

**Town and Country Planning Act 1990**  
**Neighbourhood Planning (General) Regulations 2012**

**BARKWAY AND NUTHAMPSTEAD NEIGHBOURHOOD DEVELOPMENT PLAN**  
**2018 – 2031**

**INDEPENDENT EXAMINATION**

**Final Report to North Hertfordshire District Council**  
**by Edward F Cousins BA, BL, LL.M, Barrister**

**January 2025**

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# **PART 1**

## **INTRODUCTION**

1. This Report comprises the findings of my examination (*‘the Examination’*) into the draft Barkway and Nuthampstead Neighbourhood Development Plan (*‘the Neighbourhood Plan’*). As required by Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 (*‘the 2012 Regulations’*) the Neighbourhood Plan was duly submitted for consultation by Barkway Parish Council (*‘the Parish Council’*). Subsequently, in accordance with Regulation 16 of the 2012 Regulations the Parish Council formally submitted the Neighbourhood Plan to North Hertfordshire District Council (*‘NHDC’*). NHDC then held a consultation which concluded on 25<sup>th</sup> June 2024. I was then retained as the Examiner commencing 14<sup>th</sup> October 2024 and the documentation was made available to me by email to enable me to conduct the Examination. I have also accessed NHDC’s website. I made an unaccompanied site visit in November 2024.
2. In my judgment, and subject to the modifications set out in this Report, I consider that the Neighbourhood Plan complies with the Basic Conditions and other statutory requirements. I therefore recommend to NHDC that the Neighbourhood Plan, subject to the incorporation of the recommended modifications as specified, should proceed to referendum.

### **My appointment**

3. I have been appointed by NHDC to conduct an independent examination into the Neighbourhood Plan. I am independent of the Parish Council and of NHDC. I do not have any interest in any land that may be the subject of the Neighbourhood Plan - nor do I have any professional conflicts of interest.
4. I am a Barrister in practice at Radcliffe Chambers, where additionally I act as a Mediator. I have also joined a set of Chambers in Manchester – Nine St John Street – as an Associate Member. Previously, I was the Principal Judge of the Land Registration Division of the Property Chamber and a Chancery barrister in practice in Lincoln’s Inn. Currently I am a specialist property and planning lawyer, with particular expertise in

markets and fairs, including street trading; commons and town and village greens; manorial rights; mines and minerals; and land registration law and practice. I have wide experience examining neighbourhood development plans and, when necessary, conducting public hearings as part of the examination process. In addition to my membership of the Bar of England and Wales, I was also called to the Bar of Ireland at Trinity Term 2001, and I hold a Practising Certificate in Ireland, together with a Practising Certificate in Northern Ireland where I was called in October 2022.

**PART 2**  
**THE LEGAL FRAMEWORK**

**Neighbourhood Planning**

**The Background**

1. Neighbourhood planning is the process introduced by Parliament as enacted by the Localism Act 2011 (*'the 2011 Act'*). The intellectual purpose of neighbourhood planning is to seek to enfranchise those persons living and working in a community by providing the basis through which they can play a more active role in the process of deciding the future of their neighbourhood. It has been described as the ability: -

*'to give to communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.'*

2. Thus, the 2011 Act gave powers to parish councils to involve their communities in the creation of neighbourhood development plans in order to provide them with a greater say in planning matters. Parish councils are therefore able to play a role in the establishment of general planning policies for the development and use of land in their neighbourhoods. Examples of such involvement are directed to the siting, design and construction of new homes and offices, and the designation of local green space. The neighbourhood development plan sets a vision for the future for the area concerned. It can be detailed, or general, depending on the views of local people.
3. In order to ensure that the new process is workable and effective the 2011 Act introduced the requisite amendments into the Town and Country Planning Act 1990, and the Planning and Compensation Act 2004 (*'the 2004 Act'*).<sup>1</sup>

**Qualifying Body**

4. At the commencement of the Examination, I required Barkway Parish Council and Nuthampstead Parish Meeting to clarify which of the organisations was the qualifying

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<sup>1</sup> The 1990 Act, ss. 61E to 61P, Sch. 4B (neighbourhood development orders); the Planning and Compulsory Purchase Act 2004, ss. 38A to 38C (neighbourhood plans), as amended by the 2011 Act. These amendments variously came into force on subsequent days in 2012 and 2013 and were supplemented by detailed procedures provided in the 2012 and 2013 Regulations.

body. Given the evidence submitted to me as part of this Examination by NHDC, Barkway Parish Council and Nuthampstead Parish Meeting, I am satisfied that Barkway Parish Council is an appropriate ‘*Qualifying Body*’ as defined. Barkway Parish Council is authorised to act for that purpose by Nuthampstead Parish Meeting<sup>2</sup>. Barkway Parish Council is therefore entitled to submit to the local planning authority the Neighbourhood Plan as an essential prerequisite to it being ‘*made.*’ Nuthampstead Parish Meeting has been engaged in the development of the Neighbourhood Plan through Joint Planning Committees and Steering Group Meetings. Additionally, both Barkway Parish Council and Nuthampstead Parish Meeting have independently approved the submission of the Neighbourhood Plan to NHDC.

### **Neighbourhood Plan Area**

5. The first step towards producing a neighbourhood plan is for a parish council, or other qualifying body, to define a ‘*neighbourhood area*’ for which it considers that a plan should be prepared and presented.<sup>3</sup> This is part of the process which that body is entitled to initiate for the purpose of requiring the local planning authority in England to make a neighbourhood development plan for the whole or any part of its area specified in the plan.<sup>4</sup> A ‘*neighbourhood development plan*’ is a plan -

*‘.... which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area.’<sup>5</sup>*

6. I note from the Neighbourhood Plan and NHDC’s website that the Neighbourhood Plan area was designated and approved by NHDC on 5th August 2014.
7. The Basic Conditions Statement states that the Neighbourhood Plan Area incorporates the two parishes of Barkway and Nuthampstead. A plan showing the boundary of the Neighbourhood Plan Area is shown in the Neighbourhood Plan on page 6, at Figure 1.
8. For clarity and the avoidance of doubt, I propose a modification to para 1.2.2 of the Neighbourhood Plan to read

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<sup>2</sup> See 1990 Act, s.61F(2)

<sup>3</sup> See s 38A(1).

<sup>4</sup> The 1990 Act, s. 61F(1), (2), applied by the 2004 Act, s. 38C(2)(a).

<sup>5</sup> By virtue of 38A(2).

‘Barkway Parish Council, with the support of Nuthampstead Parish Meeting, submitted the application for the Neighbourhood Plan area. The Neighbourhood Plan area was designated by NHDC on 5<sup>th</sup> August 2014. Barkway Parish Council is the relevant body for the Neighbourhood Plan. Nuthampstead Parish Meeting has endorsed Barkway Parish Council’s role as Qualifying Body in the Neighbourhood Plan process’.

### **Public Consultation**

9. Regulation 14 of the 2012 Regulations sets out the requirements for pre-submission consultation, and Schedule 1 thereto makes reference to the relevant consultation bodies. The Consultation Statement sets out the aim of the consultation activities.
10. The Consultation Statement accompanying the Neighbourhood Plan sets out the pre-submission consultation process. This refers to informal and formal consultation with the community and other stakeholders. This process included an open event in November 2013. The Parish Council also engaged with residents on specific policy areas via a questionnaire; the findings were explained at a public meeting, the date of which is not stated. The draft Neighbourhood Plan was produced in 2015 and went out to ‘wider consultation’. It is not clear in the Consultation Statement the extent of that consultation or its impact upon the policies in the draft Neighbourhood Plan.
11. On 7<sup>th</sup> February 2019, a public meeting was attended by approximately 60 people. A Housing Needs Survey was completed in 2019. The Vision and Objectives were agreed following a public meeting on 29<sup>th</sup> May 2019 which included the opportunity to complete a feedback form. The policies were presented at a public meeting on 21<sup>st</sup> September 2019 together with consultation on the potential Local Green Spaces and Views. The Consultation Statement confirms that following the Regulation 14 consultation, letters were sent to owners of the Local Green Spaces, resulting in the reduction of the number of Local Green Spaces.
12. The Regulation 14 consultation period ran from 28<sup>th</sup> September until 23<sup>rd</sup> November 2020 together with a meeting event. Following my request at an early part of the Examination, a schedule detailing the complete list of Regulation 14 responses was submitted to me. The Parish Councils’ assessment of the main issues is included in the Consultation Statement. I am clear that feedback gathered from the community and

stakeholders shaped subsequent iterations of the Neighbourhood Plan, refining its objectives, and strengthening its policies.

13. Additionally, the Consultation Statement reports that the Regulation 14 version of the Neighbourhood Plan was updated to reflect current legislation, government guidance and the North Herts District Plan. Three new policies were introduced at this time. As part of the Examination, NHDC has confirmed that it considers that there is no requirement for a further pre-submission consultation to be undertaken in respect of these additional policies.
14. The Neighbourhood Plan, and accompanying documents, was submitted to NHDC as required under Regulation 15 of the 2012 Regulations. In accordance with Regulation 16 of the 2012 Regulations, NHDC, as the relevant local planning authority, was required to publicise the Neighbourhood Plan proposal. The Regulation 16 consultation period was 10<sup>th</sup> May 2024 to 25<sup>th</sup> June 2024.
15. The consultations generated representations at the Regulation 16 consultations stage. These have been made available to me through NHDC's website and by email. I confirm that all representations on the Neighbourhood Plan received at the Regulation 16 stage have been considered when undertaking this examination. I have considered each of the representations made in reaching my conclusions on whether the Neighbourhood Plan has met the Basic Conditions. Where appropriate, I have made specific reference to the individual comments by the person or organisation.
16. Successful public consultation enables the Neighbourhood Plan to reflect the needs, views and priorities of the local community and help achieve consensus. I have already noted that the Consultation Statement includes a consultation event and engagement with the local community. I am satisfied that the consultation process, as corrected by the subsequent submissions, comply with the requirements for consultation on the Neighbourhood Plan.



## **THE STATUTORY FRAMEWORK**

### **The Detail**

#### **Referendum**

17. The purpose of the referendum is to decide whether the draft plan should be ‘*made,*’ subject to any changes recommended by the Examiner and accepted by the planning authority. If more than 50% of those voting, vote in favour of the plan, the local planning authority then is under a statutory ‘*to make the plan*’.
18. Once it comes into force, a neighbourhood development plan forms part of the development plan for the area to which it relates, together with the strategic policies in the adopted local plan, the “*saved*” policies of the relevant local plan, and any plans for minerals and waste disposal. Thereafter it forms an integral part of the policy framework that guides the local planning authority and the Planning Inspectorate, in making all planning decisions in the area.
19. This report includes a recommendation for the Neighbourhood Plan to proceed to Referendum, subject to the inclusion of the recommended modifications. The Plan should proceed to Referendum based upon the neighbourhood plan area, as defined.

#### **Compliance with provision made by or under sections 38A and 38B of the 2004 Act**

##### ***Section 38A – Meaning of “neighbourhood development plan”***

20. Section 38A of the 2004 Act (as amended) provides that any ‘*qualifying body*’ is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development plan. As noted above, Barkway Parish Council is a Qualifying Body by virtue of the provisions of 38A(12). Further, as stated above, NHDC is the local planning authority for the purpose of the 2004 Act.
21. Section 38A(2) requires the neighbourhood development plan only to contain policies relating to the development and use of land lying in the neighbourhood area. The policies are set out in Section 4 of the Neighbourhood Plan. I should state at this stage that I am satisfied that the Policies do relate to the use and development of land within the neighbourhood area, and not to extraneous matters.

22. By Section 38(3)(c) of the 2004 Act, a neighbourhood development plan that has been made in relation to an area forms part of the statutory development plan, for the purpose of guiding town and country planning decisions. Under Section 38(6) there is a presumption in favour of determining planning applications in accordance with the neighbourhood development plan unless material considerations indicate otherwise.

***Section 38B***

23. Section 38B of the 2004 Act provides as follows:

*‘38B Provision that may be made by neighbourhood development plans*

*(1) A neighbourhood development plan—*

- (a) must specify the period for which it is to have effect,*
- (b) may not include provision about development that is excluded development, and*
- (c) may not relate to more than one neighbourhood area.*

*(2) Only one neighbourhood development plan may be made for each neighbourhood area.*

*(3) If to any extent a policy set out in a neighbourhood development plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy.*

*(4) Regulations made by the Secretary of State may make provision—*

- (a) restricting the provision that may be included in neighbourhood development plans about the use of land,*
- (b) requiring neighbourhood development plans to include such matters as are prescribed in the regulations, and*
- (c) prescribing the form of neighbourhood development plans.*

*(5) A local planning authority must publish each neighbourhood development plan that they make in such manner as may be prescribed by regulations made by the Secretary of State.*

*(6) Section 61K of the principal Act (meaning of “excluded development”) is to apply for the purposes of subsection (1)(b).’*

24. Section 61K provides, so far as is material, as follows: -

*‘61K Meaning of “excluded development”*

*The following development is excluded development for the purposes of section 61J—*

- (a) *development that consists of a county matter within paragraph 1(1)(a) to (h) of Schedule 1,*
- (b) *development that consists of the carrying out of any operation, or class of operation, prescribed under paragraph 1(j) of that Schedule (waste development) but that does not consist of development of a prescribed description,*
- (c) *development that falls within Annex 1 to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended from time to time),<sup>6</sup>*
- (d) *development that consists (whether wholly or partly) of a nationally significant infrastructure project (within the meaning of the Planning Act 2008).'*

25. I should state at this stage that I am satisfied that the Neighbourhood Plan clearly specifies the period for which it is to have effect (2018-2031); it does not include ‘*excluded development*’; and it is the only neighbourhood plan for the area.
26. The 2012 Regulations are made under section 38B of the 2004 Act. These prescribe detailed requirements for neighbourhood plan proposals and how they are to be consulted upon, publicised, and submitted.

**What must the Examiner examine?**

27. Paragraph 8 of Schedule 4B to the 1990 Act, as modified by section 38C (5) of the 2004 Act, requires the examiner to consider the following:
- whether the draft plan meets the Basic Conditions. These are defined at sub-paragraph (2);
  - whether it complies with the provision made by or under sections 38A and 38B of the 2004 Act; and
  - whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates; and

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<sup>6</sup> This must now be taken to refer to codifying Directive 2011/92/EU. This repealed and re-enacted Directive 85/337/EEC and its amending instruments. It states at Article 14 that references to the repealed directive are to be construed as references to the new directive as a matter of consistent interpretation and under the principle of construction codified in relation to domestic law by s.17(2)(a) of the Interpretation Act 1978.

- whether the draft plan is compatible with ‘*the Convention rights,*’ as defined by the Human Rights Act 1998<sup>7</sup>.

28. Paragraph 11(2) of Schedule 4B, as modified by section 38C(5)(d) of the 2004 Act provides that:

- ‘(2) A draft [plan] meets the basic conditions if—*
- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the [plan],*
  - (b).....*
  - (c).....*
  - (d) the making of the [plan] contributes to the achievement of sustainable development,*
  - (e) the making of the [plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),*
  - (f) the making of the [plan] does not breach, and is otherwise compatible with, EU obligations, and*
  - (g) prescribed conditions are met in relation to the [plan] and prescribed matters have been complied with in connection with the proposal for the [plan]”*

29. Basic Conditions (b) and (c), relating to the built heritage, apply to the examination of proposed neighbourhood development orders, but not to that of neighbourhood development plans.

30. Regulations 32 and paragraph 1 of Schedule 2 of the General Regulations, has prescribed a further condition for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act, as follows -

*‘[the] making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects).’*

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<sup>7</sup> Section 1 of the 1998 Act defines these as the rights and fundamental freedoms set out in Articles 2 to 12 and 14 of the European Convention on Human Rights, Articles 1 to 3 of the First Protocol to the Convention, and Article 1 of the Thirteenth Protocol, as read with Articles 16 to 18 of the Convention.

31. Since 28th December 2018, the General Regulations, Schedule 2 paragraph 1, has prescribed a further Basic Condition, namely:

*‘In relation to the examination of neighbourhood development plans the following Basic Condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act—*

*The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.’*

32. It is to be noted that if a proposed neighbourhood development plan is to be made it must meet all of the Basic Conditions specified in paragraph 8(2) - not just some of them.
33. Further, and importantly, the examination process is not intended to put the Examiner into the shoes of the ‘qualifying body’ so as to usurp its function and re-make its decisions. The statutory remit of the Examiner is limited.
34. Thus, the examination process is less intrusive than that required in respect of a local development plan document. For instance:

*‘the remit of an examiner dealing with a neighbourhood plan does not include the requirement to consider whether that plan is ‘sound’ (as in section 20(5)(b) of the 2004 Act), so the requirements of ‘soundness’ contained in paragraph 182 of the NPPF do not apply to a neighbourhood plan. The Examiner of a neighbourhood plan does not consider whether that plan is ‘justified’ in the sense used in paragraph 182 of the NPPF. In other words, the Examiner does not have to consider whether a draft policy is the ‘most appropriate strategy’ compared against alternatives, nor is it for him to judge whether it is supported by a ‘proportionate evidence base.’*

- *Whereas under paragraph 182 of the NPPF a local plan needs to be “consistent with national policy” an examiner of a neighbourhood plan has a discretion to determine whether it is appropriate that the plan should proceed having regard to national policy.*
- *The basic condition only requires the examiner to consider whether the draft neighbourhood plan as a whole is in general conformity with the strategic policies in the adopted Development Plan taken together. I am not charged with determining in respect of each particular policy or element whether there is a tension between the local and neighbourhood plans, and if there is such tension in*

*places, that may not be determinative of the overall question of general conformity.*<sup>8</sup>

35. The concept of ‘*soundness*,’ referred to by Holgate J in Maynard refers to the text in a former edition of the NPPF. This text has now been superseded in the new edition of the NPPF published in December 2024. This retains a section now referred to as ‘*Examining plans*’ and refers to the same four requirements for ‘*soundness*.’ Paragraphs 36 and 37 of the latest edition of the NPPF contains a separate reference to the examination process, notably that neighbourhood plans must meet the Basic Conditions and other legal requirements before they can come into force which ‘*... are tested through an independent examination before the neighbourhood plan may proceed to referendum.*’
36. Thus, although the Examiner has a general discretion whether to recommend modification to bring the neighbourhood plan into line with national policy if he finds points of departure, it is necessary to bear in mind that it would normally be expected that appeal decisions would follow current national policy where it conflicts with a local or neighbourhood plan. A neighbourhood plan that is at odds with national policy is in danger of becoming otiose. Unless the Examiner considers that there is evidence demonstrating good reason to depart from national policy in the neighbourhood, he would be expected to recommend that it be followed.
37. In essence, therefore, the role of the Examiner is to assess whether the draft plan is compliant with the Basic Conditions and other legal requirements. If in the event that the draft plan does not comply with the various statutory requirements, the Examiner then is obliged to consider whether it can be modified so that it does so comply. Other legal requirements include consideration of the NPPF and the NPPG.
38. The NPPF was updated on 12 December 2024. Paragraph 239 of the NPPF 2024 sets out transitional arrangements for plan-making. Policies in the updated Framework will apply for the purpose of preparing neighbourhood plans from 12 March 2025 unless a

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<sup>8</sup> See *R(Maynard) v Chiltern DC* [2015] EWHC 3817 (Admin) at [13] per Holgate J. see also the judgment of Holgate J in *R (Crownhall Estates Limited) v Chichester DC* (Admin) – 21 January 2016 where he makes further comments as to the concept of ‘*soundness*’ [29]. See also paragraph 36 of the latest version of the NPPF where the ‘*soundness*’ of Neighbourhood Plans is discussed.

neighbourhood plan proposal has been submitted to the local planning authority under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended) on or before the 12 March 2025.

39. On this basis, I have had regard to national policies and advice contained in the 2023 version of the NPPF. As the sections on the Legal and Statutory Frameworks draw extensively on the provisions contained in both the NPPF and the NPPG, no further reference will be made to either document at this stage.

### **The Report**

40. The Examiner then produces a report, which contains one of three possible recommendations, namely, whether:

- (a) the draft plan is to be submitted to a referendum;*
- (b) the modifications specified in the report are to be made to the draft plan, and that the draft plan as modified is submitted to a referendum; or*
- (c) the proposal for a plan is to be refused.<sup>9</sup>*

41. The recommended modifications can only be those that the Examiner feels are necessary to ensure that the draft plan complies with the Basic Conditions and the other relevant statutory requirements or are needed for the purpose of correcting errors. If the changes are substantial, then they may have to be the subject of a further round of consultation.

42. The further requirements of the Examiner, as defined in the 2012 Regulations, include considering whether the draft plan complies with the definition of a neighbourhood plan, and the provisions that can be made by a neighbourhood plan; and whether the draft plan is compatible with the European Convention on Human Rights. The Examiner may also make recommendations on whether the neighbourhood plan area for referendum should extend beyond the neighbourhood plan boundaries. I have determined in paragraph 19 above that the referendum should not extend beyond the neighbourhood plan boundaries.

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<sup>9</sup> 1990 Act, Sch 4B, para 10(2), applied by the 2004 Act, s 38A(3).

43. In this Report, I shall first consider address the European dimension and the question of human rights. I shall then consider the Basic Conditions, and then formal compliance with the provisions contained within sections 38A and 38B of the 2004 Act. Finally, I shall make recommendations as to the modification or amendment of the draft Policies. The modifications or amendments do not include minor updates or consequential changes to the contents and where necessary, Policy, paragraph, and page numbering. It is recommended that this is undertaken by NHDC, the Parish Council, and Parish Meeting where necessary.

### **European Law obligations**

#### ***Strategic Environmental Assessment***

44. I am still required to check that the making of the Neighbourhood Plan does not breach EU obligations. This means that I must consider whether there has been compliance with the SEA Directive and SEA Regulations.
45. Directive 2001/42/EC - known as the Strategic Environmental Assessment Directive - on the assessment of the effects of certain plans and programmes on the environment ('the SEA') - provides by Article 3(2) that an environmental assessment is to be carried out for plans prepared for town and country planning or land use. These set a framework for development consent of certain projects, or which in view of the likely effect on protected sites, have been determined to require assessment under the Habitats Directive. Where a neighbourhood plan determines the use of small areas at local level and makes minor modifications to other town and country planning or land use plans, they require such assessment only where Member States determine that they are likely to have significant environmental effects (by virtue of article 3(3)).
46. NHDC undertook a screening assessment of the draft Neighbourhood Plan in April 2024, to determine whether a SEA of the emerging Neighbourhood Plan should be screened into the SEA process, informed by consultation with the prescribed statutory consultees. The report concluded that the Neighbourhood Plan does not require a SEA because 'there are no sites allocated for development; the neighbourhood plan focuses on protecting the character of the village and its environment; there are no proposals in the neighbourhood plan which are likely to have significant environmental effects on the natural and heritage features in the neighbourhood planning areas; and the



neighbourhood plan does not seek to change the outcomes of the development proposals in the Local Plan to the extent that it might lead to substantively different effects to those which have already assessed’.

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

47. Article 6(3) of the Habitats Directive<sup>10</sup> requires that any plan which is not directly connected with or necessary to the management of a protected site but is likely to have a significant effect thereon (meaning that such an effect cannot be excluded beyond reasonable scientific doubt on the basis of objective information), must not be the subject of agreement unless it has been subject to an ‘*appropriate assessment of the implications for the site*’. Further it must have been ascertained that it will ‘*not adversely affect the integrity of the site concerned*.’ If a neighbourhood development plan is assessed and found to cause harm to the integrity of a protected site, Article 6(4) enumerates some conditions under which a plan may exceptionally be approved where the plan must nevertheless be carried out for imperative reasons of overriding public interest.
48. Those obligations have been transposed into national law by Regulations 102, 102A and 103 of the Conservation of Habitats and Species Regulations 2010 (‘the *Habitats Regulations*’). Regulation 102 states:
- ‘(1) *Where a land use plan—*
    - (a) *is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and*
    - (b) *is not directly connected with or necessary to the management of the site,*  
*the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.*’
  - (4) *In the light of the conclusions of the assessment, and subject to regulation 103 (considerations of overriding public interest), the plan-making authority... must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site... ’*

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<sup>10</sup> Council Directive 92/43/EEC of 21 May 1992.

Regulation 102A states:

*‘A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 102 or to enable them to determine whether that assessment is required.’*

49. Regulation 107(1) of the Habitats Regulations then sets out definitions. ‘*Land-use plan*’ is defined to include a neighbourhood development plan. ‘*Plan-making authority*’ is defined to mean ‘*the local planning authority when exercising powers under Schedule 4B to the TCPA 1990 (as applied by section 38A (3) of the 2004 Planning Act)*’. The term ‘*competent authority*’ is not defined by Regulation 107, but by Regulation 7 it includes (but not be limited to) a ‘*public body of any description or person holding a public office*’. It includes local authorities and parish councils.
50. Case law establishes that plans cannot be approved in reliance upon the duty to assess the planned projects as and when they come forward, and only approve them at that stage if found not to harm any protected site.<sup>11</sup> Consequently, for instance, the fact that there may be ‘*boiler plate*’ language in the statutory development plan stating that projects cannot be approved if they would harm a protected site, cannot itself be sufficient to enable the plan to be approved without assessment, where it allocates or encourages particular development that is liable to harm a protected site.
51. There is no requirement for any formal decision to be made under the Habitats Regulations whether or not an ‘*appropriate assessment*’ has been required. However, the Parish Council will be in breach of Regulation 102 of the Habitats Regulations if in fact a plan is likely to have a significant effect on a European site and has not been assessed.
52. The Basic Conditions Statement states that a Habitats Regulation Assessment screening is not required because the Neighbourhood Plan does not propose any development allocations which are additional or alternate to the sites proposed in the North Hertfordshire Local Plan 2011-2031. Following a request at an early part of the Examination, NHDC confirmed that a HRA screening assessment was completed on

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<sup>11</sup> Case C-6/04, *Commission v UK* [2006] Env. L.R. 29 at [51]-[56].

17<sup>th</sup> January 2024. It confirms that the Neighbourhood Plan is not considered to have the potential to cause a likely significant adverse effect on a European site and no further action is required.

### **Human Rights**

53. The Basic Conditions Statement comments that the Neighbourhood Plan is compatible with human rights legislation. In my view, the Neighbourhood Plan is not likely to lead to increased inequalities or discrimination in the plan area. I have identified that some of the policies are identified as having positive impacts on people who may experience disadvantage by virtue of their age or disability.

## **PART 3**

### **THE EXAMINATION**

#### **NEIGHBOURHOOD PLAN - CHAPTER 2**

##### **VISION AND OBJECTIVES**

1. Section 2 of the Neighbourhood Plan sets out the community's Vision and objectives. This Vision seeks to ensure that the two villages thrive and meet the housing needs of the community. This is to be supported by respecting and where possible preserving the history prevalent in the built and natural environment.
2. The progression from Issues to Vision and Objectives to Policies is an important part of the provision of the requisite evidence in support of the Neighbourhood Plan as required in the NPPG.
3. The Neighbourhood Plan lists 10 distinct objectives which seek positively to translate and support the vision through to policies. To ensure that the objectives are positive, in accordance with the requirements of NPPF, and reflect the policies in the Neighbourhood Plan, I propose modifications which seek to ensure that the vision's positive approach is reflected in the objectives. I have also recommended modifications for clarity.
4. I am satisfied that the Vision Statement and Strategic Objectives set out in Chapter 2 of the Neighbourhood Plan reflect the aspirations of the community as referred to in the Consultation Document. Its vision and strategic objectives, taken as a whole, seek to support the sustainable growth of the parish whilst at the same time safeguarding the rural character of the village, the qualities of its environment and would contribute to the achievement of sustainable development. I am also satisfied that subject to the adoption of the recommended modifications, set out below, the Vision Statement and the ten Strategic Objectives will meet the Basic Conditions. I recommend the following modifications:

**Objective 2** - To preserve or enhance the character, appearance, and settings of all designated and non-designated heritage assets.

**Objective 3:** To promote biodiversity by protecting valued green spaces within the parish and to support ~~ecosystem services by new-builds proposals that~~ are as ecofriendly as possible

**Objective 10:** To ~~preserve~~ ensure the important views within and around the parish continue to be enjoyed.

### NEIGHBOURHOOD PLAN - CHAPTER 3 PLAN POLICIES MAP

- Chapter 3 identifies the Neighbourhood Plan area with each relevant policy depicted on a 1:10,500 scale plan. The supporting text acknowledges that it is difficult to see the policy details on the policies map and refers to an A1 plan on the Parish Council's website. To avoid the potential of different versions of the policy maps being made in separate locations, I propose modifications in section 3, page 15, to delete the reference to the online parish map. Additionally, it is essential that decision makers and stakeholders can accurately identify the areas to which a policy designation applies. NPPG advises that Neighbourhood Plan should be precise. The current maps are ambiguous and confusing and therefore accurate and readable policy maps must be included in the Neighbourhood Plan. The District Council has also highlighted that the labels within the maps are unclear. I recognise that such mapping may incur additional costs. However, I recommend that modifications are made for essential clarity.

Delete sentence: ~~It is not possible to clearly see the detail within Barkway village on an A4 page. An A1 PDF version of the Policies Map can be viewed on the Neighbourhood Plan page of Barkway Parish Council website.~~

Replace deleted sentence with: The details of the policy designations are shown in Figure 4: Barkway Neighbourhood Plan Policies Map and Figure 5: Policies Map Detail of Barkway village. Further details of the

Local Green Spaces, Non-designated Heritage Assets and Important Views can be found in the relevant policies and Appendices.

Figure 4 and Figure 5 must be revised to ensure that the relevant policy areas are accurately and unambiguously defined. The maps must be readable and produced at a scale to ensure that all labels and policy areas can be clearly identified.

## **NEIGHBOURHOOD PLAN - CHAPTER 4**

### **NEIGHBOURHOOD PLAN POLICIES**

#### **Format and Content**

6. The construction and presentation of the policies within the Submission Version of the Plan is in general clear and comprehensible.
7. The supporting text to the policies, in some cases, provides limited information, evidence and justification for the detail included within the policy. It is sometimes unclear as to the evidence on which the proposed policy relies. NPPG advises (amongst other things) that policies in Neighbourhood Plans should be '*concise, precise and supported by appropriate evidence*'. Furthermore, policies should be distinct to reflect and respond to the unique characteristics and planning context of the specific Neighbourhood Plan area for which it has been prepared. Where the underpinning evidence is lacking, not up to date or not robust, I recommend modifications to the relevant policy.
8. In addition, there is recurring repetition of policies included either within national or Local Plan policy. Policies must serve a clear purpose. Therefore, the Neighbourhood Plan should avoid unnecessary duplication of policies that apply to a particular area. This includes repetition of national policy or references to other policies in the Neighbourhood Plan. In accordance with national guidance, where this repetition occurs, the policy is proposed to be modified to ensure that the Neighbourhood Plan meets the Basic Conditions.

9. The Neighbourhood Plan is not ‘*permitting*’ development and there are other material considerations that the Local Planning Authority will need to have regard to in the decision making process. Policies should provide a positive planning context in which decisions by the Local Planning Authority are made. The phrase ‘*permitted*’ is recommended to be modified to ‘*supported*’ in all cases. The term ‘*must*’ in policy must be used exceptionally as it does not provide the flexibility required by national policy. I do not repeat these explanations in the Report.

### **Policy BN H1 Affordable Housing**

10. The opening paragraph to this chapter sets out the current spatial strategy for Barkway, the pipeline housing supply and a reference to paragraph 14b of the NPPF. As identified by NHDC, the opening paragraph refers to Barkway and not to Nuthampstead.
11. The Housing Development Strategy is established by Local Plan Policy SP2: Settlement Hierarchy and Spatial Distribution. It states that at least 13,000 new homes are to be provided across the district between 2011 to 2031. The policy states that approximately 13% of the total housing provision is to be delivered in 5 villages which includes Barkway (a figure of 208 homes is stated in brackets). The implications of the figure in brackets are made clear in Local Plan footnote 33. It states: ‘*The figures shown in this policy for individual settlements are the total of planned, permitted and completed development for the period 2011-2031. These figures are not a target and do not necessarily represent the maximum number of new homes that will be built.*’ Barkway is a focus for development in the rural east of the district. Local Plan policy SP2 also identifies Nuthampstead as a category C settlement where limited affordable housing and facilities for local community needs will be allowed. For accuracy and clarity, I recommend modifications to reflect the adopted spatial strategy for both Barkway and Nuthampstead.
12. The District Council has not provided an indicative housing figure for the neighbourhood plan area.<sup>12</sup> NPPF at paragraph 14b states that where the Neighbourhood Plan contains policies and allocations to meet its identified housing requirement it may benefit from the additional protections offered by national policy.

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<sup>12</sup> see paragraph 66 NPPF.

As NHDC has not provided an indicative housing figure, it is inappropriate for the Neighbourhood Plan to suggest that the Neighbourhood Plan has met its identified housing requirement, as set out in paragraph 66 and 67 of NPPF. Policy SP2 is clear that the figure of 208 dwellings for Barkway is not a target. Therefore, to ensure that the supporting text is accurate, in general conformity with strategic Local Plan policy SP2 and does not misrepresent the provisions of NPPF paragraph 14b, I recommend modifications.

13. Local Plan Policy HS2: Affordable housing confirms that 65% of affordable housing provision will be rented and 35% will comprise 'other forms of affordable housing'. The policy advises that the housing needs will be identified by the 'housing register data, Neighbourhood Plans, and settlement of parish level surveys.'
14. In respect of the Neighbourhood Plan, the Barkway and Nuthampstead Housing Needs Survey (2019) is relevant and adds a distinctive layer beyond that provided for in Local Plan policies. It highlights the need for 1 and 2 bedroom accommodation for shared ownership or rent. This includes sheltered accommodation for older people and bungalows. It also concludes that the greatest need is for shared ownership and could include starter homes for young people.
15. To ensure that the policy provides for affordable housing for rent and 'ownership' in conformity with Local Plan Policy HS2; to align with Local Plan Policy HS3: Housing Mix; to bring the clarity required by the NPPF, to avoid an unnecessary overlap with local planning policies and to provide the clarity required by decision makers, I recommend the following modifications:

Policy BN H1 Affordable Housing

Affordable homes should include a mix of ~~ownerships~~ sizes and tenures ~~and support include~~ the provision for sheltered, ~~adapted~~ adaptable and bungalow units, ~~and a range of sizes — but~~ supporting the locally identified housing need identified in the an up to date Housing Needs Survey or ~~and~~ Strategic Housing Market Assessment. ~~Community-led housing and self-build schemes could be an option to provide for the need for affordable homes.~~



Amend paragraph 4.1.1 - ~~The Neighbourhood Plan does not contain housing site allocations. and is not required to in the Local Plan. The Housing Development Strategy for Barkway and Nuthampstead is established by Local Plan Policy SP2: Settlement Hierarchy and Spatial Distribution. The strategy states that at least 13,000 new homes are to be provided across the district between 2011 to 2031. Approximately 13% of the total number of homes required is to be delivered in 5 villages which includes Barkway.~~ The adopted NHLP includes two site allocations (policies BK2 and BK3) for a total of approximately 160 homes in Barkway. This will represent an increase of over 40% in the number of homes in Barkway the village since the 2021 census). ~~The number of housing completions and planning permission granted in Barkway since 2011 accounts for an additional 57 homes. Based upon NHDC monitoring data, the total allocated, completed and homes with planning permission in Barkway since 2011 is 224 therefore 217,~~ representing a 74% increase in the number of homes in Barkway.

Amend as follows after 4.1.1 - Nuthampstead is defined as a category C settlement in Local Plan policy SP2, where limited affordable housing and facilities for local community needs will be allowed. For the purposes of NPPF, paragraph 14 b) the housing needs of Barkway village have therefore been met for the life of the Neighbourhood Plan.

At the end of paragraph 4.1.8 add: Community-led housing and self-build schemes will be supported where such development provides the need for affordable homes.

### **Policy BN H2 Design and Layout**

16. The submission documents include the Barkway and Nuthampstead Design Codes and Guidance 2024. The guidance establishes plan area design guidelines and codes that aim to ensure that any potential development within the Neighbourhood Plan area

follows good design practice and contributes to a sustainable and thriving community. Such an approach aligns with the Design principles set out in national policy.

17. The policy as drafted does not provide the clarity needed for decision makers nor reflect the conclusions of the Design Guidance and Codes. As an example, Part h is contrary to the advice contained in the Design Code, particularly in respect of the Conservation Area Character Area, which highlights that soft boundary treatments degrade enclosure levels and it is important for the character of the area to retain strong enclosure and use characterful boundary treatments. I propose modifications to the policy to ensure consistency with the Design Codes and Guidance, in part by including reference to the document itself in the policy, is positively worded and to provide sufficient clarity and guidance to decision makers as required by national policy. NHDC comment that an additional criterion should be added to ensure development is within the settlement boundary. I am satisfied that the Neighbourhood Plan should not seek to rehearse the existing spatial strategy set out in the Local Plan.

18. I propose modifications as follows:

Amend policy BN H2 to read:

A proposal for ~~residential~~ development, ~~including a redevelopment,~~ will be ~~permitted~~ supported provided that it demonstrates that it is guided by the principles set out in the Barkway and Nuthampstead Design Codes and Guidance 2024 ~~all of~~ and the following design criteria are met:

a) It is in keeping with existing local architectural styles ~~(other than unsympathetic 20th century infill~~ so as to contribute to local distinctiveness;

b) It respects and enhances local character with a sufficient variety of styles and heights. ~~Preferred styles in the conservation area include timber framing, pargetted walls, thatch, flint and red brick (for more detail see Barkway and Nuthampstead Design Codes and Guidance 2024).~~ Building heights will be no more than three-and-a-half storeys. Good modern design will be acceptable ~~in some cases;~~

c) ~~Development is in proportion to surrounding buildings, especially in terms of~~ The principal elevations should preserving reflect traditional

fenestration details such as ratios of doors and windows to the total frontage area;

d) Preferred styles in the Conservation Area include timber framing, pargetted walls, thatch, flint, and red brick. Brickwork, including replacement brickwork should blend in with surrounding walling in both colour and texture;

e) It does not ~~lead to the loss of~~ have a significant adverse impact upon the amenity for of neighbouring users through the loss of privacy, loss of light or visual intrusion;

f) Where appropriate to the scale, location or type of development, the Local Planning Authority agrees a Construction Scheme that safeguards the amenities of nearby residents will be protected during the construction phase;

g) ~~It respects the natural contours of a site while,~~ Where possible appropriate to the scale, location, and type of development, sensitively incorporates natural features such as trees, hedges, and ponds within the site;

h) ~~Solid boundaries such as fences should be avoided in front gardens to maintain the open feel of the village;~~

i) It creates safe, accessible, and well-connected ~~environments~~ pedestrian and cycle routes that meet the needs of users;

j) All public areas resulting from new development should be designed ~~proposals must be visible and overlooked~~ in accordance with good practice set out in Secured by Design ~~in order~~ to create an environment that feels safe.

Make a minor amendment to paragraph 4.1.12 to amend the reference from BN H2 to BN H3.

### **Policy BN H3 Sustainable Construction**

19. The policy includes a list of far reaching and detailed criteria which seek to ensure sustainable construction for residential development. Although I acknowledge and recognise the key aspirations to secure higher standards of sustainable construction to move to a lower carbon future, the policy criteria often rehearse existing planning

policy; duplicate advice contained in Building Regulations; repeat other Neighbourhood Plan policies; use outdated standards or do not include robust evidence to demonstrate that a distinct and separate approach is required in the Neighbourhood Plan area. I deal with each of the criteria in turn.

20. Local Plan Policy HS5: Accessible and Adaptable housing makes provision for major residential development to contribute to M4(2) and M4(3) accessible and adaptable standards. Policy BN H3 as written does not provide sufficient clarity to decision makers to determine whether a new dwelling would satisfy the policy requirements to be flexible and adaptable and the proportion. The policy is not supported by evidence which demonstrates that further provision is required over and above that required by Local Plan policy HS5.
21. It is not clear what type or amount of ‘smart technology’ would satisfy the requirements of part b and therefore the policy is not clear to decision makers. I note NHDC’s concerns with regard to the cost implications and how such schemes may be implemented.
22. Part c seeks to include provisions which are included in statutory guidance provided in Building Regulations covering fire safety matters within and around buildings. I have no evidence to justify requirements beyond this statutory requirement.
23. The Code for Sustainable Homes was withdrawn by the Government in 2015 whilst some of the standards were included in Building Regulations. I note NHDC suggests that the policy simply refers to heat pumps. However, I am of the view that by using the term ‘including’ in the policy it allows flexibility required by national policy.
24. Part e – Local Plan policy T2: Parking requires minimum standards set out in Appendix 4. Appendix 4 to the Local Plan includes minimum cycle parking standards. It states: *‘provision of 1 secure, covered cycle space per dwelling. None if garage or secure area provided within the curtilage of the dwelling’*. I have no evidence to demonstrate that this policy is not appropriate.

25. Local Plan policy NE8: Sustainable drainage systems require development to reduce the risk of surface water flooding and to ensure that drainage solutions follow the SuDs hierarchy. The supporting text to the Local Plan notes the impact of impermeable surfaces can have on preventing rainwater soaking naturally into the ground and generate additional rainwater runoff. The policy needs to provide flexibility to provide an appropriate solution to site specific conditions. I note the comments by Anglian Water to improve water efficiency and support for measures that address surface water run-off. The policy seeks to enable water conservation and SuDS. I am not required to amend the policy further to meet the Basic Conditions.
26. Local Plan Policy NE11 and its supporting text addresses the issue of Source Protection Zones. It states that certain new activities need to be deterred in sensitive areas based on their intrinsic hazard to sensitive receptors (e.g. Source Protection Zones). Close to sensitive receptors a precautionary approach is likely to be taken even where the risk of failure is low as the consequences may be serious or irreversible. It is not clear from the evidence in the Neighbourhood Plan why such an approach is only appropriate to construction work and as such I consider that the Neighbourhood Plan policy could undermine the approach set out in Policy NE11.
27. I recommend modifications in respect of policy BN H3 Sustainable Construction:
- ~~A proposal for residential development, including a redevelopment,~~  
will be permitted supported where provided all of the following criteria  
~~for sustainable construction~~ are met:
- ~~a) Housing should be designed with flexible, adaptable spaces, including for people with mobility problems;~~
  - ~~b) Social housing should include homes fitted with smart technology to support people with disabilities, including dementia, in support of the aspiration of Barkway and Nuthampstead to be dementia friendly villages;~~
  - ~~e) The incorporation of best practice fire suppressant technologies to prevent damage and injury from fire will be encouraged;~~
  - ~~da) The incorporation of micro-energy schemes (including ground source heat pumps, heat exchange systems, solar panels, and emerging~~

~~green technology), in new homes. New homes to be designed and constructed to achieve a minimum level of energy performance set at Level 6 of the Code for Sustainable Homes, where this is viable;~~

~~e) Secure cycle storage will be included for all homes to encourage sustainable travel;~~

fb) The inclusion of facilities to enable water conservation, including consideration of grey water harvesting;

gc) Proposals for residential development will provide adequate storage for bins and recycling;

~~dh) All Where required to address surface water flood risk, new hard standings will be constructed of locally appropriate permeable materials such as stone or brick paving, hoggin and gravel;~~

i) Development will include Sustainable Drainage Systems (SuDs) incorporating storage for natural run-off and run-off from new development. Multi-use above ground SuDs will be encouraged. ~~Funding management and maintenance plans should be secured at the earliest stage;~~

~~j) Construction work must be carried out in accordance with relevant standards and best practice to ensure protection of the groundwater Source Protection Zone.~~

#### **Policy BN H4 Design Codes**

28. The policy states that all development should be assessed against the Barkway and Nuthampstead Design Guidance and Code 2024.
  
29. The Design Guidance and Code is referenced in the policy and is included as an Appendix to the Neighbourhood Plan. The document did not form part of the Regulation 14 consultation and I am not aware that a separate consultation was completed by AECOM during its preparation. I accept that a design led approach should be taken for all proposals, guided by the Design Guidance and Codes. Given the proposed modifications above, the policy duplicates the provisions in Policy BN H2.

30. I recommend modifications to delete this policy and include the supporting text (paragraphs 4.1.15 to 4.1.17) after policy BN H2.

**Policy BN H5 Framework for BK3**

31. The land identified as BK3 is allocated in the Local Plan. The Local Plan policy includes criteria which are to be addressed through the design of the development. The site also has the benefit of outline planning permission together with an associated S106 agreement and planning obligations. I have reviewed the planning officer's report, the decision notice and the S106 agreement. I note the objection from The Gardens Trust which state that the allocation is within the setting of two important landscape parks and should not be developed. The Neighbourhood Plan should be in accordance with the strategic policies in the Local Plan to satisfy the Basic Conditions. The Neighbourhood Plan would fail to meet the Basic Conditions if it proposed to delete this housing allocation.
32. I recognise and support the Parish Councils' aspirations to ensure that the development is sustainable, reflects the distinctive character of the village and seeks to address the constraints and opportunities presented on the site. Many of the criteria seek to amplify the criteria set out in the Local Plan, the planning permission and address the issues that will be considered as part of the reserved matters applications whilst also taking on board the guidance contained within the Barkway and Nuthampstead Design Guidance and Codes.
33. The District Council has clarified that a contribution for sustainable transport was secured through the S106 agreement which is to be used for the provision and improvement of bus stops; a bus service that runs between Buntingford and Royston via Barkway and public transport initiatives such as Demand Responsive Transport services to encourage less dependence on private cars. Financial contributions to improve walking and bus access between Barkway and Nuthampstead were not secured through the S106 agreement. As such contributions would not be addressed through the reserved matters application process and I have no evidence before me to demonstrate that the financial requirement is necessary or robust to make the development acceptable. I have made the appropriate amendments to ensure the policy satisfies the Basic Conditions.

34. The District Council has raised concerns about the expectation that green roofs should be provided on dwellings on the eastern part of the site as there is no evidence to justify this requirement or indeed to which part of the site the policy should apply. However, I recognise that the Local Plan policy BK3 requires lower density housing on the eastern part of the site. In my view green roofs may soften the impact of the development upon the surrounding area. However, I would endorse the District Council’s views that there is no evidence to demonstrate such a requirement and therefore I recommend modifications.
35. I also note that additional land is not allocated, but held as a reserve site, should it be needed for educational purposes. I have no evidence to demonstrate why it is appropriate for the land to remain fallow or in agricultural use whilst the land is held in reserve.
36. The District Council has also raised concerns that criteria ‘f’ has been superseded as it rehearses a condition attached to the outline planning consent. I also note Local Plan policy NE10 seeks to ensure adequate foul water treatment and disposal already exists or can be provided in time to serve the development.
37. In respect of the other outstanding issues in the policy, it is my view that the Parish Council’s judgements are reasonable, and the assessment is proportionate and sufficiently robust for its intended purpose. However, the policies must be positively planned to align with national policy and provide sufficient flexibility. For those reasons I propose the following modifications to both the policy and the supporting text:

Amend Policy BN H5 Framework for BK3

~~.....in addition to all the~~ Development will be supported where it addresses the following criteria:

- a) The design, height and massing of development ~~must~~ should respect views across the site from Cambridge Road and ~~maintain~~ views across surrounding landscapes;
- b) ~~Financial contributions will be secured to improve walking and bus access between Barkway and Nuthampstead and surrounding villages,~~



~~notably Barley and the town of Royston where essential services are located, for community use and not just for travel between Barley and Barkway schools. The details will be agreed in consultation with Barkway Parish Council;~~

~~e**)** Land at the south-west of the site, is secured as a reserve site for primary education, ~~should remain fallow or in agricultural use until such time as it is required for a school, but be clearly and should be delineated~~ separated from the housing site by the planting and maintenance of a native hedgerow;~~

~~d**)** To reduce impact on the countryside, provision of ‘green roofs’ on dwellings on the eastern part of the site will be encouraged ~~expected~~ as where it demonstrates sensitivity to the transition between the new village edge and the surrounding open fields;~~

e) Any public open space ~~must~~ should feature natural pockets of wildlife habitat, trees, hedges, and benches;

f) Unless otherwise agreed with the Local Planning Authority and Local Highways Authority a scheme should be submitted which provides for remedial work along Bridleway 17, to widen the route where the useable width is less than 4 metres, ~~must be carried out~~ to ensure the safety of walkers, cyclists, horses and their riders. Appropriate planting along Bridleway 17 ~~will be required to~~ should ensure the endurance of the wildlife corridor during construction and occupation of the new homes.

~~g) No development shall be commenced until either the sewage works upgrade required to accommodate the additional flows from the development have been completed, or a development and infrastructure phasing plan has been agreed with the Local Authority in consultation with Thames Water to allow development to be occupied.~~

Add to paragraph 4.1.19 The principal of the development has been established. The Neighbourhood Plan can influence the reserved matters applications related to the current outline permission.

Amend final sentence of paragraph 4.1.20 as follows: The local community considers that the retention and enhancement of the trees and hedges around the boundaries of the site is also essential.

Amend second sentence in paragraph 4.1.21 as follows The community considers that a sufficient buffer is needed either side of the bridleway to ensure that the route is kept free and available to bridleway users during the construction period. The outline planning permission includes the requirement for a Construction Management Plan. It is considered important that this plan ~~of intimidation or danger from construction machinery during the build period. In its current state, fencing the bridleway to~~ defines the a space that would be safe for walkers, cyclists, horses, or their riders, ~~due to parts of the route being too narrow.~~

Amend paragraph 4.1.27—Elsewhere in the Neighbourhood Plan, the lack of public transport available in the village and the need to review and improve public transport provision is well documented. The principle of the development at BK3 has been granted. Policies in this Neighbourhood Plan seek to support sustainable transport and improvements to public rights of way. ~~In order to ensure that the development of BK3 is sustainable, this lack of provision, with no alternative to use of the private car, must be addressed before new homes are occupied. It will not be sufficient to rely on increasing active travel modes, for example, for a developer to provide cycle storage for each home when the roads around Barkway are dangerous for cyclists. The lack of public transport must be addressed.~~

### **Policy BN H6 Infill Development**

38. Local Plan Policy SP2 states that housing, along with supporting infrastructure and facilities will be delivered within the adjusted settlement boundaries of Barkway. Limited affordable housing and facilities for local community needs meeting the requirements of Policy CGB2 will be supported in Nuthampstead. Following clarification from Barkway Parish Council, this policy should refer to Barkway only

and to development within its settlement boundary. For clarity, to ensure that the policy is consistent with NPPF and the spatial strategy in the Local Plan, and to avoid unnecessary reference to other parts of the plan (the plan is read as a whole), I propose the following modifications:

Small-scale and infill development will be supported ~~provided that it is located within the built-up areas~~ settlement boundary of the Barkway village, as shown on the Policies Map, ~~is preferably on brownfield sites rather than greenfield sites~~ and where it meets all the following criteria:

- a) It retains views, open spaces and large gardens that contribute to the enjoyment of residents of the village and are important to the character and appearance of the Barkway conservation area;
- b) It does not ~~increase~~ have a significant adverse impact on traffic movements and exacerbate on street parking problems on Barkway High Street;
- c) It is designed to reflect the local vernacular style, village layout, and character ~~in accordance with Policy BNH1.~~

Add at the end of paragraph 4.1.30 '*Where appropriate, bringing forward brownfield sites will be supported in advance of Green field sites*'.

#### **Policy BN H7 Extensions, Outbuildings and Garages**

- 39. Policy BN H7 seeks to provide additional safeguarding criteria to that provided in Local Plan policy D2 – House extensions, replacement dwellings and outbuildings and D3 – Protecting living conditions.
- 40. I agree with NHDC that the policy rehearses much of the advice contained with Local Plan policies D2 and D3. Where the policy does not duplicate that advice, I am satisfied that these are detailed elsewhere in the plan. The protection of valued green space is dealt with as Local Green Spaces or Public Open Recreational Spaces. I have no evidence which suggest that 'green spaces' in this policy reflect any other green spaces.

I recommend modifications to delete policy BN H7 and all references to this policy elsewhere in the Plan.

### **Policy BN H8 Backland Development**

41. The context analysis of Barkway describes its linear settlement pattern which I appreciated at the site visit. The policy is positively planned. I have no comments and am satisfied that it meets the Basic Conditions.

### **Policy BN NE1 Local Green Space**

42. I am satisfied that the evidence in Appendix B and the further submissions by Barkway Parish Council demonstrates that the nine Local Green Spaces comply with the assessment criteria in NPPF necessary to identify the sites as Local Green Spaces. The Consultation Statement confirms that the necessary consultation, albeit after the Regulation 14 consultation, has been undertaken with landowners and the appropriate amendments made to the Local Green Spaces designation.
43. The District Council query the inclusion of site L2 (field west of Rushing Wells adjacent to Gas Lane) in the Local Green Space policy as it is quite a large ‘*extensive*’ site (3.43 ha). NPPG confirms that there are no hard and fast rules about how big a Local Green Space can be because places are different and a degree of judgment will inevitably be needed. Albeit the photograph of the site in Appendix B of the Neighbourhood Plan suggests a much wider area of land than that identified on the site plan, I am satisfied that the site is a well-defined parcel of land rather than an open swathe of countryside that is valued by the local community.
44. The title of the policy and headings should refer to spaces rather than space. For clarity and for consistency with national policy I make the following modifications to the plan:

### **Policy BN NE1 Local Green Spaces**

The areas listed below, ~~described in the text above~~ and identified on the Policies Map, are designated as Local Green Spaces. Development on

these sites will not be acceptable unless consistent with national policy for Green Belts.

L1 – Forest school site

L2 – Field to the west of Rushing Wells

L3 – Manyon’s field, including Withy Grove

L4 – Carriage Wash and adjoining grass verge

L5 – Barkway village pond

L6 – Land encompassing Three Roods Lane

L7 – Wheatsheaf Meadow Garden

L8 – Windmill Close

L9 – Grove at Caylers Farm, Nuthampstead

~~New development will only be allowed within designated Local Green Spaces where very special circumstances can be demonstrated, in accordance with the National Planning Policy~~

#### **Policy BN NE2 River Quin Protection**

45. Local Plan Policy NE9 – Water quality and environment seeks to make appropriate space for water by maintaining a minimum 8 metre wide undeveloped buffer zone from all designated main rivers. This would include the River Quin. The supporting text refers to a submission by the Environment Agency to another Neighbourhood Plan which has provided guidance on a 10 metre boundary around the river. This advice has been extended to the tributaries in policy BN NE2.
46. The Parish Council has provided examples of other Neighbourhood Plan policies which have recognised the importance of safeguarding and enhancing chalk streams supported by the Environment Agency and other stakeholders engaged in water and conservation management. By using this information, I am satisfied that it provides the level of robust evidence which demonstrates the wider benefits of extending the buffer zone by two metres in width and the role it might play in safeguarding the tributaries. I recognise that the River Quin and its tributaries are an important environmental asset and I have recommended that the policy be modified to be positively planned, for consistency and clarity.

47. I recommend modifications to Policy BN NE2 River Quin Protection so that it is amended to read:

*'The River Quin, which originates in Barkway, is a protected chalk river. ~~and no development will be permitted within~~ Any development scheme adjacent to the River Quin should be designed with a naturalised buffer zone of at least 10 metres from the top of the bank of the river, or its tributaries, in order to protect and enhance the conservation value of the watercourse and ensure access for flood defence maintenance'.*

Amend final sentence of paragraph 4.2.7 to read:

*'Support will be given to have extended extend this protection to the tributaries of the River Quin, of which there are two significant tributaries around Nuthampstead, as any adverse impact on a tributary is likely to have a direct effect, downstream, on the River Quin.'*

Amend paragraph 4.2.8 to read:

*'Despite NHLP requiring ~~only~~ an 8 metre buffer for an average river, the River Quin is both a rare chalk stream and at considerable risk of damage from other sources, including pollution. ~~In this circumstance, the Neighbourhood Plan is requiring~~ The Parish Council and Parish Meeting will work with any development proposal which impacts the buffer zones around the River Quin and its tributaries to secure a level of protection slightly higher than that in the NHLP.' ~~This is a detail which remains in general conformity with the strategic policies contained in the Local Plan, to ensure development in the Neighbourhood Plan area is sustainable.~~*

### **Policy BN NE3 Conserve and enhance biodiversity**

48. The Environment Act 2021 sets out the components of mandatory biodiversity gain. For major sites, the requirement came into force on 12<sup>th</sup> February 2024. For small sites, this requirement came into force on 2<sup>nd</sup> April 2024. Household applications are exempt from this requirement and therefore the requirement does not apply. As a mandatory

requirement, including the need to use the Biodiversity Metric, the policy should not undermine the purpose of the Environment Act by requiring no net biodiversity loss.

49. NPPF is clear (at paragraph 186) that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Policy BN NE3 should be updated to reflect this national policy to meet the Basic Conditions. I note the reference to the Greenspace Action Plan although I propose modifications to avoid unnecessary repetition. I also note the comments by Anglian Water to include reference to the emerging Local Nature Recovery Strategy and ambitions to include Swift Bricks in all new developments and secure permanent nest sites. Although I recognise that these represent positive interventions to support sustainable development, I am not required to include these references in the Neighbourhood Plan to ensure it meets the Basic Conditions.

50. I recommend a modification that Policy BN NE3 is updated to read:

Development will be supported where it:

- ~~a) Has a positive impact on designated local wildlife habitats or corridors listed above;~~
- ~~b) Aims to~~ Protects and enhances designated local wildlife habitats and corridors ~~wherever possible~~ in accordance with national policy;
- ~~e) Seeks to retain and restore existing hedgerows and protect mature trees (in particular trees framing the war memorial in Nuthampstead and the avenue of trees in Bell Lane leading towards The Woodman) and encourages the planting of new hedgerows and woods, on condition that where they do not adversely impact on important views;~~
- ~~d) Results in no net loss of biodiversity;~~
- ~~ec) Keeps~~ Minimises outside lighting ~~to a minimum~~ to avoid disturbance to nocturnal species and preserves dark skies ~~the view of the night sky.~~

The wildlife site at Barkway Chalk Pit will be protected and managed in accordance with North Herts Council Greenspace Action Plan 2018-2023 and its Appendix 2023-2028.

Schemes that would decrease the biodiversity value of sites which contain habitats listed in Section 41 of the NERC Act should be avoided unless the benefits of development clearly outweigh any impacts, and a mitigation hierarchy is applied. See Appendix D.

#### **Policy BN NE4 Important Views**

51. The Neighbourhood Plan identifies fifteen important views in the parish. The Neighbourhood Plan defines the zone of views more closely in Appendix E, and on the policies map. The supporting text sets out 3 criteria against which the views are tested.
52. V5: View from Social Club across meadow is a short distance view of a paddock area which is not on a Public Right of Way, does not contain a feature of artistic merit and is not at the entry to the village. The description in Appendix E expresses the pressure for development on this site and the need to retain its openness. As such I am not satisfied that it accords with the Neighbourhood Plan assessment criteria and I recommend a modification to delete View 5.
53. Further information submitted by the District Council confirms that view 9: View across Duke's Field towards Rokey Wood is identified as a valued view that emphasises the openness of the plateau and contributes positively to the rural setting of Barkway.
54. In all other respects, I am satisfied that the evidence in Appendix E demonstrates that the other 13 views comply with the assessment criteria and it is appropriate to identify the valued views.
55. I recognise that a view which was identified in the Design Guidance and Code has not been included in the Neighbourhood Plan. It would be inappropriate to do so given the advanced stage of the Neighbourhood Plan. To ensure the policy is positively worded and provides sufficient flexibility in accordance with national policy, I propose the following modifications to the final paragraph:

Amend first word of first paragraph to Fourteen.



Amend final paragraph of policy to: Any new development within these important views ~~must~~ should ensure that key features of these views can continue to be enjoyed. ~~Any major~~ Where appropriate to the scale, location and type of development, proposals should ~~must~~ include an assessment of the visual impact of that development on these important views. Proposals where a harmful impact is identified will ~~only be permitted~~ supported where appropriate mitigation measures can be delivered.

### **Policy BN NE5 Chestnut Avenue Protection**

56. I saw from my site visit that these are an important natural asset and clearly are important to the local community. For clarity I recommend the following modifications to the policy:

Amend policy to read: The avenue of chestnut trees on Cambridge Road on the approach to Barkway from the north are an important part of the setting of Barkway and a significant feature of the area. Any development ~~must not have a negative~~ should not have a harmful impact on this group of trees.

### **Policy BN HA1 Designated Heritage Assets**

57. National and Local Plan policy is clear. Where substantial harm to, or loss of significance, of a designated heritage asset is proposed, the Local Planning Authority will refuse consent unless it can be demonstrated that the scheme is necessary to deliver considerable public benefits that outweigh the harm or loss. Importantly, Local Plan policy HE1 requires the submission of a Heritage Impact Statement. I note the broad support from Historic England and support from The Gardens Trust / Hertfordshire Garden Trust to the proposed policy to protect heritage assets including Cokenach Park.
58. However, the policy, as drafted, rehearses the requirements set out in Local Plan policy and as a matter of principle does not accord with the test set out at paragraphs 200 or 201 of NPPF. I make recommended modifications to retitle and amend the policy:

#### Policy BN HA1 Designated Heritage Assets-Cokenach

~~Development proposals which have an impact on designated heritage assets, including all listed buildings and the Grade II listed Historic Park and Garden of Cokenach, will take account of the historic fabric, the significance of the asset and the contribution of its setting to that significance. A statement setting out any adverse impacts on the asset and its setting, along with any proposed mitigation measures will be required. Proposals must preserve, or where possible enhance, the asset and its setting.~~

Development proposals to restore, enhance and facilitate good conservation management through a Conservation Landscape Management Plan for Cokenach will be encouraged.

### **Policy BN HA2 Non-Designated Heritage Assets**

59. The assets listed in the Policy form part of the fabric and heritage of the neighbourhood area. The Parish Council has submitted further evidence in respect of the Tally Ho Pub. In my view, the descriptions indicate that due to their age, rarity, architectural, archaeological, or historic interest or their landmark status, each represents a feature which is reasonably designated as non-designated heritage assets. I note the support from The Gardens Trust / Hertfordshire Garden Trust to the proposed designation of non-heritage assets including Newsells Landscape Park.
60. I note that the Parish Council and District Council have asked for all details of Ashgrove to be withdrawn from the Neighbourhood Plan. I make recommended modifications accordingly.
61. The second part of the Policy simply rehearses Local Plan Policy HE4 Archaeology and therefore I recommend modification whereby this part of the Policy is deleted.
62. For clarity, the location of the non-designated heritage assets and the extent of the parkland associated with Newlands should be included alongside the policy. The recommended modifications are as follows:

Amend paragraph in policy to read: Development proposals which affect these non-designated heritage assets, or are within their setting, should ~~avoid or minimise any harm to their significance.~~ include a proportionate description of their significance and the impact of the proposals ~~on it must be provided by applicants,~~ to enable a balanced judgement to be made, having regard to the scale of any harm or loss and the significance of the asset.

Delete the final paragraph in policy BN HA2 beginning ‘Development proposals affecting a site

Add a policy map extracted from Appendix G of non-designated heritage assets. Include text in policy to make reference to the new policy map and in paragraph 4.3.27

Delete Ashgrove as one of the assets and remove all references including photographs from the Neighbourhood Plan including with reference to Ashgrove in respect of the description of View 11 in Appendix E.

### **Policy BN HA3 Barkway Conservation Area**

63. The policy usefully highlights and elevates the Barkway Conservation Area Character Statement to a policy consideration in the decision making process. I am satisfied that this will contribute to sustainable development and complies with the Basic Conditions.

### **Policy BN L1 Valued Community Assets**

64. The Neighbourhood Plan supports the community aspiration to protect and expand the range of community services and facilities. The Policy helpfully identifies the community facilities that are valued by the community and which are particularly important when considering the provisions of Local Plan Policies ETC7: Local community shops and services in towns and villages and Policy HC1: Community Facilities. I do not agree with NHDC's suggestion that the policy is retitled to Assets of Community Value as this reflects a distinct and separate legislative approach.
65. The policy proposes to add a new criterion against which planning applications for change of use should be assessed. The wording is unclear, ambiguous and to some extent duplicates the criteria set out in Local Plan Policies HC1 and Policy ETC7. Policy ETC7 requires proposals to demonstrate that the unit is no longer required to meet the needs of the community including active marketing for 12 months. I recommend modifications to amend this criterion to ensure that there is clarity for decision makers.

Amend paragraph: Permission Proposals for a change of use of these facilities ~~must~~ should be supported by evidence that the facilities were ~~no longer used with no likelihood that re-use was possible or desirable, or that their active use was to be replaced elsewhere and would still~~

~~benefit village residents,~~ assessed in accordance with North Hertfordshire Local Plan Policies ETC7 and HC1.

### **Policy BN L2 Existing Pubs**

66. The policy seeks to further identify the two public houses that are also identified in Policy BN L1 as Valued Community Assets. Whereas policy BN L1 would assess the reuse of the public house against the needs of the community, policy BNL2 also seeks any proposal to demonstrate that the public house is no longer viable.
67. National policy seeks to enable the retention and development of accessible local services to support the rural economy and to provide social, recreational, and cultural facilities. Additionally, public houses have been identified as a Sui Generis use through the Use Classes Order. The policy seeks to introduce a viability test to demonstrate that the public house use is no longer viable. The need to demonstrate that the use is no longer required by the community duplicates the provisions in Local Plan policy ETC7. However, for clarity, and to ensure the Neighbourhood Plan is positively planned I recommend the following modifications:

Amend the first two paragraphs of Policy BN L2 to read:

The conversion of existing pubs (The Tally Ho in Barkway and The Woodman Inn in Nuthampstead) to any other uses will be supported ~~strongly opposed unless, following viability assessment and public consultation,~~ where it is in accordance with Local Plan policy ETC7 and it can be clearly demonstrated that ~~they are~~ the use is no longer not financially viable and no longer required by the community.

Proof of viability must be robust and could include ~~CAMAR's~~ CAMRA's Public House Viability Test or ~~be supported by a~~ District Valuer Services report.

### **Policy BN L3 Development of the Community Hub**

68. National and Local Plan policies encourage the provision of community facilities to support the rural economy and to provide social, recreational, and cultural facilities. The policy clearly reflects the community's ambition to develop a community hub. As

such the policy meets the Basic Conditions by supporting sustainable development and having regard to national policy. The policy seeks to consider improvements to an existing facility as a first option. It is not clear how this mechanism might work in practice. For clarity and accuracy, I recommend modifications.

Amend policy BN L3 as follows: Proposals that would contribute positively to the development of the community hub to serve the villages of Barkway and Nuthampstead will be encouraged. ~~The first option to be considered would be~~ including extensions/improvements to existing facilities. Such proposals ~~must~~ should demonstrate how they will accommodate visitors of all ages and abilities, including those with dementia.

Delete first two sentences at 4.4.14 ~~Barkway Stud utilises a number of paddocks throughout the village, but the central stables lie at the bottom of Burrs Lane. A successful working stud farm breeding ponies for children, it also provides space for livery and has a ménage in which horses can be schooled.~~

#### **Policy BN L4 Protected Recreational Open Space**

69. The Policy supports the protection of valued open spaces and I have had regard to Sport England's advice which seeks to protect and support sports facilities. I am satisfied that the sites are valuable to the community and should be protected in accordance with Local Plan policy.
  
70. R2 – Windmill Close is also identified in Neighbourhood Plan policy BN NE1 as a Local Green Space. As Local Green Spaces, development on this site would be assessed against the provisions of Green Belt policy as set out in NPPF. Development within a Protected Recreational Open Space is subject to a different set of local tests set out in Local Plan policy NE5. The local tests include the potential that existing Protected Recreational Open Spaces could be replaced by alternative provision where specified conditions are met. Such conditions do not exist in respect of Local Green Space policy. Therefore, I find the proposal for a site to be both a Local Green Space and a Protected Recreational Open Space to be ambiguous; add a layer of uncertainty for decision

makers; and be inconsistent with the Green Belt policies' as far as they apply to Local Green Spaces. As such I recommend modifications to delete R2 Windmill Close from this policy.

Amend Policy BN L4 to delete the reference to R2 Windmill Close, delete paragraph 4.4.16 and amend the policy maps as appropriate.

Amend the word 'permitted' to 'supported.'

### **Policy BN E1 Preserving and Developing Local Employment Opportunities**

71. The policy supports employment opportunities having regard to national policy and reflects the Local Plan policy CGB1: Rural Areas beyond the Green Belt and Policy ETC2: Employment development outside Employment Areas and Employment Allocations BA10 and RY9. This supports the creation of jobs and prosperity appropriate to the scale of the two villages. The first part of the policy provides little additional policy advice but for clarity make reference to policy ETC2 to ensure the proposed development is sustainable.
72. The second part of the policy seeks to ensure that existing industrial operations are accompanied by a detailed emissions reduction plan and best practice in waste management. Local Plan policy D4: Air Quality supports air pollution impact assessments to determine the impact on local air quality. Mitigation is required to address emissions of pollutants to the atmosphere. The supporting paragraph to the Local Plan policy identify types of development where the Council would expect the submission of an air quality impact assessment. I have no evidence as part of this Neighbourhood Plan which demonstrates that such a reduction plan is needed for all industrial operations. I make recommended modifications accordingly.
73. In accordance with the NPPF, support is given to farm diversification subject to three criteria. The NPPF refers to agricultural and land-based rural businesses and so a recommended modification is made to widen the policy to reflect this. I am satisfied that the policy has sufficient safeguards to ensure that any such development is appropriate to the area. Subject to the modification above, the policy meets the basic conditions.

Amend first paragraph as follows: Development proposals that would support the retention of existing businesses and the development of new local employment opportunities within the settlement of Barkway will be encouraged, including artisan businesses, provided that the proposal is appropriate to the location in terms of size, scale, function, catchment area and / or historic and architectural character as identified in Local Plan policy ETC2 ~~they do not conflict with other policies in this plan.~~ In Nuthampstead, rural business will be supported in accordance with policies on rural areas beyond the Green Belt including Local Plan policy CGB1.

Amend the second paragraph as follows: Support will be given to employment proposals ~~Expansion of existing industrial operations should be accompanied by an appropriately detailed~~ that include an emissions reduction plan and the adoption of a ‘adopt best practice approach for emissions control and waste management. ~~This must refer to any risk to further pollution of the River Quin.~~

Amend the first sentence of the third section of the policy as follows  
Proposals for the diversification of agricultural and land-based rural businesses will be supported provided:

### **Policy BN E2 Internet Infrastructure**

74. Policy BN E2 sets out the communities’ support for landline, fibre optic broadband to premises and mobile coverage through the parish. NPPF states that high quality and reliable communications infrastructure is essential for economic growth and social well-being. The policy is clearly written although it refers to the parish which could lead to some ambiguity. With this minor modification I am satisfied that the policy meets the Basic Conditions.

Delete ‘throughout the parish’ in the policy.



## **Schools and Education.**

75. The Neighbourhood Plan does not include a policy on schools and education but does provide contextual evidence. Hertfordshire County Council have reported that there are a number of inaccuracies in the text that need to be amended. For clarity I recommend modifications:

Amend Paragraph 1.9.5 as follows: Barley and Barkway VA Church of England First Schools Federation provides our children with a good primary education. The Published Admission Number (PAN) of Barley Church of England First School is 15 and the PAN of Barkway Church of England First School is 12, so in total the two schools currently offer 27 places. The nursery, Reception and Year 1 pupils are taught at the Barkway School site and Year 2, Year 3 and Year 4 pupils are taught at the Barley School site. The two schools are now combining PAN, so there are technically the places for 27 1st preferences. however, the school is having to turn away children at nursery and reception ages because there are only 15 places per year for each of these age groups. Major redevelopment of the Barkway school buildings is required to provide 25 places for nursery and reception and to bring the teaching and learning environment up to modern standards.

Amend Paragraph 4.6.1 as follows: ~~There are currently surplus places at most age levels at local schools. The exception is for nursery and reception in the Barley and Barkway VA Church of England First Schools Federation for which only 15 places are available for each year's intake, leading to children having to be turned away. Building works currently proposed at the Barkway School have planning permission and will make the current buildings more fit for purpose as the classrooms are small. These works are funded by the Diocese/school and through S106 contributions. A major redevelopment of the Barkway premises is required to increase capacity to at least 25 for nursery and reception and to update the teaching and learning environment of the school. Pressure on the places for these younger age groups would increase if BK3 were to proceed. Currently,~~

there are 15 places available and therefore the schools are not at full capacity. Hertfordshire County Council consider there is sufficient capacity to mitigate demand from planned new housing growth.

### **Policy BN T1 Sustainable Transport**

76. The supporting text explains that there is limited public transport provision in the villages. The policy seeks to ensure major developments contribute to the local transport services. Financial contributions are sought for 3 interventions set out in the policy. Given the concern locally that the villages have a lack of choice of sustainable modes of transport, such interventions may help to achieve sustainable development. However, robust evidence has not been submitted which demonstrates that these interventions are appropriate or viable. A shared community autonomous vehicle is yet to be available. I am not clear whether the contributions are required to purchase or operate a minibus service. The priorities are also not comprehensively included in Appendix O – Action Plan. The policy as currently written lacks the clarity needed for decisions makers and does not have the flexibility required by national policy to meet the Basic Conditions. I therefore recommend modifications:

Amend the policy as follows: Major development proposals, ~~must~~ are encouraged to positively contribute towards improvements in the quality of local transport services appropriate to its scale, type, and location, in order to ensure that residents have access to sustainable modes of transport.

~~Financial contributions will be sought for~~ Improvements could include:

- Provision of communal electric car charging points in Barkway village
- Provision of a-shared community-~~autonomous vehicles~~ transport
- ~~Contributions towards a village minibus~~

### **Policy BN T2 Mitigating Traffic Impact**

77. The policy supports proposals that improve pedestrian safety, reduce congestion, and improve traffic movement through the villages. The supporting text explains the existing issues and the impact it has upon the local communities. Given the concern locally, the positive wording of the policy, I am satisfied that it meets the Basic Conditions.

### **Policy BN T3 Public Rights of Way**

78. The first part of the policy seeks to resist the loss of Public Rights of Way which includes footpaths, cycleways, and bridleways. The second part seeks to encourage the integration of Public Rights of Way into a larger network. The Local Plan justification also confirms that Public Rights of Way are protected under their own statutory regime. This part of the policy simply duplicates the provisions in Local Plan. For this reason, I recommend its deletion.
79. The second part of the policy seeks to integrate the Public Rights of Way into a larger network. The supporting text does not provide any further evidence on any existing gaps, and where and what the larger network is. I am not required to make reference to a Rights of Way Improvement Plan as requested by a number of representations in order for the Neighbourhood Plan to meet the Basic Conditions. However, I recommend modifications. As follows:

Replace policy with the following: In order to maintain Barkway and Nuthampstead's close links to the countryside and to ensure permeability between residential areas and services and facilities, development proposals should utilise opportunities to link into the wider footpath and bridleway network where applicable.

### **Policy BN T4 Safe and Accessible Walking and Cycling Routes**

80. The policy seeks to secure a package of walking and cycling routes that link schools, services, and facilities. It does not address bridleways and I am not required to extend the policy to ensure the Neighbourhood Plan meets the Basic Conditions. I note from the supporting text that there is no footpath or cycleway between Nuthampstead and Barkway School. National policy gives priority to pedestrian and cycle movements and ensure that places are safe, secure, and attractive. To ensure that the policy provides the flexibility required by national policy and to ensure that it is fairly and reasonably related to the proposal, I make recommended modifications.
81. The second part of the policy appears to have two purposes: to ensure pedestrian access to new schools is well lit with wide footpaths and to ensure the location of new schools reduces traffic congestion. Whilst national policy supports safe and suitable access to a

site, the policy as written lacks clarity. It also seeks a new development to not only mitigate its own impact upon traffic congestion but to reduce existing congestion. This is not in accordance with national policy which seeks to ensure that significant impacts from the development on the transport network or on highway safety can be cost effectively mitigated. As currently drafted the policy does not meet the Basic Conditions.

82. The final part of the policy seeks to support developments that incorporate travel plans to improve the safety of local roads to local schools. A travel plan is a strategy that seeks to deliver sustainable transport objectives (NPPF glossary). It is not a road improvement plan. I recommend modifications.

Amend policy as follows: Major developments should ~~feature an~~ be designed to help create and maintain an appropriate and proportionate package of safe and attractive walking and cycling routes that link schools, services, and facilities such as shops.

~~The location and access arrangements of~~ Proposals for new schools should promote safe and suitable access ~~pedestrian safety by including~~ widening existing footpaths and ensuring ~~that they~~ footpaths are well lit, ~~and by reducing vehicular congestion.~~

Proposals which incorporate travel plans ~~that~~ or include measures to improve the safety of local roads leading to local schools will be supported.

### **Policy BN T5 Vehicle Parking in Residential Development**

83. The policy seeks to minimise on street parking particularly in areas where there is considered to be existing issues. Given the concern locally that on street parking is both creating a highway safety issue in areas of the villages, such an approach may help to achieve sustainable development. However, the development proposal is unlikely to, in itself, minimise on street parking. It can only increase off street parking within the development or as part of a wider transport scheme. I recommend modifications.
84. The second part of the policy seeks to require two parking spaces per dwelling. The Council's adopted parking standards requires a minimum of 2 car parking spaces for 2

and 3 bedroom homes. A lower requirement of 1 space is required for 1 bedroom homes. The effect of the policy is to increase the number of parking spaces in 1 bedroom units from 1 to 2 parking spaces. The policy provides flexibility for an applicant to demonstrate why a lower standard for 1 bedroom units is justified. I am satisfied that it meets the Basic Conditions.

Amend the first part of the policy as follows: New residential development ~~must~~ should seek to ~~minimise on~~ increase off street parking in Barkway and Nuthampstead particularly in Barkway High Street, Cambridge Road, Royston Road, Church Lane, Chapel Close, Windmill Close and Periwinkle Close.

### **Policy BN 11 Spending Priorities**

85. The Implementation and Monitoring section usefully set out the process by which the Parish Councils will evaluate the impact of the policies. I would encourage the Parish Council to establish monitoring targets and an evaluation framework.
86. The Neighbourhood Plan sets out a series of priorities in Appendix O which set out the communities' aspirations for interventions to be supported through contributions from S106 agreements. The British Horse Society comments that the Appendix does not include priority to improve and maintain public rights of way. I am not required to amend the priorities to ensure the Neighbourhood Plan meets the Basic Conditions. To ensure that the supporting text reflects national policy I recommend modifications. As follows:

Second paragraph of Policy BN11: The ~~Parish Council will request that~~ these priorities are should be reflected in section 106 agreements, where appropriate necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Additionally, the Parish Council and Parish Meeting and will direct funding support proposals to fund priority schemes identified in Appendix O from any New Homes Bonus, Community Infrastructure Levy, or other funding streams; towards projects which fall within these priorities.

Paragraph 5.3.2 Barkway Parish Council and the Nuthampstead Parish Meeting team will request these priorities be reflected in s106 agreements, where ~~appropriate~~ necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The Parish Council and Parish Meeting will also direct funding received from any future Community Infrastructure Levy (CIL) and other funding streams towards projects which fall within these priorities as and when opportunities arise.

### **Appendices**

87. The appendices are a useful set of documents. However, some of the appendices are more relevant to the Basic Conditions Statement and the Consultation Statement and therefore I recommend that they are removed in the final version of the document.

Appendix B – references renumbered if any changes to the Local Green Spaces

Appendix G – amend any references to non-designated heritage assets

Delete Appendix I

## **PART 4**

### **CONCLUSIONS**

1. In essence, subject to the adoption of the various recommended modifications and amendments set out above made in order to address various perceived deficiencies in the draft Neighbourhood Plan, I am satisfied that it should thereafter be compliant with the statutory requirements. The Policies set out in the draft Neighbourhood Plan are broadly justified by legitimate aims protection of the environment; amenity of local people; support for the local economy; conservation of landscape and local heritage. I am also satisfied that they do not strike an intrinsically unfair balance. I am further satisfied that the Policies will in general conform with the existing statutory development plan and support sustainable development.
  
2. I therefore recommend to NHDC that the Neighbourhood Plan, subject to the incorporation of the recommended modifications as specified, should proceed to referendum.

Edward Cousins  
Examiner

Radcliffe Chambers

January 2025