

# Biddulph Neighbourhood Plan and Neighbourhood Development Order

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## Initial Comments of the Independent Examiner

**Prepared by**

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**John Slater Planning Ltd**

**20<sup>th</sup> October 2021**

## Introductory Remarks

1. As you will be aware, I have been appointed to carry out the examination of the Biddulph Neighbourhood Plan and also the accompanying Neighbourhood Development Order (NDO). I have carried out my initial review of the Plan and the accompanying documents which I have been sent. I visited the town of Biddulph and the village of Biddulph Moor on Wednesday 13th October 2021. I spent the whole day within the plan area.
2. I have concluded that I should be able to deal with the examination solely based on the written material and it will not be necessary for me to call for a public hearing. However, there are a number of matters that I need to ask questions or which seek clarification based on what I have read in the plan or saw on my site visit. This is quite common in the examination process.

## Regulation 16 Comments

3. I would firstly like to offer the Town Council the opportunity to comment on the representations that were submitted to both the plan and the NDO, as part of the Regulation 16 consultation. I have also been sent two separate responses which were made, outside the Reg 16 consultation period. I would invite the Town Council's comments on the disputed boundaries to the two green spaces referred to in that correspondence (Sites 25 and 32).
4. I am not expecting a response in respect of every point raised at Regulation 16, just those that the Town Council feels it wishes to respond to.

## Changes to the NPPF

5. The neighbourhood plan was drawn up against the background of the 2019 version of the National Planning Policy Framework and this is reflected in the Basic Condition Statements.
6. On 20<sup>th</sup> July 2021, the Secretary of State issued revisions to the National Planning Policy Framework (NPPF). This most recent version can be found at <https://www.gov.uk/government/publications/national-planning-policy-framework--2>.
7. With the recent changes to the national policy context, my examination will need to assess whether the changes to the Framework will have a material impact on my assessment of the basic conditions, particularly whether the plan has regard to the policy and advice of the Secretary of State. I would invite the District Council and the Town Council to comment on whether the changes to the Framework should have a material impact on my conclusions.

## Strategic Policies

8. Can Staffordshire Moorland District Council confirm which of its Local Plan policies, are for the purpose of the basic condition, the strategic policies that the neighbourhood plan has to be in general conformity with?

## Start Date

9. I note that the end date of the plan is 2035, but would the Town Council advise me what date should be used for the start of the plan period.

## Policy HCT1: Enterprise and Tourism Development

10. Can the Town Council comment on whether this policy will allow for the construction of new buildings within the countryside area and to what extent would that conflict with Green Belt policy, as set out in paragraphs 147 to 150 of the NPPF? Does the District Council have a view on this?
11. Can the Town Council confirm that by referring to rural areas, the policy applies to all the land outside the settlement boundaries?
12. In terms of the drafting of the policy, I am assuming the first bullet point should be located within the body of the first paragraph?
13. Whilst I am clear what could be considered as business and tourism uses, can the Town Council give me some examples of what it sees as “enterprise uses”? For example, would the construction of a new restaurant in the rural areas be considered appropriate under this policy?

## Policy LE1: Biddulph Town Centre

14. Does the Town Council have a view as to how this policy will operate following the introduction of the wider Use Class E, on 1<sup>st</sup> September 2020 covering Commercial, Business and Service Uses?
15. Can the Town Council comment on whether the presumption against the introduction of ground floor residential uses can still be justified in the light of the new permitted development rights covering vacant commercial units introduced in Class MA by the Town and Country Planning (General Permitted Development etc) (England) (Amendment) Order 2021 which allows subject to conditions, their change of use to residential?

## Policy LE2: Albion Mill

16. Can the District Council give me a short precis of the planning history of this site? Is the building a designated or non-designated heritage asset? I note that the site has almost 100% site coverage and I assume that there is no scope for car parking either onsite or in the vicinity.
17. Can the Town Council explain why it considers that residential uses at ground floor level would be unacceptable in planning terms?
18. Can the District Council confirm that Policy DSB2 – which referred to Biddulph Mills in the adopted version of the local plan, is the same building as Albion Mill?

## Policy CF2: Existing Community Facilities

19. I note that the list of facilities set out in the policy are identified in Appendix K, is different to the list of community facilities set out in Appendix B. Could the inclusion of that list raise expectations, that the community facilities

referred to in the Appendix B, but not in the policy, are nevertheless still be covered by this policy?

20. Can the District Council advise me upon what basis was the community room at Sainsbury's provided? Is it required to be retained for community use in perpetuity, by a planning obligation, as I assume that it forms part of the wider retail planning unit?

### Policy NE1: Natural Environment Features

21. I find the mapping associated with this policy somewhat difficult to navigate. I would ask the Town Council whether each of the maps referred to in the policy, could be allocated a Map Number, that could be listed in the policy i.e. "as shown on Map X". Could all these maps be placed in the appropriate section of the policy? Also, I could not find within the document the Priority Distinctiveness Map, the Habitats Map and Nature Recovery Network Map. Can the Town Council provide me with these maps as I would expect maps referred to in the policy to be in the document?
22. Can the former mineral extraction sites referred to in the policy be shown on a map?
23. Can either the District Council or the Town Council, explain how the boundaries of the ecological networks were established and how is this information utilised in a development management context? In what way does it affect the determination of planning applications?
24. A number of the maps in the neighbourhood plan, show the whole Staffordshire Moorland district area – I wonder whether it would be clearer if the maps were restricted just to the plan area. That would mean that it would be easier to see whether individual sites are covered by these designations. Maybe the District Council could assist, via its GIS team?
25. I am assuming that all the identified sites are not European sites but can the District Council indicate whether any are designated as SSSIs? Are there any ancient woodlands within the plan area and are they shown on any maps?
26. Paragraph 175 of the NPPF refers to the hierarchy of sites of biodiversity interest. The policy as submitted sets the bar to the highest level, through the use of the phrase "new development **must preserve** or enhance .... the ecological" features of sites. Can the Town Council expand on what tests it would expect to be imposed at the development management when considering planning applications that are covering these sites? Should proposals not have to follow the principles set out in paragraph 180a) of the NPPF?
27. Has there been any specific landscape assessment, that describes in more detail the landscape character of the plan area, below the level of the National Character Area, that can be used to assess proposals against the last bullet point?

28. Can the Town Council comment on what it sees as the implications of complying with this policy, on the development of the Wharf Road strategic allocation site set by the Local Plan Policy DSB1 and the Tunstall Road allocation site, set out in Policy DSB3?

### Policy NE3: Local Green Space

29. Is it possible for the LGS maps to be provided with clearer numbers as I was only able to decipher some of the reference numbers with the aid of a magnifying glass? Also, can the LGS table setting out the description of each site against the reference number, be included as an Appendix within the plan?
30. The Secretary of State policy is to restrict local green space designation to only those green spaces which are demonstrably special to the local community. This is the highest level of open space protection, reserved for those sites that have a particular significance. I was struck by the very large number of LGS sites being identified for a town the size of Biddulph and Biddulph Moor. Can the Town Council set out how the community was asked to identify the green areas of particular significance as I need to be clear as to the evidence of each of them meeting the threshold of being “demonstrably special”?
31. I note that a number of the areas are already designated as local green space within the development plan i.e. through the Local Plan. Can the Town Council explain what is the purpose of reimposing the same status as already applied to these sites?
32. Paragraph 103 of the NPPF states that policies for managing development within a Local Green Space should be consistent with those for managing development in the Green Belt. This was also the approach advocated by the Local Plan Inspector. Can I ask the Town Council what the added value that LGS status gives to sites which already are subject to Green Belt policy? The criteria against which planning applications will be assessed are the same. I would also point out that national guidance does not impose any requirement for development to *enhance* the green space, only protect it. Also, national policy does not place any obligations on development that adjoins the green space.
33. I note that two of the proposed sites (16 and 63) form part of the Biddulph Valley Way which is protected in its own right by Policy NE4.
34. Can the Town Council comment on why it is proposing that the large built footprint of the Leisure Centre and its car parks are being proposed as Local Green Space – I note that these areas are excluded from the LGS designation in the Local Plan? Is it reasonable that planning applications related to the leisure centre building and its car park, are subject to Green Belt policy?
35. I would also question the appropriateness of including a number of areas of highway land as Local Green Space as development on these areas is normally covered by highway rather than planning legislation.

36. Can the District Council provide me with extracts from the SHLAA information on the sites which are proposed for LGS designation? In particular, on my site visit, I noted a large pile of material appeared to be stored on the Gas Work site – has planning permission been granted for that site’s development? Can the District Council also give me any timescale of when the town’s Green Belt boundaries are likely to be reviewed? As you will be aware, one of the criteria is that is that granting of LGS status should be consistent with the development of sustainable development and should last beyond the plan period, which is 2035.

### **Policy NE5: Protection of Views of Local Importance**

37. My reading of the policy is that it sets out its aim but it does not specify how a planning application which impacts upon these views will be assessed. Does the Town Council wish to consider an alternative form of wording that gives greater clarity to the decision maker?
38. Can the Town Council explain how the policy will be applied to planning applications that are not required to submit a Design and Access Statement, which is only required in respect of major developments or development within a Conservation Area?
39. Is there a background evidence document that elaborates on the characteristics of the views the policy is seeking to protect e.g. is it development affecting the immediate foreground or only affects the long distance views of the countryside beyond, that are valued? I would have expected a similar evidence base to justify the choice of views, in the same way that the local green space is supported by evidence.

### **Policy HOU 1: Housing**

40. Can I be provided with the most up to date housing needs assessment covering the plan area?
41. Can the Town Council clarify whether the required mix of housing is based on an assessment of district wide requirements or is the information specific to the needs of the plan area.
42. Does the Town Council or the District Council have any views on whether the policy should refer to First Homes?

### **Policy HOU2: Infill Housing**

43. Can the Town Council clarify whether this policy only applies within the settlement boundaries or would it allow infill housing development in the Green Belt, outside of the settlements?

### **Policy INF1: Critical Road Junctions**

44. Would the Town Council provide me with a copy of the traffic study it commissioned and which is referred to in the first paragraph of the supporting text to this policy.

45. Could the Town Council advise me what it considers would be the scale of development where an applicant or a decision maker would need to be considering the implications of their particular development on the four junctions. Would it only be those applications that are required to submit a Transport Assessment? Is there traffic data to identify the extent to which these junctions are congestion pressure points e.g. in terms of their capacity at peak times. Similarly, is there specific accident data that identifies that these are problem junctions. Is there an expectation that development will only look at impact on the junction closest to the site or all four junctions?
46. Can the Town Council confirm that it does not expect the District Council or Highway Authority to specifically assess the impact of development on the list of junctions identified by local residents, beyond the 4 junctions referred to in the policy?

### **Policy INF 3: Community Infrastructure**

47. A neighbourhood plan policy is a policy to be used to determine a planning application. It cannot be used to determine where CIL money is to be spent as that is a budgetary decision. Can the Town Council clarify whether the intention of the policy is to signpost how the Town Council is intending to spend its 25% share of CIL receipts on the infrastructure improvements it has identified or is it an attempt to influence the District Council's decisions and priorities in which case it may be more appropriate to include it within the supporting text?
48. Section 106 contributions can only be secured where they meet the three tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, namely that the funding is required to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. The moneys are expected to be spent on the items for which the payment is sought and most agreements include provision for the money to be repaid if it is not spent for that project within a specified period.

### **Neighbourhood Development Order**

49. I note that the proposed order is only seeking to remove the need for planning applications to be submitted for the installation of new shop fronts within the defined area of the Town Centre. I consider that the area has been carefully drawn and note, for example the shop units adjacent to Sainsbury are not included where the form of shopfront being sought would be out of character with the main building.
50. On my site visit, I was particularly struck by the fact that a substantial proportion of the shops within the town centre are located where there is a sloping pavement in front and as such many of the units currently rely upon steps to access the shops. In drawing up the four Shopfront Types and

Details, did the Town Council consider the implications of the changes in ground level between the street and the internal floor levels of the shops. The drawings only show a situation where there is no difference in level between the pavement and the shop floor.

51. I imagine that the current arrangements create major problems for those members of the public with mobility issues. Clearly the present situation is a legacy of the past, but modern expectations are that development should seek to create a more accessible environment for all sectors of society. The installation of new shop fronts, offers an opportunity to address these issues of level changes thereby improving the shops accessibility. Does the Town Council expect that shops taking advantage of the provisions of the Order would retain a stepped access? I also would be interested in the District Council's views on whether a planning application that relied upon a step access would be acceptable? This raises a number of related issues. For example, can the Town Council clarify from what ground level the height of the stall riser would be measured – will it be from the highest or lowest part of the ground level when assessing the design parameter which specifies the height of the stall riser must be between 350mm and 550mm? It does strike me that the two options with shopfronts with side door recessed offer opportunities to create a ramp to allow for example wheelchair access. I would specifically ask the District Council whether this is a matter that would be acceptable under the Building Regulations or related legislation.
52. One of the issues raised by the District Council is the question of the precision in the drafting of the Order. I would be interested in the Town Council's comments on how a shop keeper or a decision maker would know the extent to which a pilaster extends "slightly forward". The wording could cause difficulty in, perhaps, an enforcement situation where there could be different interpretation as to what constitutes "***slightly forward***". I wonder whether the District Council might suggest a suitable dimension to remove that uncertainty.
53. Similarly, can the Town Council elaborate on how a decision maker would determine whether a stallriser comprised a "constructional timber panel" and in appearance terms what is the difference to an applied timber beading. Does the Town Council have a view as to whether the masonry used in panelling under (iii) should match the materials used in the rest of the building?
54. Following the introduction of the Town and Country Planning Use Classes (Amendment ) Order 2020, does the Town Council have a view as to whether condition (ii) should now refer to the new Use Class E?
55. There is a slightly problematical interface between the proposed Order and the Town and Country Planning (Control of Advertisement) (England) Regulations 2007, in that some matters that the order may be seeking to control through the Order could be covered by the Advertisement

Regulations. For example, some businesses such as chemists and vets are allowed to have illuminated signs without requiring consent to display or the need for planning permission. Equally if a shop owner wishes to have an illuminated sign, then it can apply to the District Council for consent to display the advertisement, which can only be determined having regard only to two grounds, public safety and amenity. The Order's parameter preventing the internal lighting of a transparent shop sign could not preclude the submission of an application for an internally illuminated fascia sign. Similarly, if the business has a canopy which is an advertisement, it would be covered by the advertisement regulations, rather than needing planning permission.

56. Under (vi) if the lighting unit were to be installed on the building above the new shopfront would those lighting units be covered by the scope of the Order as they would not be part of the shopfront?
57. Can the District Council confirm whether, within the area of the proposed Order, there are any listed buildings and if there are, can they be identified on a map and also please confirm that the Town Centre is not within a Conservation Area?

### Concluding Remarks

29. I am sending this note direct to both Biddulph Town Council, and Staffordshire Moorland District Council. I would request that the two parties' response to my questions should be sent to me by 12 pm on **17<sup>th</sup> November 2021** and also be copied to the other party.
30. I would also request that copies of this note and the respective responses are placed on the Neighbourhood Plan's and also the District Council's website.

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John Slater Planning Ltd

Independent Examiner to the Biddulph Neighbourhood Plan and Neighbourhood Development Order.

20<sup>th</sup> October 2021