

# **BERKSWELL NEIGHBOURHOOD DEVELOPMENT PLAN 2018 - 2033**

**The Report of the Independent Examiner to Solihull Metropolitan Borough  
Council on the Berkswell Neighbourhood Development Plan**

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8<sup>th</sup> April 2019**

## Summary

I was appointed by Solihull Metropolitan Borough Council, in agreement with the Berkswell Parish Council, in January 2019 to undertake the Independent Examination of the Berkswell Neighbourhood Development Plan.

The Examination has been undertaken by written representations. I visited the Neighbourhood Area on 15th March 2019.

The Neighbourhood Development Plan proposes a local range of policies and seeks to bring forward positive and sustainable development in the Berkswell Neighbourhood Area. There is an evident focus on safeguarding the very distinctive, largely rural character of the area whilst accommodating future change and growth.

The Plan has been underpinned by extensive community support and engagement. The social, environmental and economic aspects of the issues identified have been brought together into a coherent plan which adds appropriate local detail to sit alongside the Solihull Metropolitan Borough Council Local Plan 2013.

Subject to a series of recommended modifications set out in this Report I have concluded that the Berkswell Neighbourhood Development Plan meets all the necessary legal requirements and should proceed to referendum.

I recommend that the referendum should be held within the Neighbourhood Area.

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## **Introduction**

This report sets out the findings of the Independent Examination of the Berkswell Neighbourhood Development Plan 2018 - 2033. The Plan was submitted to Solihull Metropolitan Borough Council by Berkswell Parish Council in their capacity as the 'qualifying body' responsible for preparing the Neighbourhood Development Plan.

Neighbourhood Development Plans were introduced into the planning process by the Localism Act 2011. They aim to allow local communities to take responsibility for guiding development in their area. This approach was subsequently incorporated within the National Planning Policy Framework (NPPF) in 2012 and this continues to be the principal element of national planning policy. A new NPPF was published in July 2018 (and updated in February 2019) but the transitional arrangements in para 214 Appendix 1 on Implementation apply and thus this Examination is unaffected by the changed NPPF; accordingly all references to the NPPF in this Report are to the original 2012 NPPF document (unless otherwise indicated).

This report assesses whether the Berkswell Neighbourhood Development Plan is legally compliant and meets the 'basic conditions' that such plans are required to meet. It also considers the content of the Plan and, where necessary, recommends modifications to its policies and supporting text. This report also provides a recommendation as to whether the Berkswell Neighbourhood Development Plan should proceed to referendum. If this is the case and that referendum results in a positive outcome, the Berkswell Neighbourhood Development Plan would then be used in the process of determining planning applications within the Plan boundary as an integral part of the wider Development Plan.

## **The Role of the Independent Examiner**

The Examiner's role is to ensure that any submitted Neighbourhood Development Plan meets the legislative and procedural requirements. I was appointed by Solihull Metropolitan Borough Council, in agreement with Berkswell Parish Council, to conduct the examination of the Berkswell Neighbourhood Development Plan and to report my findings. I am independent of both Solihull Metropolitan Borough Council and Berkswell Parish Council. I do not have any interest in any land that may be affected by the Plan.

I possess the appropriate qualifications and experience to undertake this role. I have over 40 years' experience in various local authorities and third sector bodies as well as with the professional body for planners in the United Kingdom. I am a Chartered Town Planner and a panel member for the Neighbourhood Planning Independent Examiner Referral Service (NPIERS). I am a Member of the Royal Town Planning Institute.

In my role as Independent Examiner I am required to recommend one of the following outcomes of the Examination:

- the Berkswell Neighbourhood Development Plan is submitted to a referendum; or
- the Berkswell Neighbourhood Development Plan should proceed to referendum as modified (based on my recommendations); or
- the Berkswell Neighbourhood Development Plan does not proceed to referendum on the basis that it does not meet the necessary legal requirements.

As part of this process I must consider whether the submitted Plan meets the Basic Conditions as set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. If recommending that the Neighbourhood Development Plan should go forward to referendum, I must then consider whether or not the referendum area should extend beyond the Neighbourhood Area to which the Plan relates.

In examining the Plan, I am also required, under paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, to check whether:

- the policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act 2004;
- the Neighbourhood Development Plan meets the requirements of Section 38B of the 2004 Act (the Plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one Neighbourhood Area);
- the Neighbourhood Development Plan has been prepared for an area that has been designated under Section 61G of the Localism Act and has been developed and submitted for examination by a qualifying body.

These are helpfully covered in the submitted Basic Conditions Statement and, subject to the contents of this Report, I can confirm that I am satisfied that each of the above points has been properly addressed and met.

In undertaking this examination I have considered the following documents:

- Berkswell Neighbourhood Development Plan (Autumn 2018) as submitted
- Berkswell Neighbourhood Development Plan Basic Conditions Statement (Autumn 2018)
- Berkswell Neighbourhood Development Plan Consultation Statement (undated)
- Strategic Environmental Assessment & Habitat Regulations Assessment Screening Report (May 2018)
- Content at: <https://berkswellparishcouncil.org.uk/projects/ndp>
- Content at: <http://www.solihull.gov.uk/resident/planning/appealsenforcement/planmaking/neighbourhoodplanning>
- Representations made to the Regulation 16 public consultation on the Berkswell Neighbourhood Development Plan
- Solihull Metropolitan Borough Council Local Plan 2013
- Solihull Metropolitan Borough Draft Local Plan Supplementary Consultation (January 2019)
- National Planning Policy Framework (NPPF) (2012 & 2019)
- Neighbourhood Development Planning Regulations (2012)
- Planning Practice Guidance (PPG) (March 2014 and subsequent updates)

I carried out an unaccompanied visit to the Neighbourhood Area on 15<sup>th</sup> March 2019. I looked at Berkswell and Balsall Common and their rural hinterland. I also viewed the Berkswell Conservation Area and all the various sites and locations identified in the Plan document.

The legislation establishes that, as a general rule, Neighbourhood Development Plan examinations should be held without a public hearing, by written representations only. Having considered all the information before me, including the representations made to the submitted plan which I felt made their points with clarity, I was satisfied that the Berkswell Neighbourhood Development Plan could be examined without the need for a public hearing and I advised Solihull Metropolitan Borough Council accordingly. The Qualifying Body has helpfully responded to my enquiries so that I may have a thorough understanding of the thinking behind the Plan, and the correspondence has been shown on the Solihull Metropolitan Borough Council Neighbourhood Development Planning website for the Berkswell Neighbourhood Development Plan.

### **Berkswell Neighbourhood Area**

A map showing the boundary of the Berkswell Neighbourhood Area has been provided within the Neighbourhood Development Plan. Further to an application made by Berkswell Parish Council, Solihull Metropolitan Borough Council approved the designation of the

Neighbourhood Area on 18<sup>th</sup> July 2017. This satisfied the requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G(1) of the Town and Country Planning Act 1990 (as amended).

## **Consultation**

In accordance with the Neighbourhood Development Planning (General) Regulations 2012, the qualifying body has prepared a Consultation Statement to accompany the Plan.

The Planning Practice Guidance says:

“A qualifying body should be inclusive and open in the preparation of its Neighbourhood Development Plan [or Order] and ensure that the wider community:

- is kept fully informed of what is being proposed
- is able to make their views known throughout the process
- has opportunities to be actively involved in shaping the emerging Neighbourhood Development Plan [or Order]
- is made aware of how their views have informed the draft Neighbourhood Development Plan [or Order].” (Reference ID: 41-047-20140306)

I note that a Steering Committee of Parish Councillors, representatives of the two residents' associations and interested local residents from Balsall and Berkswell Parish held its inaugural meeting in June 2017. An Issues and Options document was subsequently prepared which included a number of key questions to help guide residents to consider the key planning issues and this was consulted upon from September to October 2017. As part of the publicising of the issues and related drop-in sessions, every household in Berkswell Parish received a hand delivered copy of a leaflet (1,390 households). Posters and banners were placed around both Berkswell and Balsall Parish and the Parish Council wrote to a number of community organisations and to neighbouring Parish Councils inviting input. Around 220 local people attended the drop-in events, over 400 questionnaire responses were submitted from local residents and groups and over 1000 written suggestions were made by residents. To bring structure to these comments the Steering Committee employed a Japanese quality analysis technique called an “affinity diagram” to find common themes.

In parallel with the public consultation the Steering Committee undertook a survey of as many local businesses as could be identified from extensive research and local knowledge. 19 responses were received providing information about the key issues facing local employers and the Berkswell Parish economy. Special efforts were also made to engage with the younger members of the community; these efforts included a special consultation at the Heart of England secondary school and just over a third of the eligible students replied (with one of the students undertaking the analysis).

The First Draft Plan was published for informal public consultation from March to April 2018 to allow local residents and stakeholders to consider the emerging draft Neighbourhood Development Plan (NDP) policies and to provide comments. Approximately 3700 NDP packs were hand-delivered containing an explanatory letter covering the process and where to get more information, a 4- page summary of the First Draft Plan, and a questionnaire with pre-paid return envelopes and an on line option to return representations and comments. Publicity included seven banners advertising the drop-in sessions placed at key locations. An impressive 684 completed paper copies were received, alongside 239 completed online, making a total of 923 responses overall. Following consideration of the responses to the consultation process the First Draft Plan was reviewed, amended and finalised as a Draft Plan. The Regulation 14 public consultation on this was held from 18<sup>th</sup> June to 31<sup>st</sup> July 2018. Tables setting out the responses were subsequently published, the Plan revised as required and then submitted to Solihull MBC.

Throughout the plan-making process a dedicated NDP website provided updates on the progress of the NDP and the minutes and agendas of Steering Committee meetings as well as access to background documents and the evidence base which support the policies and proposals in the Plan. The local publication The Bugle, published quarterly, was used to provide background briefing sessions and updates to residents, including consultation feedback but core to the communication strategy for the whole NDP process was the use of the Balsall Common Village Residents Association (BCVRA) e-newsletter and the Berkswell Society e-newsletter plus the schools' e-parent mail systems. These were supplemented by mail drops, notice boards, facebook, posters/banners etc. and face to face drop in sessions.

I am therefore satisfied that the consultation process accords with the requirements of the Regulations and the Practice Guidance and that, in having regard to national policy and guidance, the Basic Conditions have been met. In reaching my own conclusions about the specifics of the content of the Plan I will later note points of agreement or disagreement with Regulation 16 representations, just as the Qualifying Body has already done for earlier consultations. That does not imply or suggest that the consultation has been inadequate, merely that a test against the Basic Conditions is being applied.

### **Representations Received**

Consultation on the submitted Plan, in accordance with Neighbourhood Development Planning Regulation 16, was undertaken by Solihull Metropolitan Borough Council from Monday 5<sup>th</sup> November until Friday 21<sup>st</sup> December 2018. I have been passed a significant number of representations – 46 in total – which is too many list here but a summary schedule has been included alongside the details of the Plan on the Solihull MBC Neighbourhood Planning website. I have not mentioned every representation individually within the Report but this is not because they have not been thoroughly read and considered in relation to my Examiner role, rather their detail may not add to the pressing of my related recommendations which must ensure that the Basic Conditions are met.

## **The Neighbourhood Development Plan**

The Berkswell Parish Council is to be congratulated on its extensive efforts to produce a Neighbourhood Development Plan for their area that will guide development activity over the period to 2033. I can see that a sustained effort has been put into developing a Plan with a vision for 2033 that “Berkswell Parish is and will remain a pleasant and safe place to bring up families; it will continue to be a supportive and inclusive society; it will remain distinct from the neighbouring conurbations by protecting the rural environment within the Meriden gap but have good transport links and modern and enhanced communications. The many historic features that emphasise and enhance the rural character of Berkswell, whether in the countryside or built environment, will be conserved and new development will be designed to be sensitive to our local heritage, character and distinctiveness”. The Plan document is well presented with a distinctive combination of text, images and Policies that are, subject to the specific points that I make below, well laid out and helpful for the reader. The Plan has been kept to a manageable length by not overextending the potential subject matter and the coverage of that.

The wording of some content & Policies is not always as well-expressed as one might wish, but that is not uncommon in a community-prepared planning document and something that can readily be addressed. It is an expectation of Neighbourhood Development Plans that they should address the issues that are identified through community consultation, set within the context of higher level planning policies. There is no prescribed content and no requirement that the robustness of proposals should be tested to the extent prescribed for Local Plans. Where there has been a failure by the Qualifying Body to address an issue in the round, leading to an inadequate statement of policy, it is part of my role wherever possible to see that the community’s intent is sustained in an appropriately modified wording for the policy. It is evident that the community has made positive use of “direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area” (Planning Practice Guidance Reference ID: 41-001-20140306). It is evident that the Qualifying Body understands and has addressed the requirement for sustainable development.

Having considered all the evidence and representations submitted as part of the Examination I am satisfied that the submitted Plan has had regard to national planning policies and guidance in general terms. It works from a positive vision for the future of the Neighbourhood Area and promotes policies that are, subject to some amendment, proportionate and sustainable. The Plan sets out the community needs it will meet whilst identifying and safeguarding Berkswell’s distinctive features and character. The plan-making had to find ways to reconcile the external challenges that are perceived as likely to affect the area with the positive vision agreed with the community. All such difficult tasks were approached with transparency and care, with input as required and support from Solihull Metropolitan Borough Council.

However, in the writing up of the work into the Plan document, it is sometimes the case that the phraseology is imprecise, not helpful, or it falls short in justifying aspects of the selected policy. Accordingly I have been obliged to recommend modifications so as to ensure both clarity and meeting of the ‘Basic Conditions’. In particular, Plan policies as submitted may not meet the obligation to “provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency” (NPPF para 17). I bring this particular reference to the fore because it will be evident as I examine the policies individually and consider whether they meet or can meet the ‘Basic Conditions’.

### **Basic Conditions**

The Independent Examiner is required to consider whether a Neighbourhood Development Plan meets the “Basic Conditions”, as set out in law following the Localism Act 2011; in

December 2018 a fifth Basic Condition was added relating to the Conservation of Habitats and Species Regulations 2017. In order to meet the Basic Conditions, the Plan must:

- have regard to national policies and advice contained in guidance issued by the Secretary of State;
- contribute to the achievement of sustainable development;
- be in general conformity with the strategic policies of the development plan for the area;
- be compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations;
- not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017(d).

The submitted Basic Conditions Statement has very helpfully set out to address the issues in relation to the first four of these requirements in the same order as above and, where appropriate, has tabulated the relationship between the policy content of the Plan and its higher tier equivalents. I note that the Local Plan is the Solihull Metropolitan Borough Council Local Plan 2013. At the time of Neighbourhood Development Plan submission the fifth Basic Condition had not been added but as the Plan does not allocate land for development and is supportive of Berkswell's rural features, I am satisfied that the making of the Plan will not breach the Basic Condition relating to the Habitats and Species Regulations 2017.

I have examined and will below consider the Neighbourhood Development Plan against all of the Basic Conditions above, utilising the supporting material provided in the Basic Conditions Statement and other available evidence as appropriate.

### **The Plan in Detail**

I will address the aspects of the Neighbourhood Development Plan content that are relevant to the Examination in the same sequence as the Plan. Recommendations are identified with a bold heading and italics, and I have brought them together as a list at the end of the Report.

#### **Front cover**

A Neighbourhood Development Plan must specify the period during which it is to have effect. I note that there is a reference to the Plan dates prominently and helpfully on the front cover. The "Submission Plan Autumn 2018" label on the title page can now be dispensed with.

#### ***Recommendation 1:***

*Remove the "Submission Plan Autumn 2018" label on the front cover.*

#### **Contents**

The Contents list will need to be reviewed once the text has been amended to accommodate the recommendations from this Report.

#### ***Recommendation 2:***

*Review the "Contents" pages once the text has been amended to accommodate the recommendations from this Report.*

#### **1. What is a Neighbourhood Development Plan?**

This introductory section has now served its purpose and can be removed.

#### ***Recommendation 3:***

*Remove the section "What is a Neighbourhood Development Plan?" on page 3 and renumber subsequent sections accordingly.*

## **2. Portrait of Berkswell Parish**

This is a helpful pen-picture of the Neighbourhood Area.

## **3. An NDP for Berkswell**

This section has helpful brevity but needs a reference for the Neighbourhood Development Plan (NDP) website in paragraph 3.8.

### ***Recommendation 4:***

*Add a footnote reference for the “NDP website” mentioned in paragraph 3.8.*

## **4. Vision and Objectives**

It would be helpful to include a note after the Objectives to explain that not all of these will be pursued through the land-use Neighbourhood Plan and an Appendix/Annex to the Plan addresses other actions for the Parish Council.

### ***Recommendation 5:***

*Add after the statement of Objectives on page 11: ‘Not all of these Objectives will be pursued through the land-use Neighbourhood Plan and an Appendix addresses other actions for the Parish Council’.*

## **Planning Policies**

### **5. Housing in Balsall Common**

At the end of paragraph 5.1 there is an incorrect reference to “Appendix 2” but the Qualifying Body has agreed that the relevant Appendix (Appendix 1) should be deleted as it represents, as noted in paragraph 5.3, a snapshot which may mislead over the lifetime of the Plan. The last sentence of paragraph 5.16 refers to a “minimum” distance but to accord with the revised Policy wording – see below – the word “minimum” needs to be deleted.

### ***Recommendation 6:***

*Under the sub-heading “5.Housing in Balsall Common”:*

*6.1 In paragraph 5.1 delete the last sentence: “See Maps in Appendix 2.”*

*6.2 In the last sentence of paragraph 5.16 delete “minimum”.*

## **Policy B1: New Housing – General Principles**

### **1. Brownfield sites**

A representation queries the wording of criterion 1; partly it is queried on the basis of comparison with the NPPF 2018 wording but, as noted above, I am Examining against the 2012 NPPF. The representation comments: “The 2012 NPPF states (Paragraph 111) that the re-use of brownfield land should be encouraged, not that development on brownfield land must come forward before greenfield land will be released”. I note that the Policy wording does not say “must” but instead says “should” but the thrust of the point is valid. Additionally I note that, given the location of the Parish within the Green Belt, the “release” of greenfield land is a strategic matter for Solihull MBC. Accordingly, whilst a preference for the use of brownfield land is reasonable, the wording of criterion 1 needs to be tempered to have regard to national policy.

The Qualifying Body has suggested revised wording which is over-lengthy given that the identification of sites for the Local Plan is a strategic matter and at an advanced stage.

### **2. Layouts and Accessibility**

There is a concern that some of the requirements within criterion 2 are over-prescriptive and therefore potentially in conflict with the NPPF expectation (para 59) that “design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new

development in relation to neighbouring buildings and the local area more generally". One representation notes that "A more flexible approach would reflect the need to design layouts to respond to site-specific context" and another suggests that "criteria b., c., j. and k. are deleted and replaced by a criterion that reads: Proposals should be supported by information explaining how the design and layout will facilitate social cohesion and community safety and security."

The Qualifying Body has commented on criteria b & c that the suggestion that "up to 20" dwellings is a beneficial scale derives from the existing character of the area and that the quantum of 250 dwellings is evidenced as appropriate by the success of the existing development at Riddings Hill. These are therefore locally sourced guidelines but should not be presented within "General Principles" as other than guidelines.

In relation to criterion 2d Secured by Design 2019 says (para 8.3): "Whilst it is accepted that through routes will be included within development layouts, the designer must ensure that the security of the development is not compromised by excessive permeability". The concern within the criterion for the potential for "rat runs" (source and destination unspecified) could be accommodated by a simple addition of 'and amenity' to the Secured by Design guidance.

In relation to criterion 2e it is unspecified what the related guidance on how to design out "parking on pavements and verges" might be; arguably it is a behavioural/non-land-use issue as much as a design one but it is evidently related to the levels of parking provision and this is the subject of Policy B8.

In keeping with Policy B9 it would be appropriate to expect 'attractive' as well as accessible routes in criterion 2f.

For criterion 2g a representation comments that "this criterion should specify that children's play areas are not necessarily required in all open spaces, only on those where the Borough's guidance requires it". The need for this amendment was agreed by the Qualifying Body.

Within criterion 2j it is suggested that the 30m distance guide is in part designed "to support a lower density pattern of development" but this is not the case if this is part of the Solihull standard. A representation comments: "This could be overly restrictive and not relevant for all sites. It is also in conflict with the NPPF's requirement for making effective use of land". Another representation comments that the application of the guideline could result in some fairly unusable spaces. The Qualifying Body has clarified that the distance is intended to apply to gardens where new and existing properties are back to back. The wording therefore needs improved clarity whilst making it more apparent that it is a guideline.

For criterion 2k there is a need to provide a reference for "Secured by Design".

### **3. Landscaping and Drainage**

A representation comments: "Policy 3a should be amended to reflect that fact that not all mature trees and hedgerows are worthy of retention. The desirability of retaining trees on sites should be identified through the production of site specific tree surveys". I note that the opening to the Landscape and Design section says "wherever possible" but the basis for a decision on retention would add clarity.

In criterion b a reference is required for the Natural Environment and Rural Communities Act 2006 (which should be named in full in the absence of a glossary). In the second sentence it would be correct to say 'may include' rather than "include".

In criterion c a reference is required for the “SuDS hierarchy”. The Environment Agency has recommended that an additional point is included “to state that all new development should be located within Flood Zone 1 and where this is not viable, development must be steered to land at the lowest flood risk, following the application of the Sequential Test”. Accordingly this might become criterion c and the existing criteria c & d renumbered.

With criterion 3d – as with 2j – a representation comments that “this criterion should ideally avoid being too prescriptive about the need for open space to be located between existing and proposed housing. This may not always deliver the best layout in terms of a site’s characteristics.” The Qualifying Body has however responded that “it is important that development is seen as development of the community as a whole (old and new)”. This is another instance where a “wherever possible” would be appropriate.

#### **4. Building Design Principles**

Within criterion a the phrases “their position and design enhances the development” and “should be appropriate to the position proposed” are particularly open to a range of interpretations. The salient point it would seem is that the relationship between dwellings should be examined and justified in terms of height, scale and massing.

Within criterion c a representation queries why driveways must be the location for charging points. The Qualifying Body responded with a proposal to add another level of complexity about the sizing of garages. I believe it is reasonable for prospective owners to be allowed the choice of where a charging point is located.

I believe that we have already reached a point where solar roof panels are a normal part of house design and therefore the expectation within criterion d that houses should be “grouped together to create design compatibility” is an inappropriate prescription.

In relation to 4e a representation notes: “the criterion would be better reflecting the need for the provision of suitable storage of bins (and presumably cycles) rather than specifying it should be within the garden”. The need for an amendment is agreed by the Qualifying Body.

#### **5. Housing Mix**

Within section 5 the wording of criterion a suggests that all of the listed types of housing should be provided, including self-build and housing for older people on all sites. As a representation notes, this would be particularly difficult on smaller sites; therefore the Policy wording needs a slight modification.

The last bullet point of criterion 5a and criterion 5c are a duplication and only one is required.

#### **6. Natural Environment**

The opening sentence here should end with a colon.

In relation to the last Policy sentence, the opening line of the Policy says “proposals will be required to address the following criteria”, many of these criteria being “wherever possible”. There is therefore no value in restating this again in different words at the end of the Policy.

#### ***Recommendation 7:***

*Amend Policy B1: New Housing – General Principles as follows:*

*7.1 Reword criterion 1 as: ‘The reuse of brownfield sites will be preferred to the loss of greenfield land’.*

*7.2 Combine criteria 2b, 2c & 2d and reword as follows: ‘Layouts should be designed to help facilitate social cohesion and community security. In the Berkswell Neighbourhood Area context this suggests that larger developments should have character areas of around 250*

*dwellings and all developments should aim for clusters of around 20 dwellings. Good legibility<sup>7</sup> is required but the security and amenity of the development should not be compromised by excessive through route permeability’; renumber subsequent criteria accordingly.*

*7.3 In criterion 2e replace the wording after “pavements” with ‘and tree planting wherever possible’ (picked up from Policy B3).*

*7.4 In criterion 2f add ‘attractive and’ before accessible.*

*7.5 Combine criteria 2g, 2i and 2j to read: ‘Quality public open and children’s play space should be provided in accordance with the Solihull Green Space Strategy Review<sup>8</sup> or the successor document. New open and play spaces should normally be located between new and existing housing to serve the whole community; play spaces should benefit from natural surveillance. Where this location of the open space is not feasible, to help the transition the distance between new and existing dwellings should be toward the upper end of the range in the Solihull Housing Development Guidelines SPG<sup>6</sup> or successor document ie around 30m’; renumber criterion 2k accordingly.*

*7.6 Simplify criterion 3a as: ‘A site specific survey should identify which mature trees and hedgerows make the most significant contribution to local landscape character and biodiversity and should therefore be retained and protected. New planting to replace losses or enhancing existing planting should use characteristic native species.’*

*7.7 Within criterion 3b put the full name of the Natural Environment and Rural Communities Act 2006 alongside the acronym and provide a footnote source reference; in the second sentence add ‘may’ between “habitats” and “include”.*

*7.8 At the request of the Environment Agency add an additional criterion (as c with subsequent numbers amended accordingly) as follows: ‘All new development should be located within Flood Zone 1 and where this is not viable, development must be steered to land at the lowest flood risk, following the application of the Sequential Test’.*

*7.9 Within criterion 3c add a footnote source reference for the SuDS hierarchy.*

*7.10 Within criterion 3d replace “landscape buffer zones” with ‘narrow corridors’ and delete the second sentence (section 2 having addressed this matter).*

*7.11 For clarity, simplify criterion 4a by removing “overlook, existing 2 storey properties and their position and design enhances the development. Such development should not”.*

*7.12 Reword criterion 4c as: ‘Provision should be made per dwelling for electric vehicle charging’.*

*7.13 Within criterion 4d delete “and grouped together to create design compatibility”.*

*7.14 Reword criterion 4e as: ‘Suitable provision should be made within curtilages for secure storage and refuse/recycling bin enclosures’.*

*7.15 Within criterion 5a replace “. The mix should include but not be limited to” with ‘such as’.*

*7.16 Delete criterion 5c (as it duplicates an item within 5a).*

*7.17 Delete the last sentence of the Policy beginning “Where developers consider...”*

As amended Policy B1 meets the Basic Conditions.

## **6. Housing in the Rural Areas**

I note that the definition of Affordable Housing referenced and included as Appendix 3 is not the 2019 definition. Given that there may be further updates it would be simpler to reference the NPPF Glossary at the foot of page 19.

### **Recommendation 8:**

*Replace the footnote presently on page 19 with a reference to the NPPF 2019 Glossary.*

## **Policy B2: Rural Exception Local Needs Housing in Berkswell Village**

Rural Exception sites are supported within the NPPF (para 54) and within the Solihull Local Plan Policy P4. As I first read this Policy it is intending to accommodate multiple developments of “1 to 2” homes should evidence of need be provided, thus making no presumption about the scale of needs that will come forward in the future; this was confirmed by the Qualifying Body.

### **Recommendation 9:**

*Within Policy B2:*

*9.1 Number the paragraphs.*

*9.2 In the first line make “development” plural and add ‘around’ between “of” and “1”.*

As amended Policy B2 meets the Basic Conditions.

## **7. Protecting [the] Rural Area and Local Landscape Character**

Paragraph 7.5 is no longer appropriate for a Plan on the verge of being ‘made’ and therefore it should be deleted. In the first bullet point of paragraph 7.10 “boarded” is used instead of ‘bordered’; I understand that this derives from an error in the original text so that should be acknowledged. In a Plan that is generally well referenced, it is surprising to find that the HER noted in paragraph 7.18 lacks a reference as does the Ecological Report noted in the following paragraph. However it is pleasing to see that the representation from Historic England commends the approach as “exemplary”.

### **Recommendation 10:**

*Under the heading “Protecting [the] Rural Area and Local Landscape Character”:*

*10.1 Delete paragraph 7.5 and renumber subsequent paragraphs accordingly.*

*10.2 Within the first bullet point of paragraph 7.10 add ‘(sic)’ after the word “boarded”.*

*10.3 Add footnotes to reference the HER and the Preliminary Ecological Report in paragraphs 7.14 and 7.19 respectively.*

## **Policy B3: Protecting Local Landscape and Built Character**

An NPPF Core Planning Principle (para 17) says planning should “take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it”. Solihull Local Plan Policy P10 does likewise. Unlike Policy B1, the numbering of Policy B3 (and some subsequent Policies) involves numerous elements that are all numbered 1, 2 or 3 etc; there needs to be a tiered numbering adopted to allow elements to be appropriately distinguished.

### **Landscape Character**

A representation comments: “In terms of criterion 1 of this Landscape Character policy, it is worth noting that the Balsall Common Eastern Fringe is a different landscape character area

than the rest of the area to the north (Berkswell Landscape Character Area 4 Rural Centre, Sub Area 4D)". The Qualifying Body noted that "local character" within the Policy is intended to mean 'local to the site' and therefore further clarity is required.

Paragraph 2 of this Policy refers to "[landscape] features of identified local heritage interest such as ridge and furrow"; in saying "identified" and "such as" the question is begged as to how the prospective developer will know of the location of these and the other such features not mentioned but apparently identified. The paragraph goes on to consider "landscape features and wildlife habitats of identified value" and again uses "identified" and "such as" but fails to refer to the specifics in Map 2 whilst including the much more nebulous elements of "semi-natural grassland" and "river wetlands" which the text seems to acknowledge will not all be of equal interest/importance. Given that many of these features have been lost over time with agricultural change it must be questionable that it is realistic/reasonable for development to "retain" all "such" features; the Policy itself acknowledges mitigation. The Qualifying Body has advised that the source of the "features" would be the HER and the Preliminary Ecological Report referenced earlier. They also accepted that there is significant overlap between paragraphs 2 and 3 and that some editing is appropriate for clarity. The reference to "street trees" is inappropriate within a landscape Policy but I included for it earlier under Policy B1.

**Recommendation 11:**

*Under the headings "Policy B3: Protecting Local Landscape and Built Character" and "Landscape Character":*

*11.1 Within criterion 1 between "character" and "as" add 'within the Neighbourhood Area'; add a footnote reference for the Solihull Borough Landscape Character Assessment.*

*11.2 Combine criteria 2 & 3 and reword as follows:*

*'Landscape features of heritage or wildlife value (as identified in the Historic Environment Summary Report\* and the Preliminary Ecological Report\*) should be conserved according to their significance. Where mitigation measures are appropriate the evidence based proposals should include for locally-appropriate features such as tree-planting, hedges and ponds.'*

*[\* indicates footnote required]*

**Built Character**

There is some overlap between criteria 2 & 4 and the Qualifying Body has suggested a reformatting for clarity.

**Recommendation 12:**

*Under the headings "Policy B3: Protecting Local Landscape and Built Character" and "Built Character":*

*12.1 Swap criteria 2 & 3.*

*12.2 Within the renumbered criterion 3 delete the wording after "roofs".*

**Heritage Assets**

Paragraph 2 seems to compact together a number of different ways that heritage assets might be harmed whilst implying that all will be considerations in every instance. I believe that the first two sentences, in conjunction with national and Local Plan policies, are sufficient. Further, a representation notes: "Criteria 2 should be amended to remove the reference to 'great' weight being applied to the conservation of [all] heritage assets. NPPF (2012) Paragraph 132 states that great weight should be given to the conservation of a 'designated heritage asset' and Policy B3 should reflect this."

Paragraph 5 is a matter that would be dealt with through Listed Building legislation which is not the same as that through which Local and Neighbourhood Plans are provided for.

Accordingly, whilst the point might be noted within the supporting text, it should not form part of a land use Policy.

**Recommendation 13:**

*Under the headings “Policy B3: Protecting Local Landscape and Built Character” and “Heritage Assets”:*

*13.1 For clarity in criterion 1 replace “between” with ‘with’ and delete “and any aspect of the proposal”.*

*13.2 Within criterion 2:*

*13.2.1 Replace the first sentence with: ‘The Parish’s heritage assets should be conserved in a manner appropriate to their significance;*

*13.2.2 Delete the second sentence (as it repeats criterion 1);*

*13.2.3 Within the third sentence replace the words “whether it has been” with ‘as appropriate it should be’.*

*13.3 Delete criterion 5.*

#### Large Agricultural Buildings in the Open Countryside

The content of criterion 1 does not match with the sub-heading; the use of ‘Non-residential’ in the heading would be more appropriate. I can see that “large” has been used to accommodate the fact that many agricultural buildings will be permitted without the need for a planning consent.

**Recommendation 14:**

*Under the headings “Policy B3: Protecting Local Landscape and Built Character” and “Large Agricultural Buildings in the Open Countryside”, in the latter heading replace “Agricultural” with ‘Non-residential’.*

As amended Policy B3 meets the Basic Conditions.

#### Local Green Spaces

This section is very thoroughly presented. However, a significant number of representations reassert the point noted in the text in relation to the green area named as “The Recreation Ground” (although I note the base map annotates it as “Playing Field”) that the proposed Space is private land. The text in paragraph 7.30 acknowledges that “public access is not one of the criteria in the NPPF”. But Planning Practice Guidance also notes: “Land could be considered for designation even if there is no public access (e.g. green areas which are valued because of their wildlife, historic significance and/or beauty). Designation does not in itself confer any rights of public access over what exists at present” (Ref: 37-017-20140306). Therefore there is no prospect that the land could be considered as public recreation space unless the owner agreed, access rights were established or the land was leased/purchased for this purpose. Planning Practice Guidance further clarifies that “There is no need to designate linear corridors as Local Green Space simply to protect rights of way, which are already protected under other legislation” (Ref: 37-018-20140306). But amongst those making representations there seems to be an evident belief that public access is at stake. This notion is reinforced by the survey evidence included with the Consultation Statement accompanying the Plan which concentrates on establishing that the whole field has been accessed by residents (not just the Right of Way footpath).

Representations also assert that the Plan assessment against the NPPF criteria overplays the claimed recreation, tranquillity and wildlife value of the land in question and that, as a consequence, the “demonstrably special” and “particular local significance” requirements are not established. Further comments suggest that these concerns have been ignored or inadequately addressed within the consultations.

I would comment that, as far as I can tell from an indistinct map within the Solihull MBC Local Plan 2013, the land in question is within the current Green Belt. The NPPF establishes that (para 78) “Local policy for managing development within a Local Green Space should be consistent with policy for Green Belts”. Therefore, there is no obvious benefit from the designation of Green Belt land as Local Green Space since it will only confer the same level of protections from which the land already benefits. Planning Policy Guidance says: “If land is already protected by designation, then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space” (Ref: 37-011-20140306).

However, a number of representations note that the land has been identified by Solihull MBC (confirmed by Solihull MBC) as a site with housing potential that is actively being considered for allocation within the Local Plan Review which is still in progress. I see that the current Solihull MBC Draft Local Plan Supplementary Consultation notes that “Some of the sites, in particular Barratt’s Farm, have multiple and potential complex land assembly issues. It is important that sites such as this are considered in a comprehensive manner to avoid piecemeal developments occurring.....Before being finally included in the plan, it will be necessary for the varied land interests to demonstrate to the Council that they are prepared to work on a collaborative and comprehensive basis to ensure a quality development is possible and can be satisfactorily delivered.” The related draft Concept Masterplan appears to have the land identified as having potential for “low density housing” whilst having a number of other sites identified for public open space. Solihull MBC comments that this Concept Plan should carry “little weight at this stage of the Local Plan Review process”; however they go on to note that work around the Concept Plan “also identifies areas that have been found to have significant ecological value, which do not include the land proposed for the [Local Green Space]”.

Planning Practice Guidance says: “Designating any Local Green Space will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making” (Ref: 37-007-20140306). Given that the Neighbourhood Plan does not aim to allocate land for housing it cannot itself conclude that local needs are capable of being met, although I appreciate that its stated preference is for the reuse of brownfield land. However, as the Qualifying Body has noted: “The Draft Local Plan estimates that the housing capacity of the Recreation Ground (Blessed Robert Grissold field) site is 47 [dwellings]” whilst “The January 2019 draft of the Local Plan identifies 1755 houses for Balsall Common of which about 1195 of which (*sic*) fall within Berkswell Parish”. The housing capacity of the field is therefore small in comparison to the potential housing allocation as a whole, but that allocation is by no means certain at this stage.

The Qualifying Body has also commented that the Space would make an attractive and inviting entrance to the footpath which will prospectively connect the existing and possible new housing. But other Policy within the Plan addresses this point (and I earlier suggested a minor modification that would improve that). And at this stage the Concept Plan – as noted above – has yet to be resolved or adopted.

If a proposed Local Green Space meets the NPPF criteria in full (para 77) (and the other NPPF and Guidance considerations as above) then that space should be designated. In relation to the green area named as the “Football Ground” I am satisfied that the criteria are met and no objectors have questioned that. However, in relation to the green area named as the “Recreation Ground” I am not satisfied that all the criteria have been met and my reasoning is:

- I agree that the green area is “in reasonably close proximity to the community it serves” and no objectors have questioned that;
- I agree that the green area “is local in character and not an extensive tract of land” and no objectors have questioned that;
- I cannot agree that the green area is “demonstrably special to the local community”. In part this is because there clearly is no unanimity of view but also a significant number of those that assert its significance evidently do so because of a perceived recreational value that no longer exists (beyond the Right of Way) since the owners fenced off the largest part of the area, as is their right. I must interpret “special” as being ‘above the ordinary’ because the NPPF (para 77) says: “The Local Green Space designation will not be appropriate for most green areas or open space”; from my visit to the area it was apparent that the field named as the Recreation Ground is indistinguishable in character from adjacent open fields which are equally inaccessible because they are privately owned. The green area is demonstrably used, to the extent that the Right of Way allows, and it is demonstrably green but of themselves these are not sufficient to justify designation. However, within the justification in the Plan it is noted that “the site is also special because of its tranquillity and value for wildlife” and it “is surrounded by mature trees and hedgerows which add to the sense of a quiet green oasis in the midst of a built-up area”. In fact the green area forms the edge of the open Green Belt of which it is a part and this will continue to be the case unless, when the new Local Plan is adopted (after public Examination), the status of the land is changed. If the status of the land does change then other Policies in this Plan make ample provision within any housing development for well-located public open space to be provided that is useable by the existing and new residents, and for the protection of mature trees.
- Even if I found a way to establish, on balance, that the green area is demonstrably special, no evidence has been provided to show that it also “holds a particular local significance”. A number of representations have asserted that it ‘held’ a local significance as a recreation area but that has not endured because of restricted access. The local authority has noted that the green area does not have any significant ecological value according to the survey work undertaken for the draft Local Plan. The green area is not identified within the HER and no-one has evidenced any historical significance for it. No-one has claimed that the field has a “particular” beauty; as I note above it is indistinguishable from adjacent agricultural fields. There have been no other claims to “particular” significance.

Therefore, since not all the criteria have been met, I must conclude that the green area named as the Recreation Ground should not be designated as a Local Green Space.

**Recommendation 15:**

*Under the heading “Local Green Spaces”:*

*15.1 Reword paragraph 7.28 as: ‘One site is proposed as a Local Green Space for protection in Policy B4. This is the triangle of land off Lavender Hill; Lane which includes the football ground – see Map 4.’*

*15.2 Delete paragraphs 7.29 & 7.30 and renumber 7.31 as 7.29.*

*15.3 In paragraph 7.31 delete “second”.*

*15.4 Delete pages 35 – 37; on page 38 delete “Table 2” from the heading; on page 40 amend “Map 4b” to ‘Map 4’.*

## **Policy B4: Local Green Space**

### **Recommendation 16:**

Reword Policy B4 as:

*'The following green area as shown on Map 4 is designated as a Local Green Space:  
The Football Ground on Lavender Hall Lane, Balsall Common.'*

As amended Policy B4 meets the Basic Conditions.

## **8. Protecting Berkswell Conservation Area**

The NPPF (para 126) supports "a positive strategy for the conservation and enjoyment of the historic environment". Local Plan Policy P16 addresses the Conservation of Heritage Assets & Local Distinctiveness. To these Policy B5 can legitimately add local detail.

### **Policy B5: Berkswell Conservation Area**

As noted earlier this is one of the Policies where a tiered numbering system is required.

#### New Buildings

Criterion 5 unnecessarily uses "traditional" twice.

### **Recommendation 17:**

*Under the headings "Policy B5: Berkswell Conservation Area" and "New Buildings" within criterion 5 delete "usually traditional ones".*

#### Extensions

In criterion 2 "fully justifiable" would more appropriately be worded as 'fully justified' since this requires the design solution to be explained.

### **Recommendation 18:**

*Under the headings "Policy B5: Berkswell Conservation Area" and "Extensions" within criterion 2 replace "fully justifiable" with 'fully justified'.*

#### Conversions

The Qualifying Body has advised that this section of the Policy relates to the conversion or sub-division of non-residential properties within the Conservation Area; accordingly the title needs to make this clear and the text needs adaptation to accommodate sub-division.

### **Recommendation 19:**

*Under the headings "Policy B5: Berkswell Conservation Area" and "Conversions":  
19.1 Replace the heading "Conversions" with 'Conversion or Sub-Division of Non-Residential Properties'.*

*19.2 Replace the opening sentence with: 'Proposals for conversion or sub-division will be supported where the existing building can accommodate such alteration without substantial or complete rebuilding, and where the alterations do not detract from the character of the original building, the character and appearance of the Conservation Area, or the special interest and setting of any relevant listed buildings.'*

#### Views and Open Spaces

Within criteria 2 the use of "maintained" is open to misinterpretation – the more appropriate word is 'conserved'.

### **Recommendation 20:**

*Under the headings "Policy B5: Berkswell Conservation Area" and "Views and Open Spaces" in criterion 2 replace "maintained" with 'conserved'.*

As amended Policy B5 meets the Basic Conditions.

## **9. Conversion of Former Agricultural Buildings**

### **Policy B6: Conversions of Former Agricultural Buildings**

The Qualifying Body has clarified that this Policy relates to buildings in the open countryside and therefore this should be added to the heading. The NPPF (para 28) supports “the development and diversification of agricultural and other land-based rural businesses”. The Local Plan Policy 17 adds some specific cautions about buildings in the Green Belt that should be acknowledged within Policy B6.

It is unclear what “Existing access arrangements should be used” is intended to imply. In context it is apparently not about the position of a front door but rather vehicular access. It is also unclear whether an existing access must be “suitable and adequate” before conversion will be supported or if it is expected that accesses can be made “suitable and adequate” for connecting to the local road network; some clarity is needed. I also note that parking areas should ‘screened’ or ‘concealed’ depending on whether paragraph 4 or 5 is addressed which is unhelpful duplication.

#### **Recommendation 21:**

*Under the heading “Policy B6: Conversions of Former Agricultural Buildings”:*

*21.1 Add to the title ‘in the Open Countryside’.*

*21.2 Add paragraph numbering.*

*21.3 Within the first criterion replace “sensitive to the existing character and form” with ‘sensitive to the existing character, form and any special designation’.*

*21.4 Within the fourth criterion delete the first and last sentences and add ‘or if necessary made suitable’ between “suitable” and “and”.*

As amended Policy B6 meets the Basic Conditions.

## **10. Accessibility and Infrastructure**

### **Policy B7: Improving Car Parking Facilities at Berkswell Station**

As is noted within the text, Policy B7 is not supported with sufficient evidence to justify the allocation of a specific site, instead the Policy is supportive of provisions to enhance rail passenger facilities which would contribute to the Plan’s sustainability objectives. In their representation the Environment Agency “noted that in paragraph 10.7 [it says] that there is ‘a narrow strip of land in Flood Zone 3’ to the west side of the West Coast Main Line. Within the policy text, it states that ‘development of a two storey car park building and / or an extension to the current car park to the West of the West Coast Main Line’. Development within Flood Zone 3 should be avoided and the extension of the car park should take place within Flood Zone 1. We would recommend including this within the Policy wording.”

#### **Recommendation 22:**

*Within Policy B7 at the end of the first sentence add ‘provided these do not fall within Flood Zone 3’.*

As amended Policy B7 meets the Basic Conditions.

### **Policy B8: Car parking and Cycle Storage**

Government policy on provision for car parking starts from a different place to that apparent in the Berkswell Plan. Whilst I am examining against the NPPF 2012 the most up-to-date indication of policy is provided by the NPPF 2019 which says (para 102) “patterns of movement, streets, parking and other transport considerations are integral to the design of

schemes, and contribute to making high quality places” and (para 105) “If setting local parking standards for residential and non-residential development, policies should take into account: a) the accessibility of the development; b) the type, mix and use of development; c) the availability of and opportunities for public transport; d) local car ownership levels; and e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles” and (para 106) “**Maximum** [my emphasis] parking standards for residential and non-residential development should only be set where there is a clear and compelling justification **that they are necessary for managing the local road network** [my emphasis] or for optimising the density of development in city and town centres and other locations that are well served by public transport”. The pre-amble to Policy B8 is therefore confused and it certainly should not read as a rehearsed argument with the Local Planning Authority.

Whilst there may be a basis for requiring developers to address the criteria set down in the NPPF para 105 the Policy does not actually seem to require anything to be done with the “evaluation” (and the evaluation factors do not all seem to relate to the “number of spaces”). A representation comments: “The emerging Local Plan Policy P8 (Managing Travel Demand and Reducing Congestion) states that the Council will support development proposals which: ‘take an evidence-based approach to demonstrate appropriate car parking provision, taking account of location, trip rates and, where relevant, travel plan targets and forecast levels of car ownership’. It is considered that the evidence-based approach would be more appropriate than seeking to apply specific parking standards through the NP.”

I find no convincing evidence that there is a basis for some of the more extreme measures:

- Requiring all roads, whatever their likely usage, to allow for on-street parking despite the thrust of the Policy to require off-street parking provision would have a significant impact on design/densities achievable. The Qualifying Body has suggested that there is already a successful precedent for this on the Kemps Green estate, Balsall Common but the Plan document notes that the use of electric charging points will generally require off-street parking.
- “1 additional car parking space per bedroom” excluding the garage whatever its size – I doubt that any development could meet this standard **and** meet the design requirements of Policy B3. The Qualifying Body would however wish this to be the “default position” but with a preference for adequate communal parking to supplement on-site parking.
- “Unless the developer can demonstrate that the garage provision will actually be used for parking” – no indication is provided on how this might be achieved. The Qualifying Body has subsequently suggested that this might be addressed by better design but the NPPF cautions against being too prescriptive (para 59).

However the Qualifying Body has demonstrated that there are comparatively high levels of car ownership and poor public transport provision within the Neighbourhood Area. Unfortunately some of their suggested remedies, provided in response to my questions, are beyond the scope of a land-use Neighbourhood Plan. The thrust of the NPPF expectation is that the developer should be able to devise an appropriate approach based on evidence – it is therefore appropriate for Policy B8 to draw attention to the evidence (although this may of course vary over time) and expect that it will be acted upon.

**Recommendation 23:**

*23.1 Delete paragraph 10.13 except for the sections 4 & 5 within that (which add information to that in paragraphs 10.11 & 10.12) which should be given their own paragraph numbers and paragraph 10.14 renumbered accordingly.*

23.2 Reword Policy B8 as follows:

*'Development proposals must have appropriate regard for the higher levels of car ownership evident within the Berkswell Neighbourhood Area. Whilst suitable parking provision must be integral to the design of schemes, the number of off-street parking spaces for residents and visitors should be justified and provided on the basis of an evidenced assessment of:*

- a) the accessibility of the development;*
- b) the type, mix and use of development;*
- c) the availability of and opportunities for public transport;*
- d) local car ownership levels; and*
- e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles.*

*As far as is practical, the guidance provided within the Manual for Streets<sup>17</sup> and Secured by Design should inform the location and design of vehicle and cycle parking provision.*

As amended Policy B8 meets the Basic Conditions.

### **Improving Accessibility for All**

#### **Policy B9: Improving Access for All**

Paragraph 35 of the NPPF says that plans should “create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians”. Local Plan Policy P7 says that accesses should be “safe, attractive, overlooked and direct on foot, by bicycle and from public transport”. Whilst the purpose of this Policy provides local detail and is generally clear paragraph 1 applies to all “development proposals” but not all will be close or adjacent to the identified routes; therefore a “where applicable” needs to be included.

#### **Recommendation 24:**

*In Policy B9 add “where applicable” to paragraph 1 between “should” and “include”.*

As amended Policy B9 meets the Basic Conditions.

## **11. Business**

### **Businesses in the Rural Area**

#### **Policy B10: Supporting Local Businesses**

The NPPF paragraph 28 supports a prosperous rural economy. Policy B10 notes and has regard to the Local Plan Policy P17. As written the three criteria for the first paragraph of the Policy read as 1 “and” (implicitly) 2 “and” (explicitly) 3 but the third element cannot be intended to be a requirement of every business proposal; some modification of this aspect is therefore required.

#### **Recommendation 25:**

*Within the first paragraph of Policy B10:*

*25.1 Move the “and” from the end of criterion 2 to the end of criterion 1.*

*25.2 Alter criterion 3 to become a second paragraph for the Policy and reword as:*

*'Where proposals are for the reuse or conversion of former agricultural buildings, workshops or previously used brownfield sites they should demonstrate appropriate regard for Policy B6.'*

As amended Policy B10 meets the Basic Conditions.

## **12. Next Steps**

The content here is no longer relevant but might usefully be replaced with a commitment to keep the Plan under review. This point is also made within a representation. The Qualifying Body agreed.

**Recommendation 26:**

*Replace the content under and the heading “12. Next Steps” with a new heading ‘Review’ and new content: ‘The Qualifying Body will monitor the impact of the Plan and undertake a review of the Plan no later than 3 years after the adoption of the new Local Plan.’*

**Appendices**

A representation has commented: “As there is so much uncertainty over the likely housing allocations within Balsall Common the strategic sites referred to, and shown in Appendix A to the NP, should be removed from the Plan and it should be explicitly stated that the NP is not making any housing allocations”. Whilst I appreciate that the Appendix will have been informative to many participating in the consultations, given that there is continuing uncertainty over the extent of allocations that will be made in the Local Plan I tend to agree that the detail of Appendix 1 will cause confusion, particularly once the Plan has become part of the Development Plan.

Recommendation 8 includes a footnote linking to the NPPF definition of Affordable Housing and so Appendix 2 can also be deleted.

Appendices 3, 4 & 5 are evidently not part of the land use Neighbourhood Plan. It would be clearer if these three Appendices and their related text were brought together to form an Appendix or Annex of the non-land use content. Planning Practice Guidance says: “Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non land use matters should be clearly identifiable. For example, set out in a companion document or annex” (Paragraph: 004 Reference ID: 41-004-20170728).

**Recommendation 27:**

*27.1 Delete Appendices 1 & 2.*

*27.2 Bring together Appendices 3, 4 & 5 as an Annex for non-planning content.*

**Other matters raised in representations**

Some representations have suggested additional or expanded content that the Plan might include. However, given that the Neighbourhood Development Plan sits within the development plan documents as a whole, keeping content pertinent to Berkswell identified priorities is entirely appropriate. As noted within the body of this Report it is a requirement that a Neighbourhood Development Plan addresses only the “development and use of land”. Even within this restriction there is no obligation on Neighbourhood Development Plans to be comprehensive in their coverage – unlike Local Plans - not least because proportionate supporting evidence is required.

Many representations indicate support for all or parts of the draft Plan and this helps in a small but valuable way to reassure that the extensive public consultation has been productive.

I have not mentioned every representation individually but this is not because they have not been thoroughly read and considered in relation to my Examiner role, rather their detail may not add to the pressing of my related recommendations which must ensure that the Basic Conditions are met.

## **European Union (EU) and European Convention on Human Rights (ECHR) Obligations**

A further Basic Condition, which the Berkswell Neighbourhood Development Plan must meet, is compatibility with European Union (EU) and European Convention on Human Rights (ECHR) obligations.

There is no legal requirement for a Neighbourhood Development Plan to have a sustainability appraisal. The Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Report carried out by Solihull Metropolitan Borough Council for the Berkswell Neighbourhood Development Plan (May 2018) considered whether or not the content of the Plan required a Strategic Environmental Assessment (SEA) in accordance with the European Directive 2001/42/EC and associated Environmental Assessment of Plan and Programmes Regulations 2004. In accordance with Regulation 9 of the SEA Regulations 2004, Solihull Metropolitan Borough Council determined that “the policies in the Berkswell NDP are likely to be in general conformity with the strategic policies of the adopted Development Plan. It is therefore unlikely that there will be any significant environmental effects arising from the Berkswell NDP that were not covered in the Sustainability Appraisal / SEA of the Solihull Local Plan and the Gypsy and Traveller Site Allocations Plan. 5.2.2. It is therefore concluded that the Berkswell NDP does not require a full SEA to be undertaken” and “it is also concluded that the Berkswell NDP does not require a full HRA to be undertaken.” In making this determination, the Borough Council had regard to Schedule 1 of the Regulations and carried out consultation with the relevant public bodies who concurred with the screening opinion. Particularly in the absence of any adverse comments from the statutory bodies or the Local Planning Authority, I can confirm that the Screening undertaken was appropriate and proportionate and confirm that the Plan has sustainability at its heart.

The Basic Conditions Statement submitted alongside the Berkswell Neighbourhood Development Plan confirms that “the Submission Neighbourhood Plan is fully compatible with the European Convention on Human Rights. It has been prepared with full regard to national statutory regulation and policy guidance, which are both compatible with the Convention. The Plan has been produced in full consultation with the local community. The Plan does not contain policies or proposals that would infringe the human rights of residents or other stakeholders over and above the existing strategic policies at national and district-levels, as demonstrated below.” No evidence has been put forward to demonstrate that this is not the case.

Taking all of the above into account, I am satisfied that the Berkswell Neighbourhood Development Plan is compatible with EU obligations and that it does not breach, nor is in any way incompatible with, the ECHR.

## Conclusions

This Independent Examiner's Report recommends a range of modifications to the Policies, as well as some of the supporting content, in the Plan. Modifications have been recommended to effect corrections, to ensure clarity and in order to ensure that the Basic Conditions are met. Whilst I have proposed a significant number of modifications, the Plan itself remains fundamentally unchanged in the role and direction set for it by the Qualifying Body.

I therefore conclude that, subject to the modifications recommended, the Berkswell Neighbourhood Development Plan:

- has regard to national policies and advice contained in guidance issued by the Secretary of State;
- contributes to the achievement of sustainable development;
- is in general conformity with the strategic policies of the development plan for the area;
- is compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations;
- does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017(d).

**On that basis I *recommend* to the Solihull Metropolitan Borough Council that, subject to the incorporation of modifications set out as recommendations in this report, it is appropriate for the Berkswell Neighbourhood Development Plan to proceed to referendum.**

### Referendum Area

As noted earlier, part of my Examiner role is to consider whether the referendum area should be extended beyond the Plan area. I consider the Neighbourhood Area to be appropriate and no evidence has been submitted to suggest that this is not the case. I therefore ***recommend*** that the Plan should proceed to referendum based on the Neighbourhood Area as approved by the Solihull Metropolitan Borough Council on 18<sup>th</sup> July 2017.

**Recommendations:** (this is a listing of the recommendations exactly as they are included in the Report)

Rec	Text	Reason
1	Remove the “Submission Plan Autumn 2018” label on the front cover.	For clarity
2	Review the “Contents” pages once the text has been amended to accommodate the recommendations from this Report.	For clarity and accuracy
3	Remove the section “What is a Neighbourhood Development Plan?” on page 3 and renumber subsequent sections accordingly.	For clarity
4	Add a footnote reference for the “NDP website” mentioned in paragraph 3.8.	For clarity
5	Add after the statement of Objectives on page 11: ‘Not all of these Objectives will be pursued through the land-use Neighbourhood Plan and an Appendix addresses other actions for the Parish Council’.	For clarity
6	Under the sub-heading “5.Housing in Balsall Common”:  6.1 In paragraph 5.1 delete the last sentence: “See Maps in Appendix 2.”  6.2 In the last sentence of paragraph 5.16 delete “minimum”.	For clarity and correction
7	Amend Policy B1: New Housing – General Principles as follows:  7.1 Reword criterion 1 as: ‘The reuse of brownfield sites will be preferred to the loss of greenfield land’.  7.2 Combine criteria 2b, 2c & 2d and reword as follows: ‘Layouts should be designed to help facilitate social cohesion and community security. In the Berkswell Neighbourhood Area context this suggests that larger developments should have character areas of around 250 dwellings and all developments should aim for clusters of around 20 dwellings. Good legibility <sup>7</sup> is required but the security and amenity of the development should not be compromised by excessive through route permeability’; renumber subsequent criteria accordingly.  7.3 In criterion 2e replace the wording after “pavements” with ‘and tree planting wherever possible’ (picked up from Policy B3).  7.4 In criterion 2f add ‘attractive and’ before accessible.  7.5 Combine criteria 2g, 2i and 2j to read: ‘Quality public open and children’s play space should be provided in accordance with the Solihull Green Space Strategy Review <sup>8</sup> or the successor document. New open and play spaces should normally be located between new and existing housing to serve the whole community; play spaces should benefit from natural surveillance. Where this location of the open space is not feasible, to help the transition the distance between new and existing dwellings should be toward the upper end of the	For clarity and correction and to meet Basic Conditions 1 & 3

	<p>range in the Solihull Housing Development Guidelines SPG6 or successor document ie around 30m'; renumber criterion 2k accordingly.</p> <p>7.6 Simplify criterion 3a as: 'A site specific survey should identify which mature trees and hedgerows make the most significant contribution to local landscape character and biodiversity and should therefore be retained and protected. New planting to replace losses or enhancing existing planting should use characteristic native species.'</p> <p>7.7 Within criterion 3b put the full name of the Natural Environment and Rural Communities Act 2006 alongside the acronym and provide a footnote source reference; in the second sentence add 'may' between "habitats" and "include".</p> <p>7.8 At the request of the Environment Agency add an additional criterion (as c with subsequent numbers amended accordingly) as follows: 'All new development should be located within Flood Zone 1 and where this is not viable, development must be steered to land at the lowest flood risk, following the application of the Sequential Test'.</p> <p>7.9 Within criterion 3c add a footnote source reference for the SuDS hierarchy.</p> <p>7.10 Within criterion 3d replace "landscape buffer zones" with 'narrow corridors' and delete the second sentence (section 2 having addressed this matter).</p> <p>7.11 For clarity, simplify criterion 4a by removing "overlook, existing 2 storey properties and their position and design enhances the development. Such development should not".</p> <p>7.12 Reword criterion 4c as: 'Provision should be made per dwelling for electric vehicle charging'.</p> <p>7.13 Within criterion 4d delete "and grouped together to create design compatibility'.</p> <p>7.14 Reword criterion 4e as: 'Suitable provision should be made within curtilages for secure storage and refuse/recycling bin enclosures'.</p> <p>7.15 Within criterion 5a replace ". The mix should include but not be limited to" with 'such as'.</p> <p>7.16 Delete criterion 5c (as it duplicates an item within 5a).</p> <p>7.17 Delete the last sentence of the Policy beginning "Where developers consider..."</p>	
8	Replace the footnote presently on page 19 with a reference to the NPPF 2019 Glossary.	For clarity and correction
9	<p>Within Policy B2:</p> <p>9.1 Number the paragraphs.</p>	For clarity

	9.2 In the first line make “development” plural and add ‘around’ between “of” and “1”.	
10	<p>Under the heading “Protecting [the] Rural Area and Local Landscape Character”:</p> <p>10.1 Delete paragraph 7.5 and renumber subsequent paragraphs accordingly.</p> <p>10.2 Within the first bullet point of paragraph 7.10 add ‘(sic) after the word “boarded”.</p> <p>10.3 Add footnotes to reference the HER and the Preliminary Ecological Report in paragraphs 7.14 and 7.19 respectively.</p>	For clarity and to meet Basic Condition 1
11	<p>Under the headings “Policy B3: Protecting Local Landscape and Built Character” and “Landscape Character”:</p> <p>11.1 Within criterion 1 between “character” and “as” add ‘within the Neighbourhood Area’; add a footnote reference for the Solihull Borough Landscape Character Assessment.</p> <p>11.2 Combine criteria 2 &amp; 3 and reword as follows:  ‘Landscape features of heritage or wildlife value (as identified in the Historic Environment Summary Report* and the Preliminary Ecological Report*) should be conserved according to their significance. Where mitigation measures are appropriate the evidence based proposals should include for locally-appropriate features such as tree-planting, hedges and ponds.’  [* indicates footnote required]</p>	For clarity and to meet Basic Condition 1
12	<p><i>Under the headings “Policy B3: Protecting Local Landscape and Built Character” and “Built Character”:</i></p> <p>12.1 <i>Swap criteria 2 &amp; 3.</i></p> <p>12.2 <i>Within the renumbered criterion 3 delete the wording after “roofs”.</i></p>	For clarity and to meet Basic Condition 1
13	<p>Under the headings “Policy B3: Protecting Local Landscape and Built Character” and “Heritage Assets”:</p> <p>13.1 For clarity in criterion 1 replace “between” with ‘with’ and delete “and any aspect of the proposal”.</p> <p>13.2 Within criterion 2:  13.2.1 Replace the first sentence with: ‘The Parish’s heritage assets should be conserved in a manner appropriate to their significance;  13.2.2 Delete the second sentence (as it repeats criterion 1);  13.2.3 Within the third sentence replace the words “whether it has been” with ‘as appropriate it should be’.</p> <p>13.3 Delete criterion 5.</p>	For clarity and correction and to meet Basic Conditions 1 & 3

14	Under the headings “Policy B3: Protecting Local Landscape and Built Character” and “Large Agricultural Buildings in the Open Countryside”, in the latter heading replace “Agricultural” with ‘Non-residential’.	For clarity and correction and to meet Basic Condition 1
15	Under the heading “Local Green Spaces”:  15.1 Reword paragraph 7.28 as: ‘One site is proposed as a Local Green Space for protection in Policy B4. This is the triangle of land off Lavender Hill; Lane which includes the football ground – see Map 4.  15.2 Delete paragraphs 7.29 & 7.30 and renumber 7.31 as 7.29.  15.3 In paragraph 7.31 delete “second”.  15.4 Delete pages 35 – 37; on page 38 delete “Table 2” from the heading; on page 40 amend “Map 4b” to ‘Map 4’.	For clarity and correction and to meet Basic Condition 1
16	Reword Policy B4 as:  ‘The following green area as shown on Map 4 is designated as a Local Green Space: The Football Ground on Lavender Hall Lane, Balsall Common.’	For clarity and correction and to meet Basic Condition 1
17	Under the headings “Policy B5: Berkswell Conservation Area” and “New Buildings” within criterion 5 delete “usually traditional ones”.	For clarity and to meet Basic Condition 1
18	Under the headings “Policy B5: Berkswell Conservation Area” and “Extensions” within criterion 2 replace “fully justifiable” with ‘fully justified’.	For clarity and correction
19	Under the headings “Policy B5: Berkswell Conservation Area” and “Conversions”:  19.1 Replace the heading “Conversions” with ‘Conversion or Sub-Division of Non-Residential Properties’.  19.2 Replace the opening sentence with: ‘Proposals for conversion or sub-division will be supported where the existing building can accommodate such alteration without substantial or complete rebuilding, and where the alterations do not detract from the character of the original building, the character and appearance of the Conservation Area, or the special interest and setting of any relevant listed buildings.’	For clarity and correction and to meet Basic Conditions 1 & 3
20	Under the headings “Policy B5: Berkswell Conservation Area” and “Views and Open Spaces” in criterion 2 replace “maintained” with ‘conserved’.	For clarity and to meet Basic Condition 1

21	<p><i>Under the heading “Policy B6: Conversions of Former Agricultural Buildings”:</i></p> <p><i>21.1 Add to the title ‘in the Open Countryside’.</i></p> <p><i>21.2 Add paragraph numbering.</i></p> <p><i>21.3 Within the first criterion replace “sensitive to the existing character and form” with ‘sensitive to the existing character, form and any special designation’.</i></p> <p><i>21.4 Within the fourth criterion delete the first and last sentences and add ‘or if necessary made suitable’ between “suitable” and “and”.</i></p>	For clarity and correction and to meet Basic Conditions 1 & 3
22	Within Policy B7 at the end of the first sentence add ‘provided these do not fall within Flood Zone 3’.	For clarity and to meet Basic Conditions 1 & 3
23	<p>23.1 Delete paragraph 10.13 except for the sections 4 &amp; 5 within that (which add information to that in paragraphs 10.11 &amp; 10.12) which should be given their own paragraph numbers and paragraph 10.14 renumbered accordingly.</p> <p>23.2 Reword Policy B8 as follows:  ‘Development proposals must have appropriate regard for the higher levels of car ownership evident within the Berkswell Neighbourhood Area. Whilst suitable parking provision must be integral to the design of schemes, the number of off-street parking spaces for residents and visitors should be justified and provided on the basis of an assessment of:</p> <ul style="list-style-type: none"> <li>a) the accessibility of the development;</li> <li>b) the type, mix and use of development;</li> <li>c) the availability of and opportunities for public transport;</li> <li>d) local car ownership levels; and</li> <li>e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles.</li> </ul> <p>As far as is practical, the guidance provided within the Manual for Streets17 and Secured by Design should inform the location and design of vehicle and cycle parking provision.</p>	For clarity and correction and to meet Basic Conditions 1 & 3
24	In Policy B9 add “where applicable” to paragraph 1 between “should” and “include”.	For clarity and correction and to meet Basic Condition 1
25	<p>Within the first paragraph of Policy B10:</p> <p>25.1 Move the “and” from the end of criterion 2 to the end of criterion 1.</p>	For clarity and correction and to meet

	25.2 Alter criterion 3 to become a second paragraph for the Policy and reword as: 'Where proposals are for the reuse or conversion of former agricultural buildings, workshops or previously used brownfield sites they should demonstrate appropriate regard for Policy B6.'	Basic Condition 1
26	Replace the content under and the heading "12. Next Steps" with a new heading 'Review' and new content: 'The Qualifying Body will monitor the impact of the Plan and undertake a review of the Plan no later than 3 years after the adoption of the new Local Plan.'	For clarity
27	27.1 Delete Appendices 1 & 2.  27.2 Bring together Appendices 3, 4 & 5 as an Annex for non-planning content.	For clarity and to meet Basic Condition 1