

EXAMINER'S REPORT

SOWERBY
NEIGHBOURHOOD PLAN

2019 - 2034

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ABBREVIATIONS and ACRONYMS

The following are acronyms and abbreviations used in this examination:

CIL- Community Infrastructure Levy

DLP - (Draft) Calderdale Local Plan, Publication Draft 2018.

HRA - Habitats Regulation Assessment.

NDP- Neighbourhood Development Plan.

NPPF - National Planning Policy Framework.

NPPG - National Planning Practice Guidance.

RCUDP- Replacement Calderdale Unitary Development Plan, as amended by the Secretary of State, 3rd August 2009.

SEA - Strategic Environmental Assessment.

The Council - Calderdale Metropolitan District Council.

The Forum - collective term to represent the qualifying body which has prepared this Plan.

The Plan - the Neighbourhood Development Plan under examination.

INTRODUCTION

1. This is an independent examination of a Neighbourhood Plan prepared by the Neighbourhood Forum in consultation with the local community. I refer to it as “the Forum” in this document. The Localism Act 2011 provided local communities with the opportunity to have a stronger say in their future by preparing neighbourhood plans, which contain policies relating to the development and use of land.

2. If the plan is made, following a local referendum, which must receive the support of over 50% of those voting, it will form part of the statutory development plan. It will be an important consideration in the determination of planning applications as these must be determined in accordance with development plan policies unless material

considerations indicate otherwise.

3. I have been appointed by the Calderdale Metropolitan District Council (The Council) in consultation with the Forum to carry out this independent examination. I am a Chartered Town Planner with over 30 year's experience working at a senior level in local government and as a private consultant. I am a member of the Royal Town Planning Institute

4. I confirm that I am independent of the Forum and the Council and have no interest in any land, which is affected by the Neighbourhood Development Plan (the Plan).

5. This report is the outcome of my examination of the submitted version of the Plan.

6. My report will make recommendations based on my findings on whether the Plan should go forward to a referendum.

BACKGROUND DOCUMENTS

7. I have considered the following documents as part of this examination:

Documents submitted for the examination

Sowerby Neighbourhood Development Plan, 2019-2034, Submission Draft , June 2019 including Appendices A-E,
Consultation Statement, June 2019,
Document 7 Policies referred to in Sowerby Neighbourhood Plan.
Ecological Assessment, BE7251, Sowerby Neighbourhood Plan, Bagshaws Ecology
Basic Conditions Statement, June 2019,
Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Opinion Screening Determination, CC 8/11/19
Health Check, July 2019: Undertaken by Andrew Seaman BA (Hons) MA MRTPI,
Regulation 16 Representations,

Sowerby Heritage and Character Assessment , November 2018, AECOM,
Sowerby Housing Needs Assessment, March 2018, AECOM,
Summary of Neighbourhood Plan Initial Heritage Consultation,
Summary of Neighbourhood Plan Initial Consultation,
Sowerby Neighbourhood Development Plan Meeting Communication.

Local and National Policies and relevant evidence

National Planning Policy Framework (NPPF), July 2018,
National Planning Practice Guidance (NPPG),
Calderdale Local Plan (CLP), Publication Draft 2018,

Replacement Unitary Development Plan (RUDP), as amended by the Secretary of State, 3rd August 2009,
Draft Sites for Housing Allocation – Viability Assessment, Final Report, August 2020, Avison Young,
Local Plan and Preferred Sites for Allocation Viability Assessment January 2018, prepared by GVA,
Calderdale Local Plan – Publication Draft – Working List of Modifications (April 2020),
Draft Calderdale Street Design Guide, 2018.

Documents submitted during the examination

Calderdale Council and Sowerby Neighbourhood Forum Response to Examiner's Questions, April 2021,

Calderdale Council and Sowerby Neighbourhood Forum Response to Examiner's Questions, May 2021

THE EXAMINATION

8. The nature of the independent examination is set out in Section 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

9. The examiner has to make a recommendation as to whether the Plan should be submitted to a referendum, with or without modifications, and if the area for the referendum should extend beyond the plan area.

10. As a general rule the examination should be carried out on the basis of written representations unless a hearing is necessary to allow adequate consideration of an issue or to allow a person a fair chance to put a case.

11. I visited the Plan area on the 24/5/21 and assessed the implications of the proposed Plan as part of the examination.

PROCEDURAL MATTERS

12. It is necessary to determine that the Plan complies with the following procedural matters¹:

- The Plan has been prepared and submitted by a qualifying body
- The Plan has been prepared for an area that has been properly designated
- The Plan specifies the period to which it has effect, does not include provisions about excluded development and does not relate to more than one neighbourhood area

¹ Paragraph 8(1) of Schedule 4 B of the Town and Country Planning Act 1990 (as amended)

- The policies relate to the development and use of land for a designated neighbourhood area.

13. The Plan had been prepared and submitted by a qualifying body, the Sowerby Neighbourhood Plan Forum. The Forum and the Plan area were authorised by the Council in April 2017.

14. In accordance with the regulations², the Plan sets out policies in relation to the development and use of land and does not refer to “excluded” development. It specifies the period for which it has effect (2019-2034). It does not relate to more than one neighbourhood area.

CONSULTATION

15. The Consultation Statement explains in detail the manner in which the public and the Council were involved in the development of the Plan.

16. Recruitment to the Forum was carried out throughout 2017 and involved public meetings, which were adequately publicised and explained its role. I am satisfied that this is a properly representative body.

17. Early work in 2017 and 2018 revolved around formulation of a Housing Needs Assessment including public questionnaires and a number of public meetings.

18. The initial public consultation was carried out between 24th February 2018 and 25th May 2018. It consisted of an open day and an opportunity to complete a questionnaire, that could be filled in online or in person. Over 150 people attended the open day giving a variety of views with 84 questionnaires completed, giving a total overall return of 7% for the area.

19. The questionnaire was forwarded to all residents, local schools, local businesses, some assisted living centres and the St Peter’s Community Centre. The consultation exercise also offered “face to face” meetings including with local developers.

20. Further public engagement including public meetings was carried out by AECOM in connection with the formulation of the Heritage Assessment and the production of advice on Design Codes.

21. This work informed the preparation of draft policies which were presented to the public under the statutory procedure³ requiring a 6-week period for comment from 15th December 2018 – 27th January 2019. This included a community “drop-in day” on the 15th December 2018.

² Neighbourhood Planning (General) Regulations 2012

³ Regulation 14 of the Neighbourhood Planning (General) Regulations 2012

22. During this whole process the progress on the Plan and opportunities for comment were widely publicised on the Plan web site, social media, posters at strategic points in the village and in local newsletters.

23. The draft Plan was made available on the web site and hardcopies at various locations in the village.

24. Comments received by the public during the process were readily available at the public meetings. The comments including those from technical consultees received at the statutory consultation period are summarised in the Consultation Statement. Actions on the basis of these comments are noted.

25. The final formal consultation⁴ was carried out from 6th December 2019 to 31/01/20. I will assess these comments as part of this examination.

26. I am satisfied that the “Consultation Statement”, demonstrates a good level of consultation, which has targeted all appropriate sections of the community and allowed technical consultees and developers to be effectively involved in the emerging Plan.

BASIC CONDITIONS

27. It is necessary to decide whether the Neighbourhood Development Plan meets the “basic conditions” specified in the Act.⁵ This element of the examination relates to the contents of the Plan.

28. This Plan meets the basic conditions if:

- a) It has regard to national policies and advice contained in guidance issued by the Secretary of State,
- b) The making of the plan contributes to sustainable development,
- c) The making of the plan is in general conformity with the strategic policies contained in the development plan for the area,
- d) The making of the plan does not breach, and is otherwise compatible with, EU obligations and human rights requirements,
- e) The plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

29. The Parish has submitted a “Basic Conditions Statement”, to seek to demonstrate conformity. The analysis of conformity with the basic conditions is carried out below. Note this is not in the order specified above.

⁴ Regulation 16 of the Neighbourhood Planning (General) Regulations 2012

⁵ Contained Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

SUSTAINABLE DEVELOPMENT

30. The Forum submits in the Basic Conditions Statement that the Plan complies with NPPF core policies, which ensure the Plan promotes sustainable development. The NPPF establishes that the three components of sustainability are economic, social and environmental and that these underpin all planning policy.

31. A table in the Statement demonstrates that the Plan is firmly aligned with the core principles of the NPPF and the principles of sustainability.

32. In the social respect, the Plan supports appropriate community-based sustainable transport and encourages healthy lifestyles by protecting local green spaces.

33. In its environmental role, the Plan seeks to protect and enhance the natural and physical environment. Policies protect the landscape character, green spaces, biodiversity and the built character and heritage.

34. In economic terms, whilst the Plan does not have specific policies to stimulate economic activity there are no overriding policies to directly discourage it. Indeed, the Plan seeks to protect key local community facilities and services, by encouraging safer and enhanced sustainable transport links to them.

35. I accept that the policies in the Plan meet the claims referred to in the Statement. I am satisfied that the Plan contributes to sustainable development as defined by the NPPF.

EU OBLIGATIONS, HUMAN RIGHTS REQUIREMENTS

36. A neighbourhood plan must be compatible with European Union Directives as incorporated into UK law, in order to be legally compliant. This situation will pertain until UK legislation is adjusted to take account of Brexit.

37. Key directives are the Strategic Environmental Assessment Directive⁶ and the Habitats and Wild Birds Directives⁷. These require that consideration should be given to the need for a Strategic Environmental Assessment (SEA) to assess any significant environmental impacts and /or an appropriate Habitats Regulations Assessment to assess any impact on a site/habitat recognised as protected under European legislation⁸. A neighbourhood plan should also take account of the requirements to consider human rights.

⁶ Article 3(5) of Directive 2001/42/EC

⁷ European Directives 92/43/EEC and 2007/147/EC transposed into the Conservation of Habitats and Species Regulations 2010.

⁸ Often referred to as Natura 2000 sites and include Ramsar sites - wetlands of international importance, Special Areas of Protection (SAP) - providing protection to bird

38. The Forum submitted a report of the 8/11/19, by the Council, which concludes that neither a SEA nor HRA is required. The Council is the competent authority able to determine screening decisions. The statutory consultation bodies Natural England, Historic England and the Environment Agency were consulted and have not raised an objection to these findings.

39. The screening report states the Plan proposals are in general conformity with the strategic policies in the Replacement Unitary Development Plan (RUDP) and the emerging draft Local Plan (DLP), itself the subject of a Sustainability Appraisal (SA) incorporating the SEA and HRA Assessment Regulations. The report tests the Plan policies against the criteria for determining the likely significant effects referred to in the EU Directive and Schedule 1 of the Regulations. No significant effects are identified as the Plan promotes minimal sustainable development appropriate to the scale of the settlement to protect the community infrastructure and the natural and built environment. There are no new site allocations beyond those already established in strategic policies, including the emerging DLP.

40. I am satisfied that an SEA is not required.

41. Regarding the HRA, the screening assessment prepared by the Council identifies sites protected under European legislation within 15 kilometres of the Plan area which have the potential to be affected by development covered by its policies. It assesses each policy in terms of potential “likely significant affects”.

42. The policies in the Plan propose no new site allocations than are in strategic policies and the DLP, which have been through the HRA process.

43. I am content that the screening opinion stating no further work is required to satisfy the HRA legislation is valid. I have not taken into account any mitigation measures proposed in the Plan in reaching this conclusion.

44. I do not consider the Plan raises any issues under the European Convention and the Human Rights Act 1998. In terms of the Article 6 of the Act and the right to a “fair hearing” I consider the consultation process has been effective and proportionate in its efforts to reach out to different groups potentially affected. Neighbour responses have been taken into account in a satisfactory manner during the processing of the plan.

CONFORMITY WITH NATIONAL AND LOCAL STRATEGIC POLICIES

45. The Forum states in the “Basic Conditions Statement” that the Plan takes into

habitats and Special Areas of Conservation (SAC) - protect a variety of plants animals and habitats.

account national planning policies and guidance in the NPPF and is in general conformity with local strategic planning policies.

46. The Statement demonstrates in detail in the table at the end of the document how each of the Plan policies conform with the relevant aspects of the the National Planning Policy Framework (NPPF). I note that the Plan in the supporting text to policies usefully clearly identifies relevant policies. In some case I have made detailed recommendations to ensure more precise consistency with the NPPF. I am satisfied the Plan has taken into account national guidance

47. The Forum correctly identify that the emerging draft DLP is at an advanced examination stage and therefore relevant. There is a need for the Plan to take into account “evidence and reasoning”⁹ associated with the DLP to ensure it is based on current evidence and seeks to avoid unnecessary conflict with the emerging strategic policies, which are likely to be adopted soon. It is, however, necessary that the Plan is in general conformity with strategic policies in the Replacement UDP (RUDP), as amended by the Secretary of State,^{3rd} August 2009, where appropriate.

48. Despite comments in the Statement, I could not discover any direct reference to RUDP policies. The Forum has liaised with the Council which has not raised any overriding objections regarding need for general conformity with strategic policies. I have considered the Plan in relation to the RUDP.

49. I have identified some alterations necessary to achieve general conformity with strategic policies. I am satisfied subject to these alterations that there is general conformity with strategic policies.

RECOMMENDATIONS IN RELATION TO BASIC CONDITIONS

General Matters

50. I have made recommendations below, which will allow the plan to conform to “basic conditions”. Where I am suggesting modifications, I have given reasons. In cases of minor grammatical or formatting issues, I have simply highlighted the need for correction without explanation.

52. I have taken into account all aspects of the representations received during the Plan process. In some cases, these do not require specific reference or highlight of particular issues as they do not in my view effectively raise a concern that the Plan does not conform to basic conditions.

⁹ See National Planning Practice Guidance (NPPG) Paragraph: 009 Reference ID: 41-009-20190509

53. In some cases, I have referred to the Council, due to the specific and detailed nature of its representation and its particular relevance to “basic conditions”.

54. A recurring issue is the need for policies to be drafted with appropriate clarity. The National Planning Practice Guidance (NPPG)¹⁰ requires that *“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”*. I have therefore suggested some modifications in the interests of greater clarity and meeting this guidance.

55. I have explained my recommendations in accordance with the order and format of the Plan and expressed them in bold type at the end of the various sections.

SECTIONS 1,2, 3 and 4

56. These sections effectively introduce the Plan, set the context, explain what the Plan is, the process involved and establish key themes, policies and objectives.

57. The Plan would benefit from a Glossary in the interests of clarity, explaining the various acronyms used throughout the document. I realise there is some explanation in paragraph 4.12, but this does not cover all the acronyms used in the Plan

58. There are some inconsistent and incorrect references in the Plan to the “Local Plan”. This should be corrected to read draft Local Plan using the acronym DLP as referred to elsewhere in the Plan. I have also adopted the acronym DLP in this examination report.

RECOMMENDATION 2

Insert a glossary as a further Appendix to the Plan.

Omit all references to “Local Plan” and replace with draft Local Plan, utilising the acronym “DLP”.

Paragraph 2.10, Third sentence- the “2012 report” requires a reference.

Paragraph 4.1, delete first sentence.

Paragraph 4.1, second sentence- Delete “As this plan has been written” and replace with “At the time of writing”.

Paragraph 4.1, third sentence- Delete the third and fourth sentences and replace with “It is necessary to establish general conformity with local strategic policies.

¹⁰ NPPG Paragraph: 041 Reference ID: 41-041-20140306

The UDP is technically the statutory policy document although it is likely to be replaced with the emerging DLP which is under examination and at a relatively late stage in its process. In this case, the evidence supporting the emerging Plan and impact on consequent policies must be considered. There is also the requirement to take account of national guidance.”

In every reference to the Street Design Guide, referred to with the acronym SDG, insert “draft” preceding the reference.

SNPP1

59.This policy seeks to limit on-street parking on bus routes, in particular, Sowerby New Road. On street parking is a recurrent problem on many streets and no evidence is presented to demonstrate that there is a particular problem on bus routes in the area, although clearly these are generally busier highways. Furthermore, the policy refers to all bus routes and apart from Sowerby New Road and does not discriminate in an evidenced manner towards identified problem highways.

60.I note the emerging DLP has a policy BT4 The Design and Layout of Highways and Accesses seeks to ensure the “free and safe flow of traffic”. The Replacement Unitary Development Plan, as amended by the Secretary of State, 3rd August 2009 (RUDP) contains several policies aimed at encouraging sustainable transport and reducing car journeys. Furthermore, it has a policy T18 Maximum Parking Allowances which establishes off-street parking standards.

61.In view of the lack of direct evidence for specific requirements on bus routes and that there are other policies which seek to reduce parking problems on bus routes I recommend this policy be deleted.

62.In these respects, I do not consider the Plan takes into account advice in the NPPG that policies should be “concise, precise and supported by evidence”.¹¹

63.There is scope for the Forum to include an aspiration to liaise with the Council to encourage traffic management measures to reduce parking along bus routes. However, this must be clearly distinguished from planning policies relating to land use and the consideration of development requiring planning permission.¹²

¹¹ NPPG Paragraph: 041 Reference ID: 41-041-20140306

¹² See NPPG Paragraph: 004 Reference ID: 41-004-20190509

RECOMMENDATION 3

Delete policy SNPP1.

The Forum has the option to include in the Plan the intentions of the policy as an aspiration which will be pursued with the Council, Highway Authority and other relevant bodies. This should be presented and formatted in a manner which clearly distinguishes it as an aspiration and not a planning policy to be considered in planning decisions.

SNPP2

64. The policy seeks to enhance walking and cycling infrastructure. This is clearly complementary to national and local policies and guidance but needs to be more precise as to when it is applicable. There should be reference to when opportunities arise and that such works are to be proportionate to the scale of development and consolidate and enhance links to community facilities. Planning obligations and conditions should be reasonably related to the development to which they relate.¹³

65. The Council has concerns that policy text implies that if satisfactory walking and cycling provision is provided then a development will be “supported” regardless of compliance with other policies. However, it is accepted that all Development Plan policies are applied comprehensively, and the term “support” is used widely in the NPPF. I do not therefore share the Council’s concern in this respect, but the policy would have more clarity if the text was strengthened to make the infrastructure improvements a proportionate requirement when opportunities were available.

RECOMMENDATION 4

Alter the text of policy SNPP2 as follows:

“When opportunities arise walking and cycling infrastructure shall be enhanced and extended in proportion to the scale of development. Links to community facilities should be enhanced and new ones established, where possible.”

In paragraph 2.1 after “NPPF”, add “Paras 55, 56 ...”.

Add the following sentence to the end of paragraph 2.4 “The scope and scale of measures required will be related to opportunities available, the level of development proposed and the pressure it places on existing infrastructure. This is in accord with guidance in the NPPF.”

¹³ NPPF paragraphs 55 and 56

SNPP3

66.This policy seeks to prioritise spending from the Community Infrastructure Levy (CIL) on creating and improving the network of footpaths and cycleways.

67.If this Plan is “made” then the Council must spend 25% of the CIL funds generated from development in the area on local infrastructure. CIL is a contribution to local social and physical public infrastructure from developers to account for the extra burden the new development will place on the local infrastructure. It is open to the Forum to specify priorities to the Council for the spending of the Community Infrastructure Levy (CIL) in the Plan area.

68.I agree with the Council that the text of the policy is rigid and can be interpreted as requiring all CIL monies to be spent on footpaths and cycleways which is inflexible and ,in some cases, may be difficult to implement. The NPPG requires policies plans to be deliverable and consistent¹⁴. I have therefore suggested some amendment to the text.

RECOMMENDATION 5

In the first sentence of Policy SNPP3 delete “utilise” insert “prioritise”.

SNPP4

69.This policy seeks to address problems of on-street parking by requiring a higher standard for dwellings of more than 3 bedrooms than exists in the RUDP. It is apparent from the community responses and my site visit that there are on-street parking issues in some areas. I note further that there is limited accessibility to public services which may justify higher parking standards.

70.The Council point out that the RCUDP maximum standards are intended to be replaced by minimum standards in the DLP. This is in accordance with national guidance.¹⁵

71.The policy does not state what the provision should be for dwellings over 3 bedrooms. The current requirement for all dwellings in the RCUDP is for 1 space or 1.5 where there is only communal parking available. Dwellings in excess of 5 bedrooms are assessed separately. Lower parking levels are accepted in areas of high accessibility. In this case it seems reasonable to specify a minimum of 2 off street parking spaces per dwelling unit, not including any communal parking for visitors.

¹⁴ NPPG Paragraphs: 005 Reference ID: 41-005-20190509 and 041 Reference ID: 41-041-20140306

¹⁵ NPPF paragraph 106

72.I am also concerned that whilst it is apparent from the community responses and my site visit that there are on-street parking issues in some areas there is no detailed evidence and there are some areas in the Plan where there is not an apparent problem. The policy should have more flexibility to take into account the advice in the NPPG¹⁶ that policies should be based on evidence.

73.I have recommended some amendments to the policy text.

RECOMMENDATION 6

Amend the text of policy SNNP4 as follows:

“Development should be in accordance with the Council’s parking guidelines but for dwellings of more than 3 bedrooms, it will be necessary to provide a minimum of 2 spaces per dwelling either within the dwelling curtilage or in communal spaces, where it can be demonstrated that there are existing or potential on-street parking problems. Lower levels of parking may be acceptable in accessible locations.”

SNPP5

74.This policy requires a bike storage locker and electric charging point for each new dwelling. This is in accordance with national guidance¹⁷.

75.The text of the policy is imprecise in reference to “alternative storage hubs” and I recommend this term be deleted.

76.The need for the electric charging point should be linked to situations where there is an on-site parking space.

RECOMMENDATION 7

Amend the text of policy SNPP5 as follows:

“Residential developments shall provide a bike storage locker for every dwelling unit. An electric charging point shall be provided for every dwelling unit where there is a parking space within the curtilage of the dwelling.”

SNPP6

77.This policy seeks to establish a low light emissions framework for assessing new development to protect and encourage wildlife. This is based on evidence submitted by Bagshaws Ecology Ltd. who were commissioned to study the Plan area.

¹⁶ NPPG Paragraph: 041 Reference ID: 41-041-20140306

¹⁷ NPPF paragraph 105

78.The policy is fundamentally in accord with national and local policy and is based on good evidence.

79.The text requires further precision. The aspiration to work with the council to control street light times is not a matter which can be cover in planning decisions. This aspect should be separated out of the policy text as an aspiration in accordance with NPPG advice¹⁸.

RECOMMENDATION 8

Amend the text of policy SNPP6 as follows:

Delete the second sentence of the policy text and insert this as the last sentence in paragraph 6.3 of the supporting text.

In the third sentence of the policy text after “All new development proposals”, insert “which require external lighting”.

SNPP7

80.This policy seeks to encourage natural flood management and sustainable drainage systems in order to reduce flooding problems which is a serious local issue. The policy repeats some of the advice in the NPPF and includes some of the aspects of policies in the emerging DLP.

81.The policy has potential to create confusion because it does not comprehensively include all the advice in the NPPF¹⁹. The Environment Agency has pointed this out. For example, there is no reference to the sequential approach, the desire to incorporate multi-functional benefits e.g. ecological benefits, operational standards and maintenance agreements. There is a need to therefore to cross refer to national guidance.

82.Given the acute local flooding problems, however, I recommend the policy be retained as a useful local supplement to national guidance. However, the policy and supporting text should make a more explicit cross-reference to the national guidance to explain there are further policy considerations in relation to sustainable drainage.

83.The text of the policy contains a justification for the policy in terms of the alleviation of the problem of the loss of green fields. This is inappropriate for the inclusion within the policy text which should be concisely related to advising the decision maker.

¹⁸ See NPPG Paragraph: 004 Reference ID: 41-004-20190509

¹⁹ NPPF paragraph 165

84.The policy cannot apply to all developments as some development does not generate drainage issues.

85.The reference to “the parish” in paragraph 7.4 is misleading as flooding is not related to parish boundaries

RECOMMENDATION 9

Change the policy text of SNPP7 to the following;

“When development is considered acceptable in terms of national guidance in relation to flooding but has the potential to create surface water run off which may exacerbate flooding problems, natural flood management /sustainable drainage systems shall be implemented to reduce flooding on the site and elsewhere.”

Add the following sentence to the end of paragraph 7.2:

“The NPPF has comprehensive guidance relating to the issues which need to be considered in assessing planning applications. This should be closely followed in addition to this Plan policy.”

In paragraph 7.4 delete “in the parish”.

SNPP8

86.The policy requires provision of community space on residential schemes of over 20 dwellings.

87.This is a laudable policy but needs to be related to evidence and provision of community space should only be necessary where there is a deficiency of community space in the vicinity of a development site.

88.The threshold of 20 dwellings is arbitrary and not consistent with the Council’s existing RUDP policy OS 5 The Provision of Recreational Open Space in Residential Development, which applies to all new residential development. I note the emerging DLP contains a policy GN6 Protection and Provision of Open Space, Sport and Recreation Facilities which effectively continues this policy.

89.The intention does not appear to have a lesser threshold for provision of open space than the rest of the Council’s area. In any case, no evidence has been forwarded to justify such an approach I consider that the policy is not in general conformity with the existing strategic policy and should be deleted.

RECOMMENDATION 10

Delete the policy SNPP8.

SNPP9

90. This policy requires new housing development to have regard to design codes set out in a document prepared by AECOM which is an appendix to the Plan. The document explains the architectural vernacular of the area and sets out guidance as to how new housing development should fit into this historic character.

91. The policy is fundamentally acceptable in that it is in accordance with national and local guidance to protect the local distinctive character of areas.

92. There is a need to make it more explicit in the policy text that the design codes relate to housing rather than other forms of development and that it isn't solely directed to the potential housing sites identified in the document. During the examination I sought clarification from the Forum on this matter and it was confirmed the intention is to relate to all housing development.

93. In the interests of clarity, I recommend that the supporting text refers to the matter that the potential housing sites remain to be allocated in the emerging DLP.

94. During the examination I questioned how the proposed density figures for the allocated sites had been determined. I was pointed to the evidence prepared for the emerging DLP, in particular, Appendix 1. I noted that whilst proposed densities in the Plan are the same as those in Appendix 1 of the draft DLP, there are significant differences in the assessment of residential capacity, essentially on the basis that the Plan, unlike the DLP, does not base these on an indicative developable area. The Plan simply refers to the larger site area and suggests this will be reduced as a result of constraints identified in due course. The sites represented in appendix 1 of the DLP are accompanied by more detailed evidence in relation to the constraints which allows the delineation of an indicative developable area. On the basis that the developable areas are "indicative", I consider the evidence put forward on the emerging DLP is proportionate. I note, further, that the constraints identified in Appendix 1 are partly informed by public consultation.

95. This difference in the potential site capacity recommendations is confusing. The Appendix 1 information in the emerging DLP is more researched and extensive. The Plan evidence is relatively scant.

96. I therefore recommend that the information on each of the 7 sites is amended such that it reflects that in Appendix 1 of the emerging DLP.

RECOMMENDATION 11

In the text to policy SNPP9 at the start of the text before “Development” insert “Housing”. After “Design Code”, insert “Appendix C”.

In paragraph 9.2 after “Design Code”, insert “document, prepared by AECOM, February 2019”. After “...proposals for...”, insert “all (new) housing”.

Insert a new paragraph after 9.2, as follows:

“The Design Code makes specific recommendations on seven sites which are identified as having potential for development in the DLP, which at the time of the preparation of this Plan is not yet formally adopted. The Design Code is in anticipation that some or all of these sites may be allocated but does not establish any presumption in favour of development which remains to be determined in the emerging Calderdale Local Plan.”

In section 5 of the Design Code, replace the information relating to Land Type, Site Area, Listed Buildings, Gradient, Site Assessment Capacity for each of the sites, with the information in “Appendix 1 – Site Allocations Supporting Information”, August 2018 of the draft DLP. Note, retain the tables relating to the Plan Design Codes.

SNPP10

97. This policy is a repetition of some elements of national guidance in the NPPF ²⁰to promote biodiversity. However, it does not include all the nuances of the policy as explained in the NPPF paragraph 175 (a) to (d) and is therefore misleading.

98. The policy should therefore be removed.

RECOMMENDATION 12

Delete policy SNPP10 and supporting text.

SNPP 11

99. This policy seeks to enhance pedestrian and cycling facilities. It is effectively a repetition of policy SNPP2. I recommend it be deleted as SNPP2, as amended in accordance with my recommendations, serves the same purpose.

RECOMMENDATION 13

Delete policy SNPP11 and the supporting text.

²⁰ NPPF paragraph 175(d)

SNPP12

100.This is not a policy rather an aspiration to encourage the Council to provide improved parking space to serve the shopping arcade on Towngate.

101.It can remain in the Plan document but should be in a format whereby it is distinguished as a community aspiration rather than a land use policy related to the determination of planning applications.

RECOMMENDATION 14

Amend Policy SNPP12 such that it is clear from its text and format in the document that it is not a planning policy but a community aspiration.

SNPP13

102.The policy seeks to establish that development shall be of sustainable design and construction to ensure optimum energy efficiency. In the Written Ministerial Statement, March 2015²¹, the government confirmed that technical standards for buildings, including energy performance standards will be operated by the Building Regulations. Local plans can endorse national technical standards but not neighbourhood plans. The policy implies standards for energy efficiency and aspires to zero emissions which in accordance with the above Statement is not appropriate for inclusion in this Plan.

101.The design guidance relating to siting and orientation to optimise passive solar gain is, however, suitable as this does not relate to any national technical standards. I have therefore suggested amendments to this policy.

102.The policy as recommended whilst repeating the NPPF guidance in paragraph 151 offers the opportunity to embellish this guidance by references in the supporting text.

103.The supporting text should cross-refer to the RCUDP and emerging policies in the emerging DLP which encourage the use of renewable technologies.

RECOMMENDATION 15

Amend the text of policy SNPP13 as follows:

“Development shall be located, orientated and designed to take account of opportunities on site to achieve energy efficiency”.

Delete the text in paragraph 13.3 and replace with the following;

²¹ Written Statements Wednesday, March 25th, Business Innovation and Skills, National Measurement and Regulation Office

“The design, location and orientation of development can have a significant impact on energy efficiency. The precise siting and design of a building can optimise passive solar gain and combat over-heating. Constructional methods connected with the fabric of the building are covered by the Building Regulations.”

Delete the text in paragraph 13.5 and replace with the following:

“There are policies in the Replacement Calderdale Unitary Development Plan and the DLP which promote the use of renewable technologies.”

SNPP14

104.The policy seeks to provide a range of dwelling types to meet the needs of the area as identified in the “Housing Needs Assessment”, prepared by AECOM in 2018.

105.I share the Council’s concern that policy SNPP14 relating to housing mix requires a threshold for the number of dwellings which will trigger the policy. During the examination, I asked the Council and the Forum clarify that there is no objection to the use of 10 dwellings as referred to in the emerging DLP policy H3.

106.The text of the policy is vague in its reference to “a range of dwelling types”. Also, the reference to the current requirement for older and single people may change during the Plan period. I recommend, therefore, that the policy text should refer to the most recent housing needs assessment, which could include the Council’s Strategic Housing Market Assessment.

RECOMMENDATION 16

Amend the text of policy SNPP14, as follows;

“Residential development of 10 or more dwellings shall provide a mix of housing in terms of size, type, tenure and affordability which shall be informed by the latest housing needs assessment.”

Add the following paragraph after 14.4;

“There may be further housing needs assessments carried out by the Neighbourhood Forum or the Council during the Plan period. The policy will be implemented in accordance with the latest assessment.”

SNPP15

107.The policy seeks to ensure a “significant” proportion of affordable/social rental housing is provided in all residential developments. This is consistent with national guidance and local policies but it is vague in use of the term “significant” and the distinction between affordable and social rental housing is unnecessary

108.The supporting text (paragraph 15.5) provides detail which, advises that 40% of the development on housing sites of 11 units or more shall be for affordable housing. Although

this is not in the policy text, it is put forward as a commitment in the supporting text and if considered acceptable would be included in the policy text. However, the thresholds proposed are not consistent with the emerging DLP policy HS6, which for sites in the Plan area (i.e., Zone C) sets a threshold of 15 dwellings and a requirement of 25%.

109.I note the “Housing Needs Assessment”, prepared by AECOM 2018, in support of the proposed Plan housing policies presents cogent evidence of need for types of affordable housing but does not contain a detailed viability assessment with respect to levels of proposed affordable housing. However, in the case of the emerging DLP there is a viability assessment in the supporting Calderdale Economic Viability Assessment (2011) and the SHMA 2018. This has been supplemented by further viability assessments in the “Local Plan and Preferred Sites for Allocation Viability Assessment January 2018”, prepared by GVA and “Draft Sites for Housing Allocation – Viability Assessment, Final Report, August 2020”, Avison Young.

110.During the examination, the Council confirmed that at this relatively late stage in the hearing into the emerging DLP, the Inspector has not questioned the evidence put forward to support the DLP policy HS6, in particular, the 15 dwellings and 25% thresholds. This is important in weighting the respective evidence and the difference in policy approaches between the two Plans. I note that a responder to the formal consultation on the Plan has raised concerns that the 11 unit and 40% thresholds are not consistent with the emerging DLP and there is a lack of evidence to justify these higher thresholds for Sowerby.

111.I am concerned that there is a lack of evidence to support the proposed thresholds for affordable housing and the difference between the two emerging Plans would create confusion in the application of the policies. Should there be a conflict between a policy in a neighbourhood plan and a policy in a local plan, section38(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. In this case it is distinctly possible the DLP will become the later Plan and the lower thresholds in policy HS6 would apply.

112.I therefore recommend that the Plan policy is based on the threshold levels proposed in DLP policy HS6 which are supported by appropriate evidence. The findings in the AECOM report relating to the type of affordable housing can be used in the application of the policy as the most relevant housing needs study. If the Forum wishes to reconsider the thresholds in a future review of the Plan and increase these beyond the DLP levels, it is open to do so in association with satisfactory evidence.

113.The supporting text should be expanded slightly to provide an overview of the housing needs identified in the AECOM study.

RECOMMENDATION 17

Replace the text in policy SNPP15 with the following:

“Housing Development of 15 or more dwelling units shall provide a minimum of 25% of the dwelling units as affordable housing.

The Council will expect details of the affordable housing mix to be provided in a statement of Affordable Housing Contribution to be informed by the most recent or relevant Housing Needs Assessment, related to the Plan area, together with Council's published guidance on affordable housing provision.

In some instances, the proportion may be less than that referred to above, where robust viability evidence demonstrates that there are development costs which would otherwise prejudice the implementation of the proposal. For any deviation from the stated requirements, the Council will take account of the most recent Housing Market Needs Assessment as it relates to the Plan area, such as the SHMA and any subsequent updates or other relevant and recent information.

The affordable homes should be incorporated within the development but where justified, a financial contribution of at least equal value may be accepted to provide affordable homes elsewhere or to re-use or improve the existing housing stock.

Planning applications which include proposals for affordable housing must ensure that there are secure and practical arrangements to retain the benefits of affordability for initial and subsequent owners and occupiers, such as the involvement of a registered provider and where appropriate by the use of conditions or planning obligations.”

Delete the last sentence from paragraph 15.4.

Delete the text in paragraph 15.5 and replace with the following:

“The AECOM 2018 Housing Needs Assessment, prepared as an evidence base for the Plan. draws the following main conclusions in terms of guiding housing to meet needs; Tenures should be 53.8% (55 to 60%) Social rented 21.6% Intermediate and 24.6% Market Housing (mainly private rented) In terms of size of dwellings, the trends identified point towards a mix of smaller dwellings and family sized homes, of 2-5 habitable rooms. A range of accommodation is identified to meet the needs of an increasing number of elderly people.”

SNPP16

114.The policy seeks to protect heritage assets which are of local value but not the subject of a national designation.

115.The text of the policy should reflect more accurately the guidance in the NPPF²² that “*In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*”

²² NPPF paragraph 197

116. There are discrepancies in appendix B between the map showing the assets and the list. Furthermore, although there are grid references in the list, the map does not have any form of reference to the individual items shown. These issues were addressed during the examination.

117. The NPPG²³ describes these type of heritage assets as “*buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of heritage significance...*”.

118. During the examination I asked that the heritage merits of three areas be clarified as the references in appendix B simply described their general attributes and value to the local community. I am satisfied that in the case of No.9 Rawson Wood and No.13 White Windows Wood the response to my questions of the 12/5/21, provides adequate justification on heritage grounds. Both of these areas have links to historical estates and contribute to the setting of listed buildings.

119. The justification, however, for No.12 Nether Ends Beck is tenuous. The only basis for its heritage credentials is that it is believed to be the main and only ‘visible’ streams used historically by weavers. I do not consider this explanation has sufficient provenance or clear visible connection to the historical local weaving industry to justify inclusion and should be deleted. The NPPG²⁴ states “*Proportionate, robust evidence should support the choices made and the approach taken*”. The area may be valued by the local community as a popular walking spot which may justify inclusion as local green space in a future review of the Plan.

120. The no. 28 Green Lane shown in appendix B is outside the Plan area and should be deleted from the list and map.

RECOMMENDATION 18

Delete the text of policy SNPP16 and replace with the following;

“In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”

Make the following alterations to appendix B

- **Delete “No. 12 White Windows Woods”.**
- **Embellish the reason for inclusion in the list on No.9 Rawson Wood and No.13 White Windows Wood with a summary of the reasons as expressed in the response to the examiner’s questions of the 12/5/21.**
- **Delete No.28 Green Lane Thunderton Lane**

²³ NPPG Paragraph: 039 Reference ID: 18a-039-20190723

²⁴ NPPG Paragraph: 040 Reference ID: 41-040-20160211

Replace the map in appendix B with that submitted in response to the examiner's questions of the 5/4/21. Reference the green lanes specified in the list with a key on the map.

SNPP17

121.The policy promotes alternative means of energy production. It does not add any local nuance to existing national guidance in the NPPF, the range of policies in the Environmental Protection section of the RCUDP or policies in the emerging DLP.

122.The proposed policy lacks the detail in current policy.

123.I consider this policy could result in confusion and is unnecessary. I therefore recommend it be deleted.

RECOMMENDATION 19

Delete policy SNPP17 including its supporting text.

SNPP18

124.The policy relates to the control of wind turbines under 18 metres.

125.The policy is not as detailed as the existing RCUDP policy EP30 Wind power Developments which relates to all wind turbine proposals and has a number of criteria to take into consideration.

126.The emerging DLP policy is similarly detailed and based on evidence provided by Julian Martin associates in 2013 and 2014 relating to the resilience of the local environment and landscape to accept wind turbine development and the criteria to be taken into account in their consideration. This has resulted in a draft DLP policy which in the Plan area states only turbines less than 18 metres are allowed in the Plan area apart from a small area just south of Hubberton Green where turbines 18-24 metres may be acceptable subject to certain criteria. The criteria effectively require that turbines less than 18 metres should be

“directly related to, and generate power principally for, the operation of a farmstead, other rural business or a local Settlement and following consultation it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.”

127.The proposed policy does not add a significant local dimension to the existing RCUDP policy EP30 and does not allow for the findings of the Julian Martin studies embodied in the draft policy in the emerging plan which allow a small area for turbines over 18 metres.

128.I consider therefore that the policy is not in general conformity with local strategic policies and should be deleted.

RECOMMENDATION 20

Delete the policy SNPP18 and the supporting text.

SUMMARY

129.I have completed an independent examination of the Neighbourhood Development Plan.

130.The Neighbourhood Forum has carried out an appropriate level of consultation and shown how it has responded to the comments it has received. I have taken into account the further comments received as part of the consultation under Regulations 14 and 16 on the Neighbourhood Planning Regulations 2012.

131.I have recommended modifications to the policies in order to satisfy the basic conditions particularly to ensure that they provide a clear basis for decision-making in accordance with the NPPF and local development plan policies.

132.Subject to these modifications, I am satisfied that the plan meets the Basic Conditions.

133. I am also satisfied that the Plan meets the procedural requirements of Schedule 4B of the Town and Country Planning Act 1990.

134. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area, and if it is to be extended, the nature of that extension.

135.There is no evidence to suggest that the referendum area should extend beyond the boundaries of the Plan area, as they are currently defined.

136.I am therefore pleased to recommend that the submitted draft Sowerby Neighbourhood Development Plan, as modified by my recommendations, should proceed to a referendum.