

TITCHFIELD NEIGHBOURHOOD PLAN 2011 - 2036

(Submission Version)

Report of the Examination into the
Titchfield Neighbourhood Plan 2011 - 2036

Timothy Jones, Barrister, FCI Arb,
Independent Examiner



No 5 Chambers,
Birmingham - London - Bristol - Leicester

To Fareham Borough Council
And to Titchfield Neighbourhood Forum

26th April 2019.

<u>Contents</u>	Page(s)
1. Introduction	1-2
- Neighbourhood planning	1
- Appointment and role	1 - 2
2. Preliminary Matters	2
- Public consultation	2
- Other statutory requirements	2
3. The Extent and Limits of an Examiner's Role	2 - 4
4. Consideration of Representations	4 - 5
5. Public Hearing and Site Visits	5
6. The Basic Conditions and Human Rights	5 - 7
- Regard to national policies and advice	5 - 6
- Contributing to the achievement of sustainable development	6
- General conformity with the development plan	7
- EU obligations	8
- Conservation of Habitats and Species Regulations	8
- Human rights	8
7. The nature of the area	9
8. Housing	9 - 11
9. The contents of the Draft TNP	11 - 21
10. Updating	21
11. Referendum Area	21
12. Summary of Main Findings	21 - 22
Appendix A: Recommended Modifications	23 - 28
Appendix B: Abbreviations	29

Report of the Examination into the Titchfield Neighbourhood Plan

1. Introduction

Neighbourhood planning

1. The Localism Act 2011 Part 6 Chapter 3 introduced neighbourhood planning, including provision for neighbourhood development plans. A neighbourhood development plan should reflect the needs and priorities of the community concerned and should set out a positive vision for the future, setting planning policies to determine decisions on planning applications. If approved by a referendum and made by the local planning authority, such plans form part of the Development Plan for the neighbourhood concerned. Applications for planning permission should be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

*Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. ... neighbourhood forums can use neighbourhood planning to: set planning policies through neighbourhood plans to determine decisions on planning applications...*¹

2. This report concerns the Submission (Regulation 16) Version of the Titchfield Neighbourhood Plan 2011 - 2036 (“the Draft TNP”).

Appointment and role

3. Fareham Borough Council (“FBC”), with the agreement of Titchfield Neighbourhood Forum (“TNF”), has appointed me to examine the Draft TNP. I am a member of the planning bar and am independent of FBC, TNF, and of those who have made representations in respect of the Draft TNP. I have been trained and approved by the Neighbourhood Planning Independent Examiner Referral Service. I do not have an interest in any land that may be affected by it.

4. My examination has involved considering written submissions and an unaccompanied site visit on Friday 8th February 2019. This was a very wet day. I therefore carried a second site visit in much better weather on Saturday 6th April. The site visits helped me to gain a sufficient impression of the nature of the area for the purpose of my role. I have considered all the documents with which I have been provided.

5. My role may be summarised briefly as to consider whether certain statutory requirements have been met, to consider whether the Draft TNP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in paragraph 12 below applies and, if appropriate, to consider the referendum area. I must act

¹ NPPF (2012), para 183.

proportionately, recognising that Parliament has intended the neighbourhood plan process to be relatively inexpensive with costs being proportionate.

2. Preliminary Matters

Public consultation

6. I am satisfied that TNF took public consultation very seriously and am greatly impressed by the Consultation Statement, which shows more extensive consultation than is often the case. I also note paragraphs 4.3 and 4.4 of the draft TNP and the appendices to which these refer. I do not consider there has been any failure in consultation, let alone one that would have caused substantial prejudice. The consultation was sufficient and met the requirements of the Neighbourhood Planning (General) Regulations 2012 (“the General Regulations”).

Other statutory requirements

7. I am also satisfied of the following matters:

- (1) The Draft TNP area is shown on the cover of and Appendix 14 to the Draft TNP. TNF, a designated neighbourhood forum, is authorised to act in respect of this area (Town and Country Planning Act 1990 (“TCPA”) s61F (1) as read with the Planning and Compulsory Purchase Act 2004 (“PCPA”) s38C (2)(a));
- (2) The Draft TNP does not include provision about development that is excluded development (as defined in TCPA s61K), and does not relate to more than one neighbourhood area (PCPA s38B (1));
- (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2));
- (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)); and
- (5) The Draft TNP specifies the period for which it is to have effect, namely 2011 - 2036, as required by PCPA s38B(1)(a).

3. The Extent and Limits of an Examiner’s Role

8. I am required to consider whether the Draft TNP meets the basic conditions specified in TCPA Sch 4B para 8(2) as varied for neighbourhood development plans, namely:

- (a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;
- (d)² The making of the Plan contributes to the achievement of sustainable development;

² The omission of (b) and (c) results from these clauses of para 8(2) not applying to neighbourhood development plans (PCPA s38C (5)(d)).

(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.

9. There is one prescribed basic condition:³ *“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.”* Page 2 of the Condition Statement omits this condition, but I am satisfied that the matter has been considered properly.

10. The combined effect of TCPA Sch 4B para 8(6) and para 10(3)(b) and of the Human Rights Act 1998 means that I must consider whether the Draft TNP is compatible with Convention rights. ‘*Convention rights*’ are defined in the Human Rights Act 1998 as (a) Articles 2 to 12 and 14 of the European Convention on Human Rights (“the Convention”), (b) Articles 1 to 3 of its First Protocol, and (c) Article 1 of its Thirteenth Protocol, as read with Articles 16 to 18 of the Convention. The Convention rights that are most likely to be relevant to town and country planning are those under the Convention’s Article 6(1), 8 and 14 and under its First Protocol Article 1.

11. In my examination of the substantial merits of the Draft TNP, I may not consider matters other than those specified in the last three paragraphs. In particular I may not consider whether any other test, such as the soundness test provided for in respect of examinations under PCPA s20, is met.⁴ Rather, it is clear that Parliament has decided not to use the soundness test, but to use the, to some extent, less demanding tests in the basic conditions. It is important to avoid unduly onerous demands on qualifying bodies, particularly for communities like Titchfield with small populations. This is not a plan that requires a Strategic Environmental Assessment and the increased requirements in such cases do not apply here. It is not my role to rewrite a neighbourhood development plan to create the plan that I would have written for the area.

12. Having considered the basic conditions and human rights, I have three options, which I must exercise in the light of my findings. These are: (1) that the Draft TNP proceeds to a referendum as submitted; (2) that the Draft TNP is modified to meet basic conditions and then the modified version proceeds to a referendum; or (3) that the Draft TNP does not proceed to referendum. If I determine that either of the first two options is appropriate, I must

³ Sch 2 of the General Regulations prescribes this.

⁴ PPG Reference ID: 41-055-2018022.

also consider whether the referendum area should be extended. My power to recommend modifications is limited by statute in the following terms:

The only modifications that may be recommended are—

(a) modifications that the examiner considers need to be made to secure that the draft [NDP] meets the basic conditions mentioned in paragraph 8(2),

(b) modifications that the examiner considers need to be made to secure that the draft [NDP] is compatible with the Convention rights,

(c) modifications that the examiner considers need to be made to secure that the draft [NDP] complies with the provision made by or under sections 61E(2), 61J and 61L,

(d) modifications specifying a period under section 61L(2)(b) or (5), and

(e) modifications for the purpose of correcting errors.⁵

13. The word “only” prevents me recommending any other modifications. The fact that a modification seems desirable is not a sufficient ground in itself to recommend it. So, for example, a suggested modification which gives additional information cannot be justified simply because some would find that information helpful. The same applies to a representation that a statement might be better included in some other document. It is not within my powers to recommend avoidance of repetition or other matters that some may consider unnecessary, unless it happens to come with one of the categories specified in the preceding paragraph. A representation that the draft TNP has not taken an opportunity would only be relevant if it related to my statutory role. I must not take an excessively restrictive view of the power to recommend modifications, but must bear in mind Lindblom LJ’s explanation of its extent in his judgment in Kebbell Developments Ltd v. Leeds City Council.⁶ I may not recommend a modification that would put the draft NDP in breach of a basic condition or of human rights.

14. It is not my role to consider matters that are for the determination of other bodies such as FBC. Nor is it my role to consider matters that an NDP could consider, but which are not considered in the Draft TNP, unless this is necessary for my role as explained above.

4. Consideration of Representations

15. I have given all representations careful consideration, but have not felt it necessary to comment on most of them. Rather in accordance with the statutory requirement and bearing in mind the judgment of Lang J in R (Bewley Homes Plc) v. Waverley Borough Council,⁷ I

⁵ TCPA Sch 4B, para 10(3). The provisions in (a), (c) and (d) are in the TCPA.

⁶ [2018] EWCA Civ 450, 14th March 2018, paras 34 and 35.

⁷ [2017] EWHC 1776 (Admin), Lang J, 18th July 2017.

have mainly concentrated on giving reasons for my recommendations.⁸ Where I am required to consider the effect of the whole Draft TNP, I have borne it all in mind. Most recently, I have read and borne in mind the Appeal Decision⁹ of Inspector Kenneth Stone dated 12th April 2019 in respect of land south of Bellfield and east of Posbrook Lane, which I was awaiting before finalising this report.

5. Public Hearing and Site Visits

16. The general rule is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However an examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure (1) adequate examination of the issue or (2) a person has a fair chance to put a case. Since neither applied in this case, notwithstanding the representations that there should be one, I did not hold a public hearing.

17. I did consider that an unaccompanied site visit was appropriate and held one on Friday 8th February 2019. Because of the heavy rain on that day, I held a further unaccompanied site visit on Saturday 6th April.

6. Basic conditions and human rights

Regard to national policies and advice

18. The first basic condition requires that I consider whether it is appropriate that the TNP should be made “*having regard to national policies and advice contained in guidance issued by the Secretary of State*”. A requirement to have regard to policies and advice does not require that such policy and advice must necessarily be followed, but it is intended to have and does have a significant effect.

19. The principal document in which national planning policy is contained is the National Planning Policy Framework (March 2012) (“the NPPF”) and I have borne that in mind. Other policy and advice that I have borne in mind includes national Planning Practice Guidance (“PPG”). A revised version of the NPPF was issued in July 2018 and this was further revised in February 2019. However its paragraph 214 provides: “*The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.*” Its footnote 69 explains “*For*

⁸ TCPA Sch 4B, para 10(6).

⁹ APP/A1720/W/18/3199119.

neighbourhood plans, 'submission' in this context means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012." That has occurred in this case. I have therefore considered the policies in the 2012 NPPF.

Contributing to the achievement of sustainable development

20. The second basic condition means that I must consider whether the making of the Plan contributes to the achievement of sustainable development. Unless the Draft TNP, or the Draft TNP as modified, contributes to sustainable development, it cannot proceed to a referendum. This condition relates to the making of the Plan as a whole. It does not require that each policy in it must contribute to sustainable development. It does require me to consider whether constraints might prevent sustainable development and, if they might, whether the evidence justifies them. That involves consideration of site-specific constraints, both existing (including the Strategic Gap, heritage assets and their settings and flood-risk) and those proposed in the Draft TNP. The total effect of the constraints introduced by the Draft TNP when read with existing constraints should not prevent the achievement of sustainable development.

21. The bulk of the NPPF constitutes guidance on sustainable development. Its paragraph 6 says, "*The policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development... means in practice for the planning system.*"

22. I welcome the draft TNP's support for pedestrians, public transport and appropriate cycling,¹⁰ particularly policies G.A1, G.A2, P.1 and CE 2 - my site visits emphasised the problems for pedestrians in some locations. The draft TNP's emphasis on these contributes to the environmental element of sustainable development. I also note and agree with Natural England's welcoming of Traffic objective T.3 and paragraph 12.3.

23. The draft TNP's support for the neighbourhood's heritage assets, particularly chapter 13, is amply merited, is consistent with the duties imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990 and contributes to the environmental element of sustainable development. I was highly impressed by the heritage assets that I was able to view and, in some cases,¹¹ enter.

¹⁰ I wrote "*appropriate cycling*" because I see force the view that it "*is not safe to have speeding cyclists and walkers*" (draft TNP para 10.12) on the path along the disused canal. This is a very different path from the sort of towpaths along some operational canals that have lawful pedestrian and cycling use. Whether this should be widened, resurfaced or otherwise improved (and if so where and to what extent) would depend on, among other things, careful consideration of the nature conservation impact of doing so on the Solent and Southampton Water SPA and Ramsar site, on the Titchfield Canal Site of Importance for Nature Conservation and elsewhere.

¹¹ These include the ruins of Titchfield Abbey (Place House), an English Heritage managed Scheduled Ancient Monument, and the parish church, St Peter's Heritage Church (a grade 1 listed building, part of which dates from the early Saxon period). I also paid particular attention to the views of Great Posbrook from the public footpaths on field to the south of Bellfield and from Posbrook Lane.

General conformity with the development plan's strategic policies

24. The third basic condition means that I must consider whether the Draft TNP is in general conformity with the strategic policies contained in the development plan for the area of the authority.

25. The adjective 'general' allows a degree of (but by no means unlimited) flexibility and requires the exercise of planning judgement. This condition only applies to strategic policies - there is no conformity requirement in respect of non-strategic policies in the development plan or in respect of other local authority documents that do not form part of the development plan. In assessing general conformity and whether a policy is strategic, I have borne in mind helpful PPG advice.¹² I have also borne in mind the relevant part of the judgment in R (Swan Quay LLP) v Swale Borough Council.¹³

26. The most relevant parts of the development plan are FBC's Local Plan Part 1: Core Strategy (2011-2026) ("the Core Strategy"); and Local Plan Part 2: Development Sites and Policies (2015). There is an emerging Fareham Borough Local Plan ("eFBLP"). This is not the development plan for the purpose of the third basic condition; but reasoning and evidence informing the Local Plan process may be relevant to other issues.

27. The Core Strategy policies, to which the third basic condition can apply include (among other policies):

- Policy CS14, which seeks to control development outside defined settlement boundaries resisting proposals which would adversely affect its landscape character and function.
- Policy CS18 Provision of Affordable Housing, which begins:
"The Council will require the provision of affordable housing on all schemes that can deliver a net gain of 5 or more dwellings.
 - *On sites that can accommodate between 5 and 9 dwellings developers will be expected to provide 30% affordable units OR the equivalent financial contribution towards off-site provision.*
 - *On sites that can accommodate between 10 and 14 dwellings developers will be expected to provide 30% affordable units.*
 - *On sites that can accommodate 15 or more dwellings developers will be expected to provide 40% affordable units."*
- Policy CS22 Development in Strategic Gaps which provides that land within strategic gaps will be treated as countryside and that development proposals will not be permitted where they affects the integrity of the gap and the separation of settlements.

¹² Paragraphs 074 to 077 of the section on neighbourhood planning.

¹³ [2017] EWHC 420 (Admin), para 29, Dove J, 27th January 2017.

EU obligations

28. The fourth basic condition requires me to consider whether the Draft TNP breaches or is otherwise incompatible with, EU obligations. I have in particular considered the following, together with the UK statutory instruments implementing them: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); the Water Framework Directive (2000/60/EC); and the General Data Protection Regulation. I have also considered the judgment of the European Court of Justice in People Over Wind v Coillte Teoranta.¹⁴

29. I am satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality directive. I am satisfied that the making of the NDP would not breach, and be otherwise incompatible with, EU obligations and that (except to the extent to which I may recommend modification) it is not necessary to consider the matter further in this report.

Conservation of Habitats and Species Regulations

30. Within 10 kilometres of the TNP area there are 6 designated European sites, a further site currently under consideration for designation and three Ramsar sites.¹⁵ Particular care must therefore be taken. I am satisfied, especially from the Neighbourhood Planning Screening Report and Appropriate Assessment (July 2018), that it has been. I am satisfied that the making of the NDP would not be incompatible with the prescribed basic condition and that (except to the extent to which I may recommend modification) it is not necessary to consider the matter further in this report.

Human Rights

31. English planning law in general complies with the Convention. This matter can also be dealt with briefly in advance of detailed consideration of the contents of the Draft TNP. I have considered whether anything in the Draft TNP would cause a breach of any Convention right. In particular I have considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. Nothing in my examination of the Draft TNP indicates any breach of a Convention right, so that no modifications need to be made to secure that the Draft TNP is compatible with these rights. It is therefore not necessary to consider human rights in the parts of this report that deal with specific parts of the Draft TNP.

¹⁴ Case C-323/17, ECJ, 12th April 2018.

¹⁵ FBC's Neighbourhood Planning Screening Report and Appropriate Assessment – Titchfield Neighbourhood Plan (July 2018), paras 6.14 and 6.15.

7. The nature of the area

32. In considering the contents of the Draft TNP I must consider the nature of the village of Titchfield and of the TNP area as a whole. The area is mainly rural with most housing being in the village of Titchfield. According to the AECOM Housing Needs Survey population of the plan area was approximately 2,500. Substantial parts of both the western and eastern boundaries of the area are urban built-up edges. I have no hesitation in agreeing with the statement in the Core Strategy, *“The key factors shaping future development in Titchfield include its important historic environment and its position in the Meon Valley separating the two main urban areas within Fareham.”*¹⁶ The historic environment includes two conservation areas (the Titchfield Conservation Area and the Titchfield Abbey Conservation Area), Schedule Monuments and Listed Buildings. Most of the rural area (including all of the rural area that adjoins Titchfield village) is in the Strategic Gap that is subject to Core Strategy policy CS22.

8. Housing

33. A major issue is housing provision. Some representations seek no further provision. The Draft TNP, relying on a report from AECOM refers to a requirement of 153 after allowance is made for completions and for dwellings and a retirement home under construction. Woolf Bond Planning, relying on the eFBLP, considers the figure should be higher.

34. The appeal in respect of an application for up to 150 houses and other proposed development at a site to the south of Bellfield and east of Posbrook Lane has very recently been dismissed.¹⁷ The factors that an inspector considering an appeal under TCPA s78 must consider are different from those that I must address and I am not obliged to follow it. Nonetheless, there is a considerable overlap and some of the differences are of little importance. For example, while I do not consider non-strategic local policies, I have to consider national policies on which non-strategic policy is often based. I also recognise that, unlike the inspector, the version of the NPPF that I have to consider is the original 2012 version. Some of the evidence that the inspector considered is different from the evidence considered by me. I still reach the conclusion that the site should not be allocated for housing development. In particular, for the reasons given in his appeal decision, I share Inspector Stone’s assessment that the development would result in harm to a valued landscape and would conflict with policy CS14 and that great weight should be given to the harm to the setting of the listed buildings.

¹⁶ Paragraph 2.13.

¹⁷ Paragraph 15 above. FBC ref. P/17/0681/OA; Planning Inspectorate ref APP/A1720/W/18/3199119. The site concerned is shown on HSP Architects drawing 16.092.01 Rev E.

35 The eFBLP will be examined by an inspector who will apply different tests to those that apply to NDPs and who will have the advantage of having been able to consider Titchfield in the wider context of a detailed consideration of the borough as a whole. In the event of a difference between a new Local Plan adopted after the TNP and the TNP, the former will prevail.¹⁸ It is not a part of my role to attempt to determine what the eFBLP examining inspector will say. Rather my role is to consider the matters specified above.

36. Given strong central government policy in favour of more housing, more than minimal housing provision will be required. I am not satisfied that either open-market or affordable housing will be provided to a sufficient extent on windfall sites in the current Defined Urban Settlement Boundary as extended by the draft TNP (“DUSB”). As far as housing in general is concerned there is no evidence that 153 dwellings can be provided in the DUSB and the justification in paragraph 1.2 of the draft TNP is flawed. When using past windfalls to estimate future delivery of windfalls, “dwellings having been completed” should not be added to dwellings “under construction in the same period.” Further, even if this had been appropriate, this would not result in a figure of 153. There are occasions when a gap in pre-examination evidence can be filled by an examiner applying planning judgment, but this is not such a case. As far as affordable housing is concerned, paragraph 63 of the 2018 NPPF¹⁹ and Core Strategy Policy CS18²⁰ are likely to limit the provision of affordable housing on windfall sites. That is a concern, not least because: as the Draft TNP points out “*very few young people can afford to buy property here*”²¹; TNF’s housing needs survey showed a strong preference for affordable housing²²; and the Core Strategy states in respect of the district as a whole “[t]here is a high demand for affordable housing in the area”.²³

37. The AECOM report has been produced by reputable consultants and is specific to Titchfield. It is the best evidence before me and is sufficiently robust for its purpose; and the Draft TNP treats this appropriately in reaching a figure of 153. I bear in mind and sympathise with the views of objectors about the attractive nature of Titchfield and the amount of traffic on and nature of local roads, but these are not unusual in the Home Counties and development needs must be met. Those views do however provide grounds for not

¹⁸ PCPA s38(5) states, “*If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan*”.

¹⁹ This begins “*Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).*” For housing, ‘major development’ is development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.

²⁰ Paragraph 27 above.

²¹ Page 13. The same point is made in paragraph 9.1.

²² Draft TNP, para 9.5 and Appendix 7.

²³ Paragraph 2.3.

significantly exceeding the figure of 153. I am certainly not satisfied that a figure that is higher than 153 would be appropriate, although I recognise that a consideration of the district as a whole in the eFBLP may lead to a different figure. The Draft TNP should therefore retain this figure. Policy H1 read with the current DUSB as extended to a modest extent in accordance with the proposal shown map on page 18 would be unlikely to permit the construction of 153 dwellings.²⁴

38. There are four ways in which modifying policy might avoid this prevention of the achievement of sustainable development, namely: by allocating sites, for example by extending the DUSB to a significantly greater extent than the Draft TNP proposes; by permitting development outside the DUSB to the extent needed to achieve the requirement; by shortening the Plan period considerably; by removing policy from the draft TNP and leaving housing to be determined on the basis of national and district policy.

39. The SEA Screening Report repeatedly relies upon the absence of allocations and I cannot be confident that it would have reached the same conclusion in respect of any site I might recommend. A substantial extension of the DUSB onto greenfield land that did not have planning permission would not be in general conformity with the development plan's strategic policies. Also this is not a case where there has been appropriate public consultation on possible alternative sites. In these circumstances I cannot recommend allocating further land for housing.

40. This is not a case where I could properly devise a criteria-based policy for new housing sites. There has been no screening of such an approach and no consultation upon it.

41. This is also not a case where a shortening of the draft NDP period would be appropriate, as might be the case if some land were allocated but not enough for the plan period.

42. I have therefore concluded that housing provision should be determined on the basis of national and district policy.

9. The contents of the Draft TNP

Contents

43. There are a few errors in the Contents pages. The draft TNP does not contain a policy H5 (Community Infrastructure), so the reference to this on page 3 should be deleted. There are no appendices 16, 17, 25 and 30, so these should not appear in the list of contents.

<u>Recommended modification 1</u>
--

<i>Page 3</i>

²⁴ Draft TNP, para 9.3.

Delete the reference to policy H5 Community Infrastructure.

Page 5

Delete the references to Appendices 16, 17, 25 and 30 and renumber appropriately.

Chapter 1

44. It may be better practice to include wider community aspirations than those relating to development and use of land in an annex or companion document. However PPG advice,²⁵ to which I have regard, makes it clear that the important thing is that they “*should be clearly identifiable*” and that setting them “*out in a companion document or annex*” is only one way of doing this. Further I do not consider that transferring such aspirations to another document is of sufficient importance to justify the extensive work that would be required to do this at this stage. It is also important to avoid costs that have no significant benefit. The important thing is to distinguish clearly aspirations from policies. In general the draft TNP identifies aspirations with sufficient clarity to avoid confusion. Where it does not, the matter can be rectified by a modest modification. It is also important that aims and objectives are clearly distinguished from policies.²⁶ The Draft TNP does this.

45. On the evidence available, paragraph 1.2 overstates the situation.

Recommended modification 2

Page 9, paragraph 1.2, 2nd sentence

Replace “The justification for the housing needs being met by windfall sites” with “The justification for the housing needs being partly met by windfall sites”.

46. The final sentence of paragraph 1.4 sounds like a policy and is to a substantial extent contrary to permitted development rights. It is not appropriate.

Recommended modification 3

Page 9, paragraph 1.4

Delete the final sentence and do not replace it.

Chapter 5

47. The first sentence of paragraph 5.2 refers to the wrong policy.

48. The proposed minor extension to the DUSB to include existing properties along Southampton Hill, which I agree is already “*an integral part of the village footprint*”²⁷ and

²⁵ Paragraph: 004 Reference ID: 41-004-20170728.

²⁶ Bassetlaw v Secretary of State [2019] EWHC 556 (Admin), Andrews J., para 16.

²⁷ Draft TNP p17.

which is particularly sustainably located, does not take the Draft TNP out of general conformity with the development plan's strategic policies. I note that the definition of 'previously developed land' in NPPF 2012's glossary may weigh against housing in private residential gardens²⁸ and also that, if such development is permitted, its small scale is likely to mean that it does not include affordable housing.

Recommended modification 4

Page 17, paragraph 5.2, line 1 and page 18 Map 2

In the 1st line, replace "H.3" with "DUSB.1"

Chapter 6 and 7

Pages 19, 22, 24

49. Since I am recommending that policy H1 should no longer deal solely with windfall development and should be renamed, appropriate modifications should be made where the phrase "Policy H1, Windfall Development" appears.

Recommended modification 5

Page 19

Replace "Policy H1, Windfall Development" with "Policy H1 Housing Development".

Chapter 7

50. The italics in paragraph 7.2 give the impression that words concerned are quotes, when some are not. This should be corrected.

Recommended modification 6

Page 21, paragraph 7.2, text in italics

Convert this to plain text and in the last grammatical paragraph replace "NPPF, para 9" and "NPPF 2012 paras 9 and 10".

51. Table 1 does not mention policies HT1 and HT2. It should.

Recommended modification 7

Page 22, bottom of Table 1

Insert additional rows for policies HT1 Preserving Historic Environment and HT2 Archaeological Assessment and complete appropriately.

52. Table 1 does not mention policies HT1 and HT2. It should.

²⁸ The same applies to the definition in NPPF 2018's glossary.

Recommended modification 8

Page 24, bottom of Table 2

Insert additional rows for policies HT1 Preserving Historic Environment and HT2 Archaeological Assessment and complete appropriately.

Chapter 9 Housing

53. Paragraph 9.2 needs updating.

Recommended modification 9

Page 27, paragraph 9.2

Replace the second grammatical paragraph within paragraph 9.2 with “A revised version of the NPPF was issued in July 2018 and this was further revised in February 2019. As a result it is likely that FBC will reassess the housing requirement for the borough.”

54. Paragraph 9.6’s final grammatical paragraph refers to a site outside the draft TNP area in the eFBLP. While it is wrong in principle for an NDP to support a development proposal outside its area, it can record what is said in the adopted development plan and matters of incontrovertible fact.

Recommended modification 10

Page 30, paragraph 9.6

Replace the last grammatical paragraph in paragraph 9.6 with “The FBLP records that a major housing allocations at Hunts Pond Road, Titchfield Common had planning permission subject to legal agreement. Planning permissions have been granted and 310 dwellings were completed in the period 2008 to 2014. This site is just outside the NP area, adjacent to the Titchfield Ward boundary and less than 1 km to the west of the Plan area.”

55. Paragraph 9.7 should describe the emerging plan correctly.

Recommended modification 11

Page 31, paragraph 9.7, Aim

Replace “Emerging Plan 2036” with “Draft Fareham Local Plan 2036”.

56. As it stands in the submission draft Policy H1 was not supported by sufficient evidence. There was no basis for believing that either the general need for housing or the need for affordable housing could be met from windfall sites alone. For the reasons given in the section on housing, above it should be modified to provided that housing provision should be determined on the basis of national and district policy.

Recommended modification 12

Policy H1 should be modified to read:

“Policy H1 Housing Development:

So far as practicable housing growth of 153 dwellings will be met by small-scale infill development within the Titchfield DUSB. To the extent that this is not practicable applications will be considered on their merits in accordance with national and local policy”.

All references in the Draft TNP to ‘Policy H1 Windfall Development’ should be modified to ‘Policy H1 Housing Development’.

57. NPPF 2012 emphasises the importance of good design.²⁹ In particular its paragraph 56 states that “*good design is a key aspect of sustainable development*” and its paragraph 58 states: “*neighbourhood plans should develop robust and comprehensive policies that set out the quality of development that will be expected for the area.*” The main policy in the Draft TNP that addresses this is policy H4.³⁰ I agree with Historic England’s comment: “*We do not consider that Policy H.4 is a “comprehensive” policy*”.³¹ The policy is not robust and comprehensive.³² I have considered how that could be rectified and concluded that the best way is to incorporate non-policy text on which there has been consultation and where in my opinion it is appropriate.

58. To some extent, I share FBC’s concern about the Word “*acknowledges*” and recommend replacing it with “*bears in mind*”. I do however recognise that design policies do not have to be precise and can leave decisions to planning judgement.

59. I have borne in mind the statement “*The Plan clearly states that any development in the future must be of good quality design which respects the existing style and scale of buildings within the village*”.³³ This should be policy. I have also borne in mind and given weight to Historic England’s views.

Recommended modification 13

Page 32

Replace policy H4 with:

²⁹ Particularly the Ministerial foreword, paragraphs 8, 9, 17, 28, 56-66, and 125.

³⁰ I also in particular note (in the specific context of energy efficiency) its policy BE1.

³¹ Page 3 of its letter of 11th January 2019.

³² I recognise that ‘design’ can be difficult for qualifying bodies and that, to some extent, the nature of the policy in the submission draft results from deletions following representations.

³³ Condition statement, page 6.

“Development Design Development that takes the opportunities available for enhancing local distinctiveness will be supported where it:

- a) demonstrates good quality architectural and landscape design that reinforces or promotes the character of the surrounding area and respect the existing style and scale of buildings within the area;
- b) replaces poor design with high quality design in keeping with the character of the surrounding area;
- c) bears in mind established building lines;
- d) where a conservation area is affected, bears in mind the relevant strategy and assessment;
- e) retains as many existing trees and hedges as possible within sites and along the boundaries;
- f) provides adequate parking (in accordance with FBC Residential Car Parking Standards SPD, Table 1).”

Chapter 10

60. The beginning of paragraph 10.14 mixes the adopted FBC’s Local Plan Part 1: Core Strategy with the eFBLP. The inclusion of the footnote number is confusing and serves no purpose.

Recommended modification 14

Page 41, paragraph 10.14, box

Replace the first three lines with:

“Transport Policy

The FBC’s Local Plan Part 1 Core Strategy states:”

In line 4, delete “32”.

61. The phrase “*seek to respond*” in policy G.A1 is weak and imprecise. I share FBC’s view that it should be replaced with the clearer “*maximise*”.

Recommended modification 15

Page 42, paragraph 10.15, policy G.A1

Replace “seek to respond to” with “maximise”.

62. Policy G.A2 is too broad applying to all new development, including for example replacement buildings that have no effect on traffic and development for which there was no potential relevant cycle link.

Recommended modification 16

Page 42, paragraph 10.15, policy G.A2

New development that is likely to contribute to increased private motor-vehicle mileage should provide or support cycling routes to other areas, communities and the National Cycling Network or otherwise mitigate their traffic impact.

63. I share FBC's view that "must comply" in policy P.1 is too forceful. There may be occasions, such as adverse impact on a heritage asset, where full compliance is not appropriate.

Recommended modification 17

Page 45, paragraph 10.16, policy P1

Replace the first sentence of this policy with:

"New development within the Titchfield Neighbourhood Plan area should include appropriate levels of parking provision in line with the adopted Residential Parking Standards SPD."

Chapter 11

64. The map on page 48 should reflect the defined urban settlement boundary recommended above.

Recommended modification 18

Page 48, map 6

Alter the map to show the defined urban settlement boundary.

65. I share FBC's view that wording of policy CE.1 is unclear and confusing. It is also appropriate to specify the area concerned. There is no justification for this applying to the whole plan area and it seems to be intended for the village centre, which I am satisfied merits protection. The centre is identified on map 6 as the Square, most of High Street, about a third of South Street and a little of Church Street. This is consistent with the draft TNP page 4, the Condition Statement page 4 and the Core Strategy's strategic objective SO4 and policy CS3.

Recommended modification 19

Page 50, policy CE 1

Replace the text of the policy with

“Proposals that result in the loss of retail and business units in the village centre identified by blue colouring on Map 6 will be resisted unless they result in new or improved employment opportunity.”

66. Policy CE 2 contains a note from revoked government policy defining ‘walking distance’. This is not appropriate in a policy. Since the phrase ‘walking distance’ is not used elsewhere in the Plan, there is no need to include a definition of it.

Recommended modification 20

Page 50, policy CE 2

Delete the Note.

Chapter 12

Page 54 and 60

67. Assets of community value are a matter solely for FBC, but may be mentioned.

68. Paragraph 12.4 has not identified any specific spaces for local green space designation. In the absence of specific proposals it has not been necessary for me to consider the suitability of any of them for this designation. The absence of any recommended modification in respect of this paragraph does not indicate a view on the merits of designating any of the spaces indentified. Rather the paragraph indicates the sort of aspiration that may be included in an NDP.

Page 55

69. “The Neighbourhood Plan supports the production of a Biodiversity Mitigation and Enhancement Plan (BMEP)” is not appropriate in a policy. Rather it is a community aspiration, which should be identified as such.

Recommended modification 21

Page 55, policy BE2

Delete the final sentence.

Page 56

Insert: “Community Aspiration BE5

Encourage the production of a Biodiversity Mitigation and Enhancement Plan”.

Page 62, paragraph 13.3

70. It is not correct to describe an unclassified road, Mill Lane, as a main road, although it is busy.

Recommended modification 22

Page 62, paragraph 13.3, 2nd grammatical paragraph, 2nd sentence

Delete: “main”.

Page 64

71. I am concerned that the last two sentences in the first paragraph do not address the nature conservation impact of upgrading the canal path and ensuring a steady flow of clean water. Since whether these would have an impact on habitats has not been assessed the sentences should be removed. Also, the plan should not support actions outside the neighbourhood area.

Recommended modification 23

Page 64, 1st grammatical paragraph

Delete the last two sentences and replace with “Provided this does not cause harm to nature conservation, it is desirable that the canal path is upgraded to enable all-year use by pedestrians and that the water in the canal is clean and flowing.”

Page 66

72. Policy HT.1 is worded so as to apply to all development, although some may have no effect at all on the historic environment. It should be reworded.

Recommended modification 24

Page 66, policy HT.1

Replace “fail to conserve or enhance” with “harm”.

73. I see no objection in principle to a policy on archaeological assessment and there can be benefits in giving the requirement the force of development plan policy. However, there is no reason to exclude all areas that are not Conservation Areas.

Recommended modification 25

Page 66, policy HT.2

Replace the policy with: “On sites where there is reason to believe that there may be archaeological remains, development that may disturb those remains will not be permitted unless an archaeological assessment has been undertaken and, if merited, further investigation carried out.”

Insert the following supporting text:

“Due to the historical importance of the area, archaeological assessment may be required. The showing of an archaeological alert on Hampshire County Council’s planning constraint maps is likely to necessitate an assessment.”

Page 68

74. This should record the most important Conservation Area documents in the list of supporting evidence.

Recommended modification 26

Page 68

Add to the list of supporting documents:

“Conservation Area Character Appraisal and Management Strategy for Titchfield Conservation Area

Titchfield Abbey Conservation Area Character Assessment for the Titchfield Abbey Conservation Area.”

Chapter 15

75. The glossary of terms contains some inaccuracies that need to be corrected to reflect the relevant statutory provisions and NPPF guidance.

Recommended modification 27

Page 70, Glossary

Replace the following definitions as follows

“Backland is land that lies behind existing development and does not front a road, such as land in a large back garden or a field accessed by a way between existing housing”.

“Brownfield land (also called previously developed land) is land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by

landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”

“Conservation Area: land of architectural or historic interest designated as such under the Planning (Listed Buildings and Conservation Areas) Act 1990 because it is desirable to preserve or enhance its character or appearance.”

“Greenfield land: All land that is not brownfield land as defined above”.

“Scheduled monument is a monument or site given protection under the Ancient Monuments and Archaeological Areas Act 1979.”

8. Updating

76. It well may be that certain passages need updating. Nothing in this report should deter appropriate updating prior to the referendum in respect of incontrovertible issues of primary fact.

9. The Referendum Area

77. I have considered whether the referendum area should be extended beyond the designated plan area. However I can see no reason to extend the area and therefore recommend that the referendum area be limited to the Draft TNP area. I do not consider that the premature statement at the top of page 10 of the Consultation Statement has caused any harm. This is far from a finely balanced situation.

10. Summary of Main Findings

78. I commend the Draft TNP for being in an easy-to-read style.

79. I recommend that the Draft TNP be modified in the terms specified in Appendix A to this report in order to meet basic conditions and to correct errors. I am satisfied with all parts of the Draft TNP to which I am not recommending modifications.

80. With those modifications the Draft TNP will meet all the basic conditions and human rights obligations. Specifically

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the NDP;
- The making of the NDP contributes to the achievement of sustainable development;

- The making of the NDP is in general conformity with the strategic policies contained in the development plan for the area of Titchfield (or any part of that area);
- The making of the NDP does not breach, and is not otherwise incompatible with, EU obligations;
- The making of the NDP does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 ; and
- The modified Draft TNP is in all respects fully compatible with Convention rights contained in the Human Rights Act 1998.

81 I recommend that the modified NDP proceed to a referendum, the referendum area being the area of the Draft TNP.

Timothy Jones, Barrister, FCI Arb,

Independent Examiner,

No 5 Chambers

26th April 2019.

Appendix A: Recommended Modifications

Recommended modification 1

Page 3: Delete the reference to policy H5 Community Infrastructure.

Page 5: Delete the references to Appendices 16, 17, 25 and 30 and renumber appropriately.

Recommended modification 2

Page 9, paragraph 1.2, 2nd sentence. Replace “The justification for the housing needs being met by windfall sites” with “The justification for the housing needs being partly met by windfall sites”.

Recommended modification 3

Page 9, paragraph 1.4: Delete the final sentence and do not replace it.

Recommended modification 4

Page 17, paragraph 5.2, line 1 and page 18 Map 2

In the 1st line, replace “H.3” with “DUSB.1”

Recommended modification 5

Page 19

Replace “Policy H1, Windfall Development” with “Policy H1 Housing Development”.

Recommended modification 6

Page 21, paragraph 7.2, text in italics:

Convert this to plain text and in the last grammatical paragraph replace “NPPF, para 9” and “NPPF 2012 paras 9 and 10”.

Recommended modification 7

Page 22, bottom of Table 1

Insert additional rows for policies HT1 Preserving Historic Environment and HT2 Archaeological Assessment and complete appropriately.

Recommended modification 8

Page 24, bottom of Table 2

Insert additional rows for policies HT1 Preserving Historic Environment and HT2 Archaeological Assessment and complete appropriately.

Recommended modification 9

Page 27, paragraph 9.2

Replace the second grammatical paragraph within paragraph 9.2 with “A revised version of the NPPF was issued in July 2018 and this was further revised in February 2019. As a result it is likely that FBC will reassess the housing requirement for the borough.”

Recommended modification 10

Page 30, paragraph 9.6

Replace the last grammatical paragraph in paragraph 9.6 with “The FBLP records that a major housing allocations at Hunts Pond Road, Titchfield Common had planning permission subject to legal agreement. Planning permissions have been granted and 310 dwellings were completed in the period 2008 to 2014. This site is just outside the NP area, adjacent to the Titchfield Ward boundary and less than 1 km to the west of the Plan area.”

Recommended modification 11

Page 31, paragraph 9.7, Aim

Replace “Emerging Plan 2036” with “Draft Fareham Local Plan 2036”.

Recommended modification 12

Policy H1 should be modified to read:

“Policy H1 Housing Development:

So far as practicable housing growth of 153 dwellings will be met by small-scale infill development within the Titchfield DUSB. To the extent that this is not practicable applications will be considered on their merits in accordance with national and local policy”.

All references in the Draft TNP to ‘Policy H1 Windfall Development’ should be modified to ‘Policy H1 Housing Development’.

Recommended modification 13

Page 32

Replace policy H4 with:

“Development Design Development that takes the opportunities available for enhancing local distinctiveness will be supported where it:

- a) demonstrates good quality architectural and landscape design that reinforces or promotes the character of the surrounding area and respect the existing style and scale of buildings within the area;
- b) replaces poor design with high quality design in keeping with the character of the surrounding area;
- c) bears in mind established building lines;
- d) where a conservation area is affected, bears in mind the relevant strategy and assessment;
- e) retains as many existing trees and hedges as possible within sites and along the boundaries;
- f) provides adequate parking (in accordance with FBC Residential Car Parking Standards SPD, Table 1).”

Recommended modification 14

Page 41, paragraph 10.14, box

Replace the first three lines with:

“Transport Policy

The FBC’s Local Plan Part 1 Core Strategy states:”

In line 4, delete “32”.

Recommended modification 15

Page 42, paragraph 10.15, policy G.A1

Replace “seek to respond to” with “maximise”.

Recommended modification 16

Page 42, paragraph 10.15, policy G.A2

New development that is likely to contribute to increased private motor-vehicle mileage should provide or support cycling routes to other areas, communities and the National Cycling Network or otherwise mitigate their traffic impact.

Recommended modification 17

Page 45, paragraph 10.16, policy P1

Replace the first sentence of this policy with:

“New development within the Titchfield Neighbourhood Plan area should include appropriate levels of parking provision in line with the adopted Residential Parking Standards SPD.”

Recommended modification 18

Page 48, map 6

Alter the map to show the defined urban settlement boundary.

Recommended modification 19

Page 50, policy CE 1

Replace the text of the policy with

“Proposals that result in the loss of retail and business units in the village centre identified by blue colouring on Map 6 will be resisted unless they result in new or improved employment opportunity.”

Recommended modification 20

Page 50, policy CE 2

Delete the Note.

Recommended modification 21

Page 55, policy BE2

Delete the final sentence.

Page 56

Insert: “Community Aspiration BE5

Encourage the production of a Biodiversity Mitigation and Enhancement Plan”.

Recommended modification 22

Page 62, paragraph 13.3, 2nd grammatical paragraph, 2nd sentence

Delete: “main”.

Recommended modification 23

Page 64, 1st grammatical paragraph

Delete the last two sentences and replace with “Provided this does not cause harm to nature conservation, it is desirable that the canal path is upgraded to enable all-year use by pedestrians and that the water in the canal is clean and flowing.”

Recommended modification 24

Page 66, policy HT.1

Replace “fail to conserve or enhance” with “harm”.

Recommended modification 25

Page 66, policy HT.2

Replace the policy with: “On sites where there is reason to believe that there may be archaeological remains, development that may disturb those remains will not be permitted unless an archaeological assessment has been undertaken and, if merited, further investigation carried out.”

Insert the following supporting text:

“Due to the historical importance of the area, archaeological assessment may be required. The showing of an archaeological alert on Hampshire County Council’s planning constraint maps is likely to necessitate an assessment.”

Recommended modification 26

Page 68

Add to the list of supporting documents:

“Conservation Area Character Appraisal and Management Strategy for Titchfield Conservation Area

Titchfield Abbey Conservation Area Character Assessment for the Titchfield Abbey Conservation Area.”

Recommended modification 27

Page 70, Glossary

Replace the following definitions as follows

“Backland is land that lies behind existing development and does not front a road, such as land in a large back garden or a field accessed by a way between existing housing”.

“Brownfield land (also called previously developed land) is land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”

“Conservation Area: land of architectural or historic interest designated as such under the Planning (Listed Buildings and Conservation Areas) Act 1990 because it is desirable to preserve or enhance its character or appearance.”

“Greenfield land: All land that is not brownfield land as defined above”.

“Scheduled monument is a monument or site given protection under the Ancient Monuments and Archaeological Areas Act 1979.”

Appendix B: Abbreviations

The following abbreviations are used in this report:

Convention	European Convention on Human Rights
Core Strategy	FBC's Local Plan Part 1: Core Strategy
Draft TNP	The Submission version of the Titchfield Neighbourhood Plan 2018 - 2036
DUSB	Defined Urban Settlement Boundary
eFBLP	Emerging Fareham Borough Local Plan 2011-2033
EU	European Union
FBC	Fareham Borough Council
General Regulations	Neighbourhood Planning (General) Regulations 2012 (as amended)
NDP	Neighbourhood Development Plan
NPPF	National Planning Policy Framework
p	page
para	paragraph
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
PPG	national Planning Practice Guidance
s	section
Sch	Schedule
TCPA	Town and Country Planning Act 1990 (as amended)
TNF	Titchfield Neighbourhood Forum

Where I use the verb '*include*', I am not using it to mean '*comprise*'. The words that follow are not necessarily exclusive.