Cosby Neighbourhood Development Plan

A report to Blaby District Council of the Independent Examination of the Cosby Neighbourhood Development Plan

Copy to Cosby Parish Council

Independent Examiner Christopher Collison

Christopher Collison

BA (Hons) MBA MRTPI MIED IHBC

Planning and Management Ltd

collisonchris@aol.com

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Summary of Main Findings

This is the report of the Independent Examination of the Cosby Neighbourhood Development Plan that has been prepared by Cosby Parish Council. Cosby Parish was designated as a Neighbourhood Area on 11 October 2017. The plan area lies within the Blaby District Council area. The plan period runs until 2029. The Neighbourhood Plan includes policies relating to the development and use of land. The Neighbourhood Plan does not allocate land for residential development.

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

Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. Paragraph 29 of the National Planning Policy Framework (the Framework) states that “neighbourhood planning gives communities the power to develop a shared vision for their area”.

2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.

3. The Cosby Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Cosby Parish Council (the Parish Council). Cosby Parish was designated by Blaby District Council (the District Council) as a Neighbourhood Area on 11 October 2017. The draft plan has been submitted by the Parish Council, a qualifying body able to prepare a neighbourhood plan, in respect of the Cosby Neighbourhood Area (the Neighbourhood Area). The Neighbourhood Plan has been produced by a Neighbourhood Plan Steering Group (the Steering Group) made up of Parish Councillors and other volunteers from the local community.

4. The submission draft of the Neighbourhood Plan and accompanying documents were approved by the Parish Council for submission to the District Council. The District Council arranged a period of publication between 24 March 2022 and 12 May 2022 and subsequently submitted the Neighbourhood Plan to me for independent examination which commenced on 19 May 2022.

Independent Examination

5. This report sets out the findings of the independent examination of the Neighbourhood Plan. The report makes recommendations to the District Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum. The District Council will decide what action to take in response to the recommendations in this report.

6. The District Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission version plan. Once a neighbourhood plan has been independently examined, and a decision statement is issued by the local planning authority outlining their intention to hold a neighbourhood plan referendum, it must be taken into account and can be given significant weight when determining a planning application, in so far as the plan is material to the application.

7. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will form part of the Development Plan and be given full weight in the determination of planning applications and decisions on planning appeals in the plan area unless the District Council subsequently decide the Neighbourhood Plan should not be 'made'. The Housing and Planning Act 2016 requires any conflict with a neighbourhood plan to be set out in the committee report, that will inform any planning committee decision, where that report recommends granting planning permission for development that conflicts with a made neighbourhood plan. Paragraph 12 of the Framework is very clear that where a planning application conflicts with an up-to-date neighbourhood plan that forms part of the Development Plan, permission should not usually be granted.

8. I have been appointed by the District Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and the District Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan.

9. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; and a Member of the Institute of Historic Building Conservation. As a Chartered Town Planner, I have held national positions and have 35 years' experience at Director or Head of Service level in six local planning authorities. I have been a panel member of the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) since its inception, and have undertaken the independent examination of neighbourhood plans in every region of England, and in the full range of types of urban and rural areas.

10. As independent examiner, I am required to produce this report and must recommend either:
    - that the Neighbourhood Plan is submitted to a referendum, or
    - that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or

- that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.

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

12. Paragraph 9 of Schedule 4B to the TCPA 1990 provides that the general rule is that the examination of a neighbourhood plan is to take the form of the consideration of written representations. The Planning Practice Guidance (the Guidance) states “it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.”

13. The Regulation 16 representation of Catesby Estates plc states “Given the concerns we have set out above it is considered necessary for the CNDP to be subject to hearing sessions to explore the issues raised further. We would wish to participate in any hearing sessions”. The examiner has the ability to call a hearing for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure adequate examination of the issue, or a person has a fair chance to put a case. This requires an exercise of judgement on my part. All parties have had the opportunity to state their case. The representation of Catesby Estates plc which has been professionally prepared sets out clearly points for my consideration. All of the Regulation 16 responses set out any representations relevant to my consideration whether or not the Neighbourhood Plan meets the Basic Conditions and other requirements. Those representations; the level of detail contained within the submitted Neighbourhood Plan and supporting documents; and the response to my request for clarification of matters have provided me with the necessary information required for me to conclude the Independent Examination. As I did not consider a hearing necessary, I proceeded on the basis of examination of the submission and supporting documents; the written representations; and an unaccompanied visit to the neighbourhood area.

14. This report has been produced in an accessible format.

Basic Conditions and other Statutory Requirements

15. An independent examiner must consider whether a neighbourhood plan meets the "Basic Conditions". A neighbourhood plan meets the Basic Conditions if:
    - having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
    - the making of the neighbourhood plan contributes to the achievement of sustainable development;
    - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
    - the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
    - the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

16. With respect to the penultimate Basic Condition the European Withdrawal Act 2018 (EUWA) incorporates EU environmental law (directives and regulations) into UK law and provides for a continuation of primary and subordinate legislation, and other enactments in domestic law. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention Rights, which has the same meaning as in the Human Rights Act 1998. All of these matters are considered in the later sections of this report titled 'The Neighbourhood Plan taken as a whole' and 'The Neighbourhood Plan Policies'. Where I am required to consider the whole Neighbourhood Plan, I have borne it all in mind.

17. In addition to the Basic Conditions and Convention Rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004(in sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)). I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 as amended (the Regulations) which are made pursuant to the powers given in those sections.

18. The Neighbourhood Plan relates to the area that was designated by the District Council on 11 October 2017. A map of the Neighbourhood Area is included on page 10 of the Submission Version Plan. The Neighbourhood Plan does not relate to more

than one neighbourhood area, and no other neighbourhood development plan has been made for the neighbourhood area. All requirements relating to the plan area have been met.

19. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area; and the Neighbourhood Plan does not include provision about excluded development (principally minerals, waste disposal, development automatically requiring Environmental Impact Assessment, and nationally significant infrastructure projects). I am able to confirm that I am satisfied that each of these requirements has been met.

20. A neighbourhood plan must also meet the requirement to specify the period to which it has effect. The front cover of the Neighbourhood Plan states the plan period is 2021-2029. This plan end date is confirmed in paragraph 5.0 of the Neighbourhood Plan.

21. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the tests of soundness provided for in respect of examination of Local Plans. It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan, except where this arises as a result of my recommended modifications so that the Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified. I have been appointed to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and Convention Rights, and the other statutory requirements.

22. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include policies dealing with all land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as, or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.

23. Neighbourhood plans are developed by local people in the localities they understand and as a result each plan will have its own character. It is not within my role to re-interpret, restructure, or re-write a plan to conform to a standard approach or terminology. Indeed, it is important that neighbourhood plans reflect thinking and aspiration within the local community. They should be a local product and have particular meaning and significance to people living and working in the area.

24. I have only recommended modifications to the Neighbourhood Plan (each is numbered and presented in bold type) where I consider they need to be made so that the plan meets the Basic Conditions and the other requirements I have identified. I refer to the matter of minor corrections and other adjustments of general text in the Annex to my report.

Documents

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

- Cosby Neighbourhood Development Plan 2021-2029 Regulation 16 Submission Draft October 2021
- Cosby Neighbourhood Development Plan 2021-2029 Basic Conditions Statement October 2021 [*In this report referred to as the Basic Conditions Statement]*
- Cosby Neighbourhood Development Plan 2021-2029 Consultation Statement October 2021 [*In this report referred to as the Consultation Statement]*
- Cosby Neighbourhood Plan Strategic Environmental Assessment and Habitats Regulations Assessment – Appropriate Assessment Screening Opinion Report December 2019
- Cosby Neighbourhood Plan - The Environmental Assessment of Plans and Programmes Regulations 2004 - Screening Determination Notice under Regulation 9(1)
- Information available on the Cosby Parish Council website
- Information available on the Blaby District Council website
- Representations received during the Regulation 16 publicity period
- Correspondence between the Independent Examiner and Blaby District Council and the Parish Council including: the letter of the District Council regarding Regulation 16 representations dated 18 May 2022; the initial letter of the Independent Examiner dated 19 May 2022; the letter of the Independent Examiner seeking clarification of various matters dated 4 June 2022 and the responses of the Parish Council and Blaby District Council which I received on 9 and 10 June 2022 respectively
- National Planning Policy Framework (2021) [*In this report referred to as the Framework*]
- Blaby District Local Plan (Core Strategy) Development Plan Document (2013)
- Blaby District Local Plan (Delivery) Development Plan Document (2019)
- Permitted development rights for householders' technical guidance MHCLG (10 September 2019) [*In this report referred to as the Permitted Development Guidance]*
- Planning Practice Guidance web-based resource MHCLG (first fully launched 6 March 2014 and subsequently updated) [*In this report referred to as the Guidance]*
- Town and Country Planning (Use Classes) Order 1987 (as amended)
- Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004 (as amended)
- Equality Act 2010
- Localism Act 2011

- Housing and Planning Act 2016
- European Union (Withdrawal) Act 2018
- Neighbourhood Planning Act 2017 and Commencement Regulations 19 July 2017, 22 September 2017, and 15 January 2019
- Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations. References to Regulation 14, Regulation 16 etc in this report refer to these Regulations]*
- Neighbourhood Planning (General) (Amendment) Regulations 2015
- Neighbourhood Planning (General) incorporating Development Control Procedure (Amendment) Regulations 2016
- Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

Consultation

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

27. Consultation can be traced back to 2018 when a key issues consultation document and questionnaire was delivered to every household and business in the parish. This resulted in more than 500 responses. Since that time consultation has been achieved through the Parish Council website; the Parish Magazine; direct emails, letters and telephone calls; and use of notice boards.

28. In accordance with Regulation 14 the Parish Council consulted on the pre-submission version of the draft Neighbourhood Plan between 15 March 2021 and 25 April 2021. The consultation on the pre-submission draft Plan and supporting documents was publicised through a flyer and an article in the Parish Magazine, and direct emailing of parties on a mailing list. The draft Plan and supporting documents could be viewed electronically on the Parish Council website. Hard copies of the consultation plan were available on request. A representation form was made available to assist parties in making representations however comments by email or in writing were welcomed. Appendix 1 of the Consultation Statement sets out a list of statutory and other organisations consulted. Table 1 and Table 2 of the Consultation Statement present details of the representations received and set out a response and any action taken, including modification and correction of the emerging

Neighbourhood Plan. Suggestions have, where considered appropriate, been reflected in a number of changes to the Plan that was submitted by the Parish Council to the District Council.

29. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 period of publication between 24 March 2022 and 12 May 2022. Representations were submitted from a total of 15 different parties. This includes a representation by the Leicester, Leicestershire and Rutland Clinical Commissioning Groups which had made an arrangement with the District Council during the period of publication for the submission to be made as soon as newly appointed staff were able to do so. A further representation was received by the District Council after the period of publication had closed. In accordance with the District Council Statement of Community Involvement that representation is not considered to have been 'duly made' and will be kept on file, but may be unlikely to influence the content of the Neighbourhood Plan document.

30. The Environment Agency states it is disappointing that the examination version of the Plan is silent on the issue of flooding but notes that there are no Site Allocations proposed (either within or outside of the flood zone) and also that on issues where Neighbourhood Plans are silent then the requirements of the NPPF/ Local Plan must be followed. On this basis the Environment Agency have no further comment. The Coal Authority, Natural England, Historic England and National Highways confirmed no specific comments on the Neighbourhood Plan. Sports England and a representation on behalf of National Grid offer general advice. The Leicester, Leicestershire and Rutland Clinical Commissioning Groups are supportive of the vision of the Neighbourhood Plan and welcome opportunities to maximise health and wellbeing, in particular health use of identified community facilities. None of these representations require any modification of the Neighbourhood Plan to meet the basic conditions.

31. The representation of an individual raises two questions which I refer to in the annex to my report. The representation of another individual comments that the Neighbourhood Plan does not address traffic issues on roads into and out of Cosby and refers to traffic speeds and danger to pedestrians. The representation of another individual suggests a one-way traffic system involving Park Road and Main Street and refers to heavy goods vehicle movements as a problem. These representations do not necessitate any modification of the Neighbourhood Plan to meet the basic conditions.

32. A representation of Catesby Estates plc objects to the Neighbourhood Plan on the basis the repetition of strategic housing development policies which are now nine years old and currently undergoing review does not allow the CNDP any longevity or flexibility (the representation states this is required by the PPG / NPPF). I refer to this

matter later in my report when I consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).

33. A representation of the District Council refers to Policies 4, 5, 6 and 7. The Representation of Severn Trent Water refers to Policies 3 and 4. A representation of Leicestershire County Council refers to Policies 1, 3, and 8. This representation also refers to Policy 9 although the Neighbourhood Plan does not include such a policy. It would appear the comments relate to Parish Council Action 2 which I explain later in my report is not subject to this Independent Examination. Having regard to Bewley Homes Plc v Waverley District Council [2017] EWHC 1776 (Admin) Lang J, 18 July 2017 and Town and Country Planning Act Schedule 4B paragraph 10(6) where representations raise concerns or state comments or objections in relation to specific policies, I refer to these later in my report when considering the policy in question where they are relevant to the reasons for my recommendations.

34. I have been sent each of the Regulation 16 representations. In preparing this report I have taken into consideration all of the representations submitted, in so far as they are relevant to my role, even though they may not be referred to in whole in my report. Some representations, or parts of representations, are not relevant to my role which is to decide whether or not the Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified. Where the representations suggest additional policy matters that could be included in the Neighbourhood Plan that is only a matter for my consideration where such additions are necessary for the Neighbourhood Plan to meet the Basic Conditions or other requirements that I have identified.

35. I provided the Parish Council with an opportunity to comment on the Regulation 16 representations of other parties. Whilst I placed no obligation on the Parish Council to offer any comments, such an opportunity can prove helpful where representations of other parties include matters that have not been raised earlier in the plan preparation process. The Parish Council did not submit additional comments in this respect.

36. The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which:
    a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
    b) explains how they were consulted;
    c) summarises the main issues and concerns raised by the persons consulted; and

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

37. The Consultation Statement includes information in respect of each of the requirements set out in the Regulations. I am satisfied the requirements have been met. In addition, sufficient regard has been paid to the advice regarding plan preparation and engagement contained within the Guidance. It is evident the Neighbourhood Plan Steering Group has taken great care to ensure stakeholders have had full opportunity to influence the general nature, and specific policies, of the Neighbourhood Plan.

The Neighbourhood Plan taken as a whole

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

Consideration of Convention Rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017

39. On page 36 of the Basic Conditions Statement, it is stated the Neighbourhood Plan is fully compatible with the European Convention on Human Rights. I have considered the European Convention on Human Rights and in particular Article 6 (fair hearing); Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property). The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law. Development Plans by their nature will include policies that relate differently to areas of land. Where the Neighbourhood Plan policies relate differently to areas of land this has been explained in terms of land use and

development related issues. I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. I am satisfied the Neighbourhood Plan has been prepared in accordance with the obligations for Parish Councils under the Public Sector Equality Duty (PSED) in the Equality Act 2010. Whilst an Equality Screening Assessment has not been prepared, from my own examination the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics as identified in the Equality Act 2010.

40. The objective of EU Directive 2001/42 (transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004) is "to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment." The Neighbourhood Plan falls within the definition of 'plans and programmes' (Defined in Article 2(a) of Directive 2001/42) as the Local Planning Authority is obliged to 'make' the plan following a positive referendum result (Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012).

41. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council, as the Qualifying Body, to submit to the District Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required.

42. The Cosby Neighbourhood Plan Strategic Environmental Assessment and Habitats Regulations Assessment – Appropriate Assessment Screening Opinion Report December 2019 concluded at paragraph 4.2 that "it is unlikely that any significant effects will occur as a result of the implementation of the Cosby Neighbourhood Plan". All consultation responses and further advice are presented in Appendix 1 of the Screening Opinion. The District Council has published the appropriate Screening Determination. I am satisfied the requirements regarding Strategic Environmental Assessment have been met.

43. The Screening Opinion also concluded that "it is considered that the Cosby Neighbourhood Plan either alone, or in combination with other plans, is considered unlikely to have a significant effect on any of the designated sites within approximately 40km of the boundary of Blaby District. A full appropriate assessment of the plan is therefore not required." Natural England has confirmed agreement with this conclusion. I am satisfied that the Neighbourhood Plan meets the requirements of the revised Basic Condition relating to Habitats Regulations.

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

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

46. The Guidance states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. The District Council as Local Planning Authority must decide whether the draft neighbourhood plan is compatible with EU environmental law obligations (directives and regulations) incorporated into UK domestic law by the European Withdrawal Act 2018 (EUWA):
    - when it takes the decision on whether the neighbourhood plan should proceed to referendum; and
    - when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).

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

47. I refer initially to the basic condition "having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan". The requirement to determine whether it is appropriate that the plan is made includes the words "having regard to". This is not the same as compliance, nor is it the same as part of the tests of soundness provided for in respect of examinations of Local Plans which requires plans to be "consistent with national policy".

48. Lord Goldsmith has provided guidance (Column GC272 of Lords Hansard, 6 February 2006) that 'have regard to' means "such matters should be considered." The Guidance assists in understanding "appropriate". In answer to the question "What does having regard to national policy mean?" the Guidance states a neighbourhood plan "must not constrain the delivery of important national policy objectives."

49. The most recent National Planning Policy Framework published on 21 July 2021 sets out the Government's planning policies for England and how these are expected to be applied. The Planning Practice Guidance was most recently updated on 24 June 2021. As a point of clarification, I confirm I have undertaken the Independent Examination in the context of the most recent National Planning Policy Framework and Planning Practice Guidance.

50. Table 2 of the Basic Conditions Statement set out an explanation how the Neighbourhood Plan has regard to the Framework. I am satisfied the Basic Conditions Statement demonstrates how the Neighbourhood Plan has regard to relevant identified components of the Framework.

51. The Neighbourhood Plan includes in paragraph 2.8 a positive 2029 Vision for Cosby with economic, social and environmental dimensions. Paragraph 2.9 of the Neighbourhood Plan sets out four objectives that help support delivery of the vision. The objectives, which provide a framework for the policies that have been developed, include economic dimensions (appropriate levels of infrastructure), and social components (enhance community and recreation facilities), whilst also referring to environmental considerations (conserve and enhance the character of the neighbourhood area, protect local green spaces and open spaces).

52. The Neighbourhood Plan includes two supporting Parish Council actions relating to sport and recreation, and transport improvements. These Parish Council actions are presented under the background/justification to Policy CNDP6 and Policy CNDP8 respectively. The plan preparation process is a convenient mechanism to surface and test local opinion on ways to improve a neighbourhood other than through the development and use of land. It is important that those non-development and land use matters, raised as important by the local community or other stakeholders, should not be lost sight of. The acknowledgement in the Neighbourhood Plan of issues raised in consultation processes that do not have a direct relevance to land use planning policy represents good practice. The Guidance states, "Wider community aspirations than those relating to the development and use of land, if set out as part of the plan, would need to be clearly identifiable (for example, set out in a companion document or annex), and it should be made clear in the document that they will not form part of the statutory development plan". The Parish Council actions are presented in text boxes with a different colour background to the policies of the Neighbourhood Plan. I am satisfied the Parish Council actions are adequately distinguished from the policies of the Neighbourhood Plan however their status is not clear. I have recommended the 'Background' section of the Neighbourhood Plan should make it clear the Parish Council actions are not planning policies and do not form part of the Neighbourhood Development Plan. I can confirm the Parish Council actions have not been subject to Independent Examination.

Recommended Modification 1: In the Background section of the Neighbourhood Plan make it clear the Parish Council actions are not planning policies and do not form part of the Neighbourhood Development Plan

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

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

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

56. The Framework states there are three dimensions to sustainable development: economic, social and environmental. Table 1 of the Basic Conditions Statement demonstrates ways in which the Neighbourhood Plan supports the economic, social and environmental aspects of sustainable development. The statement does not highlight any negative impacts of the Neighbourhood Plan or its policies.

57. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by ensuring schemes are of an appropriate nature and quality to contribute to economic and social well-being; whilst also protecting important environmental features of the Neighbourhood Area. In particular, I consider the Neighbourhood Plan as recommended to be modified seeks to:

- Ensure new development within and affecting the setting of Cosby Conservation Area will be expected to conserve and enhance the Conservation Area and its setting;
- Ensure development affecting six identified non-designated heritage assets is assessed against Local Plan Delivery DPD Policy DM12;
- Ensure new development responds positively to key local design attributes and features, including those set out in stated criteria;
- Designate nine Local Green Spaces;
- Establish criteria for the loss of other open spaces;
- Establish criteria for the loss of retail premises and community facilities;
- Ensure development promotes access to the countryside; and
- Ensure all development promotes active travel and safe travel for all.

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

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

59. The Framework states neighbourhood plans should “support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies”. Plans should make explicit which policies are strategic policies. “Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine its strategic policies”.

60. In this independent examination, I am required to consider whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in

the development plan for the area of the authority (or any part of that area). The District Council has confirmed the Development Plan applying in the Cosby Neighbourhood Area and relevant to the Neighbourhood Plan comprises the Blaby District Local Plan (Core Strategy) Development Plan Document (2013) and the Blaby District Local Plan (Delivery) Development Plan Document (2019).

61. The Guidance states, "A local planning authority should set out clearly its strategic policies in accordance with paragraph 21 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner." The District Council has confirmed that all of the policies of the Core Strategy and the 'Updated Core Strategy Policy CS15 Open Space, Sport and Recreation' in the Local Plan Delivery DPD are regarded by the Local Planning Authority as strategic polices for the purposes of neighbourhood planning.

62. The District Council has commenced the preparation of the new Local Plan that will replace the current Local Plan (the Core Strategy and Delivery DPDs) and set out a blueprint for how Blaby District will grow and change over the next 15 years and beyond. The District Council published a New Local Plan Options document for consultation between 28 January 2021 and 12 March 2021. The commencement of the Regulation 19 consultation on the new Local Plan is dependent upon the outcome of sub-regional work currently underway.

63. A representation of Catesby Estates plc objects to the Neighbourhood Plan summarising the objection as "Overall, it is considered that the approach set out in the Reg 16 CNDP is not justified or sustainable. The repetition of strategic housing development policies which are now 9 years old and currently undergoing review does not allow the CNDP any longevity or flexibility (as required by the PPG / NPPF). Given the timescales for the adoption of the replacement Blaby Local Plan, it is likely that the CNDP will become out of date and largely redundant in the very near future. In this regard the Reg 16 CNDP fails Basic Condition (a) (regard to national policies and advice contained in the Secretary of State guidance). It cannot proceed to referendum in its current form."

64. The Planning Policy Context part of the Neighbourhood Plan includes, between paragraphs 4.4 and 4.12, a description of the Blaby District planning policy which explains how housing requirements will be met across the district with a focus on, and adjoining the Principal Urban Area in the northern part of Blaby District. Paragraph 4.8 states the Local Delivery DPD (4 February 2019) sets a new settlement boundary for Cosby and identifies an area of separation and a green wedge. Paragraph 4.9 explains "The main implication for the CNDP being that there is now an up-to-date plan in place that sets out how the Local Plan Core Strategy will be delivered. In Cosby that will be within a defined settlement boundary and such development will be assessed against DPD Development Management Policy 1..."

Development Management Policy 1 establishes conditional support for development proposals within the settlement boundaries, including that of Cosby. Paragraph 4.10 states the DPD does not allocate any further housing beyond the settlement boundary and that Development Management Policy 2 only allows for very limited development in the countryside. Paragraph 4.11 confirms the Neighbourhood Plan does not seek to add to the policy framework set for future development within or outside the settlement boundary. A neighbourhood plan can allocate sites for housing development but there is no obligation to do so. The scope of neighbourhood plans is up to the neighbourhood planning body. Mrs Justice Lang in Park Lane Homes and Rother District Council 2022 EWHC 485 (Admin) states "In my judgment, it is clear that national policy or guidance does not require a neighbourhood plan to allocate any sites for housing to meet a strategic housing requirement in the development plan. The neighbourhood plan body has a choice whether or not to do so. Therefore, the absence of housing allocations in the draft plan was not of itself a basis upon which the Examiner and the Council ought to have concluded that the draft plan failed to meet basic condition (a)."

65. Whilst the Neighbourhood Plan does not allocate land for housing development, it places no additional cap or limit, beyond the limitations of strategic policy, on the number of homes that can be provided within the existing confines or outside of Cosby village. I consider it is reasonable to assume there will be a windfall supply of new dwellings during the Plan period which will boost the supply of homes in the Neighbourhood Area.

66. Paragraph 4.12 of the Neighbourhood Plan states a new Local Plan is in preparation and that this is at a very early stage of preparation, having gone through an Issues and Options consultation. The Neighbourhood Plan can proceed ahead of preparation of the new Local Plan. The Guidance states: "Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its Local Plan. A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development. Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- the emerging neighbourhood plan;

- the emerging Local Plan;
- the adopted development plan;

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

67. The approach of the District Council and the Parish Council has been consistent with that stated in the Guidance "It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging local plan, including housing supply policies." I am mindful of the fact that should there ultimately be any conflict between the Neighbourhood Plan, and the new Local Plan when it is adopted; the matter will be resolved in favour of the plan most recently becoming part of the Development Plan; however, the Guidance is clear in that potential conflicts should be minimised. In order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan. The emerging new Local Plan is not part of the Development Plan and this requirement does not apply in respect of that. Emerging planning policy is subject to change as plan preparation work proceeds. The Guidance states "Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood areas. They can be developed before or at the same time as the local planning authority is producing its Local Plan".

68. In considering a now-repealed provision that "a local plan shall be in general conformity with the structure plan" the Court of Appeal stated "the adjective 'general' is there to introduce a degree of flexibility" (Persimmon Homes v. Stevenage BC the Court of Appeal [2006] 1 P &CR 31). The use of 'general' allows for the possibility of conflict. Obviously, there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.

69. The Guidance states, “When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:
    - whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with;
    - the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy;
    - whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy;
    - the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.”

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

70. Consideration as to whether the making of the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan for the area of the authority (or any part of that area) has been addressed through examination of the plan as a whole and each of the plan policies below. I have taken into consideration Table 3 of the Basic Conditions Statement that demonstrates how each of the policies of the Neighbourhood Plan is in general conformity with relevant strategic policies. Subject to the modifications I have recommended, I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

The Neighbourhood Plan Policies

71. The Neighbourhood Plan includes eight policies as follows:
    Policy CNDP1 – Development within and affecting the setting of Cosby Conservation Area
    Policy CNDP2 – Development affecting non-designated heritage assets
    Policy CNDP3 – Design Principles
    Policy CNDP4 – Protecting Local Green Space
    Policy CNDP5 – Protecting Other Open Spaces
    Policy CNDP6 – Protection of Existing Community Facilities and Local Shops
    Policy CNDP7 – Access to the Countryside
    Policy CNDP8 – Access and Road Safety

72. Paragraph 29 of the Framework states “Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies”. Footnote 16 of the Framework states “Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area.”

73. Paragraph 15 of the Framework states “The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.”

74. Paragraph 16 of the Framework states “Plans should: a) be prepared with the objective of contributing to the achievement of sustainable development; b) be prepared positively, in a way that is aspirational but deliverable; c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees; d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals; e) be accessible through the use of digital tools to assist public involvement and policy presentation; and f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).”

75. The Guidance states “A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”

76. “While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan”.

77. A neighbourhood plan should contain policies for the development and use of land. “This is because, if successful at examination and referendum (or where the

neighbourhood plan is updated by way of making a material modification to the plan and completes the relevant process), the neighbourhood plan becomes part of the statutory development plan. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (See section 38(6) of the Planning and Compulsory Purchase Act 2004)."

78. "Neighbourhood plans are not obliged to contain policies addressing all types of development. However, where they do contain policies relevant to housing supply, these policies should take account of latest and up-to-date evidence of housing need". "A neighbourhood plan can allocate sites for development, including housing. A qualifying body should carry out an appraisal of options and an assessment of individual sites against clearly identified criteria. Guidance on assessing sites and on viability is available."

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

Policy CNDP1 – Development within and affecting the setting of Cosby Conservation Area

80. This policy seeks to ensure new development within and affecting the setting of Cosby Conservation Area will be expected to preserve and enhance the Conservation Area and its setting.

81. In a representation Leicestershire County Council state "Street furniture within a development which requires adoption, such as street lighting/ mandatory road signs etc would need to be in line with Leicestershire County Council (LCC) specifications. Anything over and above LCC specifications would require commuted sums and would need to be installed with the agreement of the developer." This representation does not necessitate modification of part (g) of the policy in order to meet the basic conditions.

82. The policy has regard for national policy which requires great weight is given to the conservation of designated heritage assets whilst recognising not all elements of a Conservation Area will necessarily contribute to its significance as set out in paragraphs 199 and 207 of the Framework respectively. The policy has regard for paragraph 189 of the Framework which states heritage assets should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their

contribution to the quality of life of existing and future generations. Whilst I appreciate the term “preserve” is used in primary legislation the national policy approach set out in the Framework is better reflected through use of the term “conserve” which more readily accommodates beneficial change. In response to my request for clarification the District Council confirmed such a modification would bring the policy in line with national and local planning policies. I have recommended a modification in this respect so that the policy has sufficient regard for national policy.

83. Part (i) of the policy does not flow from the initial text of the second sentence of the policy. I have recommended a modification in this respect so that the policy “is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals” as required by paragraph 16d) of the Framework.

84. The policy is in general conformity with the strategic policies included in the Core Strategy and the Local Plan Delivery DPD and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

85. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan if modified as recommended. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 2:
In Policy CNDP1

- **replace “preserve” with “conserve”**
- **replace part (i) with “Demonstrate, in the case of proposals where below ground works and investigations are required, that suitable archaeological investigations will be undertaken and recorded.”**

Policy CNDP2 – Development affecting non-designated heritage assets

86. This policy seeks to ensure development affecting six identified non-designated heritage assets is assessed against Local Plan Delivery DPD Policy DM12.

87. Paragraph 5.7 of the Neighbourhood Plan provides information how locally valued heritage assets have been identified. The Guidance refers to advice on local lists published on Historic England’s website (Paragraph: 040 Reference ID: 18a-040-20190723 Revision date 23 07 2019). Historic England Advice Note 11 Neighbourhood Planning and the Historic Environment (Published 16 October 2018) states “Preparing a list of locally-valued heritage assets. Independent (at least initially) of any local list endorsed or developed by a local planning authority, neighbourhood planning groups may wish to consider if any buildings and spaces of

heritage interest are worthy of protection through preparing a list of locally-valued heritage assets that is referenced in neighbourhood plan policy. The use of selection criteria helps to provide the processes and procedures against which assets can be nominated and their suitability for addition to the local planning authority's heritage list assessed. A list of locally-valued heritage assets can inform or be integrated within a local list maintained by the local authority, subject to discussion with them." It is appropriate for a local community to use the Neighbourhood Plan preparation process to identify heritage assets that are locally valued. I am satisfied the approach adopted in the Neighbourhood Plan in these respects has sufficient regard for national policy. I have recommended the policy title and the policy text are amended to reflect the actual status of the heritage assets referred to in the policy. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and "is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals" as required by paragraph 16d) of the Framework.

88. The Blaby Local Plan DPD Development Management Policy DM12 states that: "A balanced consideration will be applied to proposals which may impact non-designated heritage assets. Proposals will be supported where the benefits of the scheme are considered to outweigh the scale of any harm or loss, having regard to the significance of the heritage asset". Whilst Development Management Policy 12 refers to benefits in the context of non-designated heritage assets this is not a strategic policy. Core Strategy Policy CS20 states "Proposed development should avoid harm to the significance of historic sites, buildings or areas, including their setting." Consideration of public benefits is only referred to in the Framework with respect to proposals affecting designated heritage assets. I consider the approach most applicable to locally valued assets is that relating to non-designated heritage assets as set out in paragraph 203 of the Framework. I have recommended a modification in this respect so that the policy has sufficient regard for national policy.

89. As recommended to be modified the policy is in general conformity with the strategic policies included in the Core Strategy and the Local Plan Delivery DPD and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

90. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan if modified as recommended. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 3:
Replace the first sentence of Policy CNDP2 with "The effect of a development proposal on the significance of the locally valued heritage assets listed below

should be taken into account in determining an application. In weighing applications that directly or indirectly affect a locally valued heritage asset, in the context of Local Plan Delivery DPD Development Management Policy DM12, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."
Retitle the policy "POLICY CNDP2 – Development affecting locally valued heritage assets" and adjust the background/justification text accordingly

Policy CNDP3 – Design Principles

91. This policy seeks to ensure new development responds positively to key local design attributes and features, including those set out in stated criteria.

92. In a representation Severn Trent Water state "Whilst we note that water efficiency is mentioned Within policy CNDP3 however we feel that specific requirements for water efficiency could be made clearer by amending the existing policy Wording. This is because water efficient design and technology is important for ensuring the sustainability of the water supply system for the future, both supporting existing customers and future development. NPPF supports the delivery of sustainable development and the Humber River Basin Management Plan promotes the use of the tighter Water Efficiency Target within Building Regulations Part G. We would recommend that this detailed with Policy CNDP3 so that developers are aware of what is expected of them from the outset of the design process. To aid with the implementation fop the recommendation we have provided example wording below: All development should demonstrate that they are water efficiency, where possible incorporating innovative water efficiency and water re-use measures, demonstrating that the estimated consumption of wholesome water per dwelling is calculated in accordance with the methodology in the water efficiency calculator, should not exceed 110 litres/person/day." The Housing: optional technical standards published on 27 March 2015 states "Where there is a clear local need, local planning authorities can set out Local Plan policies requiring new dwellings to meet tighter Building regulations optional requirement of 110 litres/person/day." Guidance is provided as to how local planning authorities should establish clear need including sources of evidence, consultations, and consideration of the impact on viability and housing supply. There is no stated expectation that Neighbourhood Plans will address these matters. I have recommended a modification of the supporting text in this respect so that the Neighbourhood Plan has sufficient regard for national policy.

93. In a representation Leicestershire County Council state "Due to budgetary constraints and long-term maintenance costs, LCC no longer considers adopting green spaces, verges or trees. It should be ensured that any scheme, which proposes these features is suitably designed so these areas do not impact on roads

proposed for adoption i.e., root protection would need to be installed. It should be noted that these areas will need to be maintained by a management company including any features, which are not required for the satisfactory function of the highway and will attract commuted sums. This representation does not necessitate modification of part (g) of the policy in order to meet the basic conditions. The County Council also state "The Leicestershire Highways Authority (LHA) currently doesn't have any standards for vehicle charging points." I have recommended a modification of part (j) of the policy in this respect to correct an error.

94. Paragraph 127 of the Framework states "neighbourhood planning groups can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development". Policy CNDP3 has regard for paragraph 130 of the Framework which sets out design principles of development that planning policies should ensure. In particular the policy has regard for paragraph 130 of the Framework which states planning policies should ensure developments are sympathetic to local character and history. The policy is not overly prescriptive and will not prevent or discourage appropriate innovation or change.

95. To be read alongside the Guidance, Government published the National Design Guide on 1 October 2019 to set out the characteristics of well-designed places and demonstrate what good design means in practice. The National Design Guide was updated on 30 January 2021 to align with the National Model Design Code and Guidance Notes for Design Codes published separately (as forming part of the Guidance) on 20 July 2021, and have been last updated on 14 October 2021. The design criteria set out in Policy CNDP3 reflect the approach and principles recommended in national policy.

96. Subject to my recommended modification of the final sentence of the first paragraph of Policy CNDP3 I am satisfied the policy is not seeking to introduce additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings which would be contrary to the Written Ministerial Statement to Parliament of the Secretary of State (CLG) on 25 March 2015 but is instead seeking to establish support for positive environmental measures including compliance with standards where they exist.

97. In parts (l) and (m) of the policy the terms "height of" and "safe and secure" are ambiguous. The word "uses" in part (n) of the policy requires correction. The term "reduce light pollution" in part (p) of the policy does not provide a basis for the determination of development proposals. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and "is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals" as required by paragraph 16d) of the Framework.

98. The policy is in general conformity with the strategic policies included in the Core Strategy and the Local Plan Delivery DPD and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

99. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan if modified as recommended. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 4:
In Policy CNDP3

- **replace the final sentence of the first paragraph with "Development that exceeds prevailing sustainable construction standards as set out in Building Regulations will be supported."**
- **in part (j) delete "to meet County adopted standards"**
- **in part (l) after "height of" insert "buildings in"**
- **in part (m) replace "safe and secure" with "achieve a safe and secure living environment"**
- **in part (n) replace "uses" with "use"**
- **in part (p) replace "light pollution" with "avoid light spillage beyond site boundaries"**

In the final sentence of background/justification paragraph 5.10 delete the text after "measures".

Policy CNDP4 – Protecting Local Green Space

100. This policy seeks to designate nine Local Green Spaces. Appendix 1 of the Neighbourhood Plan sets out background information relating to the identification and assessment of green open spaces in Cosby.

101. The policy does not seek to introduce a more restrictive approach to development proposals than apply in Green Belt without sufficient justification, which it may not. (R on the Application of Lochailort Investments Limited v Mendip District Council. Case Number C1/2020/0812).

102. In a representation Severn Trent Water state "Severn Trent understand the need for Local Green Space and the need for it to be protected, however local green spaces can provide suitable locations for schemes such as flood alleviation to be delivered without adversely impacting on the primary function of the open space. If the correct scheme is chosen, the flood alleviation schemes can result in additional benefits to the local green space in the form of biodiversity or amenity improvements. We would therefore recommend that the following point is added to Policy CNDP4 to

support the delivery of flood alleviation projects where required within green spaces. Development of flood resilience schemes within local green spaces will be supported provided the schemes do not adversely impact the primary function of the green space." Paragraph 103 of the Framework states "Policies for managing development within a Local Green Space should be consistent with those for Green Belts." Paragraphs 147 to 151 of the Framework sets out statements regarding the types of development that are not inappropriate in Green Belt areas. The additional wording suggested by Severn Trent Water does not have sufficient regard for national policy.

103. Designation of Local Green Space can only follow identification of the land concerned. For a designation with important implications relating to development potential it is essential that precise definition is achieved. The proposed Local Green Spaces are presented on an index map and individual maps within Appendix 2 of the Neighbourhood Plan. I am satisfied the areas of land proposed for designation as Local Green Spaces have been adequately identified.

104. Paragraph 101 of the Framework states "The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period." In respect of each of the areas proposed for designation as Local Green Space I find these requirements are met.

105. Paragraph 102 of the Framework states "The Local Green Space designation should only be used where the green space is: a) in reasonably close proximity to the community it serves; b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and c) local in character and is not an extensive tract of land." I find that in respect of each of the proposed Local Green Spaces the designation relates to green space that is in reasonably close proximity to the community it serves, is local in character, and is not an extensive tract of land.

106. In a representation the District Council state "Paragraph 103 of the National Planning Policy Framework ('NPPF') (2021) is clear that policies for managing development within a Local Green Space should be consistent with those for Green Belts. Therefore, Local Green Space designations are significant and require detailed explanation indicating how each designation meets the criteria outlined by NPPF paragraph 102, b). As stated in our Regulation 14 response, it is felt that the detail in Appendix 2 to support the designation of the Local Green Spaces is lacking in depth and does not reflect the strength of the policy. The Neighbourhood Plan

provides a description of the category / criteria type the proposed site's justification would fulfil but does not provide detail. The connection between the strength of the policy designation and the Local Green Spaces identified is missing. However, should the Examiner find that the areas of open space meet the criteria for designation as Local Green Space, the Policy wording will need amending. The maps to illustrate the Local Green Spaces are on pages 41 to 50 and not 40 to 49." I refer to the page number issue in the Annex to my report.

107. Appendix 2 of the Neighbourhood Plan includes Table 2 which seeks to justify each of the nine proposed designations as Local Green Space. Relevant reasons for designation are indicated as applying in respect of each of the proposed Local Green Spaces including matters referred to in the Framework. I have visited each of the areas of land concerned and as a matter of planning judgement consider the attributes identified to be relevant and reasonable. The District Council has raised a valid point regarding the lack of detailed explanations. Whilst the justifications are brief in nature and could have helpfully included greater detail, Appendix 2 of the Neighbourhood Plan provides sufficient evidence for me to conclude that each of the areas proposed for designation as Local Green Space is demonstrably special to a local community and holds a particular local significance. In reaching this conclusion I have taken into account the fact that the proposed designations have been identified as part of the Neighbourhood Plan preparation process that has included substantial community consultation and the statement in paragraph A2.3 that "the designation of local spaces as special to the community is informed by general local knowledge the opinions of those residents who live nearby the spaces in question."

108. I find that the areas proposed as Local Green Space are suitable for designation and have regard for paragraphs 101 to 103 of the Framework concerned with the identification and designation of Local Green Space.

109. The policy is in general conformity with the strategic policies included in the Core Strategy and the Local Plan Delivery DPD and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

110. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. This policy meets the Basic Conditions.

Policy CNDP5 – Protecting Other Open Spaces

111. This policy seeks to establish criteria for the loss of other open spaces. Appendix 1 of the Neighbourhood Plan sets out background information relating to the identification and assessment of green open spaces in Cosby.

112. In a representation the District Council has commented "Paragraph 16 d) of the NPPF states that plans should contain policies that are clearly written and unambiguous, so it is evident how a decision-maker should react to development proposals. There are inconsistencies between the policy, the illustrations on the Policies Map, and the titles of Open Spaces in the policy, which may affect how someone determines an application when using the policy. There is a lack of consistency between the Open Space sites listed in the text of the Policy and the Open Space sites illustrated on the Policies Map. The policy lists 17 spaces to be protected by this policy whereas the Policies Map at the back of the document illustrates 18 spaces to be protected. Blaby District Council Officers responded to the Regulation 14 consultation on the Neighbourhood Plan and commented that there was duplication between policies in the Neighbourhood Plan and the Local Plan. Commenting on Policy CNDP5 Protecting Other Open Space it was noted that the open space at Tudor Drive / Brierfield Road (formerly referenced as CNDP5/9 in the Regulation 14 version of the Neighbourhood Plan) was already protected in Updated Local Plan Policy CS15 Open Space, Sport and Recreation of the Local Plan (Delivery) Development Plan Document (2019) as amenity green space and so it was recommended to be removed from the Plan. The Cosby Neighbourhood Plan Consultation Statement acknowledged this fact. It appears that this site has been removed from the list of sites to be protected by the Policy but the site remains illustrated on the Policies Map towards the end of the document. There is the risk that the illustration of the land at Tudor Drive / Brierfield Road in the Neighbourhood Plan without an accompanying policy could confusion to the reader which conflicts with paragraph 16 d) of the NPPF that requires plans to contain policies that are clearly written and unambiguous, so it is evident how a decision-maker should react to development proposals." I have recommended the Policy Map is modified to delete the open space at Tudor Drive/Brierfield Road reference CNDP5/9 so that the Neighbourhood Plan "is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals" as required by paragraph 16d) of the Framework.

113. The District Council also state "There are inconsistencies in the titles of the Open Spaces proposed to be protected from development which could cause confusion to the public and the decision-maker as to how they should react to development proposals:

- The reference of CNDP5/3 should be changed from Corner Hillview/Chiltern Avenue to Corner of Hill View Drive to avoid confusion between the designations CNDP5/2 Chiltern Avenue and CNDP5/3 Corner Hillview/Chiltern Avenue.
- Similarly, the designation Lady Leys, east corner is repeated twice under two textual references: CNDP5/7 and 5/8. The titles of these two separate Open Spaces should be different. It is suggested that CNDP5/7 remains as Lady Leys, east corner, whereas CNDP5/8 could be retitled as White Barn Drive to reflect its location.
- Referring to the Policies Map, the site label for CNDP5/3 is annotated but the extent of the open space designation is not illustrated. It could be that the site label is obscuring the extent of the site proposed to be protected. Therefore, the site label needs to be moved.
- The final sentence requires the addition of a comma at the end of the introductory clause so that it reads: 'Where feasible, proposals to improve or enhance these spaces will be supported'".

I agree that the inconsistency of references will cause confusion for users of the Neighbourhood Plan and that the identified errors are corrected. I recommend these modifications are made so that the policy "is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals" as required by paragraph 16d) of the Framework.

114. The policy is in general conformity with the strategic policies included in the Core Strategy and the Local Plan Delivery DPD and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

115. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan if modified as recommended. Subject to the recommended modifications this policy meets the Basic Conditions.

Recommended modification 5:
In Policy CNDP5

- **replace the description of site reference CNDP5/3 to "Corner of Hill View Drive"**
- **replace the description of site reference CNDP5/8 to "White Barn Drive"**
- **in the final sentence insert a comma after "Where feasible"**

On the Policy Map identify the land to which site reference CNDP5/3 relates, and delete the open space at Tudor Drive/Brierfield Road reference CNDP5/9

Policy CNDP6 – Protection of Existing Community Facilities and Local Shops

116. This policy seeks to establish criteria for the loss of retail premises and community facilities.

117. In a representation the District Council has commented Under "Community Facilities", the text "Where planning permission is required" should be deleted because the policy would not be used if planning permission was not required. I agree with this change and the reason for it. I have recommended a modification in this respect and in respect of deletion of the term "subject to the exercise of permitted development rights" for the same reason. I have also recommended the deletion of the term "when they are in accordance with other development plan policies and the policies of the CNDP" as it is unnecessary and confusing for one policy to state this as the Neighbourhood Plan and the entire Development Plan should be read as a whole. I also agree with the District Council that the comma after "nurseries)" and before "unless" should be deleted as this is a subordinate clause and the comma is not required. I have recommended these modifications so that the policy "is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals" as required by paragraph 16d) of the Framework.

118. The District Council also state "With reference to the final paragraph in the policy, it is not clear how the applicant is to 'demonstrate that such local retail provision is no longer needed, or, that the premises are physically unsuitable for continued retail use'. This lack of clarity conflicts with paragraph 16 d) of the NPPF (2021). It is suggested that the final paragraph of the policy is re-worded to the following: Retail provision within the defined Local Centre (as shown on the Local Plan Policies Map 2019) and local shops outside of this centre will be protected unless one of the following can be demonstrated: the applicant can demonstrate through the submission of marketing evidence (including active marketing locally and in the wider area), over a minimum period of 12 months, that there is no longer a demand for such retail provision; or the premises are physically unsuitable for continued retail use. This will ensure that there is consistency within the Policy with regards to the evidence and marketing periods required to justify the losses of Community Facilities and Local Shops." I have recommended a modification of the final paragraph so that it provides the basis for the determination of development proposals. This includes alternative wording to the term "protected". I have recommended a modification to delete the first sentence of the policy as it is unnecessary and does not reflect the complexity of the policy content. I have recommended these modifications so that the policy "is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals" as required by paragraph 16d) of the Framework.

119. The policy is in general conformity with the strategic policies included in the Core Strategy and the Local Plan Delivery DPD and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

120. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan if modified as recommended. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 6:
In Policy CNDP6

- **delete the first sentence**
- **delete "Where planning permission is required"**
- **delete the comma after "nurseries)" and before "unless"**
- **delete "when they are in accordance with other development plan policies and the policies of the CNDP"**
- **replace the final paragraph with "Development proposals resulting in the loss of retail provision within the defined Local Centre (as shown on the Local Plan Policies Map 2019) and local shops outside of this centre will not be supported unless one of the following can be demonstrated:**
    - **the applicant can demonstrate through the submission of marketing evidence (including active marketing locally and in the wider area), over a minimum period of 12 months, that there is no longer a demand for such retail provision; or**
    - **the premises are physically unsuitable for continued retail use."**

Policy CNDP7 – Access to the Countryside

121. This policy seeks to ensure development promotes access to the countryside.

122. In a representation the District Council has commented "The policy does not conform with national legislation and policy. It is suggested that the final paragraph of the policy is deleted. Firstly, the final paragraph of the policy states that: 'any development that leads to the loss or degradation of any PROW, or any cycleway, will not be permitted' and, 'proposals to divert PROWs or cycleways should provide clear and demonstrable benefits for the wider community'. It will not be possible for both events to occur. The policy informs decision-makers to refuse proposals that lead to the loss or degradation of any PROW or cycleway, but then says that proposals to divert PROWs or cycleways should provide clear and demonstrable benefits to the wider community. Secondly, statutory provisions apply in the case of development affecting public rights of way, with public rights of way considered a

highways matter and under the jurisdiction of the Leicestershire County Council Highways Team; therefore, parts of the policy are covered by existing provisions and parts of the policy go beyond the remit of a Neighbourhood Plan by contradicting national legislation. The Town and Country Planning Act 1990, section 251 (1) enables rights of way to be extinguished or diverted by order of the Secretary of State. The paragraph does not comply with national legislation and therefore does not meet part a. of the basic conditions as set out in paragraph 8 (2) of schedule 4B to the Town and Country Planning Act 1990. As public rights of way may also have strategic implications, the policy is also considered to have the potential to undermine strategic policies across the District and therefore fails part e. of the basic conditions. The rest of the policy is acceptable and it is felt that the finer detail it contains positively builds upon CS10 Transport Infrastructure of the Local Plan Core Strategy (2013)." I agree that the final paragraph of the policy is inappropriate as it seeks to modify the statutory framework relating to the public right of way network. The term "Where considered necessary and relevant" introduces uncertainty and does not provide a basis for the determination of development proposals. The repeat of the term ""to the" requires correction. I have recommended a modification in these respects so that the policy has sufficient regard for national policy and "is clearly written and unambiguous, so it is evident how a decision maker should react to development proposals" as required by paragraph 16d) of the Framework.

123. The policy is in general conformity with the strategic policies included in the Core Strategy and the Local Plan Delivery DPD and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

124. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a 'made' neighbourhood plan. Subject to the recommended modification this policy meets the Basic Conditions.

Recommended modification 7:
In Policy CNDP7

- **delete the repeat "to the"**
- **replace "where considered necessary and relevant" with "unless it is demonstrated that this is not necessary"**
- **delete the final paragraph**

Policy CNDP8 – Access and Road Safety

125. This policy seeks to ensure all development promotes active travel and safe travel for all.

126. In a representation Leicestershire County Council state “It should be noted that a new development should only mitigate its own impact; developers are not required to mitigate any existing situations unless the existing concerns are made worse by a new development. The LHA would normally expect development proposals to comply with the relevant national and local polices and guidance, both in terms of justification and of design. As part of any planning application an applicant is advised to determine the exact legal line of any Public Rights of Way (PROW) before designing any development. Developers should endeavour to provide a route for the path on its existing line. Only if this is not practicable should a diversion or extinguishment be considered. A PROW cannot be moved until a Public Path Order is confirmed. Should a development require a diversion or extinguishment of a PROW. The LHA would advise developers to contact Leicestershire County Council’s Rights of Way Service as an application to the Planning Authority for a Public Path Diversion Order (S.247/257 Town & Country Planning Act 1990) will be required at the same time as the planning application. This representation does not necessitate modification of the policy in order to meet the basic conditions.

127. The policy has regard for paragraph 106 of the Framework which states planning policies should identify and protect, where there is robust evidence, routes which could be critical in developing infrastructure to widen transport choice, and that planning policies should provide for attractive and well-designed walking and cycling networks. The policy also has regard for paragraph 92 of the Framework relating to the achievement of safe and accessible places with clear and legible pedestrian and cycle routes.

128. The policy is in general conformity with the strategic policies included in the Core Strategy and the Local Plan Delivery DPD and relevant to the Neighbourhood Plan and provides an additional level of detail or distinct local approach to that set out in the strategic policies.

129. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. Having regard to the Framework and Guidance the policy is appropriate to be included in a ‘made’ neighbourhood plan. This policy meets the Basic Conditions.

Conclusion and Referendum

130. I have recommended seven modifications to the Submission Version Plan. I recommend an additional modification in the Annex to my report. The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them. I am satisfied that the Neighbourhood Plan is compatible with the Convention Rights, and would remain compatible if modified in accordance with my recommendations; and subject to the modifications I have recommended, meets all the Statutory Requirements set out in paragraph 8(1) of schedule 4B of the Town and Country Planning Act 1990, and meets the Basic Conditions:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- does not breach, and is otherwise compatible with, EU obligations; and
- the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

I recommend to Blaby District Council that the Cosby Neighbourhood Development Plan for the plan period up to 2029 should, subject to the modifications I have put forward, be submitted to referendum.

131. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension. I have seen nothing to suggest that the policies of the Plan will have "*a substantial, direct and demonstrable impact beyond the neighbourhood area*". I have seen nothing to suggest the referendum area should be extended for any other reason. I conclude the referendum area should not be extended beyond the designated Neighbourhood Area.

I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by Blaby District Council as a Neighbourhood Area on 11 October 2017.

Annex: Minor Corrections to the Neighbourhood Plan

132. I have only recommended modifications and corrections to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the Basic Conditions and the other requirements I have identified. If to any extent, a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Supporting text must be adjusted to achieve consistency with the modified policies.

133. In Policy CNDP4 the reference to maps to illustrate the Local Green Spaces should be corrected to refer to pages 41 to 50 and not 40 to 49.

Recommended modification 8:
Modify policy explanation sections, general text, figures and images, and supporting documents to achieve consistency with the modified policies, and to achieve updates and correct identified errors.

I have earlier in my report referred to the representation of an individual that questions whether Victoria Park is protected and why Prior William Close is not mapped. My role does not extend to answering questions in representations. I request the writer is contacted by either the Parish Council or the District Council to provide suitable answers to the questions posed.

Chris Collison
Planning and Management Ltd
collisonchris@aol.com
17 June 2022
REPORT END