

THE MONKS KIRBY NEIGHBOURHOOD PLAN 2022 - 2031

(Submission Version 2022)

Report of the Examination into the
Monks Kirby Neighbourhood Plan 2022 - 2031

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To Rugby Borough Council
And to the Monks Kirby Parish Council

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1. Introduction

Neighbourhood planning

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

2. This report concerns the Submission draft (2022) of the Monks Kirby Neighbourhood Plan 2022-2031 (“the Draft NDP”).

Appointment and role

3. Rugby Borough Council (“RBC”), with the agreement of qualifying body Monks Kirby Parish Council (“MKPC”), has appointed me to examine the Draft NDP. I am a member of the planning bar and am independent of RBC, MKPC, and of those who have made representations in respect of the Draft NDP. I have been trained and approved by the Neighbourhood Planning Independent Examiner Referral Service and have extensive experience both as a planning barrister and as a neighbourhood plan examiner. I do not have an interest in any land that is, or may be, affected by the Draft NDP.

4. My examination has involved considering written submissions and a detailed site visit on 13th January 2023. I have considered all the documents with which I have been provided.

5. My role may be summarised briefly as to consider whether certain statutory requirements have been met, to consider whether the Draft NDP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in paragraph 12 below applies and, if appropriate, to consider the referendum area. I must act proportionately, recognising that Parliament has intended the neighbourhood plan process to be relatively inexpensive with costs being proportionate.

2. Preliminary Matters

Public consultation

6. Consultation and community involvement are important parts of the process of producing a neighbourhood plan. I am satisfied that MKPC took public consultation seriously.

I do not consider there has been a failure in consultation. Consultation has been sufficient and meets the requirements of the Neighbourhood Planning (General) Regulations 2012 (“the General Regulations”).

Other statutory requirements

7. I am also satisfied of the following matters:

- (1) The Draft NDP area is the parish of Monks Kirby. RBC designated this on 8th June 2021. MKPC is authorised to act in respect of this area (Town and Country Planning Act 1990 (“TCPA”) s61F (1) as read with the Planning and Compulsory Purchase Act 2004 (“PCPA”) s38C (2)(a));
- (2) The Draft NDP does not include provision about development that is excluded development (as defined in TCPA s61K), and does not relate to more than one neighbourhood area (PCPA s38B (1));
- (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2));
- (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)); and
- (5) The Draft NDP specifies the period for which it is to have effect, namely 2022-2031, as required by PCPA s38B(1)(a), an end date that sensibly mirrors the Rugby Local Plan (2011-2031).

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

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

- (a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;
- (d)¹ The making of the Plan contributes to the achievement of sustainable development;
- (e) The making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- (f) The making of the Plan does not breach, and is otherwise compatible with, EU obligations; and
- (g) Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with in connection with the proposal for the Plan.

¹ The omission of (b) and (c) results from these clauses of para 8(2) not applying to neighbourhood development plans (PCPA s38C (5)(d)).

9. There is one prescribed basic condition:² *“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.”* Chapter 8 comprises regulations 105 to 111.

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

11. In my examination of the substantial merits of the Draft NDP, I may not consider matters other than those specified in the last three paragraphs. In particular, I may not consider whether any other test, such as the soundness test provided for in respect of examinations under PCPA s20, is met.³ Rather, Parliament has decided not to use the soundness test, but to use the, to some extent, less demanding tests in the basic conditions. It is important to avoid unduly onerous demands on qualifying bodies. It is not my role to rewrite a neighbourhood development plan to create the plan that I would have written for the area. It is not my role to impose a different vision on the community.

12. Having considered the basic conditions and human rights, I have three options, which I must exercise in the light of my findings. These are: (1) that the Draft NDP proceeds to a referendum as submitted; (2) that the Draft NDP is modified to meet basic conditions and then the modified version proceeds to a referendum; or (3) that the Draft NDP does not proceed to referendum. If I determine that either of the first two options is appropriate, I must also consider whether the referendum area should be extended. My power to recommend modifications is limited by statute in the following terms:

The only modifications that may be recommended are—

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

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

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

² Sch 2 of the General Regulations prescribes this.

³ Woodcock Holdings Ltd v. Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin), Holgate J. para 57; R. (Crownhall Estates Limited) v. Chichester District Council [2016] EWHC 73 (Admin) , para 29 Holgate J. PPG Reference ID: 41-055-2018022.

- (d) modifications specifying a period under section 61L(2)(b) or (5), and*
*(e) modifications for the purpose of correcting errors.*⁴

13. The word “*only*” prevents me recommending any other modifications. The fact that a modification would be of benefit is not a sufficient ground in itself to recommend it. So, for example, the fact that a policy could be strengthened or added to does not justify a modification unless this is necessary for the reasons given above. I must not take an excessively restrictive view of the power to recommend modifications, but must bear in mind Lindblom LJ’s explanation of its extent in his judgment in Kebbell Developments Ltd v. Leeds City Council.⁵ I may not recommend a modification that would put the draft NDP in breach of a basic condition or of human rights. When I conclude that a modification is necessary, I must, in deciding its wording, bear in mind material considerations including government advice. This includes the importance of localism. Where I properly can, my suggested modifications seek to limit the extent to which the substance of the draft NDP is changed.

14. It is not my role to consider matters that are solely for the determination of other bodies such Warwickshire County, RBC in a non-planning capacity, or the Environment Agency. Nor is it my role to consider matters that an NDP could consider, but which are not considered in the Draft NDP, unless this is necessary for my role as explained above. It is not my role to consider aspirations that are not policies.

4. Consideration of Representations

15. I have given the representations careful consideration, but have not felt it necessary to comment on most of them. Rather in accordance with the statutory requirement and bearing in mind the judgment of Lang J in R. (Bewley Homes Plc) v. Waverley District Council,⁶ I have mainly concentrated on giving reasons for my recommendations.⁷ Where I am required to consider the effect of the whole Draft NDP, I have borne it all in mind.

5. Public Hearing and Site Visit

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

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

⁵ [2018] EWCA Civ 450, 14th March 2018, paras 34 and 35.

⁶ [2017] EWHC 1776 (Admin), Lang J, 18th July 2017.

⁷ TCPA Sch 4B, para 10(6).

17. I decided that an unaccompanied site visit was necessary and held an extensive one on 13th January 2023. The site visit helped me to gain a sufficient impression of the nature of the area for the purpose of my role.

6. Basic conditions and human rights

Regard to national policies and advice

18. The first basic condition requires that I consider whether it is appropriate that the NDP should be made “*having regard to national policies and advice contained in guidance issued by the Secretary of State*”. A requirement to have regard to policies and advice does not require that such policy and advice must necessarily be followed, but they should only be departed from them only if there are clear reasons, which should be explained, for doing so.⁸

19. The principal document in which national planning policy is contained is the National Planning Policy Framework 20th July 2021 (“NPPF”) and I have borne that in mind. Other policy and advice that I have borne in mind includes national Planning Practice Guidance (“PPG”).

20. The NPPF provides that neighbourhood plans should support the delivery of strategic policies contained in local plans and should shape and direct development that is outside of these strategic policies.⁹ Its paragraphs 28 and 29 state:

28. non-strategic policies should be used by... 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.

Contributing to the achievement of sustainable development

21. The second basic condition means that I must consider whether the making of the Plan contributes to the achievement of sustainable development. Unless the Draft NDP, or the Draft NDP as modified, contributes to sustainable development, it cannot proceed to a referendum. This condition relates to the making of the Plan as a whole. It does not require that each policy

⁸ R. (Lochailort Investments Limited) v. Mendip District Council [2020] EWCA Civ 1259, Lewison LJ, paras 6, 31 and 33, 2nd October 2020.

⁹ NPPF para 13.

in it must contribute to sustainable development. It does require me to consider whether constraints might prevent sustainable development and, if they might, whether the evidence justifies them. That involves consideration of site-specific constraints, both existing and those proposed in the Draft NDP. The total effect of the constraints introduced by the Draft NDP when read with existing constraints should not prevent the achievement of sustainable development.

General conformity with the development plan's strategic policies

22. The third basic condition means that I must consider whether the Draft NDP as a whole is in general conformity with the strategic policies contained in the development plan for the area of the authority. The development plan is Rugby Local Plan (2011-31) ("RLP"), and the Warwickshire County Council Minerals and Waste Local Plans.

23. The adjective 'general' allows a degree of (but by no means unlimited) flexibility and requires the exercise of planning judgement. The draft NDP "*need not slavishly adopt every detail*".¹⁰ This condition only applies to strategic policies - there is no conformity requirement in respect of non-strategic policies in the development plan or in respect of other local authority documents (such as Supplementary Planning Documents) that do not form part of the development plan, although such documents may be relevant to other matters. In assessing general conformity and whether a policy is strategic, I have borne in mind helpful PPG advice.¹¹ I have also borne in mind the relevant part of the judgment in *R. (Swan Quay LLP) v. Swale District Council*.¹²

EU obligations

24. The fourth basic condition requires me to consider whether the Draft NDP breaches, or is otherwise incompatible with, EU obligations. I have in particular considered the following, together with the UK statutory instruments implementing them in England: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); the Water Framework Directive (2000/60/EC); and the General Data Protection Regulation (2016/679/EU). I have also considered the judgment of the European Court of Justice in *People Over Wind v Coillte Teoranta*.¹³ I have borne in mind that proportionality is a concept of and underlies EU law and must be wary of requirements that would be disproportionate to the Draft NDP.

¹⁰ *Wiltshire Council v. Cooper Estates Strategic Land Ltd* [2019] EWCA Civ 840, para 3.

¹¹ Paras 074 to 077 of the section on neighbourhood planning.

¹² [2017] EWHC 420 (Admin), para 29, Dove J, 27th January 2017.

¹³ Case C-323/17, 12th April 2018.

25. I am satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality directive.

Conservation of Habitats and Species Regulations

26. I am satisfied that the making of the NDP would not be incompatible with the prescribed basic condition and that it is not necessary to consider the matter further in this report.

Human Rights

27. The planning law of England and Wales in general complies with the Convention. This matter can be dealt with briefly in advance of further consideration of the contents of the Draft NDP. I have considered whether anything in the Draft NDP would cause a breach of any Convention right. In particular, I have considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. This last-mentioned article reinforces the common-law principle that private property rights should not be removed without proper justification, and I have borne that in mind. Apart from that, nothing in my examination of the Draft NDP has required further consideration of human rights.

7. The nature of the area

28. In considering the contents of the Draft NDP I must consider the nature of the neighbourhood area. Its gist is adequately described in the Draft NDP. The 2011 Census records 445 residents living in 181 households. Most of the parish is within the Green Belt. The area contains 14 listed buildings, a designated conservation area, which includes the whole of the village of Monks Kirby and some adjoining countryside) and non-designated heritage assets. The 18th century landscaped park and garden associated with Newnham Paddox House is a Registered Park and Garden.

29. Most of the parish is open countryside. In many places this countryside is some distance from the village of Monks Kirby¹⁴ and much closer to other settlements. Part of the southern boundary is very close to the village. Beyond this lies the parish of Pailton.

30. The village occupies only a small part of the parish, the largest parish in Warwickshire. It is a "Rural Village" in the RLP's settlement hierarchy. As such Rural Villages it "will not play a role in helping to deliver Rugby Borough's strategic growth".¹⁵ The most prominent building, the large, historic, attractive and interesting Anglican church of St Edith in Miller Lane on an elevated location in the west of the village, dates from the thirteenth century and is Grade I listed.¹⁶ As such it is of exceptional importance, being in the top 2% of all listed

¹⁴ I use this phrase and 'the village' to cover both Monks Kirby and the historically distinct Brockhurst.

¹⁵ RLP para 3.12.

¹⁶ List Entry Number: 1034855.

buildings. The historic core of the village in its western half contains most of the parish's listed buildings.

31. Facilities within the village include two places of worship (St Edith's which has a room for events and the Roman Catholic church), a primary school, a pub with dining and take-aways (the Denbigh Arms), a community park and playground, and a village hall. The village is served by the 85 Coventry to Rugby bus service, which (with its variants routes 85B and 85S) provides a good service for a small village, together with the less frequent 210, 213 and 241 bus services. There are also school buses.

32. There is also a cemetery with a chapel a little outside the village and 'The Barn' (a pub, restaurant and micro-brewery) in Coalpit Lane in the north of the parish.

8. The contents of the Draft NDP

Page 8

33. The is. minor error on page 8. "Chirchberie" should be "Chircheberie" as correctly recorded on page 24. I do consider it necessary to recommend adding the uncertain reference to Cestersover.

Recommended modification 1

Page 8

Replace "Chirchberie" with "Chircheberie".

Pages 26 - 29

34. These pages consider two proposed local green spaces ("LGSs"): the Churchyard of St Edith's church; and the Fishponds community wildlife area, open space, children's play area, verges and 'Oak Trees green'. I viewed and walked over these on the site visit.

35. The NPPF provides for Local Green Spaces in its chapter 8, which is headed "Promoting healthy and safe communities". Under the sub-heading "Open Spaces and Recreation", its paragraphs 101 to 103 state:

101. The designation of land as Local Green Space through ... 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.

102. 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), tranquillity or richness of its wildlife; and
- c) local in character and is not an extensive tract of land.

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

36. These paragraphs are central to any consideration of whether land should be designated as an LGS. They should be followed unless there is a good reason not to do so and none is apparent to me. In considering the proposed LGS designations, I have born in mind and found helpful the judgment Court of Appeal in R. (Lochailort Investments Ltd) v Mendip District Council. The phrase in paragraph 101 “capable of enduring beyond the end of the plan period” was given specific consideration. It is less demanding policy than applies to Green Belt designation where the stronger word “permanently” is used. I am satisfied that each proposed LGS is capable of enduring beyond the plan period.

37. I have considered each proposed LGS and the reason for their designation in the papers that I have seen. With regards to the churchyard, I am satisfied that most of the proposed LGS meets the criteria for being an LGS, however I do not consider that such as substantial permanent building as the church itself can properly be described as a green area. I am therefore recommending a modification to exclude it.

38. With regard to the second area, I agree with the description in the Monks Kirby Conservation Area Appraisal (2010):

“The village green provides an attractive focal point at the historic centre and acts as the foreground to the surrounding buildings. The structural role of the green is enhanced by the three Oak trees. The green is read in conjunction with the new community park and the grass verges on the approach from the south west, bordering the church and the churchyard.”

I am satisfied that this satisfies the requirements for inclusion in an NDP as an LGS.

39. In respect of both the churchyard (excluding the church) and the second area, I am satisfied that including them in the NDP as LGSs involves no conflict with either the NPPF or the Local Plan and is justified. The modest extent of LGS designation in the Draft NDP does not come close to undermining sustainable development.

Recommended modification 2

Page 28

Amend the location plan and the site plan so that St Edith’s Church is not coloured green.

40. These pages deal with three proposed important open spaces: the Revel C of E Primary School grounds and wildlife area; the War Memorial green; and the Catholic burial ground, frontage and verges.

41. Among other things the NPPF states:

“Planning policies and decisions should enable... the retention and development of accessible local services and community facilities, such as ... open space...” [para 84]

“To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: plan positively for the provision and use of shared spaces, community facilities (such as ... sports venues, open space, ...) ... to enhance the sustainability of communities and residential environments.” [para 93]

“Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.” [para 99]

42. The Revel C of E Primary School grounds and wildlife area is a substantial area of land that is not publicly accessible and does not adjoin any land to which the public have a right of access. It lies within the Green Belt and the Conservation Area and outside the Settlement Boundary and as a result is subject to substantial constraints on development. It is also subject to national and local policy and to other policy in the draft NDP. I cannot rule out the possibility that some of this land may be need for school purposes and cannot see no sufficient reason to add further to the constraints that already exist in respect of it. Indeed, possible expansion is envisaged in policy E6. If schools cannot expand in their immediate vicinity, they may have to move elsewhere. I therefore recommend modifying the draft NDP to exclude it from figure 6.1, but not figure 6.2.

43. The War Memorial green is a much smaller are of land that is publicly accessible. I was able to view it clearly and to walk on it. Such greens are important and in general particularly valued by local communities. It is the focus of the annual Remembrance Sunday events. Its protection would not prevent sustainable development. It should remain in the Plan.

44. I was able to visit and to walk over the Catholic burial ground, frontage and verges. These lie just beyond the northeastern end of the village. The ground includes the Chapel of the Sacred Heart, an 1888 grade II listed building which plays a key role in the landscape design

of the small cemetery in which it sits.¹⁷ The chapel itself is of sufficient size and permanence not to be included within an open space. It of course has substantial protection as a listed building. Subject that the protection of this area as an important open space is justified.

Recommended modification 3

Page 29

Replace “Three further de facto important open spaces” with “Two further important open spaces

Page 30

Delete, “The Revel C of E Primary School grounds and wildlife area. Inventory sites 005 and 014. (In part) Rugby BC Open Space Outdoor sports facilities plus (in part) this NP designation as Outdoor sports facilities / Natural and semi-natural green space”

Page 31, figure 6.1

Remove all yellow colouring that relates to the Revel C of E Primary School grounds and wildlife area.

Amend the colouring of the Catholic burial ground, frontage and verges so that the chapel is excluded.

Pages 41-42

45. Policy ENV8 protects important views shown on Figure 11. With one exception I am satisfied that this is justified. The exception is view 8 ‘View out of the village down Bell Lane’. The view along the built-up part of Bell Lane from its northwestern end to the former Bell Inn does not justify protection. Beyond the former Bell Inn, the view is outside the parish and in the parish of Pailton. It therefore cannot be covered by this NDP.

Recommended modification 4

Page 42 text

Delete “8. View out of the village down Bell Lane” and replace “9” with “8”

Page 42 Figure 11

Delete the blue arrow commencing with the number 8 and renumber the blue arrow commencing with the number 9.

¹⁷ List Entry Number: 1392656.

46. These deal with Renewable Energy Generation Infrastructure. Since the matter is dealt with in national policy, I must follow Lochailort Investments judgment and apply that policy unless there are clear reasons for not doing so.

47. The introductory words to this section accurately quote part of NPPF paragraph 151. The words that follow are *“Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources”*.

48. Paragraph 151 is followed by paragraph 152, *“The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.”*

49. The statement at the bottom of page 45 that *“there are almost no locations that are not in plain sight from the village and most of the parish”* has not been justified in respect of the village by a visual impact assessment or other evidence and is a truism in respect of the parish that would apply to every parish. The former seems unlikely given the hidden nature of the village other than the church and the extensive nature of the parish.

50. The introductory words of policy ENV 11 include *“proposals for small-scale, solar and wind generation infrastructure proposals instigated by local residents, businesses, or the community”*. Neither national nor local policy supports limiting needed the small-scale renewable energy to projects instigated by local residents or businesses, although there is support for *“community-led initiatives for renewable and low carbon energy”*. Community is relevant to wind turbines as mentioned below.

51. Wind turbines and solar farms are described as essential infrastructure in NPPF Annex 3. Since this relates to flood risk, I treat the description with some caution, but it nonetheless is a fair one.

52. The NPPF’s footnote 54 states:

“Except for applications for the repowering of existing wind turbines, a proposed wind energy development involving one or more turbines should not be considered acceptable unless it is in an area identified as suitable for wind energy development in the development plan; and, following consultation, it can be demonstrated that the planning impacts identified by the affected local community have been fully addressed and the proposal has their backing.”

53. The point about the backing of the local community has been confirmed by statements in December from the Prime Minister and the Secretary of State for Levelling Up, Housing and Communities. The phrase “the affected local community” is an imprecise one, not subject to any definition. It must be interpreted applying planning judgment. There may be occasions where a fair interpretation of it is the parish, but this is not the case here. That would make the parish of Pailton the local community for land immediately south of the village and the parish of Monks Kirby the local community for areas that are much closer to Willey, Churchover, Pailton, Stretton-under-Fosse and Withybrook.

54. RLP Policy SDC8: Supporting the Provision of Renewable Energy and Low Carbon Technology includes the following:

“For solar farms proposed on the best and most versatile agricultural land a sequential test has to be undertaken as outlined in the supporting text to this policy. Where it is proven that the use of the best and most versatile agricultural land is necessary, conditions may be applied to an approval to require the land to be restored to its previous greenfield use when the operation ceases.”

55. This makes it clear that solar farms may be allowed on the best and most versatile agricultural land where it is proven that this is necessary. This is at odds with policy ENV11(i) *“Proposals for solar photovoltaic arrays avoid the best and most versatile agricultural land”* and the difference has not been justified.

56. With regard to heritage assets RLP Policy SDC8 provides *“There is no unacceptable impact on heritage assets and their setting”*, which clearly envisages that there will be some circumstances where some degree of harm is acceptable. Policy ENV1(c) is more restrictive, providing, *“The siting of development avoids harm to the significance of a heritage asset and its setting in accordance with the provisions of the NPPF”*.

57. Enhanced biodiversity will be dealt with by the 10 per cent Biodiversity Net Gain requirement in the Environment Act 2021. Parliament has decided that a significant period should be allowed before this comes into effect.

58. I have no hesitation in concluding that policy ENV1 is significantly more restrictive than policy in both national and local policy. The restrictions that I have mentioned have not been justified. This means that the policy as it stands would be contrary to basic conditions (a) and (e). I have not found it necessary to decide whether it would also place the draft NDP as a whole in breach of basic condition (d).

59. Having reached that conclusion, I have considered whether policy ENMV11 could be modified to comply the basic conditions. It would not be right simply to duplicate national or Rugby strategic planning policies, as the draft NDP rightly recognises.¹⁸

60. With regret I have concluded that the problems most of policy ENV11 (the part that gives criteria for renewable energy generation) are so great that I cannot recommend a modification that would not be an excessive rewriting of the policy. The matter should therefore be left to national and local policy, principally that in the NPPF and RLP. That would comply with the basic conditions and deal with those concerns that are justified.

61. The last two paragraphs of the policy deal with heat pumps and solar roofing and are properly severable from the rest of the policy. There is no reason why they should not remain in the NDP.

Recommended modification 5

Pages 45 to 48

Delete the whole of the section on Renewable Energy Generation Infrastructure, that is from the title to the section to the end of page 48 and replace it with:

“Heat pumps and solar roofing

National Planning Policy Framework 2021 paragraphs 152-154 make it clear that, including through their Neighbourhood Plans, communities should take responsibility for reducing emissions as part of the recognised need to mitigate for and adapt to climate change. Residents of Monks Kirby wish to play their part, but at a scale and in locations appropriate to the landscape sensitivity of the Plan Area. Policy on renewable energy generation infrastructure is contained in the Rugby Local Plan and the National Planning Policy Framework. Policy ENV1 supplements this in respect of heat pumps and solar roofing.

POLICY ENV1: HEAT PUMPS AND SOLAR ROOFING

Proposals for ground source heat pumps will be supported provided there is no adverse effect on biodiversity (habitats and species), the best and most versatile agricultural land, or the historic environment.

All proposals for residential or agricultural development should incorporate an appropriate solar roofing system.”

¹⁸ Page 11, second paragraph.

62. The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 has been repealed and replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015.

Recommended modification 6

Replace “Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014” with “Town and Country Planning (General Permitted Development) (England) Order 2015”.

9. Updating

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

10. The Referendum Area

64. I have considered whether the referendum area should be extended beyond the designated plan area. However, I can see no sufficient reason to extend the area and therefore recommend that the referendum area be limited to the neighbourhood area.

11. Summary of Main Findings

65. I commend the Draft NDP for being clear, intelligible and well written, and for the considerable effort that has gone into its creation. It has struck the right balance between readability to a lay person and the use of technical words that ensure precision and readability.

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

67. With those modifications the Draft NDP will meet all the basic conditions and human rights obligations. Specifically:

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

- The making of the NDP will be in general conformity with the strategic policies contained in the development plan for the neighbourhood area;
- The making of the NDP will not breach, and will not otherwise be incompatible with, EU obligations;
- The making of the NDP will not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017; and
- The modified Draft NDP will in all respects fully compatible with Convention rights contained in the Human Rights Act 1998.

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

Timothy Jones, Barrister, FCI Arb,
Independent Examiner,
No 5 Chambers

January 2023.

Appendix A: Recommended Modifications

Recommended modification 1

Page, Map

Replace “Chirchberie” with “Chircheberie”.

Recommended modification 2

Page 28

Amend the location plan and the site plan so that St Edith’s Church is not coloured green.

Recommended modification 3

Page 29

Replace “Three further de facto important open spaces” with “Two further important open spaces”.

Page 30

Delete, “The Revel C of E Primary School grounds and wildlife area. Inventory sites 005 and 014. (In part) Rugby BC Open Space Outdoor sports facilities plus (in part) this NP designation as Outdoor sports facilities / Natural and semi-natural green space”.

Page 31, figure 6.1

Remove all yellow colouring that relates to the Revel C of E Primary School grounds and wildlife area.

Amend the colouring of the Catholic burial ground, frontage and verges so that the chapel is excluded.

Recommended modification 4

Page 42 text

Delete “8. View out of the village down Bell Lane” and replace “9” with “8”.

Page 42 Figure 11

Delete the blue arrow commencing with the number 8 and renumber the blue arrow commencing with the number 9.

Recommended modification 5

Pages 45 to 48

Delete the whole of the section on Renewable Energy Generation Infrastructure, that is from the title to the section to the end of page 48 and replace it with:

“Heat pumps and solar roofing

National Planning Policy Framework 2021 paragraphs 152-154 make it clear that, including through their Neighbourhood Plans, communities should take responsibility for reducing emissions as part of the recognised need to mitigate for and adapt to climate change. Residents of Monks Kirby wish to play their part, but at a scale and in locations appropriate to the landscape sensitivity of the Plan Area. Policy on renewable energy generation infrastructure is contained in the Rugby Local Plan and the National Planning Policy Framework. Policy ENV1 supplements this in respect of heat pumps and solar roofing.

POLICY ENV1: HEAT PUMPS AND SOLAR ROOFING

Proposals for ground source heat pumps will be supported provided there is no adverse effect on biodiversity (habitats and species), the best and most versatile agricultural land, or the historic environment.

All proposals for residential or agricultural development should incorporate an appropriate solar roofing system.”

Recommended modification 6

Page 54

Replace “Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014” with “Town and Country Planning (General Permitted Development) (England) Order 2015”.

Appendix B: Abbreviations

The following abbreviations are used in this report:

Convention	European Convention on Human Rights
Draft NDP	Submission draft of the Monks Kirby Neighbourhood Plan 2022-2031
EU	European Union
General Regulations	Neighbourhood Planning (General) Regulations 2012 (as amended)
LGS	local green space
MKPC	Monks Kirby Parish Council
NDP	Neighbourhood Development Plan
NPPF	National Planning Policy Framework (2021)
para	paragraph
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
PPG	national Planning Practice Guidance
RBC	Rugby Borough Council
RLP	Rugby Local Plan (2011-31)
s	section
Sch	Schedule
TCPA	Town and Country Planning Act 1990 (as amended)

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