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# **Report on the Utkinton and Cotebrook Neighbourhood Plan 2020 – 2030**

**An Examination undertaken for Cheshire West and Chester Council with the support of the Utkinton and Cotebrook Parish Council on the April 2020 submission version of the Plan.**

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## **Main Findings - Executive Summary**

From my examination of the Utkinton and Cotebrook Neighbourhood Plan (UCNP/the Plan) and its supporting documentation including the representations made, I have concluded that subject to the policy modifications set out in this report, the Plan meets the Basic Conditions.

I have also concluded that:

- The Plan has been prepared and submitted for examination by a qualifying body – Utkinton and Cotebrook Parish Council;
- The Plan has been prepared for an area properly designated – the Parish of Utkinton and Cotebrook, as shown on Figure 1 on page 5 of the submitted Plan;
- The Plan specifies the period during which it is to take effect: 2020 – 2030; and
- The policies relate to the development and use of land for a designated neighbourhood area.

I recommend that the Plan, once modified, proceeds to referendum on the basis that it has met all the relevant legal requirements.

I have considered whether the referendum area should extend beyond the designated area to which the Plan relates and have concluded that it should not.

## **1. Introduction and Background**

### *Utkinton and Cotebrook Neighbourhood Plan 2020–2030*

- 1.1 The Parish of Utkinton and Cotebrook, containing the village of Utkinton and the smaller settlement of Cotebrook, lies within open countryside, roughly equidistant from Chester, Nantwich and Northwich. Tarporley lies about 3 km to the south. The population of the Parish in 2011 was 706.<sup>1</sup> The sandstone ridge which bisects the Parish offers extensive views over the surrounding gently undulating agricultural landscape of scattered farms, narrow lanes, with well-established mixed hedgerows.
- 1.2 The process of preparing the UCNP began after a decision by Utkinton and Cotebrook Parish Council (UCPC) in August 2016<sup>2</sup>, with the initial designation of the Plan area taking place in November 2016. The Plan was built on the foundations laid in the Utkinton and Cotebrook Parish Plan 2013 (Appendix A of the Plan). A Steering Committee was formed. Initial public consultation occurred in June and July 2017. Questionnaires were

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<sup>1</sup> 2011 Census.

<sup>2</sup> Utkinton and Cotebrook Parish Council: Chair's report 2016/17.

distributed. The Plan area was redesignated in October 2019<sup>3</sup> by Cheshire West and Chester Council (CWaCC) and further public consultation took place. The Plan was finally submitted to CWaCC in April 2020 and represents over four years work by those involved.

### *The Independent Examiner*

- 1.3 As the Plan has now reached the examination stage, I have been appointed as the examiner of the UCNP by CWaCC, with the agreement of UCPC.
- 1.4 I am a chartered town planner and former government Planning Inspector and have experience of examining neighbourhood plans. I am an independent examiner, and do not have an interest in any of the land that may be affected by the Plan.

### *The Scope of the Examination*

- 1.5 As the independent examiner, I am required to produce this report and recommend either:
- (a) that the neighbourhood plan is submitted to a referendum without changes; or
  - (b) that modifications are made and that the modified neighbourhood plan is submitted to a referendum; or
  - (c) that the neighbourhood plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.
- 1.6 The scope of the examination is set out in Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990 (as amended) ('the 1990 Act'). The examiner must consider:
- Whether the Plan meets the Basic Conditions.
  - Whether the Plan complies with provisions under s.38A and s.38B of the Planning and Compulsory Purchase Act 2004 (as amended) ('the 2004 Act'). These are:
    - it has been prepared and submitted for examination by a qualifying body, for an area that has been properly designated by the local planning authority;
    - it sets out policies in relation to the development and use of land;
    - it specifies the period during which it has effect;

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<sup>3</sup> See paragraph 3.1 below.

- it does not include provisions and policies for 'excluded development'; and
- it is the only neighbourhood plan for the area and does not relate to land outside the designated neighbourhood area.
- Whether the referendum boundary should be extended beyond the designated area, should the Plan proceed to referendum.
- Such matters as prescribed in the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the 2012 Regulations').

1.7 I have considered only matters that fall within Paragraph 8(1) of Schedule 4B to the 1990 Act, with one exception. That is the requirement that the Plan is compatible with the Human Rights Convention.

### *The Basic Conditions*

1.8 The 'Basic Conditions' are set out in Paragraph 8(2) of Schedule 4B to the 1990 Act. In order to meet the Basic Conditions, the neighbourhood plan must:

- Have regard to national policies and advice contained in guidance issued by the Secretary of State;
- Contribute to the achievement of sustainable development;
- Be in general conformity with the strategic policies of the development plan for the area;
- Be compatible with and not breach European Union (EU) obligations (under retained EU law);<sup>4</sup> and
- Meet prescribed conditions and comply with prescribed matters.

1.9 Regulation 32 of the 2012 Regulations prescribes a further Basic Condition for a neighbourhood plan. This requires that the making of the Plan does not breach the requirement of Chapter 8 Part 6 of the Conservation of Habitats and Species Regulations 2017 ('the 2017 Regulations').<sup>5</sup>

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<sup>4</sup> The existing body of environmental regulation is retained under EU law.

<sup>5</sup> This revised Basic Condition came into force on 28 December 2018 through the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.

## 2. Approach to the Examination

### *Planning Policy Context*

- 2.1 The Development Plan for this part of CWaCC, excluding policies relating to minerals and waste development, includes the Cheshire West and Chester Local Plan (CWaCLP). The CWaCLP (Part One) deals with Strategic Policies and was adopted in January 2015. The CWaCLP (Part Two) covers Land Allocations and Detailed Policies and was adopted in July 2019.
- 2.2 The planning policy for England is set out principally in the National Planning Policy Framework (NPPF). Planning Practice Guidance (PPG) offers guidance on how this policy should be implemented. A revised NPPF was published on 19 February 2019 and all references in this report are to the February 2019 NPPF and its accompanying PPG.

### *Submitted Documents*

- 2.3 I have considered all policy, guidance and other reference documents I consider relevant to the examination, including those submitted which include:
- the Draft Utkinton and Cotebrook Neighbourhood Plan 2020-2030 (April 2020);
  - the map on page 5 of the Plan, which identifies the area to which the proposed Neighbourhood Plan relates;
  - the Consultation Statement (April 2020);
  - the Basic Conditions Statement (March 2020);
  - all the representations that have been made in accordance with the Regulation 16 consultation;
  - the Strategic Environmental Assessment, Sustainability Appraisal and Habitats Regulations Assessment Screening Determination prepared by CWaCC (September 2020); and
  - the request for additional clarification sought in my letter of 22 December 2020 and the responses dated 13 January 2021 from CWaCC and dated 18 January 2021 from UCPC.<sup>6</sup>

### *Site Visit*

- 2.4 I made an unaccompanied site visit to the UCNP area on 17 December 2020 to familiarise myself with it and visit relevant locations referenced in the Plan and evidential documents.

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<sup>6</sup> View at:

[http://consult.cheshirewestandchester.gov.uk/portal/cwc\\_ldf/np/utkinton\\_cotebrook\\_pu\\_b?tab=files](http://consult.cheshirewestandchester.gov.uk/portal/cwc_ldf/np/utkinton_cotebrook_pu_b?tab=files)

### *Written Representations with or without Public Hearing*

- 2.5 This examination has been dealt with by written representations. I considered hearing sessions to be unnecessary as the consultation responses clearly articulated the objections to the Plan and presented arguments for and against the Plan's suitability to proceed to a referendum. No requests for a hearing session were received.

### *Modifications*

- 2.6 Where necessary, I have recommended modifications to the Plan (**PMs**) in this report in order that it meets the Basic Conditions and other legal requirements. For ease of reference, I have listed these modifications separately in the Appendix.

## **3. Procedural Compliance and Human Rights**

### *Qualifying Body and Neighbourhood Plan Area*

- 3.1 The Utkinton and Cotebrook Neighbourhood Plan has been prepared and submitted for examination by Utkinton and Cotebrook Parish Council, which is a qualifying body. The UCNP extends over all the Utkinton and Cotebrook Parish. This constitutes the area of the Plan redesignated by CWaCC on 17 October 2019 (making minor revisions to the extent of the area initially designated on 22 November 2016), to align with a change made to the Parish boundary in 2018.<sup>7</sup> The UCNP includes a map on page 5 on which the area of the Plan is delineated.

### *Plan Period*

- 3.2 The period of the Plan, prominently displayed on the front cover of the document, is between 2020 and 2030. The end date of the period aligns with that of the CWaCLP (Part One) and CWaCLP (Part Two).

### *Neighbourhood Plan Preparation and Consultation*

- 3.3 The Consultation Statement and accompanying appendices indicate a process of several stages of Plan preparation from 2016 to submission to CWaCC in April 2020. Following the decision to proceed with the Neighbourhood Plan in 2016 and the formation of a Steering Committee, a questionnaire was delivered to each household in the Parish and public meetings were held in Cotebrook on 15 July 2017 and Utkinton on 22 July 2017. The survey and meetings were publicised on the Parish Council noticeboards and website. The Steering Group also attended and set up a stall at the Utkinton Garden Fete in July 2017. 153 responses were

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<sup>7</sup> For further details see Basic Conditions Statement paragraph 2.2 & Consultation Statement page 3.

received to the questionnaire, a response rate in relation to the population of the Parish of 22%.

- 3.4 Pupils who lived in the Parish but attended Tarporley High School were visited in the School, given a short presentation on the Neighbourhood Plan and asked to fill in the questionnaire during a programme designed and monitored by their teachers. In addition, a questionnaire was devised by the Steering Group for pupils at St. Pauls Primary School, the teachers agreeing to present them during specific lessons relevant to the topic, in which the questions were a natural corollary to the subject being taught. Businesses and farmers were also approached but with the result of a low response rate. The responses overall helped to form the basis of the Plan vision, objectives and policies, and helped to determine what evidence needed to be gathered to inform the policies. A Housing Needs Survey was carried out in 2018 and the Utkinton and Cotebrook Neighbourhood Plan Vision and Objectives document was drawn up which was discussed at the Parish Council and then circulated for consultation to each dwelling in the Parish.
- 3.5 On completion of the draft Utkinton and Cotebrook Neighbourhood Plan, a printed copy was delivered to every dwelling in Cotebrook and Utkinton in July 2019 for a consultation period of six weeks. Two meetings were held to give residents the opportunity to discuss the contents of the draft Plan with members of the Steering Group and representatives of the Parish Council. The meetings were held on 17 August 2019 in Cotebrook Village Hall and 7 September 2019 in Utkinton Village Hall.
- 3.6 The Plan was published for consultation under Regulation 14 of the 2012 Regulations for a period of 8 weeks from 16 October until 4 December 2019 and was placed on the Parish website. 29 statutory consultees were consulted; 9 responded. A summary of the representations received from the statutory consultees and the action taken is given on pages 66–68 of the Consultation Statement.
- 3.7 Consultation in accordance with Regulation 16, when the Plan was submitted to CWaCC, was carried out for a period of 7 weeks between 12 October and 30 November 2020. 14 responses were received. I am satisfied that a transparent, fair and inclusive consultation process has been followed for the UCNP, that has had regard to advice in the PPG on plan preparation and is procedurally compliant in accordance with the legal requirements.

#### *Development and Use of Land*

- 3.8 The Plan sets out policies in relation to the development and use of land in accordance with s.38A of the 2004 Act.

### *Excluded Development*

- 3.9 The Plan does not include provisions and policies for 'excluded development'.

### *Human Rights*

- 3.10 The Basic Conditions Statement advises that the UCNP is fully compatible with the European Convention on Human Rights, transposed into UK law by the Human Rights Act 1998. It has been prepared within the existing framework of statute, national planning policy and guidance, and local level strategic planning policies, which are both compatible with the Convention. In accordance with the established process, the Plan has been prepared in full consultation with the local community and wider stakeholders to produce as inclusive a document as possible and it is subject to independent examination. The Plan does not contain policies or proposals that would infringe the human rights of residents or other stakeholders over and above the existing strategic policies at national and local levels. In general, the policies and proposals will not have a discriminatory impact on any particular group of individuals. CWaCC has not alleged that human rights might be breached. I have considered this matter independently and I have found no reason to disagree with that position.

## **4. Compliance with the Basic Conditions**

### *EU Obligations (under retained EU law)*

- 4.1 The UCNP was screened for Strategic Environmental Assessment (SEA) by CWaCC. The report was submitted with the Plan in accordance with the legal requirement under Regulation 15(e)(i) of the 2012 Regulations. As a result of the SEA screening assessment, the Council found that it is unlikely that there will be any significant environmental effects arising from the Plan and, therefore, an SEA would not be required. The Environment Agency (EA)<sup>8</sup> and Natural England (NE)<sup>9</sup> when consulted, agreed with that assessment. Historic England were consulted, albeit no response was provided.<sup>10</sup>
- 4.2 The UCNP was also screened for Habitats Regulation Assessment (HRA) by CWaCC who determined that the Plan is unlikely to have an adverse effect on a European site (as defined in Regulation 8 of the 2017 Regulations), alone or in combination with other plans and projects. Accordingly, Appropriate Assessment was not considered to be required. NE agreed with the report's conclusions that the UCNP would not be likely to result in

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<sup>8</sup> Received on 30 October 2019.

<sup>9</sup> Received on 15 October 2019.

<sup>10</sup> Consulted on 11 October 2019.

a significant effect on any European Site, either alone or in combination and therefore no further assessment work would be required.

- 4.3 Having read the SEA, Sustainability Appraisal and the HRA Screening Determination, the other information provided, and considered the matter independently, I agree with those conclusions. Therefore, I am satisfied that the UCNP is compatible with EU obligations under retained EU law.

#### *Main Issues*

- 4.4 Having considered whether the Plan complies with various procedural and legal requirements, it is now necessary to deal with whether it complies with the remaining Basic Conditions, particularly the regard it pays to national policy and guidance, the contribution it makes to the achievement of sustainable development and whether it is in general conformity with strategic development plan policies. I test the Plan against the Basic Conditions by considering specific issues of compliance of all the Plan's policies.
- 4.5 As part of that assessment, I consider whether the policies are sufficiently clear and unambiguous, having regard to advice in the PPG. A neighbourhood plan policy 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.<sup>11</sup>
- 4.6 Accordingly, having regard to the Utkinton and Cotebrook Neighbourhood Plan, the consultation responses, other evidence and the site visit, I consider that the main issues in this examination are whether the UCNP policies (i) have regard to national policy and guidance, (ii) are in general conformity with the adopted strategic planning policies and (iii) would contribute to the achievement of sustainable development? I shall assess these issues by considering the policies within the topics in the sequence in which they appear in the Plan.
- 4.7 CWaCC has submitted constructive comments in response to the Regulation 16 consultation, which includes suggested improvements to the Plan in addition to potential deficiencies in and support for specific policies. My remit is to assess the Plan against the Basic Conditions and not to consider how it could be improved. Nevertheless, many of the suggestions by CWaCC are helpful, would assist in removing ambiguity and would clarify the presentation within the Plan, all of which is useful in creating a valuable document which will form part of the Development Plan. Therefore, I generally support the changes suggested by CWaCC which would increase the effectiveness of the Plan as part of the development management process.

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<sup>11</sup> PPG Reference ID: 41-041-20140306.

## *Vision and Objectives*

4.8 The UCNP does not include a vision or any objectives. However, a Vision and Objectives survey was carried out and the summarised results have enabled nine issues to be identified which are listed in the Plan.<sup>12</sup> The issues include the provision of homes and facilities for local people, the protection of wildlife and the built and natural environment, improving public transport and supporting the local economy.

## *Housing (Policies 1, 2 & 3)*

4.9 Policy R 1 of the CWaCLP (Part Two) designates Utkinton as a Local Service Centre in which development proposals will be supported where they meet the relevant policy criteria and are consistent with Policy STRAT 8 of the CWaCLP (Part One). Policy R 1 also provides for the definition of settlement boundaries in certain settlements and the one for Utkinton is shown on Figure 3 of the Plan. Policy 1 of the UCNP considers housing location and, subject to two shortcomings, has regard to national guidance,<sup>13</sup> generally conforms with Policies STRAT 8 and STRAT 9 of the CWaCLP (Part One) and meets the Basic Conditions.

4.10 My two criticisms relate to the reference to housing development in gardens and the support for housing development in brownfield land in Cotebrook. Policy 1 supports "... *infill development of one or two houses within a small gap in a built-up frontage, which would also apply to development in gardens*". Whereas non-strategic Policy DM 19 of the CWaCLP (Part Two) seeks to prevent new dwellings in gardens which would result in a disproportionate loss of garden land or unacceptable harm to the character and surrounding area, Policy SOC 5 of the CWaCLP (Part One) includes safeguarding residential amenity.

4.11 Each planning application for housing would be considered on its merits, wherever the location, but emphasising residential gardens as potential sites for housing would not be consistent with the prevailing guidance which is neutral about what is colloquially referred to as "garden grabbing". Indeed, the NPPF Glossary explicitly excludes residential gardens from the definition of previously developed land. The CWaCLP (Part Two) notes that garden land is important to residential amenity and an important resource of open space that should be protected from over development wherever possible. Therefore, I shall recommend a modification to Policy 1 by the deletion of the reference to development in gardens. **(PM1)**

4.12 Policy 1 supports the re-use or redevelopment of brownfield land in Cotebrook. However, Cotebrook is located within the countryside where, under Policy STRAT 9 of the CWaCLP (Part One), the re-use or redevelopment of brownfield land is excluded from the categories of

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<sup>12</sup> UCNP Appendices C & D.

<sup>13</sup> NPPF: paragraph 78.

development which will be permitted. Accordingly, I shall recommend the deletion of the bullet point dealing with Cotebrook and also the deletion of the tautological reference to Cotebrook in the sentence of which the bullet point forms part. **(PM2)**

4.13 A representation sought an allocation for housing development on land at Quarry Bank/John St on the northern edge of Utkinton.<sup>14</sup> The site adjoins the settlement boundary of Utkinton and is in open countryside and part of an Area of Special County Value (ASCV). The representation refers to Policy SOC 2 of the CWaCLP (Part One) and Policy DM 24 of the CWaCLP (Part Two) which support Rural Exception Sites. However, given that the site could accommodate up to 67 dwellings, I do not accept that it is small enough to meet the size criterion in Policy SOC 2 and neither would the development be modest, nor in keeping with the form and character of the settlement and local landscape setting. In any event, subject to the two recommended modifications, I consider that Policy 1 of the Plan would meet the Basic Conditions, and therefore, there is no requirement to allocate additional land for housing.

4.14 Policy 2 considers Housing Style and has regard to national guidance,<sup>15</sup> generally conforms with Policy ENV 6 of the CWaCLP (Part One) and meets the Basic Conditions. Policy 3 deals with Housing Design, which also has regard to national guidance,<sup>16</sup> and generally conforms with Policy ENV 6 of the CWaCLP (Part One), subject to introducing the qualification of lighting to be external. However, in addition, Policy 3 states that development should not erode the gap between Utkinton and Cotebrook. Policy GBC 3 of the CWaCLP (Part Two) identifies five key settlement gaps which are enabled by Policies STRAT 5 and ENV 2 of the CWaCLP (Part One). Policy 3 is even more restrictive than Policy GBC 3 because the latter includes four circumstances where development within a key settlement gap would be supported. Therefore, I consider that the element of the policy to maintain the gap between Utkinton and Cotebrook does not generally conform with the relevant policies of the CWaCLP (Parts One and Two) and I shall recommend its deletion. **(PM3)**

4.15 Those who may be concerned that removal of the gap from the policy may result in acceding to pressure for development in the countryside should be reconciled by the strong protection given by Policies STRAT 9 and ENV 2 of the CWaCLP (Part One) and GBC 2 of the CWaCLP (Part Two).

#### *Local Infrastructure (Policies 4, 5 & 6)*

4.16 The supporting text of Policy 4 describes the aim of supporting better facilities for local people. This is realised by the policy supporting schemes for improved parking and supporting the creation of new play space and recreational facilities. The policy also lists projects where improvements

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<sup>14</sup> Regulation 16 consultation response: Fisher German LPP on behalf of Mr A Hassell.

<sup>15</sup> NPPF: paragraph 127.

<sup>16</sup> NPPF: paragraph 127.

will be sought and the creation of a community orchard and public picnic site behind Woodlands Close, Cotebrook.

- 4.17 However, some of the justification immediately preceding Policy 4 seeks to avoid harm to the facilities, and retain and improve them, which reads more as part of a policy than the policy itself. In addition, the list of projects within the policy are in the nature of aspirations or Parish Council actions. Therefore, I shall recommend rephrasing the policy by introducing some text from the justification, by moving the list of projects into an accompanying table and by including a further brief table about Parish Council intentions. **(PM4)** The policy would then have regard to national guidance,<sup>17</sup> would generally conform with Policies STRAT 8, STRAT 9 and SOC 5 of the CWaCLP (Part One) and would meet the Basic Conditions.
- 4.18 CWaCC has indicated that the third paragraph of page 23 contains an error in that three of the sites identified in Policy 4 are defined as open space in the Local Plan. In addition, the explanation should include references to acknowledge the requirements of Policy SOC 6 of the CWaCLP (Part One) and Policy DM 35 of the CWaCLP (Part Two). I have concluded that Policy 4 would meet the Basic Conditions and therefore need not be modified. Nevertheless, the correction of the inaccuracy and the expansion of the explanation would be improvements to the Plan which could be undertaken as minor non-material updates when it is rewritten in preparation for the referendum.
- 4.19 Policy 5 considers the local economy. The policy has regard to national guidance,<sup>18</sup> generally conforms with Policies STRAT 8 and STRAT 9 of the CWaCLP (Part One) and meets the Basic Conditions, subject to one concern about Clause a) which refers to specifying the need for the development. Applicants are only required to identify a need for the development for which an application is made in certain circumstances such as where environmental or planning policy constraints mean that permission would otherwise be refused. In this case, operational need for agricultural development is referred to in Policy DM 6 of the CWaCLP (Part Two) and necessity is referred to in Policy DM 7 of the CWaCLP (Part Two) in relation to rural diversification. Policy ECON 3 of the CWaCLP (Part One) refers to unmet need in the context of camping and caravan sites.
- 4.20 Most significantly, Policy STRAT 9 of the CWaCLP (Part One) includes provision for development that has an operational need for a countryside location such as for agricultural or forestry operations. Given that the Plan area, other than land within the Utkinton settlement boundary is defined as countryside, I shall recommend a modification to Policy 5 to relate the specification of need to development in the countryside and add a reference to operational and locational need. **(PM5)**

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<sup>17</sup> NPPF: paragraph 92.

<sup>18</sup> NPPF: paragraph 85.

4.21 Policy 6 supports the provision of high quality communications, has regard to national guidance,<sup>19</sup> generally conforms with Policy ECON 1 of the CWaCLP (Part One) and meets the Basic Conditions. The title of the policy is misleading given that it relates to more than just broadband. Therefore, in the interest of clarity I shall recommend modifying the title to "High Quality Communications". **(PM6)**

#### *Transport (Policies 7 & 8)*

4.22 Policy 7 supports footpaths cycleways and highways. The policy has regard to national guidance,<sup>20</sup> generally conforms with Policy STRAT 10 of the CWaCLP (Part One) and meets the Basic Conditions. Transport is considered in Policy 8, about which CWaCC has provided particularly constructive comments.<sup>21</sup> The policy contains criteria expressed in four bullet points. The first criterion a) seeks a Transport Statement (TS) or Transport Assessment (TA) for development which would generate a "significant amount of vehicle movements". I accept that significance is a matter of judgement, but I am confident that development management procedures will enable a TS/TA to be produced where appropriate. The policy also refers to an "independent" consultant. As CWaCC indicates, consultants employed by a developer would produce a TS/TA which would then be reviewed by the CWaCC which would take the independent view. I shall recommend modifying criterion a) by deleting the final phrase.

4.23 Criterion b) explains what would be sought in the TS/TA and effectively is a repeat of a). Therefore, I shall recommend the deletion of criterion b). Criterion c) seeks the investigation of road safety and HGV usage which is more a Parish Council aspiration rather than a land use policy and I shall recommend that it is transferred from Policy 8 to the explanation. Subject to those modifications **(PM7)**, the policy would have regard to national guidance,<sup>22</sup> would generally conform with Policy STRAT 10 of the CWaCLP (Part One) and would meet the Basic Conditions.

#### *Local Distinctiveness, Landscape, Wildlife and Open Space (Policies 9, 10 & 11)*

4.24 When applications for development are considered, Policy 9 aims to retain the distinctive landscape within the Plan area. The policy, whilst being perhaps longwinded (albeit not to suggest it is unclear) has regard to national guidance,<sup>23</sup> generally conforms with Policy ENV 2 of the CWaCLP (Part One) and meets the Basic Conditions, subject to the deletion of the reference to an "independent" Arboricultural Assessment. **(PM8)**

4.25 Policy 10 deals with wildlife. Unfortunately, the policy has major defects because of the inclusion of Parish Council intentions, references to outdated maps and incorrect guidance and I refer again to the

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<sup>19</sup> NPPF: paragraphs 112 & 113.

<sup>20</sup> NPPF: paragraph 104.

<sup>21</sup> Regulation 16 response: CWaCC dated 29 November 2020.

<sup>22</sup> NPPF: paragraph 102.

<sup>23</sup> NPPF: paragraph 170.

constructive comments made by CWaCC.<sup>24</sup> The overall objectives behind the policy are sound but the expression of them within the policy lacks the clarity necessary for effective development management.

- 4.26 The policy contains eight items a) to h). Item a) seeks to monitor and maintain existing hedgerows, especially along the sides of roads and fails to recognise that hedges occur throughout the countryside and, unless within the area of a planning application, fall outside the planning system. Items b), c) and e) refer to information from the Cheshire Wildlife Trust (CWT) which has been updated by CWaCC. The “exceptional circumstances” test in Item g) is more restrictive than set out in national guidance, particularly when mitigation had been provided. In addition, there is a failure to recognise that, for a land use based policy appropriate to a neighbourhood plan, there should be a link to planning applications for development, rather than an assertion of what is intended for hedges, trees, wildlife, etc. Finally, the need for a net gain in biodiversity when development proposals are considered, sought by national guidance and encouraged in Policy DM 44 of the CWaCLP (Part Two), is absent.
- 4.27 CWaCC included an example of a wildlife policy in their Regulation 16 consultation response, which overcomes the shortcomings which I have identified above, and I shall recommend the majority of it as a replacement Policy 10. **(PM9)** The policy would then have regard to national guidance,<sup>25</sup> generally conform with Policies ENV 4 and ENV 3 of the CWaCLP (Part One) and Policy DM 44 of the CWaCLP (Part Two) and meet the Basic Conditions.
- 4.28 In their Regulation 16 consultation response, CWaCC commented that Habitat Distinctiveness is not normally used in policies. Furthermore, in response to one of my questions, CWaCC stated that the areas of high Habitat Distinctiveness shown on Figure 18 in the Plan do not align fully with the corridors and stepping stones or the restoration areas shown in the Local Plan (See Policy DM 44 of the CWaCLP Part Two). CWaCC suggested that the Map at Figure 18 should be replaced by one which is attached to the response and based on the Ecological Network for Cheshire West and Chester. I agree that this would correct the inaccuracies and shall recommend the modification to the Plan. **(PM10)**
- 4.29 Policy 11 designates Local Green Spaces (LGS) and refers to important vistas and views which are shown on Figure 20 (page 62)<sup>26</sup> and in subsequent annotated maps and photographs. The NPPF states that LGS should satisfy various requirements. The LGS 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,

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<sup>24</sup> Regulation 16 response: CWaCC dated 29 November 2020.

<sup>25</sup> NPPF: paragraph 174.

<sup>26</sup> There are presently two figures labelled as No.20 in the draft Plan (see pages 62 and 54). Following examination, when the Plan is updated, these references may be revised in accordance with paragraph 4.37 of this report.

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.<sup>27</sup>

- 4.30 The Plan identifies six LGS, two at Cotebrook and four on the edge of Utkinton. Of those at Cotebrook, I consider that the land to the rear of Woodlands Close (Figure 20, page 54) meets all the criteria for LGS designation. However, although the former school site (Figure 21) is close to the community it would serve and is local in character, I do not consider that it holds particular significance as a space which is open and green. It currently has the appearance of overgrown derelict land. Indeed, a comment in the Plan is that it could provide for a small number of affordable/discounted dwellings. I also note that in the response to my questions, UCPC excluded this site from the list of "protected green spaces" sought by the Council.<sup>28</sup> Therefore, I shall recommend that the former school site is not designated as LGS.
- 4.31 There are two proposed LGS on the western edge of Utkinton near the War Memorial on John Street (Figures 22 & 23), one proposed LGS on land off Quarry Bank on the northern edge of Utkinton (Figure 25) and another proposed LGS on the "Donkey Field" on the southern edge of Utkinton (Figure 24). I accept that all the sites are in close proximity to Utkinton. However, Utkinton is defined as a Local Service Centre and, in response to my questions, CWaCC commented that the cumulative nature of the proposed LGS around Utkinton may limit long term development opportunities. The NPPF advises that designating land as LGS should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.<sup>29</sup> Therefore, I conclude that the accumulation of LGS would be disproportionate, given that there are no land allocations for additional housing. This conclusion is given added weight in view of NPPF advice that LGS should be capable of enduring beyond the end of the Plan period.
- 4.32 Nevertheless, the proposed LGS at the "Donkey Field", located between the dwellings on Northgate, the Rose Farm complex and the houses on the western side of Rowlands View, is local in character. The land also has local significance due to its relative tranquillity and forming part of the setting of Bumblebee Hall, a Grade II listed building at 16 Northgate. I do not consider that the 0.9 ha site is an extensive tract of land in the context of its surroundings and its virtual enclosure by the residential properties and Rose Farm. Therefore, I conclude that it meets the criteria for designation as LGS. Accordingly, I shall recommend that the Plan is modified by the deletion of the proposed LGS at the former school (Cotebrook), Land off John Street (Utkinton), Land behind the War Memorial (Utkinton) and Land off Quarry Bank (Utkinton) but that the

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<sup>27</sup> NPPF: paragraph 100.

<sup>28</sup> Response from UCPC dated 18 January 2021.

<sup>29</sup> NPPF: paragraph 99.

Land to the rear of Woodlands Close (Cotebrook) and the “Donkey Field” (Utkinton) are retained as LGS in the Plan. **(PM11)**

- 4.33 Turning to the phrasing of Policy 11 a), policies for managing development within a Local Green Space should be consistent with those for Green Belts.<sup>30</sup> National guidance is that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special, rather than exceptional, circumstances. Further guidance is outlined in the NPPF. Therefore, I shall recommend a modification of the policy to make it consistent with the management of development in the Green Belt.
- 4.34 Policy 11 b) requires development to respect important views into and out of the Parish. Policies cannot be included for land outside the Plan area. Views into the Parish will originate from outside the area of the Plan and I shall recommend modifying the criterion to views “within and from the Parish”. I shall also recommend including the list of views in Figure 20 (page 62) in the policy in order to avoid excessive coverage and the lack of clarity suggested in the additional list of ten views on pages 69 and 70 which have no associated maps or photographs.
- 4.35 Policy 11 d)–e) consider the potential impact of development on views and vistas and, in my opinion, add confusion to how the effects would be assessed by the Plan. Policy 9 Landscape Distinctiveness is more comprehensive and will enable a thorough assessment to be made. Criterion f) lacks the precision required for effective development management and presupposes that development would cause damage, which is not necessarily the case. Therefore, I shall recommend the deletion of criteria d), e) and f) of Policy 11. Finally, the title of the policy is misleading because it only refers to LGS and I shall recommend the addition of Vistas and Views. **(PM12)** Subject to the recommended modifications, Policy 11 would have regard to national guidance,<sup>31</sup> would generally conform with Policy ENV 2 of the CWaCLP (Part One) and would meet the Basic Conditions.

### Overview

- 4.36 Accordingly, on the evidence before me, with the recommended modifications, I consider that the policies within the UCNP would be in general conformity with the strategic policies of the Local Plan (Parts One and Two), would have regard to national guidance, would contribute to the achievement of sustainable development and so would meet the Basic Conditions.
- 4.37 A consequence of the acceptance of the recommended modifications set out in the Appendix to this report would be that amendments would have to be made to the explanation within the Plan in order to make it logical

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<sup>30</sup> NPPF: paragraph 101.

<sup>31</sup> NPPF: paragraphs 99 & 100.

and suitable for the referendum. These might include correcting any inaccuracies and re-numbering paragraphs and figures.<sup>32</sup> In addition, improvements may be considered desirable to the formatting so that it enables effective use of the UCNP as a development plan document. None of these alterations would affect the ability of the Plan to meet the Basic Conditions and could be undertaken as non-material changes.

## **5. Conclusions**

### *Summary*

- 5.1 The Utkinton and Cotebrook Neighbourhood Plan has been duly prepared in compliance with the procedural requirements. My examination has investigated whether the Plan meets the Basic Conditions and other legal requirements for neighbourhood plans. I have had regard to all the responses made following consultation on the UCNP, and the evidence documents submitted with it.
- 5.2 I have made recommendations to modify a number of policies to ensure the Plan meets the Basic Conditions and other legal requirements. I recommend that the Plan, once modified, proceeds to referendum.

### *The Referendum and its Area*

- 5.3 I have considered whether or not the referendum area should be extended beyond the designated area to which the Plan relates. The UCNP as modified has no policy or proposal which I consider significant enough to have an impact beyond the designated Neighbourhood Plan boundary, requiring the referendum to extend to areas beyond the Plan boundary. I recommend that the boundary for the purposes of any future referendum on the Plan should be the boundary of the designated Neighbourhood Plan Area.

### *Concluding Comments*

- 5.4 The Parish Council and the associated volunteers are to be commended for their efforts in producing a plan which is well supported by the accompanying documentation. It is very informative and I enjoyed reading it, especially the details of the countryside around Utkinton and Cotebrook which I saw on my site visit. Incorporating the modifications I have recommended, the UCNP will make a positive contribution to the Development Plan for the area and should enable the rural character and appearance of the Parish to be maintained whilst enabling sustainable development to proceed.

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<sup>32</sup> For example, see footnote 26 of this report and PM11 and PM12 in the Appendix.  
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*Andrew Mead*

Examiner

## Appendix: Modifications

Proposed modification no. (PM)	Page no./ other reference	Modification
PM1	Policy 1	Delete: "... which would also apply to development in gardens."
PM2	Policy 1	Amend first paragraph on p.18 to: <b>"Within the countryside, housing proposals ... etc,"</b> .  Delete: "... Reuse or redevelopment of brownfield land in Cotebrook."
PM3	Policy 3	Amend the third paragraph to: <b>"Any future development must protect the "dark skies" with sympathetic external lighting. Developers should give details of external lighting and lux levels ... etc."</b>  Delete the final paragraph.
PM4	Policy 4	Delete the policy and substitute:  <b>"Proposals which would result in the harm or loss of the facilities listed in Table 1 below will not be supported. Proposals which would result in the replacement of or improvement/addition to the facilities will be supported. Schemes to provide adequate parking for the community buildings will be supported. Schemes which would create new play and recreational facilities for all ages will be supported, where appropriate."</b>  Include a new Table 1: <b>Table 1 Community Facilities</b>  <b>Utkinton Village Hall</b> <b>Cotebrook Village Hall</b> <b>Utkinton St Paul's C of E Primary School</b> <b>Playing field opposite St Paul's C of E the Primary School</b> <b>St John's and the Holy Cross Church</b>

		<p>Include a new Table 2:</p> <p><b>Table 2 Parish Council Projects</b></p> <p><b>i) Improve the facilities at the places listed in Table 1.</b></p> <p><b>ii) Explore with CWaCC the acquisition/transfer and use of land at the rear of Woodlands Close, Cotebrook for the purpose of providing a community orchard and picnic place.</b></p>
PM5	Policy 5	Amend a) to: <b>"Applications for development or change of use of buildings within the countryside relating to agricultural, retail, tourism or leisure use must have the operational and locational need specified by the applicant."</b>
PM6	Policy 6	Alter policy title to: <b>"High Quality Communications"</b> .
PM7	Policy 8	<p>Delete from a): "... to be produced by an independent consultant."</p> <p>Delete b).</p> <p>Transfer c) from the policy to the explanation.</p>
PM8	Policy 9	Delete from c): "... Independent ...".
PM9	Policy 10	<p>Delete the policy and include:</p> <p><b>a) "Proposals should sustain and encourage a net gain in the flora and fauna that are integral components of the Parish's landscape and wildlife diversity.</b></p> <p><b>b) Proposals will be supported where they integrate with the borough's ecological network, improve the quality, enhance wildlife corridors in the area and include measures to protect wildlife species and habitats.</b></p>

		<p><b>c) Development proposals should retain existing wetland features such as ponds to enhance local diversity.</b></p> <p><b>d) Development proposals should seek to maintain and retain hedgerows, trees and watercourses where these make a significant contribution to the amenity, biodiversity and landscape character of the surrounding area. Development that would adversely affect these features will not normally be permitted.</b></p> <p><b>e) Any hedgerows damaged or removed as a result of development or maintenance should provide appropriate mitigation; proposals to replant with native hedgerow species to sustain wildlife habitation are encouraged.</b></p> <p><b>f) New developments will be required to include suitable planting of trees and hedgerows, in line with the Council’s local plan policies.”</b></p>
PM10	Figure 18	Replace Figure 18 with the Ecological Network map attached to the CWaCC email dated 13 January 2021. <sup>33</sup>
PM11 <sup>34</sup>	Policy 11 Table 2 Figures 21, 22, 23 and 25.	Delete the following proposed Local Green Spaces from the Plan:  The former school (Cotebrook). Land off John Street (Utkinton).  Land behind the War Memorial (Utkinton).

<sup>33</sup> <http://consult.cheshirewestandchester.gov.uk/file/5791018>

<sup>34</sup> In relation to the Plan references in PM11 (and PM12), see paragraph 4.37 of this report. Intelligent Plans and Examinations (IPE) Ltd, 3 Princes Street, Bath BA1 1HL

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		Land off Quarry Bank (Utkinton).
PM12 <sup>35</sup>	Policy 11	<p>Amend title to: <b>“Local Green Spaces, Vistas and Views”</b>.</p> <p>Amend final sentence of clause a) to: <b>“Development on designated Local Green Space will be considered in line with national planning policy on Green Belts.”</b></p> <p>Amend clause b) to: <b>“Development must respect the important views within and from the Parish shown on Figure 20 (page 62) due to their special character, significance and community value.”</b></p> <p>Delete clauses d), e) and f).</p>

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<sup>35</sup> See footnote 34.