

**Independent Examiner's Report of the**  
**Aveton Gifford Neighbourhood Plan**

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## **SECTION 2**

### **Summary**

*As the Independent Examiner appointed by South Hams District Council to examine the Aveton Gifford Neighbourhood Plan, I can summarise my findings as follows:*

- 1. I find the Aveton Gifford Neighbourhood Plan and the policies within it, subject to the recommended modifications does meet the Basic Conditions.*
- 2. I am satisfied that the Referendum Area should be the same as the Plan Area, should the Aveton Gifford Neighbourhood Plan go to Referendum.*
- 3. I have read the Aveton Gifford Consultation Statement and the representations made in connection with this subject I consider that the consultation process was robust and that the Neighbourhood Plan and its policies reflect the outcome of the consultation process including recording representations and tracking the changes made as a result of those representations.*
- 4. I find that the Aveton Gifford Neighbourhood Plan can, subject to the recommended modifications proceed to Referendum.*
- 5. The Aveton Gifford Neighbourhood Plan Area is within the area covered by South Hams District Council. The development plan for the area is the Plymouth and South West Devon Joint Local Plan (the JLP), adopted in March 2019.*

## **SECTION 3**

### ***Introduction***

#### ***1. Neighbourhood Plan Examination.***

*My name is Deborah McCann and I am the Independent Examiner appointed to examine the Aveton Gifford Neighbourhood Plan.*

*I am independent of the qualifying body, I do not have any interest in the land in the plan area, and I have appropriate qualifications and experience, including experience in public, private and community sectors.*

*My role is to consider whether the submitted Aveton Gifford Neighbourhood Plan meets the Basic Conditions and has taken into account human rights; and to recommend whether the Aveton Gifford Neighbourhood Plan should proceed to Referendum. My role is as set out in more detail below under the section covering the Examiner's Role. My recommendation is given in summary in Section 2 and in full under Section 5 of this document.*

*The Aveton Gifford Neighbourhood Plan has to be independently examined following processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012.*

*The expectation is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However, there are two circumstances when an examiner may consider it necessary to hold a hearing. These are where the examiner considers that it is necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case. Having read the plan and considered the representations I concluded that it was not necessary to hold a Hearing.*

#### ***2. The Role of Examiner including the examination process and legislative background.***

*The examiner is required to check whether the neighbourhood plan:*

- *Has been prepared and submitted for examination by a qualifying body*
- *Has been prepared for an area that has been properly designated for such plan preparation*
- *Meets the requirements to*
  - i) specify the period to which it has effect;*
  - ii) not include provision about excluded development; and*
  - iii) not relate to more than one neighbourhood area and that*
- *Its policies relate to the development and use of land for a designated neighbourhood area.*

*The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).*

*As an independent Examiner, having examined the Plan, I am required to make one of the following recommendations:*

*1. The Plan can proceed to a Referendum*

*2. The Plan with recommended modifications can proceed to a Referendum*

*Where a policy does not meet the Basic Conditions or other legal requirement I may, on occasion, need to delete wording, including potentially an entire plan policy and/or section of text, although I will first consider modifying the policy rather than deleting it. Where a policy concerns a non-land use matter, advice in the Planning Practice Guidance states “Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.” As such, when considering the deletion of any non-land use matters from the plan, I will consider if I can make a modification to place the relevant proposed actions in a non-statutory annex to the plan, dealing with ‘Wider Community Aspirations’. I will not generally refer back to parties on these detailed revisions. I will make modification either in order to meet the Basic Conditions, to correct errors or provide clarification. However, the focus*

*of my examination, as set out in legislation is relatively narrow, I must focus on compliance with the Basic Conditions. The main purpose of a neighbourhood plan is to provide a framework for the determination of planning applications, policies in a plan which have elements which either seek to control things which fall outside the scope of the planning system or introduce requirements which are indiscriminate in terms of the size of development or are overly onerous and would not meet the Basic Conditions. In these circumstances it will be necessary to make modifications to the plan. In making any modifications I have a duty to ensure that the Basic Conditions are met however I am also very careful to ensure, where possible that the intention and spirit of the plan is retained so that the plan, when modified still reflects the community's intent in producing their neighbourhood plan.*

### *3. The Plan does not meet the legal requirements and cannot proceed to a Referendum*

*3.1 I am also required to recommend whether the Referendum Area should be different from the Plan Area, should the Aveton Gifford Neighbourhood Plan go to Referendum.*

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

- the policies in the Plan relate to the development and use of land for a designated Neighbourhood Area are in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act 2004*
- the Plan meets the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 to specify the period for which it has effect*
- the Plan has been prepared for an area designated under the Localism Act 2011 and has been developed and submitted for examination by a qualifying body.*

*3.3 I am also required to determine whether the Plan complies with the Basic Conditions, which are that the proposed Neighbourhood Plan:*

- *Has regard to national policies and advice contained in guidance issued by the Secretary of State;*
- *Contributes to the achievement of sustainable development;*  
*and*
- *Is in general conformity with the strategic policies contained in the Development Plan for the area.*

*There is now an additional Basic Condition to be considered. Since the 28th of December 2018, the Neighbourhood Planning (General) Regulations 2012 Such 2 para 1 has stated:*

*"In relation to the examination of Neighbourhood Plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act-*

*The making of the Neighbourhood Plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017."*

*The Plan must also not breach, and otherwise be compatible with EU obligations and Human Rights requirements.*

*South Hams District Council will consider my report and decide whether it is satisfied with my recommendations. The Council will publicise its decision on whether or not the plan will be submitted to a referendum, with or without modifications. If the Neighbourhood Plan is submitted to a referendum, then 28 working days' notice will be given of the referendum procedure and Neighbourhood Plan details. If the referendum results in more than half those voting (i.e. greater than 50%), voting in favour of the plan, then the Council must "make" the Neighbourhood Plan a part of its Development Plan as soon as possible. If approved by a referendum and then "made" by the local planning authority, the Neighbourhood Plan then forms part of the Development Plan.*



## **SECTION 4**

### ***The Report***

#### ***4.1. Appointment of the Independent examiner***

*South Hams District Council appointed me as the Independent Examiner for the Aveton Gifford Neighbourhood Plan with the agreement of the Aveton Gifford Neighbourhood Plan Group*

#### ***4.2. Qualifying body***

*I am satisfied that Aveton Gifford Parish Council is the Qualifying Body.*

#### ***4.3. Neighbourhood Plan Area***

The Aveton Gifford Neighbourhood Plan Area was designated on the 18<sup>th</sup> of November 2015 under the Neighbourhood Planning Regulations 2012 (part 2 S6). The area covers the administrative boundaries of the Parish of Aveton Gifford. The Qualifying Body have confirmed that there are no other neighbourhood plans covering the designated area.

#### ***4.4. Plan Period***

The Plan identifies the period to which it relates as 2014 to 2034, a period chosen to correspond with the development plan for the area, the Plymouth and South West Devon Joint Local Plan (the JLP).

#### ***4.5. South Hams District Council Regulation 15 Assessment of the Plan.***

*The Qualifying Body submitted the plan to South Hams District Council for consideration under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended). The Council made an initial assessment of the Aveton Gifford Neighbourhood Plan and the supporting documents and is satisfied that these comply with the specified criteria.*

#### ***4.6. The Consultation Process***

*The Aveton Gifford Neighbourhood Plan has been submitted for examination*

*with a Consultation Statement which sets out the consultation process that has led to the production of the plan, as set out in the regulations in the Neighbourhood Planning (General) Regulations 2012.*

*The Statement describes the approach to consultation, the stages undertaken and explains how the Plan has been amended in relation to comments received. It is set out according to the requirements in Regulation 15.1.b of the Neighbourhood Planning (General) Regulations 2012):*

*(a) It contains details of the persons and bodies who were consulted about the proposed Neighbourhood Plan;*

*(b) It explains how they were consulted;*

*(c) It summarises the main issues and concerns raised by the persons consulted; and*

*(d) It describes how these issues and concerns were considered and, where relevant, addressed in the proposed Neighbourhood Plan.*

*Having examined the documents and considered the focus of the Neighbourhood Plan I conclude that the consultation process was robust, well conducted and recorded.*

*A list of statutory bodies consulted is included in the Consultation Statement.*

#### ***4.7. Regulation 16 consultation by South Hams District Council and record of responses.***

*South Hams District Council placed the Aveton Gifford Neighbourhood Plan out for consultation under Regulation 16 Neighbourhood Planning (General) Regulations 2012 (as amended) from the 15<sup>th</sup> of November 2019 to the 27<sup>th</sup> of December 2019. Due to difficulties in some background documents being easily accessible the consultation period was extended until Monday 3 February 2020.*

*A number of detailed representations were received during the consultation period and these were supplied by the Council as part of the supporting*

*information for the examination process. I considered the representations, have taken them into account in my examination of the plan and referred to them where appropriate.*

#### **4.8. Site Visit**

*I carried out an unaccompanied site visit to familiarise myself with the Neighbourhood Plan Area on the 23<sup>rd</sup> of March 2020.*

#### **4.9. Compliance with the Basic Conditions**

*The Qualifying Body have produced a Basic Conditions Statement. The purpose of this statement is to set out in some detail how the Neighbourhood Plan as submitted meets the Basic Conditions. It is the Examiner's Role to take this document into consideration but also take an independent view as to whether or not the assessment as submitted is correct.*

*I have to determine whether the Aveton Gifford Neighbourhood Plan:*

- 1. Has regard to national policies and advice*
- 2. Contributes to sustainable development*
- 3. Is in general conformity with the strategic policies in the appropriate Development Plan*
- 4. Is not in breach and is otherwise compatible with EU obligations and Human Rights requirements.*
- 5. There is now an additional Basic Condition to be considered. Since the 28th of December 2018, the Neighbourhood Planning (General) Regulations 2012 Such 2 para 1 has stated:*

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

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

*Documents brought to my attention by South Hams District Council for my examination included:*

- *Aveton Gifford Neighbourhood Plan - the main document which includes policies developed in consultation with the community at various engagement events and workshops.*
- *Basic Conditions Statement - sets out how the plan meets the Basic Conditions*
- *Consultation Statement – sets out how the community, and other stakeholders, have been involved in preparing the Plan.*
- *Strategic Environmental Assessment (SEA) Report*
- *Habitats Regulations Assessment (HRA) screening opinion*

### ***Comment on Documents submitted***

*I am satisfied having regard to these documents and other relevant documents, policies and legislation that the Aveton Gifford Neighbourhood Plan does, subject to the recommended modifications, meet the Basic Conditions.*

## ***4.10. Planning Policy***

### ***4.10.1. National Planning Policy***

*National Policy guidance is in the National Planning Policy Framework (NPPF). At the time of the preparation of the Neighbourhood Plan the relevant NPPF was the National Planning Policy Framework (NPPF) February 2019 (as updated).*

*To meet the Basic Conditions, the Plan must have “regard to national policy and advice”. In addition, the NPPF requires that a Neighbourhood Plan “must be in general conformity with the strategic policies of the local plan”.*

*Paragraph 29 states:*

*“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to*

*deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies.”*

*The Aveton Gifford Neighbourhood Plan does not need to repeat these national policies, but to demonstrate it has taken them into account.*

*I have examined the Aveton Gifford Neighbourhood Plan and consider that, subject to modification, the plan does have “regard for National Policy and Advice” and therefore the Plan, subject to minor modification does meet the Basic Conditions in this respect.*

#### **4.10.2 Local Planning Policy- The Development Plan**

*The Aveton Gifford Neighbourhood Plan Area is within the area covered by South Hams District Council. At the time of my examination, the development plan for the area was the development plan for the area is the Plymouth and South West Devon Joint Local Plan (the JLP), adopted in March 2019.*

*To meet the Basic Conditions, the Aveton Gifford Neighbourhood Plan Neighbourhood Plan must be in “general conformity” with the strategic policies of the development plan.*

*The NPPF 2019 (updated) states:*

*“20. Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision<sup>12</sup> for:*

*a) housing (including affordable housing), employment, retail, leisure and other commercial development;*

*b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);*

*c) community facilities (such as health, education and cultural infrastructure);  
and*

*d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.”*

*Neighbourhood Plans should only contain non-strategic policies. The NPPF 2019(updated) states:*

*“Non-strategic policies*

*28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.*

*29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies.”*

*Should there be a conflict between a policy in a neighbourhood plan and a policy in a Local Plan, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy, which is contained in the last document to become part of the development plan.*

*The distinction between strategic and non-strategic policies is important because of the relationship with Neighbourhood Plans. Neighbourhood Plans only have to be in general conformity with the strategic policies of the development plan (Localism Act 2011, Schedule 4B, s7 (2)(e)) When made, neighbourhood plan policies take precedence over existing non-strategic policies in the local plan, where they are in conflict.*

*Planning Policy Guidance paragraph 41-076-20140306 sets out that:*

*“Strategic policies will be different in each local planning authority area. When reaching a view on whether a policy is a strategic policy the following are useful considerations:*

- whether the policy sets out an overarching direction or objective*
- whether the policy seeks to shape the broad characteristics of development*
- the scale at which the policy is intended to operate*
- whether the policy sets a framework for decisions on how competing priorities should be balanced*
- whether the policy sets a standard or other requirement that is essential to achieving the wider vision and aspirations in the Local Plan*
- in the case of site allocations, whether bringing the site forward is central to achieving the vision and aspirations of the Local Plan*
- whether the Local Plan identifies the policy as being strategic”*

*I have examined the Aveton Gifford Neighbourhood Plan and consider that, subject to modification, the plan is in general conformity with the Strategic Policies of the Development Plan and does meet the Basic Conditions in this respect.*

#### **4.11. Other Relevant Policy Considerations**

##### **4.11.1 European Convention on Human Rights (ECMR) and other European Union Obligations**

*As a ‘local plan’, the Neighbourhood Plan is required to take cognisance of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC.*

South Hams District Council carried out a Strategic Environmental Assessment (SEA) screening exercise in consultation with relevant statutory

bodies the conclusion of the screening was that a SEA was required under European Directive 2001/42/EC.

A SEA was carried out by AECOM in November 2019.

The SEA process assessed the policies put forward through the current version of the Aveton Gifford Neighbourhood Plan. The SEA identified:

“The allocations proposed through the Neighbourhood Plan have the potential to have impacts on the setting (but not the fabric) of features and areas nationally and locally designated for the historic environment in Aveton Gifford. In addition, the proposed allocations, whilst not within the South Devon AONB, can be viewed from, and as such are in the setting of, the AONB. The policies of the Neighbourhood Plan however proactively respond to these constraints, including through having a close focus on protecting and enhancing landscape and villagescape character, and on conserving and enhancing the setting and fabric of the historic environment in the parish. Taken together, the policies will help limit negative effects from new development on landscape/villagescape character and on the setting of the historic environment and promote longer term positive effects through securing enhancements to local distinctiveness. Overall therefore, no significant effects have been identified in relation to the ‘Landscape’ and ‘Historic Environment’ theme.”

#### **4.11.2 Habitats Regulations Assessment (HRA)**

*In September 2019, South Hams District Council, as the competent authority carried out HRA to comply with Regulation 105 of the Habitats Regulations 2017. Under these Regulations, a competent authority must consider whether a relevant plan is likely to have a significant effect on any European sites before deciding to give any consent, permission or other authorisation.*

*The conclusion of the screening opinion was:*

*“A small part of the Aveton Gifford Plan falls within the Zone of Influence of the Plymouth Sound and Estuaries SAC and the South Hams SAC. The bulk*



*of Policies in the Plan protect these areas from impacts. Two Policies propose new housing development. The allocated sites do not lie within the Zones of Influence. As such it is concluded that further assessment is not required.”*

#### **4.11.3 Sustainable development**

Paragraphs 7 to 14 of the NPPF (Feb 2019 as updated) identify the components of sustainable development, and how planning applications and local plans can meet these requirements.

The SEA report has considered how the plan addresses the issue of the requirement to achieve sustainable development.

*My conclusion is that the principles of Sustainable Development required in the NPPF have been taken into account in the development of the plan and its policies and where issues have been identified they were addressed by revisions to the document prior to submission. I am satisfied that the Aveton Gifford Neighbourhood Plan subject to the recommended modifications addresses the sustainability issues adequately.*

*The Neighbourhood Plan is required to take cognisance of the European Convention of Human Rights and to comply with the Human Rights Act 1998.*

*I am satisfied that the Aveton Gifford Neighbourhood Plan has done so.*

*I am therefore satisfied that the Aveton Gifford Neighbourhood Plan meets the basic conditions on EU obligations.*

#### **4.11.4 Excluded development**

*I am satisfied that the Aveton Gifford Neighbourhood Plan does not cover County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.*

#### **4.11.5 Development and use of land**

*I am satisfied that the Aveton Gifford Neighbourhood Plan, subject to*

*modification covers development and land use matters.*

#### **4.12 General Comments**

*Planning Guidance on preparing neighbourhood plans and policies is clear, it states:*

*“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.*

*Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.”*

*In order to provide clarity and to ensure that the policies in the Aveton Gifford Neighbourhood Plan meet the Basic Conditions it has been necessary for me to make modifications to a number of policies. This includes modifications where policies have sought to introduce controls outside the scope of the planning system or where existing policy already sets out the scope of control.*

*As I have found it necessary to modify a number of policies it may also be necessary to modify the supporting text within the plan to align with the modified policies, where this is necessary. The details of these modifications are set out within my comments on the related policies. My comments on policies are in *blue* with the modified policies in *red*.*

#### **4.13. The Neighbourhood Plan Vision, Strategic Aims and Policies**

##### **4.13.1 VISION Statement**

*Although the Vision Statement is referred to in the plan on page 9 it is not included in the plan.*

*As a result of the consultations several key main issues emerged:*

- a) A need for affordable housing and support for self-build homes*
- b) A need for extra car parking for the village hall and school*
- c) Refurbishment or replacement of the village hall*
- c) Volume of traffic passing through the village*
- d) Better broadband provision (has been addressed and goes live 2020)*
- e) The need for a new footbridge to safely link both sides of the Avon*
- f) Provision of smaller dwellings for older people*

*Neighbourhood Development Plan Themes*

- a) Development and New Homes*
- b) Housing*
- c) Community Facilities and Infrastructure*
- d) Traffic and Transport*
- e) Environment*
- f) Economy*

## **COMMENT**

*I am satisfied that the Aveton Gifford NDP themes were developed from the consultation process and that the policies within the plan reflect the priorities identified.*

### **4.13.2 AVETON GIFFORD NEIGHBOURHOOD PLAN POLICIES**

#### **POLICY AG1: DEVELOPMENT AND THE SETTLEMENT BOUNDARY**

**1. Development will be permitted inside the village settlement boundary shown in the plan, provided it is in scale and character with the site and**

*surroundings, is of an appropriate density, and will cause no significant adverse impacts on the AONB, natural or historic assets, local amenity, traffic, parking or safety.*

*2. Elsewhere in the parish development will be strictly controlled and only permitted where it can be delivered sustainably and requires a countryside location or will meet a proven local need which cannot be met inside the settlement boundary.*

#### **COMMENT**

*The policy title is Development and Settlement Boundary and yet the policy refers to “settlement boundary”. This is potentially confusing and for clarity the policy title should be modified.*

*The National and Local planning policy framework to control development in sensitive landscapes the natural and historic environment already exists, and this is not accurately reflected in this policy.*

*For clarity and to meet the Basic Conditions the policy should be modified as follows:*

#### **POLICY AG1: SETTLEMENT BOUNDARY**

*Development proposals within the village settlement boundary shown on plan?? will be supported where:*

*1. they are in conformity with policy Dev 25 of the Plymouth JLP and are of a scale and character with the site and surroundings, of an appropriate density, will conserve and enhance the AONB and cause no significant adverse impacts on natural or historic assets, local amenity, traffic, parking or safety.*

*Outside the settlement boundary development will be strictly controlled and only supported where it is in accordance with National Policy and*

**guidance, the Development Plan and require a countryside location or will meet a proven local need which cannot be met inside the settlement boundary.**

**POLICY AG2: DESIGN AND LAYOUT OF NEW DEVELOPMENT**

**New development should:**

- a) be of high design quality appropriate to the site and not compromising the character or amenity of the AONB,**
- b) be generally small-scale and in keeping with the village scene,**
- c) be attractive, inclusive and accessible, reducing opportunities for crime, disorder and antisocial behaviour and supporting community safety and cohesion,**
- d) be linked to the village centre by safe walking and cycling routes and be served by safe highway access,**
- e) incorporate adequate car parking with at least one space for a single bedroom dwelling, at least two spaces for a two-bedroom dwelling and at least three spaces for anything larger,**
- f) incorporate a high standard (quality and quantity) of private open space and provision of public open space or contribution towards off site provision,**
- g) incorporate measures to minimise flood risk and assure satisfactory foul and surface water drainage.**
- h) incorporate measures to reduce carbon through the use of renewable energy, water and waste recycling and energy efficiency measures, and**
- i) contribute towards the provision or enhancement of community facilities and infrastructure in line with Policy AG7: Community Facilities and Infrastructure.**

## **COMMENT**

*The inclusion of “small -scale “in paragraph b) could be considered to be in conflict with policy AG5 which supports major development.*

*Delete paragraph i) as it should not been included in the policy but can be included in the policy context/justification.*

*A number of the criteria are relevant for all types of development whilst others will only be relevant to residential development. For clarity and to meet the Basic Conditions the policy should be modified as follows:*

### **POLICY AG2: DESIGN AND LAYOUT OF NEW DEVELOPMENT**

*All Development proposals should:*

*a) be of high design quality appropriate to the site and conserve and enhance the AONB in accordance with National Policy Guidance and Policy Dev 25 of the JLP.*

*b) be of a scale appropriate to and in keeping with the village character,*

*c) be attractive, inclusive and accessible, reducing opportunities for crime, disorder and antisocial behaviour and supporting community safety and cohesion,*

*d) where relevant due to the scale of the development, be linked to the village centre by safe walking and cycling routes and be served by safe highway access,*

*e) as a minimum incorporate car parking to the relevant adopted standard and for residential development, where possible at least one space for a single bedroom dwelling, at least two spaces for a two-bedroom dwelling and at least three spaces for anything larger,*

*f) for residential development, incorporate a high standard (quality and quantity) of private open space appropriate to the proposed use and the*

*provision of public open space or contribution towards off site provision in accordance with the requirements of the Development Plan,*

*g) incorporate measures to minimise flood risk and assure satisfactory foul and surface water drainage.*

*h) incorporate measures to reduce carbon through the use of renewable energy, water and waste recycling and energy efficiency measures.*

### **New Housing**

#### **POLICY AG3: AFFORDABLE, SELF-BUILD AND SHELTERED HOUSING**

*a) Affordable homes and/or contributions towards affordable homes will be welcomed and should be included in new housing development at least in line with adopted policies.*

*b) Where affordable homes form part of a scheme, development should be designed and laid out so that open market and affordable homes are all of good locally distinctive design, suitably mixed in with and indistinguishable from one another.*

*c) Affordable homes should first be made available to those with a local connection.*

*d) Self-build housing will be welcomed and should be incorporated in new housing schemes if possible.*

*e) Sheltered housing and accommodation for the elderly will be welcomed and should be laid out to incorporate high quality outdoor communal space, good access to public transport and suitable parking provision for residents, staff and visitors.*

#### **COMMENT**

*I have no comment on this policy.*

## ***The Local Economy***

### ***POLICY AG4: NEW BUSINESS AND EMPLOYMENT DEVELOPMENT***

***1. New business development will be welcomed providing it will:***

- a) be in keeping with the locality,***
- b) cause no nuisance to neighbours,***
- c) incorporate safe access and adequate parking, and***
- d) not increase traffic through the village.***

***2. Change of use of suitable redundant farm buildings to employment use will be supported providing the conversion will:***

- a) not compromise the rural setting of the building,***
- b) be converted to no more than minimal alteration to the existing structure,***
- c) not involve residential or holiday housing, and***
- d) meet the requirements of clause 1 above.***

#### ***COMMENT***

***Any new development is likely to create traffic generation particularly in a rural location where opportunities for alternative modes of transport are unlikely to be available. Delete paragraph 2. C as this refers to the creation of residential accommodation.***

***For clarity the policy should be modified as follows:***

### ***POLICY AG4: NEW BUSINESS AND EMPLOYMENT DEVELOPMENT***

***Proposals for new business development will be supported where:***



- a) the scale and design is appropriate for its location,*
- b) it protects residential amenity*
- c) it incorporates safe access and adequate parking, and*
- d) any traffic generated by the development is managed to minimise the impact on the village.*

*2. Change of use of suitable redundant farm buildings to employment use will be supported providing the conversion will:*

- a) not compromise the rural setting of the building,*
- b) it can be converted with minimal alteration to the existing structure,*
- c) meets the requirements of paragraph 1 above.*

#### ***Development Sites***

#### ***POLICY AG5: DEVELOPMENT AT MILLHAYE AND CHURCH FIELD***

***Development is proposed at Millhaye and Church Field. It should demonstrate high quality design that respects the special architectural and historic interest of the Conservation Area and contributes positively to its setting. Development should also seek to conserve and enhance the setting of the Grade II listed farm buildings at Tree Farm to the south of the site.***

***The development shall include:***

- a) About 20 new open market homes on sites 1b & 1c, and in addition about 6 affordable homes (inclusion of self-build homes within this number will also be welcomed, as well as provision for senior living accommodation).***
- b) Space for a public car park to the south of the site, with about 30-50***

***car parking spaces to serve the needs of the village, which shall be laid out and usable for public use before the first house is occupied.***

***c) Good safe pedestrian and vehicular access, including good pedestrian circulation within the site, and***

***d) suitable and satisfactory drainage and flood prevention measures.***

***A masterplan shall be prepared for the whole site, including consultation with and involvement of the local community, showing how the whole of the development can be safely and satisfactorily laid out and delivered, and how construction traffic will be able to access the site from its northern edge so as to minimise disturbance.***

***Development shall not commence until that masterplan has been approved in writing by the local planning authority.***

#### **COMMENT**

***I have carefully considered the AECOM SEA report and conclusions in relation to the proposed allocation of this site. The report raised a number of issues and during the course of my examination I asked a number of questions for clarification. My questions and the Qualifying Body's response can be viewed in full on the South Hams District Council website.***

***I sought clarification around the issue of whether or not Aveton Gifford can be considered as a sustainable village as it was excluded as such from the JLP. The response from the Qualifying Body was as follows:***

***"The JLP was amended by its examiners to exclude settlements lying within or partly within the AONB from the list of sustainable villages. In summary this was done because there was insufficient evidence in the JLP to demonstrate that such settlements could necessarily accommodate development without harm to the AONB. It is therefore a matter for neighbourhood plans (or other means) to bring forward local***

*proposals for development with suitable evidence in support. JLP para 5.165 sets out the approach. This is a challenge for local community groups, but the Aveton Gifford Neighbourhood Plan aims to meet the requirements.*

*The SHDC Settlement Assessment Summary spreadsheet is attached. It records the availability of services and facilities across the villages of South Hams. Aveton Gifford scores 40 out of a possible 47 points. Only Dartington (44 points) and Harbertonford (41 points) score higher. Other villages range down to a minimum score of 11 points (Heybrook Bay).*

*Aveton Gifford's high score in the SHDC assessment strongly supports its sustainability, and this is reinforced by the community's desire to see proportionate growth and development."*

*On the basis of this clarification I am satisfied on balance that Aveton Gifford can be considered to be a sustainable village.*

*AECOM identified a potential yield of 31 dwellings from this site in the site analysis report however the recommendation in this report is:*

*"Barnfield (Millhaye is referred to as Barnfield in the AECOM site analysis report) is within a suitable location for development, with good access to local amenities and existing connections to the highway network. Key constraints concern potential effects on landscape and villagescape character and the relative biodiversity value of parts of the site, and flood risk issues on the lower parts of the site.*

*For these reasons, parts of the south eastern section of the site are considered as a suitable potential location for small scale development for the purposes of the Neighbourhood Plan, providing it complements existing character, is sensitive to the ecological value of the area and is not within the areas of site with flood risk issues."*

*I also sought clarification on why this policy supports major rather than small scale development as advocated in the SEA. The response from*

*the Qualifying Body was as follows:*

*“Although the AECOM report recommends small scale development on the site, subsequent work indicates that a larger development (as proposed in the plan) is needed in order to best deliver the development required in the village, and that it can be delivered without causing undue harm to local assets.*

*The site (Millhaye and Churchfield) are owned by a family trust who are keen to develop the sites and have signaled their willingness to provide the needed village car park (in memory of their uncle who owned the land). It is considered that delivery of that car park together with affordable homes in line with the targets set out in the JLP will require more than the small-scale development recommended by AECOM.*

*It is further considered that the constraints mentioned by AECOM can be satisfactorily dealt with. The lie of the land means that the visual impact of the proposed development will not be significantly greater than would be the case for small scale development in the south eastern parts of the site (as suggested by AECOM). Its location within the valley shields the site from long distance views and it is only prominent at its southern boundary adjoining the main road through the village. The Environment Agency flood maps show that only a relatively small part of the site is liable to flood. Development can be satisfactorily accommodated without encroaching on this area, although it is considered that the car park could be laid out on raised ground using spoil excavated within the site.*

*There is no other site in the village so well placed or able to deliver the development currently required.”*

*The SEA scores the sites considered for development and I sought clarification as to why the Millhaye and Churchfield site was chosen to allocate despite scoring less favourably than the other sites considered in the SEA and how this recommendation informed policy AGV 5 and the*

*decision state a figure of approximately 20 dwellings, which is major development.*

*The response from the Qualifying Body was as follows:*

*“The only sites which performed significantly better in the AECOM report were sites 5 and 6, both of which also feature in the plan.*

- Site 5 is proposed for the development of 6-8 houses (with an affordable housing contribution); this is the site referred to as Barton Field (site 2 in the plan).*
- Site 6 is safeguarded in the plan as potential expansion land for school use only. We note that in our response to SHDC’s Reg 14 comments it was indicated that this site would be placed outside the settlement boundary but that the submitted plan has failed to make that change. This is a matter we would be happy for the examiner to correct.*
- Several sites performed similarly to Millhaye and Churchfield, but none is so well placed to deliver the amount of development required and also enable the provision of a car park for the village.”*

*On the basis of this clarification and balancing the economic, social and environmental objectives for achieving sustainable development I am satisfied that the site can be developed, and the policy can, with modification meet the Basic Conditions.*

*However, I have not been provided with the evidence that the site can support the quantum of development whilst ensuring the environmental and heritage protections necessary. Therefore, the policy should be modified to ensure that at application stage the proposals can be tested to ensure that the site can be developed in a manner which provides the necessary protections and will achieve sustainable development.*

*The issue of how construction traffic will be managed and when aspects*

*of the development should be completed will be dealt with by condition and/or legal agreement and should not be part of the policy.*

*Development could not commence until a planning application has been approved therefore the last paragraph should be deleted. For clarity and to meet the Basic Conditions the policy should be modified as follows:*

***POLICY AG5: MILLHAYE AND CHURCH FIELD site allocation***

***The site at Millhaye and Church Field (sites 1b and 1c illustrated on map?) is allocated for approximately 20 open market houses, affordable housing in accordance with the Development Plan and a community car park.***

***Proposals should be brought forward following the preparation of a masterplan for the whole site, including consultation with and involvement of the local community, showing how the whole of the development can be safely and satisfactorily laid out and delivered and will be supported where the proposals:***

- a) demonstrate high quality design that respects the landscape setting of the village and will conserve and enhance the AONB and***
- b) respect the special architectural and historic interest of the Conservation Area and contribute positively to its setting and***
- c) conserve and enhance the setting of the Grade II listed farm buildings at Tree Farm to the south of the site and***
- d) include a public car park to the south of the site, with between 30-50 car parking spaces to serve the needs of the village and***
- e) Include safe pedestrian and vehicular access, including good pedestrian circulation within the site, and***
- f) suitable and satisfactory drainage and flood prevention measures.***

***The inclusion of affordable self-build homes as well as the provision homes adaptable for senior living will be supported.***

**POLICY AG6: DEVELOPMENT ADJOINING PULLEYS CLOSE – BARTON FIELD**

*Development of 6-8 new houses is proposed at a site adjacent to Pulleys Close. Development should demonstrate high quality design that respects the special architectural and historic interest of the Conservation Area and contributes positively to its setting. A contribution towards affordable housing will be required.*

**COMMENT**

*When considering any planning application that affects a conservation area a local planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of that area. For clarity the policy should be modified as follows:*

**POLICY AG6: DEVELOPMENT ADJOINING PULLEYS CLOSE – BARTON FIELD SITE ALLOCATION**

*The site adjoining Pulleys Close – Barton Field is allocated for residential development to provide 6-8 new houses.*

*Proposals should:*

- demonstrate high quality design that preserves or enhance the special architectural and historic interest of the Conservation Area and contributes positively to its setting.*
- make provision for affordable housing in accordance with the Development Plan.*

**Community Facilities, Transport and Infrastructure**

**POLICY AG7: COMMUNITY FACILITIES, TRANSPORT AND INFRASTRUCTURE**

**1. Development that will demonstrably support the vibrancy and vitality**

***of the village and wider community will be supported.***

***2. Proposals for additional community facilities and infrastructure will be supported, providing the proposal will include safe and satisfactory access and parking arrangements, sustainable drainage which will not exacerbate existing overflow problems, and will not cause loss of privacy or nuisance to neighbours.***

***3. Potential expansion land (site 3) is safeguarded for school use only.***

***4. To safeguard the sustainability of the local community, development that would result in the loss of the village shop, church or pub, or which would adversely affect the amenity value of a local community facility, will not be permitted unless***

***(a) there is no longer any need or demand for the facility,***

***(b) it can be shown to be no longer economically viable, or***

***(c) alternative equivalent or better provision of the facility is made at a suitable location elsewhere in the parish.***

***The church is added into the list of specified facilities to reflect para 70a of the plan, and the three tests (a, b and c) are specified to respond to SHDC's expressed concerns. The policy clause as written closely resembles others that have been successfully adopted all around the country.***

***5. The following priorities for the provision or enhancement of community facilities and infrastructure in Aveton Gifford have been identified:***

***a) refurbishment or rebuilding of the Memorial Hall (village hall),***

***b) relocation of Memorial Hall car park to facilitate the village hall scheme,***



**c) contributions to help support parish and community-owned amenities,**

**d) traffic calming and other measures to reduce traffic speeds and volumes and improve pedestrian safety in the village,**

**e) contribution towards the maintenance of Parsons Brook, which is vital to minimise fluvial flood risk to the village, and**

**f) provision of a footbridge to cross the Avon.**

**New development in Aveton Gifford will be required, where appropriate and where the requirement arises from the proposed development, to contribute to the above priorities through a Section 106 obligation or CIL, in accordance with adopted standards.**

#### **COMMENT**

**Paragraph 3. refers to “Potential expansion land (site 3) is safeguarded for school use only”. I have not been provided with any evidence that the school will need expansion during the plan period or demonstrating why the size of the site illustrated has been selected or that Devon County Council support this allocation. Without this evidence I consider that point 3. Should be deleted and the allocation removed from the proposed development site plan.**

**Paragraph 5 is a CIL priority list and not a policy. The list can be included in the plan but not the policy section.**

**The paragraph after point c) should be deleted as this appears to be narrative which should be included in the justification text rather than the policy.**

**For clarity and to meet the Basic Conditions the policy should be modified as follows:**

**POLICY AG7: COMMUNITY FACILITIES, TRANSPORT AND INFRASTRUCTURE**

**To safeguard the sustainability of the local community, development that would result in the loss of the village shop, church or pub, or which would adversely affect the amenity value of a local community facility, will not be permitted unless**

- (a) there is no longer any need or demand for the facility,**
- (b) it can be shown to be no longer economically viable, or**
- (c) alternative equivalent or better provision of the facility is made at a suitable location elsewhere in the parish.**

**Development that will support the vibrancy and vitality of the village and wider community including proposals for additional community facilities and infrastructure will be supported, providing the proposals:**

- i) include safe and satisfactory access and parking arrangements**
- ii) do not exacerbate existing flooding problems**
- iii) protect the residential amenity of adjoining occupiers**

**Environment**

**POLICY AG8: PROTECTING THE LANDSCAPE AND BIODIVERSITY**

**Development shall not harm but should conserve and enhance landscape and biodiversity by:**

- a) having regard to the special qualities of and national and local strategic policies to protect and enhance the AONB and the South Devon AONB Planning Guidance**
- b) having regard to national and local strategic policies to protect and enhance Sites of Special Scientific Interest (SSSIs), County Wildlife Sites, species and habitats,**

***c) safeguarding and enhancing local features that make a positive contribution to the landscape, particularly areas of green space, green lanes, estuary, salt marshes and trees, and***

***d) incorporating high quality landscaping which retains existing features, reinforces local landscape character, restores degraded landscapes, and provides mitigation from harm.***

#### **COMMENT**

***National and local policy already exists for the control of development affecting protected landscapes and wildlife sites. This policy does not add to that policy nor does it reflect exactly the existing policy regime. For clarity and to meet the Basic Conditions the policy should be modified as follows:***

#### **POLICY AG8: PROTECTING THE LANDSCAPE AND BIODIVERSITY**

***Development proposals must, where relevant:***

***a) protect, conserve and enhance the South Devon AONB and be in conformity with National Policy, the Development Plan and the South Devon AONB Management Plan.***

***b) conform with national policy and advice, and local strategic policies to protect and enhance Sites of Special Scientific Interest (SSSIs), County Wildlife Sites, species and habitats***

***c) safeguard and enhance local features that make a positive contribution to the landscape, particularly areas of green space, green lanes, estuary, salt marshes and trees, and***

***d) incorporate high quality landscaping which retains existing features, reinforces local landscape character, restores degraded landscapes, and provides mitigation from harm.***

***e) include a Biodiversity action plan.***

### ***Heritage and Conservation***

#### ***POLICY AG9: HERITAGE AND CONSERVATION***

***Development shall not harm but shall conserve and enhance designated and non-designated historic and heritage assets and their settings, both above and below ground, by having regard to national and local strategic policies for heritage and conservation.***

#### ***COMMENT***

***National and local policy and guidance already exists for designated and non-designated heritage assets and does not need to be repeated. For clarity the policy should be modified as follows:***

#### ***POLICY AG9: HERITAGE AND CONSERVATION***

***Proposals affecting designated and non-designated heritage assets and their settings, both above and below ground, must be in conformity with national and local policy and guidance for heritage and conservation.***

### ***Local Green Spaces***

#### ***POLICY AG10: LOCAL GREEN SPACES***

***1. The following areas are designated as green spaces in the plan:***

***a) The Village Green and adventure play area***

***b) Rectory Lawn***

***c) Memorial Hall grounds***

***d) Pittens Walk***

**e) Allotments Field**

**f) Junior play area at Icy Park**

**The local green spaces identified in the plan will be safeguarded from development. Only minor development directly associated with and necessary for the public enjoyment of the green space will be permitted. All these Local Green Spaces are in current use by the parish.**

**COMMENT**

**The NPPF states:**

**“99. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated and be capable of enduring beyond the end of the plan period.**

**100. The Local Green Space designation should only be used where the green space is:**

**a) in reasonably close proximity to the community it serves;**

**b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquility or richness of its wildlife; and**

**c) local in character and is not an extensive tract of land.**

**101. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.”**

*The policy implication of Local Green Space designation is significant and therefore the NPPF sets a high standard of criteria to be met for designation. I have considered the areas proposed in the Aveton Gifford NDP and am satisfied that they meet the NPPF tests.*

*The word “Local” is missing from point 1. In the policy.*

*During the course of my examination it was brought to my attention that there was a drafting error for the areas covered by the proposed LGSs A and E. This has now been resolved with the adjacent landowner and the Local Green Space map on page 27 of the AGNDP should be modified accordance with the amended boundary map provided. The provision of a larger scale LGS map within the plan would be helpful.*

## **SECTION 5**

### **Conclusion and Recommendations**

- 1. I find that the Aveton Gifford Neighbourhood Plan has been prepared in accordance with the statutory requirements and processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012.*

2. *The Neighbourhood Plan does not deal with County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.*
3. *The Aveton Gifford Neighbourhood Plan does not relate to more than one Neighbourhood Area and there are no other Neighbourhood Plans in place within the Neighbourhood Area.*
4. *The Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) screening, meet the EU Obligation.*
5. *The policies and plans in the Aveton Gifford Neighbourhood Plan, subject to the recommended modifications would contribute to achieving sustainable development. They have regard to national policy and to guidance, and generally conform to the strategic policies of the Development Plan. At the time of my examination, the development plan for the area is the Plymouth and South West Devon Joint Local Plan (the JLP), adopted in March 2019.*
6. *I therefore conclude that the Aveton Gifford Neighbourhood Plan subject to the recommended modifications can proceed to Referendum.*

*Deborah McCann BSc MRICS MRTPI Dip Arch Con Dip LD*

*Planning Consultant*

*NPIERS Examiner*

*CEDR accredited mediator*

*30th June 2020*

