

# Frogmore and Sherford Neighbourhood Plan 2014 - 2034

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## **Submission Version**

A Report to South Hams District Council on the Examination of the  
Frogmore and Sherford Neighbourhood Development Plan

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## Executive Summary

My examination has concluded that the Frogmore and Sherford Neighbourhood Plan should proceed to referendum, subject to the Plan being amended in line with my recommended modifications, which are required to ensure the plan meets the basic conditions. The more noteworthy include –

- Refocussing the heritage policy to one which designates non-designated heritage assets, but exclude from the proposed list, the public pontoon. The terms of the policy should be brought into line with national policy for such heritage assets.
- Updating the lighting guidance to reference the 2021 version of the ILP Guidance Note.
- Removing reference to “statutory minimum use of sustainable materials and minimising use of non-renewable resources”. Remove reference to environmental harm during the construction period and to set the threshold regarding neighbours’ amenity to proposals which have a *significant* negative impact.
- The affordable housing policy should seek to control occupancy of affordable houses to those with a local connection, only on rural exception sites.
- Revising the new business policy to support the principle of such development, especially if it relates to the improvement of an existing business will reuse all existing building(s).
- Removing the need to demonstrate business failure when considering the loss of existing business premises.
- Removing Frogmore children’s play area and Stabbs Lane lawn from the list of community facilities.
- Removing Mill Lane amenity grounds from the list of local green spaces.

The referendum area does not need to be extended beyond the plan area.

## Introduction

1. Neighbourhood planning is a process, introduced by the Localism Act 2011, which allows local communities to create the policies which will shape the places where they live and work. The Neighbourhood Plan provides the community with the opportunity, if it wishes, to allocate land for particular purposes and to prepare the policies which will be used in the determination of planning applications in their area. Once a neighbourhood plan is made, it will form part of the statutory development plan alongside the adopted Plymouth and South West Devon Joint Local Plan 2014-2034. Decision makers are required to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
2. The neighbourhood plan making process has been led by Frogmore and Sherford Parish Council. A Steering Group was appointed to undertake the plan preparation made up of both parish councillors and local volunteers. Frogmore and Sherford Parish Council is a “qualifying body” under the Neighbourhood Planning legislation.
3. This report is the outcome of my examination of the Submission Version of the Frogmore and Sherford Neighbourhood Plan. My report will make recommendations based on my findings on whether the Plan should go forward to a referendum. If the plan then receives the support of over 50% of those voting at the referendum, the Plan will be “made” by South Hams District Council.

## The Examiner’s Role

4. I was initially appointed by South Hams District Council in October 2021, with the agreement of Frogmore and Sherford Parish Council, to conduct this examination. My role is known as an Independent Examiner. My selection has been facilitated by the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) which is administered by the Royal Institute of Chartered Surveyors (RICS).
5. In order for me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 43 years’ experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant and director of John Slater Planning Ltd. I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I am independent of both South Hams District Council and Frogmore and Sherford Parish Council and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.

6. Under the terms of the neighbourhood planning legislation, I am required to make one of three possible recommendations:
  - That the plan should proceed to referendum on the basis that it meets all the legal requirements.
  - That the plan should proceed to referendum, if modified.
  - That the plan should not proceed to referendum on the basis that it does not meet all the legal requirements.
7. Furthermore, if I am to conclude that the Plan should proceed to referendum, I need to consider whether the area covered by the referendum should extend beyond the boundaries of the area covered by the Frogmore and Sherford Neighbourhood Plan area.
8. In examining the Plan, the Independent Examiner is expected to address the following questions
  - a. Do the policies relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
  - b. Does the Neighbourhood Plan meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 - namely that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as “excluded development” and also that it must not cover more than one Neighbourhood Plan area.
  - c. Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Localism Act and has been developed and submitted by a qualifying body?
9. I am able to confirm that the Plan does relate only to the development and use of land, covering the area designated by South Hams District Council, for the Frogmore and Sherford Neighbourhood Plan, on 25<sup>th</sup> March 2017, if it is modified in accordance with my recommendations.
10. The end date of the plan is the same as that used by the Joint Local Plan. The plan period is 2014 to 2034.
11. I can confirm that the plan does not cover any “excluded development”.
12. There are no other neighbourhood plans covering the area covered by the neighbourhood area designation.
13. Frogmore and Sherford Parish Council, as a parish council, is a qualifying body under the terms of the legislation.

## **The Examination Process**

14. The presumption is that the neighbourhood plan will proceed by way of an examination of written evidence only. However, the Examiner can ask for a public hearing in order to hear oral evidence on matters which he or she wishes to explore further or if a person has a fair chance to put a case.
15. I am required to give reasons for each of my recommendations and also provide a summary of my main conclusions.

16. I am satisfied that I am in a position to properly examine the plan without the need for a hearing.
17. I carried out an unaccompanied visit to the plan area on 25<sup>th</sup> November 2021. I first visited Sherford, where I drove down the hill through the Conservation Area. I stopped in the car park of the village hall and visited the grounds of St Martin's Church and its war memorial, before driving further down the hill into Frogmore where I parked up behind its village hall. I walked through the village, bought a sandwich in the village deli and then proceeded up the hill before walking down to Frogmore Creek where I navigated myself along the foreshore, as the tide was out, before losing a shoe in the mud! On route, I visited the proposed local green spaces at Stabbs Lane lawn. I then drove out of the village, seeing the recent development at Creek Close and the local green space at Perraton Field before heading out of the village towards Kingsbridge, stopping off at the farm shop, Springfield. Unfortunately, the Globe Inn was closed at the time of my visit.
18. Following my initial site visit and my preliminary assessment of the plan, I had a number of matters on which I wished to receive further information, both from the Parish Council and the District Council. That request was set out in a document entitled *Initial Comments of the Independent Examiner* dated 26<sup>th</sup> November 2021. I received a combined response, on 9<sup>th</sup> December 2021. I also clarified matters relating to the proposed settlement boundary around Creek Close, through an exchange of emails with the District Council and the Parish Council.
19. All documents have been placed on the respective websites.

## **The Consultation Process**

20. At the start of the neighbourhood plan process, in late 2016, a Steering Group was formed to prepare the plan. Drop-in sessions were held in both Sherford and Frogmore in September 2017, which were used to inform a SWOT analysis. This was then followed by a questionnaire which was distributed to all residents in December 2017, supported by drop-in sessions. It generated 186 returns, a response rate of 45%. Residents were able to monitor progress on the neighbourhood plan making process through a website that was created for the neighbourhood plan
21. All this work culminated in the preparation of the Pre-Submission version of the neighbourhood plan, which was the subject of a 6-week consultation period which commenced on 21<sup>st</sup> February 2020 and ran through to 3<sup>rd</sup> April 2021. That is known as the Regulation 14 Consultation and all the comments have been set out against each policy heading in Appendix 6 of the Consultation Statement.

22. Overall, I am happy that the Steering Group has actively sought the views of residents and other stakeholders from both villages, and these have helped to shape the plan.

## Regulation 16 Consultation

29. I have had regard, in carrying out this examination, to all the comments made during the period of final consultation which took place over a 6-week period, between 16<sup>th</sup> August 2021 to 27<sup>th</sup> September 2021. This consultation was organised by South Hams District Council, prior to the plan being passed to me for its examination. That stage is known as the Regulation 16 Consultation.

30. In total, 12 responses were received from Natural England (a late representation which I have decided to have regard to), South Hams District Council (also a late representation), Devon CC Flood and Coastal Risk Management, Highways England, Historic England, The Coal Authority, Marine Management Organisation and five local residents.

31. I have carefully read all the correspondence and I will refer to the representations where it is relevant to my considerations and conclusions in respect of specific policies or the plan as a whole.

## The Basic Conditions

32. The Neighbourhood Planning Examination process is different to a Local Plan Examination, in that the test is not one of “soundness”. The Neighbourhood Plan is tested against what is known as the Basic Conditions which are set down in legislation. It will be against these criteria that my examination must focus.

33. The five questions, which seek to establish that the Neighbourhood Plan meets the basic conditions test, are: -

- Is it appropriate to make the Plan having regard to the national policies and advice contained in the guidance issued by the Secretary of State? For the avoidance of doubt this examination will be considering the latest version of the National Planning Policy Framework (NPPF) issued in July 2021.
- Will the making of the Plan contribute to the achievement of sustainable development?
- Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?

- Will the making of the Plan breach or be otherwise incompatible with EU obligations or human rights legislation?
  - Will the making of the Plan breach the requirements of Regulation 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017?
34. The basic conditions set out in the box in paragraph 1.7 are not an accurate resume of the basic conditions; for example, it does not refer to having regard to European legislation and the Conservation of Habitats and Species Regulations but it did make reference to having special regard to listed buildings and conservation areas which only applies to neighbourhood development orders.

## **Compliance with the Development Plan**

35. To meet the basic conditions test, the Neighbourhood Plan is required to be in general conformity with the strategic policies of the Development Plan, which in this case is the now adopted Plymouth and South West Devon Joint Local Plan 2014 -2034, prepared by Plymouth City Council, West Devon Borough Council and South Hams District Council. The plan's overarching spatial strategies are set out in Policies SPT1 and SPT2 and refers to sustainable rural communities. The plan proposes a minimum of 26,700 new homes to be built in the period 2014 – 34, with at least 7,700 required to be provided within the Thriving Towns and Villages policy area.
36. Policy TTV 1 establishes a hierarchy of sustainable settlements, including what are described as “sustainable villages”, where development is expected to meet locally identified needs and which sustain limited services and amenities, will be supported. These are differentiated from “smaller villages, hamlets and the countryside” where development will only be permitted to support the principle of sustainable development and sustainable communities. Neither Frogmore or Sherford are identified as sustainable villages.
37. Development in the countryside areas is covered by the Policy TTV 26 and Policy TTV 27 and includes offering support for exception sites, in cases where there is a proven need for affordable housing. Policy DEV 8 sets requirements for affordable housing as well as the need for a mix of sizes, types and tenure of housing and Policy DEV 9 establishes the need for the delivery of a range and mix of houses particularly to meet local needs. Policy DEV10 sets high expectations in terms of design for new housing. Policy DEV 15 supports the provision of local jobs and the diversification of the rural community and Policy DEV 18 seeks to protect facilities of local community importance, such as public houses and local shops.
38. Policy DEV 21 is the policy for protecting the historic environment and Policy DEV 23 requires proposals to protect the landscape generally whilst enhanced



measures are offered through Policy DEV 25 which establishes the highest level of protection to the South Devon AONB.

39. Part of the plan area is within the area defined by the Joint Local Plan as Undeveloped Coast and Heritage Coast which is comprehensively protected by Policy DEV 24.
40. I had asked the District Council what it considered to be the strategic policies but its response was (notwithstanding the advice in paragraph 21 of the NPPF), that it has not published a list of strategic policies, but it is content that the Frogmore and Sherford Neighbourhood Plan is in general conformity with the Joint Local Plan. However, that is not the basic condition test which I have to consider, which is the matter of general conformity with the *strategic* policies in the Local Plan.
41. I have therefore had to come to my own view as to what are the strategic policies. In doing so, I have had regard to the Secretary of State advice set out in Paragraphs 75, 76 and 77 of the Neighbourhood Planning chapter of the Planning Practice Guidance. I have decided that I will treat all the policies in the Joint Local Plan which I have referred to in this section, as strategic in nature.
42. My overall conclusion is that I am satisfied that the policies in the neighbourhood plan are in general conformity with the strategic policies in the adopted Joint Local Plan.

## **Compliance with European and Human Rights Legislation**

43. In a screening report dated May 2021, South Hams District Council determined that a full Strategic Environmental Assessment, as required by EU Directive 2001/42/EC which is enshrined into UK law by the “Environmental Assessment of Plans and Programmes Regulations 2004”, would not be required.
44. In the same screening report, South Hams District Council, as competent authority, concluded that the neighbourhood plan would not have any significant effects on the nearest European protected sites, which are Dartmoor SAC, Plymouth Sound and Estuaries SAC, South Dartmoor Woods SAC, Tamar Estuaries Complex SPA, Start Point to Plymouth Sound and Eddystone SAC, South Devon Shore Dock SAC, Blackstone Point SAC, Lyme Bay and Torbay SAC and South Hams SAC. It concluded that an Appropriate Assessment under the Habitat Regulations would not be required.
45. I am satisfied that the basic conditions regarding compliance with European legislation, including the newly introduced basic condition regarding compliance with the Habitat Regulations, are met. I am also content that the plan has no conflict with the Human Rights Act.

## The Neighbourhood Plan: An Overview

46. I must congratulate the Parish Council and the Steering Group on the reaching this important milestone in the production of this neighbourhood plan.
47. The plan area covers the two settlements, the larger village, Frogmore has a settlement boundary and Sherford which is a smaller village, does not although much of it is a Conservation Area. The southern half of the Parish lies within the South Devon AONB and the landscape is dominated by the tidal Frogmore Creek which extends right into the heart of Frogmore. The estuary dominates the landscape of this part of South Devon and to my mind is key to the “sense of place” that the village of Frogmore, in particular, enjoys.
48. I consider that the document is a comprehensive, well written and presented plan, which is brought to life through the use of many photographs which illustrate life in the parish.
49. The two villages sit at the lowest tier of the settlement hierarchy, where there is only a requirement to meet local housing need. There is no housing target attached to the parish and the plan has not chosen to make any housing allocations, although it does recognise the possibility of further rural exception sites. Some representations have been made arguing that the plan could have been proactive by making housing allocations to address local housing need but I suspect that view was not shared by the overwhelming body of local residents, as expressed to the Parish Council during the public consultation.
50. The plan has sought to be more restrictive than the Local Plan, by limiting employment development to existing companies and the reuse of traditional agricultural buildings. National policy sets out a less restrictive approach which recognises that well designed new buildings for rural businesses can be allowed to take place in the countryside and this can be done sympathetically without adversely affecting either the AONB or the intrinsic beauty of the countryside.
51. My overall assessment is that the policies in the plan will sit comfortably alongside the strategic policies in the Joint Local Plan. I have had to make recommendations which are required to ensure that the plan has regard to policy and advice of the Secretary of State and I explain my reasons in the relevant sections of this report.
52. My examination also needs to address the question as to whether the neighbourhood plan will deliver sustainable development and in particular its three strands as set out in Paragraph 8 of the NPPF. It defines a revised settlement boundary for Frogmore, and sets policy for housing both inside and outside of that boundary, whilst protecting the AONB and its setting, as well as the landscape character of the parish’s countryside. The plan contains policies which protect the area’s heritage by identifying non designated heritage assets in the parish and its community assets at the same time as protecting and

encouraging economic development. Overall, my assessment is that the neighbourhood plan will meet the basic condition of assisting the delivery of sustainable development.

53. My recommendations have concentrated on the wording of the actual policies against which planning applications will be considered. It is beyond my remit as examiner, to comprehensively recommend all editorial changes to the supporting text. These changes are likely as a result of my recommendations, so that the plan will still read as a coherent planning document.
54. Following the publication of this report, I would urge the Steering Group and South Hams planners to work closely together to incorporate the appropriate changes which will ensure that the text of the Referendum Version of the neighbourhood plan matches the policy, once amended in line with my recommendations.

## The Neighbourhood Development Plan Policies

### Policy FSNP 1: The Landscape

55. In the submission version of the neighbourhood plan, there are some typographical issues in the first sentence, which I can correct.
56. I have no comments to make on the policy in terms of compliance with the basic conditions.

#### **Recommendation**

***The first sentence should read “Development shall not harm but maintain and enhance the beauty of the landscape and biodiversity by”***

### Policy FSNP2: Frogmore Creek

57. I was able to appreciate for myself the scenic value of Frogmore Creek during my visit. I also understand that it is a Site of Special Scientific Interest.
58. The second part of the policy refers to maintaining public access. The policy refers to Harbour Estuary and Nature Reserve bylaws, but these are not planning powers and would not necessarily be pertinent to the determination of a planning application.
59. It is clear that from the response to my question in the Initial Comments document that South Hams District Council has jurisdiction over development to the low tide mark. My concern with the wording is that some bodies may choose to refer to its provisions in a context beyond the determination of planning applications, such as if an access to the foreshore were to be closed off. I will clarify that the intention is that development should not reduce or inhibit public access to Frogmore Creek.

#### **Recommendation**

***Replace 2. With “Development should not to restrict or inhibit public access to Frogmore Creek.”***

### Policy FSNP3: Heritage and Conservation

60. The Parish Council is proposing the neighbourhood plan should be the vehicle for designating non-designated heritage assets in the parish. In that case, I believe that the heritage assets should be listed in the policy itself and I also consider the justification for their inclusion, setting out their historical significance, should be included within the plan document, possibly as an appendix. It would also assist the identification of the locally listed structures if their location could be shown on a map.
61. In terms of the specific designations, I believe that the evidence set out in the Parish Council's response to my Initial Comments supports the designation of all of them as proposed heritage assets, apart from the public pontoon. It appears that the pontoon has only been in situ for just over a decade and I do not consider that it has any historical or architectural significance. The reason quoted by the Parish Council for its designation is that "it is well used and makes a positive contribution to the parish's tourism economy". This is justification for seeking to protect the pontoon, as a community facility which is also protected by Policy FSNP 14, rather than its heritage significant. I do not consider that the pontoon meets the definition of being a heritage asset as defined by the Glossary to the NPPF, which refers to an asset's significance in terms of its heritage interest. I will be recommending that the pontoon is not accorded heritage asset status.
62. The drafting of the policy refers to both designated and non-designated heritage assets being treated the same, i.e. they should not be harmed and should be conserved and enhanced. The policy goes on to refer to development having regard to national and local strategic policy for heritage and conservation. That would be effectively duplicating existing policy, which already applies to development within the parish and as such it would be contrary to the Secretary of State's policy, as set out in paragraph 16 f of the NPPF.
63. In any event the Framework differentiates between harm to listed buildings compared to harm to non-heritage assets. Paragraph 199 of the Framework states that "when considering the impact on a proposed development on the significance of a designated heritage assets, great weight should be given to the asset's conservation... This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance".
64. That is contrasted with the policy test as set out in Paragraph 203 which states that in assessing the effects on the significance of a non-designated heritage it is necessary to balance the scale of any harm or loss with the significance of the heritage asset.
65. I conclude that the policy does not need to be restating existing policy, in terms of designated heritage assets, but it could be the vehicle that identifies the non-designated heritage assets within the parish and set the policy position in a way that reflects the approach advocated by the Secretary of State. The policy will then meet the basic conditions.

66. In view of the reduced scope of the policy I will recommend that the policy should be retitled “Non-Designated Heritage Assets”.

#### **Recommendations**

##### **Retitle policy “Non-Designated Heritage Assets”**

**Replace the policy with “Development proposals affecting the non-designated heritage assets identified below will be considered in terms of the scale of any harm or loss against the significance of the asset:**

- **Frogmore’s historic road bridge at the head of the Creek**
- **The Globe Inn, Frogmore**
- **Frogmore’s 19<sup>th</sup> Century former bakery premises, trading as “Swell”**
- **Keynedon Mill, Sherford**
- **Homefield Farm Courtyard Barns, Sherford**
- **The War Memorial, Sherford”**

**Include the details of the significance of the above assets in the plan, as described in the Parish Council’s response to the Initial Comments document either as an appendix or include it within the body of the plan. Show the location of the assets on a map.**

#### **Policy FSNP 4: Tranquility and Dark Skies**

67. The first part of the policy is based on advice issued by the Institute of Lighting Engineers in one of its advice notes. That advice is restricted to exterior lighting rather than lighting from within a building. The Parish Council provided me with a copy of the 2011 version of the guidance, however this has now been updated and a 2021 version has been published.

68. I can see that the policy can be used to identify that the parish line lies within Zone C. However much of the advice is technical and I consider is not appropriate to repeat its requirements as a statement of policy. I will therefore propose that the objective of the policy be retained, to limit light pollution, which is in line with the aspirations set out in Paragraph 185 of the Framework and to encourage applicants to refer to guidance in the Institute of Lighting Professionals (as it is now titled) advice note.

#### **Recommendation**

**Delete the text after “natural environment.” in part 1 of the policy and replace with “Applicants are encouraged to have regard to the advice in the Institute of Lighting Professionals’ “Guidance Note 1 for the reduction of obtrusive light 2021” and note that the parish falls within Environmental Zone E1”**

#### **Policy FSNP 5: Settlement Boundary**

69. There has been a degree of confusion regarding this policy caused by the statement in paragraph 4.4 that the boundary amendments would include the new affordable housing at Creek Close. I initially understood that this could be

referring to the site which lies to the east of the existing Creek Close development and which was granted on appeal. A reserved matters application is currently under consideration. The inclusion of that land was promoted by two local residents' Regulation 16 comments. However, Map 4 does not include that site with the boundary, but importantly it does include the existing Creek Close cul de sac.

70. The Parish Council, in its response to the District Council's Regulation 16 comments, stated that "Following informal discussions with SHDC, the Parish Council recognises that, as an exception site within the AONB, Creek Close should be omitted from the settlement boundary. The proposed new housing in the AONB land east of Creek Close remains omitted from the settlement boundary".
71. In order for me to be absolutely clear on what was being proposed, I exchanged emails with the District Council and the Parish Council and the response from the Joint Chair of the Neighbourhood Plan Steering Group confirmed that "On mature reflection we now also propose to omit the developed Creek Close affordable housing estate from the Settlement Boundary. This scheme sits just inside the AONB. It was promoted by the Parish Council and planning consent was validated in conformity with the "Rural Exception" objectively assessed housing need criteria."
72. A rural exception site is a site where development to meet a locally identified housing need is approved on land which would otherwise not be considered suitable for development. I am satisfied that the Creek Close development was developed as a rural exception site.
73. However, whilst the justification for allowing development outside but adjacent to a settlement boundary, may have been the determining factor as part of the decision-making process at the application stage, once the development has been constructed, then I believe that the settlement boundary should be reviewed in order to be able to reflect the division between what is in effect now the built-up area of the village and the surrounding countryside. The neighbourhood plan text as submitted and as shown on Map 4 reflects what I saw for myself, when I drove into Creek Close specifically that the development now has been successfully integrated into the village of Frogmore.
74. There must be a time when the circumstances surrounding the granting of planning permission, is no longer the determining factor as to whether a site falls inside or outside a settlement boundary. It would equally be applicable to a site granted planning permission on appeal which lies outside a settlement boundary.
75. I therefore have concluded that the neighbourhood plan's original intention to now include Creek Close inside the revised settlement boundary should not be changed, as now suggested by the Parish Council, especially at this late stage. I am conscious that a revision of the boundary to now exclude Creek Close would not have been subject to any public consultation. I do not consider that



the location within the AONB is material to this issue, as that designation washes over much of the village up to the main road through the village.

76. The situation with regard to the land to the east is, as I understand it, somewhat different in that it was not promoted as a rural exception site but rather it was approved on appeal, based on the lack of a five-year housing land supply. However, at this point in time the site only has outline planning consent (which establishes the principle of residential development on this site irrespective of any rural exception policy considerations). Only when reserved matters approval has been granted and all conditions discharged and the houses are completed, could it be legitimately treated as forming part of the settlement. Accordingly, I am not minded to include the land to the east of Creek Close as falling within the settlement boundary, but this issue can be re-visited when the neighbourhood plan and the settlement boundary is reviewed at some stage in the future, if the development is completed.

### **Policy FSNP6: Design and Construction**

77. There are only a small number of elements within the policy that raise concerns resulting from the expectations set through the use of the phrase “all new development shall”.
78. The requirement to “support and encourage construction which seeks the statutory minimum use of sustainable materials and minimises use of non-renewable resources.” I am not aware of any statutory sustainable construction standards beyond those set in the Building Regulations. In a Written Ministerial Statement to the House of Commons, dated 25<sup>th</sup> March 2015, the Secretary of State made clear that neighbourhood plans should not set any local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. I will therefore recommend that the only element of criterion 5 of the policy which can be retained is that part which seeks to maximise solar gain energy capture, which I do not believe is ruled out by the above Written Ministerial Statement.
79. The second area of concern relates to that part of criterion 7 of the policy relating to protection against environmental damage or local nuisance. The normal basis of planning control is that it is the impact of the completed development that is normally the subject to planning control rather than the during the construction phase. In certain circumstances, it may be desirable for a planning condition to be imposed, based on the particular circumstances of the development and its location, which requires the submission of a Construction Environmental Management Plan. However, it is usual that issues of environmental damage and nuisance is covered by other more appropriate legislation that can address issues in a more effective manner than planning enforcement powers, such as the use of the Control of Pollution Act or highway legislation, for example.
80. The threshold of the policy’s final criterion is that there should be no negative impact on neighbours. I consider that this threshold is set unreasonably low and

could prevent the delivery of sustainable development and new homes. I will be recommending that the threshold refers to *significant negative impacts* on neighbours.

### **Recommendations**

***In 5. delete text after “construction which” up to “maximising” and replace with “maximises”***

***Delete 7.***

***In 8. insert “significant” before “negative”***

### **Policy FSNP7: Renewable Energy**

81. I have no comments to make on this policy.

### **Policy FSNP8: Affordable Housing**

82. A neighbourhood plan policy is required to only cover the development and use of land, to be used to determine a planning application. A planning policy cannot dictate apart from on rural exception sites who should be allocated affordable housing. These are matters that fall under the responsibility of the Housing Authority, who will allocate housing based on the criteria set in its Allocation Policy. I will therefore recommend a form of wording for this policy which only requires that the occupation of affordable housing on rural exception sites should be restricted to persons with a local connection to the parish.

83. There is no reason why rural exception sites should be located outside of the AONB and I will recommend that the wording of paragraph 5.10 should be amended.

### **Recommendations**

***Replace 4. with “Occupation of any affordable houses on a rural exception site shall be restricted to persons with a local connection to the parish of Frogmore and Sherford.”***

***In paragraph 5.10 delete all text after “village centres”***

### **Policy FSNP9: Private Housing Development**

84. Having regard to the characteristics and the constraints on development generally, I consider this policy meets basic conditions. In response to my question as what constitutes “small scale”, the Parish Council considered small development could be 3 units but I consider that such an arbitrary figure is not defensible, because 3no 5 bed units could have a bigger impact than say 5no 2 bed units. I think that allowing some flexibility to the decision maker could be beneficial as I noted that the report on the 9-unit Creek Close scheme described the development as “small scale”.

85. I consider the policy meets the basic conditions.



## Policy FSNP 10: Sustainable Business Growth

86. The District Council has pointed out that the restriction on new employment development to sites within the settlement boundaries conflicts with Joint Local Plan Policy DEV15. I would also add that the policy as written conflicts with Paragraph 85 of the NPPF which states that local business needs may need to be met beyond existing settlements. This restrictive stance has been criticised by a local resident in her Reg 16 comments.
87. In response, the Parish Council has suggested a re-draft of the policy which removes reference to settlement boundaries but limits the support to proposals which relate to the improvement of an existing business or reuse of traditional agricultural or other buildings. That is still more restrictive than the local plan policy which refers to business start-ups etc. being supported subject to it being demonstrated that there are no residual impacts on the environment. As submitted, I do not consider that it will meet the basic conditions.
88. I will propose a modification which would allow new businesses, visitor and tourism accommodation within the parish but especially supporting those which involve improvements for an existing business or reuse of existing buildings, in line with NPPF policy.

### *Recommendation*

***Replace 1. and 2. with “New business premises, visitor and tourist accommodation and associated facilities will be acceptable in principle, particularly if it involves improvement of an existing business and / or the reuse of existing building(s)”***

## Policy FSNP 11: Existing Businesses

89. I have no fundamental concerns in terms of this policy but there will be certain circumstances where planning permission is not required for change of uses of Class E uses, say to residential uses, apart from in those parts of the parish within the AONB, subject to a number of conditions set out in the General Permitted Development Order.
90. I propose to caveat the policy as to development where planning permission is required. I also do not consider the business failure should be necessarily the only criterion for changes of use of existing business premises as these may be vacated due to a range of circumstances, such as the retirement of the business owner. It is the fact that the premises are vacant that should be the main criterion.

### *Recommendations*

***At the start of the policy insert “Where planning permission is required”  
At the end of the first sentence after “business user”, remove the full stop, delete the second sentence and insert “by evidence of the premises being marketed for business use over at least 2 years.”***

## **Policy FSNP 12 Telecommunications**

91. I have no comments to make on this policy in terms of meeting the basic conditions.

## **Policy FSNP 13 – Local Transport, Footpaths and Bridlepaths**

92. A neighbourhood plan can only include policies which control development within the plan area. As written the second element of the policy supporting links to adjacent villages could be construed as supporting new routes which lie within an adjacent parish. I am able to clarify that such a policy is only supporting those links within the Frogmore and Sherford neighbourhood area.

### ***Recommendation***

***In 2. after “routes” insert “within the plan area which are capable of”***

## **Policy FSNP 14: Community Facilities and Infrastructure**

93. There is a degree of duplication between those community facilities identified which can be lost, if the circumstances set out in criterion 3 are met and Policy FSNP 15 which seeks to safeguard the designated local green spaces from development for all time. That latter policy offers a higher degree of protection. In order to avoid conflicts as to which policy would apply in such circumstances, I will propose the removal of the Stabbs Lane lawn and the children’s play area from this policy, both of which are to be designated as a local green space.

### ***Recommendation***

***Remove from the list in 4. “Frogmore children’s play area” and “Stabbs Lane lawn”***

## **Policy FSNP 15: Local Green Space**

94. I visited each of the proposed local green spaces. I note that the Perraton Field, Mill Lane is held by the community on a lease which runs until 14<sup>th</sup> September 2031, with earlier termination rights.
95. One of the requirements for local green space is that the green space should be capable of enduring beyond the end of the plan period, which in this case runs until 2034, by which time, public access and usage could have been legally terminated. As such I do not believe it meets the test of being a local green space as it does not comply with the strict conditions for local green space designation as set out in Paragraph 101 of the NPPF. However, the site can continue to be recognised as a valued community facility covered by the Policy FSNP 14.
96. I will also clarify that St Martin of Tours Church is not designated as a local green space, which is intended to cover the war memorial garden, which is shown on Map No 6.

### ***Recommendation***

***Remove “2. Mill Lane, Frogmore amenity ground” and retitle 3. as “War Memorial Garden, St Martins of Tours churchyard***

## The Referendum Area

52. If I am to recommend that the Plan progresses to its referendum stage, I am required to confirm whether the referendum should cover a larger area than the area covered by the Neighbourhood Plan. In this instance, I can confirm that the area of the Frogmore and Sherford Neighbourhood Plan, as designated by South Hams District Council on 25<sup>th</sup> March 2017, is the appropriate area for the referendum to be held and the area for the referendum does not need to be extended.

## Summary

53. I congratulate Frogmore and Sherford Parish Council on seizing the opportunities presented by neighbourhood planning to allow the community to shape its planning policies. Clearly a lot of hard work has been carried out by the volunteers who have produced this plan over a number of years.
54. This is a locally distinct neighbourhood plan, which seeks to deliver on the expressed priorities of the residents of the plan area. It provides policies which will allow local needs housing to be provided on the edge of the settlements, whilst protecting the scenic qualities of the AONB, Frogmore Creek and the countryside generally. It allows new businesses to be created in the parish and protects local community facilities and formally identifies non-designated heritage assets. This plan will provide a sound basis for dealing with planning applications in the neighbourhood area in the coming years.
55. To conclude, I can confirm that my overall conclusions are that the Plan, if amended in line with my recommendations, meets all the statutory requirements including the basic conditions test and that it is appropriate, if successful at referendum, that the Plan, as amended, be made.
56. I am therefore delighted to recommend to South Hams District Council that the Frogmore and Sherford Neighbourhood Plan, as modified by my recommendations, should now proceed to referendum.

JOHN SLATER BA(Hons), DMS, MRTPI  
John Slater Planning Ltd  
27<sup>th</sup> January 2022