

Selston Parish Council

JUS-t (Jacksdale, Underwood, Selston - tomorrow)
Neighbourhood Development Plan

A report to Ashfield District Council of the Independent Examination of the JUS-t Neighbourhood Development Plan

Independent Examiner Christopher Edward Collison

Christopher Edward Collison

BA (Hons) MBA MRTPI MIED MCMi IHBC

Planning and Management Ltd

collisonchris@aol.com

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Overall Finding

This is the report of the Independent Examination of the JUS-t Neighbourhood Development Plan. The plan area is the entire civil Parish of Selston as it existed prior to 1 December 2016. The plan period is 2017-2032. The Neighbourhood Plan includes nine policies relating to the development and use of land.

This report finds that subject to specified modifications the Neighbourhood Plan meets the basic conditions and other requirements. It is recommended the Plan should proceed to a local referendum based on the Selston Parish boundary established on 1 December 2016.

Neighbourhood Planning

1. The Localism Act 2011 empowers local communities to take responsibility for the preparation of elements of planning policy for their area through a neighbourhood development plan. The National Planning Policy Framework (the Framework) states that “*neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.*”¹
2. Following satisfactory completion of the necessary preparation process neighbourhood development plans have statutory weight. Decision-makers are obliged to make decisions on planning applications for the area that are in line with the neighbourhood development plan, unless material considerations indicate otherwise.
3. The JUS-t Neighbourhood Development Plan (the Neighbourhood Plan) has been prepared by Selston Parish Council (the Parish Council), a qualifying body able to prepare a neighbourhood plan, in respect of the JUS-t Neighbourhood Area which was formally designated by Ashfield District Council (the District Council) on 12 December 2013. The Neighbourhood Plan has been prepared by the JUS-t Neighbourhood Plan Steering Group (the Steering Group), made up of parish councillors, the parish council clerk, and local volunteers, on behalf of the Parish Council.
4. The submission draft of the Neighbourhood Plan, along with the Consultation Statement and the Basic Conditions Statement, has been approved by the Parish Council for submission of the plan and accompanying documents to the District Council. The District Council has submitted the Neighbourhood Plan to me for independent examination.

Independent Examination

5. This report sets out the findings of the independent examination into the Neighbourhood Plan.² The report makes recommendations to the District Council including a recommendation as to whether or not the Neighbourhood Plan should proceed to a local referendum. The District Council will decide what action to take in response to the recommendations in this report.

¹ Paragraph 183 National Planning Policy Framework (2012)

² Paragraph 10 Schedule 4B town and Country Planning Act 1990

6. The District Council will decide whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be extended, and what modifications, if any, should be made to the submission version plan. Once a neighbourhood plan has been independently examined, and the decision taken to put the plan to a referendum, it must be taken into account when determining a planning application, in so far as the policies in the plan are material to the application.
7. Should the Neighbourhood Plan proceed to local referendum and achieve more than half of votes cast in favour, then the Neighbourhood Plan will be 'made' by the District Council. If 'made' the Neighbourhood Plan will come into force as part of the Development Plan for the neighbourhood area, and subsequently be used in the determination of planning applications and decisions on planning appeals in the plan area. The Housing and Planning Act 2016 requires any conflict with a neighbourhood plan to be set out in the committee report, that will inform any planning committee decision, where that report recommends granting planning permission for development that conflicts with a made neighbourhood plan. The Framework is very clear that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted³.
8. I have been appointed by the District Council with the consent of the Parish Council, to undertake the examination of the Neighbourhood Plan and prepare this report of the independent examination. I am independent of the Parish Council and the District Council. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I hold appropriate qualifications and have appropriate experience. I am an experienced Independent Examiner of Neighbourhood Plans. I am a Member of the Royal Town Planning Institute; a Member of the Institute of Economic Development; a Member of the Chartered Management Institute; and a Member of the Institute of Historic Building Conservation. I have forty years professional planning experience and have held national positions and local authority Chief Planning Officer posts.
9. As independent examiner, I am required to produce this report and must recommend either:
 - that the Neighbourhood Plan is submitted to a referendum, or

³ Paragraph 198 National Planning Policy Framework 2012

- that modifications are made and that the modified Neighbourhood Plan is submitted to a referendum, or
- that the Neighbourhood Plan does not proceed to a referendum on the basis it does not meet the necessary legal requirements.

10. I make my recommendation in this respect and in respect to any extension to the referendum area,⁴ in the concluding section of this report. It is a requirement that my report must give reasons for each of its recommendations and contain a summary of its main findings.⁵

11. The general rule is that examination of the issues is undertaken by the examiner through consideration of written representations.⁶ The National Planning Practice Guidance (the Guidance) states “*it is expected that the examination of a draft Neighbourhood Plan will not include a public hearing.*”

12. The examiner has the ability to call a hearing for the purposes 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 adequate examination of the issue, or a person has a fair chance to put a case. All parties have had opportunity to state their case. As I did not consider a hearing necessary I proceeded on the basis of written representations.

Basic Conditions and other statutory requirements

13. An independent examiner must consider whether a neighbourhood plan meets the “Basic Conditions”.⁷ A neighbourhood plan meets the Basic Conditions if:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood 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);

⁴ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

⁵ Paragraph 10(6) Schedule 4B Town and Country Planning Act 1990

⁶ Paragraph 9(1) Schedule 4B Town and Country Planning Act 1990

⁷ Paragraph 8(2) Schedule 4B Town and Country Planning Act 1990

- the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.⁸

14. An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.⁹ All of these matters are considered in the later sections of this report titled 'The Neighbourhood Plan taken as a whole' and 'The Neighbourhood Plan policies'.

15. In addition to the Basic Conditions and Convention rights, I am also required to consider whether the Neighbourhood Plan complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004.¹⁰ I am satisfied the Neighbourhood Plan has been prepared in accordance with the requirements of those sections, in particular in respect to the Neighbourhood Planning (General) Regulations 2012 (the Regulations) which are made pursuant to the powers given in those sections.

16. The Neighbourhood Plan relates to the area that was designated by the District Council as a neighbourhood area on 12 December 2013. A map of the Neighbourhood Plan boundary is included as Map 1 of the Submission Version Plan. The Neighbourhood Plan does not relate to more than one neighbourhood area,¹¹ and no other neighbourhood development plan has been made for the neighbourhood area.¹² All requirements relating to the plan area have been met.

17. I am also required to check whether the Neighbourhood Plan sets out policies for the development and use of land in the whole or part of a designated neighbourhood area;¹³ and the Neighbourhood Plan does not include provision about excluded development.¹⁴ I am able to

⁸ Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

⁹ The Convention rights has the same meaning as in the Human Rights Act 1998

¹⁰ In sections 38A and 38B themselves; in Schedule 4B to the 1990 Act (introduced by section 38A (3)); and in the 2012 Regulations (made under sections 38A (7) and 38B (4)).

¹¹ Section 38B (1)(c) Planning and Compulsory Purchase Act 2004

¹² Section 38B (2) Planning and Compulsory Purchase Act 2004

¹³ Section 38A (2) Planning and Compulsory Purchase Act 2004

¹⁴ Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B(1)(b) Planning and Compulsory Purchase Act 2004

confirm that I am satisfied that each of these requirements has been met.

18. A neighbourhood plan must also meet the requirement to specify the period to which it has effect.¹⁵ The front cover of the Submission Version Plan clearly states the plan period to be 2017-2032.
19. The role of an independent examiner of a neighbourhood plan is defined. I am not examining the test of soundness provided for in respect of examination of Local Plans.¹⁶ It is not within my role to examine or produce an alternative plan, or a potentially more sustainable plan, except where this arises as a result of my recommended modifications so that the Neighbourhood Plan meets the Basic Conditions and other requirements that I have identified. I have been appointed to examine whether the submitted Neighbourhood Plan meets the Basic Conditions and Convention rights, and the other statutory requirements.
20. A neighbourhood plan can be narrow or broad in scope. There is no requirement for a neighbourhood plan to be holistic, or to include policies dealing with particular land uses or development types, and there is no requirement for a neighbourhood plan to be formulated as, or perform the role of, a comprehensive local plan. The nature of neighbourhood plans varies according to local requirements.
21. Neighbourhood plans are developed by local people in the localities they understand and as a result each plan will have its own character. It is not within my role to re-interpret, restructure, or re-write a plan to conform to a standard approach or terminology. Indeed, it is important that neighbourhood plans are a reflection of thinking and aspiration within the local community. They should be a local product and have particular meaning and significance to people living and working in the area.
22. Apart from minor corrections and consequential adjustment of text (referred to in the Annex to this report) I have only recommended modifications to the Neighbourhood Plan (presented in bold type) where I consider they need to be made so that the plan meets the Basic Conditions and the other requirements I have identified.¹⁷

¹⁵ Section 38B (1)(a) Planning and Compulsory Purchase Act 2004

¹⁶ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

¹⁷ See 10(1) and 10(3) of Schedule 4B to the Town and Country Planning Act 1990

Documents

23. I have given consideration to each of the following documents in so far as they have assisted me in considering whether the Neighbourhood Plan meets the Basic Conditions and other requirements:

- JUS-t Neighbourhood Plan Submission Version
- Selston Parish (JUS-t) Neighbourhood Plan Basic Conditions Statement 25 January 2017
- Selston Parish (JUS-t) Neighbourhood Plan Consultation Statement
- Map of Selston Parish plan area
- Selston Parish Council JUS-t Draft Neighbourhood Plan Strategic Environmental Assessment Screening Report March 2017
- JUS-t Neighbourhood Development Plan Development Site Appraisals – Principles for sustainable development in Selston Parish January 2016
- JUS-t Neighbourhood Development Plan Place analysis - Understanding the character and identity of Selston Parish January 2016
- JUS-t (Selston) Proposed Neighbourhood Development Plan Legal Compliance Check and Decision Statement 24 April 2017
- Representations received during the Regulation 16 publicity period
- Saved Policies of the Ashfield Local Plan Review adopted 2002
- Ashfield District Council Local Plan Development Plan Document (DPD) submitted to the Secretary of State on 24th February 2017 for independent examination
- National Planning Policy Framework (27 March 2012) [*In this report referred to as the Framework*]
- Permitted development for householders' technical guidance (June 2016) [*In this report referred to as the Permitted Development Guidance*]
- National Planning Practice Guidance web-based resource (first fully launched 6 March 2014) [*In this report referred to as the Guidance*]
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014
- The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2015
- The Town and Country Planning Act 1990 (as amended)
- The Planning and Compulsory Purchase Act 2004 (as amended)
- The Localism Act 2011
- The Housing and Planning Act 2016
- The Neighbourhood Planning Act 2017
- The Neighbourhood Planning (General) Regulations 2012 (as amended) [*In this report referred to as the Regulations*].
- The Neighbourhood Planning (General) (Amendment) Regulations 2015
- The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016

Consultation

24. The submitted Neighbourhood Plan is accompanied by a Consultation Statement which outlines the process undertaken in the preparation of the plan. In addition to detailing who was consulted and by what methods, it also provides a summary of comments received from local community members, and other consultees, and how these have been addressed in the submission plan. I highlight here a number of key stages of consultation undertaken in order to illustrate the approach adopted.
25. Early engagement took the form of 'drop-in' meetings in Selston, Jacksdale, and Underwood in November and December 2013 designed to raise awareness of the Neighbourhood Plan and capture early thoughts on local issues. Awareness raising efforts continued into 2014 through a variety of means including delivery of leaflets to community buildings; display of posters at shops and commercial premises; an article and advert in the local magazine 'Community News'; and display of banners and balloons.
26. A dedicated website was launched in May 2014 and remained in use throughout the plan preparation process. The website has been used to provide comprehensive information and includes a contact facility. A Facebook page and twitter account have also been used.
27. The delivery of approximately 6,500 survey forms to every house in the Parish in October and November 2014; visits to social groups; and articles local publications represented a significant effort to engage with the whole of the local community. Engagement continued throughout 2015 and early 2016
28. Pre-submission consultation in accordance with Regulation 14 was undertaken in the period between 9 July and 30 September 2016 and included delivery of a consultation leaflet to every household in the Parish; deposit of copies of the draft plan at several locations; and 'drop-in' consultation events. A total of 60 responses were received from individuals and organisations. The observations made are presented within the Consultation Statement where responses, and amendments to the Neighbourhood Plan, are set out. The suggestions have been reflected in a number of changes to the Plan that was approved by the Parish Council for submission to the District Council.
29. The Submission Version of the Neighbourhood Plan has been the subject of a Regulation 16 publicity period between 28 April and 12

June 2017. Representations from nine different parties were submitted during the publicity period as follows:

- Ashfield District Council.
- J Booth (Phoenix Planning).
- Coal Authority.
- Derbyshire County Council.
- Environment Agency.
- Gedling Borough Council.
- Highways England.
- Natural England.
- England Lyle Good Town Planning on behalf of Wren Hall.

30. Responses of Gedling Borough Council, Natural England, and the Environment Agency have not raised any issues that require consideration of modification of the Neighbourhood Plan to meet the Basic Conditions and other statutory requirements.

31. A representation by J Booth of Phoenix Planning (UK) Ltd includes a Master Plan proposing a scheme for land between Winter Close and Cordy Lane, Underwood. The scheme includes *“a new adopted highway from Cordy Lane out to the Industrial Area (this takes all the Heavy Goods Vehicles away from the village). The remainder of the land with access off Cordy Lane is proposed as a retirement village and plots for sale and Allotment area.”* The representation includes copies of previous letters sent to the District Council in March and December 2016 setting out, in some detail, the merits of a scheme for the land in question. It is not within my role to assess the merits of the proposed scheme nor is it within my role to propose a modification of the Neighbourhood Plan to include the proposed allocation of land and development scheme. My role is to determine whether the Neighbourhood Plan meets the Basic Conditions and other statutory requirements. The Neighbourhood Plan in Section 12 recognises the emerging Local Plan, being prepared by the District Council, includes site allocations for housing development to meet the assessed requirement of dwellings up to 2032. There is no requirement for the Neighbourhood Plan to include allocations of land for housing development or for any other type of development.

32. A representation by England Lyle Good Town Planning on behalf of Wren Hall includes comment in respect of Policies NP1 and NP4 and NP7 that I have taken into account when considering those policies. The representation also includes comment as follows:

- Supporting identification of elderly care in Selston as a strength but suggesting restriction of growth of this valuable provision is

- a threat;
- Welcoming acknowledgement of Wren Hall as one of the largest local employers which meets a local and wide need for assisted living and day care for the elderly and those with dementia;
 - Supporting the acknowledgement of increasing demand for care home facilities such as Wren Hall and support for proposals for the expansion of such provision;
 - Supporting the encouragement of business growth and seeking flexibility of planning policies and more favourable consideration of expansion of existing businesses in the Green Belt to take a positive approach and address the lack of employment opportunities;
 - Repeat of representations made in respect of the emerging Local Plan, and agreement with Aspirational Policy 1 valuing community involvement.

These representations do not necessitate my consideration of any modification of the Neighbourhood Plan to meet the Basic Conditions or other statutory requirements.

33. The Coal Authority note the submitted Plan does not propose to make any site allocations, and therefore has no specific comments to make on the Neighbourhood Plan. The Neighbourhood Plan does however through Policy NP1 seek sustainable development and through Policy NP3 seek to protect the landscape character. Whilst I deal with the requirements relating to neighbourhood plans in respect to national policy, and development plan policy, later in my report I consider here the issues in relation to land instability and mineral sterilisation as they are relevant to both, and it is also necessary to consider the issue of excluded development.

34. According to the Coal Authority Development High Risk Area Plans, there are recorded risks from past coal mining activity within the Neighbourhood Plan area in the form of 187 mine entries, 5 reported surface hazards, recorded shallow coal workings, unrecorded probable shallow coal workings, thick coal outcrops, and past surface mining. These mining legacy features cover much of the plan area.

35. A neighbourhood development order may not provide for the granting of planning permission for any development that is excluded development¹⁸. For these purposes excluded development includes

¹⁸ Section 61J (2) of the Town and Country Planning Act 1990 as amended by the Localism Act 2011

development that consists of a county matter.¹⁹ County matters include the winning and working of minerals. Part 2 of Schedule 9 to the Localism Act 2011 applies the excluded development provision to neighbourhood development plans. Neighbourhood development plans do not grant planning permission but set out policies in relation to the development and use of land. On this basis, neighbourhood development plan policies may not relate to excluded development including the winning and working of minerals. This exclusion, when applied to the construction of policies to be included in the Neighbourhood Plan, should not be taken to extend to land instability linked to past coal mining activity.

36. The Framework states planning policies should ensure that a site is suitable for its new use taking into account ground conditions and land instability including from former activities such as mining. Given the large number and extensive nature of mining legacy features in the Plan area the way that the Neighbourhood Plan shapes and directs development should have regard for this important element of national policy. This aspect of policy can be dealt with by inclusion within the Neighbourhood Plan of a provision that these matters are required to be considered. I have later in my report recommended a modification to Policy NP 1 accordingly.

37. The issue of sterilisation of mineral resources is a complex matter. The existence of coal measures deep underground does not in itself provide a basis to prevent Policy NP 3 of the Neighbourhood Plan which seeks to protect the landscape character. The working of coal reserves deep underground could in any case only be considered in the context of excluded matters. In the case of the Neighbourhood Plan area there are coal reserves close to the surface. I also note the entire Plan area is identified by The Coal Authority as a surface coal resource area. Coal measures close to the surface can only be extracted by disruption of the land surface by opencast mining methods. A policy to protect landscape character can have the effect of sterilising coal resources where the winning of those resources would be extracted by opencast mining.

38. Minerals can only be worked where they exist. The existence of mineral deposits does not necessarily mean they can be worked. That decision will be based on a wide range of complex considerations that could not appropriately be considered by a community led neighbourhood planning process. To determine whether surface coal

¹⁹ Within paragraph 1(1)(a) to (h) of Schedule 1 of the Town and Country Planning Act 1990 as amended by the Localism Act 2011

reserves can be worked requires consideration of compatibility of adjoining land uses. Where, for example, reserves are immediately adjacent to a school, or residential areas, they are unlikely to be able to be worked. If reserves cannot be worked then it cannot be found they can be sterilised by policies directing development, as Policy NP 3 seeks to do, above those reserves in that they are already sterilised by virtue of their juxtaposition in relation to sensitive neighbouring land uses. These issues can only be considered through exploration of mineral development matters that are excluded for the purposes of neighbourhood plan preparation.

39. Additionally, issues relating to mineral sterilisation are strategic in nature. It is not the function of a neighbourhood plan to prepare strategic planning policies to meet assessed needs over a Local Plan area²⁰. Unlike issues of land instability that relate to specific sites, issues of mineral sterilisation must be considered on a wide area basis. It is inappropriate to consider issues of mineral sterilisation at a neighbourhood plan area level. Independent examination of a neighbourhood plan cannot consider whether the proposed strategy is the most appropriate or is justified by a proportionate evidence base²¹. I have not considered the issue of the sterilisation of mineral resources in this independent examination of the Neighbourhood Plan as I consider this to be excluded development.²²

40. Highways England states it is acknowledged “*that approximately 390 dwellings are proposed to be delivered across the Plan area over the plan period. It is also noted that, as set out in the accompanying Development Appraisals Document, 322 dwellings have been proposed to be delivered across three areas: Jacksdale (75 dwellings); Selston East (110 dwellings) and Selston West (137 dwellings). Highways England considers that, owing to the scale of development being proposed and the proximity of M1 junction 27 to the plan area, the Neighbourhood Plan should refer to the need to consider impacts on the highway network (including the SRN) that could arise from development proposals in the Plan area through appropriate Transport Statements/Transport Assessments*”. Paragraph 32 of the Framework states “*All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment.*” I have recommended a modification of Policy NP 1 to reflect this consideration.

²⁰ Gladman Developments v Aylesbury Vale District Council 2014 EWHC 4323 (Admin)

²¹ Woodcock Holdings Ltd and Secretary of State CLG and Mid Sussex District Council 2015 EWHC 1173 (Admin)

²² Principally minerals, waste disposal, and nationally significant infrastructure projects - Section 38B(1)(b)

Planning and Compulsory Purchase Act 2004

41. In preparing this report I have taken into consideration all of the representations submitted during the Regulation 16 period even though they may not be referred to in whole, or in part. Where appropriate I refer to those representations that relate to policies of the Neighbourhood Plan in the later section of my report relating to the Plan policies.
42. In a consultation, Government, had put forward a question as follows *“Do you agree with the introduction of a new statutory requirement (basic condition) to test the nature and adequacy of the consultation undertaken during the preparation of a neighbourhood plan or order? If you do not agree is there an alternative approach that you suggest that can achieve our objective?”* The published Government response to the consultation states *“We do not intend to take forward the proposals to introduce a new basic condition...”*²³ The Regulations state that where a qualifying body submits a plan proposal to the local planning authority it must include amongst other items a consultation statement. The Regulations state a consultation statement means a document which:
- a) Contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
 - b) Explains how they were consulted;
 - c) Summarises the main issues and concerns raised by the persons consulted; and
 - d) Describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.²⁴
43. The Consultation Statement includes information in respect of each of the requirements set out in the Regulations. On this basis, I am satisfied the requirements have been met. It is evident the Neighbourhood Plan Steering Group has taken great care to ensure stakeholders have had full opportunity to influence the general nature, and specific policies, of the Neighbourhood Plan.

²³ Department for Communities and Local Government Neighbourhood Planning Government response to consultation December 2014 ISBN 978-1-4098-4416-7

²⁴ Regulation 15 The Neighbourhood Planning (General) Regulations 2012 SI 2012 No.637

The Neighbourhood Plan taken as a whole

44. This section of my report considers whether the Neighbourhood Plan taken as a whole meets EU obligations, habitats and human rights requirements; has regard to national policies and advice contained in guidance issued by the Secretary of State; whether the plan contributes to the achievement of sustainable development; and whether the plan is in general conformity with the strategic policies contained in the development plan for the area. Each of the plan policies is considered in turn in the section of my report that follows this. In considering all of these matters I have referred to the background and supporting documents and copies of the representations provided to me.

Consideration of Convention rights; and whether the making of the Neighbourhood Plan does not breach, and is otherwise compatible with, EU obligations; and the making of the Neighbourhood Plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects

45. The Basic Conditions Statement states *“The Neighbourhood Plan has regard to and is compatible with the fundamental rights and freedoms guaranteed under the European Convention on Human Rights.”* I have given consideration to the European Convention on Human Rights and in particular to Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property).²⁵ I have seen nothing in the submission version of the Neighbourhood Plan that indicates any breach of the Convention. The Basic Conditions Statement includes the comment *“Whilst an Equality Impact Assessment Report has not been specifically prepared, great care has been taken throughout the preparation and drafting of this Neighbourhood Plan to ensure that the views of the whole community were embraced to avoid any unintentional impacts on particular groups.”* From my own examination, the Neighbourhood Plan would appear to have neutral or positive impacts on groups with protected characteristics.

46. The objective of EU Directive 2001/42²⁶ is *“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an*

²⁵ The Human Rights Act 1998 which came into force in the UK in 2000 had the effect of codifying the protections in the European Convention on Human Rights into UK law.

²⁶ Transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004

environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.” The Neighbourhood Plan falls within the definition of ‘plans and programmes’²⁷ as the Local Planning Authority is obliged to ‘make’ the plan following a positive referendum result.²⁸

47. The Neighbourhood Planning (General) (Amendment) Regulations 2015 require the Parish Council to submit to the District Council either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental report is not required. The District Council issued a Screening Report in March 2017 concluding that a full Strategic Environmental Assessment (SEA) will not be required. The Screening Opinion included a statement of reasons why a full SEA report is not required. The Screening Opinion confirms that all the Statutory Consultees were consulted. I am satisfied that the requirements in respect of Strategic Environmental Assessment have been met.

48. The Screening Report prepared by the District Council in March 2017 also considered whether or not a Habitats Regulations Assessment is required and concluded the Neighbourhood Plan does not require a Habitats Regulations Assessment to be undertaken. The assessment includes reasons for the conclusion. The District Council has provided me with a letter from Natural England dated 27 February 2017 which, in respect of Habitats Regulations Assessment Screening, includes the statement *“Natural England notes the screening process applied to this Neighbourhood Plan. We agree with the Council’s conclusion of no likely significant effect upon the named European designated sites: Birklands and Bilhaugh SAC; South Pennine Moors SAC and SPA; Sherwood pSPA”*. On this basis, it is not necessary to undertake a full Habitats Regulations Assessment ‘appropriate assessment’ to accompany the Neighbourhood Plan.

49. I have not seen anything that suggests the Neighbourhood Plan will have a significant effect on a European offshore marine site. There are a number of other EU obligations that can be relevant to land use planning including the Water Framework Directive, the Waste Framework Directive, and the Air Quality Directive but none appear to be relevant in respect of this independent examination.

50. I conclude that the Neighbourhood Plan:

²⁷ Defined in Article 2(a) of Directive 2001/42

²⁸ Judgement of the Court of Justice of the European Union (Fourth Chamber) 22 March 2012

- is compatible with the Convention rights
- does not breach, and is otherwise compatible with, EU obligations
- is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects

51. The Guidance states it is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a draft neighbourhood plan submitted to it have been met in order for the draft neighbourhood plan to progress. The District Council as local planning authority must decide whether the draft neighbourhood plan is compatible with EU obligations (including obligations under the Strategic Environmental Assessment Directive) when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).²⁹

Consideration whether having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Neighbourhood Plan; and whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development

52. I refer initially to the basic condition “*having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan*”. The requirement to determine whether it is appropriate that the plan is made includes the words “*having regard to*”. This is not the same as compliance, nor is it the same as part of the test of soundness provided for in respect of examinations of Local Plans³⁰ which requires plans to be “*consistent with national policy*”.

53. Lord Goldsmith has provided guidance³¹ that ‘*have regard to*’ means “*such matters should be considered.*” The Guidance assists in understanding “*appropriate*”. In answer to the question “*What does having regard to national policy mean?*” the Guidance states a neighbourhood plan “*must not constrain the delivery of important national policy objectives.*”

²⁹ National Planning Practice Guidance paragraph 080 Reference ID: 41-080-20150209

³⁰ Under section 20 of the Planning and Compulsory Purchase Act 2004 and in respect of which guidance is given in paragraph 182 of the Framework

³¹ The Attorney General, (Her Majesty’s Principal Secretary of State for Justice) Lord Goldsmith, at a meeting of the Lord’s Grand Committee on 6 February 2006 to consider the Company Law Reform Bill (Column GC272 of Lords Hansard, 6 February 2006) and included in guidance in England’s Statutory Landscape Designations: a practical guide to your duty of regard, Natural England 2010 (an Agency of another Secretary of State)

54. The Basic Conditions Statement includes Table 1 which I am satisfied demonstrates how the Neighbourhood Plan has regard to the 12 core principles set out in paragraph 17 of the Framework.
55. The Neighbourhood Plan includes a positive vision for JUS-t. Reference is made to getting *“the balance right between providing future homes, jobs and facilities and protecting the highly valued rural character of the area.”* The vision also refers to *“a vibrant and attractive place to live and work”*, and *“sustained by a range of local services”*, and *“a thriving community spirit”*. These statements are consistent with the underlying principles of the Framework, specifically, the need to jointly and simultaneously seek economic, social and environmental gains through the planning system.
56. The vision is supported by eight objectives of the Neighbourhood Plan. These objectives relate to the built environment; landscape and the natural environment; local economy; local housing needs; community wellbeing; and transport and movement. The objectives of the Neighbourhood Plan are consistent with the core planning principles of the Framework.
57. The planning policies of the Neighbourhood Plan are grouped under the topics that support the objectives of the plan. The Neighbourhood Plan taken as a whole seeks to shape and direct development. This is precisely the role national policy envisages for a neighbourhood plan.
58. The Neighbourhood Plan includes two aspiration policies: Policy AP 1 Community Involvement in Major Planning Applications; and Policy AP2 Improving the bus services. Appendix A to the Submission Version Plan sets out a list of 11 projects that have been identified through the preparation of the Neighbourhood Plan. It is intended these projects will be delivered by the Parish Council as funds become available through CIL or other programmes, for example Lottery or other Government initiatives.
59. The Neighbourhood Plan preparation process is a convenient mechanism to surface and test local opinion on matters considered important in the local community. It is important that those non-development and land use matters, raised as important by the local community or other stakeholders, should not be lost sight of. The Guidance states, *“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.”* The

acknowledgement of aspiration policies, and projects in the Neighbourhood Plan, is consistent with this guidance and represents good practice. The 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.”* I recommend a modification so that both Aspiration Policy 1 and Aspiration Policy 2 and associated supporting text are transferred to an Appendix so that the approach is consistent with the Guidance.

Recommended modification 1

Transfer Aspiration Policies AP 1 and AP 2, and associated supporting text, to an Appendix of the Neighbourhood Plan

60. Apart from those elements of policy of the Neighbourhood Plan in respect of which I have recommended a modification to the plan I am satisfied that need to *‘have regard to’* national policies and advice contained in guidance issued by the Secretary of State has, in plan preparation, been exercised in substance in such a way that it has influenced the final decision on the form and nature of the plan. This consideration supports the conclusion that with the exception of those matters in respect of which I have recommended a modification of the plan, the Neighbourhood Plan meets the basic condition *“having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan.”*
61. At the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision-taking.³² The Guidance states, *“This basic condition is consistent with the planning principle that all plan-making and decision-taking should help to achieve sustainable development. A qualifying body must demonstrate how its plan or order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures). In order to demonstrate that a draft neighbourhood plan or order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or order guides development to sustainable solutions”*³³.

³² Paragraph 14 National Planning Policy Framework 2012

³³ National Planning Practice Guidance (Ref ID:41-072-20140306)

62. The Basic Conditions require my consideration whether the making of the Neighbourhood Plan contributes to the achievement of sustainable development. There is no requirement as to the nature or extent of that contribution, nor a need to assess whether or not the plan makes a particular contribution. The requirement is that there should be a contribution. There is also no requirement to consider whether some alternative plan would make a greater contribution to sustainable development.

63. The Framework states there are three dimensions to sustainable development: economic, social and environmental. Section 4 of the Basic Conditions Statement confirms, for each dimension of sustainability, the alignment of the Neighbourhood Plan with the aims of the Framework.

64. I conclude that the Neighbourhood Plan, by guiding development to sustainable solutions, contributes to the achievement of sustainable development. Broadly, the Neighbourhood Plan seeks to contribute to sustainable development by ensuring schemes are of an appropriate quality; will enhance social and economic facilities; and will protect important environmental features. In particular, I consider the Neighbourhood Plan seeks to:

- Ensure housing development meets identified local need;
- Ensure development encourages active travel, including improvement of access to the countryside and open spaces;
- Ensure development respects local built character, existing landscape character, and green infrastructure;
- Retain or expand local employment opportunities, and support appropriate additional business accommodation, and broadband provision;
- Strengthen retail and commercial presence and the attractiveness of the area in the vicinity of the Co-op Selston, and in Jacksdale's local shopping centre;
- Support small retail and commercial uses on site RA2e (land to the rear of the Bull and Butcher public house premises in Selston); and
- Support new or improved leisure facilities and resist loss of existing community facilities.

Subject to my recommended modifications of the Submission Plan including those relating to specific policies, as set out later in this report, I find it is appropriate that the Neighbourhood Plan should be made having regard to national policies and advice contained in

guidance issued by the Secretary of State. I have also found the Neighbourhood Plan contributes to the achievement of sustainable development.

Consideration whether the making of the Neighbourhood 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)

65. The Framework states that the ambition of a neighbourhood plan should “*support the strategic development needs set out in Local Plans*”.³⁴ “*Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies*”.³⁵

66. The Guidance states, “*A local planning authority should set out clearly its strategic policies in accordance with paragraph 184 of the National Planning Policy Framework and provide details of these to a qualifying body and to the independent examiner.*”³⁶

67. I have noted a footer on each page of the Neighbourhood Plan includes the statement “*All policies should be read in conjunction with District wide adopted policies.*” In this independent examination, I am required to consider whether the making of the Neighbourhood 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). The District Council has informed me that the Development Plan applying in the JUS-t neighbourhood area and relevant to the Neighbourhood Plan are the following “saved” policies of the Ashfield Local Plan Review Adopted November 2002 and that all of these policies are regarded as strategic:

Strategic policies: ST1, ST2, ST3, ST4

Environment policies: EV1, EV2, EV4, EV5, EV6, EV11, EV14

Employment policies: EM1, EM4, EM5

Housing policies: HG1, HG3, HG4

Transport policies: TR6

Retail policies: SH4

³⁴ Paragraph 16 National Planning Policy Framework 2012

³⁵ Paragraph 184 National Planning Policy Framework 2012

³⁶ National Planning Practice Guidance Paragraph 077 Reference ID: 41-077-20140306

Recreation policies: RC2, RC3, RC5, RC8, RC9

68. The District Council is preparing a new District-wide Local Plan. The District Council submitted the Ashfield District Council Local Plan Development Plan Document (DPD) to the Secretary of State on 24th February 2017 for independent examination. This Ashfield Local Plan Publication 2016 sets out the Council's planning framework for future development in the District until 2032. It includes policies and proposals for development that will deliver Ashfield's housing and employment needs and address a range of key issues facing the District. The Ashfield Local Plan Publication 2016 refers to an area that includes the District Council Wards of Selston, Jacksdale and Underwood as 'The Rurals'. 'The Rurals' in the Local Plan Publication 2016 covers a slightly different area to the JUS-T Neighbourhood Plan Area.
69. The Guidance states, "*Neighbourhood Plans can be developed before or at the same time as the local planning authority is producing its Local Plan. Although a draft neighbourhood plan is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested*".
70. In considering a now repealed provision that "*a local plan shall be in general conformity with the structure plan*" the Court of Appeal stated "*the adjective 'general' is there to introduce a degree of flexibility.*"³⁷ The use of 'general' allows for the possibility of conflict. Obviously, there must at least be broad consistency, but this gives considerable room for manoeuvre. Flexibility is however not unlimited. The test for neighbourhood plans refers to the strategic policies of the development plan rather than the development plan as a whole.
71. The Guidance states, "*When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:*
- *whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with;*
 - *the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy;*

³⁷ Persimmon Homes v. Stevenage BC the Court of Appeal [2006] 1 P &CR 31

- *whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy;*
- *the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach.*³⁸

My approach to the examination of the Neighbourhood Plan policies has been in accordance with this guidance.

72. Consideration as to whether the making of the Neighbourhood 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) has been addressed through examination of the plan as a whole and each of the plan policies below. Subject to the modifications I have recommended I have concluded the Neighbourhood Plan is in general conformity with the strategic policies contained in the Development Plan.

The Neighbourhood Plan policies

73. The Neighbourhood Plan includes 9 policies as follows:

Policy NP1: Sustainable Development

Policy NP2: Design Principles

Policy NP3: Protecting the Landscape Character

Policy NP4: Housing Types

Policy NP5: Increasing retail and commercial uses in Selston village

Policy NP6: Supporting Jacksdale's Local Shopping Centre

Policy NP7: Community Facilities

Policy NP8: Improving Access to the Countryside

Policy NP9: Supporting Local Businesses

74. The Framework states "*Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of*

³⁸ National Planning Practice Guidance Paragraph 074 Reference ID: 41-074-20140306

development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.” “Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area.”³⁹

75. The Guidance 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.”⁴⁰*

76. *“While there are prescribed documents that must be submitted with a neighbourhood plan ... there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan”.*⁴¹

77. *“A neighbourhood plan must address the development and use of land. This is because if successful at examination and referendum the neighbourhood plan will become part of the statutory development plan once it has been made (brought into legal force) by the planning authority. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (See section 38(6) of the Planning and Compulsory Purchase Act 2004).”⁴²*

78. If to any extent, a policy set out in the Neighbourhood Plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy. Given that policies have this status, and if the Neighbourhood Plan is made they will be utilised in the determination of planning applications and appeals, I have examined each policy individually in turn. In adopting this approach, I have noted a footer on each page of the Neighbourhood Plan includes the statement *“No neighbourhood Plan policy will be applied in isolation; account will be taken of all relevant policies.”* I have considered

³⁹ Paragraphs 184 and 185 National Planning Policy Framework 2012

⁴⁰ National Planning Practice Guidance Paragraph 041 Reference ID: 41-041-20140306

⁴¹ National Planning Practice Guidance Paragraph 040 Reference ID: 41-040-20160211

⁴² National Planning Practice Guidance Paragraph 004 Reference ID: 41-004-20140306

whether there are any inter-relationships between policies that are relevant to my remit. I have concluded that it is appropriate for me to consider each of these policies individually.

Policy NP1: Sustainable Development

79. This policy seeks to establish overarching principles that will ensure development occurring is sustainable.
80. The Neighbourhood Plan does not allocate sites for housing or any other use but does recognise at paragraph 12.3 that dwellings will be built in the Plan area on six sites identified in the emerging Local Plan.
81. A representation by England Lyle Good Town Planning on behalf of Wren Hall supports this Policy but suggests that it should be expanded to support the growth of local businesses. I am satisfied part d) of the policy has sufficient regard for national policy in respect of building a strong, competitive economy and I do not consider a modification necessary in this respect.
82. The term “*is encouraged*” does not provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended a modification in this respect.
83. Part 2 of the Policy includes the term “*in the Plan area*”. It is confusing and unnecessary for one part of one policy to specify spatial application in this way as all of the policies of a neighbourhood plan apply throughout the neighbourhood area unless a specific part of the area is stated. I have recommended a modification in this respect, and minor wording change in respect of parts a) and d) in order to improve clarity.
84. I have earlier in my report recommended additional provisions of the Policy relating to consideration of land stability, and consideration of impact on the highway network, so as to have regard to those aspects of national policy that are particularly relevant to development in the Neighbourhood Area.
85. Paragraph 12.14 of the supporting text refers to certain schemes being given priority over other proposals. This statement of priority is not referred to in the Policy and is therefore a source of confusion. It is also impractical to assign priority where schemes will be submitted at

different times throughout the plan period. The final sentence of paragraph 12.14 should be deleted.

86. The policy is in general conformity with the strategic policies included in the Development Plan, the "saved" policies of the Ashfield Local Plan Review Adopted November 2002 and in particular strategic policies ST1, ST4, EV1, EV2, EV4, EV5, EV6, EM5, HG3, HG4, TR6, SH4, and RC3.
87. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong competitive economy; ensuring the vitality of town centres; supporting a prosperous rural economy; promoting sustainable transport; delivering a wide choice of high quality homes; requiring good design; promoting healthy communities; and conserving and enhancing the natural environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 2:

In Policy NP1

- **delete "is encouraged" and insert "will be supported"**
- **delete "in the Plan area"**
- **after "housing development" insert "is"**
- **delete "and/"**
- **add f) consideration of ground stability**
- **add g) consideration of impacts on the highway network through Transport Statements/Transport Assessments**

And delete the final sentence of paragraph 12.14 of the supporting text

Policy NP2: Design Principles

88. This policy seeks to establish design principles that development should respect. The policy specifies design principles for each of the settlements of Selston, Jacksdale and Underwood. The policy also seeks to establish plan area-wide principles in parts 1,5,6 and 7 relating to respect for local character; sustainable movement; encouragement to use national design standards; and support for sustainable drainage systems. The Appendix E JUS-T Neighbourhood Development Plan Place Analysis document provides thorough and detailed evidence to support many aspects of the policy.

89. The term “*is encouraged*” does not provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended a modification in this respect which also has the effect of making the term “(where applicable)” obsolete.
90. I have also recommended insertion of a footnote to define the term “*major development*” so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.
91. The policy is in general conformity with the strategic policies included in the Development Plan, the “saved” policies of the Ashfield Local Plan Review Adopted November 2002 and in particular Policy ST1 and HG5.
92. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with requiring good design; promoting sustainable transport; and meeting the challenge of climate change and flooding. The policy avoids unnecessary prescription as required by paragraph 59 of the Framework, whilst reinforcing local distinctiveness in accordance with paragraph 60 of the Framework. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 3:

In Policy NP2

- **in parts 2, 3, and 4, delete “is encouraged” and insert “should include the following characteristics or demonstrate that these are not appropriate for the scheme concerned”**
- **in part 2a Delete “(where applicable)”**
- **in part 5 delete “encourage” and insert “provide for”**
- **in part 6 delete “encouraged” and insert “required”, and insert a footnote to define major developments**

Policy NP3: Protecting the Landscape Character

93. This policy seeks to establish four provisions that protect the landscape character of the plan areas.

94. The first part of the policy requires demonstration that development proposals protect 10 view corridors (one from Felley, a cluster of three from Stoney Lane Selston, and a cluster of 6 from Wagstaff Lane Jacksdale) as an important part of the landscape character. The view corridors are adequately defined on a map and by use of photographs.
95. The first part of the policy also requires schemes to adhere “*to the Landscape Actions for the relevant Draft Policy Zone as given in the most recent Greater Nottingham Landscape Character Assessment.*” Reference to policy requirements set out in documents outside the set of Neighbourhood Plan documents is not normally desirable in terms of providing a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. However, where there is a desire to co-ordinate landscape actions over a character area that is more extensive than the neighbourhood area, and where those landscape actions may change throughout the Neighbourhood Plan period, then the approach adopted offers a practical solution and I have therefore not recommended a modification in this respect.
96. Part 3 of the policy seeks to establish requirements to apply to development proposals that encroach upon existing open countryside. It is unnecessary and confusing for provision 3b of the policy to state “*on new development or as part of alterations to existing development*” when it is clear from the policy that it relates to all “*development proposals that encroach upon existing open countryside.*” I have recommended a modification in this respect.
97. Part 4 of the policy requires biodiversity impact assessment when development proposals relate to sites adjoining existing settlements. The policy expects new provision elsewhere, to ensure no net loss of biodiversity, if there is a significant loss of trees and shrubs. Paragraph 118 of the Framework states that if significant harm to biodiversity cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused. Paragraph 118 also states development resulting in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland should be refused unless the need for, and benefits of, the development in that location clearly outweigh the loss. I have recommended a modification in this respect so that the policy has regard for national policy.

98. Paragraph 3.1 of the Neighbourhood Plan states that 70 % of the Parish is designated as Green Belt. Clearly openness is an important factor in the landscape character of the plan area. The Appendix E JUS-T Neighbourhood Development Plan Place Analysis document provides thorough and detailed evidence to support the policy by identifying the way settlements in the plan area relate to the landscape setting.
99. The policy is in general conformity with the strategic policies included in the Development Plan, the "saved" policies of the Ashfield Local Plan Review Adopted November 2002 and in particular Policy EV1; Policy EV2; Policy EV4 and Policy EV5.
100. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with requiring good design; protecting Green Belt land; and conserving and enhancing the natural environment. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 4:

In Policy NP3

- **in part 3 b delete “on new development or as part of alterations to existing development”**
- **in part 4 after the first sentence insert “If significant harm to biodiversity cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.”**
- **at the end of part 4 insert “Development resulting in the loss of aged or veteran trees should be refused unless the need for, and benefits of, the development in that location clearly outweigh the loss.”**

Policy NP4: Housing Types

101. This policy seeks to establish that development proposals should deliver a housing mix that reflects local identified need and should include a range of housing types including two bedroom dwellings to suit older people, and for starter homes. Provision of smaller dwellings, especially those suitable for older people, will be supported near to main facilities. Provision of other accommodation (for example assisted living) to meet the growing local and District wide demands of an ageing population will be supported.

102. A representation by England Lyle Good Town Planning on behalf of Wren Hall supports this Policy, particularly part 3 and states *“In light of this Policy, it is suggested that supporting this type of valuable local business should be identified as a Community Objective.”* It is beyond my role to recommend an addition to the Community Objectives where this is not necessary to meet the Basic Conditions and other statutory requirements.
103. In a representation, the District Council states it *“raised in its comments to the Parish Council’s pre-submission consultation that the Policy identifies a requirement to deliver a housing mix that reflects a local identified housing need which was based according to the footnote on the ‘Local need taken from 2014/2015 questionnaire’. It is assumed that the Policy reference to starter homes in NP4, 1 relates to homes for first time buyers and is not reflecting the Government’s definition of a particular form of affordable housing ‘starter homes’. The Policy should be amended to reflect that it relates to homes for first time buyers. Housing Mix is reflected in the Ashfield Local Plan Publication 2016. Policy HG4: Housing Mix. The District Council’s policy includes encouraging self-build and custom-build properties on sites and for developments of 10 or more dwellings, the development will be expected to provide 10% of dwellings as accessible or easily adaptable for occupation by the elderly.”*
104. Although a draft neighbourhood plan is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. Whilst the Neighbourhood Plan policy is not as comprehensive as the emerging Local Plan policy it does not have to be. The two policies are compatible. The policy is supported by SHMA and locally based evidence. The use of the term *“starter homes”* limits the policy to a particular product without justification. I have recommended a modification in this respect
105. The policy is in general conformity with the strategic policies included in the Development Plan, the "saved" policies of the Ashfield Local Plan Review Adopted November 2002.
106. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with delivering a wide choice of high quality homes, and supporting sustainable transport. Subject to the proposed modification this policy meets the Basic Conditions.

**Recommended modification 5:
In Policy NP4 delete “starter” and insert “first”**

Policy NP5: Increasing retail and commercial uses in Selston village

107. This policy seeks to establish that planning permission will be granted for retail and other commercial uses in Use Class A in the vicinity of the Co-op on Nottingham Road subject to specified criteria. The policy also seeks to establish support for landscaping and other public realm improvements. Support is also established for small retail or other commercial uses as part of a development for residential development on a specific site.
108. The policy includes the phrase *“Planning permission will be granted”*. With regard to the issue of decision making the Framework states *“the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise”*. This basis for decision making should be made clear. Policies should use the term “will be supported” in recognition that the basis of decision making is the development plan unless material considerations indicate otherwise. The material considerations at the time of determination of a future planning application are unknown and therefore cannot be dismissed through a policy that states development will be granted.
109. The District Council states *“It is recommended that Policy NP 5, point 3, the reference to site RA2e should reflect that it is the Ashfield Local Plan Publication 2016, site RA2e”*. The reference in the policy to *“site RA2e”* is imprecise. The policy does not provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended a modification so that the site location is described and the site is identified on a map, and reference to that map is included within the policy.
110. The reference to *“in this area”* in part 2 of the policy is also imprecise. I have recommended a modification in the interests of clarity in this respect also.
111. The policy is in general conformity with the strategic policies included in the Development Plan, the "saved" policies of the Ashfield Local Plan Review Adopted November 2002 and in particular Policy SH4.

112. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong competitive economy; ensuring the vitality of town centres; supporting a prosperous rural economy; promoting sustainable transport; and promoting healthy communities. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 6:

In Policy NP5

- delete “Planning permission will be granted” and insert “Development proposals”
- delete “which” and insert “will be supported where they”
- delete “in this area” and insert “in the vicinity of the Co-op on Nottingham Road”
- after “site RA2e” insert “(land to the rear of the Bull and Butcher public house premises in Selston)”
- site RA2e should be identified on a map and reference made to that map within the policy

Policy NP6: Supporting Jacksdale’s Local Shopping Centre

113. This policy seeks to establish support for retail and other commercial (Use Class A) uses in Jacksdale’s local shopping centre subject to specified criteria. The policy also expects a high quality of design in features on the frontage of shop premises. Sympathetic renovation of 5 Main Road is specifically referred to.

114. The policy includes the phrase “*Planning permission will be granted*”. With regard to the issue of decision making the Framework states “*the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise*”. This basis for decision making should be made clear. Policies should use the term “will be supported” in recognition that the basis of decision making is the development plan unless material considerations indicate otherwise. The material considerations at the time of determination of a future planning application are unknown and therefore cannot be dismissed through a policy that states development will be granted.

115. The policy includes the term “*is expected*”. An expectation does not provide a practical framework within which decisions on planning

applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended a modification in this respect. The term “*sympathetic renovation*” is also imprecise and I have recommended a modification in this respect also for the same reason. The numbering of the parts of point 1 of the policy also need to be corrected

116. The policy is in general conformity with the strategic policies included in the Development Plan, the "saved" policies of the Ashfield Local Plan Review Adopted November 2002 and in particular Policy SH4.

117. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong competitive economy; ensuring the vitality of town centres; supporting a prosperous rural economy; and requiring good design. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 7:

In Policy NP6

- **delete “Planning permission will be granted” and insert “Development proposals”**
- **delete “which” and insert “will be supported where they”**
- **delete “expected” and insert “required”**
- **in point 1 replace c) and d) with a) and b)**
- **delete “sympathetic” and insert after “supported” continue “where the proposed scheme reflects local character”**

Policy NP7: Community Facilities

118. This policy seeks to establish conditional support for proposals for new or improved leisure facilities. Provision of land for a football pitch, and an expansion of provision of support for the elderly are supported. Loss of community facilities including commercial community facilities will be resisted unless specified criteria are demonstrated.

119. There would appear to be some overlap between criteria a and b of the first part of the policy however this is not so serious as to prevent the policy providing a practical framework within which decisions on planning applications can be made with a high degree of

predictability and efficiency as required by paragraph 17 of the Framework.

120. The term “*in accordance with District policy*” is imprecise and unnecessary. I have recommended a modification in this respect.
121. A representation by England Lyle Good Town Planning on behalf of Wren Hall supports the Policy, particularly part 3, which states that “*an expansion in the provision of support for the elderly will be supported where it meets local need*”.
122. In a representation Derbyshire County Council would welcome the inclusion of a proposal to create a Greenway (a multiuser route for walkers, cyclists, horse riders and people with limited mobility) between Jacksdale and Codnor Park. Derbyshire County Council states work is being undertaken in partnership to consider the possibility of reinstating a bridge over the Cromford Canal to provide improved, affordable access to the shops and services in Jacksdale, thereby increasing revenue; and provide the residents of Jacksdale with improved access to the countryside associated with the Forge and Monument Site and Codnor Castle. There is no requirement for the Neighbourhood Plan to include policies relating to any particular topic and it is beyond my role to recommend additional policies to be included in the Neighbourhood Plan.
123. The District Council states the latest evidence sets out a surplus of adult pitches and suggests part 2 of the policy is either deleted or amended to “*Convert adult football pitches, where appropriate, to youth / mini football pitches in accordance with the Ashfield Playing Pitch Strategy 2017*”. It is beyond my remit to recommend a modification that introduces a new policy approach to the provision of pitches in the plan area. The policy relies on the 2013 Pitch Strategy that has been superseded by the 2017 Pitch Strategy. The result is that the policy is not supported by up-to-date evidence in respect of part 2 and I therefore recommend it is deleted.
124. The policy is in general conformity with the strategic policies included in the Development Plan, the "saved" policies of the Ashfield Local Plan Review Adopted November 2002 and in particular Policy RC5 and Policy RC9.
125. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with supporting a prosperous rural economy;

and promoting healthy communities. Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 8:

In Policy NP7

- **delete part 2**
- **delete “in accordance with District policy”**

Policy NP8: Improving Access to the Countryside

126. This policy seeks to establish support for the improvement and extension of non-vehicular routes identified on map 7 where proposals respect local landscape character and increase access to the countryside. The policy also establishes an expectation that proposals for housing development should demonstrate protection and enhancement of affected public rights of way and show opportunities have been taken to improve linkages. I have recommended a modification to clarify the reference to development is to the proposed development so that the policy provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework.

127. Paragraph 75 of the Framework states planning policies should protect and enhance public rights of way and access, and that opportunities for additional links in rights of way networks should be sought.

128. In a representation Derbyshire County Council would welcome the inclusion of a proposal to create a Greenway (a multiuser route for walkers, cyclists, horse riders and people with limited mobility) between Jacksdale and Codnor Park. Derbyshire County Council states work is being undertaken in partnership to consider the possibility of reinstating a bridge over the Cromford Canal to provide improved, affordable access to the shops and services in Jacksdale, thereby increasing revenue; and provide the residents of Jacksdale with improved access to the countryside associated with the Forge and Monument Site and Codnor Castle. There is no requirement for the Neighbourhood Plan to include policies relating to any particular topic and it is beyond my role to recommend additional policies to be included in the Neighbourhood Plan.

129. The policy is in general conformity with the strategic policies included in the Development Plan, the "saved" policies of the Ashfield

Local Plan Review Adopted November 2002 and in particular Policy TR6 and Policy RC8.

130. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with promoting sustainable transport; protecting Green Belt land; promoting healthy communities; and conserving and enhancing the natural environment. Subject to the recommended modification this policy meets the Basic Conditions.

**Recommended modification 9:
In Policy NP8 after “affected by” insert “the proposed”**

Policy NP9: Supporting Local Businesses

131. This policy seeks to establish encouragement for development, less than specified size limits, within settlement boundaries, that proposes A2 (financial services) or B1 (business) uses as defined in the Town and Country Planning (Use Class) Order 1987 (as amended).
132. The first sentence of the policy is a statement only. This statement and the term “*will be encouraged*” do not provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended a modification in these respects.
133. Part 2 of the policy specifies criteria without any consequence. I have recommended a modification in this respect. Part 3 of the policy states retention of existing employment sites in Selston Parish will be given significant weight in accordance with District policy. The reference to Selston Parish is unnecessary as all the policies of the Neighbourhood Plan relate to the plan area and it is confusing for one part of one policy to state geographic application. The reference to District policy is imprecise and does not provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended a modification in this respect also.
134. In a representation, the District Council recommended that part 5 of the policy should clarify that agricultural diversification will be supported where it meets national policy. In balancing the component

of the Framework relating to supporting a prosperous rural economy with the components relating to protection of the Green Belt and conserving and enhancing the natural environment it may be found a proposal for agricultural diversification may be appropriate. I have recommended a modification that recognises this.

135. The District Council also states the evidence base does not address the floor space requirements set out in Policy NP 9, 1 (a), and the footnote that refers to GPDO 1995 is incorrect as it has been superseded. I agree the precise floorspace and site size limits have not been adequately justified. The Guidance states “*Proportionate, robust evidence should support the choices made and the approach taken*”. I consider the criteria set out in part 1b and part 2 of the policy, that apply to any development for business use, provide sufficient control to ensure schemes are appropriate. I have recommended the deletion of part 1a of the policy. The reference to settlement boundaries is imprecise. I have recommended a modification in this respect also.

136. The policy is in general conformity with the strategic policies included in the Development Plan, the "saved" policies of the Ashfield Local Plan Review Adopted November 2002 and in particular Policy EV1, Policy EM1, and Policy EM5.

137. The policy seeks to shape and direct sustainable development to ensure that local people get the right type of development for their community. The policy has regard to the components of the Framework concerned with building a strong competitive economy; ensuring the vitality of Town centres; supporting a prosperous rural economy; promoting sustainable transport; supporting high quality communications infrastructure; promoting healthy communities; protecting Green Belt land; and conserving and enhancing the natural environment; Subject to the proposed modification this policy meets the Basic Conditions.

Recommended modification 10:

In Policy NP9

- **Replace part 1 with “Development proposals for A2 (financial services) or B1 (business) as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) within the built extent of existing settlements will be supported,”**
- **In part 5 replace “and” with a semi-colon; and after “enterprise” continue “; and meets national and Local Plan policies on the Green Belt”**

Summary and Referendum

138. I have recommended 10 modifications to the Submission Version Plan. I have also made a recommendation of modification in the Annex below.

139. I am satisfied that the Neighbourhood Plan⁴³:

- is compatible with the Convention rights, and would remain compatible if modified in accordance with my recommendations; and
- subject to the modifications I have recommended, meets all the statutory requirements set out in paragraph 8(1) of schedule 4B of the Parish and Country Planning Act 1990 and meets the Basic Conditions:
 - having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood 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);
 - does not breach, and is otherwise compatible with, EU obligations; and would continue to not breach and be otherwise compatible with EU obligations if modified in accordance with my recommendations; and
 - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.⁴⁴

I recommend to Ashfield District Council that the JUS-t Neighbourhood Development Plan for the plan period up to 2032 should, subject to the modifications I have put forward, be submitted to referendum.

⁴³ The definition of plans and programmes in Article 2(a) of EU Directive 2001/42 includes any modifications to them

⁴⁴ Prescribed for the purposes of paragraph 8(2) (g) of Schedule 4B to the 1990 Act by Regulation 32 The Neighbourhood Planning (General) Regulations 2012 and defined in the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

140. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if to be extended, the nature of that extension.⁴⁵

141. On 12 December 2013, the District Council designated the whole of the then Parish of Selston as the Selston Neighbourhood Area. The geographic area of the Parish was extended from 1 December 2016 under the Local Government and Public Involvement in Health Act 2007 to include a small additional area. The Local Plan Publication 2016 includes proposals for housing allocations within the Neighbourhood Plan Area. The majority of these proposed allocations are within the settlement boundaries but one site 'Land to the rear of the Bull and Butcher Public House Selston' (Ra2e) entails taking land out of the Green Belt. In addition, another site 'Park Lane, Selston' (RA2d) is outside the Neighbourhood Plan Area but is on land which was brought into the Parish boundaries on 1 December 2016. I consider the M1 motorway which forms the current parish boundary is a strong and stable barrier in environmental, social and economic terms.

142. I consider the referendum area should be extended beyond the designated Neighbourhood Area to include the whole of the Parish of Selston as it has been defined since 1 December 2016. The Strategic Environmental Assessment Screening Report prepared in March 2017 anticipated the possibility of the additional geographic area being included in a future neighbourhood plan prepared for the whole of Selston Parish as extended on 1 December 2016 and concluded this would not require a SEA or Habitat Regulations Assessment to be undertaken.

I recommend that the Neighbourhood Plan should proceed to a referendum based on the area of Selston Parish that was established on 1 December 2016.

⁴⁵ Paragraph 8(1)(d) Schedule 4B Town and Country Planning Act 1990

Annex: Minor Corrections to the Neighbourhood Plan

A number of consequential modifications to the general text of the Neighbourhood Plan will be necessary as a result of recommended modifications relating to policies.

The District Council has in a representation made a number of suggestions for minor adjustments to the Neighbourhood Plan. I am able to recommend modification of the Neighbourhood Plan in order to correct errors.⁴⁶ I agree the following minor changes only in so far as they are to correct errors or where they are necessary so that the Neighbourhood Plan provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework:

Page 5 Foreword rather than Forward

Page 6 para 2.1 and para 2.2 and Page 8 para 3.7

The parish boundary was extended from 1st December 2016. Consequently, the JUS-T Plan Area does not now equate to the whole of the Selston Parish. It is recommended that small changes are made to the text to reflect this.

Page 7 para 2.7

For clarification refer to “*These include the Ashfield Local Plan Review 2002, Nottinghamshire County Council’s Replacement Waste Local Plan Part 1, Waste Core Strategy 2013 and the Nottinghamshire Minerals Local Plan 2005.*”

Page 24 para 7.8 and Page 49 para 15.3

Reference that ‘*over 65 expected to increase by 53%*’ is set out in the District Council Strategic Housing Market Assessment Table 71: Projected Change in Population of Older Persons (2013 to 2033)

Page 36 para 12.5

Reference that ‘*The villages of Selston, Jacksdale and Underwood have been allocated appropriate levels of development to support rural infrastructure and sustainable growth*’ is from the Ashfield Local Plan Publication, para 3.10.

Page 38 para 13.3

⁴⁶ Paragraph 10 (3)(e) of Schedule 4B to the Town and Country Planning Act 1990

Identify that the Ashfield Local Plan Publication, Policy CC2 identifies under Water Efficiency 'Residential development proposals will implement water efficiency measures to minimise water consumption, to achieve a requirement of 110 litres per person per day'.

Page 39 para 13.4 & 13.5

SuDS, rather than SDS.

Page 49 para 15.7

Reference that the *report published in January 2016 Generation Stuck: Exploring the Reality of Downsizing in Later Life*.

Generation Stuck Exploring the Reality of Downsizing in Later Life 2016
Brian Beach, The International Longevity Centre (ILC-UK).

http://www.ilcuk.org.uk/images/uploads/publication-pdfs/Generation_Stuck.pdf

Page 52 para 16.9

For clarity add *site RA2e is identified in the Ashfield Local Plan Publication 2016, Policy RA2*

Page 54 para 17.5

Since the Plan was submitted the Council has undertaken further work on the Ashfield Playing Pitch Strategy 2017. Update to "17.5 The Ashfield Playing Pitch Strategy 2017 identifies there are a total of 9 sites in the Plan Area for the playing of football, cricket or bowls. There is a surplus of 4 adult football pitches to meet current peak time demand and a deficit of 1 mini football pitch. By 2026, based on predicted demand and population increase, the demand for adult football pitches will reduce to a surplus of 3. The demand for mini football pitches will remain as a deficit of 1, however there will be an additional deficit of 2 youth football pitches. These deficits could be addressed by converting adult pitches".

**Recommended modification 11:
Modification of general text will be necessary to achieve consistency with the modified policies, and to correct identified errors including those arising from updates**

Chris Collison
Planning and Management Ltd
collisonchris@aol.com

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REPORT ENDS