

CUBBINGTON NEIGHBOURHOOD DEVELOPMENT PLAN April 2024

**The Report of the Independent Examiner to Warwick District Council on the
Cubbington Neighbourhood Development Plan**

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16th June 2025**

Summary

I was appointed by Warwick District Council, in agreement with the Cubbington Parish Council, in April 2025 to undertake the Independent Examination of the Cubbington Neighbourhood Development Plan.

The Examination has been undertaken by written representations. I visited the Neighbourhood Area on 19th May 2025 after resolving my initial enquiries of the Qualifying Body.

The Neighbourhood Plan proposes a local range of policies and seeks to bring forward positive and sustainable development in the Cubbington Neighbourhood Area. There is an evident focus on safeguarding the very distinctive, local character of the area whilst accommodating future change and growth.

The Plan has been underpinned by extensive community support and engagement. The social, environmental and economic aspects of the issues identified have been brought together into a coherent plan which adds appropriate local detail to sit alongside the Warwick District Local Plan 2011 - 2029.

Subject to a series of recommended modifications set out in this Report, some of more significance than others, I have concluded that the Cubbington Neighbourhood Development Plan meets all the necessary legal requirements and should proceed to referendum.

I recommend that the referendum should be held within the Neighbourhood Area.

Report Index

	<i>Page</i>
Introduction	3
The Role of the Independent Examiner	3
The Cubbington Neighbourhood Area	4
Consultation	5
Representations Received	5
 The Neighbourhood Plan	 6
Basic Conditions	7
The Plan in Detail:	7
Format	8
Front Cover	8
Foreword	8
Table of Contents	8
1.0 Background	9
2.0 Cubbington Neighbourhood Development Plan Key Issues, Vision and Objectives	9
3.0 Cubbington Neighbourhood Area	9
4.0 Planning Policy Context	10
5.0 Neighbourhood Plan Policies	10
Policy CNDP1 – Protecting Local Green Space	10
Policy CNDP2 - Protecting Other Green Spaces	11
Policy CNDP3 – Sustainable Design and Construction	11
Policy CNDP4 - Conserving and Enhancing the Landscape	13
Policy CNDP5 – Cubbington Conservation Area	13
Policy CNDP6 – Protection and Enhancement of Community Facilities	14
Policy CNDP7 – Community Infrastructure	15
6.0 How to Comment on this Document	15
Appendices	15
 EU and ECHR Obligations	 16
 Conclusions	 17
Listing of Recommendations	18

Introduction

This Report sets out the findings of the Independent Examination of the Cubbington Neighbourhood Development Plan. The Plan was submitted to Warwick District Council by the Cubbington Parish Council in its capacity as the 'Qualifying Body' responsible for preparing the Neighbourhood Plan.

Neighbourhood Plans were introduced into the planning process by the Localism Act 2011. They aim to allow local communities to take responsibility for guiding development in their area. This approach was subsequently incorporated within the National Planning Policy Framework (NPPF) in 2012 and this continues to be a principal element of national planning policy. A new NPPF was published in December 2024. However, as paragraph 239 of that document makes clear "For neighbourhood plans, the policies in this Framework will apply for the purpose of preparing neighbourhood plans from 12 March 2025 unless a neighbourhood plan proposal has been submitted to the local planning authority under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended) on or before the 12 March 2025." The applicable version of the NPPF is therefore the one published in December 2023.

This report assesses whether the Cubbington Neighbourhood Development Plan is legally compliant and meets the 'basic conditions' that such plans are required to meet. It also considers the content of the Plan and, where necessary, recommends modifications to its policies and supporting text. This report also provides a recommendation as to whether the Cubbington Neighbourhood Development Plan should proceed to referendum. If this is the case and that referendum results in a positive outcome, the Cubbington Neighbourhood Development Plan would then be used in the process of determining planning applications within the Plan boundary as an integral part of the wider Development Plan.

The Role of the Independent Examiner

The Examiner's role is to ensure that any submitted Neighbourhood Plan meets the legislative and procedural requirements. I was appointed by Warwick District Council, in agreement with the Cubbington Parish Council, to conduct the Examination of the Cubbington Neighbourhood Development Plan and to report my findings. I am independent of both Warwick District Council and the Parish Council. I do not have any interest in any land that may be affected by the Plan.

I possess the appropriate qualifications and experience to undertake this role. I have over 40 years' experience in various local authorities and third sector bodies as well as with the professional body for planners in the United Kingdom. I am a Chartered Town Planner and a panel member for the Neighbourhood Planning Independent Examiner Referral Service (NPIERS). I am a Member of the Royal Town Planning Institute.

In my role as Independent Examiner I am required to recommend one of the following outcomes of the Examination:

- The Cubbington Neighbourhood Development Plan is submitted to a referendum; or
- The Cubbington Neighbourhood Development Plan should proceed to referendum as modified (based on my recommendations); or
- The Cubbington Neighbourhood Development Plan does not proceed to referendum on the basis that it does not meet the necessary legal requirements.

As part of this process I must consider whether the submitted Plan meets the Basic Conditions as set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. If recommending that the Neighbourhood Plan should go forward to referendum, I must then consider whether or not the referendum area should extend beyond the Neighbourhood Area to which the Plan relates.

In examining the Plan, I am 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 2004;
- the Neighbourhood Plan meets the requirements of Section 38B of the 2004 Act (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.

These are helpfully covered in the submitted Basic Conditions Statement and, subject to the contents of this Report, I can confirm that I am satisfied that each of the above points has been properly addressed and met.

In undertaking this Examination I have considered the following primary documents:

- The Cubbington Neighbourhood Development Plan April 2024 as submitted
- The Cubbington Neighbourhood Development Plan Basic Conditions Statement (May 2024)
- The Cubbington Neighbourhood Development Plan Consultation Statement (undated)
- The Cubbington Neighbourhood Development Plan Strategic Environmental Assessment Screening Opinion (November 2023)
- Content at: www.warwickdc.gov.uk/info/20444/neighbourhood_plans/1706/cubbington_neighbourhood_plan
- Content at: <https://cubbingtonparishcouncil.gov.uk/neighbourhood-plan/>
- Representations made to the Regulation 16 public consultation on the Cubbington Neighbourhood Development Plan
- The Warwick District Local Plan 2011 - 2029
- National Planning Policy Framework (NPPF) (2023)
- Neighbourhood Planning Regulations (2012)
- Planning Practice Guidance (PPG) (March 2014 and subsequent updates)

I carried out an unaccompanied visit to the Neighbourhood Area on 19th May 2025. I looked at all the various sites and locations identified in the Plan document in their rural setting.

The legislation establishes that, as a general rule, Neighbourhood Plan examinations should be held without a public hearing, by written representations only. Having considered all the information before me, including the representations made to the submitted plan which I felt made their points with clarity, I was satisfied that the Cubbington Neighbourhood Development Plan could be examined without the need for a public hearing and I advised Warwick District Council accordingly. The Qualifying Body and the Local Planning Authority have helpfully responded to my enquiries so that I may have a thorough understanding of the facts and thinking behind the Plan, and the correspondence is being shown on Warwick District Council's Neighbourhood Planning website for the Cubbington Neighbourhood Development Plan.

The Cubbington Neighbourhood Area

A map showing the boundary of the Cubbington Neighbourhood Area has been provided within the Neighbourhood Plan (p 5). Further to an application made by the Cubbington Parish Council, Warwick District Council approved the designation of the Neighbourhood Area on 2nd September 2021. This satisfied the requirement in line with the purposes of

preparing a Neighbourhood Plan under section 61G(1) of the Town and Country Planning Act 1990 (as amended).

Consultation

In accordance with the Neighbourhood Planning (General) Regulations 2012, the Qualifying Body has prepared a Consultation Statement to accompany the Plan.

The Planning Practice Guidance says:

“A qualifying body should be inclusive and open in the preparation of its Neighbourhood Plan [or Order] and ensure that the wider community:

- is kept fully informed of what is being proposed
- is able to make their views known throughout the process
- has opportunities to be actively involved in shaping the emerging Neighbourhood Plan [or Order]
- is made aware of how their views have informed the draft Neighbourhood Plan [or Order].” (Reference ID: 41-047-20140306)

The submitted Consultation Statement notes that, to create a platform for the preparation of the Cubbington Neighbourhood Development Plan (CNDP), an online questionnaire Residents’ Survey was conducted between January and April 2022. This generated responses from some 300 people. Using the survey responses, published technical information and other available evidence the Plan Steering Group identified the key planning issues affecting the future of Cubbington that could be addressed by the CNDP. From these a vision and objectives were devised which were the subject of an informal consultation held in May/June 2023. This was advertised on the Parish’s noticeboards and through the Parish magazine. Comments were gathered via a dedicated email address and the Parish Council website with drop-in sessions arranged at the Village Hall. The informal consultation yielded 67 responses.

Following this informal consultation, residents’ views and opinions on the focus and content of the CNDP were considered and incorporated into the Regulation 14 consultation draft of the CNDP. The Regulation 14 Pre-Submission Draft Plan 8-week consultation commenced on 22nd January 2024. Copies of the Plan and supporting documents were made available on the Parish Council website; hard copies were also made available from the Parish Council on request. Publicity of the CNDP was widespread and included: Parish Noticeboards, Flyers, Social Media, Parish Council and WDC websites, and mailing lists of businesses and formal consultees. Responses to this consultation were fully considered and amendments made to the Plan where necessary, as evidenced in the Consultation Statement. Subsequently a revised Plan was formally submitted to Warwick District Council for further statutory consultation.

Accordingly, overall, I am satisfied that the consultation process accords with the requirements of the Regulations and the Practice Guidance and that, having regard to national policy and guidance, the Basic Conditions have been met. In reaching my own conclusions about the specifics of the content of the Plan I will later note points of agreement or disagreement with Regulation 16 representations, just as the Qualifying Body have already done for earlier consultations. That does not imply or suggest that the consultation has been inadequate, merely that a test against the Basic Conditions is being applied.

Representations Received

Consultation on the submitted Plan, in accordance with Neighbourhood Planning Regulation 16, was undertaken by Warwick District Council from 31st October 2024 and 12th December 2024. I have been passed the representations – 11 in total – which were generated by the consultation and which are included along with the submitted Plan on Warwick District

Council's Neighbourhood Planning website. I have not mentioned every representation individually within this Report but this is not because they have not been thoroughly read and considered in relation to my Examiner role, rather their detail may not be relevant to ensuring that the Basic Conditions are met.

The Neighbourhood Plan

The Cubbington Parish Council is to be congratulated on their extensive efforts to produce a Neighbourhood Plan for their area that will guide development activity over the plan period. I can see that a sustained effort has been put into developing a Plan around this vision:

"The Cubbington Neighbourhood Development Plan aims to identify the expectations and aspirations of Cubbington residents for the future protection of the parish's environment, community, housing, employment, transport and leisure facilities.

Via research, surveys, and public consultation the Plan will identify how these wishes can be aligned with local and central government policies.

The Plan can then help inform both the Parish Council and Warwick District and Warwickshire County Council when considering the future of Cubbington village and surrounding area and in determining planning applications."

The Plan document is well presented with a combination of text, maps and policies that are, subject to the specific points that I make below, well laid out and helpful for the reader. The Plan has been kept to a helpfully manageable length by not overextending the potential subject matter and the coverage of that.

It is an expectation of Neighbourhood Plans that they should address the issues that are identified through community consultation, set within the context of higher-level planning policies. There is no prescribed content and no requirement that the robustness of proposals should be tested to the extent prescribed for Local Plans. Where there has been a failure by the Qualifying Body to address an issue in the round, leading to an inadequate statement of policy, it is part of my role wherever possible to see that the community's intent is sustained in an appropriately modified wording for the policy. It is evident that the community has made positive use of "direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area" (Planning Practice Guidance Reference ID: 41-001-20140306).

Individually, I can see that the Policies address legitimate matters for a Neighbourhood Plan as identified with the community. I will later look at the Policies in turn so as to ensure that the Basic Conditions are met, which include an obligation to be in general conformity with Warwick District Local Plan strategic policies. Having considered all the evidence and representations submitted as part of the Examination I am satisfied that the submitted Plan has had regard to national planning policies and guidance in general terms. It works from a positive vision for the future of the Neighbourhood Area and promotes policies that are, subject to amendment to variable degrees, proportionate and sustainable. The Plan sets out the community's priorities whilst seeking to identify and safeguard Cubbington's distinctive features and character. The plan-making had to find ways to reconcile the external challenges that are perceived as likely to affect the area with the positive vision agreed with the community. All such difficult tasks were approached with transparency, with input as required and support from the Warwick District Council.

However, in the writing up of the work into the Plan document, it is sometimes the case that the phraseology is imprecise, not helpful, or it falls short in justifying aspects of the selected policy. This is not uncommon in a community-prepared planning document and something that can readily be addressed in most instances. Accordingly, I have been obliged to recommend modifications so as to ensure both clarity and meeting of the 'Basic Conditions'. In particular, Plan policies as submitted may not:

“b) be prepared positively, in a way that is aspirational but deliverable;
d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;
and f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).” (NPPF para 16). I bring this particular reference to the fore because it will be evident as I examine the policies individually and consider whether they meet or can meet the ‘Basic Conditions’.

Basic Conditions

The Independent Examiner is required to consider whether a Neighbourhood Plan meets the “Basic Conditions”, as set out in law following the Localism Act 2011; in December 2018 a fifth Basic Condition was added relating to the Conservation of Habitats and Species Regulations 2017. In order to meet the Basic Conditions, the Plan must:

- have regard to national policies and advice contained in guidance issued by the Secretary of State;
- contribute to the achievement of sustainable development;
- be in general conformity with the strategic policies of the Plan for the area;
- be compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations;
- not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017(d).

The submitted Basic Conditions Statement has very helpfully set out to address the issues in relation to these requirements in the same order as above and has tabulated the relationship between the policy content of the Plan and its higher tier equivalents. The NPPF published in December 2023 has been the basis for the submitted Basic Conditions Statement and it is against the content of that NPPF that the Plan is examined. A new version of the NPPF was published in December 2024, However, as paragraph 239 of that document makes clear “For neighbourhood plans, the policies in this Framework will apply for the purpose of preparing neighbourhood plans from 12 March 2025 unless a neighbourhood plan proposal has been submitted to the local planning authority under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended) on or before the 12 March 2025.” The applicable version of the NPPF is therefore the one published in December 2023.

I note that the local strategic policies are set out in the Warwick District Local Plan 2011 - 2029. Warwick District Council are the process of undertaking a Local Plan review to, along with Stratford-on-Avon District Council, produce a South Warwickshire Local Plan. Whilst some data prepared for the review may be relevant for a Neighbourhood Plan, the Basic Conditions do not require me to assess any conformity with the in-progress review. From the accompanying Strategic Environmental Assessment and Habitats Regulations Screening, I will later address whether the making of the Plan will breach the Basic Condition relating to the Habitats and Species Regulations 2017.

I have examined and will below consider the Neighbourhood Plan against all of the Basic Conditions above, utilising the supporting material provided in the Basic Conditions Statement and other available evidence as appropriate.

The Plan in Detail

I will address the aspects of the Neighbourhood Plan content that are relevant to the Examination in the same sequence as the Plan. Recommendations are identified with a bold heading and italics, and I have brought them together as a list at the end of the Report.

Format

I expressed a concern to Warwick District Council that, at the Regulation 16 Consultation stage, the Policies Map was separated away from the Neighbourhood Plan as a “Supporting Document”. The Map is an essential part of the Plan policies. This misled at least one person making representations who requested detail that the Policies Map, had they located it, would have provided. Although the Policies Map is not presented in an interactive format, it is presented at a scale that probably would not have been feasible within the Plan document. However, the Plan needs to include a link to the Policies Map and, ideally, reproduce the map within the Plan for those reading it off-line. Both the District Council and the Qualifying Body agreed that these should be done.

Front cover

As noted earlier, a Neighbourhood Plan must state the period that it covers. I note that there is no indication of the plan period on the front cover of the Cubbington Plan. Looking inside the Plan I can see that, at paragraph 5.1, it is stated that the Plan covers the period to 2029. The Qualifying Body explained that this date was chosen so as to coincide with end of the current Local Plan. However, Neighbourhood and Local Plans are not required to coincide. And a period of just 4 years is a very short timeframe for any forward-looking plan. I note that at paragraph 1.2 the Plan says: “the CNDP will also provide a timely and valuable input into the South Warwickshire Local Plan 2030-2050” but this is not true if the Plan periods don’t overlap. National Planning Guidance says: “Neighbourhood planning provides the opportunity for communities to set out a positive vision for how they want their community to develop over the next 10, 15, 20 years in ways that meet identified local need and make sense for local people” (Paragraph: 003 Reference ID: 41-003-20190509). The Qualifying Body agreed that the Plan period should be amended, and suggested, to 15 years ie to 2040, whilst acknowledging that a review would be likely once the new Local Plan is in place.

The reference to “Regulation 16 Consultation Draft” should now be removed.

Foreword

The Foreword now seems to be out of date and, as such, it should be deleted or suitably replaced with a current statement about the Plan and its preparation. I suggest that the opportunity is taken here to provide a hyperlink to the Policies Map which is an essential part of the Plan.

Table of Contents

This table should be reviewed in the light of my Recommendations but in particular Section 6 should now be removed as being outdated.

Recommendation 1:

1.1 On the front cover include the now revised Plan period dates ‘2025 – 2040’ and remove the reference to “Regulation 16 Consultation Draft” (also in the page header).

1.2 Delete or replace the Foreword with a current introduction to the Plan, and if the latter include a hyperlink to the on-line Policies Map (I will also later recommend that a reference to the Policies Map is added to paragraph 5.1).

1.3 From the Table of Contents remove the reference to Section 6 and amend according to the changes made to the Plan document through recommendations.

1.0 Background

Designated Cubbington Neighbourhood Area

I note that, at Figure 1, the Plan appropriately includes a map of the Neighbourhood Area for which the Plan is prepared. Otherwise, I have no comments on this section.

2.0 Cubbington Neighbourhood Development Plan Key Issues, Vision and Objectives

I regard this section as largely an historic record of the development of the Plan with the community. However, I noted to the Qualifying Body that two pieces of survey data and a statement that need to be unpacked for their true implications to be understood:

“84% wanted no new housing but if there was any then the development should be assessed on its impact on village, not in isolation”:

I queried with the Qualifying Body whether this is suggesting that 84% of people accept that some development is likely to happen or just 16%? The Qualifying Body responded: “The community was concerned at more development, in the last two years two new estates with over 150 houses have been built and without any additions to local facilities and schools. These constituted an almost 10% increase in the village housing [which] they felt threatened its identity. So, 84% did want no more housing but if for some reason the wishes were overruled then the development should be assessed on its impact on village, not in isolation. A recommendation to make this less ambiguous is acceptable.”

“99% wanted open spaces preserved”:

As has been observed in some representations, for a community located within the Green Belt, “open spaces” can mean many things, from recreation grounds to open countryside. Combined with “84% wanted no new housing” the data could be saying no more than that people prefer no change. The Qualifying Body referred again to the recent history of development and the feeling of ‘threat’.

“A further problem is caused by HS2 setting a boundary for future development”:

I asked the Qualifying Body whether this is suggesting that there is a fear that the village might be allowed to expand up to the edge of the new railway line or that there will be an ambition for Leamington Spa to expand eastward to reach that line? Their response seemed to suggest a fear that both are possibilities, despite the Green Belt location.

Cubbington Neighbourhood Development Plan Draft Vision and Draft Objectives

I queried with the Qualifying Body why, for the purposes of the Regulation 16 Consultation, these items remain shown as “draft”. The response was that was a legacy of the draft document stage and should be amended.

Recommendation 2:

2.1 In the bullet points of paragraph 2.1:

- *Replace the second bullet point with: ‘84% wanted no new housing; any development should not be assessed in isolation from its impact on the village’*
- *Delete the third bullet point because of its ambiguity and a likely duplication of the sentiment of bullet points two and four.*

2.2 In paragraph 2.2 under “Maintain Green Belt protection” remove one of the two uses of “previously”.

2.3 In the last bullet point of paragraph 2.3, replace the last sentence with: ‘There is a fear that the line of the new HS2 will be treated as a new development boundary for Cubbington or Leamington.’

2.4 Under and within the heading “Cubbington Neighbourhood Development Plan Draft Vision and Draft Objectives” remove references to “draft”.

3.0 Cubbington Neighbourhood Area

No comments.

4.0 Planning Policy Context

I commented to the Qualifying Body that, whilst the section on the emerging Local Plan and Appendix 3 may have been helpful to the consultation process, given that all the information is already out of date, these sections are now best omitted. The Qualifying Body agreed.

Recommendation 3:

Under the heading “Planning Policy Context” omit paragraphs 4.8 – 4.11 with related content (I will later also Recommend the removal of Appendix 3).

5.0 Neighbourhood Plan Policies

As noted earlier, I will here recommend the inclusion of a hyperlink to the Policies Map and a full page reproduction of that within the Plan so as to help off-line readers.

CNDP OBJECTIVE 1 - To protect and enhance green spaces

Policy CNDP1 – Protecting Local Green Space

The supporting paragraphs in the Plan correctly record the way in which the Policy has regard to national policies and is in general conformity with the strategic policies of the Local Plan.

Having visited the listed sites individually and researched a little of the background of the larger spaces, including changes arising from the HS2 route, I conclude that each should be designated as a Local Green Space (LGS). Although the smaller spaces are already in public ownership and the larger spaces are protected by a combination of designations including Green Belt, I accept that the local community have identified these spaces as demonstrably special and holding a particular local significance. Although the larger areas are already within the Green Belt, Planning Policy Guidance says: “One potential benefit [from LGS designation] in areas where protection from development is the norm (eg villages included in the green belt) but where there could be exceptions is that the Local Green Space designation could help to identify areas that are of particular importance to the local community.” Paragraph: 010 Reference ID: 37-010-20140306.

However, reaching my conclusion was hampered by a poor presentation of supporting material. Table 2 includes areas for LGS designation but also areas that were assessed as failing the NPPF criteria; no distinction is made between the two. The table also fails to acknowledge that the NPPF criteria do not say “Demonstrably special” but very importantly “demonstrably special to a local community *and* holds a *particular [my emphases]* local significance”. I therefore had to prompt the Qualifying Body to explain the “particular local significance”. Some “other” details are not relevant eg “provides access to Newbold Comyn Park”; the significance must lie in the space being designated.

I also noted to the Qualifying Body that the Policy wording should not reference the NPPF since that will (and already has) change over time. The wording should also not go beyond the basis for the NPPF protection.

Recommendation 4:

4.1 Reword Policy CNDP1 as follows:

‘The areas listed below and shown on the Policies Map are designated Local Green Spaces:

CNDP1/1 - Cubbington Playing Fields

CNDP1/2 - Austen Court play area

CNDP1/3 - North Cubbington Wood

CNDP1/4 - South Cubbington Wood

CNDP1/5 - The Runghills

Managing development within a Local Green Space should be consistent with national policy for Green Belts.

4.2 Reword paragraph 5.7 as follows:

'A small number of green spaces in the neighbourhood area were assessed against the designation criteria set out in the National Planning Policy Framework and Table 2 illustrates how the designation decision is supported.' Move Table 2 to follow this paragraph.

4.3 Edit Table 2 to remove those areas which didn't meet the designation criteria. Also, delete the column "Any other comments?" and amend the heading and content of the column "Demonstrably special?" to read and support 'Demonstrably special and holding a particular local significance?'

As amended Policy CNDP1 meets the Basic Conditions.

Policy CNDP2 - Protecting Other Green Spaces

This Policy seeks to protect green spaces or open spaces (terms which seem to be used interchangeably), "but not with the high degree of protection offered to designated local green spaces". Evidently from Table 2, part of the community interest is to protect the spaces which assure separation between communities, but this does not feature in the Policy itself (and there is already a Local Plan Strategic Policy - DS4 Spatial Strategy – directed at this issue). However, to the extent that I have been able to surmise the spaces without a map, many of the areas are already within the Green Belt and are therefore already afforded protection equivalent to that of a Local Green Space. Other smaller spaces may already be protected by inclusion within the highway or by other public ownership. As written, and without boundaries being defined, Policy CNDP2 does not meet the NPPF expectation that Policy is "clearly written and unambiguous, so it is evident how a decision maker should react to development proposals" (NPPF para 16). The Policy also seeks explicitly to interfere with the strategic policy obligations of the Local Planning Authority regarding the Green Belt and identification of sufficient land to meet housing needs. I therefore conclude that Policy CNDP2 and its supporting text should be deleted.

Paragraph 5.10 seems somewhat anomalous in its context since it is apparently promoting development within open space, albeit land closely aligned with the new HS2 route. The Qualifying Body explained that "the point here that any development envisaged in para 5.10 is compatible with the area's use as an open space". In the absence of the site being defined and a specific policy, the paragraph appears to be commentary rather than content for a Policy section.

Recommendation 5:

Delete Policy CNDP2 and its supporting text.

CNDP OBJECTIVE 2 - To ensure new development creates high quality, beautiful and sustainable buildings and places that reinforce the identity of Cubbington and the surrounding countryside

Policy CNDP3 – Sustainable Design and Construction

The NPPF at paragraph 132 says: "Neighbourhood planning groups can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development, both through their own plans and by engaging in the production of design policy, guidance and codes by local planning authorities and developers." However, I commented to the Qualifying Body that very little, if any, of the content of Policy CNDP 3 is particular to Cubbington. Where in paragraph (a) regard for "existing good quality examples" is encouraged, no examples are identified to distinguish good from bad local quality. The Qualifying Body responded: "The policy does not seek to be a design code for Cubbington – this is something the PC may consider in the future. The policy sets out a set of general criteria for the assessment of planning applications made in the area – with the aim of securing good design." But it is not explained in what ways anything is added to the existing national and local design guidance, and in at least two matters – energy standards and

biodiversity – the Policy is more likely to confuse than help in view of conflict with national policy. I can see however that the Policy can indicate the areas of design quality of interest to the community, subject to a test of clarity and relevance to sustainable quality.

I also noted to the Qualifying Body that the Policy seems to suggest it applies to developments of single dwellings and upward – the Policy ought to indicate that its application will be proportionate to the scale of the proposal.

Recommendation 6:

6.1 Renumber Policy CNDP3 to CNDP2 and also adjust the supporting text as required.

6.2 Correct the wording of Objective 2 to remove the “a” between “creates” and “high quality”.

6.3 Within the renumbered Policy CNDP2 – Sustainable Design and Construction:

6.3.1 Reword the first paragraph as ‘Appropriately to the nature and scale of the proposal, new development should be justified against criteria (a) to (v) below, which are indicative of local priorities for Cubbington’.

6.3.2 Within the second paragraph replace “should seek” with ‘is encouraged’ and delete the second sentence (which is merely a negative form and duplication of the opening paragraph).

6.3.3 Delete criterion (a) (and renumber subsequent criteria accordingly) since it duplicates paragraph (j) which has greater clarity.

6.3.4 Delete the final sentence of criterion (c) since this may mislead about national policy.

6.3.5 For clarity replace the first sentence of criterion (d) as follows: ‘It provides a proportionate amount of new public open space that is functional, enclosed, integrated and overlooked by residents.’ Delete criterion (e) as this is now incorporated within (d) and renumber subsequent criteria accordingly.

6.3.6 In criterion (n) replace “efficient” with ‘resilient’.

6.3.7 In criterion (p) replace “includes features to minimise” with ‘minimises’.

6.3.8 In criterion (r) replace “locally adopted” with ‘current, Warwick District’.

6.3.9 In criterion (t) replace “have external wall-mounted” with ‘make appropriate provision for’.

6.4 In paragraph 5.12 delete “In the future”.

6.5 Delete all but the last sentence of paragraph 5.14 (since Appendix 5 doesn’t evidence the views of Severn Trent) and replace the last sentence as: ‘Criterion v) of Policy CNDP2 seeks to ensure that rainwater issues are addressed through the planning process so that there are no negative impacts on the drainage system and a resulting increase in flood risk.’

As amended Policy CNDP2 (now amended from CNDP3) meets the Basic Conditions.

CNDP OBJECTIVE 3 - To conserve and enhance the natural environment and built heritage assets of the area

Policy CNDP4 - Conserving and Enhancing the Landscape

As noted earlier in the Plan, Cubbington sits within the Green Belt. The NPPF says at paragraph 142: “The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.” It is therefore appropriate for the Neighbourhood Plan to address landscape matters. However, I commented to the Qualifying Body that the now renumbered Policy CNDP3 seems to exaggerate the powers of the planning system to “*Retain* the network of fields and hedgerows”. The primary local content in this Policy is the reference to “Feldon Parklands character” but nowhere in the supporting text is this further explained. The Qualifying Body provided some brief supporting text to better explain the local landscape context.

I further note that whilst “significant views” are referenced in the Policy, there is no cross-reference to Appendix 4 – which I will later recommend becomes Appendix 2 – and this might simply be included in the Policy wording.

Recommendation 7:

7.1 Renumber Policy CNDP4 to CNDP3 and also adjust the supporting text as required.

7.2 Within the renumbered Policy CNDP3:

7.2.1 In criteria (b) and (c), replace “Retain” with ‘Conserve’.

7.2.2 In criterion (f) add at the end ‘(and as further described in Appendix 2)’.

7.3 Insert a new paragraph 5.22 (and renumber subsequent paragraphs accordingly) as follows:

‘The Feldon Parklands is part of the Dunsmore and Feldon National Character Area. The landscape of Feldon is predominantly rural and agricultural, featuring large arable fields, improved pasture, and small villages. It forms a transitional landscape between surrounding National Character Areas. The area is known for its open character, with low ridges and valleys.’

As amended Policy CNDP3 (now amended from CNDP4) meets the Basic Conditions.

Policy CNDP5 – Cubbington Conservation Area

Paragraph 196 of the NPPF says: “Plans should set out a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats.” Cubbington Conservation Area has been designated for the conservation of its special character.

I noted to the Qualifying Body that, unlike with Listed Buildings, the law doesn’t provide for the setting of a Conservation Area to be protected. However, development at the boundary may have an impact on the character of the Conservation Area and to that extent the boundary may be a little permeable. The Qualifying Body responded, “If you are of the view that the wording implies a statutory protection of setting we are content for a recommendation to correct this. However, we wish the text relating to “setting” to remain where possible.” I believe a small amendment in the Policy will suffice.

I note there is a Warwick District Council publication on the Conservation Area and it is perhaps surprising that it is not referenced as an authoritative source; a reference should be added.

Policy element (d) expects that “any development on key entrances (e.g. Church Lane) are designed to a high quality” but that suggests that elsewhere design can be of a lesser quality. The issue is that design must be respectful of these sensitive locations, and therefore there is duplication with element (g).

I queried with the Qualifying body, by whose judgement is a traffic management solution “overengineered”. The Qualifying Body explained: “This stems from there being In the past suggestions from highways of providing traffic lights, slip roads etc. on the Windmill Hill / Rugby Road junction rather than for example a simple roundabout”. I believe there is a danger in attempting to make policy on the basis of a single example.

I also noted that the location of the “important views” of element (g) don’t appear to be illustrated anywhere. The Qualifying Body explained that these are highlighted in the WDC Conservation Area Appraisal and I therefore recommend that the Conservation Area boundary map is amended to include the views with the source of the map and selected views being declared.

Recommendation 8:

8.1 Renumber Policy CNDP5 to CNDP4 and also adjust the supporting text as required.

8.2 Within the renumbered Policy CNDP4:

8.2.1 In the opening sentence delete “the setting of”.

8.2.2 Delete criterion (d).

8.2.3 Reword criterion (g) as follows:

‘Ensure that any development on key entrances and road junctions respects the character of the area and is suitable to these sensitive settings, avoiding clutter with signage, and that the following important views – mapped as an inset to the Policies Map - are protected.’. Add the inset to the Policies Map.

As amended Policy CNDP4 (now amended from CNDP5) meets the Basic Conditions.

**CNDP OBJECTIVE 4 - To protect and enhance local community facility provision
Policy CNDP6 – Protection and Enhancement of Community Facilities**

NPPF paragraph 88 says: “Planning policies and decisions should enable:

d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.” As noted in the supporting text to Policy CNDP5 (as now renumbered), Policy HS8 of the Warwick District Local Plan realises that expectation locally. Neighbourhood Plan Policy CNDP5 can helpfully identify the detail of the community facilities within the Neighbourhood Area.

In relation to the Policy wording, I commented to the Qualifying Body that there is a danger in quoting Local Plan Policy numbers since the Local Plan is on the verge of changing. Although the Policy supporting text says that “local residents wanted to protect and see local community facility provision improved”, Policy CNDP6 doesn’t actually specifically support the improvement of existing facilities. The Policy does suggest that one facility should be replaced to achieve greater benefit. I further noted that there is no need to say “where they are in accordance with other neighbourhood and development plan policies” since that will apply to the relevant degree with every other Policy too. These matters are therefore the basis for my Recommendations.

Recommendation 9:

9.1 Renumber Policy CNDP6 to CNDP5 and also adjust the supporting text as required.

9.2 Within the renumbered Policy CNDP5:

9.2.1 Add to the opening sentence 'or successor Policy'.

9.2.2 Reword the final paragraph as follows:

'Proposals for improving or renewing the above or adding additional community facilities, including a replacement, multi-purpose Village Hall, will be supported in principle.'

As amended Policy CNDP5 (now amended from CNDP6) meets the Basic Conditions.

CNDP OBJECTIVE 5 - To ensure new development is of a proportionate scale and supported by sufficient infrastructure so that it minimises impact on Cubbington's existing communities.

Policy CNDP7 – Community Infrastructure

As noted earlier, the NPPF at paragraph 16 says that plans should be “be prepared positively, in a way that is aspirational but deliverable.” It is not demonstrated how the aspirations in Policy CNDP 6 (as now renumbered) might be delivered. One route might be through further development but that is not specifically supported by the Plan. Neither are the “infrastructure” matters all about land use, as is required for a Neighbourhood Plan. National Planning Policy Guidance says: “Wider community aspirations than those relating to the development and use of land, if set out as part of the plan, would need to be clearly identifiable (for example, set out in a companion document or annex), and it should be made clear in the document that they will not form part of the statutory development plan” (Paragraph: 004 Reference ID: 41-004 20190509). This Policy therefore needs to be changed to a ‘Community Action’ or similar so that it can be clearly distinguishable from the statutory plan content. The Qualifying Body agreed with this approach.

Recommendation 10:

10.1 Retitle Policy CNDP7 as ‘Community Action: Community Infrastructure’ and format the content differently to distinguish it from the Policy content of the Plan. This might involve highlighting the content with a distinctive border or background colour.

10.2 Correct typos in paragraph 5.39 with: ‘and allow service providers the opportunity’.

10.3 In paragraph 5.44 remove reference to Appendix 5 (since the views of Severn Trent are not established there).

As amended the Community Action section (now amended from Policy CNDP7) meets the Basic Conditions.

6.0 How to comment on this document

This section is now redundant and should be deleted.

Recommendation 11:

Delete Section 6.0.

Appendices

Appendices should provide information essential to the understanding of Plan policies/content; background information relating to the preparation of the Plan can be kept elsewhere. On this basis the Qualifying Body agreed that Appendices 1,3,5 & 6 should be removed. The Glossary will probably be helpful to many readers.

Recommendation 12:

Remove Appendices 1,3,5 & 6 from the Plan document and renumber the remaining Appendices accordingly.

European Union (EU) and European Convention on Human Rights (ECHR) Obligations

A further Basic Condition, which the Cubbington Neighbourhood Development Plan must meet, is compatibility with European Union (EU) and European Convention on Human Rights (ECHR) obligations (as now incorporated within UK law).

Regulation 9 of the Strategic Environmental Assessment (SEA) Regulations requires that the responsible authority (Warwick District Council) shall determine whether or not a plan is likely to have significant environmental effects. Warwick District Council concluded in their Screening Report dated November 2023 that “As a result of the screening assessment in section 3, it is considered unlikely there will be any significant environmental effects arising from the Cubbington Neighbourhood Plan that were not addressed in the Sustainability Appraisal of the Local Plan. As such, it is considered that the Cubbington Neighbourhood Plan does not require a full SEA to be undertaken.” Within this overall conclusion there was also a determination that “the Cubbington Neighbourhood Plan does not require an assessment under Article 6 or 7 of the Habitats Directive”.

This screening decision was sent to Natural England, Environment Agency and Historic England, requesting comments. Comments were received from Historic England, the Environment Agency and Natural England agreeing that an SEA was not required for the Plan.

With regard to the European Convention on Human Rights, the Basic Conditions Statement that accompanies the Neighbourhood Development Plan notes at para 3.25: “The Submission CNDP is fully compatible with the European Convention on Human Rights. It has been prepared with full regard to national statutory regulation and policy guidance, which are both compatible with the Convention. The CNDP has been produced in full consultation with the local community. The CNDP does not contain policies or proposals that would infringe the human rights of residents or other stakeholders over and above the existing strategic policies at national and district-levels.” No evidence has arisen or been put forward to me to demonstrate that the Qualifying Body has not been mindful of the fundamental rights and freedoms guaranteed under the European Convention on Human Rights in process of preparing the Neighbourhood Plan.

Taking all of the above into account, I am satisfied that the Cubbington Neighbourhood Development Plan, as now modified, is compatible with EU obligations and that it does not breach, nor is in any way incompatible with, the ECHR.

Conclusions

This Independent Examiner's Report recommends a range of modifications to the Policies, as well as some of the supporting content, in the Plan. Modifications have been recommended to effect corrections, to ensure clarity and in order to ensure that the Basic Conditions are met. Whilst I have proposed a number of modifications, the Plan itself remains fundamentally unchanged in the role and direction set for it by the Qualifying Body.

I therefore conclude that, subject to the modifications recommended, the Cubbington Neighbourhood Development Plan:

- has regard to national policies and advice contained in guidance issued by the Secretary of State;
- contributes to the achievement of sustainable development;
- is in general conformity with the strategic policies of the Plan for the area;
- is compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations;
- does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017(d).

On that basis I *recommend* to Warwick District Council that, subject to the incorporation of modifications set out as recommendations in this report, it is appropriate for the Cubbington Neighbourhood Development Plan to proceed to referendum.

Referendum Area

As noted earlier, part of my Examiner role is to consider whether the referendum area should be extended beyond the Plan area. I consider the Neighbourhood Area to be appropriate and no evidence has been submitted to suggest that this is not the case. I therefore ***recommend*** that the Plan should proceed to referendum based on the Neighbourhood Area as approved by Warwick District Council on 2nd September 2021.

Recommendations: (this is a listing of the recommendations exactly as they are included in the Report)

Rec	Text	Reason
1	<p>1.1 On the front cover include the now revised Plan period dates '2025 – 2040' and remove the reference to "Regulation 16 Consultation Draft" (also in the page header).</p> <p>1.2 Delete or replace the Foreword with a current introduction to the Plan, and if the latter include a hyperlink to the on-line Policies Map (I will also later recommend that a reference to the Policies Map is added to paragraph 5.1.</p> <p>1.3 From the Table of Contents remove the reference to Section 6 and amend according to the changes made to the Plan document through recommendations.</p>	For clarity and accuracy
2	<p>2.1 In the bullet points of paragraph 2.1:</p> <ul style="list-style-type: none"> • Replace the second bullet point with: '84% wanted no new housing; any development should not be assessed in isolation from its impact on the village' • Delete the third bullet point because of its ambiguity and a likely duplication of the sentiment of bullet points two and four. <p>2.2 In paragraph 2.2 under "Maintain Green Belt protection" remove one of the two uses of "previously".</p> <p>2.3 In the last bullet point of paragraph 2.3, replace the last sentence with: 'There is a fear that the line of the new HS2 will be treated as a new development boundary for Cubbington or Leamington.'</p> <p>2.4 Under and within the heading "Cubbington Neighbourhood Development Plan Draft Vision and Draft Objectives" remove references to "draft".</p>	For clarity and accuracy
3	Under the heading "Planning Policy Context" omit paragraphs 4.8 – 4.11 with related content (I will later also Recommend the removal of Appendix 3).	For clarity and accuracy
4	<p>4.1 Reword Policy CNDP1 as follows: 'The areas listed below and shown on the Policies Map are designated Local Green Spaces: CNDP1/1 - Cubbington Playing Fields CNDP1/2 - Austen Court play area CNDP1/3 - North Cubbington Wood CNDP1/4 - South Cubbington Wood CNDP1/5 - The Runghills Managing development within a Local Green Space should be consistent with national policy for Green Belts.</p> <p>4.2 Reword paragraph 5.7 as follows: 'A small number of green spaces in the neighbourhood area were assessed against</p>	For clarity and accuracy and to meet Basic Condition 1

	<p>the designation criteria set out in the National Planning Policy Framework and Table 2 illustrates how the designation decision is supported.’ Move Table 2 to follow this paragraph.</p> <p>4.3 Edit Table 2 to remove those areas which didn’t meet the designation criteria. Also, delete the column “Any other comments?” and amend the heading and content of the column “Demonstrably special?” to read and support ‘Demonstrably special and holding a particular local significance?’</p>	
5	Delete Policy CNDP2 and its supporting text.	To to meet Basic Conditions 1 & 3
6	<p>6.1 Renumber Policy CNDP3 to CNDP2 and also adjust the supporting text as required.</p> <p>6.2 Correct the wording of Objective 2 to remove the “a” between “creates” and “high quality”.</p> <p>6.3 Within the renumbered Policy CNDP2 – Sustainable Design and Construction:</p> <p>6.3.1 Reword the first paragraph as ‘Appropriately to the nature and scale of the proposal, new development should be justified against criteria (a) to (v) below, which are indicative of local priorities for Cubbington’.</p> <p>6.3.2 Within the second paragraph replace “should seek” with ‘is encouraged’ and delete the second sentence (which is merely a negative form and duplication of the opening paragraph).</p> <p>6.3.3 Delete criterion (a) (and renumber subsequent criteria accordingly) since it duplicates paragraph (j) which has greater clarity.</p> <p>6.3.4 Delete the final sentence of criterion (c) since this may mislead about national policy.</p> <p>6.3.5 For clarity replace the first sentence of criterion (d) as follows: ‘It provides a proportionate amount of new public open space that is functional, enclosed, integrated and overlooked by residents.’ Delete criterion (e) as this is now incorporated within (d) and renumber subsequent criteria accordingly.</p> <p>6.3.6 In criterion (n) replace “efficient” with ‘resilient’.</p> <p>6.3.7 In criterion (p) replace “includes features to minimise” with ‘minimises’.</p> <p>6.3.8 In criterion (r) replace “locally adopted” with ‘current, Warwick District’.</p>	For clarity and accuracy and to meet Basic Condition 1

	<p>6.3.9 In criterion (t) replace “have external wall-mounted” with ‘make appropriate provision for’.</p> <p>6.4 In paragraph 5.12 delete “In the future”.</p> <p>6.5 Delete all but the last sentence of paragraph 5.14 (since Appendix 5 doesn’t evidence the views of Severn Trent) and replace the last sentence as: ‘Criterion v) of Policy CNDP2 seeks to ensure that rainwater issues are addressed through the planning process so that there are no negative impacts on the drainage system and a resulting increase in flood risk.’</p>	
7	<p>7.1 Renumber Policy CNDP4 to CNDP3 and also adjust the supporting text as required.</p> <p>7.2 Within the renumbered Policy CNDP3:</p> <p>7.2.1 In criteria (b) and (c), replace “Retain” with ‘Conserve’.</p> <p>7.2.2 In criterion (f) add at the end ‘(and as further described in Appendix 2)’.</p> <p>7.3 Insert a new paragraph 5.22 (and renumber subsequent paragraphs accordingly) as follows: ‘The Feldon Parklands is part of the Dunsmore and Feldon National Character Area. The landscape of Feldon is predominantly rural and agricultural, featuring large arable fields, improved pasture, and small villages. It forms a transitional landscape between surrounding National Character Areas. The area is known for its open character, with low ridges and valleys.’</p>	For clarity and accuracy and to meet Basic Condition 1
8	<p>8.1 Renumber Policy CNDP5 to CNDP4 and also adjust the supporting text as required.</p> <p>8.2 Within the renumbered Policy CNDP4:</p> <p>8.2.1 In the opening sentence delete “the setting of”.</p> <p>8.2.2 Delete criterion (d).</p> <p>8.2.3 Reword criterion (g) as follows: ‘Ensure that any development on key entrances and road junctions respects the character of the area and is suitable to these sensitive settings, avoiding clutter with signage, and that the following important views – mapped as an inset to the Policies Map - are protected:’. Add the inset to the Policies Map.</p>	For clarity and accuracy and to meet Basic Condition 1
9	<p>9.1 Renumber Policy CNDP6 to CNDP5 and also adjust the supporting text as required.</p> <p>9.2 Within the renumbered Policy CNDP5:</p> <p>9.2.1 Add to the opening sentence ‘or successor Policy’.</p> <p>9.2.2 Reword the final paragraph as follows:</p>	For clarity and accuracy and to meet Basic Condition 1

	'Proposals for improving or renewing the above or adding additional community facilities, including a replacement, multi-purpose Village Hall, will be supported in principle.'	
10	<p>10.1 Retitle Policy CNDP7 as 'Community Action: Community Infrastructure' and format the content differently to distinguish it from the Policy content of the Plan. This might involve highlighting the content with a distinctive border or background colour.</p> <p>10.2 Correct typos in paragraph 5.39 with: 'and allow service providers the opportunity'.</p> <p>10.3 In paragraph 5.44 remove reference to Appendix 5 (since the views of Severn Trent are not established there).</p>	For clarity and accuracy and to meet Basic Condition 1
11	Delete Section 6.0.	For clarity and accuracy
12	Remove Appendices 1,3,5 & 6 from the Plan document and renumber the remaining Appendices accordingly.	For clarity and accuracy