

BISHOP'S CASTLE NEIGHBOURHOOD DEVELOPMENT PLAN 2019 - 2038

(Submission Draft June 2023)

**Report of the Examination into the**  
**Bishop's Castle Neighbourhood Development Plan 2019 - 2038**

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To Shropshire Council  
And to Bishop's Castle Town Council

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**1. Introduction**

*Neighbourhood planning*

1. The Localism Act 2011 Part 6 Chapter 3 introduced neighbourhood planning, including provision for neighbourhood development plans. A neighbourhood development plan should reflect the needs and priorities of the community concerned and should set out a positive vision for the future, setting planning policies to determine decisions on planning applications. If approved by a referendum and made by the local planning authority, such plans form part of the Development Plan for the neighbourhood concerned. Applications for planning permission should be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
2. This report concerns the Submission draft of the Bishop's Castle Neighbourhood Development Plan 2019 - 2038 ("the Draft NDP").

*Appointment and role*

3. Shropshire Council ("SC"), with the agreement of qualifying body Bishop's Castle Town Council ("BCTC"), has appointed me to examine the Draft NDP. I am a member of the planning bar and am independent of SC, BCTC, and of those who have made representations in respect of the Draft NDP. I have been trained and approved by the Neighbourhood Planning Independent Examiner Referral Service and trained others who wish to be examiners. I have extensive experience both as a planning barrister and as a neighbourhood plan examiner. I do not have an interest in any land that is, or may be, affected by the Draft NDP.
4. My examination has involved considering written submissions and a detailed site visit on Wednesday 29<sup>th</sup> November 2023. I have considered all the documents with which I have been provided.
5. My role may be summarised briefly as to consider whether certain statutory requirements have been met, to consider whether the Draft NDP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in paragraph 13 below applies and, if appropriate, to consider the referendum area. I must act proportionately, recognising that Parliament has intended the neighbourhood plan process to be relatively inexpensive with costs being proportionate.

## **2. Preliminary Matters**

### *Public consultation*

6. Consultation and community involvement are important parts of the process of producing a neighbourhood plan. I am satisfied that BCTC took public consultation seriously and that consultation is accurately recorded in the Consultation Statement and pages 7 and 8 of the draft NDP. The consultation was satisfactory and no relevant person has been substantially prejudiced. I am also satisfied that the statutory Regulation 16 consultation was satisfactory. I do not consider there has been a failure in consultation. Consultation met the requirements of the Neighbourhood Planning (General) Regulations 2012 (“the General Regulations”) and the human rights of occupiers of homes and of property owners.

7. I am satisfied with the Strategic Environmental Assessment and the Habitats Regulations Assessment. These were carried out appropriately by a suitably qualified and experienced person.

### *Other statutory requirements*

8. I am also satisfied of the following matters:

- (1) The neighbourhood area is the parish of Bishop’s Castle.<sup>1</sup> SC designated this on 4<sup>th</sup> September 2019. BCTC is authorised to act in respect of this area (Town and Country Planning Act 1990 (“TCPA”) s61F (1) as read with the Planning and Compulsory Purchase Act 2004 (“PCPA”) s38C (2)(a));
- (2) The Draft NDP does not include provision about development that is excluded development as defined in TCPA s61K (PCPA s38B (6)), and does not relate to more than one neighbourhood area (PCPA s38B (1)(c));
- (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2));
- (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)); and
- (5) The Draft NDP specifies the period for which it is to have effect, namely 2019-2038, as required by PCPA s38B(1). Sensibly, 2038 aligns with the period for the emerging Shropshire Local Plan.

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<sup>1</sup> This is shown on the Neighbourhood Plan Area Map with which I have been supplied and also on Figure 1 of the Draft NDP.

### **3. The Extent and Limits of an Examiner’s Role**

9. I am required to consider whether the Draft NDP meets the basic conditions specified in TCPA Sch 4B para 8(2) as amended and as varied for neighbourhood development plans, namely:

- (a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;
- (d)<sup>2</sup> The making of the Plan contributes to the achievement of sustainable development;
- (e) The making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- (f) The making of the Plan does not breach, and is otherwise compatible with, retained EU obligations; and
- (g) Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with in connection with the proposal for the Plan.<sup>3</sup>

10. There is one relevant prescribed basic condition:<sup>4</sup> *“The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.”* Chapter 8 comprises regulations 105 to 111.

11. TCPA Sch 4B para 8(6) and para 10(3)(b) and the Human Rights Act 1998 mean that I must consider whether the Draft NDP is compatible with Convention rights. ‘Convention rights’ are defined in the Human Rights Act 1998 as (a) Articles 2 to 12 and 14 of the European Convention on Human Rights (“the Convention”), (b) Articles 1 to 3 of its First Protocol, and (c) Article 1 of its Thirteenth Protocol, as read with Articles 16 to 18 of the Convention. The Convention rights that are most likely to be relevant to town and country planning are those under the Convention’s Article 6(1), 8 and 14 and under its First Protocol Article 1.

12. In my examination of the substantial merits of the Draft NDP, I may not consider matters other than those specified in the last three paragraphs. In particular, I may not consider whether any other test, such as the soundness test provided for in respect of independent examinations under PCPA s20, is met.<sup>5</sup> Rather, Parliament has decided not to use the soundness test, but to use the, to some extent, less demanding tests in the basic conditions. It is important to avoid unduly onerous demands on qualifying bodies. It is not my role to rewrite

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<sup>2</sup> The omission of (b) and (c) results from these clauses of para 8(2) not applying to neighbourhood development plans (PCPA s38C (5)(d)).

<sup>3</sup> The amendments to the basic conditions introduced by the Levelling-up and Regeneration Act 2023 s99 are not yet in force. They will come into force on a date to be appointed.

<sup>4</sup> Sch 2 para 1 of the General Regulations prescribes this. PPG Reference ID: 41-079-20190509.

<sup>5</sup> Woodcock Holdings Ltd v. Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin), 1<sup>st</sup> May 2015, Holgate J., para 57; R. (Crownhall Estates Limited) v. Chichester District Council [2016] EWHC 73 (Admin) 21<sup>st</sup> January 2016, Holgate J., para 29; PPG Reference ID: 41-055-2018022.

a neighbourhood development plan to create the plan that I would have written for the area. It is not my role to impose a different vision on the community.

13. Having considered the basic conditions and human rights, I have three options, which I must exercise in the light of my findings. These are:

- (1) that the Draft NDP proceeds to a referendum as submitted;
- (2) that the Draft NDP is modified to meet basic conditions and then the modified version proceeds to a referendum; or
- (3) that the Draft NDP does not proceed to referendum.

If I determine that either of the first two options is appropriate, I must also consider whether the referendum area should be extended.

14. My power to recommend modifications is limited by statute in the following terms:

*The only modifications that may be recommended are—*

- (a) modifications that the examiner considers need to be made to secure that the draft [NDP] meets the basic conditions mentioned in paragraph 8(2),*
- (b) modifications that the examiner considers need to be made to secure that the draft [NDP] is compatible with the Convention rights,*
- (c) modifications that the examiner considers need to be made to secure that the draft [NDP] complies with the provision made by or under sections 61E(2), 61J and 61L,*
- (d) modifications specifying a period under section 61L(2)(b) or (5), and*
- (e) modifications for the purpose of correcting errors.<sup>6</sup>*

15. The word “only” prevents me recommending any other modifications. The fact that a modification would be of benefit is not a sufficient ground in itself to recommend it. So, for example, the fact that a policy could be strengthened or added to does not justify a modification unless this is necessary for the reasons given above. I must not take an excessively restrictive view of the power to recommend modifications, but must bear in mind Lindblom LJ’s explanation of its extent in his judgment in Kebbell Developments Ltd v. Leeds City Council.<sup>7</sup> I may not recommend a modification that would put the Draft NDP in breach of a basic condition or of human rights. When I conclude that a modification is necessary, I must, in deciding its wording, bear in mind material considerations including government advice. This includes the importance of localism. Where I properly can, my recommended modifications seek to limit the extent to which the substance of the Draft NDP is changed.

16. It is not my role to consider matters that are solely for the determination of other bodies such as SC in a non-planning capacity, Natural England (“NE”) or the Environment Agency. Nor is it my role to consider matters that an NDP could consider, but which are not considered

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<sup>6</sup> TCPA Sch 4B, para 10(3). The provisions in (a), (c) and (d) are in the TCPA.

<sup>7</sup> [2018] EWCA Civ 450, 14<sup>th</sup> March 2018, paras 34 and 35.

in the Draft NDP, unless this is necessary for my role as explained above. It is not my role to consider aspirations that are not policies.

#### **4. Consideration of Representations**

17. I have given the representations careful consideration, but have not felt it necessary to comment on all of them. Rather, in accordance with the statutory requirement and bearing in mind the judgment of Lang J in *R. (Bewley Homes Plc) v. Waverley Borough Council*,<sup>8</sup> I have mainly concentrated on giving reasons for each of my recommendations.<sup>9</sup> Where I am required to consider the effect of the whole Draft NDP, I have borne it all in mind.

#### **5. Public Hearing and Site Visit**

18. The general rule is that the examination of the issues by the examiner is to take the form of the consideration of the written representations.<sup>10</sup> However, an examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure (1) adequate examination of the issue or (2) a person has a fair chance to put a case.<sup>11</sup> Since neither applied in this case, I did not hold a public hearing. The holding of a public hearing is very much an exception.

19. I decided that an unaccompanied site visit was necessary and held one on Wednesday 29<sup>th</sup> November 2023. There were no impediments to the visit. Throughout the site visit weather was fine and views were good. I did note that Wednesday was the day on which some shops were closed or partly closed. This may have an effect on traffic, but my views on traffic are not based on a snapshot of time, but on the overall effect of the documents that I have seen and on the nature of the roads. The site visit helped me to gain a sufficient impression of the nature of the area for the purpose of my role.

#### **6. Basic Conditions and Human Rights**

*Regard to national policies and advice*

20. The first basic condition requires that I consider whether it is appropriate that the NDP should be made “*having regard to national policies and advice contained in guidance issued by the Secretary of State*”. A requirement to have regard to policies and advice does not require that such policy and advice must necessarily be followed, but they should only be departed from only if there are clear reasons, which should be explained, for doing so.<sup>12</sup>

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<sup>8</sup> [2017] EWHC 1776 (Admin), Lang J, 18<sup>th</sup> July 2017.

<sup>9</sup> TCPA Sch 4B, para 10(6).

<sup>10</sup> PPG Reference ID: 41-056-20180222.

<sup>11</sup> TCPA Sch 4B paras 9(1) and (2).

<sup>12</sup> *R. (Lochailort Investments Limited) v. Mendip District Council* [2020] EWCA Civ 1259, Lewison LJ, 2<sup>nd</sup> October 2020, paras 6, 31 and 33.

21. The main document in which national planning policy is contained is the National Planning Policy Framework 19<sup>th</sup> December 2023<sup>13</sup> (“NPPF”) and I have borne that in mind. This superseded NPPF 5<sup>th</sup> September 2023, which had superseded NPPF 20<sup>th</sup> July 2021. The submission draft was based on the 2021 version. The changes give rise to a major matter, consideration whether further consultation is needed and also a secondary matter whether small modifications are needed because of changes in paragraph numbering. I have concluded that, on the facts of this particular plan, further consultation is not required.

22. Other policy and advice that I have borne in mind includes national Planning Practice Guidance (“PPG”).

23. The NPPF provides that neighbourhood plans should support the delivery of strategic policies contained in local plans and should shape and direct development that is outside of these strategic policies.<sup>14</sup> Its paragraphs 28 and 29 are under the heading ‘non-strategic policies’ and state:

*28. Non-strategic policies should be used by... 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.*

24. NPPF paragraphs 60 and 63<sup>15</sup> are under the heading ‘delivering a sufficient supply of homes’ and now state:

*60. To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet as much of an area’s identified housing need as possible, including with an appropriate mix of housing types for the local community.*

*63. Within this context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies.*

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<sup>13</sup> As corrected in respect of para 14 only on 20<sup>th</sup> December 2023.

<sup>14</sup> NPPF para 13.

<sup>15</sup> Formerly 62.

*These groups should include (but are not limited to) those who require affordable housing; families with children; older people (including those who require retirement housing, housing-with-care and care homes); students; people with disabilities; service families; travellers; people who rent their homes and people wishing to commission or build their own homes.*

25. Paragraphs 60 and 63 mean that a Local Plan should meet all those needs. That will be addressed within the emerging Local Plan process. Not surprisingly, it does not mean that every parish (even every relatively sustainable parish) should meet all of them.

26. Among other things the PPG 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.*<sup>16</sup>

*Contributing to the achievement of sustainable development*

27. The second basic condition means that I must consider whether the making of the Plan contributes to the achievement of sustainable development. Unless the Draft NDP, or the Draft NDP as modified, contributes to sustainable development, it cannot proceed to a referendum. This condition relates to the making of the Plan as a whole. It does not require that each policy in it must contribute to sustainable development. It does require me to consider whether constraints might prevent sustainable development and, if they might, whether the evidence justifies them. That involves consideration of site-specific constraints, both existing and those proposed in the Draft NDP. The total effect of the constraints introduced by the Draft NDP when read with existing constraints must not prevent the achievement of sustainable development.

*General conformity with the development plan's strategic policies*

28. The third basic condition means that I must consider whether the Draft NDP as a whole is in general conformity with the strategic policies contained in the development plan for the area of the authority. The development plan includes Shropshire Local Development Framework, Adopted Core Strategy, March 2011; and the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan, which was adopted in December 2015.

29. The adjective 'general' allows a degree of (but by no means unlimited) flexibility and requires the exercise of planning judgement. The Draft NDP "*need not slavishly adopt every*

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<sup>16</sup> Reference ID: 41-041-20140306.

*detail*".<sup>17</sup> This condition only applies to strategic policies - there is no conformity requirement under this basic condition in respect of non-strategic policies in the development plan, in respect of the emerging Local Plan, or in respect of other local authority documents that do not form part of the adopted development plan, although such documents may be relevant to other matters. In assessing general conformity and whether a policy is strategic, I have borne in mind helpful PPG advice.<sup>18</sup> I have also borne in mind the relevant part of the judgment in R. (Swan Quay LLP) v. Swale District Council.<sup>19</sup>

### *Retained EU obligations*

30. The fourth basic condition requires me to consider whether the Draft NDP breaches, or is otherwise incompatible with, retained EU obligations. I have in particular considered the following, together with the UK statutory instruments implementing them in England: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); the Water Framework Directive (2000/60/EC); and the General Data Protection Regulation (2016/679/EU). I have also considered the judgments of the European Court of Justice in People Over Wind v. Coillte Teoranta<sup>20</sup> and Cooperation Mobilisation for the Environment v Verenigin Leefmilieu<sup>21</sup> ("the Dutch Nitrogen Judgment"). I have borne in mind that proportionality is a concept of and underlies EU law and must be wary of requirements that would be disproportionate to the Draft NDP. I am satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality directive.

### *Conservation of Habitats and Species Regulations 2017*

31. There is a major concern in respect of the impact of development on the River Clun which I deal with below. No other habitats (including the Stiperstones and Hollies Special Areas of Conservation ("SACs")) raise issues that I need to address in this report.

### *Human Rights*

32. The planning law of England and Wales in general complies with the Convention. This matter can be dealt with briefly in advance of further consideration of the contents of the Draft NDP. I have considered whether anything in the Draft NDP would cause a breach of any Convention right. In particular, I have considered the Convention's Articles 6(1), 8 and 14 and

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<sup>17</sup> Wiltshire Council v. Cooper Estates Strategic Land Ltd [2019] EWCA Civ 840, para 3, 16<sup>th</sup> May 2019.

<sup>18</sup> PPG Reference IDs: 41-074-20140306; 41-075-20190509; 41-076-20190509; and 41-077-20190509.

<sup>19</sup> [2017] EWHC 420 (Admin), para 29, Dove J, 27<sup>th</sup> January 2017.

<sup>20</sup> Case C-323/17, 12<sup>th</sup> April 2018.

<sup>21</sup> Case 293/17, 7<sup>th</sup> November 2018.

its First Protocol Article 1. This last-mentioned article reinforces the common-law principle that private property rights should not be removed without proper justification, and I have borne that in mind. Apart from that, nothing in my examination of the Draft NDP has required further consideration of human rights.

## **7. The emerging Local Plan**

33. The Local Plan is currently under review. The most recent version of the emerging Local Plan (“ELP”) is the Regulation 19: Pre-Submission Draft of the Shropshire Local Plan 2016 to 2038 (December 2020). There were Stage 1 Hearing Sessions between July 2022 and January 2023 on legal, procedural and strategic matters. The Inspectors have confirmed that SC has met the Duty to Cooperate, but has asked it to undertake additional site assessment work in order to progress to the Stage 2 Hearing sessions. SC considers it is likely to reach Stage 2 hearing sessions in Spring 2024. This will deal with site allocation and development management policy issues as well as examining the Settlement Strategies. Subject to the outcome of this work SC considers it realistic to assume adoption of the ELP in late 2024. While I have no reason to doubt this, I am aware that slippage is common in timetables for the adoption of local plans (not least where there are substantial changes in central government policy). My recommendations (other than recommended modifications 3 and 14) would be the same if adoption were to be by late 2025.

34. The ELP is at a relatively advanced stage and, although not relevant to basic condition (e), may need to be considered in respect of basic conditions (a) and (d).

35. Policy S2.1, Development Strategy: Bishop’s Castle Key Centre, states:

- 1. Bishop’s Castle will act as a Key Centre and contribute towards strategic growth objectives in the south of the County, delivering around 150 dwellings and around 3 hectares of employment development. New housing and employment development will respond to local needs.*
- 2. The Plan HRA identifies that development in Bishop’s Castle is likely to have an adverse effect on the River Clun SAC so Policy DP13 applies. Mitigation measures will be also required to remove any adverse effect from increased recreational pressure arising from development in Bishop’s Castle on the integrity of the Stiperstones and Hollies SAC in accordance with Policies DP12, DP14 and DP15. Mitigation measures for recreational impacts are identified in the Plan Habitat Regulations Assessment (HRA) and supporting documents.*
- 3. A Neighbourhood Plan is being progressed for the Bishop’s Castle Town Council area. The Neighbourhood Plan will include the strategy for achieving the housing and employment guidelines for the Key Centre of Bishop’s Castle.*

4. *New residential development will primarily be delivered through the saved SAMDev residential allocation and any residential development allocated within the Bishops Castle Neighbourhood Plan. This will be complemented by appropriate small-scale windfall residential development within the Bishop's Castle development boundary shown on the Policies Map, where it is consistent with relevant policies of this Local Plan and the Bishop's Castle Neighbourhood Plan. It will also be complemented by appropriate cross-subsidy and exception development, where it is consistent with the Bishops Castle Neighbourhood Plan and relevant policies of this Local Plan.*
5. *New employment development will be delivered through the saved SAMDev employment allocation and any employment development allocated within the Bishop's Castle Neighbourhood Plan. This will be complemented by any other appropriate small-scale employment windfall development, where it is consistent with relevant policies of this Local Plan and the Bishop's Castle Neighbourhood Plan.*
6. *New retail development will be directed towards the town centre, in line with Policy DP9, where it will benefit from and contribute to the historic character of the town.*
7. *Saved SAMDev Plan site allocations are listed in Appendix 2 of this document and identified on the Policies Map. Development of site allocations should be in accordance with specified development guidelines and approximate site provision figures and all other relevant policies of this Local Plan.*
8. *Development proposals will be expected to positively respond to policies and guidelines identified within the Bishop's Castle Neighbourhood Plan, any other relevant community-led plans and any masterplans that are adopted by Shropshire Council.*

36. The emerging Local plan also includes the following:

*Main town centre uses will also be supported within and adjoining the existing high streets of the following Key Centres: ... Bishops Castle...<sup>22</sup>*

*The nature and scale of future development is designed to maintain and enhance this small settlement's role as a Market Town.<sup>23</sup>*

37. The ELP's Appendix 5: Residential Development Guidelines and Residential Supply, Sch 5(i) includes the following in the row related to Bishop's Castle Key Centre:

*Residential Development Guideline: 150*

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<sup>22</sup> Page 98, part of policy DP9 (2).

<sup>23</sup> Page 171, part of para 5.20.

*Total Residential Completions. (2016/17, 2017/18 and 2018/19): 8*

*Total Residential Commitments (1) - Sites with Planning Permission or Prior Approval (as at 31<sup>st</sup> March 2019): 62*

*Total Residential Commitments (2) - Saved SAMDev Plan Allocations without Planning Permission (as at 31<sup>st</sup> March 2019): 40*

*Total Residential Commitments (3) - Local Plan Allocations: 0*

*Windfall Allowance: 40*

38. Other relevant policies are noted on pages 17 to 19 of the draft NDP.

39. To the extent that the Site Allocations and Management of Development Plan. (“SAMDev”) is not superseded, the ELP is to be read with it. This includes two allocations: Bishop’s Castle Schoolhouse Lane East (BISH013), Residential; and Land at Bishops Castle Business Park, Phase 2, Employment.

40. The ELP’s Policy DP13. Development in the River Clun Catchment (with SC’s proposed minor modifications) states:

*1. To protect the integrity of the River Clun Special Area of Conservation (SAC) and to comply with the Habitats Regulations and policy DP12, development within the catchment of the River Clun will only be permitted if it can demonstrate either nutrient neutrality or a reduction in nutrient levels.*

*2. All measures relied on to deliver either nutrient neutrality or a reduction in nutrient betterment levels must demonstrate with sufficient certainty that they:*

*a Will achieve either nutrient neutrality or a reduction in nutrient levels; and*

*b. Can be secured and funded for the lifetime of the development’s effects; and*

*c. Do not compromise the ability of the River Clun SAC to reach favourable conservation status.*

41. I note that NE has put forward an alternative wording for policy DP13. The differences between the wordings do not affect my recommendations. It would therefore not be appropriate for me to express an opinion on what is a matter for the ELP inspectors.

42. The ELP examination may of course result in these and other relevant policies in the emerging local plan being removed or modified. Nothing that I write is intended to seek to influence the inspectors, who have the advantage of considering Shropshire as a whole and who apply a different test to the basic conditions. On the basis of the evidence available to me, subject to my not needing to resolve the differences between SC and NE on policy DP13, I consider it more likely than not that the relevant parts of the ELP reflect need and adequately

address sustainable development. If the emerging Local Plan process reaches a different conclusion, PCPA s38(5)<sup>24</sup> will result in the relevant parts of its policies prevailing.

## **8. Nutrient neutrality**

43. Nutrient neutrality is a matter of great concern, both in the examination of the ELP and in this examination. The town of Bishop's Castle and all adjoining land is in the River Clun's catchment. Part of the River Clun is an SAC notified for the presence of Freshwater Pearl Mussels<sup>25</sup>. The Habitat Regulation Assessment for the ELP shows that development in the River Clun catchment is likely to have an adverse effect on the River Clun SAC. At present there are no mitigation measures which would remove this effect, but it is hoped that these will come forward during the draft NDP period. It seems likely that the higher standards for nutrient significant plant introduced by the Levelling-up and Regeneration Act 2023 with effect from 1st April 2030 will not in themselves be sufficient to solve the problem.<sup>26</sup>

44. Consequently, to comply with the requirements of the Habitat Regulations and in accordance with the emerging Local Plan's Policy DP13, development in Bishop's Castle is at present restricted to that which is either nutrient neutral in terms of its effect on the SAC or results in a betterment. This means that no major development of housing is at present deliverable and this includes proposed developments that were considered to be deliverable before the effects of the Dutch Nitrogen Judgment<sup>27</sup> were understood.

45. As things stand NE have raised objections to the current approach in the ELP and these are yet to be resolved through its Examination process. The position is captured in the Statement of Common Ground between the parties and in NE's reps to the Regulation 19 version of the Local Plan, each of which I have read.

46. More recently the Council commissioned Royal HaskoningDHV to undertake additional work with regard to identifying potential mitigation measures. This has been submitted to the Examination and I have read it. The ELP Inspectors have also sought clarification on the current position between the Council and NE as a result of this updated evidence, with discussions ongoing.

## **9. The Nature of the Neighbourhood Area**

47. In considering the contents of the Draft NDP I must consider the nature of the neighbourhood area. Its gist is adequately described in the Draft NDP and its appendices. It has

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<sup>24</sup> *"If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan."*

<sup>25</sup> *Margaretifera margaretifera.*

<sup>26</sup> See s168 of the 2023 Act which amends Part IV Chapter 1 of the Water Industry Act 1991.

<sup>27</sup> Above, para 29.

a population of fewer than 2,000 people. Its extensive range of services facilities for such a small town is in part due to its providing services and facilities for a large, remote, rural part of Shropshire. The area contains the whole of the town of Bishop's Castle together with nearby countryside. There is no other settlement in the parish, most of which is open countryside. Much of this countryside is some distance from the town.

48. The Shropshire Hills National Landscape (formerly and in law the Shropshire Hills Area of Outstanding Natural Beauty) lies to the south, east and north of the town.

49. The town of Bishop's Castle is one of eleven "Key Centres" in the emerging Local Plan.<sup>28</sup>

50. Much of the town centre is a Conservation Area. It has narrow streets which predate the invention of motor vehicles and which create serious problems for traffic. I note the parking and traffic shown on the photographs in the Draft Plan and its Appendix 1. Nobody has suggested that these are in any way unfairly selective or misleading and I have no reason to doubt that they fairly portray a serious problem. The Castle site is a scheduled monument and there are 86 listed buildings (5 of which are grade II\*).

51. There is no nationally designated nature conservation site in the parish, the nearest being Coed Pentre (near Pentre) to the west of the parish in Wales. There is one locally designated site within the area: Sadler's Little Wood, a Local Wildlife Site and an area of ancient woodland.

52. Facilities within the parish include a theatre, swimming pool, a community hospital, sports facilities (sports centre, football, rugby, tennis and bowls clubs), library, IT centre, five public houses, a Community College, a primary school; a children's nursery school, a fire station/service, a church hall, medical and dental practices. The cricket club to the north of the town and just outside the parish serves the town.

53. Bishop's Castle is served on Mondays to Saturdays by the Minsterley Motors 532/533 bus service between Bishop's Castle and Shrewsbury via Minsterley and Pontesbury.<sup>29</sup> The parish contains an extensive network of public rights of way and has an annual Walking Festival. Sustrans National Route 44 runs through the parish.

## **11. The contents of the Draft NDP**

*Page 12*

54. Since 22<sup>nd</sup> November 2023 Areas of Outstanding Natural Beauty have adopted a new name 'National Landscapes' and are in the process of rebranding. However, since Area of

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<sup>28</sup> Page 6 paragraph 2.5 and page 14.

<sup>29</sup> There is also the 745A Pontesbury to Clun, one bus in each direction on Mondays and Fridays only.

Outstanding Natural Beauty remains the name in law,<sup>30</sup> I have not considered it necessary to recommend modifying ‘Area of Outstanding Natural Beauty’ and ‘AONB’ wherever they appear in the draft Plan.

55. In the interests of clarity, I am recommending a modification where the phrase first appears.

Recommended modification 1

*Page 12, para 36*

**After “Area of Outstanding Natural Beauty”, insert “(“AONB”, currently being rebranded as National Landscape)”.**

*Page 14*

56. Basic condition (f) now refers to ‘retained EU obligations’. Paragraph 46 should be corrected to reflect this.

Recommended modification 2

*Page 14, para 46*

**In the fourth indent, insert “retained” before “EU obligations”.**

*Page 15*

57. Paragraph 49’s third sentence is now out of date and needs to be replaced. My concern is accuracy. Should the anticipated adoption date change, specifying this should not be considered as contrary to the intention behind my recommendation.

Recommended modification 3

*Page 15, para 49*

**Replace the third sentence with “The emerging Local Plan is at Examination and it is anticipated that adoption could occur in late 2024”.**

*Pages 19 to 24*

58. These pages deal with the important matter of residential land allocation. The draft NDP prudently does not seek to rely on windfall housing for future provision.

59. My consideration of this starts with the fact that, as a result of nutrient neutrality problems, no land for major development of housing in or next to the town of Bishop’s Castle is deliverable now and that includes land that was considered to be deliverable before the

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<sup>30</sup> Countryside and Rights of Way Act 2000 Part IV.

consequences of the Dutch Nitrogen case were known. This results from law. Developing a major development of housing without resolving the nutrient neutrality issue is at present impossible. However, given the efforts that are being made to resolve the problems, there are good grounds for considering it likely that it will be resolved within the Draft NDP period. I have concluded that, notwithstanding the problem, it is, in the circumstance where the problem applies to every major development of housing, reasonable and helpful for the draft Plan to allocate a site in advance of defining mitigation measures, while making it clear that development cannot proceed without appropriate measures.

60. The Strategic Environmental Assessment for the Bishop's Castle Neighbourhood Development Plan prepared by AECOM considered the selection of the site allocated in the draft NDP (BC1). AECOM's comments include:

*“an independent and objective assessment of the various sites available for development in the vicinity of the town was undertaken on behalf of the Neighbourhood Plan Steering Group during 2020.”*<sup>31</sup>

*“The site however is in good proximity to the services and facilities in Bishop's Castle town centre, which is approximately 700m distant.”*

*“The site is not within or in the direct setting of the Shropshire Hills Area of Outstanding Natural Beauty (AONB), which is located 1.2km to the east. Some longer distance views to and from the AONB are possible, although these are likely to be very limited, and should be seen in the context of the existing developed part of the town (including with regards to the existing housing site allocation to the south at BISH013).”*

61. I have no reason to doubt the independent assessments that were carried out by appropriately qualified and experienced people on behalf of AECOM and Andrea Pellegram Ltd.<sup>32</sup> I nonetheless checked BIS013 and BC1 viewing them close up from: the public footpath that runs from B4385 (Castle Green) to the A488 near White Lodge, the A488 and the B4384 (Schoolhouse Lane). I also drove along Stank Lane. For the most part there was no visibility towards BIS013 and BC1 because the lane is in a cutting. I got out of my car at entrances to fields. There were distant views of BIS013 and BC1 from these. I am satisfied that, provided care is taken over layout, height and other aspects of design, and landscaping, 40 dwellings can be provided without causing significant harm to views from the AONB. This will be easier

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<sup>31</sup> Para 4.11. The person who carried out this assessment was Andrea Pellegram MRTPI, who has substantial experience in planning in both the private and public sector and whose experience includes neighbourhood planning.

<sup>32</sup> Other than an error of no importance in this examination as to the location of the Coed Pentre SSSI. On page 40 of the AECOM report.

with the downsizing, bungalows and 2-3 bedroom houses that the draft NDP's paragraph 153 show to be desired and that paragraph 157 and policy BC7 support.

62. Site BC1 would have the important advantage of less traffic impact on the sensitive Conservation Area than a site to the west or the northwest of the town. The proximity of the site to the only surgery in the town would be an advantage, particularly to the elderly and to disabled people.

63. I am satisfied that neither the allocation of site BC1, nor the absence of any other allocation involves a breach of a basic condition or of Convention rights.

*Page 21*

64. Paragraph 76 includes "However, the government has made clear that a NE mitigation scheme will be in place by 2030". While I'm am prepared to assume the Levelling-up and Regeneration Act 2023 s168 commences and remains unaltered, that may not be sufficient to resolve the nutrient neutrality problems of the River Clun. Hence it is possible that the problems will not be resolved by 2030, in which case development should not start then. It is also possible that they will be resolved before 2030, in which case there is no need to delay development until then.

Recommended modification 4

*Page 21, para 76*

**Replace the second and third sentences with "SC and NE are actively seeking to resolve the issue and it is anticipated that it will be resolved during the NDP period."**

*Page 23*

65. Policy BC1(b) requires modification for the same reason. The existing criterion (b) should be removed. In addition, the policy should seek to avoid impact on the Shropshire Hills AONB.

Recommended modification 5

*Page 23, policy BC1*

**Replace (b) with "The layout, height and other aspects of design, and landscaping shall be such as to avoid significant harm to views from the Shropshire Hills Area of Outstanding Natural Beauty. Any application for development shall be supported by a Landscape Visual Impact Assessment that address views from the Shropshire Hills Area of Outstanding Beauty."**

*Page 27*

66. British English should be used in documents whose legal status is wholly or mainly in England. It also better to have consistency in spelling.

Recommended modification 6

*Page 27, sensitive site E*

**Replace “traveler” (with a single ‘l’) with “traveller (with 2 ‘l’s).**

*Page 29*

67. If a restriction is to be placed on land, it must be clearly identified. This has not occurred in the case site H on Figure 4, where only part of the boundary is shown. The site could not be extended beyond the map without further consultation. Neither the cost, nor the delay that would result from this are justified.

Recommended modification 7

*Page 29, Figure 4*

**Complete a boundary for site H using the border of the figure in its bottom left corner.**

*Page 31*

68. Paragraph 108 isn’t accurate in referring to the “the north western half of the town”.

Recommended modification 8

*Page 31, para 108*

**Replace “half” with “part”.**

*Pages 36 - 37*

69. Paragraphs 122 should be altered to reflect the law accurately. It isn’t accurate to say that being on public land makes something subject to planning control. Indeed, in some circumstances such as permitted developments in respect of highways, there may be the opposite effect.

Recommended modification 9

*Page 36, para 122*

**Replace the second sentence with “However removal of some assets would not be development and would not subject be to listed building or conservation area control.”**

Recommended modification 10

*Pages 36 -37, para 123*

**Replace the paragraph with “Works to other assets would be development or covered by listed building or conservation area control.”**

*Page 37*

70. An NDP cannot tell a principal council what it should do.

Recommended modification 11

*Page 37, para 127*

**Replace the last sentence of A with “It is hoped that the five assets listed under Sections 1 and 2 of Appendix 3 will be added to the Shropshire Council Local List.”**

*Pages 38 to 44*

71. These pages consider 16 proposed local green spaces (“LGSs”). The explanation for their selection is in Table 3.

72. The NPPF provides for Local Green Spaces in its chapter 8, which is headed “Promoting healthy and safe communities”. Under the sub-heading “Open Spaces and Recreation”, its paragraphs 105 to 107 state:

*105. The designation of land as Local Green Space through ... 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.*

*106. 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.*

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

73. PPG chapter 37 also provides guidance on LGSs. Among other things it states:

*How does Local Green Space designation relate to development?*

*Designating any Local Green Space will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making.*<sup>33</sup>

*What about public access?*

*Some areas that may be considered for designation as Local Green Space may already have largely unrestricted public access, though even in places like parks there may be some restrictions. However, other land could be considered for designation even if there is no public access (eg green areas which are valued because of their wildlife, historic significance and/or beauty).*

*Designation does not in itself confer any rights of public access over what exists at present. Any additional access would be a matter for separate negotiation with land owners, whose legal rights must be respected.*<sup>34</sup>

*Does land need to be in public ownership?*

*A Local Green Space does not need to be in public ownership. However... the qualifying body... should contact landowners at an early stage about proposals to designate any part of their land as Local Green Space. Landowners will have opportunities to make representations in respect of proposals in a draft plan.*<sup>35</sup>

74. Paragraphs 101 to 103 and the PPG are central to any consideration of whether land should be designated as an LGS. They should be followed unless there is a sufficient good reason not to do so and none is apparent to me. In considering the proposed LGS designations, I have borne in mind the judgment Court of Appeal in R. (Lochailort Investments Ltd) v Mendip District Council.<sup>36</sup> The phrase in paragraph 101 “*capable of enduring beyond the end of the plan period*” was given specific consideration. While this is a less demanding policy than applies to Green Belt designation where the stronger “*permanently*” is used, it is still important.

75. Footnote 7 and page 134 need updating to correspond with the current NPPF.

Recommended modification 12

*Page 38 footnote 7*

**Replace “99-101” with “105-107”.**

<sup>33</sup> PPG Reference ID: 37-007-20140306.

<sup>34</sup> PPG Reference ID: 37-017-20140306.

<sup>35</sup> PPG Reference ID: 37-019-20140306.

<sup>36</sup> [2020] EWCA Civ 1259, 2<sup>nd</sup> October 2020.

*Page 39 paragraph 134*

**Replace “2021” with “December 2023”.**

76. I have considered each proposed LGS and the reason for their designation in the papers that I have seen. Nos. 5, 14, 15 and 16 are part of the Primary School or the Community College. Loss of open space at educational facilities comes under the control of the Secretary of State for Education, who is well placed to balance different factors including education needs. Within the Plan period, new needs, which would be prevented by an LGS designation, may emerge. Preventing the meeting of those needs could be inconsistent with planning for sustainable development. It is better to leave matters to the Secretary of State than to impose restrictions that would not otherwise apply to educational facility. All other proposed LGSs satisfy the requirements for inclusion in an NDP as an LGS.

Recommended modification 13

*Page 40, Figure 6*

**In respect of 5, 14, 15 and 16, remove the colouring, photographs lines and text. Renumber the other sites appropriately.**

*Pages 41-44*

**Remove the rows respect of 5, 14, 15 and 16 and renumber the other sites appropriately.**

*Page 44*

**Delete the final sentence.**

*Page 58*

77. Paragraph 161 is out of date. The ELP has not yet been adopted. As with recommended modification 3, my concern is accuracy. Should the anticipated adoption date change, specifying this should not be considered as contrary to the intention behind my recommendation.

Recommended modification 14

*Page 58, paragraph 161*

**Replace “before its adoption in October 2021 at the earliest” with “before its adoption which is expected to be in late 2024”.**

*Page 59*

78. A small typing mistake needs to be corrected.

Recommended modification 15

*Page 59, paragraph 167*

**Replace “highwy” with “highway”.**

Appendix 1

*Page 3*

79. Paragraphs 4 and 5 should accurately state the development plan.

Recommended modification 16

*Appendix 1, page 3, paragraph 4*

**Replace the second sentence of paragraph 4 with “The Development Plan includes the Shropshire Local Development Framework, Adopted Core Strategy, March 2011 and the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan, which was adopted in December 2015.”**

Appendix 2

*Page 2*

80. Paragraph 2 should accurately state the development plan.

Recommended modification 17

*Appendix 2, page 2, paragraph 2*

**Replace the second sentence of paragraph 4 with “The Development Plan includes the Shropshire Local Development Framework, Adopted Core Strategy, March 2011 and the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan, which was adopted in December 2015.”**

81. Paragraph 7 contains a minor typing error.

Recommended modification 18

*Appendix 2, page 2, paragraph 7*

**Replace “shame” with “shape”.**

*Page 3*

82. Paragraph 12 contains a minor typing error.

Recommended modification 19

*Appendix 2, page 3, paragraph 12*

**Replace “where” with “were”.**

Appendix 3

*Pages 20, 25 26*

83. The Vaults,<sup>37</sup> 2 Market Square<sup>38</sup> and the Town Hall<sup>39</sup> are listed buildings and as such designate heritage assets. They should not be included in a schedule related to non-designated heritage assets.

Recommended modification 20

*Appendix 3, pages 20, 25 and 26*

**Remove the whole of the entries relating to the Vaults, 2 Market Square and the Town Hall.**

**11. Updating**

84. It may be that certain passages in the draft NDP need updating. Nothing in this report should deter or delay appropriate updating prior to the referendum in respect of incontrovertible issues of primary fact. In particular if the basis for any proposed non-designed heritage has changed substantially, e.g. because a mural has been painted over or a sculpture has been removed, it would be appropriate to remove references to these from both the text of the draft Plan and from the Plan on page 6 of Appendix 3.

**12. The Referendum Area**

85. I have considered whether the referendum area should be extended beyond the designated plan area.<sup>40</sup> However, I can see no sufficient reason to extend the area and therefore recommend that the referendum area be limited to the neighbourhood area, the parish of Bishop’s Castle.

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<sup>37</sup> List Entry Number: 1367216.

<sup>38</sup> List Entry Number: 1175102.

<sup>39</sup> List Entry Number: 1054552.

<sup>40</sup> PPG Reference ID: 41-059-20140306.

### **13. Summary of Main Findings**

86. I commend the Draft NDP for being clear, intelligible and well written, and for the great thought and effort that has gone into its creation. It has struck the right balance between intelligibility to a lay person and the use of technical words that ensure precision.

87. I recommend that the Draft NDP be modified in the terms specified in Appendix A to this report to meet basic conditions and to correct errors. I am satisfied with all parts of the Draft NDP to which I am not recommending modifications.

88. With those modifications, the Draft NDP will meet all the basic conditions and human rights obligations. Specifically:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it will be appropriate to make the NDP;
- The making of the NDP will contribute to the achievement of sustainable development;
- The making of the NDP will be in general conformity with the strategic policies contained in the development plan for the neighbourhood area;
- The making of the NDP will not breach, and will not otherwise be incompatible with, retained EU obligations;
- The making of the NDP will not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017; and
- The modified Draft NDP will in all respects be fully compatible with Convention rights contained in the Human Rights Act 1998.

89. I recommend that the modified NDP proceed to a referendum, the referendum area being the area of the Draft NDP, *i.e.*, the parish of Bishop's Castle.

Timothy Jones, Barrister, FCI Arb,  
Independent Examiner,  
No 5 Chambers  
16<sup>th</sup> January 2024.

## **Appendix A: Recommended Modifications**

### **Recommended modification 1**

Page 12, para 36

After “Area of Outstanding Natural Beauty”, insert “(“AONB”, currently being rebranded as National Landscape)”.

### **Recommended modification 2**

Page 14, para 46

In the fourth indent, insert “retained” before “EU obligations”.

### **Recommended modification 3**

Page 15, para 49

Replace the third sentence with “The emerging Local Plan is at Examination and it is anticipated that adoption could occur in late 2024”.

### **Recommended modification 4**

Page 21, para 76

Replace the second and third sentences with “SC and NE are actively seeking to resolve the issue and it is anticipated that it will be resolved during the NDP period. ”

### **Recommended modification 5**

Page 23, policy BC1

Replace (b) with “The layout, height and other aspects of design, and landscaping shall be such as to avoid significant harm to views from the Shropshire Hills Area of Outstanding Natural Beauty. Any application for development shall be supported by a Landscape Visual Impact Assessment that address views from the Shropshire Hills Area of Outstanding Beauty.”

### **Recommended modification 6**

Page 27, sensitive site E

Replace “traveler” (with a single ‘l’) with “traveller (with 2 ‘l’s).

### **Recommended modification 7**

Page 29, Figure 4

Complete a boundary for site H using the border of the figure in its bottom left corner.

### **Recommended modification 8**

Page 31, para 108

Replace “half” with “part”.

Recommended modification 9

Page 36, para 122

Replace the second sentence with “However removal of some assets would not be development and would not subject be to listed building or conservation area control.”

Recommended modification 10

Pages 36 -37, para 123

Replace the paragraph with “Works to other assets would be development or covered by listed building or conservation area control.”

Recommended modification 11

Page 37, para 127

Replace the last sentence of A with “It is hoped that the five assets listed under Sections 1 and 2 of Appendix 3 will be added to the Shropshire Council Local List.”

Recommended modification 12

Page 38 footnote 7

Replace “99-101” with “105-107”.

Page 39 paragraph 134

Replace “2021” with “December 2023”.

Recommended modification 13

Page 40, Figure 6

In respect of 5, 14, 15 and 16, remove the colouring, photographs lines and text. Renumber the other sites appropriately.

Pages 41-44

Remove the rows respect of 5, 14, 15 and 16 and renumber the other sites appropriately.

Page 44

Delete the final sentence.

Recommended modification 14

Page 58, paragraph 161

Replace “before its adoption in October 2021 at the earliest” with “before its adoption which is expected to be in late 2024”.

Recommended modification 15

Page 59, paragraph 167

Replace “highwy” with “highway”.

Recommended modification 16

Appendix 1, page 3, paragraph 4

Replace the second sentence of paragraph 4 with “The Development Plan includes the Shropshire Local Development Framework, Adopted Core Strategy, March 2011 and the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan, which was adopted in December 2015.”

Recommended modification 17

Appendix 2, page 2, paragraph 2

Replace the second sentence of paragraph 4 with “The Development Plan includes the Shropshire Local Development Framework, Adopted Core Strategy, March 2011 and the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan, which was adopted in December 2015.”

Recommended modification 18

Appendix 2, page 2, paragraph 7

Replace “shame” with “shape”.

Recommended modification 19

Appendix 2, page 3, paragraph 12

Replace “where” with “were”.

Recommended modification 20

Appendix 3, pages 20, 25 and 26

Remove the whole of the entries relating to the Vaults, 2 Market Square and the Town Hall.

## **Appendix B: Abbreviations**

The following abbreviations are used in this report:

AONB	Area of Outstanding Natural Beauty
BCTC	Bishop's Castle Town Council
Convention	European Convention on Human Rights
Draft NDP	Submission draft of the Bishop's Castle Neighbourhood Development Plan 2019 - 2038
ELP	emerging Local Plan
EU	European Union
General Regulations	Neighbourhood Planning (General) Regulations 2012 (as amended)
LGS	local green space
NDP	Neighbourhood Development Plan
NE	Natural England
NPPF	National Planning Policy Framework (19 <sup>th</sup> December 2023)
para	paragraph
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
PPG	national Planning Practice Guidance
s	section
SAC	Special Area of Conservation
SC	Shropshire Council
Sch	Schedule
TCPA	Town and Country Planning Act 1990 (as amended)

Where I use the verb '*include*', I am not using it to mean '*comprise*'. The words that follow are not necessarily exclusive.