

Uplyme Neighbourhood Plan 2016-2031

Submitted Plan for Examination

October 2016

Report to the East Devon District Council on
the Independent Examination of the draft
Uplyme Neighbourhood Plan 2016-2031

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Summary of main findings

0.1 It is a requirement of the Localism Act that this report should contain a summary of its main findings. The reasons for each of the recommendations are given in the following sections of the report.

0.2 The principal findings in this report are that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in the Town and Country Planning 1990 Act (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

0.3 It is recommended that the plan, as modified, be submitted to a referendum and that the referendum area need not be extended beyond that of the neighbourhood area. My main recommendations for modifications to the individual plan sections and policies are: -

- Section 9, Transport, highways and pedestrian access, should be clearly identified as representing community aspirations and not land-use planning policy. The two 'policies' should not be labelled as such.
- Section 10.1.2, Proposed Conservation Area, should also be clearly identified as community aspiration.
- The treatment of 'exception sites' under Policies UHG3 and UHG4 should be clarified. The boundaries of the Lime Kiln Lane allocation should be adjusted with a requirement for flood risk assessment.
- Reference to a site for open-market housing on Harcombe Road, Raymond's Hill, should be deleted.
- The first part of Policy UCF2 should be merged with Policy UEM5 to provide a more clearly expressed land-use policy for the development of a new school on a site by the village hall and for the re-use of the old school buildings as a Business Centre but that the latter aspect is in the nature of a community aspiration.
- Policy UEN7 for Local Green Space should be re-cast to more closely reflect national Green Belt policy and 'Area E' deleted in recognition of the grant of planning permission on appeal.

Section 1 - Introduction

Appointment

1.01 I have been appointed by the East Devon District Council (EDDC), acting as the Local Planning Authority (LPA), under the provisions of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, to carry out an independent examination of the Uplyme Neighbourhood Plan as submitted to the LPA on 1st November 2016. The EDDC carried out publicity for the proposed plan for a period of 9 weeks between 28th November 2016 and 27th January 2017 giving details of how representations might be made, in accordance with Regulation 16 of the Neighbourhood Plans (General) Regulations 2012 ('the 2012 Regulations'). I was sent the documentation required under Regulation 17 in late March 2017 including copies of all of the representations received under Regulation 16. The examination commenced on 3rd April 2017. I have taken that documentation and all of the representations into account in carrying out the examination.

1.02 I am a Chartered Town Planner (Member of the Royal Town Planning Institute) with some 45 years post-qualification professional experience in local and central government and latterly as a sole practitioner specialising in development plan policy work. I am independent of the Uplyme Parish Council and of the Local Planning Authority. I have no land interests in any part of the plan area.

My role as an examiner

1.03 The terms of reference for the independent examination of a Neighbourhood Development Plan are statutory. They are set out in the Localism Act 2011 and in the 2012 Regulations. As an examiner I must consider whether the plan meets what are called 'the basic conditions'¹. In summary, these require me to consider: -

- whether, having regard to national policies and to advice contained in guidance issued by the Secretary of State, it would be appropriate to make the plan;
- whether the making of the plan would contribute to the achievement of sustainable development;

¹ These are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (as introduced in Schedule 10 of the Localism Act 2011)

- whether the making of the plan would be in general conformity with the strategic policies contained in the development plan for the area; and to ensure that:-
- the making of the plan would not breach, and would otherwise be compatible with EU obligations relating to Strategic Environmental and Habitats Assessment and that the plan would be compatible with Convention rights, within the meaning of the Human Rights Act 1998; and
- that 'prescribed conditions' would be met and 'prescribed matters' would be complied with in plan preparation and submission.

1.04 Legislation requires that my report on the draft plan should contain one of the following recommendations:-

- a) that the draft plan is submitted to a referendum, or
- b) that modifications are made to the draft plan and the modified plan is submitted to a referendum, or
- c) that the proposal for the plan is refused.

I may make recommendations for modifications which I consider need to be made to secure that the plan meets the basic conditions or for compatibility with EU obligations and (Human Rights) Convention Rights. The only other modifications which I may recommend are those to correct errors.

Section 2 – Statutory compliance and procedural matters

2.01 The East Devon District Council formally designated the parish of Uplyme as a Neighbourhood Area in September 2013. The plan relates solely to the designated area and has been submitted by the Uplyme Parish Council (UPC) as the 'qualifying body'. It does not include provision about development which is 'excluded development'.²

2.02 The title of the plan is given on the front sheet simply as Uplyme Neighbourhood Plan 2016-2031 with a sub-title of 'Submitted Plan for Examination' as well as 'Regulation 15 Draft, October 2016'. Obviously, the sub-titles will require amendment in the final version of the plan.

² These statutory requirements are to be found in Section 38B of the Town and Country Planning Act 1990 (as amended by the Localism Act 2011),

2.03 It is a statutory requirement that the plan 'must specify the period for which it is to have effect'³, as indeed it does. I do not, therefore, make any recommendation for a change to the plan period especially as it has the same end date as the statutory local plan for the area, the East Devon Local Plan (EDLP). However, as I have pointed out in my written questions, the evidence base on housing needs does not support policies for much beyond a five-year time horizon. Recent legislative changes also look towards a minimum period of five years for local plan reviews and to ease the process for neighbourhood plan review. This suggests that a plan review will be required well before 2031.

2.04 A plan showing the area to which the Neighbourhood Plan relates has been submitted as required by Regulation 15(1)(a).

2.05 The legislation states that the 'general rule' is that the examination of the issues by the examiner should take the form of the consideration of written representations. However, an examiner must hold a hearing 'for the purpose of receiving oral representations about an issue' where he or she considers a hearing 'is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case'⁴. Before deciding whether a hearing would be required I issued⁵ a list of written questions seeking clarification and further evidence in justification of the plan policies. My consideration of the Parish Council's written responses⁶ to my questions along with a few queries⁷ addressed to the EDDC allowed me to conclude that the information provided was adequate for the examination to proceed without recourse to a hearing. I will be referring to my questions and the responses to them throughout this report which is structured along similar lines.

2.06 I visited Uplyme on the afternoon of Thursday 23rd April 2017 when I drove down from Raymond's Hill and around the parish. I also walked through various parts of the village looking at the proposed housing 'exception sites', the Built-Up Area Boundary (the BUAB) and Local Green Spaces. From this I was able to gain an appreciation of the character of the area and the setting of the village within the valley and the hills to the north of Lyme Regis, where I stayed overnight. That enabled me to look again at some areas on the next day (24th April).

³ S38B(1)(a) of the Town and Country Planning Act 1990 (as amended by Schedule 9 to the Localism Act 2011)

⁴ Paragraph 9 of Schedule 4B to the 1990 Act (as in reference 1 above)

⁵ On 18 April 2017

⁶ Dated 27 April, received on 4 May 2017

⁷ Issued on 11 April, response received 4 May 2017

2.07 The UPC have submitted a Basic Conditions Statement in accordance with the Regulations⁸. It is a comprehensive document which includes tables assessing each plan policy against relevant policies in the EDLP and the National Planning Policy Framework ('the NPPF') as well as a section on the contribution to the achievement of sustainable development.

The Human Rights Act and EU Obligations

2.08 Section 5 of the Basic Conditions Statement includes a statement that regard has been had to the fundamental rights and freedoms guaranteed under the European Convention on Human Rights and that the plan complies with the Human Rights Act. There is reference to the emphasis placed throughout the consultation processes on ensuring that no sections of the community were isolated or excluded. No representations have been made concerning this aspect and from my own assessment I have no reason to conclude other than that the approach taken in the plan is fully compatible with, and does not breach, Convention Rights.

2.09 An initial screening report under the Environmental Assessment Regulations⁹ was prepared in February 2016 and consulted upon. Natural England took the view that because the plan proposed to amend the BUAB and allocate exception sites for housing 'it cannot be ruled out that significant environmental effects resulting from the neighbourhood plan would not occur.'¹⁰ As a result the formal determination was that a Strategic Environmental Assessment (SEA) was required. An 'Environmental Report' was prepared and submitted along with an appendix detailing the environmental effects of the plan policies, proposals and alternatives. Its conclusions are that for the most part many of the policies score positively against environmental objectives and that where there are minor impacts from the development of affordable housing they will be mitigated through the application of the policy criteria. I am satisfied that the SEA work fully meets the requirements of the EU Obligations¹¹.

2.10 The initial screening report also includes a section on the requirements of the Habitats Regulations.¹² Uplyme parish includes a section of the sea cliffs to the west of Lyme Regis which are part of the Sidmouth and West Bay SAC ('a

⁸ Regulation 15(1)(d)

⁹ The Environmental Assessment of Plans and Programmes Regulations 2004

¹⁰ Natural England consultation response dated 4 May 2016

¹¹ European Directive 2001/42/EC

¹² The Conservation of Habitats and Species Regulations 2010, Regulation 102

European site' for the purpose of the Regulations). It is also a designated Site of Special Scientific Importance and part of the Jurassic Coast World Heritage Site. Nevertheless, the area is somewhat remote from any area proposed for development in the plan and the site is managed by Countryside Stewardship and English Nature's Reserve Enhancement Scheme. The conclusion, in paragraph 3.7 of the screening report, is that the neighbourhood plan is unlikely to have an adverse (the word used in the Regulations is 'significant') effect on the European site either alone or in combination with other plans and projects. Upon consultation, English Nature¹³ stated that they were 'content' that an Appropriate Assessment under the Habitats Regulations was not required.

2.11 On this basis, I am satisfied that the submitted plan is compatible with EU environmental obligations and meets the basic condition prescribed by section 1 of Schedule 2 to the Habitats Regulations.

Section 3 - Preparation of the plan and the pre-submission consultation processes

3.01 As required by legislation¹⁴, the UPC have submitted a Consultation Statement. It sets out very fully the extensive processes followed from the decision by the Parish Council, in April 2013 to prepare a neighbourhood plan. It is not necessary for me to rehearse the stages followed here. Suffice it to say that the consultation processes have clearly been very thorough and has led to a good deal of consensus within the community about the contents of the plan.

3.02 The Consultation Statement satisfies the requirements of Regulation 15(2) by the inclusion of lists of consultees and, in particular, setting out the responses to the Regulation 14 consultation identifying the main issues arising and how the representations were addressed in preparing the plan for submission to the local planning authority for examination.

3.03 I am satisfied that every effort has been taken to publicise the plan and to involve the community in its preparation. Although some representations by members of the public raise detailed issues of concern there is a noticeable degree of support. The Parish Council is to be congratulated on the effectiveness of the public engagement process.

¹³ IN their letter dated 4 May 2016

¹⁴ The Neighbourhood Planning (General) Regulations 2012, Regulations 15(1)(b) and 15(2)

Section 4 - The Plan, meeting the basic conditions

4.01 This section of my report sets out my conclusions on the extent to which the submitted plan meets those basic conditions which are set out in the first three bullet points in paragraph 1.3 above. If I conclude that the inclusion of a policy in the plan means that, as submitted, it does not meet one or more of the basic conditions, I recommend a modification to the plan policy in order to ensure that the plan, taken as a whole, does meet those conditions. First of all, I will consider the scope and content of the plan in the context of the National Planning Policy Framework ('the NPPF') and, in particular, the extent to which the phrasing of policies in the plan is such that they will provide a clear and unambiguous basis for taking decisions on planning applications, as indicated in national Planning Practice Guidance ('the PPG'). As part of this, I will consider whether section 9 in the plan, which deals with transport, highways and pedestrian access, is properly considered to be of an aspirational nature which should be clearly distinguished from the statutory policy provisions. I will also consider the way that a proposal for a Conservation Area is set out in the plan.

4.02 Secondly, I discuss what I regard to be the main planning issues which arise from the representations made on the plan. The main planning issues are: -

- a. whether the approach to the provision of housing in the plan may be regarded as being in general conformity with the strategic policies in the development plan and whether revisions to the Built-Up Area Boundary (Policy UHG1) are made this plan or in the Villages DPD; and
- b. whether the scope and application of policies UHG2, 3 and 4, in so far as they apply to 'rural exception sites', is sufficiently clear and whether the allocation of specific sites outside the BUAB for mixed open market and affordable housing in Policy UHG4 has had adequate regard to national policy or guidance and would contribute to sustainable development.

4.03 Thirdly, following the analysis of the two main planning issues I examine the plan policies in more general terms working through them in plan order to identify any inconsistency with the requirements set by legislation. If I do not mention a policy it means I am satisfied that the plan meets the basic conditions with that policy included in it. It should be noted that I do not make recommendations for detailed changes to the supporting text which will be required consequentially upon the modification of the policies themselves,

however I make a general recommendation that any necessary textual amendments should be made. That is to provide flexibility for the EDDC to agree such amendments with the UPC as part of their consideration of the modifications during the post-examination stages leading towards production of the final plan. Lastly, I list any errors which I have identified as requiring correction in the final version of the plan. These include an indication of some parts of the text which it will clearly not be appropriate because they relate to earlier stages of the plan-making process.

The scope and content of the plan

4.04 Policy wording. In my written questions to the Parish Council I drew attention to Planning Practice Guidance which, under a heading 'How should the policies in a neighbourhood plan be drafted?' it is stated: '*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.*'¹⁵

I pointed out that the decision maker is the Local Planning Authority or the Secretary of State on appeal. Although the plan has been prepared by the Parish Council it needs to be understood by the community that the plan is part of the statutory planning system and is implemented by the Local Planning Authority. It follows that the policies should be expressed in terms of whether planning permission should be granted or refused rather than giving an indication of the stance the Parish Council might take when consulted on an application by the LPA.

4.05 The Parish Council express concern that should a decision be taken by the LPA contrary to the plan it could be confusing for the public and discredit the plan or the planning process. Such concern is misplaced. Neighbourhood plans in England are a 'powerful tool'¹⁶ because the plan is statutory and the LPA must decide planning applications in accordance with the development plan, the UNP together with the EDLP, 'unless material considerations indicate otherwise.'¹⁷ Also, as the UNP will have been 'made' after the adoption of the EDLP its policies take precedence in the case of conflict. UNP policies also prevail over non-strategic policies in the EDLP.

¹⁵ Reference ID: 41-084-20160519

¹⁶ Paragraph 184 of the National Planning Policy Framework

¹⁷ S38(6) of the Town and Country Planning Act 1990

4.06 I have no particular difficulty with the use of the term 'support' in so far as it might reasonably be translated into an indication that permission should be granted should the policy requirements be met. It is a requirement of Government policy that a positive approach should be taken to planning decisions meaning that all applications will need to be 'favourably considered'. An indication that development should be 'resisted' is synonymous with 'refused'. But, there cannot be degrees of support expressed within a policy because that could cause uncertainty and ambiguity and, therefore, does not pay adequate regard to the practice guidance. However, there is no reason at all why the supporting text should not be used to emphasise the importance of a particular policy to the local community.

4.07 I do not, therefore, propose to recommend that the wording of every 'support' policy should be changed. That is not necessary for the basic conditions to be met. I will only recommend alternative wording should I have other reasons to recommend a modification to a policy and/or where the use of adverbs of degree introduces uncertainty in interpretation.

4.08 The EDDC, in their Regulation 16 representations on the plan, have drawn attention to the recommendations of the examiner of two other neighbourhood plans in East Devon on the inclusion of cross-references to national (NPPF and PPG) and Local Plan policies of relevance to each particular plan policy. That examiner took the view that their inclusion was unnecessary, subjective and drew attention away from the policies themselves. I have looked at both submission plans and the examiner's reports to understand the context. In both plans the list of other national and local plan policies was quite prominent within headed boxes and more extensive than in this plan in which the references are in parentheses. The purpose is clearly explained on page 3 of the plan under the heading 'Conventions'. I do not consider that such an approach unduly detracts from the policy itself nor does it make the meaning unclear or introduce ambiguity, which is the PPG 'test' quoted in paragraph 4.04 above. The inclusion of such cross-references may not strictly be necessary but the plan does not fail to meet any basic condition as a result.

4.09 Plan content. Transport Policies. As an introduction to my written question 2 I drew attention to the PPG paragraph¹⁸ in which it is stated that plans can include wider community aspirations than those relating to the development and use of land but that actions dealing with non land-use matters should be clearly identifiable, perhaps set out in a companion document or annex. I indicated that, in my opinion, section 9 in the plan dealing with transport matters and including two policies (TR1 and TR2) is dealing with matters which are either not land-use related at all or are aspirational in nature and should be moved to an annex or companion document. I have now given consideration to the Parish Council's somewhat strongly worded response to my preliminary conclusion. I have not changed my view and in the following paragraphs I set out my reasons.

4.10 It is stated in the Town and Country Planning Act 1990¹⁹ that a neighbourhood development plan is a plan which sets out policies (however expressed) in relation to the development and use of land. Of course, local plans and neighbourhood plans may include policies and proposals dealing with transport and highways matters but they can only do so when it is in some way related to a development proposal which affects the use of land. It is often, indeed usually, the case that larger development proposals give rise to a need for improvements to the highway network as part of wider infrastructure provision to support the development, although the tests for planning obligations²⁰ and planning conditions²¹ must be met.

4.11 It may be the case that highway safety improvements which arise as a direct result of a development, such as new footways, traffic calming or junction design, are specified as part of a development plan policy relating to that development. It is notable that the context for NPPF paragraphs 32 and 35, to which the UNP Policies TR1 and TR2 are cross-referenced, is the consideration of development proposals. EDLP Strategy Policy 50 is also about s106 obligations linked to site development. Furthermore, EDLP Policy TC3 headed 'traffic management schemes', which the UPC draw to my attention in their written response, starts 'The Council, when considering development proposals in town centres ...'. There is, therefore, a link to the consideration of planning

¹⁸ PPG Ref. ID: 41-004-20140306

¹⁹ Section 38A(2)

²⁰ NPPF para. 204

²¹ NPPF para. 206

applications and the policy is an indication of the improvements which would be secured through the planning process. What it doesn't say is that those improvements could only be secured if they were directly related to the development proposal and necessary to make the development acceptable in planning terms.²² Plans can also set out policies for environmental enhancements which involve land use and require planning permission.

4.12 I fully recognise the importance that issues relating to traffic and highways matters have for the community. This is made very clear in paragraph 9.2 of the plan which list the main issues identified during the plan consultation process. However, it is clear from reading paragraphs 9.2.1 to 9.2.6 that what is being discussed here are existing highway safety concerns and that the primary purpose of the whole section is to describe highway schemes which have been agreed with the Local Highway Authority to alleviate those concerns.

4.13 Section 9.2.1 deals entirely with a discussion of concerns about the B3165/A35 junction and refers to a solution preferred by the Parish Council but which does not find favour with Highways England which has responsibility for the A35 trunk road. They have made representation putting forward their reasons in greater detail. There is no policy linked to that paragraph which reads entirely of the expression of community aspirations. It is not appropriate text for inclusion in a statutory land-use plan.

4.14 Policy UTR1, and the text in paragraph 9.2.2, is not in any way related to development proposals within the plan. It is an analysis of existing safety concerns in the centre of the village and refers to speed limits which are not in any way a land-use issue. Similarly, the text in paragraph 9.2.3 deals with existing problems and the scheme which has been discussed and agreed with Devon County Highways officers, although representations suggest there may be alternatives. The proposals are described as being a 'much needed safety improvement'. Policy TR2 is no more than a statement that the DCC scheme 'is supported as a high priority'. It is not a planning policy. There is then mention of possible sources of finance which is a matter for the plan text, not policy. Although it is stated that financial contributions 'may be secured' from new development in the village it is not suggested elsewhere in the plan that any development, including the sites allocated in policy UHG4, might not be permitted unless that particular improvement is completed. As there is an adopted CIL charging schedule in East Devon that is the likely funding source but

²² Two of the 'CIL tests' for Planning Obligations in para. 204 of the NPPF

that is not a matter for development plan policy. Funding through CIL is a replacement for 'pooled' s106 contributions. Policy TR2 has, therefore, to be regarded as dealing with highways, not planning, matters.

4.15 In a similar vein, paragraphs 9.2.4 and 9.2.6 also deal with existing highway safety issues. It is only the park and ride site to which paragraph 9.2.5 refers which would involve development requiring planning permission but there is no more than an indication that a 'longer term proposals ... has the support of the Uplyme Parish Council'. That is no more than an informative.

4.16 There is also another aspect to which relates to the purpose of policies in a neighbourhood plan. Firstly, there is a clear statement in paragraph 183 of the NPPF that:

Parishes and neighbourhood forums can use neighbourhood planning to set planning policies through neighbourhood plans *to determine decisions on planning applications (my emphasis)*

Secondly, in a similar vein, in the PPG²³, under the heading 'What can communities use neighbourhood planning for?' it is stated:

Local communities can choose to ... set planning policies through a neighbourhood plan that is used in determining planning applications.

I quote from these paragraphs because even when highways works do, in themselves, involve development it is Permitted Development under Part 9 of Schedule 2 to the General Permitted Development Order. This covers such things as the provision of traffic calming, chicanes and footways on highway land, the matters covered by the TR policies. That means that none of the aspects covered by those policies would form part of an application for determination by EDDC as local planning authority. They are entirely matters for the County Council as the local highway authority. In conclusion, the framing of those policies has not had regard to the purposes of a neighbourhood plan policies as set out in the Government policy and guidance as quoted above.

4.17 I find, therefore, that there is no direct relationship between the transport section of the plan and the development and use of land. The schemes advocated are primarily highway schemes designed to meet existing problems. That is why they are community aspirations which should be clearly identified as such. The fact that the schemes have been discussed with, and agreed by, the local highway authority is not relevant. If anything that emphasises that they are highway schemes. They should not be identified as 'policy'.

²³ Ref ID. 41-002-20140306

4.18 In view of the strength of feeling on this issue as expressed in the UPC response I have carefully considered whether there is any other way to ensure that the plan meets the basic conditions than to recommend that the whole section be moved to an annex. I am conscious of the fact that the PPG is but guidance and that placing aspirational aspects in an annex or companion document is no more than an example of the way to make such sections 'clearly identifiable', that is distinct from statutory policy to be used in the determination of planning applications. Certainly, as it stands, section 9 and the two policies in blue boxes are not in any way distinguishable. The Crogg Lane scheme is also marked on the Proposals Map. One way forward might be to link to the 'Community Actions' listed in Appendix G²⁴. In the circumstances, in order to provide some flexibility for the Parish Council to consider in conjunction with the EDDC where the relevant text should be best placed, I make a recommendation based upon the wording of the relevant PPG paragraph.

Recommendation 1

Ensure that the whole of section 9 in the plan – 'Transport, highways and pedestrian access' is presented in such a way that it is clearly identifiable as representing community aspirations on such matters and is distinct from those sections which together make up the statutory neighbourhood development plan. Delete the 'policy' headings for TR1 and TR2. Omit the Crogg Lane scheme (TR2) from the Proposals Map (Appendix I).

4.19 Plan content. Proposed Conservation Area. Section 10.1.2 sets out the background to a proposal for a Conservation Area for Uplyme. It is stated, correctly, in the final paragraph of that section that the neighbourhood plan is not the appropriate mechanism for designating a Conservation Area. It is not an appropriate mechanism for proposing it either because it is not something that is done under the Town and Country Planning Act 1990. I have read Appendix 8 to the SEA documents and I am aware of the support given to the proposal by Historic England, but as they state it is 'advocacy', which is similar to aspiration. I have read the Lymptstone plan and it is significantly different in that there is but a brief statement of fact that the EDDC are proposing an extension to the Conservation Area, it does not advocate such an extension. The appraisal is also in an appendix. For similar reasons to the transport section, to accord with the practice guidance the text relating to the 'proposed' Conservation Area should be clearly identifiable as an aspiration. It could be linked to the plan in Appendix B.

²⁴ It is notable that the text in the 'Getting around' section of the Lymptstone NP primarily relates to clearly identifiable Community Actions. The only policy relates to parking in new developments.

4.20 Although the Conservation Area is not a formal proposal in the plan it is shown on the Proposals Map (Appendix I) 'for information'. I accept that as being 'clearly identifiable', however the extent is more clearly seen in Appendix B. On the Proposals Map the overlap with the LGS results in a lack of clarity.

Recommendation 2

Ensure that paragraph 10.1.2 entitled 'Proposed Conservation Area for Uplyme' is clearly identifiable as a community aspiration in so far as there is no formal plan proposal, as part of the statutory plan, that such a designation be made.

The main planning issues

Main Issue a. General conformity of the housing policies with the statutory development plan and the status of revisions to the BUAB

4.21 Housing provision. The introduction to the plan, in section 2, provides a very clear context for the plan in relation to national and local planning policy. In particular, the extracts from the EDLP given in the yellow box on page 9 detail the strategic position of Uplyme, situated as it is right on the boundary between East Devon and West Dorset with Uplyme village itself situated immediately adjacent to Lyme Regis with no obvious demarcation. The EDLP provides a clear statement of intent by both local planning authorities and the UPC to work together 'and if necessary bring forward proposals of an appropriate scale to support the potential long term growth of Uplyme and Lyme Regis.'²⁵ There is also a useful statement in section 5 of the plan about the relationship of the UNP with the EDLP giving a commitment to future cross-border working.

4.22 The EDLP does not specify any particular level of development, for housing or other uses, within rural villages such as Uplyme. In paragraph 15.7 of the EDLP it is stated that, in Uplyme, 'aspirations for development are modest' but recognises that there is a 'local (Lyme Regis) expression of need for housing and employment ...'. The overall approach to development in rural villages is expressed in the vision at the start of Chapter 15 in the EDLP and, more particularly, in paragraphs 15.1 and 15.2. In essence, the strategy is that development should meet local needs and that these may be identified through neighbourhood plans which may allocate land to meet such needs. In Uplyme, the 2014 Housing Needs Survey identified a need for 7 affordable homes for rent within 5 years with a suggestion in paragraph 6.1.4 of the plan that that may

²⁵ EDLP Strategy Policy 26C

have increased by a further 7, although it is not certain that there is no element of double-counting. In so far as the three sites allocated in plan policy UHG4 would provide between 16 and 19 houses, of which 10 to 12 would be affordable. From that I am satisfied that the neighbourhood plan would achieve the objective of meeting identified housing needs and, therefore, be in general conformity with the EDLP but, as I mention in paragraph 2.03 above, only for the initial 5 years or so. Subject to that caveat the plan contributes to sustainable development and assists in meeting Government policy objectives to boost housing supply. In addition, the revisions to the BUAB, as discussed in more detail below, might provide some scope for limited additional development within the terms of EDLP Policy Strategy 6. The overall approach to housing provision is a positive one.

4.23 What the plan does not do is make any additional provision for possible housing or employment needs arising from West Dorset and Lyme Regis. The reference in paragraph 6.1.4 to there being 54 people on the WDDC waiting list who live in Lyme Regis is not indicative of any intention that they should be housed in Uplyme. Indeed, as the EDDC acknowledge, the way that council housing allocations work means that existing residents within each District Council area have priority over those from an adjoining district unless there is a local employment qualification.

4.24 The West Dorset District Council have made representation drawing attention to local housing needs arising from Lyme Regis, which I am informed have since increased to closer to 70 households, saying that owing to the fact that Lyme Regis is heavily constrained 'it is important that the housing needs and future growth of Lyme Regis are not ignored in the Uplyme Neighbourhood Plan.'

4.25 The housing needs and future growth of Lyme Regis have explicitly not been ignored in the neighbourhood plan but there is currently no strategic requirement in the adopted EDLP for those needs to be accommodated in Uplyme. The references in that plan to joint working are looking to future co-operation between the two LPAs and the UPC. EDDC are correct in stating that the issue is one for consideration at the local plan level when the current documents are reviewed, a process which has already been commenced in West Dorset. It would not be necessary, or appropriate, for a 'formal policy' to be included in the UNP to take into account cross-border issues. Should the higher level strategic context change it might well trigger the need for a review of the UNP but, as things stand, the plan is in general conformity with this aspect of the EDLP.

4.26 The Built-Up Area Boundary (BUAB). It is stated in paragraph 6.1.1 of the plan that the BUAB as shown on the Proposals Map (Appendix I) is a 'suggested revised' boundary which has been 'informally confirmed' by EDDC Planning Officers. Then, in the accompanying Policy UHG1 it is stated that the BUAB (and proposed amendments) 'will be retained in the position shown on the Proposals Map' with a policy indication that 'proposals for development within the BUAB will be supported ...'. This leaves the status of the proposed amendments to the BUAB exceedingly unclear, contrary to the PPG²⁶. It begs the question: has the BUAB, to which EDLP Policy Strategy 6 applies, been amended by the UNP or does it have to await the adoption of the Villages DPD upon which the EDDC have recently consulted? The distinction would be particularly important should an application for development be made on one of the areas included within the extended BUAB during the interim period between any decision by the LPA on whether this plan should proceed to referendum²⁷ and the adoption of the Villages plan (strictly, a Development Plan Document).

4.27 I sought clarification of these points through written questions put to both the UPC and the EDDC. Before dealing with that, however, it is necessary to establish whether the revisions (extensions) to the BUAB have been adequately justified. All of the areas involved are shown in red on the plan at Appendix A as well as on the Proposals Map (Appendix I). There is then a very full description of the areas concerned and the reasons for the boundary amendments in Appendix 6 of the appendices to the SEA. I looked at the majority of the areas on my site visit. I could see that, for the most part, the amendments would represent recognition of development which has taken place since the last boundary review and I understand that there has been close co-operation with District Council planners to the extent that the same boundary is shown on the Policies Map for the draft Villages DPD. No representations have been made seeking amendments to the proposed boundary.

4.28 It is stated in EDLP Policies Strategy 6 and 27 that the BUABs will be defined in the East Devon Villages DPD. I am sure that is why paragraph 6.1.1 is worded in the way that it is. However, in response to my questions the EDDC

²⁶ Ref. ID: 41-041-20140306

²⁷ s70(2)(a) in the Town and Country Planning Act 1990 as amended by the Neighbourhood Planning Act 2017, section 1.

have confirmed that there is no reason why the BUAB should not be confirmed as part of the statutory development plan when the neighbourhood plan is 'made' and does not need to await the adoption of the Villages DPD. In other words, an issue of 'general conformity' does not arise. It also the preference of the UPC that the boundary, which has been consulted upon, should be recognised now. In their response, the EDDC have suggested revised wording for Policy UHG1 and the text in paragraph 6.1.1 which I consider would remove the ambiguities present in the submitted plan and make for a clearer planning policy context thus meeting the requirements of the Planning Practice Guidance.

4.29 I feel that I should draw attention to the fact that, although the BUAB has been agreed between the EDDC and the UPC and the boundary is to be shown in the Villages DPD, that plan will also be open to representation and subject to public examination by a Planning Inspector who may recommend modification to it if there is considered to be an issue relating to the 'soundness' of the plan. That is a somewhat more rigorous test than applies to neighbourhood plans and so there can be no guarantee that the boundary included in the adopted East Devon Villages DPD will be the same as in this neighbourhood plan. As long as the definition of the BUAB remains a strategic provision of the development plan any revision which post-dated the UNP would replace it in the case of conflict.

Recommendation 3

a. Replace Policy UHG1 by the following modified policy:-

The Built-up Area Boundary (BUAB) for Uplyme is shown on the Proposals Map. Proposals for development within the BUAB will be approved, provided that the requirements of Policy Strategy 6 of the Local Plan and other policies in this Neighbourhood Plan are met.

b. In the supporting text, paragraph 6.1.1., lines 9 to 15, delete the sentence: 'The suggested revised BUAB is ... the revised boundary.' and substitute: 'Following publication of this Plan, the EDDC subsequently selected this reviewed boundary as their preferred approach for the Villages Plan. This revised BUAB is shown on the Proposals Map (Appendix I).'

Main Issue b. Provision for exception site housing development in Policy UHG3 and the allocation of affordable housing 'exception sites' in Policy UHG4.

4.30 Two policies in the plan deal with what are termed rural 'exception' sites for housing. The only specific land-use allocations made in the plan are for the three 'exception' sites listed under Policy UHG4 although Policy UHG3 provides general support for any other sites which might be proposed for affordable housing development outside the BUAB and there is also a reference to exception sites in Policy UHG2.

4.31 The EDDC and another representor have drawn my attention to a recommendation made by the examiner of the East Budleigh and Bicton Neighbourhood Plan, which was to delete a policy under which the development of a site, described as an 'identified rural exception site' lying outside the BUAB, for a 'small-scale community lead affordable housing scheme' was supported. The proposal was stated to be in accordance with EDLP Policy Strategy 35. In part, the examiner's reasoning was that, by definition, a rural exception site is one that does not comply with, and is an exception to, policy. He regarded this approach as confusing for the decision-maker as to whether a proposal would be policy compliant or an exception to policy. Having regard to that recommendation the EDDC advise that the three allocations in this plan should be called simply affordable housing sites rather than exception sites.

4.32 I regard this as something of an academic discussion. There are three allocations made in this plan for housing development. They are full detailed in Policy UHG4 and shown on the Proposals Map. They are justified by reference to the 2014 Housing Needs Survey. The term 'exception housing site' or 'rural exception site' is little more than a label. However, for clarity in the use of the plan there does need to be a distinction drawn between the purposes of policies UHG3 and UHG4 and the term used therein.

4.33 It has been clarified, in the UPC response to my written questions, that Policy UHG3 is intended to apply to sites in addition to those allocated under Policy UHG4. It would be EDLP Policy Strategy 35 which would apply to any applications made for mixed affordable open-market housing outside the BUAB. For clarity, there definitely should be a cross-reference under Policy UHG3 to that EDLP Policy because therein are the criteria to be applied.

4.34 EDLP Policy Strategy 35 is a development management policy which can be applied directly in the consideration of any planning applications. However, the cross-reference under Policy UHG4 is to EDLP Policies 6 and 7, not to Strategy 35. There is no reference in the East Budleigh examiner's report to EDLP Policy Strategy 6, which is headed 'Development within Built-Up Area Boundaries' and in which it is stated explicitly:

'Where a local community prepare a Neighbourhood Plan they may specifically allocate sites and/or include criteria based on other policies for promoting development/land uses beyond the boundary.'

Although that policy is not referring to sites for affordable housing as such it seems to me that the principle is the same, for whatever type of development the allocation may be. The allocations made in this plan are fully in accordance with that policy.

4.35 It does not say in paragraph 54 of the NPPF that rural exception sites cannot be allocated in a plan although the term is more commonly used in the development management context. Indeed, paragraph 54 starts by referring to the duty to co-operate which only applies in plan-making. It then states that local planning authorities should plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate. (my emphasis) The word 'allocate' is not used but in the plan-making context to which that paragraph clearly applies sites are usually identified by allocation in the plan. The UPC quote from Annex B to the outdated PPG3. I also have a copy of Planning Policy Statement (PPS)3 which, although superseded by it, immediately preceded the NPPF. Paragraph 30 in PPS3 dealt with this matter and provides helpful clarification. It included the following text: -

Where viable and practical, Local Planning Authorities should consider allocating and releasing sites solely for affordable housing, including using a Rural Exception Site Policy. This enables small sites to be used, specifically for affordable housing in small rural communities that would not normally be used for housing because, for example, they are subject to policies of restraint.

This leads me to the conclusion that rural exception sites can be allocated in plans. The word 'exception' is used in the sense not of being an exception to the plan but as an exception from the policies of restraint, for example in the Open Countryside, which would otherwise apply. That is precisely the approach which has been taken in the EDLP which was found 'sound' by an Inspector.

4.36 Having said that, I do think that the references to exception sites in policies UHG2, 3 and 4 are potentially confusing because the same words are used for different types of site. The purpose of Policy UHG2, as stated in the first part of paragraph 6.1.2 is to ensure that new build (housing) development is in harmony with the character of its surroundings. In so far as the policy is intended to apply to all applications for new housing development, the words 'within the BUAB and on exception sites' are superfluous and would be better omitted to avoid any difficulty in interpretation. The reference to rural exception sites in Policy UHG3 may then remain. For clarity, the heading used for EDLP Policy Strategy 35 which is 'Exception mixed market and affordable housing outside the Built-Up Area Boundary' should be used for Policy UHG4. Within the policy itself the words 'mixed market and affordable' should replace 'exception'. I find nothing inconsistent in such an approach with national policy for affordable housing in rural areas.

4.37 There are some other aspects of the application of Policy UHG3 which require clarification and which I consider here for completeness before making recommendations relating to policies UHG2-4. In addition to rural exception sites Policy UHG3 provides support for the conversion of 'suitable existing buildings' to affordable housing. Although the inclusion of that statement in the policy does not mean that the policy fails to meet the basic conditions it does not sit well with Policy UHG5 which is generally permissive of rural conversions for residential use. Together with the minimum site size threshold of 11 dwellings in national policy and UNP Policy UEM3 which is permissive of business uses, it would seem most unlikely that rural conversions would yield significant affordable housing, if any.

4.38 There is a statement in brackets within the blue box (policy) part of Policy UHG3: 'Although this policy is part of the EDLP ...' It is not at all clear to what EDLP policy that is intended to refer and such a statement is out-of-place within the policy box. It is confusing and should be moved to the accompanying text.

4.39 Also, within the text paragraph 6.1.3., second paragraph is a statement which indicates that exception sites could include self-build schemes, the conversion of existing buildings or dwellings to meet agricultural or forestry requirements. As the EDDC have stated by representation, self-build homes are not currently included within the definition of affordable housing, nor are the other categories. The UPC have also clarified that they did not intend that self-

build homes should be treated as an exception to the planning policies applying to development in the countryside (EDLP Policy Strategy 7). That policy requires there to be 'explicit policy provision' within a neighbourhood plan which this paragraph is not. Its inclusion is confusing and introduces a degree of uncertainty in how the Policy UHG3 should be applied, contrary to practice guidance. It should be deleted for that reason.

4.40 I comment on certain site specific aspects of the Lime Kiln Lane allocation in Policy UHG4 in paragraphs 4.43-44 below.

Recommendation 4

- a. In the first line of Policy UHG2 delete the words 'within the BUAB and on exception sites'.
- b. Remove the bracketed comment commencing 'Although this policy is part of the EDLP ...' from the blue box of Policy UHG3 and place it in the accompanying text.
- c. Insert a cross-reference to EDLP Policy Strategy Policy 35 under both policies UHG3 and UHG4.
- d. Delete the second paragraph in the text under paragraph 6.1.3 that is 'Exception sites (outside the boundary) ... can be justified.'
- e. Amend the heading of Policy UHG4 to read 'Exception mixed market and affordable housing outside the Built-Up Area Boundary' and on the first line of the policy delete 'exception' and insert 'mixed market and affordable'.

Other issues arising in plan policies

4.41 Policy USD1. Policy in favour of sustainable development. It is unusual to find a policy such as this within a neighbourhood plan. It is very closely modelled on paragraph 14 of the NPPF although that applies to the consideration of planning applications against the development plan as a whole not individual parts of it. It is also not for a neighbourhood plan policy to state that decisions should be taken in accordance with another statutory planning document, in this case the EDLP. It is for the LPA in taking decisions to weigh the different parts of the development plan in the light of paragraph 14 of the NPPF. There is no difficulty, however, if the policy refers simply to 'this plan' and the NPPF. The

policy will then have full regard for the national policy with sustainable development being the 'golden thread' running through it. In view of the fact that the plan area is within an AONB a reference to specific national policies which restrict development is an important addition.

Recommendation 5

In the second line of Policy USD1 replace the words 'the Neighbourhood Plan and the Local Plan' by 'this plan'; in line 5 replace 'the Neighbourhood Plan' by 'this plan'; at the end of the policy, replace the words 'and Local Plan' by 'taken as a whole' and add 'or specific policies in the Framework indicate that development should be restricted.'

4.42 Identification of sites under Policy UHG4. The boundaries of the three sites allocated under Policy UHG4 are shown on the 'Proposals Map' (Appendix I) at a scale of approximately 1:10,000 which is sufficient for most purposes. The large scale plans supplied to me were of assistance but I have decided they need not be reproduced in the plan itself.

4.43 When I visited the sites I was somewhat surprised to see that the allocation at Cook's Mead/Lime Kiln Lane, shown on the Proposals Map as a rectangle, breaks into a completely undeveloped field. It does not abut the junction of Lime Kiln Lane²⁸ with the Carswell Farm track but is located further to the west on steeply rising ground. Bearing in mind that the whole area is within an AONB it is important to minimise any visual impact from development. I am advised that the area was moved westwards from that investigated as part of the SEA (Appendix 6, site 11) in order to avoid the area at risk of flooding which is shown in the lower part of the site on the plan in Appendix C. There is brief reference to the need to consider surface water run-off in the site appraisal on page 23 of the SEA but there is no mention of this in Policy UHG4. The SEA assessment refers to the need for landscape planting on the northern side but it is obviously of importance to the west also. The policy requires 'peripheral landscaping'.

4.44 Paragraph 10.7.1 in the plan deals with flood risk and mitigation but there is no policy, rather Objective F gives rise to actions outside of the plan referred to in Appendix G as a Catchment Area Plan. It appears that reliance is to be

²⁸ The Google map shows the road at the Carswell Farm as 'Pound Lane' not 'Lime Kiln Lane' which starts further west. I have called it Lime Kiln Lane but I apologise if that is incorrect.

placed on EDLP policies²⁹ together with national policy. I consider that, in order to ensure maximum flexibility for the siting of the dwellings on this site to minimise visual impact, the area shown on the Proposal Map should be re-drawn to include the frontages to the two lanes down to the Lime Kiln Lane junction with the Carswell farm track. Policy UHG4 should include a requirement for a flood risk assessment to ensure that adequate regard has been had to meeting the requirements of national and local policy for dealing with the effects of climate change and thus fully meeting the basic conditions.

Recommendation 6

- a. Include an additional requirement for a flood risk assessment within the site-specific policy provisions for the Lime Kiln Lane site under Policy UHG4.
- b. Amend the area shown on the Proposals Map (Appendix I) for the Lime Kiln Lane allocation to show the site abutting the lanes on the south and east sides.

4.45 Text, section 6.1.5, Site Assessments, Raymond's Hill. I do not, as a general rule make recommendations regarding the detail of the plan text except to indicate where updating is required. However, there are representations against the inclusion of the final paragraph on page 19 of the plan which gives what could be interpreted as something of an 'amber light' by saying that there may be 'some scope' for 'limited market housing' on the southern side of Harcombe Road at Raymond's Hill. It is not given as a policy statement and does say that any planning application would be for the EDDC to consider as local planning authority, which is always the case, of course. The only other reference to Raymond's Hill is in section 3.1.3 on page 12.

4.46 I can see that this site was promoted during the plan-making process for consideration as an exception site. It is listed as Site 8 in the table of sites in Appendix 6 to the SEA indicating the decision of the plan group to include mention of the site in the plan, although in response to Regulation 14 representations it is stated to be 'only a suggestion'. It is not clear why even a suggestion should be made when to do so runs against the overall approach which has been taken in the plan not to put forward any sites outside the BUAB for open-market housing.

²⁹ EDLP Policies EN21 and EN22 are especially relevant

4.47 Raymond's Hill is not named as a settlement in EDLP Policy Strategy 27 and, therefore, it has no BUAB and comes within the category of 'open countryside' in Policy Strategy 7. Any development of open-market housing would not, therefore, accord with EDLP policy. Furthermore, presumably because it is not a policy as such, there is no reference to this in the Basic Conditions Report and no evaluation against sustainability criteria.

4.48 The inclusion of such a statement, intended as a 'suggestion' or not, introduces uncertainty for plan-users. The statement would almost certainly be put forward as a 'material consideration' should an application be made for planning permission. For all of these reasons I conclude that with such a statement the plan would fail to meet the basic conditions but deletion would overcome that difficulty.

Recommendation 7

Delete the last paragraph in section 6.1.5 of the plan, page 19, referring to possible market housing on the south side of Harcombe Road, Raymond's Hill.

4.49 Policy UHG5. Rural Building Conversions for residential use. In practice, this policy will be used in decision-making alongside EDLP Policy D8, which is cross-referenced. That contains more detailed criteria. The UPC have accepted a point made in an EDDC representation that the term 'rural areas' is vague in view of the nature of the area and that, for precision, it should be changed to 'outside the built-up area boundary'. I agree that to be necessary for clarity.

4.50 It is also not clear what 'favourably considered' is supposed to mean other than 'approved'. All applications must be considered and national policy, as reflected in UNP Policy USD1, is that permission should be granted unless the harm would demonstrably outweigh the benefits. The phrase 'traffic, access, landscaping and general amenity considerations' is also vague but, as it will be interpreted in the light of other policies, it is adequate.

4.51 I consider that the reference in the supporting text to buildings for conversion not being 'in isolated locations with no nearby built development' is important but those words do not appear in the policy. Paragraph 55 of the NPPF does, in fact, allow the creation of new isolated homes in the countryside if the development would 're-use redundant or disused buildings and (my emphasis) lead to an enhancement of the surroundings.' However, EDLP Policy D8 has been adopted post-NPPF and it emphasises sustainability factors such as

the increased use of the private car which would be inevitable in isolated locations. Bearing in mind the need for the plan to contribute to sustainable development, leaving the reference to isolated locations in the text would result in uncertainty for the decision-taker which would be contrary to practice guidance. Also, as this factor is covered by EDLP Policy D8, it should be included in the UNP policy to avoid ambiguity in policy interpretation.

Recommendation 8

In policy UHG5, line 2, replace the words 'in rural areas' by 'outside the built-up area boundary' and, in line 3, replace the words 'favourably considered' by 'approved'; modify the second criterion to commence 'the buildings are not in an isolated location with no nearby built development and' (are capable ...)

4.52 Business policies and tourism uses, UEM1-3. These policies provide positive and general support to development for businesses in the parish (not the development of businesses). They do not include any criteria relating to the location within the parish and the EDDC have made representation drawing attention to EDLP Policy E5 which requires that small-scale economic development in rural areas should be 'well related in sustainability terms to the village and surrounding areas'. In response to my question on this the UPC have stated that there are other locations within the large rural parish which may be regarded as sustainable and I accept that there are bus services along the Sidmouth Road and A35. Nevertheless, because EDLP Policy E5 is not a strategic policy, the UNP policies would take precedence for decision-making purposes and without any reference to sustainability considerations have too wide a scope and potential to result in development in unsustainable locations. Paragraph 28 of the NPPF whilst strongly supportive of the rural economy stresses the need for development to be sustainable. An additional criterion is required in both policies UEM1 and 2.

4.53 The UPC have clarified that Policy UEM2 is not intended to apply only to existing businesses. There is no clear justification for the requirement in that policy for there to be a specific need for the residential element of a live-work unit, although that would be the case if the site was outside the village BUAB. That requires clarification in the policy.

4.54 Policy UEM3 is almost identically worded to Policy UHG5. The same considerations apply, including the undesirability of the development of business uses in isolated, unsustainable locations. Therefore, the same recommendation for modification applies to that policy.

Recommendation 9

- a. In policies UEM1 and UEM2 insert the following additional criterion: 'the development is in an accessible and sustainable location';
- b. preface the provision within Policy UEM2 for live-work units by the words 'Outside of the built-up area boundary';
- c. in policy UEM3, line 2 and 3, replace the words 'in rural areas' by 'outside the built-up area boundary' and 'favourably considered' by 'approved'; modify the second criterion to commence 'the buildings are not in an isolated location with no nearby built development and' (are capable ...)

4.55 Policy UEM4. Tourism uses and development. The EDDC make a similar point about Policy UEM4 drawing attention to the fact that EDLP Policy E16 permits the expansion of tourist accommodation but only within the BUAB and where accessible on foot, by bicycle and by public transport. The UPC clearly considers that other locations within the parish are also suitable. There is a difference too in that EDLP Policy E16 is addressing new accommodation whereas the second criterion in UNP Policy UEM4 refers to 'existing activity'. The accompanying text refers specifically to the Hook Farm Caravan and Camping site, the extension of which would fall for consideration against EDLP Policy E19. Subject to the understanding that the policy relates only to existing tourism businesses in the parish, with the safeguards built in to the policy criteria, I do not consider that the policy fails to meet any of the basic conditions.

4.56 Policy UEM5. Business Centre and Policy UCF2 (first part). Education. These two policies are inextricably linked. As currently worded, 'policy' UCF2 is not a land-use policy because relocation is not, in itself, development. The development, in land-use planning terms, is the building of a new school on the site adjacent to the village hall. Strictly speaking, developments which already have planning permission do not need to be treated as plan proposals but as this one is subject to renewal it is reasonable that it should be. For clarity, Policy UCF2 need only say that a site for a new school is allocated and is shown on the Proposals Map. Although, in reality, it may only happen if the existing school (Mrs Ethelston's CE Academy) is re-located that particular school cannot be named in policy because it is not relevant in planning policy terms who the user is. The use is as a school.

4.57 Should finance not be available for the development of the new school on the allocated site then it has to be assumed that the school will remain in the existing buildings near the church. Presumably, the caveat in Policy UEM5 that it is 'subject to the relocation of the school' is to cover the possibility, however remote, that the school is simply closed. In essence, Policy UEM5 is intended to be a proposal that, once vacated, the existing school premises should be developed as a small business centre.

4.58 There is very little by way of justification for the business centre proposal either in the plan or in any evidence provided at submission. It appears to be little more than idea although it has obtained community support from inclusion in the plan. However, it has resulted in a formal representation against the proposal from the Trustees of the Ethelston and Bestic School Foundation who have put forward alternative wording for Policy UEM5 and the accompanying text which would provide much more flexibility for future uses by stating that 'all potential uses will be considered', recognising that the preferred option of the trustees is residential use referring also to the obligation on the trustees under Charity Law to maximise the value of the site.

4.59 The obligation placed on the trustees is not a planning consideration. If a planning policy has been adequately justified it will determine to what use a site or buildings may be put. It will not always be the use which gives the maximum financial return.

4.60 In response to my questions the UPC have provided more information on the thinking behind this plan proposal. They refer to the results of the local business survey which highlighted that there were over 80 businesses operating in Uplyme with many self-employed operating or based at home. That is mentioned in paragraph 7.1.1 of the plan but concludes that 'few expressed the need for additional space'. The UPC are of the opinion that the older school buildings would be suitable for small office use and that it is desirable to retain the integrity of an historic community building but there is no evidence that would be viable proposition and, given the views of the trustees, its deliverability is doubtful.

4.61 In paragraph 4.04 above I draw attention to Planning Practice Guidance on the need for neighbourhood plan policies to be written in a clear and unambiguous way so that a decision-maker will be in no doubt as to what is required for the purpose of applying s38(6) of the 1990 Act. Policy UEM5 does not actually say what should happen should the school trustees make a planning

application for residential use of the school building or redevelopment of the site for housing. As the site lies within the BUAB, redevelopment for housing would, in principle, accord with Policies USD1 and UHG1 provided the criteria in Policy UHG2 are met. There would be no reason why an imaginative and sensitive redevelopment scheme would not accord with other policies in the plan and those in the EDLP. Making effective use of a building or site within the village would be likely to be judged as representing sustainable development. There would have been no loss of a community facility (the school) because it would have been relocated.

4.62 In reality, all that the policy actually says is that a proposal for business use of the site will be supported. Even if that is interpreted as 'approved' the policy does not provide any indication of what decision should be taken if some other use, such as residential, is proposed. The evidence provided to justify retaining the building as a business centre is not sufficient to warrant a policy which would only permit that use and no other. Also, such a policy would need to be backed up by a viability assessment because should the proposals not be viable, even allowing for the lower site value, there would be a risk that the buildings would become vacant and deteriorate structurally.

4.63 In many ways, this proposal is an example of a community aspiration although it is legitimate matter for inclusion in the statutory plan because it involves the change of use of land. There are also other ways to pursue such an aspiration, including registration of the school as an Asset of Community Value, and/or identifying it as a project in the Action Plan (Appendix G).

4.64 So far as the wording of Policy UEM5 is concerned I can do no more than recommend that the word 'supported' be replaced by 'permitted'. At least that would give a clear signal to the trustees that should they bring forward a proposal for use of the buildings as a business centre that would be likely to be approved by the local planning authority provided that various other policy requirements were also met. It is not within my remit to recommend modifying the policy to say that uses other than a business centre will not be permitted, or will be refused, because that approach is not supported by the evidence and would not, therefore, meet the basic conditions. It would also be such a significant change that it would require further consultation.

4.65 I consider that the plan would be clearer if the first part of Policy UCF2 was to be combined with Policy UEM5 and the whole re-cast as an unambiguous land-use planning policy. I recommend accordingly.

Recommendation 10

Delete the first part of Policy UCF2 and combine it with a re-worded Policy UEM5, the new policy to read as follows:

Policy UEM5 – Re-use of the Primary School buildings as a Business Centre

A site is allocated in the plan adjacent to the village hall, as shown on the Proposals Map, for the development of a new primary school. The re-use of the current school land and buildings as a small business centre (for Classes A2 and B1) will be permitted subject to compliance with other relevant policies in this plan.

4.66 Policy UCF3. Sporting/recreational facilities. I accept the point made by the Parish Council that recreational facilities should serve the needs of all within the parish, not just Uplyme village itself. However, as the EDDC state the indication in the policy that the provision of new facilities will be 'supported' but if new sites are accessible by sustainable means they will be 'especially supported' is confusing for the decision-maker. As I indicate in paragraph 4.06 of this report it is possible for the approach which may be taken by the Parish Council when consulted on applications to be spelt out in the plan text but not in the policies themselves.

4.67 The EDDC have suggested revised wording for the last part of this policy. My recommendation is based on that but takes account of the need to serve Raymond's Hill as well as Uplyme. It is helpful to expand on the meaning of 'sustainable means'.

Recommendation 11

Modify the last sentence in Policy UCF3 to read:

New sites should be easily accessible by sustainable means, including by public transport, bicycle or on foot.

4.68 Policy UEN5. Trees and hedgerows. The second part of this policy applies to 'new housing or development schemes' but the first part more generally to 'development proposals'. As the EDDC have pointed out the term 'development schemes' is confusing as it may not be appropriate to require tree planting for minor development or the re-use of existing buildings, which is still 'development'. The UPC have accepted that.

4.69 I also find the first part of the policy to be somewhat ambiguous. It is not clear whether it is addressing the protection of trees during development or in the long term given the importance of the landscape within an AONB. However, the long-term protection of trees can only be achieved by the use of Tree Preservation Orders. I recommend re-wording of the policy for clarity.

Recommendation 12

Modify Policy UEN5 to read:

Proposals for new housing or business development should include measures for the protection during the course of development of existing trees/hedgerows of significant landscape, amenity, historic or conservation value. Where appropriate, such proposals should include provision for additional planting of trees and hedges to enhance the landscape character of the immediate neighbourhood and wider parish.

4.70 Policy UEN7. Green Space in Uplyme. The heading for section 10.6 of the plan is 'Local Green Space' which is the term used in paragraphs 76-78 of the NPPF. For clarity that term should be used in the heading of the policy itself so that there is no doubt about the intended policy status of the identified areas. To be 'designated' as a Local Green Space (LGS) an area should meet all of the strict criteria set out in paragraph 77 of the NPPF. Also, it is stated in paragraph 78 that the policy for managing development within an LGS should be consistent with (national) policy for Green Belts, which is that inappropriate development should not be permitted except in very special circumstances.

4.71 As submitted, the policy states '... proposals for permanent built development will be resisted'. In Green Belt policy terms that would mean that 'permanent built development' is 'in appropriate' and should not be permitted except in very special circumstances. The EDDC suggestion to provide an exception 'in special circumstances where a community benefit will result' confuses the issue. In Green Belt policy terms it is not possible to stipulate what any 'very special circumstances' might be, precisely because they must be 'very special'. Rather, as in the NPPF, the approach is to define the types of development which would be 'not inappropriate'.

4.72 This may be overcome by including the wording of national green belt policy in the NP policy itself but defining what kinds of development would not be inappropriate, in the supporting text. That would then clarify that any permanent built development would be inappropriate but that 'the erection of temporary or permanent structures where a community benefit would result' will be 'not inappropriate'. For clarity, the last part of the policy would be better moved to the end of the first paragraph. There is also inconsistency in whether there is only one 'Green Space' or whether there are 'Green Space Areas' as shown in Appendix F. I recommend the latter because, taken together, the areas would be quite extensive contrary to the NPPF criteria. (See below)

4.73 When I visited the area in April I looked at all of the areas shown on the Proposals Map and in Appendix F as 'proposed Green Space Area'. Although the LGS is divided into 8 different areas defined by management and ownership some are contiguous with one another, especially areas A and B and E and F. The former, in particular, make up a relatively large area of land but all in recreational use. There is a full evaluation in paragraph 10.6.1 of the plan which I have taken into account.

4.74 In general terms I am satisfied that the nature and function of the identified areas is such as to justify LGS status. I say 'in general' because I have a formal representation against the designation of area E. However, that has now been overtaken by events in that an appeal lodged against the EDDC's refusal of an application for the erection of a dwelling on area E was allowed on appeal in January this year. If implemented the development would negate the purpose of identifying most of area E as a Local Green Space. I have to conclude, in the circumstances, that including Area E as LGS would not meet the basic conditions and that the area should be deleted.

Recommendation 13

- a. Modify policy UEN7 as to read as follows: -

Policy UEN7 – Local Green Spaces in Uplyme

The areas of Local Green Space defined in Appendix F and on the Proposals Map provide an important green link and green corridor within the built-up area of Uplyme. These areas are to be retained as undeveloped land which physically links important landscape and/or open areas; the areas will be protected for their landscape, recreational and/or amenity value, as well as for benefits to wildlife.

Notwithstanding the location of part of this corridor within the Built-Up Area Boundary for Uplyme, proposals for inappropriate development within these areas of Local Green Space will not be permitted except in very special circumstances.

- b. Include a statement in the supporting text that ‘permanent built development’ is inappropriate within an area of Local Green Space but that the erection of temporary or permanent buildings and structures which would result in a community benefit directly related to the function and purpose of the Local Green Space and which would retain their open-ness will not be inappropriate.
- c. Delete area E from the list of Local Green Spaces in the table in paragraph 10.6.1 of the plan, from the plan of the Green Space Area(s) in Appendix F and from the Proposals Map.

4.75 Appendices. The appendices to the plan perform different functions. The Proposals Map is found at Appendix I and yet that, in many ways, is the most important plan within the document because without it the geographical extent of the application of several of the policies would not be clear. Appendix A shows, in red, the changes proposed to the BUAB and it is the BUAB itself which is relevant to the implementation of UNP Policy UHG1 and EDLP Policy Strategy 6. Therefore, the Proposals Map would be clearer if the red areas were omitted from it. Appendix F is only required to illustrate to which areas the letters in the table at paragraph 10.6.1 apply, otherwise it is duplicated on the Proposals Map. As the proposed Conservation Area is not a formal proposal of the plan it need not be shown on the Proposals Map itself especially as the area does not yet exist and so no policy relates to it. The overlap with LGS areas B and C results

in a confusing colour distortion. In line with my Recommendation 1 on the treatment of the transport section and policies in the plan it needs to be clear that the highway plans at Appendices D and E do not form part of the plan but are illustrative in nature and the Crogg Lane scheme should not be shown on the Proposals Map.

4.76 These are by way of comments. I do not suggest that the content of the appendices is so unclear that there would be uncertainty in the implementation of the plan. Apart from Crogg Lane, I have recommended (6b) only one formal amendment to the Proposals Map.

4.77 Correction of errors, including updating and consequential amendments. In their consideration of the recommendations I have made for modifications to the plan, the LPA has the power to correct errors, amongst other things. This may include making amendments to the supporting text which flow from modifications to the plan policies and by way of updating. Nevertheless, I asked the parish council to indicate what updating they would consider it necessary to undertake. Some of the introductory sections of the plan, in particular, were related to the pre-examination submission stage and make references to the examination which will be superfluous at the final stage. I indicate below those sections of the plan which will need to be revised in that light. I also make a 'catch-all' recommendation to authorise amendments which will be necessary consequentially upon my recommendations for modifications to the policies in the plan.

4.78 The following updates will be required: -

- a. The Foreword is dated October 2016 and will require a re-write.
- b. 1. Background, last two paragraphs will have been superseded.
- c. 2.1 Planning law. Add reference to The Neighbourhood Planning Act 2017.
- d. 2.2 Local and neighbourhood plan policy, page 9, second and penultimate paragraphs and first paragraph on page 10 will require updating.

Recommendation 14

Ensure that all procedural references in the plan are up-to-date and make any amendments to the supporting text in the plan which is required as a consequence of modifications to the policies made in response to the recommendations in this report.

Section 5 - Formal conclusion and overall recommendations including consideration of the referendum area

Formal Conclusion

5.01 I conclude that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in Schedule 4B to the Town and Country Act 1990 (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights. Modifications also need to be made by way of the correction of errors to ensure that the plan is up-to-date.

Overall Recommendation A.

I recommend that the modifications specified in section 4 of this report be made to the draft Uplyme Neighbourhood Plan and that the draft plan as modified be submitted to a referendum.

The referendum area

5.02 As I have recommended that the draft plan as modified be submitted to a referendum I am also required under s10(5)(a) of Schedule 4B to the Town and Country Planning Act 1990 to recommend whether the area for the referendum should extend beyond the neighbourhood area.

5.03 There have been no representations seeking an extension of the referendum area. This is despite the fact that the parish is situated right on the border not only with Lyme Regis but a different County (Dorset). The main secondary school for the area is in West Dorset with playing fields in East Devon. It is difficult when leaving Lyme on the B3165 to be sure where the boundary actually is. However, there is no indication in the representations that either the residents of Lyme or those with business interests there would be directly affected by any of the proposals in the plan such that they would feel disadvantaged should they not have a say its final approval. Also, and most significantly in terms of the operation of local democracy, the population of Lyme Regis is so much greater than that of Uplyme that, if the referendum area were to be extended, their views could easily outweigh those of Uplyme residents. There is no cross-boundary issue of such

significance as to warrant such an arrangement. I find there to be no justification for extending the referendum area beyond the designated neighbourhood area.

Overall Recommendation B.

The area for the referendum should not extend beyond the neighbourhood area to which the plan relates.

Signed:

John R Mattocks

JOHN R MATTOCKS BSc DipTP MRTPI FRGS

5 June 2017

APPENDIX 1.

Abbreviations used in this report.

'the Act'	The Town and Country Planning Act 1990, as amended
AONB	Area of Outstanding Natural Beauty
BUAB	Built-Up Area Boundary
DPD	Development Plan Document
EDDC	East Devon District Council
EDLP	East Devon Local Plan
EU	European Union
LGS	Local Green Space
LPA	Local Planning Authority
NP	Neighbourhood Plan (generic term)
NPPF	The National Planning Policy Framework ('the Framework')
PPG	(national) Planning Practice Guidance
SEA	Strategic Environmental Assessment
UNP	Uplyme Neighbourhood Plan ('the Plan')
UPC	Uplyme Parish Council ('the PC')
WDDC	West Dorset District Council
'the 2012 Regulations'	The Neighbourhood Plans (General) Regulations 2012 (any reference to a Regulation number is to these Regulations)