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**INDEPENDENT EXAMINER'S REPORT ON THE
MODIFICATION TO THE BRIXTON PARISH
NEIGHBOURHOOD DEVELOPMENT PLAN**

Deborah McCann

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SECTION 2

Summary

I am the Independent Examiner appointed by South Hams District Council to examine the modification of the Brixton Parish Neighbourhood Development Plan 2024-2034. The original Brixton Parish NDP was made by South Hams District Council in November 2019. In considering the modification to the plan I have to consider whether the modifications are:

- Minor (non-material) modifications to a neighbourhood plan or order are those which would not materially affect the policies in the plan or permission granted by the order. These may include correcting errors, such as a reference to a supporting document, and would not require examination or a referendum.
- Material modifications which do not change the nature of the plan or order would require examination but not a referendum. This might, for example, entail the addition of a design code that builds on a pre-existing design policy, or the addition of a site or sites which, subject to the decision of the independent examiner, are not so significant or substantial as to change the nature of the plan.
- Material modifications which do change the nature of the plan or order would require examination and a referendum. This might, for example, involve allocating significant new sites for development.

Brixton Parish Council (BPC) proposes to modify the 'Made' Brixton Parish Neighbourhood Plan (BPNP), 2014 – 2034. The amendment relates to policies on the Green Corridors and the Brixton Open Gap (BPNP Policies Env4 and Env6 respectively) by modification to Env Map 3.

In accordance with Regulation 14 of the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2017, Brixton Parish Council has submitted the following statement, re the modification:

"It is considered that this is a material modification which, in the view of BPC, is not so significant or substantial as to change the intentions of the Plan. It is regarded as a clarification and strengthening of the Plan. The modification can be made without a referendum in accordance with the 2012 Regulations amended by the

Neighbourhood Planning (General) and Development Management Procedure
(Amendment) Regulations 2017 No. 1243."

South Hams District Council also submitted a statement as follows:

"The Council agrees with Brixton Parish Council (the Qualifying Body) that the proposed modifications are not so significant or substantial to change the nature of the plan."

SHDC also supports the proposed modification of the Brixton Parish Neighbourhood Plan – namely the extension of the Brixton Parish Open Gap Policy Area (Policy ENV6) and additional Green Corridor 'Stepping Stones' (Policy ENV4).

I can summarise the findings of my examination as follows:

1. Both the Qualifying Body and South Hams District Council have identified that the proposed modification is material requiring examination I concur with this view.
2. I find the modification to the Brixton Parish Neighbourhood Development Plan subject to the recommended modifications does meet the Basic Conditions.
3. I have read the Brixton Parish 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 reflects the outcome of the consultation process including recording representations and tracking the changes made as a result of those representations.
4. I have concluded that the proposed modification is a Material modification which does not change the nature of the plan and therefore will not require the modification to go to Referendum.

SECTION 3

3.Introduction

3.1. Neighbourhood Plan Examination.

My name is Deborah McCann, and I am the Independent Examiner appointed to examine the modification of the Brixton Parish Neighbourhood Development 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.

Both the Qualifying Body and South Hams District Council have identified that the proposed modification is material and I concur with this view.

Having concluded that the revisions to the modified Brixton Parish NDP are material requiring examination I must determine whether the revised submission of the Brixton Parish Neighbourhood Development Plan meets the Basic Conditions and has taken into account human rights; and to recommend whether the modified Brixton Parish Neighbourhood Development Plan needs to go 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 modification of the Brixton Parish Neighbourhood Development 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 will be by 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 modification and considered the representations I determined that I did not require clarification of any issues.

3.2. 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 modification to the Plan, I am required to make one of the following recommendations:

1. The modification doesn't meet the Basic Conditions

or

2. The modification does meet the Basic Conditions (with further modification) but does require Referendum

or

3. The modification does meet the Basic Conditions (with further modification) but is not required to go to 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 or 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 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.

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.

I am also required to determine whether the Plan complies with the Basic Conditions, which are that the proposed 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. *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.

SECTION 4

4.The Report

4.1. Appointment of the Independent examiner

South Hams District Council appointed me as the Independent Examiner for the modification to the NDP with the agreement of Brixton Parish Council.

4.2. Qualifying body

I am satisfied that Brixton PC is the Qualifying Body and entitled to submit a Neighbourhood Development Plan (NDP) for its own parish.

4.3. Neighbourhood Plan Area

Brixton Parish Council applied for designation as a Neighbourhood Plan Area under the Neighbourhood Planning Regulations 2012 (part 2, S6) and it was formally designated by South Hams District Council (CC) on the 26 June 2015. It covers the whole of the Parish of Brixton Parish but excludes the new town of Sherford.

The updated Basic Conditions Statement submitted with the Brixton Parish Neighbourhood Development Plan confirms there are no other Neighbourhood Plans covering the Area of the modification to the NDP.

4.4. Plan Period

It is intended that the modification to the Neighbourhood Development Plan will cover the period 2014-2034, chosen to align with the Plymouth and South West Devon Joint Local Plan.

4.5. South Hams District Council initial assessment of the Plan (Regulation 15).

Brixton Parish Council submitted the draft modification to the NDP to South Hams District Council for consideration under Regulation 15 of the Neighbourhood Planning (General) Regulations. South Hams District Council made an initial assessment of the Neighbourhood Development Plan and the supporting documents and is satisfied that these comply with the specified criteria.

4.6 Site Visit

I carried out an unaccompanied site visit on the 9 November 2023 to familiarise myself with the Neighbourhood Plan Area.

4.7 Hearing

The expectation is that the examination will be by 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 did not consider it necessary to call a hearing.

4.7. The Consultation

The modification to the Neighbourhood Development Plan has been submitted for examination with a Consultation Report which sets out the consultation process that has led to the production of the modified 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 development 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 development plan.

Examination of the documents and representations submitted in connection with this matter have led me to conclude that the consultation process was thorough, well

conducted and recorded.

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

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

South Hams District Council placed the modification to the NDP out for consultation under Regulation 16 from Friday 8th September 2023 to Friday 20th October 2023. The statutory requirement being 6 weeks.

Representations were received during the consultation period, and these were made available by South Hams District Council as part of the supporting information supplied for the examination process. I considered the representations, have taken them into account in my examination of the plan and made reference to them where appropriate.

4.9. Compliance with the Basic Conditions

A Basic Conditions Statement was produced for the modification to the NDP. The purpose of this statement is to set out in detail how the Neighbourhood Development 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 modification to the NDP:

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. Does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017. (Prescribed Conditions)

Documents brought to my attention by South Hams District Council for my examination included:

(a) The modification to the Neighbourhood Development Plan:

This is the main document, which includes the policies developed by the community.

(b) An updated Consultation Statement:

This is a statement setting out how the community and other stakeholders have been involved in the preparation of the Brixton Parish Neighbourhood Development Plan and is supported by an evidence base, which arose from the consultation.

(c) An updated Basic Conditions Statement.

This is a statement setting out how Brixton Parish Neighbourhood Development Plan Steering Group considers that the Neighbourhood Development Plan meets the Basic Conditions. This statement also includes the screening report for the Strategic Environmental Appraisal and Habitats Regulations Assessment and addresses how the plan contributes to the achievement of sustainable development.

(d) Updated SEA and HRA screening.

Comment on Documents Submitted

I am satisfied having regard to these documents and other relevant documents, policies and legislation that the modification to the NDP does, subject to the recommended further modifications, meet the Basic Conditions. However, the documents should ensure that the references are to the 2023 version of the NPPF and the adopted JLP.

4.10 Planning Policy

4.10.1. National Planning Policy

National Policy guidance is in the National Planning Policy Framework (NPPF). At the time of my examination of the Neighbourhood Plan the relevant NPPF was the National Planning Policy Framework (NPPF) December 2023.

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 modification to the NDP does not need to repeat national policy, but to demonstrate it has taken them into account.

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

4.10.2. Local Planning Policy- The Development Plan

The modification to the NDP area is within the area covered by South Hams District Council. The main relevant development plan document is the JLP 2014-2034

4.10.3 To meet the Basic Conditions, the modification to the NDP must be in “general conformity” with the strategic policies of the development plan.

The NPPF 2023 states:

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

4.10.4 Neighbourhood Plans should only contain non-strategic policies. The NPPF 2023 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.”

4.10.5 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.

4.10.6 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.

4.10.7 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 considered the Strategic policies of the Development Plan and the Policies of the modification to the NDP and consider that, subject to the recommended modifications, the Plan does meet the Basic Condition in this respect and is in general conformity with the Strategic policies of the JLP 2014-2034.

4.11. Other Relevant Policy Considerations

4.11.1 European Convention on Human Rights (ECHR) and other European Union Obligations

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

The modification to the NDP was re-screened for SEA requirement in July 2023. The conclusion was:

"The BPNP Modification 2023 does not propose any change to any Policy wording. The proposal is for minor extension to the Brixton Parish Open Gap and Green Corridors areas as illustrated in Env Map 3, Objective 3.0 Environment and Landscape. The modification does not propose any development, furthermore, it aims to conserve existing land use and enhance biodiversity. The original conclusion by SHDC that a Strategic Environmental Assessment is not required remains valid and therefore further assessment is not required."

I am therefore satisfied that subject to the proposed modifications the modification to the NDP meets the Basic Conditions in this respect.

Habitats Regulation Assessment

Directive 92/43/EEC and Directive 2009/147/EC seek to protect and improve Europe's most important habitats and species. An updated Habitats Regulations Assessment report was prepared in July 2023, the conclusion was:

"There is no proposed development in the minor modification to Map Env3 and therefore the proposed modification falls within Category A: No Negative effect. As the modification does not propose development a further HRA assessment is not required."

I am satisfied that the HRA screening meets the requirements of the Basic Conditions.

Prescribed Matters

Regulation 32 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out a further basic condition for a Neighbourhood Development Plan in addition to those set out in the primary legislation. Being that:

- the making of the neighbourhood plan is not likely to have a significant effect on a

European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects). (See Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 (as amended) in relation to the examination of neighbourhood development plans.)

The Screening Opinion confirms that the modification to the NDP will not cause significant environmental effects on these areas.

I am satisfied with this conclusion.

4.11.2 Sustainable development

The approach to achieving sustainable development is set out in the original Basic Conditions Statement.

I am satisfied having regard to this document and other relevant documents, policies and legislation that the modification to the NDP does, subject to the recommended modifications, meet the Basic Conditions in this regard.

European Convention of Human Rights and to comply with the Human Rights Act 1998.

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

The Basic Conditions Statement refers to how the development of the plan and its policies accord with EU Human Rights obligations.

I am satisfied with this conclusion.

Equality Impact Assessment

The Equality Act 2010 places a duty on all public authorities to have regard to the need to eliminate discrimination, to advance equality of opportunity, and to foster good relations between persons who have a “protected characteristic” and those

who do not.

Many of the policies contained within the Plan seek to cater for the needs of people with protected characteristics in the Plan area. The Brixton Parish Neighbourhood Plan's vision, objectives and policies all aim to foster community cohesion and social inclusion.

I am satisfied that the modification to the NDP does, subject to modification meets the basic conditions on EU obligations.

4.11.3 Excluded development

I am satisfied that the modification to the NDP 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.

4.11.4 Development and use of land

I am satisfied that the modification to the NDP covers development and land use matters.

4.12 Brixton Parish Neighbourhood Development Plan Policies

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 proposed modification 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.
- A policy has not been drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications.

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.

Please note:

The South Devon AONB has now been retitled the South Devon National Landscape (although the legal designation remains as Area of Outstanding Natural Beauty). All references in the plan to the South Devon AONB/the AONB should be up-dated accordingly.

4.12.1 The Neighbourhood Plan Vision, Strategic Aims and Policies

THE VISION

- to conserve and enhance the rural and historic environment of Brixton Parish, with its beautiful landscape of woods, farmland and estuary;
- to retain the identity and independent character of Brixton village and its surrounding hamlets;
- to nurture thriving communities across the parish by providing improved facilities

and taking opportunities to meet the needs and wishes of the community.

Key objectives of the Brixton Parish Neighbourhood Plan

The key objectives of the modification to the Brixton Parish Neighbourhood Plan have been grouped into the following themes:

- Environment
- Transport
- Employment
- Community Facilities
- Sport and Recreation Development

COMMENT

I am satisfied that the modification to the NDP vision and themes were developed from the consultation process and that the policies within the plan reflect both the vision and themes and key objectives.

4.13 BRIXTON PARISH NEIGHBOURHOOD DEVELOPMENT PLAN

Env1. DEVELOPMENT IN THE AONB.

No development shall be permitted that would harm the natural beauty and special qualities of the South Devon AONB. Any development must conserve and enhance the AONB and its setting, paying full regard to national and local strategic AONB policies and to the South Devon AONB Planning Guidance. This is particularly relevant in the case of cumulative impact of individual developments, and the preservation of tranquillity and biodiversity of the Yealm Estuary and Cofflete Creek environs

COMMENT

The determining authority for planning applications is South Hams District Council and decisions are made in accordance with the development plan unless other material considerations indicate otherwise. The term "permitted" should be replaced with "supported".

Env2. PROTECTING LOCALLY IMPORTANT VIEWS.

Development proposals should protect the important public open views across the South Devon AONB that define the setting and character of Brixton village and its eastern and western approaches, identified as views 1 and 8 on Env Map 2.

COMMENT

I have no comment on this policy.

Env3. PRIORITY HABITAT

(a) Priority Habitat throughout the parish as shown on Environment Habitat Map (Env Map1) will be protected and enhanced.

(b) Important woodlands are to be conserved and enhanced for their contribution to the character and biodiversity of the parish. See Appendix 8: Env Map 6.

(c) No development that could result in pollution of the estuarine waters will be permitted.

COMMENT

The determining authority for planning applications is South Hams District Council and decisions are made in accordance with the development plan unless other material considerations indicate otherwise. The term "permitted" should be replaced with "supported".

Env4. GREEN CORRIDORS

(a) A green corridor will be maintained for visual and ecological significance to protect against the further urban expansion east of Plymouth along the A379, and to safeguard the individual identities of Chittleburn, Combe, and Brixton village.

(b) Measures to improve the appearance of the A379 route through Brixton, particularly through measures such as tree planting and green landscaping, including Green Corridor 'Stepping Stones' will be supported. See Env Map 3.

COMMENT

The proposed modification of this policy involves an increase of the area covered by this policy in the Made Brixton Parish NDP. The statement submitted by Brixton Parish Council in support of this modification states:

"The intention of Policy Env 4 is that the Green Corridor will be maintained for visual and ecological significance to protect against further urban expansion east of Plymouth along the A379, and to safeguard the individual identities of Brixton village and the hamlets of Chittleburn and Combe. The open spaces comprising the Green Corridor are integral to maintaining the rural character of these communities"

The wording of the policy remains unchanged in this proposed modification. I understand that the reason for the inclusion of this policy within the original NDP was to respond to community concern. My role, as examiner is to review both the policy wording and the extended area proposed to be covered by the policy and satisfy myself whether or not the revised policy meets the Basic Conditions.

I have reviewed the changes to the proposed green corridors and the wording of ENV 4. The changes to the areas identified as green corridors are within areas of open countryside, protected by policy TTV26 of the JLP and the area to the east of Brixton village also lies within the AONB and therefore already receives strong policy protection. The purpose of green corridors is generally to create areas of connectivity for wildlife and recreation the areas shown on Env Map 3 are not connected. I have not been provided with evidence that these areas have either public access or have existing ecological significance and landscape protection seems to be its main intention. However, the wording of the policy does not introduce a restriction to policy per se, more than already exists and therefore to a large extent is more an expression of aspiration than policy control.

My conclusion is that the changes to the area covered by the policy as illustrated on ENV MAP 3 for Green Corridors would meet the Basic Conditions

subject to the following modification:

Env4. Protecting the landscape setting of Chittleburn, Combe, and Brixton village and Green Corridors along the A379.

(a) To maintain the rural character and safeguard the individual identities of Chittleburn, Combe, and Brixton village from further urban expansion east of Plymouth along the A379, areas have been identified of visual importance on Env Map 3.

(b) Measures to improve the appearance of the A379 route through Brixton, particularly through measures such as tree planting and green landscaping, including Green Corridor 'Stepping Stones' will be supported. See Env Map 3.

Env5. LOCAL GREEN SPACES

The Local Green Spaces identified on Environment Policy Map Env Map 3 will be protected and enhanced. Only development directly associated with and necessary to improve the green spaces will be permitted within them:

LGS01: Land to the south of The Crescent

LGS02: Feoffee Park

LGS03: Brixstix Play Space

LGS04: Land at Elliotts Hill and Steer Point Road

LGS05: St Mary's School Playing Field

LGS06: Woodland Drive Play Space

LGS07: Land known locally as "The Donkey Field"

LGS08: Village Green

LGS09: Cofflete Creek Head

LGS10: Playing field between Cofflete Park and CampSite

LGS11: Allotments adjacent Stamps Hill

LGS12: Former Railway Cutting at Chittleburn

LGS13: Mature Orchard to west of A379 at Chittleburn

COMMENT

The policy should be modified to reflect the requirements of the NPPF 2023 and recent caselaw (see Court of Appeal Judgement in the Case of The Queen (On the Application of Lochailort Investments Limited) and Mendip District Council Norton St Philip Parish Council 2nd October 2020) which clearly states that Local Green Space polices in neighbourhood plans should not deviate from the policy requirements of the NPPF. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Env5. LOCAL GREEN SPACES

This policy designates the following Local Green Spaces identified on Environment Policy Map Env Map 3:

LGS01: Land to the south of The Crescent

LGS02: Feoffee Park

LGS03: Brixstix Play Space

LGS04: Land at Elliotts Hill and Steer Point Road

LGS05: St Mary's School Playing Field

LGS06: Woodland Drive Play Space

LGS07: Land known locally as "The Donkey Field"

LGS08: Village Green

LGS09: Cofflete Creek Head

LGS10: Playing field between Cofflete Park and CampSite

LGS11: Allotments adjacent Stamps Hill

LGS12: Former Railway Cutting at Chittleburn

LGS13: Mature Orchard to west of A379 at Chittleburn

Inappropriate development will not be supported except in very special circumstances.

Env6. BRIXTON OPEN GAP

The area identified as the Brixton Open Gap (Env Map 3) shall be safeguarded during the Plan period (2014-2034) except in the event that a future Housing Needs Survey identifies the need for essential, affordable local housing for Brixton community. In which case small numbers of well designed, sensitively located housing might be considered; in any event not before 2023 when the first review of this Plan is due. This review will also consider the development progress of Sherford and any impact on the Brixton Open Gap.

No development will be permitted that adds substantially to the cumulative impact of development in the village that will adversely impact on the social wellbeing and character of the village.

COMMENT

The modification of this policy is centred upon an increase in the area covered by the policy and illustrated on ENV Map 3. I understand that the reason for the inclusion of this policy within the original NDP was to respond to community concern regarding the potential for the new Sherford development to grow and encroach both visually and physically upon the separate character and appearance of the settlements of the Parish. The examiner, at the time considered that the policy did meet the Basic Conditions and therefore it

became part of the Made plan. Brixton PC state in their statement outlining the changes to the Plan state:

" The proposed modification of Env Map 3 is to clarify the extent of the Green Corridors along the A379 at both the western and eastern ends of Brixton village by recognising the importance of the open agricultural fields in defining the character and limits of the village. This will safeguard the open space from urban expansion."

and:

"Policy Env 6 Brixton Open Gap is intended to protect the rural character north and west of the village. The proposed modification to the defined area will provide a clearer policy of protection to the western side of the village which has been subjected to a significant amount of recent development. This will support the Green Corridor enhancement."

My role is to review both the policy wording and the extended area proposed to be covered by the policy and satisfy myself whether or not the revised policy meets the Basic Conditions.

I have received representation requesting that the proposed extension to the green gap exclude land to the east of Lodge Lane. It is argued that including this parcel of land will decrease the opportunity for delivering affordable housing for the Parish. The policy does not preclude supporting development for local housing need, and I therefore conclude that including this area of land within the green gap policy is acceptable.

I have reviewed the changes to the proposed Brixton Green Gap and taken into consideration the current policy framework. JLP Policies TTV26, TTV27 and PLY61 are relevant to my considerations alongside national policy and related guidance.

My conclusion is that the changes to the area covered by the policy as illustrated on ENV MAP 3 would meet the Basic Conditions subject to the

following modification:

Env6. BRIXTON PARISH OPEN GAP

To protect the rural character and appearance of Brixton village and maintain visual and physical separation with the new town of Sherford the area identified as the Brixton Open Gap (Env Map 3) shall be safeguarded during the Plan period (2014-2034). Proposals will not be supported other than for development in accordance with JLP policies TTV26 and TTV27 supported by an Housing Needs Survey which identifies the need for essential, affordable local housing for Brixton community where small numbers of well designed, sensitively located housing might be considered.

Development that adds substantially to the cumulative impact of development in the village that will adversely impact on the social wellbeing and character of the village will not be supported.

Env7. DESIGNATED & NON-DESIGNATED HERITAGE ASSETS

Development proposals are required to avoid harm and must conserve, restore and enhance designated and non-designated historic and heritage assets (both above and below ground) and their settings.

COMMENT

The policy framework for determining planning applications affecting designated and non-designated heritage assets is set out in the NPPF 2023 and this policy does not reflect the policy controls in place. For clarity and to meet the Basic Conditions the policy should be modified as follows:

Env7. DESIGNATED & NON-DESIGNATED HERITAGE ASSETS

Development proposals affecting designated and non-designated heritage assets (both above and below ground) and their settings will be assessed in accordance with the requirements of national policy and will be determined in accordance with the national policy framework and the development plan.

Env8. RENEWABLE ENERGY GENERATION

Community led renewable energy generation schemes will be supported provided they are designed to avoid harm to the South Devon AONB, local heritage, biodiversity, landscape, views and skylines, through noise or other nuisance and are appropriate to the setting of Brixton Parish.

COMMENT

I have no comment on this policy.

Env9. SOUTH DEVON REPAIRS AND SALES GARAGE SITE

Located in the South Devon AONB, the land currently occupied by the South Devon Repairs and Sales Garage (Env Map 5) is of strategic value to Brixton due to its location at the core of the village and its open character within the setting of the AONB. Any development on this site must retain the open frontage to the A379 and the far-reaching views over the AONB.

COMMENT

I have no comment on this policy.

Env10. THE FORMER STEER POINT BRICKWORKS SITE

Any development of the hardstanding of the former Steer Point Brickworks, identified in Env Map 5, should be tightly controlled. Only sustainable development proposals to enhance the site will be considered and should take full account of the following factors:

(a) the site's location in the South Devon AONB, the designated Heritage Coast 1 and the adjoining Yealm Estuary SSSI,²

(b) the site's isolated nature and location in relation to Brixton settlement,

(c) the unsatisfactory system of roads that serve the site and (d) the potential of the site's redevelopment to bring substantial, sustainable benefit to the Brixton

community.

COMMENT

I have no comment on this policy.

Cof1. ASSETS OF COMMUNITY VALUE*

The following local facilities should be protected and retained: St Mary's Church, The Post Office, The Foxhound Pub, The Scout Hut, St Mary's School and Ladybirds Nursery.

The loss or redevelopment of these facilities will not be permitted without overriding justification. Where justification for change of use is claimed, at least one of the following must be demonstrated:

- that the facility has been or will be replaced with a similar one of equal or greater value to the local community;
- that the facility is no longer needed by the community; or
- in the case of privately owned businesses, that the facility is no longer financially viable.

COMMENT

The determining authority for planning applications is South Hams District Council and decisions are made in accordance with the development plan unless other material considerations indicate otherwise. The term "permitted" should be replaced with "supported".

Cof2. COMMUNITY FACILITIES

New development will be required to contribute, where appropriate, towards the provision or improvement of community facilities, in accordance with the Brixton Parish Project Action Plans and local priorities which could include but is not restricted to:

- a parish hall
- off-street car parking/car park
- visitor car park in the village •
- play spaces
- allotments

Contributions can be either as a part of the development proposal or in the form of a financial contribution.

COMMENT

Whilst the inclusion of a priority list for community infrastructure is appropriate to be included in an NDP it should not form part of a policy. This list should be removed from the policy section and included in the main text of the plan.

Cof3. OPEN SPACE PROVISION IN NEW DEVELOPMENT Developments of more than 5 homes shall prioritise the on- site provision of well designed, landscaped public space. Safe children’s play areas should be provided on site where appropriate.

COMMENT

I have no comment on this policy.

Sar1. SPORT AND RECREATION FACILITIES

Public open space, private outdoor sports grounds, school playing fields, play spaces and allotments as identified on Policy Sar 1 Map, shall be protected and retained in that use. Only development directly associated with and necessary for their improvement will be permitted unless:

- an alternative and improved provision is provided that retains its original

functional requirements for existing and future users; and

(b). the proposal would not result in the loss of an area important for its amenity or contribution to the character of the area.

COMMENT

I have no comment on this policy.

Sar2. (a.) PUBLIC RIGHTS OF WAY AND BRIDLEWAYS

Development that will enhance or extend the footpath, bridleway and cycle network will be supported, providing it meets other policy requirements. Proposals will be particularly welcome which will improve those routes identified in the Sport and Recreation Plan

(b). Recreational connectivity with Sherford and the Community Park shall be provided by a designated pedestrian, cycle and bridleway route along Monkey Lane. Improvements for non- vehicular recreational access to Monkey Lane will be supported.

c). A new footpath shall be provided between Hilltop Lane, and the junction of Dodovens Farm access with the A379 at Chittleburn. Refer to Sar Map2 and Tpt Map1.

COMMENT

I have no comment on this policy.

Sar3. RIVER YEALM AND COFFLETE CREEK

Development that will enhance public access to the river Yealm and/or Cofflete Creek will be welcomed and permitted, providing it meets other policy requirements.

COMMENT

The determining authority for planning applications is South Hams District

Council and decisions are made in accordance with the development plan unless other material considerations indicate otherwise. The term "permitted" should be replaced with "supported".

Sar4. NEW SPORT AND RECREATION FACILITIES

New development will be required to contribute, where appropriate, to existing and the provision of new sport and recreation facilities as identified in the Brixton Parish Sport and Recreation Plan. *See Appendix 5: Parish Project Action Plans

COMMENT

I have no comment on this policy.

Tpt1. SUSTAINABLE MODES OF TRAVEL

Development should be designed to enable and encourage the use of sustainable modes of transport. Non-residential developments shall provide suitable secure cycle racks.

COMMENT

I have no comment on this policy.

Emp1. EXISTING EMPLOYMENT LAND

The change of use of existing employment land will not be permitted unless there are overriding demonstrable community benefits from doing so, or there is no reasonable prospect of the site being used for employment use in the future.

COMMENT

The determining authority for planning applications is South Hams District Council and decisions are made in accordance with the development plan unless other material considerations indicate otherwise. The term "permitted" should be replaced with "supported".

Emp2. CHITTLEBURN/DODOVENS FARM EMPLOYMENT AREAS

(a) Within the existing employment area at Chittleburn, the change of use resulting in the loss of land or premises from employment use will not be permitted.

(b) The identified sites EMP2a and 2b (as shown in Inset Map Emp1: Inset 2) in the vicinity of Dodovens Farm/Chittleburn Business Park are preferred for B1 light industrial development to complement the existing businesses already operating at this location and Chittleburn.

In addition to other policy requirements sites EMP2a and 2b will be required to deliver:

- The footpath link from Hilltop Lane to Chittleburn
- Suitably designed car parking in terms of numbers and visual impact mitigation
- Maintain existing Screening landscaping along the A379 and provide new tree/hedgerow screening along Hilltop Lane and to the proposed southern edge of Dodovens Farm.
- Buildings shall be integrated into the landscape to mitigate visual impact from public viewpoints
- Attenuation of surface water to prevent flooding of the stream on the northern boundary of Dodovens Farm.

COMMENT

The determining authority for planning applications is South Hams District Council and decisions are made in accordance with the development plan unless other material considerations indicate otherwise. The term "permitted" should be replaced with "supported".

Emp3. STADDISCOMBE EMPLOYMENT AREA

Employment Policy Area at Staddiscombe Service Station/ Supermarket. See Map

Emp1: Inset 1.

The site at Carrollsland/Wembury Road and Staddiscombe Road shall be retained in use for the existing supermarket/petrol filling station or, should that cease to operate, for A1 or B1 uses only. Other changes of use will not be permitted.

COMMENT

The determining authority for planning applications is South Hams District Council and decisions are made in accordance with the development plan unless other material considerations indicate otherwise. The term "permitted" should be replaced with "supported".

Emp4. EXISTING RECREATIONAL AND TOURISM FACILITIES

Existing recreational and tourism facilities shall be retained for that use. Only improvements directly associated with and necessary for their viability will be permitted unless:

(a) alternative and improved provision will be made in a location well related to the functional requirements of that use; and

(b) the proposal would not result in the loss of, or harm to, an area important for its contribution to recreation and tourism.

COMMENT

The determining authority for planning applications is South Hams District Council and decisions are made in accordance with the development plan unless other material considerations indicate otherwise. The term "permitted" should be replaced with "supported".

Dev1. DEVELOPMENT WITHIN SETTLEMENT BOUNDARY

Within the settlement boundary the scale, density and character of development shall be in keeping with the site and its surroundings and shall cause no adverse

impacts on natural or historic assets; important views; outlooks or skylines; local amenity; traffic; parking or safety.

COMMENT

The policy framework for how non-designated heritage assets should be considered in any planning application are set out in the NPPF 2023. This policy does not reflect the requirements of the framework. For clarity and to meet the Basic Conditions, the policy should be modified as follows:

Dev1. DEVELOPMENT WITHIN SETTLEMENT BOUNDARY

Within the settlement boundary the scale, density and character of development shall be in keeping with the site and its surroundings in accordance with the development plan and will be supported subject to:

- **Protecting natural assets, important views; outlooks and skylines; local amenity and highway safety.**
- **Conserving and enhancing the historic environment in conformity with national policy and guidance.**

Dev2. DESIGN

All new development must be of high quality and appropriately designed for the context in which it is proposed, with respect to its neighbours and the rural character of Brixton village and across the Parish. Development shall take into account topography, layout, building orientation, massing, landscaping, public green space and associated public realm, to minimise visual, ecological and social impact.

COMMENT

I have no comment on this policy.

Dev3. CONVERSION & RESTORATION OF NON-DESIGNATED HERITAGE ASSETS

Appropriate and sensitive restoration or conversion that secures a viable long-term future for a non-designated heritage asset, which would otherwise be lost, may be permitted.

COMMENT

The determining authority for planning applications is South Hams District Council and decisions are made in accordance with the development plan unless other material considerations indicate otherwise. The term "may be permitted" should be replaced with "may be supported".

Dev3. CONVERSION & RESTORATION OF NON-DESIGNATED HERITAGE ASSETS

Appropriate and sensitive restoration or conversion that secures a viable long-term future for a non-designated heritage asset, which would otherwise be lost, may be supported.

Dev4. DESIGN AND RENEWABLE ENERGY

Design, where appropriate, shall optimise the orientation of new development to capitalise on solar energy to reduce energy consumption. Development comprising the use of renewable energy and low carbon materials will be encouraged where it does not harm the character and appearance of the Parish and the landscape.

COMMENT

I have no comment on this policy.

Dev5. CAR PARKING

To ensure that pressure on existing on-street parking is not increased all new developments should where appropriate include well designed off-street parking and cycle storage for residents and visitors.

In residential developments at least 2 parking spaces should be provided for 2 bed

properties, with a further additional parking space for properties with more than 3 bedrooms. For properties of 6 bedrooms or more, at least 4 parking spaces should be provided. Garages will not normally be counted as parking spaces.

COMMENT

I have no comment on this policy.

Dev6. DEVELOPMENT IN BRIXTON PARISHVILLAGE

Development in Brixton village will be limited in line with its status as a sustainable village in the AONB. Any development should respect its character and local distinctiveness, ensure adequate supporting infrastructure is provided and support and/or enhance existing community facilities.

COMMENT

This policy sets a requirement for "any" development to "ensure adequate supporting infrastructure is provided and support and/or enhance existing community facilities". This will not be relevant to all development, for example an extension to a house or garden shed (where planning permission is required). Whilst it is reasonable and appropriate that "any " development should respect the character and local distinctiveness this is not the case in relation to requirements for infrastructure and/or community facilities associated with minor development. I understand that the intention of the policy was not to require such contributions from minor developments, however the wording lacks clarity. To correct this drafting error and provide clarity, the policy should be modified as follows:

Dev6. DEVELOPMENT IN BRIXTON PARISHVILLAGE

Development in Brixton village will be limited in line with its status as a sustainable village in the AONB. Proposals should respect its character and local distinctiveness, and where appropriate to the scale and size of development ensure adequate supporting infrastructure is provided and support and/or enhance existing community facilities.

Dev7. INFILL DEVELOPMENT

Any proposed infill within the village settlement boundary will be required to meet the following criteria:

- (a) It is sensitive to the history/background of the site
- (b) Existing non-designated historical features are retained
- (c) Where an infill site immediately adjacent the A379 is identified for redevelopment, the open character of the site must be retained as part of any plan for its future use. This will preserve the important breaks in the pattern of buildings that contribute to the rural village identity and provide views across the AONB.

COMMENT

The policy framework for how non-designated heritage assets should be considered in any planning application are set out in the NPPF 2023. This policy does not reflect the requirements of the framework. For clarity and to meet the Basic Conditions, the policy should be modified as follows:

Dev7. INFILL DEVELOPMENT

Any proposed infill within the village settlement boundary will be required to meet the following criteria:

- (a) It is sensitive to the history/background of the site**
- (b) It is in conformity with national policy and guidance and the development plan with regard to non-designated heritage assets.**
- (c) Where an infill site immediately adjacent the A379 is identified for redevelopment, the open character of the site must be retained as part of any plan for its future use. This will preserve the important breaks in the pattern of buildings that contribute to the rural village identity and provide views across the AONB.**

Dev8. AFFORDABLE HOUSING

The land identified on Dev Map 2, in the ownership of South Hams District Council, is allocated for Affordable Housing for local people in perpetuity. The affordable housing provision should be based on the latest available survey of housing needs. Any loss of hedgerows and trees must be mitigated through the design and layout and respect of the sensitive setting of AONB.

COMMENT

I have no comment on this policy.

SECTION 5

Conclusion and Recommendations

- 1. I find that the modification to the Brixton Parish Neighbourhood Development Plan has been prepared in accordance with the statutory requirements and processes set out in the Town and Country Planning Act 1990 (as amended by the Localism Act 2011) and the subsequent Neighbourhood Planning (General) Regulations 2012. (As amended)*
- 2. The Neighbourhood Development 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 modification to the Brixton Parish Neighbourhood Development Plan does not relate to more than one Neighbourhood Area and there are no other Neighbourhood Development Plans in place within the Neighbourhood Area.*
- 4. The SEA and Habitats Regulations screening meet the EU Obligation.*
- 5. The policies and plans in the modification to the Brixton Parish Neighbourhood Development 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 JLP 2014-203.*
- 6. I have concluded that the proposed modification is a Material Modification which does not change the nature of the plan and therefore will not require the modification to go to Referendum.*

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2 January 2024

