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Report on the Draft Tarvin Neighbourhood Development Plan 2018 - 2030

An Examination undertaken for Cheshire West and Chester Council with the support of the Tarvin Parish Council on the submission version of the Plan.

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Main Findings - Executive Summary

From my examination of the Draft Tarvin Neighbourhood Development Plan (TNP/the Plan) and its supporting documentation including the representations made, I have concluded that subject to the policy modifications set out in this report, the Plan meets the Basic Conditions.

I have also concluded that:

- The Plan has been prepared and submitted for examination by a qualifying body – the Tarvin Parish Council;
- The Plan has been prepared for an area properly designated – part of the Parish of Tarvin as shown on the map at Appendix 1 of the submitted Plan;
- The Plan specifies the period to which it is to take effect: 2018 - 2030; and
- The policies relate to the development and use of land for a designated neighbourhood area.

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

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

1. Introduction and Background

Draft Tarvin Neighbourhood Development Plan 2018 - 2030

- 1.1 Tarvin lies about 10km east of Chester adjoining the junction of the A51 and A54. The population of Tarvin parish in 2011 was 2,728.¹ The most recent population estimate in 2015 was 2914, but two areas of the parish are included in adjacent neighbourhood plans. Nevertheless, the two areas do not appear to contain significant settlements and so I consider the population of the Plan area is broadly as indicated above. The TNP area comprises a very gently undulating, agricultural landscape of scattered farms and winding lanes, with well-established mixed hedgerows, small hamlets and isolated dwellings. The hamlet of Oscroft is within the Plan area and just over a kilometre east of Tarvin village.
- 1.2 Preparation of the TNP began in 2015 with the establishment by the Tarvin Parish Council of a Steering Group. The Steering Group liaised with the Parish Council, organised the distribution of questionnaires in 2015

¹ 2011 Census.

and 2016 and attended various meetings, including public meetings. The TNP represents over 4 years work by those involved.

- 1.3 The vision for the area, derived from the results of the questionnaires and local meetings, is to: *“Retain and enhance the character of Tarvin by ensuring that any further additional housing beyond the minimum specified in the Cheshire West and Chester Local Plan, is appropriate and must not compromise the existing and proposed infrastructure needs of the community”*.
- 1.4 Aspirations for the TNP area are included on page 2 of the Plan, the gist of which I have interpreted as: to preserve the Green Belt and surrounding countryside; to respect the character of the local built environment, its history and natural landscape; to invest in community infrastructure for recreation; to overcome critical infrastructure deficiencies; to overcome traffic congestion in the village and the lack of public parking; and to maintain access to local health services.
- 1.5 The aspirations form the basis for the subsequent policies in the Plan which are grouped under the themes of housing growth, leisure, landscape and environment, transport, economic development and health provision.

The Independent Examiner

- 1.6 As the Plan has now reached the examination stage, I have been appointed as the examiner of the TNP by Cheshire West and Chester Council (CWaCC), with the agreement of the Tarvin Parish Council.
- 1.7 I am a chartered town planner and former government Planning Inspector and have experience of examining neighbourhood plans. I am an independent examiner, and do not have an interest in any of the land that may be affected by the Plan.

The Scope of the Examination

- 1.8 As the independent examiner, I am required to produce this report and recommend either:
 - (a) that the neighbourhood plan is submitted to a referendum without changes; or
 - (b) that modifications are made and that the modified neighbourhood plan is submitted to a referendum; or
 - (c) that the neighbourhood plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.

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

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

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

The Basic Conditions

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

- Have regard to national policies and advice contained in guidance issued by the Secretary of State;
- Contribute to the achievement of sustainable development;
- Be in general conformity with the strategic policies of the development plan for the area;

- Be compatible with and not breach European Union (EU) obligations; and
- Meet prescribed conditions and comply with prescribed matters.

1.12 Regulation 32 of the 2012 Regulations prescribes a further Basic Condition for a neighbourhood plan. This requires that the making of the Plan does not breach the requirement of Chapter 8 Part 6 of the Conservation of Habitats and Species Regulations 2017 ('the 2017 Regulations').²

2. Approach to the Examination

Planning Policy Context

2.1 The Development Plan for this part of CWaCC, excluding documents relating to minerals and waste development, includes the Cheshire West and Chester Local Plan (CWaCLP). The CWaCLP (Part One) deals with Strategic Policies and was adopted in January 2015. Part Two of the Local Plan ('CWaCLP (Part Two)') covers Land Allocations and Detailed Policies and is at a very advanced stage. Following submission for examination on 12 March 2018, the hearings have been held and the subsequent modifications have been the subject of publicity. The final report on the examination is awaited. The Development Plan also includes policies from the Chester District Local Plan (2006), which are being retained until they are replaced by policies in the CWaCLP (Part Two).³

2.2 The planning policy for England is set out principally in the National Planning Policy Framework (NPPF). A revised NPPF was published on 24 July 2018 replacing the previous NPPF 2012. A further revision to the NPPF was published on 19 February 2019, Annex 1, paragraph 214, states that the policies in the previous Framework published in March 2012 will apply for the purpose of examining plans, where those plans were submitted on or before 24 January 2019. The date of submission of the TNP to CWaCC was 25 January 2019 and, therefore, the Plan falls to be considered under the policies of NPPF 2019.

2.3 The Planning Practice Guidance (PPG) offers guidance on how NPPF policies should be implemented. PPG makes clear that whilst a neighbourhood plan 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. It cites, as an example, that up-to-date

² This revised Basic Condition came into force on 28 December 2018 through the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.

³ Basic Conditions Statement paragraph 5.2.

housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan contributes to the achievement of sustainable development.⁴ PPG also states, "Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area". On this basis, I refer to the emerging Local Plan, the CWaCLP (Part Two) in this report.

- 2.4 The CWaCLP (Part One) indicates that new development will be brought forward according to a settlement hierarchy which lists Chester, Ellesmere Port, Northwich and Winsford as the locations where the majority of dwellings will be built. In order to maintain the vitality and viability of rural areas, Key Service Centres are defined where an appropriate amount of development will be brought forward to support new homes and economic and social development. CWaCLP (Part One) Policy STRAT 2 includes Tarvin as a Key Service Centre, together with nine other settlements. Policy STRAT 8 of the CWaCLP (Part One) states that the Key Service Centres such as Tarvin provide a good range of facilities and services and will be the main focus of development in the rural area.

Submitted Documents

- 2.5 I have considered all policy, guidance and other reference documents I consider relevant to the examination, including those submitted which comprise:
- the Draft Tarvin Neighbourhood Plan 2018 - 2030;
 - the map at Appendix 1 of the Plan which identifies the area to which the proposed Neighbourhood Development Plan relates;
 - the Consultation Statement, November 2018;
 - the Basic Conditions Statement, January 2019;
 - all the representations that have been made in accordance with the Regulation 16 consultation;
 - the Strategic Environmental Assessment Screening determination prepared by CWaCC January 2019; and
 - the request for additional clarification sought in my letter of 15 March 2019 and the responses of 28 and 29 March, 8 April and 10 April 2019 provided by CWaCC and the Parish Council which are available on the CWaCC website.⁵

⁴ PPG Reference ID: 41-009-20160211.

⁵ View at: https://consult.cheshirewestandchester.gov.uk/portal/cwc_ldf/np/tarvin_pub

Site Visit

- 2.6 I made an unaccompanied site visit to the TNP Area on 19 March 2019 to familiarise myself with it and visit relevant sites and areas referenced in the Plan and evidential documents.

Written Representations with or without Public Hearing

- 2.7 This examination has been dealt with by written representations. I considered hearing sessions to be unnecessary as the consultation responses clearly articulated the objections to the Plan and presented arguments for and against the Plan's suitability to proceed to a referendum. As noted in paragraph 2.5 above, the Parish Council and CWaCC helpfully answered in writing the questions which I put to them in my letter of 15 March. No requests for a hearing session were received.

Modifications

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

3. Procedural Compliance and Human Rights

Qualifying Body and Neighbourhood Plan Area

- 3.1 The Tarvin Neighbourhood Plan has been prepared and submitted for examination by Tarvin Parish Council which is a qualifying body. The TNP extends over most of Tarvin parish. This constitutes the area of the Plan designated by CWaCC on 19 November 2015. The TNP includes a map at Appendix 1 on which the area of the Plan is delineated.
- 3.2 Other than two areas of land included in Kelsall Neighbourhood Plan to the east and Central Gowy (South) Neighbourhood Plan to the south, it is the only neighbourhood plan for Tarvin Parish and does not relate to land outside the designated Neighbourhood Plan Area.

Plan Period

- 3.3 The cover of the Plan clearly states the period for which it is to take effect (from 2018 to 2030). The end date aligns with the CWaCLP (Part One), which is also 2030.

Neighbourhood Plan Preparation and Consultation

- 3.4 The Consultation Statement completed in November 2018, indicates a process of several stages from January 2015 to submission to CWaCC in January 2019. The Consultation Statement comprehensively describes all the activities, including public meetings, Parish Council meetings and consultations held between January 2015 and September 2018. Neighbourhood Plan Questionnaires were circulated to households in 2015 and to households and businesses in 2016 with a response rate to the latter questionnaire of over 50%. In addition, two teenagers were recruited by the Steering Group to ascertain what their contemporaries considered future recreation priorities should be.
- 3.5 An extraordinary meeting of the Parish Council was held to discuss the Tarvin settlement boundary. A professional planning consultant was also appointed in order to advise on the phraseology of the emerging policies. A four-page summary of the policies of the Plan, produced in February 2018, was delivered to every household and business in the Plan area and two public meetings were held in March 2018. In addition, hard copies of the Plan were deposited at five locations in Tarvin village well used by residents.
- 3.6 The Draft Plan was published for consultation under Regulation 14 of the 2012 Regulations on 8 August 2018. The consultation period ran for 7 weeks until 26 September 2018. The Plan was available on line on the Parish Council website and the community website, Tarvinonline. Direct consultation was undertaken with residents and local businesses, relevant statutory organisations and landowners and others who might have had an interest in the Plan. The key issues which were raised are summarised in the Consultation Statement.
- 3.7 Consultation in accordance with Regulation 16, when the Plan was submitted to CWaCC, was carried out for a period of 6 weeks from 28 January 2019 to 11 March 2019. 18 responses were received. I am satisfied that a transparent, fair and inclusive consultation process has been followed for the TNP, that has had regard to advice in the PPG on plan preparation and is procedurally compliant in accordance with the legal requirements.

Development and Use of Land

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

Excluded Development

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

Human Rights

- 3.10 The Basic Conditions Statement advises the TNP has regard to the fundamental human rights and freedom guaranteed under the European Convention on Human Rights and that it complies with the Human Rights Act 1998. The Plan states that the policies do not give rise to any potential impacts on human rights. CWaCC has not alleged that Human Rights might be breached. I have considered this matter independently and I have found no reason to disagree with that position.

4. Compliance with the Basic Conditions

EU Obligations

- 4.1 The TNP was screened for Strategic Environmental Assessment (SEA) and Habitats Regulation Assessment (HRA) by CWaCC. The report was submitted with the Plan in accordance with the legal requirement under Regulation 15(e)(i) of the 2012 Regulations. The Council found that it was unnecessary to undertake SEA. Natural England (NE) and Historic England, when consulted, agreed with that assessment. The Environment Agency was consulted but no response was submitted. Furthermore, the Council considered the Plan did not have an adverse effect under the terms of the 2017 Regulations and HRA was not required. NE confirmed that, based on information provided, the proposals contained within the Plan will not have significant effects on sensitive sites which it has a duty to protect.
- 4.2 Having read the SEA and HRA Screening Opinions and the other information provided, and considered the matter independently, I agree with those conclusions. Therefore, I am satisfied that the TNP is compatible with EU obligations.

Main Issues

- 4.3 Having considered whether the Plan complies with various procedural and legal requirements, it is now necessary to deal with whether it complies with the Basic Conditions, particularly the regard it pays to national policy and guidance, the contribution it makes to the achievement of sustainable development and whether it is in general conformity with strategic development plan policies. I test the Plan against the Basic Conditions by considering specific issues of compliance of all the Plan's policies.
- 4.4 As part of that assessment, I consider whether the policies are sufficiently clear and unambiguous, having regard to advice in the PPG. A neighbourhood plan 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.⁶

- 4.5 Having regard to the Tarvin Neighbourhood Plan, the consultation responses, other evidence⁷ and the site visit, I consider that there are three main issues relating to the Basic Conditions for this examination. These are:

Issue 1: Whether the proposals for homes and economic development are in general conformity with the adopted strategic planning policies (and align with those emerging), whether they would contribute to the achievement of sustainable development and whether they have regard to national policy and guidance?

Issue 2: Whether the proposals for promoting leisure facilities, safeguarding the character and appearance of the landscape and environment have regard to national policy and guidance, contribute to sustainable development and generally conform with strategic statutory planning policies?

Issue 3: Whether the policies for transport and health provision in the Plan are an appropriate framework to shape and direct sustainable development whilst supporting essential facilities and services in meeting the Basic Conditions?

Issue 1: Whether the proposals for homes and economic development are in general conformity with the adopted strategic planning policies (and align with those emerging), whether they would contribute to the achievement of sustainable development and whether they have regard to national policy and guidance?

- 4.6 The spatial strategy of the CWaCLP (Part One) includes meeting future housing needs and supporting economic growth. The CWaCLP (Part One) also seeks growth which is higher than that to meet local needs.⁸ Under Policy STRAT 2 of the CWaCLP (Part One) new development is directed first of all to the four main urban areas of Chester, Ellesmere Port, Northwich and Winsford and then to the larger villages and market towns which have been identified as Key Service Centres. Tarvin is one such Key Service Centre.

- 4.7 Policy STRAT 2 of the CWaCLP (Part One) also seeks the delivery of the key elements of the strategy: about 22,000 new dwellings and 365 ha of

⁶ PPG Reference ID: 41-041-20140306.

⁷ The other evidence includes my letter to the Parish Council seeking clarification and the replies: see paragraph 2.5.

⁸ CWaCLP (Part One) paragraph 5.1.

land for employment development. Policy STRAT 8 of the CWaCLP (Part One) requires the provision of at least 4,200 new dwellings across the rural area outside the four main urban areas, together with the provision of an additional 10 ha of employment land. At Tarvin, a Key Service Centre, adopted Policy STRAT 8 indicates that at least 200 dwellings should be accommodated.

- 4.8 The CWaCLP (Part One) states that the Council will identify Settlement Boundaries (SB) for the four urban areas, key service centres and local service centres through the CWaCLP (Part Two). The CWaCLP (Part Two) is in the final stages of examination prior to adoption and includes a SB for Tarvin tightly drawn around the built-up area of the village, which is shown on Figure 1 of the TNP.
- 4.9 Policies HG1 and HG2 consider housing development inside and outside the SB. Policy HG1 provides for infill within the SB. However, Policy R1 of the emerging CWaCLP (Part Two) does not restrict housing development to infill or redevelopment.⁹ There may be sites within the Tarvin SB which are neither infill nor redevelopment and could be capable of development in an equally sustainable location. Therefore, I shall recommend a modification to Policy HG1 so that it is less restrictive. **(PM1)** Policy HG2 enables small scale development in certain circumstances outside the SB in open countryside. The circumstances described equate to the types of housing development allowed for in CWaCLP (Part One) Policy STRAT 9.
- 4.10 Therefore, subject to the above modification, both policies would generally conform to the strategic policies for housing in the CWaCLP (Part One), STRAT 2, STRAT 8 and STRAT 9, align with the emerging policies of the CWaCLP (Part Two) and also have regard to national policy for the location of houses in the countryside.¹⁰
- 4.11 The aim of Policy HG3 that new and replacement dwellings and extensions should respect and, where possible, enhance the built environment, maintain the character of Tarvin and have regard to the village design statement conforms generally with CWaCLP (Part One) Policy ENV 6 which seeks high quality design. The policy also has regard to national policy in NPPF Section 12: Achieving Well Designed Places.
- 4.12 Policy HG4 links the provision of larger areas of new housing with the provision of new recreational facilities (See Policy LS1 – paragraphs 4.15 - 4.17 below) and the implementation of highway improvements indicated in Policy HG6.

⁹ CWaCLP (Part One) paragraph 5.66 defines infill as “the filling of a small gap, up to two dwellings, in an otherwise built up frontage in a recognised settlement”.

¹⁰ NPPF paragraphs 65, 78 and 79.

- 4.13 It is quite appropriate that Policy HG6 considers the impact of additional development on traffic safety but, in order to have regard to national policy, the adverse impact should be significant. I shall recommend a modification to the policy. **(PM2)** In addition, Policy HG6 makes housing development contingent on the prior completion of off-street parking within easy walking distance of shops and services on Tarvin village High Street and Church Street. It is quite possible that, on the merits of a particular case, the prior completion of off-street parking may not reasonably relate to the development proposed, given that there may not be suitably located land and it may not be under the control of the developer.
- 4.14 If the policy is to be interpreted that no housing development should take place until more additional off-street parking is available, whoever provides it, it is possible that housing proposals, which would otherwise be sustainable, would be refused. In my opinion, this would not have regard to national policy. Therefore, I shall delete that section of the policy. **(PM3)**
- 4.15 Policy LS1 allocates a site for recreational facilities to include two pitches, changing rooms and car parking. I am not disputing the demand for the facilities and note the evidence comparing alternative sites in and around Tarvin. However, although the site is owned by CWaCC, it is the subject of a long-term agricultural lease. Therefore, the scheme is currently undeliverable and I consider it is unacceptable to define it as an allocation in the Plan, especially when the provision to prevent prejudicial development could pre-empt its use for edge of settlement development, which might otherwise accord with adopted strategic policies, such as rural exception sites enabled by CWaCLP (Part One) Policy SOC 2. Indeed, national guidance states that, if policies and proposals are to be implemented as the community intended, a neighbourhood plan needs to be deliverable.¹¹
- 4.16 Nevertheless, as shown in the supporting evidence, the project is undoubtedly an aspiration of the local community and I consider that this should be reflected in the Plan. Accordingly, Policy LS1 should be modified so that it is stated as an Aspiration. **(PM4)**
- 4.17 The consequence of modifications PM2 and PM3 is that Policy HG4 should be deleted. **(PM5)**
- 4.18 Policy HG5 aims to establish a gap between the Tarvin built-up area and the hamlet of Oscroft, where no housing development or other significant built structures would be permitted. The CWaCLP (Part One) states that, in order to protect local distinctiveness, the Council will identify key gaps

¹¹ PPG Reference ID: 41-005-20140306.

between settlements outside the Green Belt which will maintain and preserve their individual character.¹² As indicated in CWaCLP (Part One) Policy ENV 2, the identification of the key settlement gaps occurs in the CWaCLP (Part Two).

- 4.19 The countryside east of Tarvin was shown as a candidate key settlement gap in the Local Landscape Designation Review Advisory Position Paper February 2016 as part of the evidence base for the CWaCLP (Part Two). However, the gap was not selected for inclusion in the Publication draft or Submission draft of the Local Plan and is not the subject of a Main Modification about which consultation closed on 3 February 2019. Oscroft is not defined as a settlement and, therefore, the undeveloped countryside between the hamlet and Tarvin does not appear to fulfil a basic criterion for a gap between key settlements as conceived in the CWaCLP (Part One).
- 4.20 Furthermore, Policy HG5, as drafted, would prevent the building of any new housing development and other significant built structures, except for leisure facilities. This policy would be more restrictive on development than that for Green Belts and would be tantamount to an unacceptably extensive tract of Local Green Space. In my opinion, the policy designation would be equivalent to a “back door” way to try to achieve what would amount to a new area of Green Belt by another name. This is explicitly discouraged by national guidance.¹³ Nevertheless, the open countryside facing eastwards from the village is a valued element of the setting and landscape of Tarvin, the key elements of which merit safeguarding. Therefore, I shall modify Policy HG5 by substituting a policy aimed at safeguarding the important characteristics of the landscape between Tarvin and Oscroft, which would then have regard to national guidance and also generally conform with Policy ENV 2 of the CWaCLP (Part One). **(PM6)**
- 4.21 Two representations under Regulation 16 have sought the allocation of sites for housing on the edge of Tarvin outside, but adjoining the Settlement Boundary. One submission relates to an area of land on the western edge of Tarvin bounded by the A51 and A54.¹⁴ The majority of the land is within the Green Belt. NPPF paragraph 136 explains that detailed amendments to boundaries of the Green Belt may be altered in neighbourhood plans but only where a need for such a change has been established through strategic policies. Paragraph 7.2 of the emerging CWaCLP (Part Two) states that the Local Plan (Part Two) does not alter the Green Belt boundaries established under the Local Plan (Part One) and I have no evidence to suggest that the Green Belt has been the subject of

¹² CWaCLP (Part One) Policy ENV 2 and paragraph 8.19.

¹³ PPG Reference ID: 37-015-20140306.

¹⁴ Regulation 16 representation by Crabtree Homes Ltd.

the proposed Main Modifications which have recently been the subject of public consultation. Therefore, whatever the merits of the suggested housing allocation in the Plan, I have no sound reason to believe that circumstances exist which are so exceptional that I would be prepared to recommend modifying the SB of the Plan to include it.

- 4.22 The second site which is proposed for a housing allocation is on the eastern side of Tarvin at land off Church Street.¹⁵ According to the representation, in addition to housing development, the scheme would include the provision of an all-weather community sports pitch, a community building with changing room facilities, a skateboard facility and a community car park. It was the site of a planning application for up to 65 dwellings and community facilities in 2016. However, the application was refused in 2017.¹⁶ The reasons for refusal were based on the impact of the development on the character and appearance of the countryside, the effect on the setting of the nearby St Andrews Church which is a Grade 1 listed building, the possible adverse impact on a European protected species (Great Crested Newt) and the consequent conflict with development plan policies.
- 4.23 I note the CWaCLP (Part Two) comments that, in line with the NPPF, neighbourhood plans may promote a higher level of development than is set out in the Local Plan and that a greenfield countryside site adjacent to an identified settlement boundary may be allocated to meet specific local housing needs and/or seek community benefit through the provision of community infrastructure and facilities.¹⁷ I also realise that the allocation of the site may well result in the provision of most of the leisure facilities and the public car park sought by TNP Policies LS1 and TR1.
- 4.24 Nevertheless, the SB of Tarvin has been established through the stages of preparation of the Tarvin Neighbourhood Plan and the CWaCLP (Part Two), the latter being in the final stage of examination where further Main Modifications (outwith those already subject to publicity) prior to adoption would be very unusual. The suggested housing allocation would lie outside the SB. Therefore, in generally conforming with strategic policies of the CWaCLP (Part One), aligning with Policy R1 of emerging CWaCLP (Part Two) and having regard to national policy and guidance, Policy HG1 (as modified), where the SB is defined, meets the Basic Conditions. Accordingly, I have no reason to include the site within the SB of Tarvin and to allocate the land for housing development.

¹⁵ Regulation 16 representation by Gladman Developments Ltd.

¹⁶ Planning application reference: 16/05568/OUT. View at:

<https://pa.cheshirewestandchester.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

¹⁷ CWaCLP (Part Two) paragraph 6.9.

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- 4.25 Economic development is considered in Policies ED1, ED2, ED3 and ED4. Policy ED1 considers proposed changes of residential and retail development to and from business uses with the aim of supporting employment in the area. Although the retention of rural shops where they remain viable is sought through CWaCLP (Part One) Policies STRAT 8 and ECON 2, TNP Policy ED1 generally conforms with CWaCLP (Part One) Policy ECON 1 which seeks to promote sustainable economic growth in the borough and supports continued use for employment purposes.
- 4.26 Policy ED2 supports small scale measures at premises on the two existing industrial sites shown at ED2.1 and ED2.2 on Figure 13 of the Plan and supports modest extensions to allow existing businesses to grow. The policy generally conforms with Policy ECON 1 of the CWaCLP (Part One). Policy ED3 considers home based businesses and live/work units and generally conforms with Policy ECON 1 and STRAT 9 of the CWaCLP (Part One), other than the final phrase of the policy which can be interpreted as supporting new dwellings in the countryside, which would be contrary to Policy STRAT 9 and should be deleted. **(PM7)**
- 4.27 Policy ED4 supports proposals which would facilitate the expansion of high-speed electronic communications networks and related infrastructure. The policy would generally conform with CWaCLP (Part One) Policy STRAT 11 (bullet point 2). Policies ED1, ED2 and ED3 have regard to national policy for employment as set out comprehensively in the section in the NPPF for building a strong, competitive economy.¹⁸ Policy ED4 has regard to guidance in NPPF paragraphs 112 and 113.
- 4.28 Accordingly, with the recommended modifications, I consider that the policies concerning the provision of homes and economic development would generally conform with strategic statutory policies, would contribute to the achievement of sustainable development and have due regard to national policy and guidance. Therefore, the Basic Conditions are met.

Issue 2: Whether the proposals for promoting leisure facilities, safeguarding the character and appearance of the landscape and environment have regard to national policy and guidance, contribute to sustainable development and generally conform with strategic statutory planning policies?

- 4.29 I have considered Policy LS1 above. Policy LS2 seeks the protection of possible cycle routes between Tarvin village and Oscroft. The options are shown as LS2.1, LS2.2 and LS2.3 on Figure 4 of the Plan. As CWaCC comments in its Regulation 16 representation, further work is required in order to decide which route is the most appropriate, a point recognised in paragraph 4.4.3 (bullet point 2) of the Plan, where a detailed explanation is given. Nevertheless, the overall aim of the policy is in general

¹⁸ NPPF paragraphs 81 and 83.

conformity with CWaCLP (Part One) Policy STRAT 10 and has regard to national policy.¹⁹ Therefore, I shall modify the policy by excluding most of the first sentence and making an appropriate adaption to the second sentence. **(PM8)**

- 4.30 Policy LS3 seeks to protect the route of a new footpath alongside the A54 west of the built-up area of Tarvin. The footpath would link with an extension of the community woodland as shown in Policy LE4. Both policies provide for safeguarding the land for the two uses, but no measures are given in order to implement them, other than the possibility of some funds being made available under Policy TR3 of the Plan. Furthermore, representations have been received from the landowner and an interested party who oppose the policies.²⁰ Therefore, both items are currently not achievable.
- 4.31 Nevertheless, the aim to facilitate a public footpath and to extend the community woodland would be in general conformity with Policies STRAT 10, SOC 5 and ENV 3 of the CWaCLP (Part One) and would have regard to national policy.²¹ I consider it would be unreasonable to include Policies LS3 and LE4 as policies of the Plan due to the undeliverability, but it would be accurate to describe them as aspirations and I shall recommend modifications accordingly. **(PM9)**
- 4.32 Policy LE1 designates ten Local Green Spaces (LGS). Policies for the management of development within LGS should be consistent with those for Green Belts.²² Therefore the control of development in an LGS is strict. The NPPF describes the criteria which should be met in order to justify the identification of a site as LGS. An LGS should be in reasonably close proximity to the community it serves. An LGS should also be demonstrably special to a local community, hold a particular local significance and be local in character and not an extensive tract of land.
- 4.33 I consider that all the LGS designated in the Plan are in reasonably close proximity to Tarvin or, in the case of LE1.10, Oscroft. None of them are extensive tracts of land and they are local in character. The LGS within the built-up areas of Tarvin and Oscroft (LE1.2, LE1.4, LE1.8, LE1.9 and LE1.10) are, in my opinion, demonstrably special to the local community. In addition, well-visited LE1.3 (the community woodland) is also special to the local community. LE1.5 has evidence of a special value to wildlife.
- 4.34 However, in my opinion, the wide grass verges adjoining the eastern side of Church Street/Tarporley Road are not particularly special (LE1.7). They

¹⁹ NPPF paragraph 104 d).

²⁰ Regulation 16 representations from Mr J Williams and Crabtree Homes Ltd.

²¹ NPPF paragraphs 104 d) and 171.

²² NPPF paragraph 101.

may be valued as an outlook from the nearby houses, but that does not make them worthy of designation as LGS. Neither is there any evidence to suggest that they have any greater value as a wildlife haven compared to any other hedge or tree lined grass verge. Similarly, LE1.1 and LE1.6 are merely open fields at the north eastern and south eastern approaches to the village and, in my opinion, there is no real evidence of any special characteristic or significance other than openness. Therefore, I shall modify Policy LE1 by the deletion of LE1.1, LE1.6 and LE1.7. **(PM10)** Otherwise, I consider that the remaining LGS are suitable for designation.

- 4.35 Policy LE2 seeks the protection of four sites of sport, recreation and amenity value and generally conforms with Policy SOC 6 of the CWaCLP (Part One) and has regard to national guidance. Policy LE3 lists five sites which are important for wildlife and which should be protected. The policy generally conforms with CWaCLP (Part One) Policies ENV 4 and DM44. Four of the wildlife sites are identified on Figure 8 of the Plan. A more detailed map of their location is included at Appendix 5. However, although the Plan map delineates sites at Old Moss (LE3.1), the Tarvin Community Woodland (LE3.2) and Hockenhull Platts (LE3.4), the site described as the south west corner of Broomheath Lane and Tarporley Road (LE3.3) is not clearly defined. The Water Meadow (LE3.5) is not shown on Figure 8 and identified only by a symbol on the map in Appendix 5. In order to facilitate effective development management, it is important that the land which is subject to Policy LE3 is clearly and unambiguously defined.
- 4.36 In a very helpful response to one of my questions, the Parish Council indicated that Old Moss (LE3.1) is outside the Plan area. Therefore, it should be deleted from Policy LE3 and from the revisions to Appendix 5 and Figure 8 which have been submitted by the Council.²³ The sites should also be renumbered. However, in stating that development likely to have an adverse effect on the wildlife in those location is not acceptable, other than in exceptional circumstances, Policy LE3 is more restrictive than Policy ENV 4 of the CWaCLP (Part One) and national policy.²⁴ NPPF paragraph 170 indicates that the protection of sites of biodiversity value should be commensurate with their statutory status and I shall modify Policy LE3 to make it generally conform with the CWaCLP (Part One) and to have regard to national policy. **(PM11)**
- 4.37 Policy LE5 and Figure 10 of the Plan show twelve significant views where the intention is that development, which would otherwise be acceptable, must maintain sight lines within the defined vistas. The policy is in general conformity with CWaCLP (Part One) Policy ENV 2, which includes the statement that development should take full account of the characteristics

²³ Response from Tarvin Parish Council dated 8 April 2019.

²⁴ NPPF paragraph 170.

of the development site, its relationship with its surroundings and, where appropriate, views into, over and out of the site.

- 4.38 However, the terms of Policy LE5 are that any new buildings or development must not obstruct lines of sight within the vistas. Furthermore, as illustrated on Figure 10, the tract of land between Tarvin village and Oscroft includes ten of the twelve views to be protected, many overlapping. There would be such a multiplicity of overlapping views that it would have the effect of creating a blanket designation of open countryside as virtual Green Belt, which would be contrary to national guidance in PPG.²⁵ Indeed, the resulting development management would be even more tightly controlled than land in the Green Belt, where there are provisions for exceptions.
- 4.39 The landscape character of the open countryside around Tarvin, outside the Green Belt, already has protection under CWaCLP (Part One) Policy ENV 2 and I consider that no additional benefit would be gained by the inclusion of Policy LE5. Therefore, I shall delete it. **(PM12)**
- 4.40 Policy LE6 seeks to protect two sites which have been identified in the Plan as being of local archaeological and/or historic interest. The policy includes text which is more appropriate in the preceding justification and evidence section and, accordingly, I shall recommend transferring the first sentence of the policy, and the paragraph beginning with "Townfield Lane..." into the first paragraph of the appropriate justification (paragraph 5.1.1) of the Plan. **(PM13)** It may also be useful to integrate into the justification or Appendix 3 the suggestions made by CWaCC and Historic England in their Regulation 16 representations, although these would be improvements, rather than the corrections of a failure to meet a Basic Condition (and therefore fall outside my remit).
- 4.41 I note that the remnant ridge and furrow system near Tarporley Road is qualified as "possible" and I do not consider that this should merit outright protection as sought in the first sentence of the policy. The Glossary to the NPPF indicates that local designation of heritage assets can only be carried out by the local planning authority. CWaCC has not challenged the merits of either of the sites or the principle of their selection. However, in order to ensure the policy generally conforms with the CWaCLP (Part One) and national guidance, I shall reword it to retain reference to the two sites and the need for an assessment. **(PM14)** This would recognise the possible archaeological/historic quality of the two sites without requiring their automatic protection.
- 4.42 Policy LE7 seeks to protect various aspects of landscape and wildlife which are, in some cases, dealt with by other policies in the Plan. The policy

²⁵ PPG Reference ID: 37-015-20140306.

generally conforms with CWaCLP (Part One) Policies ENV 2 and ENV 4 and, subject to the comments below, has regard to national policy.²⁶ However, the clause seeking to retain agricultural land in productive use is impractical as a planning policy and would conflict with national policy which refers only to the best and most versatile agricultural land. In addition, the protection and enhancement of wildlife does not recognise the balance of avoiding of harm through mitigation. Therefore, I shall modify those sections of the policy. **(PM15)**

- 4.43 Accordingly, with the recommended modifications, I consider that the proposals and policies for promoting leisure facilities, safeguarding the character and appearance of the landscape and environment are in general conformity with the strategic policies, have regard to national policy and guidance and would contribute to the achievement of sustainable development, thereby meeting the Basic Conditions.

Issue 3: Whether the policies for transport and health provision in the Plan are an appropriate framework to shape and direct sustainable development whilst supporting essential facilities and services in meeting the Basic Conditions?

- 4.44 Policies TR1 and TR2 consider the need for off street parking. Policy TR1 allocates a site at Garden Field adjacent to Church Street for an off-street car park, which Figure 12 suggests would accommodate 48 vehicles. I appreciate the evidence indicating the difficulties caused by on-street parking and the discussion of alternative sites. However, there is no evidence of the means of implementing the proposed allocation or evidence of funding, other than the possibility outlined in Policy TR3.
- 4.45 As stated above in consideration of Policy LS1, the scheme is currently not able to be delivered and I consider it is unacceptable to define it as an allocation in the Plan. National guidance states that, if policies and proposals are to be implemented as the community intended, a neighbourhood plan needs to be deliverable.²⁷ Moreover, a policy must be supported by appropriate evidence and there is none which suggest how the car park would be built.²⁸ Accordingly, the policy fails to have regard to national guidance. Nevertheless, in recognition of the community feedback showing that a car park in this location would be desirable, I shall amend the policy and make it an Aspiration. Consequently, I shall also delete the reference to "Other..." in Policy TR2 which, similar to Policy TR1, seeks to alleviate parking and traffic congestion in the village.

²⁶ NPPF paragraphs 170, 174 a) and 175 a).

²⁷ PPG Reference ID: 41-005-20140306.

²⁸ PPG Reference ID: 41-041-20140306.

(PM16) Policy TR2 is in general conformity with CWaCLP (Part One) Policy STRAT 10 and has regard to national guidance.²⁹

- 4.46 Policy TR3 considers where funding raised through development should be spent. The first section of the policy deals with decisions which would be taken by CWaCC and should be removed from the policy. I shall modify Policy TR3 accordingly. **(PM17)** The remainder of the policy generally conforms with CWaCLP (Part One) Policy STRAT 11 and national guidance on spending money raised by the Community Infrastructure Levy (CIL).³⁰
- 4.47 Policies TR4 and TR5 deal with how to accommodate any changes to the highways infrastructure and are in general conformity with Policy STRAT 10 and ENV 6 of the CWaCLP (Part One) and have regard to national policy.³¹ Policy TR6 considers traffic impact assessments and is also in general conformity with STRAT 10 of the CWaCLP (Part One) and has regard to national policy.³²
- 4.48 Policy HP1 seeks to safeguard the existing facility for non-residential health care at Hallfields Road. Policy HP2 aims to safeguard a small office block in Meadow Close for non-residential health care and associated services. I note that the offices are currently used by CWaCC. Nevertheless, both policies would generally conform with Policy STRAT 8 of the CWaCLP (Part One), which supports the retention of community facilities and the provision of new facilities at an appropriate scale to the settlement. Tarvin is a key service centre and I consider the aim to improve or at least maintain health care facilities is consistent with that function. The policies would have regard to national policy.³³
- 4.49 Accordingly, with the recommended modifications, I consider that the policies concerning the transport and health provision are an appropriate framework to shape and direct sustainable development whilst supporting some essential facilities and services in meeting the Basic Conditions.

5. Conclusions

Summary

- 5.1 The Draft Tarvin Neighbourhood Plan has been duly prepared in compliance with the procedural requirements. My examination has investigated whether the Plan meets the Basic Conditions and other legal

²⁹ NPPF paragraph 102.

³⁰ PPG Reference ID: 25-071-20140612.

³¹ NPPF paragraph 102.

³² NPPF paragraph 111.

³³ NPPF paragraph 92.

requirements for neighbourhood plans. I have had regard to all the responses made following consultation on the TNP, and the evidence documents submitted with it.

- 5.2 I have made recommendations to modify a number of policies to ensure the Plan meets the Basic Conditions and other legal requirements. I recommend that the Plan, once modified, proceeds to referendum.

The Referendum and its Area

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

Overview

- 5.4 The Parish Council is to be commended for its efforts in producing a clear, concise and well-illustrated document. It is very informative and I enjoyed reading it. Incorporating the modifications I have recommended, the TNP will make a positive contribution to the Development Plan for the area and help to find the right balance between the protection of character and appearance of Tarvin and the surrounding countryside, whilst enabling sustainable development to proceed.

Andrew Mead

Examiner

Appendix: Modifications

Proposed modification no. (PM)	Page no./ other reference	Modification
PM1	Policy HG1	Rephrase second sentence to: “This applies to infill sites and redevelopment of existing previously developed sites and other sites for development within the defined settlement boundary.”
PM2	Policy HG6	Rephrase second sentence to include: “... additional traffic that has a significantly adverse impact on the highway network.”
PM3	Policy HG6	Delete the final two sentences.
PM4	Paragraph 4.4 Policy LS1	Change sub heading to: “Aspirations and Policy” . Delete reference to Policy LS1. Retitle as: “Aspiration” .
PM5	Policy HG4	Delete policy.
PM6	Policy HG5	Delete policy and substitute: “The character and significant features of the landscape between Tarvin and Oscroft in the area shown on Figure 2 should be protected and maintained.”
PM7	Policy ED3	Delete final bullet point.
PM8	Policy LS2	Delete first sentence. Rephrase second sentence to: “Proposals which encourage, support or contribute to the delivery of a safe cycle route between Tarvin village and Oscroft, provided they are in accordance with other Plan policies, will be supported.”
PM9	Policy LS3 & Policy LE4	Delete reference to Policy LS3. Retitle as: “Aspiration” . Delete reference to

	Paragraph 5.3	Policy LE4. Retitle as: “Aspiration” . Change sub heading to “Aspiration and Policies” .
PM10	Policy LE1	Delete LE1.1, LE1.6 and LE1.7 from Policy LE1, the adjoining table and Figure 6.
PM11	Policy LE3	Delete the policy and replace with: “The following sites, shown in Figure 8 and Appendix 5, may be important for wildlife that is in need of safeguarding: Tarvin Community Woodland (LE3.1); South West corner of Broomheath Lane and Tarporley Road (LE3.2); Hockenhull Platts (LE3.3); The watermeadow adjacent to the A51 at Stamford Bridge (LE3.4). Any proposal for development which may affect any of these sites will require the submission of an ecological assessment which identifies the significance of the biodiversity assets and the potential impact of the development, together with proposals for mitigation and compensation, where appropriate, to ensure there is no net loss and, if possible, a net gain of the biodiversity resource.” Replace Figure 8 and the map at Appendix 5 with those submitted by Tarvin Parish Council on 8 April 2019, including the deletion of Old Moss (LE3.1) and the renumbering of the remaining Nature Conservation Sites.
PM12	Policy LE5	Delete policy.
PM13	Policy LE6	Move the first two paragraphs of the policy “In addition Green Belt

		to its north " to paragraph 5.1.1 of the Justification and Evidence.
PM14	Policy LE6	Rephrase policy to: "Any development which might affect sites LE6.1 and LE6.2 should be supported by a desk-based assessment which defines the significance of the asset and considers the impact of the development on the asset and its setting."
PM15	Policy LE7	Bullet point 3 rephrase to: "Protect and enhance wildlife and ensure that, where mitigation would be appropriate, there is no net loss of biodiversity." Bullet point 4 rephrase to: "Safeguard best and most versatile agricultural land to enable it to be kept in productive use."
PM16	Policy TR1 Paragraph 6.3 Policy TR2	Delete reference to Policy TR1. Retitle as: "Aspiration" . Retitle subheading as: "Aspiration and Policies" . Delete: "Other ...".
PM17	Policy TR3	Delete first sentence. Rephrase first phrase of second sentence to: "Where funds generated by development in Tarvin are controlled at Parish level, these will be used to deliver the proposals and aspirations identified" .