

:

INDEPENDENT EXAMINER'S REPORT OF

THE COLYTON PARISH NEIGHBOURHOOD DEVELOPMENT PLAN

Deborah McCann

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SECTION 2

Summary

As the Independent Examiner appointed by East Devon District Council to examine the Colyton Neighbourhood Development Plan, I can summarise my findings as follows:

- 1. I find the Colyton Neighbourhood Development Plan and the policies within it, subject to the recommended modifications does meet the Basic Conditions.*
- 2. I am satisfied that the Referendum Area should be the same as the Plan Area, should the Colyton Neighbourhood Development Plan go to Referendum.*
- 3. I have read the Colyton Consultation Statement and the representations made in connection with this subject I consider that the consultation process was robust and that the Neighbourhood Plan and its policies reflects the outcome of the consultation process including recording representations and tracking the changes made as a result of those representations.*
- 4. I find that the Colyton Neighbourhood Development Plan can, subject to the recommended modifications proceed to Referendum.*
- 5. At the time of my examination the adopted local plan was the East Devon Local Plan 2013 – 2031 (adopted 2016).*

SECTION 3

3.Introduction

3.1. Neighbourhood Plan Examination.

My name is Deborah McCann and I am the Independent Examiner appointed to examine the Colyton Neighbourhood Development Plan.

I am independent of the qualifying body, I do not have any interest in the land in the plan area, and I have appropriate qualifications and experience, including experience in public, private and community sectors.

My role is to consider whether the submitted Colyton Neighbourhood Development Plan meets the Basic Conditions and has taken into account human rights; and to recommend whether the Colyton Neighbourhood Development Plan should proceed to Referendum. My role is as set out in more detail below under the section covering the Examiner's Role. My recommendation is given in summary in Section 2 and in full under Section 5 of this document.

The Colyton Neighbourhood Development Plan has to be independently examined following processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012.

The expectation is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However, there are two circumstances when an examiner may consider it necessary to hold a hearing. These are where the examiner considers that it is necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case. Having read the plan and considered the representations I did require clarification on a number of issues. These points were dealt with by written representations in a question and answer format. This additional information is publicly available on the East Devon District Council website and covered in my report within the relevant policy.

3.2. The Role of Examiner including the examination process and legislative background.

The examiner is required to check whether the neighbourhood plan:

- *Has been prepared and submitted for examination by a qualifying body*
- *Has been prepared for an area that has been properly designated for such plan preparation*
- *Meets the requirements to*
 - i) specify the period to which it has effect;*
 - ii) not include provision about excluded development; and*
 - iii) not relate to more than one neighbourhood area and that*
- *Its policies relate to the development and use of land for a designated neighbourhood area.*

The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

As an independent Examiner, having examined the Plan, I am required to make one of the following recommendations:

1. The Plan can proceed to a Referendum
2. The Plan with recommended modifications can proceed to a Referendum

Where a policy does not meet the basic conditions or other legal requirement I may, on occasion, need to delete wording, including potentially an entire plan policy and/or section of text, although I will first consider modifying the policy rather than deleting it. Where a policy concerns a non-land use matter, advice in the Planning Practice Guidance states “Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.” As such, when considering the deletion of any non-land use matters from the plan, I will consider if I can make a modification to place the relevant proposed actions in a non-statutory annex to the plan, dealing with ‘Wider Community Aspirations’. I will not generally refer back to parties on these detailed revisions. I will make modification either in order to meet the Basic Conditions, to correct errors or

provide clarification. However, the focus of my examination, as set out in legislation is relatively narrow, I must focus on compliance with the Basic Conditions. The main purpose of a neighbourhood plan is to provide a framework for the determination of planning applications, policies in a plan which have elements which either seek to control things which fall outside the scope of the planning system or introduce requirements which are indiscriminate in terms of the size of development or overly onerous and would not meet the Basic Conditions. In these circumstances it will be necessary to make modifications to the plan. In making any modifications I have a duty to ensure that the Basic Conditions are met however I am also very careful to ensure, where possible that the intention and spirit of the plan is retained so that the plan, when modified still reflects the community's intent in producing their neighbourhood plan.

3. The Plan does not meet the legal requirements and cannot proceed to Referendum

I am also required to recommend whether the Referendum Area should be different from the Plan Area, should the Colyton Neighbourhood Development Plan go to Referendum.

In examining the Plan, I am required to check, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, whether:

- the policies in the Plan relate to the development and use of land for a designated Neighbourhood Area are in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act 2004:

- The Plan meets the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 to specify the period for which it has effect - the Plan has been prepared for an area designated under the Localism Act 2011 and has been developed and submitted for examination by a qualifying body.

I am also required to determine whether the Plan complies with the Basic Conditions, which are that the proposed Neighbourhood Plan:

Has regard to national policies and advice contained in guidance issued by the

Secretary of State;

Contributes to the achievement of sustainable development; and

Is in general conformity with the strategic policies contained in the Development Plan for the area; and

Does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017; and

Does not breach, and otherwise is compatible with EU obligations and Human Rights requirements.

East Devon District Council will consider my report and decide whether it is satisfied with my recommendations. The Council will publicise its decision on whether or not the plan will be submitted to a referendum, with or without modifications. If the Neighbourhood Plan is submitted to a referendum, then 28 working days' notice will be given of the referendum procedure and Neighbourhood Plan details. If the referendum results in more than half those voting (i.e. greater than 50%), voting in favour of the plan, then the District Council must "make" the Neighbourhood Plan a part of its Development Plan as soon as possible. If approved by a referendum and then "made" by the local planning authority, the Neighbourhood Plan then forms part of the Development Plan.

SECTION 4

4.The Report

4.1. Appointment of the Independent examiner

East Devon District Council appointed me as the Independent Examiner for the Colyton Neighbourhood Development Plan with the agreement of Colyton Parish Council.

4.2. Qualifying body

I am satisfied that Colyton Parish Council is the Qualifying Body.

4.3. Neighbourhood Plan Area

Colyton Parish Council applied for designation as a Neighbourhood Plan Area on the 8th of June 2015 under Planning Regulations 2012 (part 2 S6) and approved by East Devon District Council under the Neighbourhood on the 28th of July 2015.

The designated Colyton Neighbourhood Area covers the Parish of Colyton.

The Basic Conditions Statement submitted with the Colyton Neighbourhood Development Plan confirms there are no other Neighbourhood Plans covering the Area of the Colyton Neighbourhood Development Plan.

4.4. Plan Period

The Basic Conditions Statement states that the Colyton Neighbourhood Development Plan will cover the period 2020-2031, chosen to align with the East Devon Local Plan.

4.5. East Devon District Council initial assessment of the Plan (Regulation 15).

Colyton Council submitted the draft Colyton Neighbourhood Plan to East Devon District Council for consideration under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 on the 25th March 2021. East Devon District Council made an initial assessment of the Neighbourhood Development Plan and the supporting documents and is satisfied that these comply with the specified criteria.

4.6 Site Visit

I carried out an unaccompanied site visit on the 29th of July 2021 to familiarise myself with the Neighbourhood Plan Area.

4.7. The Consultation Process

The Colyton Neighbourhood Development Plan has been submitted for examination with a Consultation Report which sets out the consultation process that has led to the production of the plan, as set out in the regulations in the Neighbourhood Planning (General) Regulations 2012.

The Statement describes the approach to consultation, the stages undertaken and explains how the Plan has been amended in relation to comments received. It is set out according to the requirements in Regulation 15.1.b of the Neighbourhood Planning (General) Regulations 2012):

- (a) It contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
- (b) It explains how they were consulted; (c) It summarises the main issues and concerns raised by the persons consulted; and
- (d) It describes how these issues and concerns were considered and, where relevant, addressed in the proposed neighbourhood development plan.

Examination of the documents and representations submitted in connection with this matter have led me to conclude that the consultation process was thorough, well conducted and recorded.

A list of statutory bodies consulted is included in the Consultation Statement.

4.8. Regulation 16 consultation by East Devon District Council and record of responses.

East Devon District Council placed the Colyton Neighbourhood Development Plan out for consultation under Regulation 16 for 8 weeks to the 22nd of June 2021. The normal statutory period for consultation is 6 weeks but due to the unprecedented situation

caused by Covid-19, the consultation period was extended to 8 weeks.

A number of representations were received during the consultation period and these were made available by East Devon District Council as part of the supporting information supplied for the examination process. I considered the representations, have taken them into account in my examination of the plan and made reference to them where appropriate.

4.9. Compliance with the Basic Conditions

A Basic Conditions Statement was produced for the Colyton Neighbourhood Development Plan. The purpose of this statement is to set out in detail how the Neighbourhood Development Plan, as submitted meets the Basic Conditions. It is the Examiner's Role to take this document into consideration but also make take an independent view as to whether or not the assessment as submitted is correct.

I have to determine whether the Colyton Neighbourhood Development Plan:

1. *Has regard to national policies and advice*
2. *Contributes to sustainable development*
3. *Is in general conformity with the strategic policies in the appropriate Development Plan*
4. *Is not in breach and is otherwise compatible with EU obligations and Human Rights requirements.*
5. *Does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.*

Documents brought to my attention by East Devon District Council for my examination include:

(a) The Colyton Neighbourhood Development Plan:

This is the main document, which includes the policies developed by the community.

(b) The Consultation Statement:

This is a statement setting out how the community and other stakeholders have been involved in the preparation of the Colyton Neighbourhood Development Plan and is supported by an evidence base, which arose from the consultation.

(c) Basic Conditions Statement.

This is a statement setting out how Colyton Neighbourhood Development Plan Working Group considers that the Neighbourhood Development Plan meets the Basic Conditions. This statement also includes the screening report for the Strategic Environmental Appraisal and Habitats Regulations Assessment and addresses how the plan contributes to the achievement of sustainable development.

Comment on Documents submitted

I am satisfied having regard to these documents and other relevant documents, policies and legislation that the Colyton Neighbourhood Development Plan does, subject to the recommended modifications, meet the Basic Conditions.

4.10 Planning Policy

4.10.1. National Planning Policy

National Policy guidance is set out in the National Planning Policy Framework (NPPF). During the course of my examination of the Neighbourhood Plan, a revised version of the NPPF was issued and the relevant NPPF for the purposes of my examination is the National Planning Policy Framework (NPPF) July 2021 (as updated).

To meet the Basic Conditions, the Plan must have “regard to national policy and advice”. In addition, the NPPF requires that a Neighbourhood Plan “must be in general conformity with the strategic policies of the local plan”.

Paragraph 29 states:

“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory

development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies.”

The Colyton Neighbourhood Development Plan does not need to repeat national policy, but to demonstrate it has taken them into account.

I have examined the Colyton Neighbourhood Development Plan and consider that, subject to modification, the plan does have “regard for National Policy and Advice” and therefore the Plan, subject to modification does meet the Basic Conditions in this respect.

4.10.2. Local Planning Policy- The Development Plan

Colyton lies within the area covered by East Devon District Council. The relevant development plan is the East Devon Local Plan 2013 – 2031 (adopted 2016).

4.10.3 To meet the Basic Conditions, the Colyton Neighbourhood Development Plan must be in “general conformity” with the strategic policies of the development plan.

The NPPF 2021 (updated) states:

“20. Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision¹² for:

- a) housing (including affordable housing), employment, retail, leisure and other commercial development;
- b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);
- c) community facilities (such as health, education and cultural infrastructure); and
- d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.”

4.10.4 Neighbourhood Plans should only contain non-strategic policies. The NPPF

2021(updated) states:

“Non-strategic policies

28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies.”

4.10.5 Should there be a conflict between a policy in a neighbourhood plan and a policy in a Local Plan, section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy, which is contained in the last document to become part of the development plan.

4.10.6 The distinction between strategic and non-strategic policies is important because of the relationship with Neighbourhood Plans. Neighbourhood Plans only have to be in general conformity with the strategic policies of the development plan (Localism Act 2011, Schedule 4B, s7 (2)(e)) When made, neighbourhood plan policies take precedence over existing non-strategic policies in the local plan, where they are in conflict.

4.10.7 Planning Policy Guidance paragraph 41-076-20140306 sets out that:

“Strategic policies will be different in each local planning authority area. When reaching a view on whether a policy is a strategic policy the following are useful considerations:

- whether the policy sets out an overarching direction or objective
- whether the policy seeks to shape the broad characteristics of development

- the scale at which the policy is intended to operate
- whether the policy sets a framework for decisions on how competing priorities should be balanced
- whether the policy sets a standard or other requirement that is essential to achieving the wider vision and aspirations in the Local Plan
- in the case of site allocations, whether bringing the site forward is central to achieving the vision and aspirations of the Local Plan
- whether the Local Plan identifies the policy as being strategic”

I have considered the Strategic policies of the Development Plan and the Policies of the Colyton Neighbourhood Development Plan and consider that, subject to the recommended modifications, the Plan does meet the Basic Condition in this respect and is in general conformity with the Strategic policies of the East Devon District Council Local Plan 2016.

4.11. Other Relevant Policy Considerations

4.11.1 European Convention on Human Rights (ECMR) and other European Union Obligations

As a ‘local plan’, the Neighbourhood Development Plan is required to take cognisance of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC Office.

In the case of Directive 2001/42/EC a screening opinion was obtained from East Devon District Council in terms of the need for Strategic Environmental Assessment (SEA) in April 2019. The screening report concluded that based on the scale and location of development proposed in the draft plan, and the strategic and local policy framework, that the Colyton Parish NDP “has the potential to result in a significant adverse effect on the environment” and therefore a SEA was required.

Natural England, the Environment Agency and Historic England were consulted as part of the screening process and made the following comments:

Natural England:

“Based on the policies as they are written in the consultation version, it is not possible for us to conclude that the plan will not have a likely significant effect on a European site. We advise that if the locational aspects of a number of policies could be tightened up, this may enable different conclusions on SEA to be reached”.

The Environment Agency noted:

“In general, we consider that neighbourhood plans are unlikely to result in any significant environmental effects unless the plan allocates or encourages development over that set out in the Local Plan. In this case we note that this plan does propose an increase in housing numbers for the parish compared to the existing local plan. Whilst we have not identified any specific significant effects, we are happy to support your conclusion that SEA is required”.

Historic England noted: “Having looked at the draft Plan I can confirm that there are no issues upon which we wish to comment and unless it changes significantly this will remain our position through the various stages of its preparation. On that basis there are no issues from our perspective which prompt us to advise that a full SEA is necessary. At the same time, we have no objection to the conclusion that a full SEA is in fact required”.

The SEA was undertaken by Wardell Armstrong in June 2020 in regular liaison with the Steering Group. The SEA process commenced with a scoping report. The Scoping Report determined that “only Ecology would need to be addressed within the SEA Environmental Report. The remaining issues were scoped out on the basis of the unlikelihood for significant effects upon the environment and given that the Neighbourhood Plan does not propose development above and beyond that which has already been established at a higher level of plan- making through the East Devon Local Plan and East Devon Villages Plan”. This approach was agreed with East Devon District Council, Natural England, Environment Agency and Historic England.

The assessment concluded:

“That the Plan supports the status of designated sites within or adjacent to the Neighbourhood Plan area, in that it contains policies which support development

which protects designated sites and important semi-natural habitats, as well as providing policy support for development to enhance ecological networks and provide net gains for biodiversity wherever possible. Where policies have the potential to lead to development which could impact upon important natural assets in the Neighbourhood Plan area, additional criteria regarding protecting such assets are included. As specific sites for such development are not identified in the CDNP, as planning applications come forward, they will be assessed, in part, against the policies within the CDNP, thereby securing protection, and where possible, the enhancement of European, national and local designated sites, important semi-natural habitats, wildlife corridors and ecological networks across the plan area.”

I am satisfied with this conclusion.

Directive 92/43/EEC and Directive 2009/147/EC seek to protect and improve Europe’s most important habitats and species. As part of the screening request for the SEA a Habitats Regulations Assessment Screening request was also submitted to East Devon District Council. The Council concluded that:

“The Colyton Neighbourhood Plan requires a Habitat Regulations Assessment. The Colyton Neighbourhood Plan has the potential to result in a significant adverse impact on a European site (as defined in the Habitat Regulations 2017) alone or in combination with other plans and projects. The Plan proposes a level of development over and above that in the adopted East Devon Local Plan and outside of the BUAB identified in the East Devon Villages Plan”.

Natural England, in its consultation response to the HRA screening request noted: “Based on the policies as they are written in the consultation version, it is not possible for us to conclude that the plan will not have a likely significant effect on a European site. We advise that if the locational aspects of a number of policies could be tightened up, this may enable different conclusions on HRA to be reached”.

East Devon District Council as the competent body carried out an Appropriate Assessment of the pre submission draft of the plan based on a report prepared by Wardell Armstrong. The conclusions of the Wardell Armstrong Report were as follows: “This report sets out the methods used, and the findings arising from, the Habitats Regulations Assessment undertaken of two versions of the Colyton Neighbourhood Development Plan 2018-2031 (dated July 2019 and January 2020).

The HRA considered two European Sites assessed as being potentially impacted by the implementation of the Project, namely Beer Quarry Caves SAC and River Axe SAC.

The initial screening report produced by EDDC in April 2019 concluded that the March 2019 version of the CNDP would be likely to give rise to significant effects upon European Sites, alone.

Subsequently, a HRA has been undertaken on the July 2019 CNDP, and with the inclusion of the recommended changes to the CNDP detailed in Table 2 of this report, it can be concluded that the CNDP (January 2020) will not adversely affect the integrity of the Beer Quarry Caves SAC or River Axe SAC, either alone or in combination with other plans.

This report, alongside the amended Colyton Neighbourhood Plan (pre-submission version Jan 2020) can now be submitted to the competent authority, East Devon District Council for their consideration.”

The conclusion of East Devon District Council was that “the HRA for the EDLP and the EDVP included an in-combination assessment covering the scale of growth planned for Colyton. The CNDP (January 2020) no longer contains any policies which would give rise to impact pathways to European Sites, and therefore, no in-combination assessment is required; there are no residual effects on European Sites from the CNDP (January 2020) alone, with which to undertake an in-combination assessment, making it unnecessary.”

I am satisfied with this conclusion.

Regulation 32 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out a further basic condition for a Neighbourhood Development Plan in addition to those set out in the primary legislation. Being that:

- the making of the neighbourhood plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects). (See Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 (as amended) in relation to the examination of neighbourhood development plans.)

The following European Designated Sites are within 10km of Colyton:

Beer Quarry Caves UK0012585

This complex of abandoned mines in south-west England is divided in two by a road, with a working quarry to the north and a disused quarry and cave system to the south. This site supports important populations of hibernating bats. Its use as a hibernation site by the Bechstein's bat is the primary reason for its designation as a SAC. The area also supports a significant presence of both the Lesser horseshoe bat and the Greater horseshoe bat which are both qualifying features but are not primary reasons for the site's selection.

River Axe UK0030248

The lower reaches of the River Axe feature a mixed catchment geology of sandstones and limestones giving rise to calcareous waters and associated water-crowfoots and water-starworts. The river also supports the significant presence of sea lamprey, brook lamprey and bullhead

Sidmouth to West Bay UK0019864

Sidmouth to West Bay is an example of a highly unstable soft cliff coastline subject to mudslides and landslips. The principal rock types are soft mudstones, clays and silty limestones, with a small chalk outlier in the west. Vegetation is very varied and includes pioneer communities on recent slips, calcareous grassland and scrub on detached chalk blocks, and extensive self-sown woodland dominated by ash *Fraxinus excelsior* or sycamore *Acer pseudoplatanus*.

It was the conclusion of the HRA undertaken that “the HRA for the EDLP and the

EDVP included an in-combination assessment covering the scale of growth planned for Colyton. The CNDP (January 2020) no longer contains any policies which would give rise to impact pathways to European Sites, and therefore, no in-combination assessment is required; there are no residual effects on European Sites from the CNDP (January 2020) alone, with which to undertake an in-combination assessment, making it unnecessary.”

I am satisfied that the Colyton Neighbourhood Development Plan, subject to modification meets this Basic Conditions on EU obligations.

4.11.2 Sustainable development

The Basic Conditions Statement sets out how the plan addresses achieving sustainable development:

I am satisfied having regard to this document and other relevant documents, policies and legislation that the Colyton Neighbourhood Development Plan does, subject to the recommended modifications, meet the Basic Conditions in this regard.

4.11.3 European Convention of Human Rights and to comply with the Human Rights Act 1998.

The Neighbourhood Development Plan is required to take cognisance of the European Convention of Human Rights and to comply with the Human Rights Act 1998.

The Basic Conditions Statement refers to how the development of the plan and its policies accord with EU Human Rights obligations.

I am satisfied with this conclusion.

4.11.4 Excluded development

I am satisfied that the Colyton Neighbourhood Development Plan does not cover County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.

4.11.5 Development and use of land

I am satisfied that the Colyton Neighbourhood Development Plan covers development and land use matters.

4.12.1 Colyton Neighbourhood Development Plan Policies

4.12.2 General comments

Planning Guidance on preparing neighbourhood plans and policies is clear, it states:

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.

Neighbourhood planning can inspire local people and businesses to consider other ways to improve their neighbourhood than through the development and use of land. They may identify specific action or policies to deliver these improvements. Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.”

In order to provide clarity and to ensure that the policies in the Colyton Neighbourhood Plan meet the Basic Conditions it has been necessary for me to make modifications to a number of policies. This includes modifications where:

- Policies have sought to introduce controls outside the scope of the planning system or where existing policy already sets out the scope of control.
- A policy has not been drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications.

The details of these modifications are set out within my comments on the related policies. My comments on policies are in **blue** with the modified policies in **red**.

During the course of my examination the NPPF was updated and the relevant NPPF is now the NPPF July 2021(updated). The update of the NPPF has resulted in the change to a number of paragraph references and for clarity the plan as a whole should reflect the new paragraph numbering.

4.12.3. The Neighbourhood Plan Vision, Strategic Aims and Policies

4.12.5 VISION

The vision for the Colyton Parish is:

“a uniquely characterful and caring place to live and work”

4.12.6 The Aims and Objectives of the Colyton NDP.

The aims and the objectives of the Colyton NDP are set out on page 14 of the plan.

COMMENT

I am satisfied that the Colyton NDP vision, aims and objectives were developed from the consultation process and that the policies within the plan reflect them.

4.13 Colyton Neighbourhood Development Policies

Policy No. Coly1 Protecting the Natural Environment

Development proposals should:

- i. avoid adversely affecting local wildlife sites and habitats/species of principal importance, unless exceptional circumstances can be demonstrated, and appropriate mitigation measures provided; and
- ii. protect and enhance the network of habitats, species and sites of importance including trees and woodlands, hedgerows and roadside verges; and
- iii. minimise impacts on biodiversity; and
- iv. wherever possible deliver a net gain in biodiversity.

Development proposals that would result in the loss of, or which would create unacceptable harm to, wildlife sites and other areas of ecological or geological importance, and which cannot be suitably mitigated, will not be supported.

COMMENT

I have no comment on this policy.

Policy No. Coly2 Trees, Woodlands and Hedgerows

A. Areas of natural woodland (including, but not limited to, the woodlands shown on map 4) are regarded as important natural features. Any development proposals that would result in the loss, damage or deterioration of these woodlands will be resisted, unless there are wholly exceptional reasons, and a suitable compensation strategy exists.

B. Development proposals that will cause the loss of or damage to trees, woodland or hedgerows (including hedgerows of importance) that contribute positively to the character and amenity of the area must provide for appropriate replacement planting together with a method statement for the ongoing care and maintenance of that planting where deemed necessary by the Local Planning Authority.

C. New development within the proximity of existing mature trees will be expected to have a tree protection plan in place before any development commences, prepared in accordance with British Standard 5837:2012. This will detail tree protection strategies to be employed during construction. An arboricultural method statement will also be required to cover any proposed works to trees or other works within their root protection areas.

D. Where it is unavoidable, development proposals must provide for appropriate replacement planting on the site, or as close as possible to it, together with a management plan for the ongoing care and maintenance of that planting. Such replacement planting should use appropriate native species with an expected mature size similar to those removed and be in the ratio of three trees for the loss of a large tree, two for a medium sized tree and one for a small tree. (see the Glossary for a

definition of tree sizes).

COMMENT

The Glossary should be revised to include the definition of tree sizes. The wording of paragraph D is unclear. For clarity and to meet the Basic Conditions paragraph D should be modified as follows:

D. Where development results in the unavoidable loss of trees or hedgerows, proposals must provide for appropriate replacement planting on the site, or as close as possible to it, together with a management plan for the ongoing care and maintenance of that planting. Such replacement planting should use appropriate native species with an expected mature size similar to those removed and be in the ratio of three trees for the loss of a large tree, two for a medium sized tree and one for a small tree. (see the Glossary for a definition of tree sizes).

Policy No. Coly3 Public Rights of Way

Public rights of way in the Parish are to be protected from development.

Measures to improve and extend the existing network of public rights of way, shown on Map 5, are supported so long as their value as wildlife corridors is recognised and protected, and efforts are made to enhance biodiversity as part of the 'development' work wherever appropriate.

COMMENT

I have no comment on this policy.

Policy No. Coly4 Green Wedge

The Green Wedge areas (shown on Map 6) are fundamental to retaining and protecting the special character of the neighbourhood area.

Development proposals in the designated Green Wedge areas will not be supported

unless it can be demonstrated that no harm to the character or purpose of this area will occur and development is:

- i. for the purposes of agriculture, horticulture, or forestry; or
- ii. within the curtilage of a site that is already in residential, employment use; and
- iii. small in scale and proportionate to its location in scale and type; and
- iv. complies with the requirements of Strategy 8 of the East Devon Local Plan.

COMMENT

For clarity the policy should be modified as follows:

Policy No. Coly4 Green Wedges

The Green Wedge areas (shown on Map 6) are fundamental to retaining and protecting the special character and setting of Colyford and Colyton within the neighbourhood plan area.

Development proposals in the designated Green Wedge areas will not be supported unless it can be demonstrated that it will not add to existing sporadic or isolated development in the open countryside or harm the character of these areas and development is:

- i. for the purposes of agriculture, horticulture, or forestry; or**
- ii. within the curtilage of a site that is already in residential or employment use; and**
- iii. small in scale, proportionate to its location and appropriate in type; and**
- iv. complies with the requirements of Strategy 8 of the East Devon Local Plan.**

Policy No. Coly5 Local Green Spaces

Proposals for new development on designated Local Green Spaces, listed below, will

not be supported unless ancillary to their existing recreation or amenity use, or exceptional circumstances can be demonstrated.

- A. Bridge House Garden
- B. Colyford Play Park
- C. Colyton Community Woodland and Picnic Site
- D. Cuthouse Meadow Play Area
- E. Road Green and Play Area
- F. St Andrews Churchyard and St Andrews Garden
- G. The Elms Amenity Area
- H. St Michaels Churchyard, Colyford

Any designated area of local green space lost due to exceptional circumstances must be replaced by equivalent or better provision, in terms of quantity and quality in a suitable location.

COMMENT

Local Green Space designation is a “restrictive and significant policy designation” equivalent to Green Belt designation. It is essential that, when allocating Local Green Space, plan-makers can clearly demonstrate that the requirements for its allocation are met in full.

The NPPF 2021 states:

“101. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.

Local Green Spaces should only be designated when a plan is prepared or updated and be capable of enduring beyond the end of the plan period.

102. The Local Green Space designation should only be used where the green space is:

a) in reasonably close proximity to the community it serves;

b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and

c) local in character and is not an extensive tract of land.

103. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.”

Given that the Framework is not ambiguous in stating that a Local Green Space designation is not (my emphasis) appropriate for most green areas or open space, it is entirely reasonable to expect compelling evidence to demonstrate that any such allocation meets national policy requirements.

I have carefully considered the evidence put before me for the designation proposed and I am satisfied that the proposed Local Green Spaces do meet the NPPF requirements. Paragraph 103 of the NPPF states that the policies for managing development within a Local Green Space should be consistent with those for Green Belts. Paragraphs 147-149 detail the policy framework for development affecting the Green Belt. Paragraph 147, in particular states;

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

For clarity and to meet the Basic Conditions, the first and last paragraphs of the policy should be replaced to reflect the requirements of the NPPF 2021 and recent caselaw (see Court of Appeal Judgement in the Case of The Queen (On

the Application of Lochailort Investments Limited) and Mendip District Council Norton St Philip Parish Council 2nd October 2020) which clearly states that Local Green Space polices in neighbourhood plans should not deviate from the policy requirements of the NPPF:

The areas listed below are designated as Local Green Spaces:

Inappropriate development on any of the Local Green Spaces designated in this policy will only be supported in very special circumstances.

Policy No. Coly6 Sustainable Development

Development within the Built-Up Area Boundary will generally be supported provided it:

- i. makes an appropriate use of a brownfield site, or
- ii. is infill and predominantly surrounded by existing development; and
- iii. is of sustainable design and construction to minimise the impact on climate change; and
- iv. there is no harmful impact on the Conservation Area and/or listed buildings.

For all developments in the neighbourhood area, including extensions and alterations to existing properties that require planning permission:

- v. buildings should be designed to a high level of energy efficiency aiming towards zero carbon;
- vi. the development proposal should be appropriate to its setting in terms of scale, height and massing and choice of materials;
- vii. opportunities should be encouraged to integrate bee bricks, bat and swift boxes in a suitable position within the development; and

viii proposals should consider the need to design out crime, disorder and anti-social behaviour to ensure ongoing community safety and cohesion.

COMMENT

I have received representation with regard to a number of the criteria for this policy. For clarity the following criteria should be modified:

iv. there is no harmful impact on the Conservation Area and/or Heritage Assets.

vii. measures to improve biodiversity should be incorporated into new development including, but not limited to, bee bricks, bat and bird boxes and hedgehog highways; and

Policy No. Coly7 Housing Development within the Built-up Area Boundary

New housing development within the Colyton Built-up Area Boundary will be supported provided the:

i. design and layout are generally in keeping with the character of the town and existing development around the site;

ii. boundary treatments complement the character of the area;

iii. opportunities to provide safe and secure pedestrian and cycle links throughout the development, and to and from other parts of Colyton are incorporated;

iv. opportunities to re-use existing buildings on the site are utilised wherever possible;

and

v. the mix of housing sizes and tenures reflects local needs and contributes to the diversity of the area's housing mix.

COMMENT

I have no comment on this policy

Policy No. Coly8 Exception Site Housing Development

Proposals for housing development outside the built-up area boundary will only be supported if it is demonstrated that:

- i. it is a small development of up to 15 dwellings, to provide affordable housing for local need, that is evidenced in accordance with Local Plan Strategy 35; and
- ii. it will not have a harmful visual impact on its setting or the landscape;
- iii. it conserves or enhances the character and appearance of the area; and
- iv. where relevant, it brings redundant or vacant historic buildings back into beneficial re-use.

A small number of market homes may be permitted where this is essential to enable the delivery of affordable units.

COMMENT

I received a number of representations as a result of the Regulation 16 consultation in relation to this policy. Concern was raised that the policy was changed between the Regulation 14 version and the Regulation 16 version in that criteria i. changed from:

“i. it is on a small site and would provide affordable housing for local need, that is evidenced in accordance with Local Plan Strategy 35; and”

to:

“i. it is a small development of up to 15 dwellings, to provide affordable housing for local need, that is evidenced in accordance with Local Plan Strategy 35; and”

During the course of my examination, I sought clarification from the

neighbourhood plan steering group with regard to this policy. I received the following response:

“One of the comments received was from East Devon District Council, stating they felt the original policy wording which allowed for a “small site” to be developed under Coly 8 gave insufficient clarification on scale. The suggestion of clarifying this through the number of dwellings and to use the parameter of “up to 15” was because this reflects the Local Plan policy for exceptions schemes (Strategy 35) which allows for up to or around 15 homes to be developed under this policy, and as a strategic policy of the Local Plan, the neighbourhood plan is expected to broadly conform. Furthermore, the supporting text of Policy Coly8 at Pre-Submission Regulation 14 stage stated this was the intention but did not make it a requirement of the policy, saying, “Policy Coly8 is supportive of such initiatives if the development is small (up to 15 dwellings)”. Its insertion was therefore proposed to address the risk of not giving a definition of scale within the policy and to align to the statement in the supporting text and Local Plan.

On the 4th January 2021 all members of the Steering Group were sent a schedule of the Reg. 14 comments which was compiled by Mr Weston, which included his analysis and interpretation of all points made by respondents and his suggestions as to how the Steering Group might wish to respond to each suggestion. One of the criteria he used in formulating his suggestions was to accept “the proposed policy wording amendments suggested by the local planning authority, unless they are contrary to the known position/opinion of the SG” Following feedback from all Steering Group members, he produced a Schedule of recommendations on changes to the Plan for the Parish Council to consider, which captured the collective views of the Steering Group. He also produced a draft revised Plan to ‘illustrate’ the effect of the Steering Group’s recommendations, which they had 7 days to review from 21st January 2021. The recommendations included an amendment to policy Coly8 and revisions to the supporting text.

The Parish Council met with the Steering Group on 1st March to discuss all the

comments and any changes. This was an informal meeting and was not open to the public due to the amount of comments to discuss and the impracticality of going through line by line in a public meeting. Then on the 8th March the revised Plan was considered and approved in a Full Council meeting.

We now see that there are some residents who feel that the maximum number of 15 dwellings stated in the plan is too high. A number was added to cap the amount of houses as it was felt the original policy of ‘a small number of dwellings’ was too open to interpretation.”

Whilst the East Devon Local Plan Strategy 15 does include the phrase” or up to or around 15 dwellings” the NPPF July 2021 defines Rural Exceptions Sites as follows:

“Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning authority’s discretion, for example where essential to enable the delivery of affordable units without grant funding.”

There is no further definition of “small” in this context however, the number of units and size of the site will be regulated by the identified housing need and the other policy constraints in the development plan. Whilst I acknowledge the number of units is set out in Strategy 35 I do not on planning balance consider it necessary to include this number within Coly8. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy No. Coly8 Rural Exception Site

Proposals for a Rural Exception Site in accordance with East Devon Local Plan Strategy 35 will only be supported where it:

- i. Is a small development which reflects the character, appearance and***

- scale of the adjacent settlement; and*
- ii. Is in conformity with other policies in the development plan; and*
- iii. Provides affordable housing to meet identified local need; and*
- iv. It will not have a harmful visual impact on its setting or the landscape;*
- v. where relevant, it brings redundant or vacant historic buildings back into beneficial re-use.*

Affordable housing should make up a minimum of 66% of the site and market units will only be considered where they are essential to enable the delivery of affordable units.

Policy No. Coly9 Parking Provision for New Housing Development

A. New residential development should provide:

- i) at least one off-road car parking space for one-bedroom homes and two off-road car parking spaces per homes with two or more bedrooms; and
- ii) at least one cycle parking space for one-bedroom homes and two cycle parking spaces per homes with two or more bedrooms.

B. Parking provision for major developments should be contained within the site boundary and include charging points for electric cars.

C. For minor developments, on-site parking provision of fewer car parking spaces per home than required by clause A above will only be permitted:

- i) where the provision of the parking requirements set out above would prejudice the viability and/or deliverability of the site; and
- ii) alternative and reasonably accessible car parking arrangements can be demonstrated and which themselves do not add to on-street parking.

D. The layout of all major developments should incorporate adequate additional off-street visitor car and cycle parking spaces, and accommodate delivery vehicles, or other forms of logistical support, without adversely impacting upon traffic circulation or

road safety.

E. Permeable materials for surface parking areas should be used where practicable.

COMMENT

I have no comment on this policy.

Policy No. Coly10 Employment Uses

Proposals for the change of use of existing business premises away from employment activity will be resisted unless it can be demonstrated that its existing use is no longer economically viable, and all reasonable steps have been taken to let or sell the site or building for employment purposes for a period of at least 12 months.

Development proposals to provide employment opportunities in residential areas, including the creation of live-work units, will be supported provided that the proposals:

- i. does not involve the loss of a dwelling;
- ii. contribute to the character and vitality of the local area;
- iii. do not harm residential amenity;
- iv. do not adversely impact upon road safety; and
- v. do not harm the convenience, vitality, or viability of existing town and village centre commercial uses.

COMMENT

I have no comment on this policy.

Policy No. Coly11 Tourism Development

Proposals for the development and expansion of tourism-related businesses (see definition in Glossary) will be supported providing that:

i. The scale of development is proportionate to existing activity in the Parish and the immediate locality;

ii.the potential impact on neighbouring residential properties is acceptable, having regard to potential noise and disturbance;

iii.they respect the area's heritage and historic character;

iv.they do not have a significant adverse impact on the character of the landscape and are mitigated as appropriate by landscaping and visual screening; and

v.traffic, access and highway matters are satisfactorily addressed.

COMMENT

I have no comment on this policy.

Policy No. Coly12 Tramway Links

Measures to improve pedestrian links between the tramway stations and the centre of the settlement areas of Colyford and Colyton will be supported.

COMMENT

I have no comment to this policy.

Policy No. Coly13 Connectivity

Future improvements to mobile phone reception and superfast broadband infrastructure serving the Parish will be supported where it is sensitively sited and sympathetically designed.

Suitable ducting to accommodate FTTP broadband should be provided in all new development.

Where practicable, all new residential, educational and business premises development will be required to make provision for highspeed broadband and other

communication networks.

COMMENT

I have no comment on this policy.

Policy No. Coly14 Public Transport

Development proposals specifically to maintain and enhance existing public transport provision, within the area will be supported provided the proposals would not have significant harmful effects on:

- i.the amenity of residents and other neighbouring uses; and
- ii.the local landscape, including environmental features and assets.

COMMENT

I have no comment on this policy.

Policy No. Coly15 Walking and Cycling Routes

Proposals to:

- i. improve and extend existing walking and cycle routes and link them to the wider network; or
 - ii. provide pedestrian and cycle links between settlement areas; or
 - iii. create wider and safer footpaths in settlement areas;
- will be supported.

Where appropriate, proposals will be required to demonstrate that measures will be put in place to protect wildlife and opportunities to enhance wildlife habitats and corridors will be taken.

Routes earmarked by the Parish Council for the provision of safe walking and cycling will be safeguarded.

COMMENT

I have no comment on this policy other than to suggest that the ‘safeguarded routes’ referred to in this policy be added to Map 5 with an addition to the key to reflect.

Policy No. Coly16 Public Car Parking

Proposals for public car parks, or public parking areas as part of new developments, within the Colyton built-up area boundary, will be supported where:

- i. there is appropriate vehicular and pedestrian accessibility; and
- ii. appropriate hard and soft landscaping is provided to ensure the design and layout are sensitive to the setting of the conservation area and to protect the amenity of neighbours.

The provision of electric vehicle charging outlets at public car parks and at other suitable locations to serve public demand will be supported.

COMMENT

I have no comment on this policy.

Policy No. Coly17 Community Horticulture

The use of redundant land for community allotments, orchards and community horticulture initiatives in suitable locations will be considered favourably.

Proposals that would result in the loss of all or part of existing allotment spaces will not be supported unless alternative and equivalent allotment space is provided, and it is equally accessible and of a similar quality.

Proposals for built development on allotment sites, beyond what is allowed by way of

permitted development rights, will be supported if it is of a limited nature and it can be clearly demonstrated that it is required to enhance the role and function of the site, and it would not have significant harmful effects on nearby uses and the landscape and visual amenity of the area.

Proposals that have an adverse impact on nature conservation and biodiversity will not be supported.

COMMENT

I have no comment on this policy.

Policy No. Coly18 Sports and Recreational Areas

The following sports and recreation facilities and pitches (shown on map 9) will be safeguarded for their existing use:

- Colyton Leisure Centre
- Peace Memorial Playing Fields

Proposals which result in a loss of these recreation and sports facilities and pitches and/or their capacity and/or community accessibility (availability for community use) will not be supported.

Proposals to enhance and improve existing facilities or to provide additional sports and recreation facilities in or on the edge of settlements will be supported where:

- i. the scale is related to the needs of the area and in keeping with the character of the location;
- ii. they have no detrimental impact upon nature conservation and biodiversity;
- iii. they will not add to flood risk or result in the loss of flood storage capacity;
- iv. they do not create unacceptable disturbance to neighbouring residential properties by way of noise, light spillage, and unsociable hours;

v. the use of any floodlighting has mitigation measures in place to protect nearby residential property; and

vi. access and off-street parking can be satisfactorily provided without adversely affecting highway safety, traffic movement and amenity of residential and other surrounding uses. Permeable materials for surface parking areas should be used where practicable.

COMMENT

The NPPF 2021 states:

Open space and recreation

98. Access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.

99. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

For clarity and to meet the Basic Conditions the first part of the policy should be modified as follows:

The following sports and recreation facilities and pitches (shown on map 9) will be safeguarded for their existing use:

- Colyton Leisure Centre**
- Peace Memorial Playing Fields**

Proposals which result in a loss of these recreation and sports facilities and pitches and/or their capacity and/or community accessibility (availability for community use) will not be supported unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or**
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or**
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.**

SECTION 5

Conclusion and Recommendations

1. I find that the Colyton Neighbourhood Development Plan has been prepared in accordance with the statutory requirements and processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012. (as amended)
2. The Neighbourhood Plan does not deal with County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.
3. The Colyton Neighbourhood Development Plan does not relate to more than one Neighbourhood Area and there are no other Neighbourhood Development Plans in place within the Neighbourhood Area.
4. The Strategic Environmental Assessment and Habitats Regulations Assessment meet the EU Obligation.
5. The policies and plans in the Colyton Neighbourhood Development Plan, subject to the recommended modifications would contribute to achieving sustainable development. They have regard to national policy and to guidance, and generally conform to the strategic policies of the East Devon Local Plan 2013 – 2031.
6. I therefore consider that the Colyton Neighbourhood Development Plan subject to the recommended modifications can proceed to Referendum.

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23rd August 2021

