

**Independent Examiner's Report of the
Kingswear Parish Neighbourhood Plan**

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SECTION 2

Summary

As the Independent Examiner appointed by South Hams District Council to examine the Kingswear Parish Neighbourhood Plan, I can summarise my findings as follows:

- 1. I find the Kingswear Parish Neighbourhood Plan and the policies within it, subject to the recommended modifications does meet the Basic Conditions.*
- 2. I am satisfied that the Referendum Area should be the same as the Plan Area, should the Kingswear Parish Neighbourhood Plan go to Referendum.*
- 3. I have read the Kingswear Consultation Statement and the representations made in connection with this subject I consider that the consultation process was robust and that the Neighbourhood Plan and its policies reflect the outcome of the consultation process including recording representations and tracking the changes made as a result of those representations.*
- 4. I find that the Kingswear Parish Neighbourhood Plan can, subject to the recommended modifications proceed to Referendum.*
- 5. The Kingswear Parish Neighbourhood Plan Area is within the area covered by South Hams District Council. The development plan for the area is the Plymouth and South West Devon Joint Local Plan (the JLP), adopted in March 2019.*

SECTION 3

Introduction

1. Neighbourhood Plan Examination.

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

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

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

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

The expectation is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However, there are two circumstances when an examiner may consider it necessary to hold a hearing. These are where the examiner considers that it is necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case. Having read the plan and considered the representations I concluded that it was not necessary to hold a Hearing.

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

The examiner is required to check whether the neighbourhood plan:

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

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

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

1. The Plan can proceed to a Referendum

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

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

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

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

3.1 I am also required to recommend whether the Referendum Area should be different from the Plan Area, should the Kingswear Parish Neighbourhood Plan go to Referendum.

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

- the policies in the Plan relate to the development and use of land for a designated Neighbourhood Area are in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act 2004*
- the Plan meets the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 to specify the period for which it has effect*
- the Plan has been prepared for an area designated under the Localism Act 2011 and has been developed and submitted for examination by a qualifying body.*

3.3 I am also required to determine whether the Plan complies with the Basic

Conditions, which are that the proposed Neighbourhood Plan:

- Has regard to national policies and advice contained in guidance issued by the Secretary of State;*
- Contributes to the achievement of sustainable development;*
and
- Is in general conformity with the strategic policies contained in the Development Plan for the area.*

There is now an additional Basic Condition to be considered. Since the 28th of December 2018, the Neighbourhood Planning (General) Regulations 2012 Such 2 para 1 has stated:

"In relation to the examination of Neighbourhood Plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act-

The making of the Neighbourhood Plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017."

The Plan must also not breach, and otherwise be compatible with EU obligations and Human Rights requirements.

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

SECTION 4

The Report

4.1 Appointment of the Independent examiner

South Hams District Council appointed me as the Independent Examiner for the Kingswear Parish Neighbourhood Plan with the agreement of the Kingswear Parish Neighbourhood Plan Steering Group

4.2 Qualifying body

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

4.3 Neighbourhood Plan Area

The Kingswear Parish Neighbourhood Plan Area was designated on the 19th of May 2016 under the Neighbourhood Planning Regulations 2012 (part 2 S6). The area covers the administrative boundaries of the Parish of Kingswear. The Qualifying Body have confirmed that there are no other neighbourhood plans covering the designated area.

4.4 Plan Period

The Plan identifies the period to which it relates as 2019 to 2034 a period chosen to tie in with the development plan for the area, the Plymouth and South West Devon Joint Local Plan (the JLP).

4.5 South Hams District Council Regulation 15 Assessment of the Plan.

Kingswear Parish Council submitted the plan to South Hams District Council for consideration under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012. The Council has made an initial assessment of the submitted Kingswear Parish Neighbourhood Plan and the supporting documents and is satisfied that these comply with the specified criteria.

4.6 The Consultation Process

The Kingswear Parish Neighbourhood Plan has been submitted for

examination with a Consultation Statement which sets out the consultation process that has led to the production of the plan, as set out in the regulations in the Neighbourhood Planning (General) Regulations 2012.

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

(a) It contains details of the persons and bodies who were consulted about the proposed Neighbourhood Plan;

(b) It explains how they were consulted;

(c) It summarises the main issues and concerns raised by the persons consulted; and

(d) It describes how these issues and concerns were considered and, where relevant, addressed in the proposed Neighbourhood Plan.

Having examined the documents and considered the focus of the Neighbourhood Plan I conclude that the consultation process was robust, well conducted and recorded.

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

4.7 Regulation 16 consultation by South Hams District Council and record of responses.

South Hams District Council placed the Kingswear Parish Neighbourhood Plan out for consultation under Regulation 16 from the 1st of June to the 13th of July.

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

4.8 Site Visit

I carried out an unaccompanied site visit to familiarise myself with the Neighbourhood Plan Area on the 29th July 2020.

4.9 Compliance with the Basic Conditions

The Qualifying Body have produced a Basic Conditions Statement. The purpose of this statement is to set out in some detail how the Neighbourhood Plan as submitted meets the Basic Conditions. It is the Examiner's Role to take this document into consideration but also take an independent view as to whether or not the assessment as submitted is correct.

I have to determine whether the Kingswear Parish Neighbourhood Plan:

- 1. Has regard to national policies and advice*
- 2. Contributes to sustainable development*
- 3. Is in general conformity with the strategic policies in the appropriate Development Plan*
- 4. Is not in breach and is otherwise compatible with EU obligations and Human Rights requirements.*
- 5. There is now an additional Basic Condition to be considered. Since the 28th of December 2018, the Neighbourhood Planning (General) Regulations 2012 Such 2 para 1 has stated:*

"In relation to the examination of neighbourhood development plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act—

The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017."

Documents brought to my attention by the Borough Council for my examination include:

- *Kingswear Parish Neighbourhood Plan - the main document which includes policies developed in consultation with the community at various engagement events and workshops.*
- *Basic Conditions Statement - sets out how the plan meets the Basic Conditions.*
- *Consultation Statement – sets out how the community, and other stakeholders, have been involved in preparing the Plan.*
- *Strategic Environmental Assessment (SEA) Screening Report.*
- *Habitats Regulations Assessment (HRA) screening opinion.*
- *Kingswear Character Assessment.*

4.10 Comment on Documents submitted

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

4.11 Planning Policy

4.11 National Planning Policy

National Policy guidance is in the National Planning Policy Framework (NPPF). At the time of the preparation of the Neighbourhood Plan the relevant NPPF was the National Planning Policy Framework (NPPF) February 2019 (as updated).

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

Paragraph 29 states:

“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not

promote less development than set out in the strategic policies for the area or undermine those strategic policies.”

The Kingswear Parish Neighbourhood Plan does not need to repeat these national policies, but to demonstrate it has taken them into account.

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

4.12 Local Planning Policy- The Development Plan

The Kingswear Parish Neighbourhood Plan Area is within the area covered by South Hams District Council. At the time of my examination, the Development Plan for the area was the Plymouth and South West Devon Joint Local Plan (the JLP), adopted in March 2019.

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

The NPPF 2019 (updated) states:

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

a) housing (including affordable housing), employment, retail, leisure and other commercial development;

b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);

c) community facilities (such as health, education and cultural infrastructure); and

d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.”

Neighbourhood Plans should only contain non-strategic policies. The NPPF 2019(updated) states:

“Non-strategic policies

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

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

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

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

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

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

useful considerations:

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

I have examined the Kingswear Parish Neighbourhood Plan and consider that, subject to modification, the plan is in general conformity with the Strategic Policies of the Development Plan and does meet the Basic Conditions in this respect.

4.13 Other Relevant Policy Considerations

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

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

South Hams District Council carried out a Strategic Environmental Assessment (SEA) screening exercise (June 2019) in consultation with relevant statutory bodies. Having taken all of the relevant policies of the draft Kingswear Neighbourhood Plan (Pre Regulation 14 Version submitted in May 2019) into account, and assessed the potential environmental impact on designated sites and landscapes, it was the Council’s opinion that a full SEA

was not required for the Neighbourhood Plan since no development proposals are included in the Plan.

4.13.2 Habitats Regulations Assessment (HRA)

In June 2019, South Hams District Council as the competent authority carried out HRA to comply with Regulation 105 of the Habitats Regulations 2017. Under these Regulations, a competent authority must consider whether a relevant plan is likely to have a significant effect on any European sites before deciding to give any consent, permission or other authorisation.

The conclusion of the assessment was:

Kingswear lies within the sustenance zone of the Berry Head SSSI (South Hams SAC). The Plan does not allocate any development sites. In the light of this Council consider the Kingswear Neighbourhood Plan will not have a significant effect on a European Site and therefore further assessment under the Habitat Regulations is not required.

4.13.3 Sustainable development

Paragraphs 7 to 14 of the NPPF (Feb 2019 as updated) identify the components of sustainable development, and how planning applications and local plans can meet these requirements.

The Basic Conditions Statement sets out how the neighbourhood plan addresses the requirement to achieve sustainable development.

My conclusion is that the principles of Sustainable Development required in the NPPF have been taken into account in the development of the plan and its policies and where issues have been identified they were addressed by revisions to the document prior to submission. I am satisfied that the Kingswear Parish Neighbourhood Plan subject to the recommended modifications addresses the sustainability issues adequately.

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

I am satisfied that the Kingswear Parish Neighbourhood Plan has done so.

I am therefore satisfied that the Kingswear Parish Neighbourhood Plan meets the basic conditions on EU obligations.

4.13.4 Excluded development

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

4.13.5 Development and use of land

I am satisfied that the Kingswear Parish Neighbourhood Plan, subject to modification covers development and land use matters.

4.13.6 General Comments

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

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

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

In order to provide clarity and to ensure that the policies in the Kingswear

Parish Neighbourhood Plan meet the Basic Conditions it has been necessary for me to make modifications to a number of policies. This includes modifications where policies have sought to introduce controls outside the scope of the planning system or where existing policy already sets out the scope of control.

*As I have found it necessary to modify a number of policies it may also be necessary to modify the supporting text within the plan to align with the modified policies, where this is necessary. The details of these modifications are set out within my comments on the related policies. My comments on policies are in **blue** with the modified policies in **red**.*

4.14 The Neighbourhood Plan Vision, Strategic Aims and Policies

4.14.1 VISION Statement

“To promote a thriving and sustainable community while protecting the special charm and character of Kingswear Parish and the AONB for residents and visitors.”

Objectives.

- Recognising the different characteristics of settlements and protecting the different character with appropriate development. Preferring development on brownfield sites.***
- Strengthening community ties between Hillhead and Kingswear.***
- Promoting tourism that does not adversely impact on the setting of the Parish and its AONB.***
- Developing community open spaces and recreational facilities, particularly in Hillhead.***
- Successful integration of the new development at the Noss Marina into the Parish Community and infrastructure.***

- *To protect the integrity of the AONB, its wildlife, beauty, and vistas.*
- *Conserving and strengthening local biodiversity including trees and woodland.*
- *Development within the settlement boundaries to respect local character and not impact adversely on the existing settlements.*
- *To ensure new development addresses local housing need, both for market and affordable housing.*
- *To encourage small scale renewable energy where it does not adversely impact on the AONB.*
- *To protect and improve where possible existing community facilities.*
- *To promote appropriate small business including live-work units.*
- *To ensure development protects and enhances the ecological richness and visual beauty of the river estuary and coastal margins.*

COMMENT

I am satisfied that the Kingswear NDP vision and objectives were developed from the consultation process and that the policies within the plan reflect the vision and objectives.

4.15 KINGSWEAR PARISH NEIGHBOURHOOD PLAN POLICIES

Policy K1: Settlement Boundaries

Settlement Boundaries have been defined as shown on Figure 1 for Hillhead and Kingswear. Within the settlement boundaries, infill development that complies with the KNP development plan and design guidance in the Kingswear Character Assessment 2019 (KCA) and policy K5, will be supported. Brownfield sites will be preferred for development.

Outside the settlement boundary development will need to comply with Policy TTV1 in the JLP and Policy K2 of this plan and conserve and enhance the landscape and biodiversity of the South Devon AONB. The change of use of historic and attractive disused buildings, where the proposed development complies with other policy in the development plan, will be encouraged.

COMMENT

The context for policy TTV1 in the JLP states:

“5.4 Policy TTV1 sets out the principles to be used to distribute new employment and housing across the Thriving Towns and Villages Policy Area. The distribution is based upon an understanding of the settlement pattern within the rural areas, the role of each of the settlements within this pattern, and how they relate to each other and to the wider Plymouth Housing Market Area (HMA).

5.5 The plan does not define settlement boundaries. However, development outside built up areas will be considered in the context of Policy TTV26 (development in the countryside). Neighbourhood plans may choose to identify settlement boundaries for their towns and villages. A consistent approach will be encouraged through the use of overarching principles for the drawing of settlement boundaries established by the LPAs. These principles, which were published in the JLP Settlement Boundaries Topic Paper, will be incorporated in the Thriving Towns and Villages SPD.”

Policy TTV1: Prioritising growth through a hierarchy of sustainable settlements states:

“The LPAs will distribute growth and development delivering homes and jobs in accordance with the following hierarchy of settlements, enabling each town and village to play its role within the rural area:

1. The Main Towns - which will be prioritised for growth to enable them

to continue to thrive, achieve strong levels of self-containment, and provide a broad range of services for the wider area.

2. Smaller Towns and Key Villages - which will receive support for growth commensurate with their roles in supporting the small villages and hamlets.

3. Sustainable Villages - where development to meet locally identified needs and to sustain limited services and amenities will be supported.

4. Smaller villages, Hamlets and the Countryside - where development will be permitted only if it can be demonstrated to support the principles of sustainable development and sustainable communities (Policies SPT1 and 2) including as provided for in Policies TTV26 and TTV27.”

Kingswear is not included in the list of Sustainable villages and therefore policy TTV26 of the JLP is more relevant in the context of Policy K1.

There is no definition of “attractive” provided making the application of this element of the policy uncertain.

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

Policy K1: Settlement Boundaries

Settlement Boundaries for Hillhead and Kingswear are shown on Figure 1. Within the settlement boundaries, development that complies with other policies in the KNDP and design guidance in the Kingswear Character Assessment 2019 (KCA), will be supported. Brownfield sites will be preferred for development.

Outside the settlement boundary development will need to comply with Policy TTV26 in the JLP and Policy K2 of this plan and conserve and enhance the landscape and biodiversity of the South Devon AONB. The

change of use of historic and disused buildings, where the proposed development complies with other policy in the development plan, will be encouraged.

Policy K2: Exception Sites for Local Needs.

Where evidence of exceptional local need in Kingswear Parish for affordable homes is provided, sites adjacent to the settlement boundary will be considered for the provision of housing built to suit these needs provided they are of suitable tenure, management and accessibility standards.

Any such site will need to comply with the following criteria:

- An environmental and visual assessment of the impact on the AONB and local wildlife and historic assets will need to be undertaken for any development proposal for an exception site.*
- The current local need for affordable homes will need to have been demonstrated to the satisfaction of the LPA and should be supported by independent evidence from Devon Home Choice or a successor organisation indicating a significant need for affordable housing in Kingswear from people having a local connection to Kingswear as defined in Policy K3 of this Plan.*
- Unless viability restraints require some market housing, all dwellings are to be affordable and retained as such in perpetuity. In any case, subject to viability, at least 80% of dwellings on the site are to be affordable, and any market housing proposed must be justified in terms of viability in a report with open access to the Local Planning Authority and the local community in an unredacted form.*
- Access to the site and traffic generated by it is not to cause significant adverse impact on local roads and residential amenity of neighbouring property.*
- Any right of way of the site is to be retained and if appropriate new paths and traffic calming measures are to be incorporated.*

- *Off street parking is to be provided within the development in line with policy K7.*
- *Sites will normally not be larger than 0.4ha and have no more than 10 dwellings in order that they are in keeping with the scale of Kingswear.*
- *Development Proposals will need to be designed to fit well into the landscape and comply with guidance in the KCA.*

COMMENT

Policy TTV27 sets out the JLP’s strategic approach to meeting local housing needs in rural areas through Rural Exception Sites. In order to meet the Basic Conditions policies in a neighbourhood plan must be in general conformity with the strategic policies of the relevant development plan, which is in this case the JLP.

Policy TTV27 states:

Proposals for residential development on sites adjoining or very near to an existing settlement which would not otherwise be released for this purpose may be permitted provided that it can be demonstrated that:

- 1. It meets a proven need for affordable housing for local people.***
- 2. It includes a mix of affordable and market housing products where necessary to be financially viable. This includes open market housing, providing it does not represent more than 40 per cent of the homes or 40 per cent of the land take excluding infrastructure and services.***
- 3. Management of the scheme will ensure that the dwellings continue to meet the identified need in perpetuity.***
- 4. The proposal meets the requirement of all other relevant policies of the Plan. “***

The NPPF defines Rural Exception sites as:

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

The NPPF defines Rural Exception Sites as “small” but does not put an absolute restriction on the number of dwellings or the size of the site, I have not been provided with supporting evidence to justify the imposition of additional restrictions within the policy.

Policy K2 does reflect elements of TTV27 but in certain areas diverges from it to the extent that I consider it is no longer in general conformity with it. The requirement for “at least 80% of the dwellings on site to be affordable” is not consistent with policy TTV27. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy K2: Exception Sites for Local Needs.

To meet a proven need for affordable housing for local people sites brought forward in accordance with policy TTV27 of the JLP and policy K3 of the KNDP will be supported subject to:

- Development Proposals being designed to fit well into the landscape and in compliance with the guidance in the KCA.*
- Being supported by an appropriate environmental and visual assessment which identifies the impact of the proposal on the AONB and local wildlife and historic assets.*
- Achieving safe access to the site and ensuring that any traffic generated by the development does not cause significant adverse impact on local roads and residential amenity of neighbouring property.*
- The retention of any right of way on the site and if appropriate*

new paths and traffic calming measures are to be incorporated.

- ***Off street parking provided within the development in line with policy K7.***
- ***Proposals being of a size and scale that are in keeping with the scale of Kingswear.***

Policy K3: Local Connection for Affordable Housing.

New affordable housing provision in the Neighbourhood Area shall be occupied on a preferential basis by persons (and their dependents) whose housing needs are not met by the market and:

a) who have a minimum period of 4 years permanent and continuous residence in the Parish; OR

b) who are not now resident in the Parish but have a local connection with the Parish including a period of permanent and continuous residence of 4 years or more within the last 10 years; OR

c) who have an essential need to live close to a close relative who has a minimum of 4 years permanent and continuous residence in the Parish, the essential need arising from proven age or medical reasons; OR

d) who need to live close to their place of work in the Parish and have a permanent contract for that employment.

Where such a person cannot be found for any of criteria a-d above, affordable housing may be occupied by people and their dependents whose housing needs are not met by the market. These occupancy requirements shall apply in perpetuity and be the subject of a legal agreement negotiated during the planning process on any development of affordable housing.

COMMENT

South Hams DC have changed their local connections policy, to reflect this policy K3 should be modified as follows:

Policy K3: Local Connection for Affordable Housing.

New affordable housing provision in the Neighbourhood Area shall be occupied on a priority basis by persons (and their dependents) whose housing needs are not met by the market and:

- a) The person has lived in the parish/town for 3 out of the 5 years preceding the allocation***
- b) The person has immediately prior to the allocation lived in the parish/town for 6 out of 12 months preceding the allocation***
- c) Immediate family have lived in the parish/town themselves for 5 years preceding the allocation. For avoidance of doubt The Local Government Association guidelines define immediate family as parents, siblings and non- dependent children.***
- d) The person has permanent employment in the parish/town with a minimum contract of 16 hours per week which has continued for the 6 months preceding the allocation without a break in employment of more than 3 months such employment to include self-employment. This should not include employment of a casual nature***

Where such a person cannot be found for any of criteria a-d above, affordable housing may be occupied by people and their dependents whose housing needs are not met by the market. These occupancy requirements shall apply in perpetuity and be the subject of a legal agreement negotiated during the planning process on any development of affordable housing.

Policy K4: Design of Development in Kingswear Parish.

The unique character of the built form in Kingswear village and the wider Parish should be reflected in new development proposals, which should have regard to the guidelines in the Kingswear Character Assessment 2020.

Examples of typical and traditional construction in the Kingswear Conservation Appraisal are relevant and should inform design for the built form of Kingswear village as a whole.

COMMENT

I have no comment on this policy.

Policy K5: New homes to be primary residences.

Due to the impact upon the local housing market of the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes) new open market housing will only be supported where there is a restriction to ensure its occupancy as a Principal Residence.

Enough guarantee must be provided of such occupancy restriction through the imposition of a planning condition or legal agreement. New unrestricted second homes will not be supported at any time.

Principal Residences are defined as those occupied as the residents' sole or main residence, where the residents spend most of their time when not working away from home.

The condition or obligation on new open market homes will require that they are occupied only as the primary (principal) residence of those persons entitled to occupy them. Occupiers of homes with a Principal Residence condition will be required to keep proof that they are meeting the obligation or condition and be obliged to provide this proof if/when South Hams District Council requests this information. Proof of Principal Residence is via verifiable evidence which could include, for example (but not limited to) residents being registered on the local electoral register and being registered for and attending local services (such as healthcare, schools etc.).

COMMENT

Evidence to support this policy has been produced in the

Neighbourhood Development Plan. It is clear that there is strong community support for a principal residency occupancy restriction policy and that the community feel it is the right response to the situation within the parish regarding increasing second home ownership. The supporting evidence clearly sets out the statistics for the parish showing approximately a 27% second home ownership in the Parish in 2019. South Hams District Council support the inclusion of this policy.

The first paragraph of this policy includes the phrase:

“dwellings used for holiday accommodation (as second or holiday homes)” I find that this phrase potentially confuses holiday businesses, acknowledged as important to the local economy and second homes.

I have considered the policy in terms of the Basic Conditions and particularly achieving sustainable development. I am satisfied that the information presented provides adequate evidence to support the contention that ongoing unrestricted open market housing development will have a negative impact upon the community and the affordability of dwellings for full time occupation and therefore its long-term sustainability. I therefore conclude that the policy subject to modification does meet the Basic Conditions.

The policy as currently worded is confusing and for clarity should be modified as follows:

Policy K5: New homes to be primary residences.

Due to the impact upon the local housing market of the continued uncontrolled growth of second homes new open market housing other than replacement dwellings will only be supported where there is a restriction to ensure its occupancy as a Principal Residence.

Enough guarantee must be provided of such occupancy restriction through the imposition of a planning condition or legal agreement which

will require that the dwelling is only occupied as the primary (principal) residence of those persons entitled to occupy them. Occupiers of homes with a Principal Residence condition will be required to keep proof that they are meeting the obligation or condition and be obliged to provide this proof if/when South Hams District Council requests this information. Proof of Principal Residence is via verifiable evidence which could include, for example (but not limited to) residents being registered on the local electoral register and being registered for and attending local services (such as healthcare, schools etc.).

Principal Residences are defined as those occupied as the residents' sole or main residence, where the residents spend most of their time when not working away from home.

Policy K6: Protection of local heritage assets.

Buildings and structures of significant local architectural and historic interest have been identified and are listed in Appendix 1 of this Plan. These buildings are an important contribution to the distinctiveness of Kingswear and development proposals will be expected to retain and enhance the local distinctiveness of the identified buildings and structures and their setting wherever they are potentially impacted.

COMMENT

The wording of this policy lacks clarity and fails to reflect the existing national and local policy context. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy K6: Protection of local heritage assets.

Development proposals should retain the local character and distinctiveness of the area by conserving and where appropriate enhancing its historic environment including both designated and non-designated heritage assets and their settings, according to their national and local significance.

Buildings and structures of local architectural and historic interest have been identified and are listed in Appendix 1 of this Plan. These buildings are an important contribution to the distinctiveness of Kingswear.

Policy K7: Traffic Calming and Parking Standards.

*Measures to improve pedestrian and cycle safety on the highway will be promoted and supported. Where appropriate, development that generates extra journeys will be expected to contribute to measures that implement this policy and encourage sustainable transport by assisting **vulnerable road users**.*

New residential development will be required to provide at least two off-street parking places on site unless the property has only one bedroom and is less than 60metres square total floor area. Dwellings with 3 bedrooms or more will be required to provide a minimum of three off-street parking places on site.

COMMENT

Elements of this policy would be more appropriately located either in the community aspiration/project section of the plan or within the explanatory text of the policy. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy K7: Traffic and Parking Standards.

New residential development will be required to provide as a minimum off-street parking to meet adopted standards. Where possible developers are encouraged to provide two off-street parking places on site unless the property has only one bedroom and is less than 60 metres square total floor area. Dwellings with 3 bedrooms or more will be required to provide a minimum of three off-street parking places on site.

Where appropriate, development that generates extra journeys will be expected to contribute to measures that implement this policy and

encourage sustainable transport by assisting vulnerable road users.

Policy K8: Protection of Trees and Woodland.

Development requiring planning permission that damages or results in the loss of ancient trees or mature trees or hedgerows of arboriculturally and amenity value will not be permitted.

Development proposals must be designed to retain trees or hedgerows of good arboriculturally and amenity value. Trees and areas of woodlands which are important to the setting of the urban area and views of the Parish from the sea are identified in the Kingswear Character Assessment.

Development proposals should, where appropriate, be accompanied by a survey that establishes the health and longevity of any affected trees or hedgerows and a management plan to demonstrate how they will be so maintained.

Any TPO tree that is authorised to be removed shall be replaced by a native species as near as possible to the existing location of the removed tree.

COMMENT

The NPPF sets out the policy framework for the determination of planning applications affecting irreplaceable habitats including veteran and ancient trees. The first paragraph of policy K8 is more restrictive than the National Policy and in order to meet the Basic Conditions should be modified as follows:

Policy K8: Protection of Trees and Woodland.

Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) will be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists

Development proposals should be designed to retain trees or hedgerows of good arboriculturally and amenity value. Trees and areas of woodlands which are important to the setting of the urban area and views of the Parish from the sea are identified in the Kingswear Character Assessment.

Development proposals should, where appropriate, be accompanied by a survey that establishes the health and longevity of any affected trees or hedgerows and a management plan to demonstrate how they will be maintained.

Any TPO tree that is authorised to be removed shall be replaced by a native species as near as possible to the existing location of the removed tree.

Policy K9: Local Wildlife Sites and habitats.

Development is required to protect and maintain Priority Habitats as defined by Natural England and the County Wildlife Sites listed in appendix 3 and shown in Figure 2 above. Where adverse impact on the ecological or landscape value of these habitats and sites is considered justified by the benefits of development, then mitigation and compensation will be required to ensure there is a net gain of biodiversity and no loss of long-term landscape beauty.

COMMENT

I have no comment on this policy

Policy K10: Local Green Spaces.

The following areas of open space detailed in Figs 1-4 Appendix 2 are designated as Local Green Space:

Head of Waterhead Creek including Jubilee Park,

the allotments, and Community Orchard.

Redoubt Hill Playing Fields

US Garden.

Kingswear Wood.

Development on Local Green Space will not be permitted unless it preserves and enhances the attributes for which it was designated.

COMMENT

The NPPF states:

“99. The designation of land as Local Green Space through local and Neighbourhood Development Plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated and be capable of enduring beyond the end of the plan period.

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

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

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

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

101. Policies for managing development within a Local Green Space

should be consistent with those for Green Belts.”

The policy implication of Local Green Space designation is significant and therefore the NPPF sets a high standard of criteria to be met for designation.

During the course of my examination I sought confirmation that the owners of the proposed Local Green Spaces have been formally consulted. It was confirmed that the owners had been consulted and that the owner of Kingswear Wood objected to the proposed designation on the following grounds:

- 1. In the current local plan the woodland is designated as countryside and is therefore protected against development. We believe that the NPPF criteria states that protecting open countryside would not be a proper use of the (local green space) designation.*
- 2. The woodland is protected by woodland tree preservation orders.*
- 3. The woodland is effectively the garden of our property.*
- 4. The woodland is in need of further management works, for which we now have permission under the approved Management Plan. We would have to be much more careful about restricting access to the land if the designation of the land as a local green space leads the public to think the land has the same designation as the adjacent playing field. We think we would need to fence the land at both Mount Ridley Road and Higher Contour Road to prevent public access.*

I have carefully considered this objection and the NPPF tests stated above. The objection does not of itself preclude the designation of Kingswear Wood nor does the fact that there is no public access. On balance I find that Kingswear Wood does meet NPPF tests in that it is:

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

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

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

I therefore consider that all the areas proposed as Local Green Spaces meet the necessary tests. Paragraph 101 of the NPPF states:

“Policies for managing development within a Local Green Space should be consistent with those for Green Belts”. In order to meet the Basic Conditions, the final paragraph of the policy should be modified as follows:

Inappropriate development on Local Green Spaces will only be permitted in very special circumstances.

Policy K11: Public Open Space and Access to Water.

The areas and facilities shown on figure 3b are designated as Public Open Space allowing access to water and should continue to remain as such. Any development will be required to promote and improve the existing community use or provide an alternative public space and facility with equal accessibility to water, size, and use.

COMMENT

There appears to be a drafting error in this policy, in that rather than referring to figure 3b policy is intended to refer to 3c showing various slipways and Lighthouse Beach. My comments on this policy are based on this assumed error. The NPPF refers to open space and recreation in paragraphs 96 through to 101. These paragraphs describe “Existing open space, sports and recreational buildings and land, including playing fields” and “The designation of land as Local Green Space through local and neighbourhood plans”. There is no provision for the

designation of Public Open Space as intended by this policy and I do not consider that the areas identified on Figure 3c are in fact Public Open Space falling within the NPPF description. For completeness I would add that I also consider that they would fail the tests for designation as Local Green Spaces. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy K11: Access to Water.

The slipways and public paths shown on figure 3c are important facilities allowing public access to water and should continue to remain as such. Any development affecting these will be required to maintain the existing community use or provide an alternative public space and facility with equal accessibility to water, size, and use. Proposals to improve existing community use will be supported.

Policy K12: Protection of Important Public Views and Vistas.

Views and vistas identified on figure 4a) and 4b) are important to the character and local distinctiveness of Kingswear Parish and development is required to maintain the visual beauty of the panorama and viewing points for the future enjoyment of all.

COMMENT

I have no comment on this policy.

Policy K13: Footpaths and Rights of Way Network.

Development will be expected to protect and, where appropriate, extend and enhance the network of existing and public Rights of Way in the Parish. Specific opportunities to enhance and improve the network have been identified in the South Devon AONB Brixham Kingswear Peninsular Plan supported by the Parish Council and are shown on Figure 5 Development proposals adjacent and impacting on these identified gaps and deficiencies in the network should seek opportunities to implement the improvements as

appropriate.

Enhancement of the network should include, wherever possible, making the paths accessible to those with special access needs.

COMMENT

I have no comment on this policy

Policy K14: Allotments and Community Orchard.

The Allotment and Community Orchard site shown on map below is to be maintained as allotments and orchard for community use.

COMMENT

This is not a policy that can be used in the determination of planning applications. The policy should be removed from this section of the plan and can be put in the community project/aspiration section.

Policy K15: Renewable Energy Policy.

All new housing developments and extensions are encouraged to consider renewable energy infrastructure that can be incorporated as part of the development and contribute to reducing carbon emissions.

Development of renewable energy schemes at the scale suited to households will be encouraged where they are compatible with other policies in the development plan and the AONB designation. Wind turbines will generally not be suitable in the sensitive landscape of Kingswear, but an exception may be made where a small individual turbine (no more than max 15kW power output) for use on a property or by the local community meets visual and environmental standards set out in the development plan.

COMMENT

I have no comment on this policy.

Policy K16: Minor Employment Development and live/work units.

Proposals for start-up businesses from home, live-work units and other small business developments within residential areas will be supported where the development complies with other policies in the development plan and the following can be demonstrated:

- Existing buildings are reused where possible.*
- Employment opportunities are provided, including self-employment, and the development maintains or increases the sustainability of the Parish.*
- The proposed design including any signage is in keeping with the scale and character of the surroundings.*
- The proposed use will not give rise to harmful impacts on local residential amenities or other neighbouring uses.*
- The proposed development ensures that the expected nature and volume of traffic generated by the development and need for parking would not have a detrimental impact on the residential amenity of surrounding neighbours and the area generally.*

COMMENT

Running a business from home does not necessarily require planning permission and the display of advertisements is subject to a separate consent process within the planning system. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy K16: Minor Employment Development and live/work units.

Where planning permission is required, proposals for start-up businesses from home, live-work units and other small business developments within residential areas will be supported where the development complies with other policies in the Development Plan and

the following can be demonstrated:

- Existing buildings are reused where possible.***
- The development maintains or increases the sustainability of the Parish.***
- The proposed design is in keeping with the scale and character of the surroundings.***
- The proposed use will not give rise to harmful impacts on local residential amenities or other neighbouring uses.***
- The proposed development ensures that the expected nature and volume of traffic generated by the development and need for parking would not have a detrimental impact on the residential amenity of surrounding neighbours and the area generally.***

Policy K17: Protecting Community Assets.

In order to promote a thriving community for all ages, there will be a strong presumption against the redevelopment of community facilities for non-community uses. Identified Community Facilities are:

1: The Post Office

2: Village Hall

3: The Steam Packet Public House

4: St Thomas of Canterbury Church

5: The Ship Inn

6: Kingswear Village Store

7: The Lower Ferry Slip,

8: Slipway by The Royal Dart Yacht Club.

9: The slipway by the Dart Harbour Engineering workshop at the head of Waterhead Creek

10: The public toilets situated at The Square

11: The Kingswear Primary school and Nursery

Development proposals to sustain or extend the viable use of existing community facilities and the development of new facilities especially at Hillhead will normally be supported if they comply with other policies in the development plan.

Development proposals that will result in the loss, or significant reduction in the scale and value, of a community facility will be resisted, unless alternative facilities of equal or better accessibility, size and suitability are provided or it can be clearly demonstrated that the operation of the asset, or the ongoing delivery of the community value of the asset, is no longer economically viable typically because the site has been marketed at a reasonable price for at least a year for that and any other suitable employment or service trade uses and no interest in acquisition has been expressed.

COMMENT

I have no comment on this policy

Policy K18: Provision of Play Facilities.

Any future residential development at Hillhead will be expected to include proposals for a small play space at Hillhead in association with the development, subject to meeting other policies in the development plan.

COMMENT

This policy is imprecise as it refers to “any future residential development”. The requirement for a developer to provide play areas

and open space for a residential development is generated by the size and scale of the development and is set out in the Development Plan. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Policy K18: Provision of Play Facilities.

Residential development at Hillhead will be expected to provide proposals for a play space at Hillhead in association with the development in accordance with requirements of the Development Plan, subject to meeting other policies in the development plan.

Policy K19: Priorities identified for developer contributions to be spent within the Neighbourhood area.

Financial contributions received by Kingswear Parish Council from the LPA on developments within the NP area will be allocated to community priorities agreed at the time, and may include but not exclusively the projects listed below:

Improved leisure and exercise facilities. Transport and road safety improvements

Other developer contributions to be spent in the neighbourhood area are encouraged to consider these priorities.

Where the monies available have been ring fenced for a particular purpose then they may be spent on projects within the Parish provided that such projects conform with the policies within this plan and all the provisions contained herein are met.

COMMENT

This is not a policy and should be moved to another section of the plan.

SECTION 5

Conclusion and Recommendations

- 1. I find that the Kingswear Parish Neighbourhood Plan has been prepared in accordance with the statutory requirements and processes set out in the Town and County Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012.*
- 2. The Neighbourhood Plan does not deal with County matters (mineral extraction and waste development), nationally significant infrastructure such as highways and railways or other matters set out in Section 61K of the Town and Country Planning Act 1990.*
- 3. The Kingswear Parish Neighbourhood Plan does not relate to more than one Neighbourhood Area and there are no other Neighbourhood Plans in place within the Neighbourhood Area.*
- 4. The Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) screening, meet the EU Obligation.*
- 5. The policies and plans in the Kingswear Parish Neighbourhood Plan, subject to the recommended modifications would contribute to achieving sustainable development. They have regard to national policy and to guidance, and generally conform to the strategic policies of the Development Plan. At the time of my examination, the development plan for the area is the Plymouth and South West Devon Joint Local Plan (the JLP), adopted in March 2019.*
- 6. I therefore conclude that the Kingswear Parish Neighbourhood Plan subject to the recommended modifications can proceed to Referendum.*

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30th October 2020