

**CLIFFE AND CLIFFE WOODS NEIGHBOURHOOD PLAN 2021-2037**

**SUBMISSION VERSION**

**REPORT OF EXAMINATION**

**By**

**Christopher Lockhart-Mummery KC**

**Independent Examiner**

**January 2023**

## **SUMMARY**

I was appointed in July 2022 to undertake the examination of the Cliffe and Cliffe Woods Neighbourhood Plan 2021-2037.

The neighbourhood area was designated by the Medway Council on 16 June 2015 for the whole of the Parish. The neighbourhood area is shown on Map 1 of the Plan.

A consultation statement (revised July 2021) sets out the consultation which was undertaken. I am satisfied that the level of consultation amply met the relevant statutory requirements.

I decided that the statutory condition for holding a hearing did not exist, and the examination proceeded on the basis of documents only, together with my visit to the area.

I conclude that, overall, the Plan is well-researched, well-evidenced, and clearly laid out and written. If made, the Plan will become a key part of the statutory development plan.

The high quality of the Plan has resulted in the very limited number of instances where I have recommended Modifications.

I recommend that, subject to those modifications being made, the Plan proceed to referendum.

I see no reason to recommend that the area covered by the referendum should differ from the neighbourhood area.

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## **Introduction**

1. I was appointed by Medway Council (MC) with the support of the Cliffe and Cliffe Woods Parish Council (PC), the qualifying body to undertake the examination of the submission draft of the Cliffe and Cliffe Woods Neighbourhood Plan 2021-2037 (the NP).
2. I am a King's Counsel with over 40 years' experience of planning law and practice. I am a member of the NPIERS Panel of Independent Examiners. I am independent of any local connections or interests, and have no conflicts of interest.

## **Cliffe and Cliffe Woods Parish in Context**

3. On 16 June 2015 MC designated a neighbourhood area for the whole of the parish of Cliffe and Cliffe Woods. The NP area is shown on Map 1 of the NP (page 4).
4. The Parish sits on the Hoo Peninsula in the Greater Thames Estuary, which is one of the most important areas for bird life in Europe. The Parish is described on page 5 of the NP in these terms:

*The location and character of the Neighbourhood Plan area, which covers the whole of the parish is a predominantly rural area which provides both important opportunities for, and constraints to, Neighbourhood Planning proposals and policies to guide future development within the area...The Parish is one of the largest in the historic county of Kent and has two villages: the ancient village of Cliffe which is believed to be one of, if not the oldest, settlement on the Hoo Peninsula, with human evidence from the Mesolithic period continuing to the present day. Cliffe has a compact built form with a variety of vernacular architectural styles and materials.*

*The more recent village of Cliffe Woods, is essentially a 20<sup>th</sup>-century development which started as a turn of the century "Plot Lands" development in the proximity of the B2000. It was developed as a mixture of speculative larger scale development and self-build which has given it a more open form than Cliffe but is similarly mixed in form and materials. The Neighbourhood*

*Plan area also has several smaller hamlets such as Cooling Street.*

### **The Medway Local Plan (LP)**

5. The LP was adopted in 2003. On 21 September 2007 the Secretary of State issued a Saving Direction pursuant to paragraph 1 of Schedule 8 of the Planning and Compulsory Purchase Act 2004 “saving” the great majority of the LP policies until replacement policies in a new Local Plan are adopted. There being – at the present time – no adopted new Local Plan, these policies – while some twenty years old – remain the statutory LP policies.
6. MC has experienced – and is experiencing – considerable difficulties in the progression of a replacement LP. MC has carried out three rounds of formal consultation at the Regulation 18 stage of the emerging LP. There was an initial Regulation 18 “Issues and Options” consultation in early 2016. A further consultation on “Development Options” was held in 2017. A further consultation on a Development Strategy document took place in 2018.
7. On 18 October 2022 MC adopted a revised Local Development Scheme. There is now to be a further Regulation 18 consultation on Development Alternatives in summer/autumn 2023. Publication of a draft LP pursuant to Regulation 19 is planned for early 2024. Submission for examination is hoped for in summer 2024 with adoption (subject to the examination) in autumn 2025.
8. I asked MC and PC whether, notwithstanding the great delays in progress on the emerging LP, they wished to pursue the NP through this examination, and I was informed that they did.

### **The Evolution of the NP**

9. The Neighbourhood Planning (General) Regulations 2012 set out a legal requirement at Regulation 15 that a parish council submitting a neighbourhood

plan proposal to the local planning authority must include certain documents, amongst which is a “consultation statement”. The Consultation Statement (CS) Parts I and II, revised July 2021, was published.

10. Following designation of the neighbourhood area, the PC set up a working group to oversee the preparation of the NP. The process of consultation is fully reported in the CS. Following a lengthy period of consultation and NP preparation, formal Regulation 14 consultation was carried out from 1 December 2020 to 26 January 2021. Section 8 of Part II of the CS sets out the representations made at this stage, and the modifications to be made in response.
11. I am quite satisfied that the level of consultation amply met the relevant statutory requirements.
12. Regulation 16 consultation was carried out between 25 March 2022 and 20 May 2022. Five sets of representations were submitted, from Kent County Council, National Grid, Natural England, Port of London Authority and Trenport Investments Limited. I have carefully reviewed these representations.

### **SEA and HRA**

13. The PC requested an SEA and HRA screening opinion in its pre-submission NP. In January 2021 MC published its Screening Report Statement of Reasons.
14. In relation to SEA, and in very brief summary, the Statement noted that the NP does not allocate sites for housing, the sustainable nature of any development, and the localised nature of any environmental effects. It concluded that the NP is not likely to have any significant effects on the environment.
15. In relation to HRA, the Statement recognised the proximity of a number of Special Protection Areas and Special Areas of Conservation. It concluded that the NP was not likely to cause a significant effect on any European site,

including cumulatively with other plans or proposals, and that appropriate assessment was not required.

16. I see no reason to doubt the validity of these negative screening opinions.

### **The Examination Process**

17. I was appointed in July 2022. The examination formally commenced on 10 November 2022. I was supplied with hard copies of key documents (including the Regulation 16 representations), and had electronic access to all other and background documents. I have carefully reviewed all of these.
18. On 21 December 2022 I notified MC that the statutory conditions for the holding of a hearing did not exist, and that the examination would proceed on the basis of the documents only, and my visit to the area. I also provided a provisional timetable for the completion of the examination. I carried out an unaccompanied visit to the area on 1 January 2023.

### **Basic Conditions - General**

19. Schedule 4B paragraph 8 to the Town and Country Planning Act 1990 provides that a neighbourhood plan meets the Basic Conditions if it meets those specified in paragraphs (a), (d), (e), and (f). One further basic condition has been prescribed under paragraph 8(2)(g), as follows:

*“The making of the Neighbourhood Development Plan is not likely to have a significant effect on a European Site...or a European Off-shore marine site...either alone or in combination with other plans or projects”.*

20. As the courts have frequently emphasised, and as I do now, the role of a Neighbourhood Plan Examiner is tightly constrained. It is (apart from dealing with other statutory requirements referred to at paragraphs 22-26 below) confined to considering compliance with the basic conditions. The Examiner cannot consider anything else: paragraph 8(6). Therefore the Examiner is not

able to consider whether – as would be the case for a local plan – the NP is “sound” (in accordance with paragraph 35 of the NPPF). Accordingly, the Examiner can only consider the content of the NP (the planning judgments made, the choices made, the views regarded as important etc.) insofar as those matters impact on the basic conditions. This inevitably limits, significantly, the extent to which it is proper to respond to what I might call wider “planning merits” points made by representors.

21. I address the criteria in the basic conditions where relevant as I assess, below, the contents of the NP.

### **Other statutory requirements**

22. These are set out in the Town and Country Planning Act 1990 (as amended) and sections 38A-38C of the Planning and Compulsory Purchase Act 2004.
23. The NP was prepared and submitted for examination by a qualifying body: section 38A.
24. It has been prepared for an area designated under section 61G of the 1990 Act.
25. The NP meets section 38A(2) in that it sets out policies in relation to the development and use of land in the neighbourhood area.
26. Section 38B requires the NP to specify the period for which it is to have effect. In its submission form, the NP does not do so. I was informed that the plan period is intended to be 2022-2040. I **Recommend** that modifications be made to specify this period on the front cover, on the header to all pages of the NP, and that an additional paragraph be inserted at the end of page 3 to state that the period of the NP is 2022-2040.

Reverting to section 38B, the NP does not include provisions about development which is excluded development, and does not relate to more than one neighbourhood area.



### **Assessment of NP**

27. As indicated in paragraph 20 above, the remit of this examination is significantly more limited than is the case for a local plan examination, but is confined to compliance with the above statutory requirements. Where a particular policy and/or supporting text does not raise any such compliance issues I shall, save exceptionally, make no comment. My comments and consequent recommendations therefore relate to passages where Modifications are required.
28. The penultimate paragraph on page 3 (starting “The development of...”) reflects the historic position in relation to the evolution of the emerging LP. National policy and advice require Plans to be up-to-date. This text should be updated in accordance with the LDS October 2022, and I so **Recommend**.
29. The NP throughout refers to the Census 2011. I am uncertain as to which (if any) parts of the Census 2021 have so far been published and which relate to the Census references made. I **Recommend** that a review of this aspect be undertaken and any appropriate references to the Census 2021 be made (for the same reason as above).
30. There is a related point. I do not know the extent to which references to technical and other supporting evidence now need to be updated. By way of one example only, the penultimate paragraph on page 6 refers to the Medway Council January 2017 Infrastructure Position Statement. I would be surprised if this has not been updated. I make the same **Recommendation** as in paragraph 29 above. This may require a considerable number of changes throughout the NP.
31. Again, there are references in various parts of the NP to the NPPF 2019. The current version is dated 2021. These references (including paragraph numbers) need to be updated and I so **Recommend**.

32. Policy SUSDEV3 relates to Changes of Use. The second part of the policy reads: *Changes of use will need to be justified with evidence of their non-viability and demonstrate that every effort has been made to market them in their current use.* This is confusing. I had an exchange of emails with MC and PC explaining my concerns. In essence, Policy SUSDEV2 sensibly and adequately addresses the resistance to the loss of specified local commercial uses. Policy SUSDEV3 encourages (again, sensibly) the further provision of such uses. I regard the second paragraph of SUSDEV3 as confusing and unnecessary. The parties agreed with this assessment. I therefore **Recommend** that this paragraph be deleted. This is to accord with national policy and guidance as to the clarity of NP's.
33. Policy SUSDEV4 relates to Character. I make two minor **Recommendations**, both to ensure precision and proper grammar. The reference in line 1 of the Policy to "Greenfield site land" should be deleted and replaced by "greenfield land". In the first paragraph of the supporting text, the three references to "its" should be replaced by "their".
34. In response to the representation of Natural England, I agree that Policy SUSDEV5: Infrastructure Sufficiency Statements should include reference to the importance of green infrastructure. Accordingly, in line 2 I **Recommend** that after "infrastructure sufficiency" there be added "(including green infrastructure)". This is to accord with national policy and guidance.
35. There are several updates required on page 17. In the first paragraph, the latest data on planning applications should be substituted. In the second paragraph, all references should be brought up to date. The same goes for the last two paragraphs on the page. I so **Recommend**.
36. Likewise, on page 18, I assume that there is a more recent "Housing Needs Survey than that of 2017. I **Recommend** updating, as appropriate.
37. In Policy H1, in the interests of clarity mixed uses should be "expected" or "encouraged" rather than "requested", and I so **Recommend**.

38. In relation to Policy H2: Housing Infill, in agreement with the representation of Natural England I **Recommend** the addition at the end of the Policy of: *Providing they will not result in impact to designated nature conservation sites.* This is to accord with legal requirements and national policy and guidance relating to European sites.
39. On page 22, and as before, there are references to outdated evidence base documents. These references require updating and I so **Recommend**. The same goes for pages 24, 25 and 26.
40. In relation to Policy CF1:
- (1) the three maps which follow should be titled CF1;
  - (2) the map on page 29 appears to show local shops/cafes outside the plan area – if that is correct they should be deleted;
  - (3) the outdoor sports areas on page 30 are illegible.
- The above matters should be attended to by appropriate revisions, to ensure clarity, and I so **Recommend**.
41. In relation to Policy CF3, there appears to be significant duplication with Policy CF1. They cannot both stand as they are. I **Recommend** either that they be amalgamated, or revised to avoid duplication.
42. In relation to the environmental passages in the NP, I make two comments, both in the interests of clarity and being up-to-date. First, I **Recommend** that the Public Open Space Maps - (page 39-40) be clarified – for example, it is difficult to tell the difference between the designation of Allotments and Outdoor Sports. Second, in Policy E and H2: Biodiversity net gain is to be measured by BS42020. In agreement with the representation of Kent County Council (page 3) the relevant sentence in the Policy should be deleted and replaced by: *Developments must demonstrate a measurable biodiversity net gain in alignment with the Environment Act 2021.*

43. In relation to Heritage, I would like to pay tribute to the thoroughness of the very interesting supporting text. In relation to Policy E&H3, and in agreement with the representation of Kent County Council (page 3) I **Recommend** that paragraph a) be deleted and replaced with: *The nature and significance of the heritage assets identified in the Kent Historic Environment Record or elsewhere.* (I note that in the last line of criterion c) the word Conservation is incorrectly spelt).
44. In relation to Economy and Employment, Map 1 is wholly illegible and Maps 3 and 4 barely legible. I **Recommend** that they be substituted by clear maps. I am unclear whether Map 4 shows what is promised on page 48 (“future plans for development”).
45. The following points arise in relation to Chapter 9, Infrastructure:
- (1) In response to the representations of Kent County Council (KCC), I **Recommend** the addition to the end of paragraph 3 of Policy INFRA3: *while retaining their rural character.* I so **Recommend**. (This is despite KCC not being the relevant highway authority).
  - (2) In relation to Policy INFRA4 whilst it is headed “Parking – Cars and Cycles”, I note that there is no reference to any required quantum of car parking for visitors, or cycles. Without knowing any of the details of what might be required, I can only **Recommend** that a discussion take place with Medway Council officers to ascertain if an agreed amendment/addition can be made. I hope it is sufficient to **Recommend** that any agreed change to the policy be included.
  - (3) I note that the representation of Trenport Investments Limited seeks that Policy INFRA4 be amended to be consistent with MC’s parking standards. I see the force of this. I hope that (as above) discussions on this topic can take place with Medway Council officers, and that it is sufficient to **Recommend** that any agreed resulting changes can be brought forward by a proposed modification.

- (4) In relation to Policy INFRA6 – Cycling in the Neighbourhood Area – Natural England point out that the accompanying plan proposes cycle access along the coast. The coastline within the neighbourhood area falls within the South Thames Estuary and Marshes SSSI and the Thames Estuary and Marshes SPA and Ramsar site. In agreement with Natural England I **Recommend** the addition – as a new second paragraph in the policy – of: *Any proposals to provide cycle routes through European conservation sites or the SSSI will need to ensure that impacts are avoided or fully mitigated.*

### **Overall assessments and conclusions**

46. I conclude that, overall, the NP is well-researched, well-evidenced, and clearly laid out and written. If made, the NP will become a key part of the statutory development plan applying to the area.
47. I have drawn attention to the need, in many sections of the NP, to review and update where appropriate, reference to evidence base material, including reports, studies etc.
48. The high quality of the NP has resulted in the very limited number of instances where I have recommended Modifications.
49. I recommend that, subject to those Modifications being made, the NP proceed to referendum.
50. I see no reason to recommend that the area covered by the referendum should differ from the neighbourhood area.

**Christopher Lockhart-Mummery KC**

**Examiner**

**January 2023**