

MADELEY NEIGHBOURHOOD PLAN 2017 - 2032

A Report to Madeley Parish Council on the Draft 6 Version of the Madeley Neighbourhood Plan, with particular regard to Local Green Space and Important Views

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February 2019



EST. 2011

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1. Introduction

- 1 To proceed to Referendum, a neighbourhood plan is required, by legislation, to meet the basic conditions (see page 4, below). This Report to Madeley Parish Council is set out in a similar manner to an Examiner's Report – providing for the appropriate assessment of the Madeley Neighbourhood Plan (referred to as the Neighbourhood Plan) against the basic conditions.
- 2 This Report considers the Neighbourhood Plan's approach to Local Green Space and Important Views against the basic conditions. It goes on to identify alternative approaches and/or alterations.
- 3 The Report also makes occasional general recommendations aimed at providing for clarity, accuracy and precision, having regard to Planning Practice Guidance¹, which states that:

“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.”
- 4 The content and suggestions within this Report are aimed at ensuring that the Neighbourhood Plan meets the basic conditions, enabling it to proceed to Referendum whilst achieving the clearly established community aims of protecting the spaces and views that the people of Madeley hold dear.
- 5 NB - all recommended new text is in bold and *italics*.

¹ Paragraph: 042 Reference ID: 41-042-20140306.

2. Background

- 6 Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.

“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development.” (Paragraph 29, National Planning Policy Framework)

- 7 Madeley Parish Council is the *qualifying body* responsible for the production of the Neighbourhood Plan. Whilst this will be confirmed in the Basic Conditions statement (as required) it would also be helpful to include a reference in the introductory section of the Neighbourhood Plan to the qualifying body and to the Neighbourhood Area, together with reference to the date that the Neighbourhood Area was designated by Newcastle-under-Lyme Borough Council (NULBC) and a plan showing the boundary of the Neighbourhood Area (the Map that was approved by NULBC is appropriate).

- 8 Something along the lines of:

- ***“On 11th May 2017, the whole of Madeley Parish was formally designated as a Neighbourhood Area by Newcastle-under-Lyme District Council. Map X below shows the boundary of the Neighbourhood Area, which is the same as that of the Parish boundary. Madeley Parish Council is the formally designated ‘qualifying body’ responsible for the preparation of the Madeley Neighbourhood Plan.”***

- 9 In concluding the examination, the Independent Examiner can only make one of the following three recommendations:
- that the Neighbourhood Plan should proceed to Referendum, on the basis that it meets all legal requirements;
 - that the Neighbourhood Plan, as modified, should proceed to Referendum;
 - that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 10 If recommending that the Neighbourhood Plan should go forward to Referendum, the Independent Examiner must consider whether or not the Referendum Area should extend beyond the Neighbourhood Area to which the Plan relates.
- 11 The Neighbourhood Area follows the Parish boundary and appears logical. There is no requirement for the Neighbourhood Area to extend beyond that established. I also note that, in accordance with statutory requirements, the Neighbourhood Plan relates only to the designated Madeley Neighbourhood Area and there is no other neighbourhood plan in place in the Neighbourhood Area.
- 12 The Independent Examiner is also required, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, to check whether:
- the policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004;
 - the Neighbourhood Plan meets the requirements of Section 38B of the 2004 PCPA (the Plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one Neighbourhood Area);
 - the Neighbourhood Plan has been prepared for an area that has been designated under Section 61G of the Localism Act and has been developed and submitted for examination by a qualifying body.
- 13 It is my view that the Neighbourhood Plan meets the above requirements.

Neighbourhood Plan Period

- 14 A neighbourhood plan must specify the period during which it is to have effect.
- 15 The Joint Local Plan is progressing. Given this, it would seem sensible to align the plan period of the Neighbourhood Plan with the Joint Local Plan. A plan period of 2018-2033 would seem to set out an appropriate fifteen year period (the Joint Local Plan refers to “2013 to 2033” but it would seem odd to me for a Neighbourhood Plan to be “backdated” 6 years). NB, the plan period does not dictate when a plan might be reviewed – that decision would be entirely up to plan-makers.
 - **Add reference to the plan period “2017 to 2032” to the front cover and ensure that the Neighbourhood Plan introduction refers to plan period**

Basic Conditions

- 16 I note above that the Independent Examiner must consider the neighbourhood plan against the “basic conditions.” These were *set out in law*² following the Localism Act 2011. 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 neighbourhood 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);
 - the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (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.³

² Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990.

³ 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.

- An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.⁴

17 Pages 9 and 10 of the Neighbourhood Plan provide appropriate references to the basic conditions.

EU and ECHR Obligations

- 18 It is a basic condition that the Neighbourhood Plan meets European obligations. It is therefore essential that this is demonstrated.
- 19 European obligations, in neighbourhood planning terms, relate mainly to environmental requirements. Whilst there is no legal requirement for a neighbourhood plan to have a sustainability appraisal⁵, where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment (SEA).
- 20 In addition, where a Neighbourhood Plan is likely to have significant environmental effects on a European site (eg, a Special Protection Area, like Cannock Chase for example), a Habitats Regulations Assessment (HRA) is required.
- 21 To establish whether or not SEA or HRA are required (and they are not likely to be required in Madeley, as the plan is not seeking to allocated land for development) it is essential that Screening or Scoping Reports for both are produced by the Local Planning Authority (which is obliged to produce them). Recent case law (the Sweetman case) has underlined that this is an essential process and that appropriate assessments must be carried out in a specific manner, with particular regard to whether or not mitigation is required (which again, should not be the case in respect of Madeley).
- 22 The consequence of the above is that it is important to ask NULBC to undertake the Scoping Reports – and to consult the statutory authorities (Natural England, Historic England and the Environment Agency) on the outcome of these – once you have prepared the draft plan.
- 23 I note that there are no apparent impacts on the fundamental rights and freedoms guaranteed under the ECHR, or conflicts with the Human Rights Act 1998, so this should not be an issue.

⁴ The Convention rights has the same meaning as in the Human Rights Act 1998.

⁵ Paragraph 026, Planning Practice Guidance 2014.

3. Consultation

- 24 The qualifying body will need to submit a Consultation Statement to Newcastle under Lyme Borough Council alongside the Submission version of the Neighbourhood Plan. In order to meet the requirements of Section 15 (2) of Part 5 of the Neighbourhood Planning Regulations 2012, this must provide evidence of:
- who was consulted;
 - how people were consulted;
 - the main issues and concerns raised by the people consulted; and
 - the outcome of consultation (and where relevant, how this was addressed in the Neighbourhood Plan).
- 25 Consultation relating to the Local Green Space designations is especially important. It is essential that it can be shown that the proposed designations were widely consulted upon and that there is evidence of community support for them.
- 26 The background information supporting the Neighbourhood Plan demonstrates that this is the case. It is recommended later in this Report that this evidence be presented in a clear, simple and effective manner.
- 27 It is a good idea to summarise the consultation process in the Neighbourhood Plan, as per Part 3. This can be kept relatively brief (for example, no need for the long table provided), as the Consultation Statement itself will provide all of the detailed information (including for example, the long table of information, which will be longer once the draft consultation (Regulation 14) has taken place).

4. Neighbourhood Plan – Local Green Space and Important Views

Local Green Space

- 28 Local communities can identify areas of green space of particular importance to them for special protection. Paragraph 99 of the Framework states that:

“The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them.”

- 29 The Framework requires policies for managing development within a Local Green Space to be consistent with those for Green Belts (Paragraph 101, the Framework). A Local Green Space designation therefore provides protection that is comparable to that for Green Belt land and as a consequence, Local Green Space comprises a restrictive and significant policy designation.
- 30 It is essential, as a matter of law, that the designation of land for Local Green Space meets the tests set out in Paragraph 100 of the Framework. These are that the green space is in reasonably close proximity to the community it serves; that it is demonstrably special to a local community *and* holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and that it is local in character and is not an extensive tract of land.
- 31 In addition to the above, Paragraph 99 of the Framework requires that the designation of land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.
- 32 In effect, Local Green Space provides communities with the power to protect spaces that are special to them and the Framework establishes a very clear and straightforward approach for doing so. If a Local Green Space meets the tests set out in Paragraphs 99 and 100 of the Framework, then there should be nothing to prevent its designation.
- 33 As set out, the Neighbourhood Plan separates the Local Green Space policy, Policy CF1, from the relevant supporting information, which is provided prior to the policy section. This is unnecessarily confusing and detracts from the clarity of the Policy itself.

- 34 A clear land use planning policy should be supported by relevant, informative and where appropriate, explanatory text. In the case of the designation of Local Green Space, it should also be accompanied by plans of the designated areas. Providing these plans together with the policy that names the relevant sites is the clearest method of presentation.
- 35 The nature of a Local Green Space policy is such that it is often supported by a significant and detailed evidence base and that is very much the case in respect of Madeley. As set out, the Neighbourhood Plan currently provides information in three different places – in the introductory text of the Neighbourhood Plan, in the policy section of the Neighbourhood Plan and in the evidence base. This detracts from clarity.
- 36 Further confusion arises from the inclusion of the Local Green Space policy in the “*Community Facilities*” section. Local Green Space need not comprise land that is directly accessible – it may, for example, possess qualities of beauty and tranquillity that can be enjoyed from within and/or outside the site; or it may simply be special because it is ecologically rich.
- 37 Taking this into account, labelling a Local Green Space as a Community Facility may be misleading. It could, for example, lead a landowner to think that a Local Green Space designation in the Neighbourhood Plan would provide for public access to private land, which is not the case.
- 38 As suggested above, the Local Green Space designation provides communities with a very powerful planning tool. Given this and the importance of protecting Madeley’s special spaces, it would make sense for the Local Green Space policy to be set out in its own section of the Neighbourhood Plan. I would also suggest, as per the recommendations below that as effectively the Neighbourhood Plan’s prime policy, it should be afforded primacy at the front of the policy section.
- 39 Policy CF1 states that development must not encroach on Local Green Space. This conflicts with the Framework, which states that development within a Local Green Space should be managed in a manner consistent with Green Belt policy.
- 40 Green Belt policy is set out in Chapter 13 of the Framework. In that Chapter, Paragraph 143 states:

“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.”

- 41 In this way, Green Belt policy – and therefore Local Green Space policy – provides for development, albeit only where development is not inappropriate/there are very special circumstances.
- 42 To simply state that development must not encroach on Local Green Space therefore means that Policy CF1 does not have regard to national policy and does not meet the basic conditions. The Policy needs to allow for development that is not inappropriate/there are special circumstances.
- 43 In seeking to address this latter point, the remainder of the Policy then goes on to introduce an approach that inevitably conflicts with the first sentence of Policy CF1 – by suggesting that some form of development may be acceptable.
- 44 More fundamentally, the second sentence of the Policy is ambiguous and does not have regard to Paragraph 16 of the Framework, which states that plans should:
- “...contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals.”*
- 45 As above, national Green Belt policy refers to *“very special circumstances.”* There is no reference to *“exceptional circumstances.”* Planning law often turns around language and it is established that *“very special”* and *“exceptional”* are two different things. Notwithstanding this, the Neighbourhood Plan must have regard to the Framework and the language in the Framework is explicit.
- 46 The supporting text to Policy CF1 establishes that plan-makers consider minor development, for example development ancillary to the enjoyment/use of the Local Green Space as not inappropriate. However, the supporting text also goes on to state that Policy CF1 seeks to *“ensure that such developments are accessible to the public.”*
- 47 Whilst the above provides an idea of what plan-makers think could be an appropriate Local Green Space development, it is unfortunately combined with the incorrect assumption that Local Green Space and public access are directly related. As above, a Local Green Space does not need to comprise public land. Further, the designation of Local Green Space has no direct impact on land ownership. If a private field is designated as a Local Green Space, its status as a private field is unaltered.

- 48 The Neighbourhood Plan does not define “*small-scale development*,” as referred to in Policy CF1. Consequently, it does not provide a decision maker with a clear indication of how to react to a development proposal, as required by Paragraph 16 of the Framework. One person’s idea of small scale could be different to another’s.
- 49 Notwithstanding the above, the provisions of Policy CF1 are unclear. Who will determine what is small scale, whether or not the open quality of the space is compromised and whether the overall community value of the open space is enhanced ? On what basis will such judgements be made ?
- 50 Effectively, Policy CF1 opens a can of worms, without the clear justification or evidence base to support the requirements. Further to this, in any case, the Policy states that a development proposal “*may be considered*.” The Neighbourhood Plan cannot pre-determine the planning process in this way. If a planning application is submitted to the Local Planning Authority, then it *will* be considered.
- 51 Taken together, Policy CF1 and the supporting text show the difficulty in seeking to add a layer of detail to national policy. In the case of Local Green Space, there is no need to do this and in effect, attempts to suggest what kind of development may be suitable within a Local Green Space tend to water-down the whole purpose of the designation.
- 52 The recommendations below seek to provide an appropriate, clear Local Green Space policy. They also go on to suggest the shape the supporting text might take.
- 53 Rather than focus on justifying a new layer of policy onto national policy, it is my strong recommendation that the supporting text instead seeks to draw out the relevant points from what is currently Section 4 of the Neighbourhood Plan (but which should, as above, be presented together with the Policy, in the policy section), to ensure that it is clear that the designations themselves have emerged through appropriate consultation and a robust evidence base.
- 54 The evidence base supporting the Local Green Space designations is excellent. The key is to ensure that there can be no doubt in the Examiner’s mind that the designation process was appropriate.

- 55 I set out below a set of modifications aimed at achieving all of the above. In suggesting the changes, I note that the section numbering used in the Neighbourhood Plan is unclear. The Policies Section should be precisely that. As set out however, there are various numbered sections within it – eg, Section 6 is “Policies” but Section 7 is “Housing Growth” and includes policies within it.
- 56 The Policies Section will inevitable contain sub-sections (Housing Growth, Community Facilities), but these should simply be sub-sections within the Policy Section, rather than effectively appearing as numbered chapters.
- 57 Thus, the Neighbourhood Plan might be divided as: **1, Introduction; 2, Vision and Aims; 3, About the Parish; 4; Community Engagement; 5, Policies; 6, Non-Planning Issues. Appendix: Local Green Spaces.** Within the Policy Section would be, for example, **Local Green Space; Housing Growth; Good Design; Community Facilities; Natural Environment; Transport; Madeley Village Centre.**
- 58 Taking everything into account, I recommend:
- **Delete Section 4 of the Neighbourhood Plan**
 - **Delete Policy CF1 of the Neighbourhood Plan**
 - **Begin the Policy section of the Neighbourhood Plan with “*Local Green Space*”**
 - **New Policy, “*Policy LGS: Local Green Space Designations*”**
 - **Wording of Policy LGS: “*The following sites, shown on the plans below, are designated as Local Green Space, where all development is ruled out other than in very special circumstances: LIST HERE LGS1 Doctors Field, Station Road, Madeley; LGS2 College Field...*”**
 - **Provide plans of showing each Local Green Space after the Policy, or following the supporting text (but in the same section as Policy LGS)**

- Suggest that the supporting text is along the following lines:
“Interpretation. Paragraph 99 of the National Planning Policy Framework 2018 states:

“The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them.”

In Paragraph 100, the NPPF goes on to establish the tests for the designation of Local Green Space, requiring that it is:

“...in reasonably close proximity to the community it serves; demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and local in character and is not an extensive tract of land.”

In addition to the above, Paragraph 99 of the Framework requires that the designation of land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.

Local green spaces in Madeley are extremely important to the local community. Following extensive consultation and engagement, the community has overwhelmingly identified the appropriate protection of these spaces as perhaps the most important part of the Madeley Neighbourhood Plan.

Initial consultation identified 21 sites for consideration by the community through a detailed questionnaire. Visits were made to each site, to document evidence, with particular regard to the national policy tests for Local Green Space designation.

Further to the above work, 12 of the 21 sites were found to be appropriate for designation as Local Green Space. Further community consultation was then carried out on each of the 12 sites. This included the Parish Council writing to landowners, occupiers and users of the sites in order to obtain comments, views and feedback about their proposed designation as Local Green Space.

Taking all of the above into account, the Neighbourhood Plan designates the 12 Local Green Space identified in Policy LGS.

A detailed description of each Local Green Space, together with the reasons why the Local Green Space meets the national policy tests, is provided in the Appendix to this Neighbourhood Plan. In addition, the Consultation Statement and the evidence base provides a detailed audit trail of the extensive public consultation through which the designations emerged. Whilst not everyone consulted fully supported all of the designations, the evidence base shows that consultation was pro-active and open and that a very significant majority of people supported the designation of each of the 12 sites.

Policy LGS prevents development other than in very special circumstances. The Parish Council considers that such very special circumstances might, for example, comprise the provision of storage or changing facilities to support a recreational use, or improvements to public rights of way.”

- **At the time of producing the Consultation Statement, ensure that this works in combination with the evidence base in respect of Local Green Space consultation. Ideally, this should provide an audit trail showing all of the consultation carried out in respect of Local Green Space, making it easy for the Examiner to see that it was extensive.**
- **It would be helpful if the Appendix was supported with percentages showing the % of people in favour/against the designation of each Local Green Space. This would provide the Examiner with clarity in respect of community support. NB, demonstrating community support is important. It may also be worth referring to such figures in the supporting text to the Policy.**
- **Doctors Field. The designation itself meets the national policy tests. However, landowners hoping that their holdings have hope value for development often seek to resist Local Green Space designations and this is likely to be the case in respect of Doctors Field. In the Appendix it is therefore worthwhile emphasising why the designation meets the tests. The Consultation Statement will need to record how key issues were dealt with as the Plan emerged, so this would also deal with the early representations by NULBC, eg, re: proximity to Madeley – which the officer then recognised was not the case, as the site is adjacent to much of the community it serves and is in reasonable proximity to the whole of Madeley (this test is largely aimed at sites isolated from housing/activity, for example in the middle of the open countryside).**

- Re “extensive tranche of land” – the Appendix should make the point that “...*whilst the Doctors Field is a little larger than other areas of Local Green Space, it is not, in any way, an extensive tranche of land relative to the size of the settlement of Madeley.* The boundaries of the site ensure that the Local Green Space protects all of those things identified as being special to the local community. These are wide-ranging and include the beauty, recreation value and tranquillity of the space, some of which are derived from its relatively spacious qualities.”
- Each Local Green Space should have an area (Ha) in the Appendix. This should demonstrate that compared to areas of Local Green Space in other made Neighbourhood Plans, relative to the size of relevant settlements, the Doctors Field site is not an extensive tranche of land.

Important Views

- 59 Policy DES3 seeks to protect views considered to be locally important.
- 60 There are examples of Neighbourhood Plans seeking recognition of and/or affording protection to views in a number of different ways. Generally, the more prescriptive the policy approach, the greater the requirement for more detailed evidence.
- 61 For example, if a policy were to state that “*views are to be protected/development must not harm views,*” then there would be a reasonable requirement for detailed evidence setting out the precise nature of any view to be protected. Difficulties can arise in this regard, due to the potentially subjective nature in respect of the quality, extent and nature of a view. Further, views can change seasonally, monthly, daily or even on an hourly basis, dependent upon a wide range of factors, including weather, traffic, use of buildings, gardens etc.
- 62 In the case of Policy DES3, there is an added level of complexity, as the Policy also includes reference to the Madeley Conservation Area. Conservation Areas and their settings are strongly protected by national policy. Chapter 16 of the Framework requires development to conserve or enhance the heritage assets in a manner appropriate to their significance. National policy does not prevent development that may harm a heritage asset, but requires that less than substantial harm be outweighed by public benefits and that substantial harm should be exceptional.
- 63 The term “*preserve*” is considered archaic and inappropriate in the light of national policy as it is recognised that it may be appropriate for heritage assets to change and such change may not necessarily be harmful.
- 64 As worded, Policy DES3 is not a land use planning policy. It is, rather, a statement, the Policy “...*aims to preserve or enhance...*” There is no detail setting out how this will happen or what will occur if this does not happen.

- 65 Further, the Policy seeks to protect views “*within*” the Conservation Area. This conflicts with the views themselves, some of which are to areas outside the Conservation Area. This approach is repeated in the Interpretation below the Policy.
- 66 The result of the above is a confusing Policy that does not achieve its aims – those of conserving the Conservation Area and affording some level of recognition/protection to important views.
- 67 I therefore recommend:

- **Delete Policy DES3 and Interpretation**
- **Create a new Policy DES3 “*Development in the Madeley Conservation Area and its Setting.*”**
- **New wording “*Development proposals within Madeley Conservation Area and/or its setting should demonstrate how they will conserve or enhance this important heritage asset, taking into account and respecting the important views identified on Map X below.*”**
- **Suggested supporting text: “*Interpretation. The National Planning Policy Framework recognises heritage assets as irreplaceable and requires that they are conserved or enhanced in a manner appropriate to their significance.*”**

***Madeley Conservation Area and its setting comprises a heritage asset of national significance. The Neighbourhood Plan is concerned to ensure that all development within the Conservation Area or its setting conserves or makes a positive contribution to the quality of the natural and built environment. To help achieve this, the Parish Council has identified key views within the Conservation Area and development proposals will be expected to respect the integrity of these. It is strongly recommended that proposals likely to impact on the Conservation Area or its setting be discussed with the Parish Council and/or the community prior to the submission of a planning application.*”**

- Each of the views should be named (the current Policy only identifies three views) and it would be helpful if photographic evidence (ie, each of the views, clearly labelled) accompanies the Map.



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