



## Planning and Economic Development

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Dear Nicky and the Neighbourhood Plan Steering Group

### **Shenley Neighbourhood Plan: Regulation 14 consultation response**

Thank you for the opportunity to comment on your draft Plan. The draft Plan demonstrates that a significant amount of work has been undertaken with a commitment to the broadest possible engagement with the local community. Our comments are made in the context of a Neighbourhood Plan (NP) needing to meet the Basic Conditions test, pass through local Examination and ultimately provide a clear document for its end-users. We would define the end-users as including developers and the Local Planning Authority (planning committee and officers), as well as the Parish Council and wider local community.

Our response covers (1) some key overall concerns which we consider should be addressed now and (2) comments on the remainder of the NP. The comments are intended to be helpful and to aid further discussion and we look forward to meeting with you as arranged on 10 October 2018.

### **Key overall concerns**

The draft NP is predicated on a significant enlargement to the village envelope whilst retaining that land within the Green Belt. Whilst a minor change to the Village envelope could be proposed through the NP, development other than limited infilling here would not comply with either paragraph 145 of the National Planning Policy Framework (NPPF) or Local Plan Policy CS13 *The Green Belt*, (which is a strategic policy). Both of these refer solely to the scope for 'limited infilling' within village envelopes.

Our Local Plan identifies limited infilling as development which does not create more than 2 extra dwellings, and the village envelopes are drawn tightly around the built up edge of the village. We do not consider the statement in paragraph 2.4 of the NP - that the proposed changes to the village envelope boundary and the creation of a NDO here would be in general conformity with the Local Plan and NPPF - to be correct. Your Plan could certainly identify (in the supporting text, not Policy) the area as your preferred location for new development to meet potential future housing need but at this stage we do not believe that it can go any further.

As previously indicated we see fundamental problems with Policy S2. In order to ensure that our comments at this stage are as clear and helpful as possible we have obtained external legal advice. This legal advice, which is consistent with what we have previously emphasised in our communications with Shenley PC, is reproduced below:

*I see fundamental problems with draft Policy S2, which in my opinion, will preclude it from having any reasonable prospect of surviving an Examination in its current form.*

*The first problem is that Policy S2 seeks to extend the Shenley Village Envelope without altering the Greenbelt boundary to exclude the land within the revised Village Envelope and to indicate that the extended Village Envelope is to form the spatial focus of new development in and near Shenley Village. There is then a series of limitations on what development can take place; essentially development must either comply with Local and National Planning Policies on appropriate uses in the Open Countryside and Greenbelt, or relate to necessary infrastructure where there is no reasonable alternative location, or is concerned with small scale mix of uses or permitted development on existing isolated agricultural farms.*

*Thus having set out that the extended Village Envelope is to form the spatial focus of new development, the policy then sets out severe constraints which effectively prevent the extended Village Envelope from forming the spatial focus of new development. This means that the policy is incapable of clear interpretation by the plan reader. It provides the sort of contradictions which would have to be resolved by a development management team on application, or an Inspector on appeal. It is a classic case of an unclear policy giving mixed and contradictory messages to the plan user.*

*I would also note that in relation to criterion (b) the policy refers to the “exceptional circumstance” test. In fact for development management the test is “very special circumstances”. “Exceptional circumstances” refers to changes to the Greenbelt boundary. I also note that criterion (c) talks about “small scale mix of uses or permitted development on existing isolated agricultural farms”. The criterion does not make clear whether a small scale mix of uses has to be on existing isolated agricultural farms, or whether it is only permitted development which is limited to existing isolated agricultural farms.*

*The other major issue is that there would be a potential conflict between policy S2 (if it is to be the spatial focus of new development) and Hertsmere Council’s policy CS13 which is, and has been notified to Shenley Parish, as a strategic policy.*

*Schedule 4B to the Town and Country Planning Act 1990 sets out that a Neighbourhood Plan (or a Neighbourhood Development Order) should comply with the “basic conditions”. One of the basic conditions is that the Plan, or the making of a Neighbourhood Development Order is in general conformity with the strategic policies contained in the Development Plan for the area of the authority.*

*In my opinion, there is a fundamental conflict between Strategic Policy CS13 in the Core Strategy and Policy S2 of the draft Neighbourhood Plan. The Council would be bound to appear at the Examination into the Neighbourhood Plan or the Neighbourhood Development Order to draw the Examiners attention to the fact that the basic conditions were not complied with and invite the Inspector to recommend such modifications as were necessary to remove that conflict.*

*Of course, these short-comings should be drawn to the attention of Shenley Parish Council at this stage, so that via engagement and co-operation, the Plan when submitted to Hertsmere Borough Council can avoid these difficulties and conflicts.*

We would also want to emphasise that a NP policy cannot pre-judge or rule out changes to strategic policies which may be made in a subsequent update to the Local Plan as the policy tries to do.

As we have previously indicated, we do not consider a NDO to be an appropriate vehicle for 'allocating' or securing significant residential development in the Green Belt. The scope to treat an NDO as appropriate development in the Green Belt is clearly caveated in Paragraph 146f by a need to preserve the openness of the Green Belt, a test which development of the scale and nature envisaged in the NP would fail. On the basis of the above, we would object to draft Policy S2 and suggest that this particular issue be addressed before proceeding further with your NP.

## **Comments on the rest of the draft Neighbourhood Plan**

### **General comments**

The draft Plan is well structured and presented. It can however be difficult in places to follow where the narrative is taking you as there is a lot of information, some of which

- whilst interesting may not need to be in the Plan
- does not necessarily add to an understanding of what the Plan is seeking to achieve or what is required of a developer
- may, through sheer volume, obscure key principles
- is repeated

If the Plan is going to be used properly and achieve what you are working hard to secure, end users need to find it easy to navigate and to find relevant information.

The status of a NP needs to be clearly and correctly set out in the context of legislation and guidance. Planning applications are determined by the Local Planning Authority (LPA) in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 i.e. in accordance with the Development Plan (of which an adopted NP is a part) unless material considerations indicate otherwise. National Planning Practice Guidance clearly sets out the status of a NP.

Policies need to be clearly evidenced and in order for the LPA to support these policies, we would want it to be clear that they are linked to evidence rather than opinion (e.g. 'the survey showed that' rather than 'people think that').

Policies need to be clear and unambiguous. Your policies clearly arise from your objectives for protecting and improving the characteristics of Shenley. We would suggest however that a number of them do not make it sufficiently clear what is or is not acceptable and contain explanatory narrative which makes it difficult to distil out the precise requirements.

Some policies make more onerous demands on developers than the Local Plan requires across the rest of the borough. We would not support this without clear justification and evidence that the viability of proposals would not be prejudiced. The National Planning Policy Framework requires that the sites and the scale of development identified in a plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.

Policies also need to be framed in such a way that they are capable of being applied, consistently, by DM officers and planning committee.

### **Specific comments**

In order to illustrate these points we have set out below some examples of where they may be relevant, or where there appear to be factual inaccuracies. We will be more than happy to discuss further when we meet in a couple of weeks' time.

### **Foreword**

Page 7, second paragraph: the Neighbourhood Plan, once made, will form part of the Borough's statutory Development Plan, but is separate to the Local Plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that 'If regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the development plan unless material consideration indicate otherwise'. The 'presumption in favour' to which you refer is actually with regard to sustainable development, not the policies of the NP. It is important that people are not encouraged to think that the NP will have greater weight than in fact it will do.

### **Executive Summary**

The first paragraph (and section 1.3 of the NP) needs to refer to the new Local Plan timescales and to acknowledge that some elements of the NP may need to be updated in the context of revised housing targets etc. The statement that this version of the NP will last until 2036 should therefore be caveated accordingly.

Page 9, First paragraph: what indication was there that the older part of the village might lose its Green Belt designation? Is this the case?

### **Introduction**

#### **1.1 What is a Neighbourhood Plan**

There is a good deal of repetition in this section which could be kept factual i.e. the statutory basis on which planning applications must be determined, the status of the Neighbourhood Plan, its relationship to the Development Plan and the point at which an emerging Neighbourhood Plan becomes a material consideration should be set out accurately and succinctly.

#### **1.3 Lifespan of the Shenley Plan**

Para 1.31: new Local Plan context needs to be added.

#### **1.6 Why do we need a Shenley Plan?**

It would help the reader if you pull out the factors/reasons one by one rather than presenting this as a long piece of narrative. The content is interesting but we do not believe a developer will engage with it other than to copy and paste chunks of it back into his documentation in order to try to demonstrate compliance.

Para 1.61: what evidence have you drawn on for the statement that Shenley is one of the most prosperous and desirable places to live in the country? What evidence is there that new PD rights

are putting pressure on employment land locally? We are not saying that the statements are not correct – just that they need to be evidenced

Para 1.62-1.64: We don't necessarily think the NP is the place to express these views

Para 1.64: - it would be helpful to refer to your evidence base to justify your statement re need for smaller homes

Para 1.68: people may find it difficult to understand what this paragraph is actually saying – several issues are wrapped up together. It might be helpful to bullet point as this would help clarify what is being said.

## **1.7 How the Draft Shenley Plan was prepared**

Para 1.75: There is quite a lot of repetition of this information in para 1.79

## **1.8 The Parish of Shenley in 2018**

Para 1.81: the quoted size of the Parish doesn't make sense

Para 1.85: can you give the evidence for these statements?

Para 1.89: The Local Plan comprises 3 documents – the Core Strategy was adopted in 2013 (not 2016)

Para 1.91: The NP must meet the basic conditions, one of which is to be in general conformity with the strategic policies of the Local Plan. Can you indicate where in national guidance/policy it indicates that the NP can deviate from this requirement if it presents 'robust and defensible evidence to justify a departure from those strategic policies'?

Para 1.92: There is some repetition of 1.89 in relation to new Local Plan preparation. What is the source of the statement that the LA assumes Shenley Parish's contribution to overall housing delivery need in the borough is 500 dwellings or 33 homes per year come from? If it is based on the Issues and Options consultation, this was only one of a number of approaches put forward for accommodating development.

With regard to the reference to the Independent Housing Needs Assessment for Shenley undertaken by AECOM, we have previously indicated that there were concerns about the methodology for arriving at a figure for housing need arising in Shenley and also about the principle of defining a separate Shenley figure which excludes a contribution to meeting the wider needs arising in the borough. It is also not clear in this paragraph specifically why the figures you discuss lead to the focus on design quality, Green Belt retention and your village boundary proposal.

Para 1.95: The figure of 14 dpa arising from the Housing Needs Assessment has not been agreed by HBC and does not in any case take account of need arising in the wider area. It also relates to the period going forward, for which a new borough wide housing target has not yet been able to be determined due to the changes in how housing need is calculated and the likelihood that government is intending to change its methodology again in the near future.

The lower site size threshold for when Affordable Housing can be required in rural locations unfortunately does not apply in Shenley. It is not a 'designated area'.

If there is a fall in average household size as a result of the growth in one person households would this also indicate a need for 1 bed homes?

How does the Plan respond to the 'strong call for four bedroom dwellings' that was identified through the household survey?

The identified need for specialist housing appears significant – 97 units. You would need to ensure that the justification/evidence for this is clear

### **Vision and Objectives**

01: It would be useful to clarify the sense in which the term openness is being used. It obviously has a specific Green Belt meaning, but it is not clear whether this is what you mean, and if so people might not understand it.

07: need to be sure that this objective is consistent with your evidence (para 1.95) and policy. Is it consistent with your priority for delivering 3 bed properties? Are the 'smaller properties' just for first time buyers (and older) or anyone wanting this size of house (paragraph 3.1 includes reference to young families needing extra space, not just first time buyers)? It would be helpful to ensure 'smaller' is defined.

08: the way in which you envisage the creation of the new rural edge 'bringing the community together' could usefully be clarified

09 and 10: it might be better to say 'encouraging' the provision of health and public transport services as these aren't strictly land use/development matters that the NP can deliver.

### **S1 Rural Character of Old Shenley**

#### **Context and Reasoned Justification**

There is a lot of interesting and relevant information in this section. So as to make it as user friendly as possible we would suggest that you try to identify the key issues/factors/characteristics that you want people to take account of when developing proposals and give sufficient detail only to make it clear how you want this to influence design.

#### **Policy S1**

We would suggest that some of the detail in each section of the policy could usefully be moved to the supporting text so that the policy is clear and unambiguous and does not include comments or opinions. Who do you envisage judging the extent to which these 'requirements' are met?

Some specific comments:

- S1e may be too prescriptive if it relates to all major development rather than purely that which is at the edge of the village.
- With regard to S1g, we would not be able to require the provision of space standards above those which apply across the borough and/or above building regulations requirements.
- With regard to S1h, is the materials palette to which the policy refers set out anywhere?
- With regard to S1i, the requirements for documents to be submitted with a planning application are set down nationally.

- With regard to S1j, we would advise that Construction Management Plans are increasingly not being required as they are difficult to enforce and there are issues over who is responsible for enforcement. We would not be able to require this as part of planning application documentation.

## **S2 Village Envelope**

Our main comments in relation to this policy are set out at the start of these comments. In addition:

Paragraphs 2.10, 2.11 and Policy S2 – There is a bit of confused terminology here. Shenley village (excluding Porters Park) is ‘washed over’ by Green Belt (not ‘awash’). Much of the (old) village is within the defined village envelope/boundary - this identifies the area within which limited infilling may be appropriate. Porters Park has been taken out of the Green Belt. Both Porters Park and the area within the village boundary are within the settlement.

Para 2.16/2.19 – This section needs a little revising: Our forthcoming public engagement provides an opportunity to comment on all the sites put forward for consideration through the Call for Sites and Issues and Options consultation. In the context of revised population projections and the likelihood that the government is likely to introduce further changes to its standard methodology calculation for assessing housing need, Preferred Options are not yet being identified or put forward for consultation. Moreover, reference to a possible ‘large Garden City’ north of Shenley is rather over-stated as our Issues and Options consultation referred to the potential for a Garden Village scale of development.

## **S3 Housing Mix and choices**

### **Context and Reasoned Justification**

Again there is a lot of interesting and useful information, and evidence of much information gathering, but it can be difficult to identify the separate strands of evidence underpinning your proposed policies. We found the commentary with regard to age structure particularly difficult to follow. More use of tables may help here. It would help if you can draw out the main trends, identified needs, whether the pattern of housing completions/proposals is addressing these needs (presumably you would argue they are not) and therefore what policies you are proposing in order to try to ‘correct’ the balance.

### **Policy S3**

We need to be clear that whilst the NP supports specific types of housing this does not mean that the LPA would refuse other types that do not fit into the categories you have identified. It is also the case that our DM officers do not check applications for compliance with non-planning legislation such as the building regulations.

S3.1a would allow for flats - is this what you intend?

Is there a potential conflict between S3.1 and S4a?

In relation to S3.1d it would be helpful to clarify what the ‘amenity needs’ of various households means.

With regard to S3.2, the NP cannot require all new residential development to meet local housing need. If you want to support or encourage this type of provision though, how would you define 'people with local connections'?

## **S4 Community Infrastructure Facilities**

### **Context and Reasoned Justification**

Again there is a lot of interesting and useful information, and evidence of much information gathering, but the key information may risk being 'lost' in the narrative.

Para 4.14 last sentence – we think the school under construction to which you refer is the new Hertsmere Academy (secondary). The proposed primary school does not yet have planning permission so construction is not underway.

### **Policy S4**

S4a – can you indicate what 'loses its amenity value' actually means in relation to the range of 'community infrastructures' that you have identified? How would this be assessed when determining a planning application? Could you envisage supporting the replacement of one of your identified 'community infrastructures' with an alternative community facility that might be of equal or more value to the local community than the existing? If so your policy would not allow for this. Also you perhaps need to acknowledge that some changes of use are PD and therefore would not come under planning control.

S4b - a requirement to 'adhere to the design ethos and rules in this plan' needs to make clear what the precise requirements are in order that it can be applied consistently and without unnecessarily opening the decision taker up to challenge. Also how would you anticipate an applicant being able to demonstrate that a proposal is 'sustainable financially and managerially' and who would you anticipate being the arbiter of this? Is there a potential internal inconsistency in the policy if development that the second part of S4b strongly supports would involve the loss of an existing community facility that would be strongly resisted under S4a?

## **Policies S5 Local Knowledge for Good Design, S6 Building for Life 12, S7 Connecting Shenley Village, S8 New Rural Edges, S9 Rural Buildings**

DM colleagues have expressed concerns about the level of prescription in these design policies and also have concerns about the resource implications of implementing the policies and the extent to which refusals of permission for proposals not complying with the requirements would be able to be defended at appeal. They are also particularly concerned that the policies should be clear and unambiguous, as should responsibility for assessing compliance with them.

The production of a Design and Development Brief and Statement of Community Consultation & Neighbour Involvement for major development proposals, in collaboration with the local community (S5), may be a helpful vehicle for incorporating local knowledge/input into the design of proposals at an early, influential stage. However care needs to be taken that the policy requirements are clear, and not excessively onerous. How will this relate to the council's pre-application process where this is engaged? Where the pre-application process is not engaged would you anticipate the LPA commenting on the design brief prior to consideration of a planning application? This would have resource implications that could be prohibitive. Who is the 'arbiter' of whether the detailed requirements have been met? Who comprises 'the community' with whom a developer should engage?

The Building for Life12 Quality Mark (S6) is one that some developers will choose to meet. Requiring this of all major developments may be onerous and is not something that our DM officers would reasonably be able to apply in its current form.

With regard to the achievement of measures to enhance connectivity (S7) how would you envisage this working? Who would specify the works required, how would viability of this be assessed, who would determine the mechanisms by which each would be achieved? Again DM officers would need to be clear what was required and how it was to be achieved.

We are supportive of measures which can ensure high quality design and appropriately scaled development. However, with regard to Policy S9, there is a real concern about the prescriptive nature and level of detail in the policy which will present DM officers with difficulty when attempting to implement it.

A different point, but the design policies are very heavily biased towards agricultural/rural character but a large part of the village is not of this character; encouraging different approaches to design – taking cues from both traditional and new - may help integrate the different parts of the village.

I hope the above is helpful and can aid your progress with your Neighbourhood Plan. We look forward to further discussions with you, beginning on 10 October.

Yours sincerely

A handwritten signature in black ink that reads "LW Wood". The signature is written in a cursive style and is underlined with a single horizontal line.

Laura Wood  
Planning Strategy Manager