

**GILSTON AREA NEIGHBOURHOOD PLAN 2020-2033**

**Submission Draft (June 2020)**

**REPORT TO EAST HERTS DISTRICT COUNCIL**

**By**

**Independent Examiner**

**Christopher Lockhart-Mummery QC**

**February 2021**

## SUMMARY

I was appointed by East Herts District Council (the Council) to carry out the independent examination of the Gilston Area Neighbourhood Plan 2020-2033.

The examination was carried out between October 2020 and February 2021. It was undertaken by considering all documents submitted to me, including Regulation 16 Representations. I held a hearing on 19 November 2020. I undertook a site view on 11 January 2021.

I find the NP is based on extensive community engagement, well researched supporting evidence, and – subject to matters set out in the Report – provides an appropriate set of local policies.

I issued Examiner’s Note 2 on 26 October 2020, stating three serious concerns I then had as to compliance with Basic Condition (a). The third concern fell away, but concerns 1 and 2 remained.

Following the hearing, the Neighbourhood Plan Group (NPG) submitted a revised NP, “December 2020 Edits”. Much of the revised material had been subject to full discussion at the hearing. The December 2020 Edits document was given full publicity, and representations were submitted. This document overcame my first and second concerns, and effected other significant improvements.

Subject to Recommended Modifications in the Report, including the substitution of the December 2020 Edits for the submitted NP, I conclude that the NP meets the Basic Conditions and other statutory requirements, and I recommend that it proceed to referendum.

I further recommend that the referendum area should be extended to include the whole of the Parish of Hunsdon.

## CONTENTS

	<b>Pages</b>
Introduction	1-4
The NPG and Consultation	4-5
Statutory requirements	5-6
Overview of NP (as submitted)	6-8
Examination process	8-11
The Basic Conditions – General	11
The Basic Conditions – Specific	12-13
Review of the NP	13-21
Conclusion and recommendations	21

## **Introduction**

1. I was appointed by East Herts District Council (the Council) with the support of the qualifying body, the Hunsdon Eastwick and Gilston Neighbourhood Plan Group (“the NPG”), to undertake the independent examination of the Submission Draft (June 2020) Gilston Area Neighbourhood Plan 2020-2033 (“the NP”).
2. I am a Queen’s Counsel with over 40 years experience of planning law and practice. I am a member of the NPIERS Panel of Independent Examiners. I am independent of any local connections and have no conflict of interest.

## **The Gilston area, the East Herts District Plan October 2018, and the Concept Framework**

3. The East Herts District Plan (“the DP”), which was adopted in October 2018, describes the Gilston area at paragraph 11.1.1 in these terms:
 

*“The Gilston Area is located to the north of the Stort Valley, in close proximity to the New Town of Harlow. It is characterised by an area of undulating countryside with a number of features including small streams, woods, hedgerows and the historically important Gilston Park. A number of small settlements are located adjacent to the Gilston Area, including the villages of Hunsdon, Eastwick and Gilston”.*
4. On 2 January 2017, the Government announced its support for the Harlow and Gilston Garden Town. It was recognised that areas in and around Harlow present a number of opportunities to deliver growth of considerable scale and significance, to meet growing pressures of housing and infrastructure need locally, but also delivering broader regeneration and change for Harlow. Local councils – EHDC, Harlow Council and Epping Forest District Council – working with other partners are committed to delivering sustainable growth to support the economic ambitions of the London Stansted Cambridge Corridor. The ambition is that the Garden Town will comprise various new developments in the wider Harlow area, within the three local authority areas. The Gilston Area forms a key part of this project.

5. The Gilston Area Concept Framework (2018) – “the CF” – was produced in parallel to the District Plan by landowners, Places for People and (now) Briggens Estate, in collaboration with the Council and following input by the local communities between September 2017 and January 2018. It is stated that the CF represents an agreed approach which has been developed through collaboration between all main parties. It identifies high quality design and place making principles, potential land uses, landscaping and public realm, transport and infrastructure requirements and phasing.
6. The CF was the subject of formal consultation between July and September 2017. Revisions were incorporated in December 2017, informed by further engagement undertaken with the community and facilitated through the NPG.
7. Revisions to the CF were agreed by the Council on 12 June 2018. The CF was formally agreed by the Council on 25 July 2018 as a material consideration for development management purposes. Paragraph II of Policy GA1 of the DP states that it will be used “as a benchmark in reviewing proposals for development”.
8. The CF identifies design principles, land uses, infrastructure requirements and phasing, and was put to the examination of the DP to support and demonstrate the deliverability of Policy GA1 as seven distinct villages separated by meaningful landscape with shared infrastructure.
9. Neither the CF nor the DP explicitly contemplated a neighbourhood plan for the same area. The CF set out “development principles that would inform future planning decisions...establish key principles for development including land use, movement...”.
10. Page 79 of the CF showed the location and broad extent of seven Villages all falling within the area indicated for development in Figure 11.2 of the DP.
11. Page 137 of the CF indicated the approximate number of residential units in each village, ranging from about 700 to 2000.

12. It was stated that the CF “has provided the basis for this Neighbourhood Plan”.
13. Chapter 11 of the DP addresses The Gilston Area. Figure 11.2 indicates a substantial area within which development would be appropriate, and a further area indicated for open, countryside uses.
14. The DP contains two Policies for the Gilston area, GA1 and GA2. In the December 2020 Edits document (see below) the policies are summarised at paragraphs 23-27.
15. Paragraph I of GA1 provides:

*“In accordance with policy DPS3 (Housing Supply 2011-2033), land at the Gilston Area is allocated for development to accommodate 10,000 homes, to be delivered within this Plan period and beyond. It is anticipated that at least 3,000 homes will be delivered by 2033”.*
16. Paragraph II provides:

*“A Concept Framework is being jointly prepared by the landowners, the Council and the local community. The Concept Framework identifies design principles, potential land uses, infrastructure requirements and phasing, and will be used as a benchmark in reviewing proposals for development. Prior to the submission of any planning application(s) further design work through the pre-application engagement process will be required in order to agree, among other things, the quantum and distribution of land uses, access and layout principles”.*
17. Detailed criteria for the development are set out in paragraphs III to VIII.
18. The submitted NP did not indicate or allocate:
  - (1) The locations, spatial extent let alone boundary of any of the seven villages (referred to at paragraph 11.3.2).
  - (2) The dwelling numbers for each village.
  - (3) The range of dwelling types and mix, including affordable housing.
  - (4) Other land uses for each village.

- (5) Density, overall and in relation to each village.
  - (6) Heights of development.
19. The DP contains a brief reference to Neighbourhood Planning. It is stated (paragraph 3.4.2) that any neighbourhood plan prepared will need to support the strategic development needs of the District as set out in this Plan. “However it will be able to shape and influence where development in the local area will go and what it will look like”.

### **The NPG and Consultation**

20. The Hunsdon Eastwick and Gilston Neighbourhood Plan Group (HEGNPG) was constituted in 2016. The NP area covers the entirety of Gilston Parish, Eastwick Parish and that part of Hunsdon Parish which lies within the proposed Gilston Area (Policy GA1) and constitutes the rural portion of the Parish of Hunsdon east of Hunsdon Village, from the outer boundaries of Hunsdon House (excluded) and the land to the south of it to the A414. The application for designation of the Neighbourhood Area was approved by the Council on 28 November 2017. The remainder of the Parish of Hunsdon (including the village, the SSSI and part of the Stort Valley and Briggens House) forms a separately designated neighbourhood plan area, for which a neighbourhood plan is currently in preparation.
21. The extent of the Neighbourhood Area and Plan Boundary is shown in Figure 1 of the submitted NP. Figure 3 of the December 2020 Edits usefully shows the NP area by reference to Figure 11.2 of the DP.
22. The NP was submitted with a comprehensive Consultation Statement. Paragraph 5 of this Statement describes the early work and engagement in relation to the CF and the original vision for the NP.
23. The first draft of the CF was prepared in 2016. As noted above, following consultation with the community, a revised CF was prepared over 2017/18, and endorsed by the Council in June 2018.

24. Following adoption of the DP, the NPG decided to develop the NP on the foundations of the CF. A deliberate choice was made by the NPG not to seek to include in the NP policies which introduced restrictions not previously agreed with the landowners.
25. In August 2019 the Pre-Submission Draft of the NP was ready for Regulation 14 consultation, invitations were sent to the community, and electronic copies sent to the landowners and statutory consultees. Regulation 14 consultation was undertaken for a six week period between September and October 2019. Responses received from the local community, statutory consultees and other stakeholders, were fully reviewed, and changes were made to the draft NP where considered appropriate to address these. Following that consultation and a formal review by the Quality Review Panel of the Harlow and Gilston Garden Town (February 2020) the NP was revised particularly in relation to policies on landscape, local character and the improvement of existing settlements.
26. A new interim draft of the NP was produced in January 2020. The subsequent process of consultation is described at paragraph 76 of the Consultation Statement. The Submission Draft was completed in June 2020 and the subject of Regulation 16 consultation between 21 July and 15 September 2020. 178 representations were received. I have carefully considered them all.
27. In conclusion I am satisfied that the NP emerged through a comprehensive process of consultation.

#### **Statutory requirements**

28. These are set out in the Town and Country Planning Act 1990 (as amended) and sections 38A-38C of the Planning and Compulsory Purchase Act 2004.
29. The NP was prepared and submitted for examination by a qualifying body: section 38A.

30. It has been prepared for an area designated under section 61G of the 1990 Act.
31. The NP meets section 38A(2) in that it sets out policies in relation to the development and use of land in the neighbourhood area.
32. The NP meets the requirements of section 38B – it specifies the period for which it is to have effect (2020-2033), it does not include provisions about development which is excluded development, and does not relate to more than one neighbourhood area.

**Overview of the NP (as submitted)**

33. By way of introduction, the Parish Councils believe that the CF sets appropriate foundations for development in the area, but it does not have the status of formally adopted planning policy. It was for this reason that the Councils agreed to prepare the NP based on the CF, and elevating it to formal policy status.
34. Pages 20-21 referred to planning documents issued under the Harlow and Gilston Garden Town project. Page 22 described the CF. Page 24 described the East Herts Gilston Area Charter SPD.
35. Section C described Local Context. Section D set out Vision and Objectives.
36. The policy section did not begin until page 49. It is set out under three main themes, Accommodating Growth, Delivering Quality Places and Implementation and Delivery. Policy AG1 set out the overarching policy in relation to sustainable development. Paragraph 2 referred to the preparation of a Strategic Landscape Masterplan and Village Masterplans.
37. Policy AG2 related to the creation of a Green Infrastructure Network.
38. Policy AG3 set out measures for the protection and enhancement of the countryside setting of both new and existing villages.

39. Policy AG4 dealt with the maintenance of the individuality and separation of all villages.
40. Policy AG5 sought to protect areas of local significance, in particular Local Green Spaces and what are regarded as “important views across open fields and from other vantage points [which] should be protected”.
41. Policy AG6 focused on the importance of creating villages with “distinct and individual character”.
42. Policy AG7 provided for the creation of new countryside parks at Hunsdon Airfield and Eastwick Woodlands.
43. Policy AG8 sought to minimise the impact of traffic and new transport infrastructure on existing communities. Policy AG9 addressed the phasing of infrastructure delivery.
44. Policy LA1 addressed landscaping within the new village boundaries.
45. Policy BU1-BU4 addressed housing and residential neighbourhoods, village cores/centres, employment areas and the design of village streets and lanes.
46. Policy H1 “celebrated” existing heritage assets.
47. Policy C1 addressed community facility provision.
48. Policy EX1 was entitled “Improving the Existing Settlements”.
49. Policies TRA1 and TRA2 addressed sustainable mobility and access to the countryside.
50. Section 3, Implementation and Delivery referred to key stages in the planning process, and described how planning applications would establish a spatial framework for masterplanning.

51. Policies D1 and D2 addressed the establishment of a partnership with the community.

**Examination process**

52. I was appointed in the first week of September 2020. I was in due course provided with hard copy documents (and electronic links to other documents) as follows:

- District Plan (and Examiner's Report).
- NP
- Consultation Statement
- Basic Conditions Statement
- East Herts Gilston Area Charter SPD
- Harlow and Gilston Garden Town Design Guide and Vision November 2018
- CF
- Harlow and Gilston Garden Town Infrastructure Delivery Plan 2019
- Council representations at Regulation 14
- All Regulation 16 representations.

I have considered all of the above. I have seen the parameter plans submitted with two planning applications made by the two major landowners. An application was submitted on behalf of Briggens Estate in October 2019 in relation to Village 7, and an application was submitted on behalf of Places for People in May 2019 in relation to Villages 1-6. It is not within my remit to comment on these applications.

53. In my Examiner's Note 1, 15 October 2020, I recorded that pursuant to Schedule 4B of the 1990 Act, paragraph 9(2) I had decided to hold a hearing to ensure adequate examination of the issues that arise.

54. On 26 October 2020 I issued Examiner's Note 2 (attached as the Appendix to this Report). This recorded my serious concerns as to compliance of the NP with Basic Condition (a): "Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the [plan]". I expressed three main concerns, elaborated on below. I invited representations which were submitted on behalf of Briggens Estate, Places for People, and the owner of Hunsdon House. I further received an Advice by Martin Edwards and a representation from Urban Silence both on behalf of the NPG.
55. Owing to the Covid Pandemic, the hearing had to be held virtually. I am greatly indebted to the Council for setting up the hearing by Zoom, and to all parties who took part in the hearing on 19 November 2020. I am quite satisfied that the hearing was fair to all involved (and received no representations to the contrary).
56. At the hearing, in response to representations, I stated that I would not pursue Concern 3 in Note 2.
57. My first concern was, in summary, that the NP failed to contain guidance covering, broadly, at least some of the land use planning matters referred to in paragraph 18 above. At the hearing the NPG agreed to submit further material which would include showing the location, broad extent and proposed dwelling numbers for each proposed Village. By email dated 26 November 2020 the NPG submitted a revised Figure 12 showing the broad location of the villages and approximate development quantities, historic settings, Local Green Spaces and Community Boundaries. A revised Figure 21 – local views – was submitted, and amended policy text relating to the revised figures and proposed wording for the Strategic Landscape Masterplan and Boundaries. The first of these matters is now seen in Figure 8 of the "December 2020 Edits" version of the NP (see below). The second matter is now seen in Figure 14 (with Figure 15). The third of these matters is now seen in Policies AG1(2) and (3) and AG2(2).

58. In my view, this revised material meets my Concern 1.
59. Concern 2 was discussed. This related, in summary, to the failure of the NP (in accordance with guidance) to be concise and avoid unnecessary duplication and repetition. There were many examples of these points. The NPG agreed to submit, by 18 December 2020, a revised NP of reduced length and repetition, and incorporating a number of specific changes that I suggested and were discussed at the hearing.
60. On 18 December 2020 the NPG duly submitted a revised version of the NP entitled “Submission Draft (Dec. 2020 Edits)”. The NPG’s email dated 18 December 2020 explained the work undertaken resulting in a 33% reduction in length, simplification of supporting text and changes to the policy text to reflect earlier discussions.
61. In my view, the December 2020 Edits document has effected a considerable number of significant improvements to both policy and text, removing many concerns I had as to detailed compliance with policy and guidance. Specifically, the text and the policies give added protection to the setting of heritage assets, notably Gilston Park House and Hunsdon House.
62. All the above material was published, including on the Council’s and the NPG’s websites. The material was posted by the Council on 4 January 2021, stating that any comments were to be received by 25 January 2021 (three weeks). As a result, comments were received from the two landowners. I have carefully considered these further comments.
63. So far as site view is concerned, I originally intended to have an accompanied tour of all relevant locations. With the worsening Covid situation this was not possible. I was given by the NPG a list, prepared in consultation with the landowners, of places to visit, with a plan. I carried out my visit on 11 January 2021. I was not able to access all suggested points. The suggested itinerary indicated that the key aspects were the separation between villages, the

relationship between built development and countryside, the views out over fields e.g. from the Eastwick Memorial and from Terlings, how the big landmarks (Hunsdon House and Gilston Park House) are not prominently placed, and the nature of the lanes. I am satisfied that I gained a good impression of these.

### **Basic Conditions - General**

64. Schedule 4B paragraph 8 to the Town and Country Planning Act 1990 provides that a neighbourhood plan meets the Basic Conditions if it meets those specified in paragraphs (a), (d), (e), and (f). One further basic condition has been prescribed under paragraph 8(2)(g), as follows:

*“The making of the neighbourhood development plan is not likely to have a significant effect on a European Site...or a European Off-shore marine site...either alone or in combination with other plans or projects”.*

65. As the courts have frequently emphasised, and as I do now, the role of a Neighbourhood Plan Examiner is tightly constrained. It is (apart from dealing with other statutory requirements referred to at paragraphs 28-32 above) confined to considering compliance with the basic conditions. The Examiner cannot consider anything else: paragraph 8(6). Therefore the Examiner is not able to consider whether – as would be the case for a local plan – the NP is “sound” (in accordance with paragraph 35 of the NPPF). Accordingly, the Examiner can only consider the content of the NP (the planning judgments made, the choices made, the views regarded as important etc.) insofar as those matters impact on the basic conditions. This inevitably limits the extent to which it is proper to respond to what I might call “planning merits” points made by representors.
66. It is convenient to address the basic conditions as a topic, alone. A later section of this report addresses individual policies, in each case by reference to the basic conditions.

## **Basic Conditions – Specific**

### **Basic Condition (a)**

67. This is addressed in the Basic Conditions Statement section B, pages 9-24. I generally accept these contentions. I refer again to my Note 2. For reasons given there, I conclude that the NP as submitted would not have met Basic Condition (a) in the two important respects set out. I further conclude that, if the December 2020 Edits document is substituted for the submitted NP by way of **Modifications**, the NP does meet Basic Condition (a). In my review of the whole NP below, I indicate some detailed respects in which further **Modifications** are required to ensure compliance.

### **Basic Condition (d)**

68. This is addressed in section C of the Basic Conditions Statement (pages 25-32). I substantially accept the contentions made in this detailed assessment. I have one qualification at page 27, phasing of infrastructure, especially so far as road infrastructure is concerned. It is clear that the role of the NP is very restricted in relation to such infrastructure (apart from its design, and how design can assist in sustainable model shift). So while this passage may overstate the role of the NP, this does not detract from my conclusion that Basic Condition (d) is met.

### **Basic Condition (e) – General Conformity**

69. This is addressed at pages 33-55 of the Basic Conditions Statement, Section D. The same comment as made under paragraph 67 above arises here (though revisions in the December 2020 Edits document have improved the position). However, this is really a quibble, and I generally accept the assessment in Section D, and conclude that Basic Condition (e) is met.

### **Basic Condition (f)**

70. This is addressed at Section E of the Basic Conditions Statement, pages 56-60. In relation to Strategic Environmental Assessment, the Council determined on 10 June 2020 that an assessment of the NP is not required as it is unlikely to have significant environmental effects. For the reasons given in the earlier

paragraphs 44-51, that assessment is plainly sound. In relation to Habitats Regulation Assessment, the Council also determined on the same date that an HRA on the NP was not required. For the reasons given in earlier paragraphs 53-59, that assessment is equally sound. I therefore conclude that Basic Condition (f) is met.

### **Review of the NP**

71. Most of the large number of Regulation 16 representations were from individuals, the vast majority in support. In addition there were representations by Herts County Council Growth and Infrastructure Unit and Harlow Council. There were detailed representations on behalf of the two landowners. There was a substantial and detailed representation on behalf of the Grade I listed Hunsdon House, lying outside the NP area but with views over part. I have carefully considered all these representations. I have responded to them where I consider that Modifications are required to meet the Basic Conditions.
72. I have reviewed the outline planning applications submitted in May 2019 and October 2019 as referred to above. It is not within my remit to comment on these applications. This should explain why I have not responded to representations of landowners to the effect that the NP is inconsistent with/fails to align with, the applications.
73. I set out my comments principally by reference to Policies in the NP, which references include the supporting text where appropriate. In all cases, for reasons given above, my comments relate to the December 2020 Edits document.

### **Paragraph 9**

There is no requirement for a NP to be in “general conformity with strategic policies” in the NPPF. I **Recommend Modification: delete this passage and replace by:**

**“It has had regard to the Policies of the NPPF (February 2019) and PPG on Neighbourhood Plans, and is in general conformity with the East Herts District Plan (adopted October 2018).”**

Page 8 – Planning Policy Framework

The statutory hierarchy is the Development Plan and other material considerations. The NPPF is one of the latter. I therefore **Recommend Modify:**

**In Figure 2 the Statutory Development Plan should be placed above the National Planning Policy Framework. The heading to paragraphs 19 and 20, and those paragraphs, should relocate to page 11, above The Gilston Area Concept Framework. The following addition should be made to the former paragraph 20: “The NPPF is supplemented by the National Planning Policy Guidance (which is the “guidance” referred to in paragraph 8(2)(a) of Schedule 4B to the Town and Country Planning Act 1990).”**

Page 9

To secure consistency with the DP **Recommend Modify:** the bullet point **Employment** should read: “provision of local employment area/s of around 5 ha in the form of either a business park or distributed across the village centres.”

Page 18 Figure 5

I can find no reference to this Figure in the text. The NPG should ensure that all Figures have an appropriate reference in the text and the NP should be **Modified** accordingly.

Page 22 - Objectives

Bearing in mind the section on Local Perspective, the Vision, the policies themselves and supporting text, the five pages of Objectives do not accord with planning guidance as to conciseness. I **Recommend Modify: remove the 13 Objectives to a new Appendix, and Modify paragraph 66 by adding “and are set out in Appendix XXX”.**

Objective 5

To be consistent with policies in the NP the fourth bullet point should be **Modified by putting a full stop after “location” in the third line, and substituting the last sentence with: “Ancillary works should accord with relevant policies, e.g. AG3 and LA1.”**

#### Policy AG1

I **Recommend** three **Modifications** to AG1. First, the term “Major” development is ambiguous here. Apart from AG2, all other policies refer to “development/development proposals/proposals”. **Recommend Modify: delete “Major”**. Second, the last four words of line one of paragraph 3 should read: **the locations of which are**. Third, paragraph 5(iv) deals with “retro fitting of existing buildings (outside the GA1 allocation)”. It is not appropriate to require this in relation to existing buildings. **Recommend Modify: delete paragraph (iv)**.

#### Policy AG2

For the same reason as in relation to AG1, I **Recommend Modify** that **in paragraph 1 “New” should be deleted, so that the policy reads: “Development should...”**. The concerns of the landowners that paragraph 2(vi) should relate only to areas outside proposed villages is misplaced, since paragraph 2 relates to the Green Infrastructure Network that will “surround and sit alongside the new villages”.

#### Policy AG3

Paragraph 2(iv) would strictly prevent small-scale ancillary facilities encroaching on cherished views. I regard this as too rigid. The role of cherished views has been considerably softened in AG5 compared with the submitted version. They are now to involve consultation with the local community etc. I **Recommend Modify: delete “do not encroach” and substitute “carefully consider the impact”**. For similar reasons in relation to paragraph 2(vi) I **Recommend delete “Avoiding” and substitute “Incorporating mitigation measures to reduce any”**.

#### Policy AG5

My comments are confined to paragraph 1 of the Policy (and paragraph 116 of the supporting text) in relation to Local Green Spaces (LGS). 13 LGS are proposed, a-n, shown on Figure 12. Their characteristics and qualities are set out in Table 1 of Appendix 1. I have no reason to doubt that they have the characteristics referred to in paragraph 100 of NPPF. They are capable of enduring beyond the NP period (paragraph 99).

Paragraph 101 advises that: *“Policies for managing development within a Local Green Space should be consistent with those for Green Belts”*. The development management aspect of paragraph 1 of AG5 is neither appropriate nor effective. It is open to a NP to take a different approach to the NPPF where justified by local circumstances. The LGS are sensitive and highly constrained areas of woodland and natural space with high biodiversity value, compatible with quiet outdoor recreation and contemplation. National Green Belt policy would contemplate permitting development which is not inappropriate in Green Belt, and otherwise permitting development only in exceptional circumstances. Owing to the specific nature of these LGS, a more focused and restrictive policy is in my view justified.

I therefore **Recommend** that paragraph 1 of the Policy is **Modified** by: (1) **deletion of the text after “Network” to the semi-colon in line 7;** (2) **replacement by “the local green spaces are (Figure 12): [followed by a. to n.]; the addition of a new paragraph 2 (with existing paragraphs 2 and 3 renumbered) as follows: “2. Any development within local green spaces should be tightly constrained, and restricted to works necessary for their maintenance and preservation, and minor ancillary works necessary for enhancement of their appreciation. In exceptional circumstances, development needed for strategic infrastructure required for the Gilston area (GA2) may be permitted”.**

In paragraph 116, after the reference to Fig. 12, insert: **“They are sensitive and highly constrained areas of woodland and natural space with high biodiversity value, compatible with quiet outdoor recreation and contemplation. There is therefore strong local justification for taking a**

different approach to development management to that advised in paragraph 101 of the NPPF. Accordingly, development should be restricted to what is needed for their maintenance and preservation, with limited additions aimed at increasing appreciation and respect for these spaces. This could include repair and adaptation of existing structures, improvements to paths and drainage, and limited interventions such as erection of memorials, information boards or similar”.

#### Policy AG6

As the representation of the Council stresses, the proposed villages will, by their very nature, be garden villages and cannot be traditional villages. I therefore **Recommend Modify: insert “Garden” in the title before Villages and “garden” before village in paragraph 1(ii).**

#### Policy AG8

This policy, and its related target sustainable mode share of 60%, was touched on at the hearing but not resolved. I addressed it – and other matters – in Examiner’s Note 3. Consistent with the NPG email dated 5 January 2021 I **Recommend Modify: delete paragraph 144 of the supporting text and replace paragraph 143 with the following: “143. The HGGT Transport Strategy<sup>46</sup> argues that it is futile to build more road capacity to accommodate future growth and that a change in travel behaviour is the only option to facilitate sustainable growth, based on reducing the need to travel and focusing travel on active travel modes. Consistent with that Strategy, new roads should be built only to serve the sustainable needs of the existing and new communities without attracting additional traffic from outside the area creating unacceptable impacts on the residents of the area or its environment.”**

I do not see that Policy AG8 is inconsistent with either GA1 or GA2 of the DP. GA2(2) seeks that the Stort Crossings should protect/enhance heritage assets. AG8 does not “hinder” (Places for People) delivery of needed infrastructure, but seeks appropriate design and to minimise environmental effects. However I agree with the Places for People representation (page 6)

and **Recommend Modify: in paragraph 1(i) delete “avoids” and insert “incorporates mitigation measures to minimise”**. This is consistent with the first line of this criterion.

#### Policy AG9

Notwithstanding references in the text to other planning documents which aspire to meet the infrastructure needs of existing communities, it is not appropriate for the policy to require new development to remedy existing deficiencies. Therefore **Recommend Modify: in paragraph 1(i): after “from” delete “the area and from”**.

#### Policy LA1

In paragraph 1(iv) I agree with the landowners that it is more realistic to qualify the enhancement objective. I therefore **Recommend Modify: insert “where possible” before “enhance”**.

Paragraph 1(vi), with its requirement to demonstrate “no adverse impacts” etc. could unnecessarily constrain desirable leisure development. I therefore **Recommend Modify: insert “significant” before “adverse”**. This would be consistent with AG3(2)(v).

#### Policy BU1

In paragraph 172, to be consistent with the CF, **Recommend Modify: insert “net” between “averaging” and “33”**.

#### Policy BU4

To achieve consistency with paragraph 201, I **Recommend Modify: in paragraph 1 at the end of the first sentence, insert “in the Strategic Landscape Masterplan”**.

#### Policy H1

I note that the specific protection of Hunsdon House and its setting has been given greater prominence in the December 2020 Edits document. I have

carefully considered the detailed representations on behalf of Hunsdon House. My task is to consider whether the NP now properly reflects national policy and guidance in relation to protection and enhancement, bearing in mind that planning applications (and especially that for Village 7) will have to meet the tests in section 16 of the NPPF. I am satisfied that the NP now provides an appropriate framework. I have given particular consideration to two aspects. First, in paragraph 1(iv) I find the reference to “integrated” is an uncertain term in this context. I prefer the formulation suggested on behalf of Briggens Estate (page 18) and **Recommend Modify: delete paragraph 2(iv) and replace by: “The significance and historic role of heritage assets in the area have been considered as part of the new development to avoid or minimise any conflict between their conservation and the proposal”**. Second, in paragraph 3(iv) I question whether this ambitious requirement is achievable in the light of the broad location of the Villages in Figure 8. I **Recommend Modify: delete paragraph (iv) and replace by: “Seeking to protect from visual encroachment or pollution (noise or light) and to enhance the parkland setting of Gilston Park House and Hunsdon House”**.

#### Policy C1

I was concerned about the references to “existing residents” and “existing communities” on page 78. However the purpose seems not to meet existing deficiencies in community provision, but – as addressed at paragraphs 218 and 219 – to secure that existing communities should have access to new provision. On this basis, I recommend no change.

In paragraph 1(i), and for clarity, **delete “a neighbouring” and replace with “one”**.

#### Policy EX1

In the heading to Figure 22, I urge that “valorisation” could be deleted and replaced by “enhancement”.

I am concerned that paragraph 224 and the incorporation of Appendix 3 in paragraph 3 of the Policy may suggest that it is the proper role of the NP to require of developers improvement schemes in existing villages which are unrelated to the proper role of mitigating impacts from new development. Some aspects of Appendix 3 would seem to fall within the non-proper category (as acknowledged in paragraph 228). I therefore **Recommend Modify: delete the reference to Appendix 3 in paragraph 3 of the Policy; delete paragraph 224 and replace with: “Policy EX1 also addresses the mitigation of impacts of new development on existing settlements through appropriate funding mechanisms”**. With the above in mind, the title to section 2.8 and the Policy – Improving the Existing Settlements – may give a misleading impression. I therefore **Recommend Modify: replace both headings with “Existing Settlements”**. These modifications are to clarify that the two legitimate themes of this section are the mitigation of impacts, and the provision of access by existing settlements to new facilities. (There is no need (Places for People page 8) to insert “where it is Reg. 122 compliant”, since this is a statutory requirement in any event).

#### Policy TRA1

In paragraph 2, and after consultation with the NPG, I **Recommend Modify: delete “clear targets are in place” and replace with: “clear sustainable mobility targets are secured as part of planning permissions”**.

#### Policy TRA2

In paragraph 2(ii) I agree with Places for People that the requirement or ambition to extend footpath etc. networks to other areas is beyond the control of landowners/developers. I therefore **Recommend Modify: insert “capable of being” before “extended” and then add “by wider stakeholders”**.

#### Policy D1

In paragraph 1(iii), and for the reason suggested by Places for People (page 9) I **Recommend Modify: delete “reflect” and replace with “respond to”**.

In paragraph 2, and also in agreement with Places for People, I find the requirement that “Funding will be made available” to be too onerous and unlikely to comply with Reg. 122. I therefore **Recommend: delete “will” and replace by “may”**.

## Appendix 2

At page 102, and in agreement with the landowners, under Guidance on Density I **Recommend Modify: delete the second bullet point and replace by: “The Gilston Area Concept Framework (pg.8) identifies an illustrative average net density of 33 dwellings per hectare based on indicative masterplanning work undertaken (pg.108)”**. I further **Recommend Modify: at the end of the third bullet point add: “Further guidance is in the Harlow and Gilston Garden Town Design Guide”**.

At page 120 in agreement with Places for People (page 12) I **Recommend Modify: following the first sentence add “Overall buildings may be between 2 and 4 storeys in height – taller buildings may be acceptable in appropriate circumstances, including taller buildings which will be considered on a case by case basis”**.

## Conclusions and recommendations

74. I conclude that the NP as submitted does not meet Basic Condition (a) essentially for the reasons set out in Note 2.
75. I further conclude that if the NP is (1) Modified to substitute in its place the December 2020 Edits document and (2) that the December 2020 Edits document is further modified in the respects set out in this report, it would meet all basic conditions and comply with all statutory requirements. I therefore **Recommend** that, in that form, it should proceed to Referendum.
76. On 12 October 2020 the NPG requested that I **Recommend** that the Referendum Area should extend beyond the Neighbourhood Area to include the whole of the Parish of Hunsdon. Six cogent reasons were given for that request. I have not received any representations to the contrary. I therefore **Recommend** accordingly.

**Christopher Lockhart-Mummery QC**

**Examiner**

**February 2021**

## APPENDIX

### SUBMISSION DRAFT GILSTON AREA NEIGHBOURHOOD PLAN 2020-2033

#### EXAMINATION

#### EXAMINER'S NOTE 2

1. The main purpose of this Note 2 is to set out some serious concerns that I have, at this early stage of the Examination, as to the compliance of the NP with the basic conditions set out in Schedule 4B of the Town and Country Planning Act 1990, paragraph 8(2). My particular focus of concern is sub-paragraph (a): *“having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan”*.
2. The policies and guidance that are relevant include the following.
3. The NPPF follows the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004. See paragraphs 12, 13 (*“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”*), and 16d (*“contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”*) and f (*“serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area...”*).
4. Paragraph 102 advises that *“Transport issues should be considered from the earliest stages of plan-making and development proposals so that: (a) the potential impacts of development on transport networks can be addressed; (b) [and one can address] “...the scale, location and density of development that can be accommodated””*.

5. Planning Practice Guidance on neighbourhood plans is the “advice contained in guidance” referred to above.
6. The advice that is particularly relevant to my concerns is as follows:
  - a. Paragraph 040: “...The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan...”
  - b. Paragraph 041: “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..”, recognising that it may provide (paragraph 074) “...an additional level of detail and/or a distinct local approach to that set out in the strategic policy...”.
  - c. Paragraph 045: In relation to infrastructure : “The following may be important considerations for a qualifying body to consider when addressing infrastructure in a neighbourhood plan:
    - i. what additional infrastructure may be needed to enable development proposed in a neighbourhood plan to be delivered in a sustainable way
    - ii. how any additional infrastructure requirements might be delivered
    - iii. what impact the infrastructure requirements may have in the viability of a proposal in a draft neighbourhood plan and therefore its delivery
    - iv. what are the likely impacts of proposed site allocation options or policies on physical infrastructure and on the capacity of existing services, which could help shape decisions on the best site choices”.
  - d. Paragraph 046: “A qualifying body should set out and explain in their draft neighbourhood plan the prioritised infrastructure required to address the demands of the development identified in the plan”.
7. “A statutory requirement of this kind requires a decision maker not only to take national policies into account but also to observe them and depart from

*them only if there are clear reasons for doing so....Accordingly although..... an examiner must decide whether it is appropriate for a plan to proceed having regard to national policy, a departure from that policy must be explained”*: Court of Appeal in R (Lochailort Investments Limited) v Mendip District Council [2020] EWCA Civ 1259, paragraph 6.

8. The effect of the above policy and guidance may be stated in short summary: the development plan (which here will consist of the East Herts District Plan October 2018 [DP] and this NP) is to inform the reader, so as to provide the framework for decisions on planning applications, as to where and when development may take place (and where it is not expected to take place), in the light of all relevant constraints, its location(s), amount, type, appearance etc, and what infrastructure is needed for that development and when it is likely to be required. This brings me to my **first and most acute main concern**.
  
9. The strategic context for the NP is provided in Policies GA1 and GA2, set out succinctly (10 pages) in Chapter 10 of the DP. It is for the NP to provide additional detail and/or a distinct local approach, and to provide the framework summarised in paragraph 8 above. As the DP itself states at paragraph 3.4.2 NP’s “...will be able to shape and influence where development in the local area will go and what it will look like”.
  
10. There is a positively bewildering array of planning documents that set out provisions (whether to be described as policy, guidance, design guidance, vision etc) seeking to guide the nature, extent, appearance, required infrastructure for development and protection of natural and built assets. None is a development plan (which has been through the statutory process of, inter alia, independent scrutiny and examination). A very incomplete list of such documents includes:
  - a. The Concept Framework July 2018
  - b. The Gilston Area Charter SPD June 2020
  - c. The Harlow and Gilston Garden Town Vision November 2018, Design Guide November 2018, Sustainable Transport Strategy January 2020 draft, the Infrastructure Delivery Plan April 2019.

11. I discuss the Concept Framework [CF] first. It appears that the CF was produced (see pages 4, 6, 172 and many such references) to provide sufficient evidence for the Gilston Area to be allocated in the then emerging DP (and for the purposes of its examination), and to show that there would be “no show stoppers”. It appears to have been written by the two landowners, and EHDC. Since it did not (any more than the DP) contemplate a NP for the same area, it set out to establish policy. It sets out “development principles that will inform future planning decisions.....establish key principles for development including land use, movement.....” etc. Accordingly its Spatial Framework shows (eg page 79) the locations and general extent of the 7 villages, and indicates (eg page 137) the approximate number of dwellings assigned to each village. It contains extensive material indicating density and how built development will be designed, and how countryside, spaces, landscaping and other such topics are to be dealt with. Accordingly it—and not the development plan—shows “where development will go and what it will look like”.
  
12. As noted, it appears that those involved in the preparation and examination of the DP did not contemplate this NP. Hence Policy GA1 II says that the CF will be used as a benchmark for “*reviewing*” proposals for development, though recognising that “*Prior to the submission of any planning application(s) further design work through the pre-application engagement process will be required in order to agree, among other things, the quantum and distribution of land uses, access and layout principles*”. The subsequent advent of this NP, however, with its statutory role, now requires the DP to be considered alongside this NP (assuming it passes the present process and is made, to become part of the development plan).
  
13. Consistently with the CF the draft NP provides a primary role to planning applications in the formulation of development principles. They are to “*....set a spatial framework for the detailed masterplanning of villages, establishing parameters for the location of built development, protection of open space and heritage assets, provision of infrastructure etc*”. The planning applications are

to set “*principles*” for the preparation of “...*a Strategic Landscape Masterplan for the whole area and Masterplans for each village...*”: draft NP paragraph 369. In terms of infrastructure “*Details of the infrastructure triggers to control the delivery of key infrastructure must be provided as part of the outline planning applications....A key element of the planning application and masterplanning process will be to establish how the specific infrastructure required for each development allocation will be delivered*”: draft NP paragraphs 247, 252 (I am uncertain where one can find “*each development allocation*” set out, save in the CF). In other words, the proper role of the NP as a development plan is being delegated to planning applications. The landowners are (understandably) keen that the NP should not “*pre-empt*” the development management process.

14. The NPG state (at page 5 of their Comments Following Reg.16 Consultation) that “*We have not tested and are not in a position to verify the capacity of the village areas: this was the responsibility of the developers and the Council at the time of the Local Plan preparation and it is not a task that can reasonably be expected to be undertaken by the Neighbourhood Plan Group*” and “*All references to maximum heights and densities which were advocated by the community at the time of the Reg.14 Consultation have been removed at the request of both developers to allow a more flexible exploration of the most appropriate design response*”.
15. The draft NP contains copious cross-references to the CF. They are plainly to be read together.
16. When a development plan is planning for significant housing growth by way (as here) of new villages in the countryside, one would expect to be able to identify in the development plan the location and extent of each village, its proposed dwelling number(s), density, heights of development, the associated physical (and other) infrastructure required, and the relationship between development quantum and required infrastructure. These are matters addressed in the CF. It appears that the primary motive for producing the NP was “...to elevate [the CF] to formal policy status...”: CF paragraph 6. As things stand,

these matters are to be identified outside the development plan, by a process involving informal planning documents and now driven by planning applications.

17. I referred at paragraph 10 above to the array of other planning documents (apart from the CF) that are extensively cross-referenced and discussed in the NP. This brings me to my **second main concern**. The clear advice is that a NP should be concise and avoid unnecessary duplication with other policies. The NP is 198 pages long. The planning documents that are cross-referenced and incorporated are, I suspect, over 1000 pages long. There is very extensive duplication with such documents. Just focussing on the NP, I do not doubt that it contains a considerable number of excellent expressions of the community response to the challenge, set out in a number of principles and objectives, such as that the development should be by way of individual villages in a rural landscape rather than urban neighbourhoods separated by green fingers; that there should be 7 separate and distinctive new villages, each separated by landscape; that the distinctive character of the existing villages should be protected; that existing landscape assets and heritage assets should be protected; that the development should be distinct from Harlow. But these topics are endlessly repeated, both in the policies and even more so in the supporting text. The policies account for some 15 pages, about 7% of the NP.
18. My **third main concern** relates to how the provision of infrastructure, and especially transport infrastructure is deal with in the draft NP. I have set out above what the NPPF and PPG expect of a NP in this respect. The NP does not inform the reader in these terms. Instead, it simply delegates (see pages 105-108 and AG9) these decisions to two processes outside the development plan, the Infrastructure Delivery Plan 2019 and the planning application process. I entirely appreciate that the River Stort Crossings (DP Policy GA2) are the responsibility of the several agencies referred to in GA2, and that they are necessarily outside the remit of the NPG. However, the NP fails to "...set out and explain...the prioritised infrastructure required to address the demands of the development identified in the plan".

19. Accordingly I will wish to receive representations, in advance and/or at the proposed hearing, as follows:
- a. In relation to my **first main concern**, as to whether the draft NP departs from national policy and advice in guidance in the respects set out above and, if so, whether it is now possible to explain that departure by way of proposed modifications.
  - b. Likewise in relation to my **second main concern**.
  - c. Likewise in relation to my **third main concern**.

**Christopher Lockhart-Mummery QC**

**Examiner**

**26 October 2020**