



# **Report on the Lymington and Pennington Neighbourhood Plan 2016 – 2036**

**An Examination undertaken for the New Forest District Council and the New Forest National Park Authority with the support of the Lymington and Pennington Town Council on the February 2025 version of the submitted Plan.**

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## **Main Findings - Executive Summary**

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

I have also concluded that:

- The Plan has been prepared and submitted for examination by a qualifying body – the Lymington and Pennington Town Council (LPTC);
- The Plan has been prepared for an area properly designated – the Lymington and Pennington Neighbourhood Area as shown on Plan A on page 4 of the Neighbourhood Plan;
- The Plan specifies the period during which it is to take effect: 2016 - 2036; and
- The policies relate to the development and use of land for a designated neighbourhood area.

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

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

## **1. Introduction and Background**

### **Lymington and Pennington Neighbourhood Plan 2016–2036**

- 1.1 Lymington, a historic market and harbour town, lies on the south coast of the New Forest where the Lymington River flows into the Solent. The A337 is the main road into Lymington from Lyndhurst (14 km to the north) and the A31/M27 a further 7 km to the north. Bournemouth lies about 30 km to the west. Lymington is also a ferry port for the Isle of Wight (Yarmouth). The Plan area includes land within the New Forest National Park. In 2021, the population of the Town Council area was 14,858.<sup>1</sup>
- 1.2 The preparation of the Lymington and Pennington Neighbourhood Plan (LPNP) began in 2015 and in 2016 a Steering Group was formed. Led by the Steering Group, evidence was collected, consultations were carried out and the final version of the Plan was submitted to the New Forest District Council (NFDC) and the New Forest National Park Authority (NFNPA) in March 2025.

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<sup>1</sup> 2021 Census.

## The Independent Examiner

- 1.3 As the Plan has now reached the examination stage, I have been appointed as the examiner of the LPNP by the NFDC and the NFNPA with the agreement of the Lyminster and Pennington Town Council (LPTC).
- 1.4 I am a chartered town planner and former government Planning Inspector and have experience of examining neighbourhood plans. I am an independent examiner, and do not have an interest in any of the land that may be affected by the Plan.

## The Scope of the Examination

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

- Such matters as prescribed in the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the 2012 Regulations').
- 1.7 I have considered only matters that fall within Paragraph 8(1) of Schedule 4B to the 1990 Act, with one exception. That is the requirement that the Plan is compatible with the Human Rights Convention.

### The Basic Conditions

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

- have regard to national policies and advice contained in guidance issued by the Secretary of State;
- contribute to the achievement of sustainable development;
- be in general conformity with the strategic policies of the development plan for the area;
- be compatible with and not breach European Union (EU) obligations (under retained EU law)<sup>2</sup>; and
- meet prescribed conditions and comply with prescribed matters.

1.9 Regulation 32 of the 2012 Regulations prescribes a further Basic Condition for a neighbourhood plan. This requires that the making of the Plan does not breach the requirement of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.<sup>3</sup>

## 2. Approach to the Examination

### Planning Policy Context

2.1 The current Development Plan for the Lymington and Pennington Area, excluding policies relating to minerals and waste development, principally includes:

- the New Forest District Core Strategy (2009);
- the New Forest District Local Plan Part 2 (2014);
- the New Forest District Local Plan Part 1 (2020); and
- the New Forest National Park Local Plan (2016-2036).

In addition, Policy DW-E12 (Protection of Landscape Features) is saved from the New Forest District Plan First Alteration (2005). The Basic

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<sup>2</sup> The existing body of environmental regulation is retained in UK law.

<sup>3</sup> This revised Basic Condition came into force on 28 December 2018 through the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.

Conditions Statement helpfully includes in Table B an assessment of general conformity with the strategic policies of the main four planning documents which comprise the Development Plan for the area. The NFDC and NFNPA Local Plans are being reviewed but they are at a very early stage in their preparation.

- 2.2 The planning policy for England is set out principally in the National Planning Policy Framework (NPPF). In addition, the Planning Practice Guidance (PPG) offers advice on how the NPPF should be implemented. It should be noted that the latest iteration of the NPPF was published on 12 December 2024. However, paragraph 239 of that version includes transitional arrangements for neighbourhood plans, stating that the revised NPPF only applies to neighbourhood plans submitted after 12 March 2025. As the Plan was submitted to NFDC and the NFNPA on 7 March 2025, all references in this report read across to the earlier December 2023 NPPF.

### Submitted Documents

- 2.3 I have considered all policy, guidance and other reference documents I consider relevant to the examination, as well as those submitted which include:
- the draft Lymington and Pennington Neighbourhood Plan 2016 – 2036 (February 2025);
  - Appendix A of the Plan: Vision for the Town Centre (January 2025);
  - Appendix C of the Plan: Lymington Local Distinctiveness Supplementary Planning Document (SPD)(February 2011);
  - Map A on page 4 of the Plan which identifies the area to which the proposed Neighbourhood Plan relates;
  - the Consultation Statement (February 2025) and Appendices A – F;
  - the Basic Conditions Statement (February 2025);
  - the Screening Statement on the determination of the need for a Strategic Environmental Assessment (SEA)/Habitats Regulation Assessment: New Forest District Council (February 2017);
  - the Screening Statement on the determination of the need for a Strategic Environmental Assessment (SEA)/Habitats Regulation Assessment: New Forest National Park Authority (March 2017);
  - the Sustainability Appraisal (SA) (July 2024);
  - the Habitats Regulations Assessment (HRA) (June 2024) and update (February 2025);
  - all the representations that have been made in accordance with the Regulation 16 consultation; and
  - the responses received on 14 August 2025 from LPTC and on 19 August 2025 from NFDC to the questions of clarification in my letter of 7 July 2025.<sup>4</sup>

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<sup>4</sup> View at: <https://newforest.gov.uk/lymingtonandpenningtonplan>

## Site Visit

- 2.4 I made an unaccompanied site inspection to the LPNP Area on 20 August 2025 to familiarise myself with it and visit relevant locations referenced in the Plan and evidential documents.

## Written Representations with or without Public Hearing

- 2.5 This examination has been dealt with by written representations. I considered a hearing session was not necessary, as the consultation responses clearly articulated the objections to the Plan and presented arguments for and against the Plan's suitability to proceed to a referendum. No requests for a hearing were received.

## Modifications

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

## 3. Procedural Compliance and Human Rights

### Qualifying Body and Neighbourhood Plan Area

- 3.1 The LPNP has been prepared and submitted for examination by the LPTC, which is a qualifying body. The LPNP extends over all the area designated by the New Forest District Council on 1 October 2015 and the New Forest National Park Authority on 15 September 2015. I am satisfied it is the only Neighbourhood Plan for the Lymington and Pennington Area and does not relate to any land outside the designated Neighbourhood Plan Area.

### Plan Period

- 3.2 The Plan period is from 2016 to 2036 as clearly stated on the front cover.

### Neighbourhood Development Plan Preparation and Consultation

- 3.3 The Consultation Statement (CS), as illustrated in the comprehensive dateline on pages 4-6 of the CS, describes the thorough preparation of the Plan with involvement of the public and various stakeholders at the stages of the process. A Steering Group was formed in 2016 early in the preparation process of the Plan which then also set up six working groups for various aspects of the Plan. The collection of the evidence for the Plan included informal public consultations in 2017 and 2023. Methods of communication included the LPNP web site, press articles, posters, social media, public exhibitions, stakeholder consultations and public meetings.

- 3.4 The pre-submission Plan was published for consultation under Regulation 14 of the 2012 Regulations from 7 August 2024 until 9 October 2024. An overview of the analysis of comments made by the NFDC, the NFNPA, statutory consultees and members of the public are summarised in Appendix D of the CS, together with the responses of the LPTC in Appendices E and F and any resulting changes to the Plan.
- 3.5 The final version of the Plan was submitted to the NFDC and the NFNPA on 7 March 2025. Consultation in accordance with Regulation 16 was carried out from 18 April 2025 until 30 May 2025. 25 responses were received about the Plan, including those from NFDC. I am satisfied that a transparent, fair and inclusive consultation process has been followed for the LPNP, that has had regard to advice in the PPG on plan preparation and engagement and is procedurally compliant in accordance with the legal requirements.

### Development and Use of Land

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

### Excluded Development

- 3.7 The Plan does not include provisions and policies for 'excluded development'.<sup>5</sup>

### Human Rights

- 3.8 The Basic Conditions Statement (BCS) notes that the LPTC has been mindful of the fundamental rights and freedoms guaranteed under the European Convention on Human Rights in the process of preparing the Neighbourhood Plan and considers that it complies with the Human Rights Act. The Neighbourhood Plan has been subject to extensive engagement with those people local to the area who could be affected by its policies and their views have been taken into account in finalising the Plan. I am aware from the CS that considerable emphasis was placed throughout the consultation process to ensure that no sections of the community were isolated or excluded. I have considered this matter independently and I am satisfied that the policies will not have a discriminatory impact on any particular group of individuals.

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<sup>5</sup> See section 61K of the 1990 Act.

## 4. Compliance with the Basic Conditions

### EU Obligations

- 4.1 A Sustainability Appraisal (SA) was prepared for the Plan. Following an appraisal of the policies, the SA concluded that no significantly negative effects were identified, but that many positive effects would occur, mostly due to the emphasis on brownfield regeneration.
- 4.2 The Plan was also subject to Habitats Regulations Assessment (HRA). The Habitats Sites considered within this report were: the New Forest Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar; the Solent Maritime SAC; the Solent and Southampton Water SPA and Ramsar; the Avon Valley SPA and Ramsar; the River Avon SAC; and the Solent and Isle of Wight Lagoons SAC. The Screening for Likely Significant Effects (LSEs) were considered using impact pathways including loss of functionally linked land, recreational pressure, air pollution and water quality.
- 4.3 Overall, it was concluded that the LPNP will not result in any LSEs on Habitats Sites in relation to the identified impact pathways, both alone and in-combination. This is because the LPNP does not make specific allocations or propose quanta of growth. With the current policies included in the LPNP, it was concluded that there was no requirement for undertaking an Appropriate Assessment (AA). Nevertheless, the HRA recommended that Policy LP3 (Key Regeneration Opportunities in the Town Centre) included a reference to the need for developers to provide adequate funding in line with the requirements set out in the Bird Aware Solent and the New Forest Revised Habitat Mitigation Scheme Supplementary Planning Document. The statutory consultees did not dissent from these conclusions.
- 4.4 Having read the SA and HRA related documentation and other information provided and, having considered the matter independently, I agree with the conclusions. Therefore, I am satisfied that the LPNP is compatible with EU obligations as retained in UK law.

### Main Issues

- 4.5 Having considered whether the Plan complies with various procedural and legal requirements, it is now necessary to deal with whether it complies with the remaining Basic Conditions, particularly the regard it pays to national policy and guidance, the contribution it makes to the achievement of sustainable development and whether it is in general conformity with strategic development plan policies. I test the Plan against the Basic Conditions by considering specific issues of compliance of all the Plan's policies.
- 4.6 As part of that assessment, I consider whether the policies are sufficiently clear and unambiguous, having regard to advice in the PPG. A

neighbourhood plan policy should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence.<sup>6</sup>

- 4.7 Accordingly, having regard to the Lymington and Pennington Neighbourhood Plan, the consultation responses, other evidence and the site visit, I consider that the main issues in this examination are whether the LPNP policies (i) have regard to national policy and guidance; (ii) are in general conformity with the adopted strategic planning policies; and (iii) would contribute to the achievement of sustainable development?

## Vision and Objectives

- 4.8 The vision for the LPNP is based on issues raised by the community during the initial stages of the consultation process. The succinct vision is described on page 20 of the Plan followed by seven broad objectives which are then used to help to achieve the vision, and which form the basis for the thirteen specific land use based policies.

Policy LP1: A Spatial Strategy For The Town

Policy LP2: Lymington Town Centre

Policy LP3: Key Regeneration Opportunities In The Town Centre

- 4.9 I have considered Policies LP1, LP2 and LP3 together because of their interaction. Policy LP1 sets out the strategy of reusing brownfield land in Lymington Town Centre for suitable development opportunities, Policy LP2 refines the strategy to a more local level describing the vision for the town centre and Policy LP3 identifies five key regeneration sites within the town centre.
- 4.10 The focus on “brownfield first”, using other suitable development opportunities within the settlement boundary and the gentle densification within the town, is seen as the means of accommodating housing needs whilst protecting the National Park landscape around the town and preventing inappropriate development in the adjoining Green Belt. The comprehensive explanation of Policy LP1 is given in paragraphs 5.4 and 5.5 of the Plan. The policy has regard to national guidance<sup>7</sup>, generally conform with Policies STR1, STR2, STR3, STR4 and ENV2 of the New Forest District Local Plan (NFDLP) Part 1; Policies SP1, SP3 and SP4 of the New Forest National Park Local Plan (NFNPLP) and meets the Basic Conditions.
- 4.11 The Lymington Town Centre Vision is described in Appendix A with the accompanying Town Centre Spatial Framework outlined on Map H of the Plan. Policy LP2 supports proposals for redevelopment provided they demonstrate how they will contribute to the Town Centre Vision. Clause C

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<sup>6</sup> PPG Reference ID: 41-041-20140306.

<sup>7</sup> NPPF: paragraphs 90, 123, 152 and 182.

of the policy requires development proposals to make a direct and proportionate contribution to projects and town centre improvements which would deliver the objectives of the Town Centre Vision. However, although contributions sought may be appropriate in scale, nature and location, they must make the development acceptable in planning terms and be directly related to the development.<sup>8</sup> Therefore, I shall recommend a modification to the policy to ensure that it has regard to national guidance.<sup>9</sup> **(PM1)** The policy would then also generally conform with Policy ECON5 and IMPL1 of the NFDLP Part 1 and meet the Basic Conditions.

- 4.12 NFDLP Part 1 Policy STR5 sets an overall housing target 2016 – 2036 for the District, which includes at Clause ii. b. around 200 homes on sites to be identified at Lymington and Pennington. LPNP Policy LP3 identifies five key regeneration sites in the Town Centre where redevelopment in the form of mixed uses, including housing, will be encouraged provided they contribute to the Town Centre Vision. The five sites are: a. Bridge Road; b. Gosport/Cannon Street; c. Town Hall, Avenue Road; d. Post Office and BT Site; and e. Solent Mead. The policy dovetails with the strategy outlined in Policy LP1 of prioritising brownfield redevelopment ahead of development in the Green Belt or other countryside.
- 4.13 NFDC concede that it is unclear that the sites will by themselves achieve a combined residential capacity of 200 homes, but there have been two large windfall sites permitted giving a net gain of 72 dwellings since the Local Plan was adopted in 2020. NFDC appear broadly satisfied that Policy LP3 is sufficient to enable the strategic functions for housing for Lymington and Pennington set out in NFDLP Part 1 Policy STR5 to be met. I have no reason to question that judgement. The housing capacities of the regeneration sites have not been defined, and representations claimed that greater precision was necessary. However, considering the flexibility required for viability and design, I believe the stance in Policy LP3 is entirely reasonable.
- 4.14 The HRA recommended that the policy includes references to the strategic requirements of Bird Aware Solent, the Mitigation for Recreational Impacts on New Forest European Sites SPD and nutrient neutrality which has been incorporated in the final sentence. NFDC has asked that a reference is made to air quality monitoring and this I shall recommend. NFDC also indicated that the Solent Mead regeneration site boundary should be amended to take into account the NFDC ownership of some of the land. I shall recommend the adjustment. **(PM2)** Policy LP3 would then have regard to national guidance<sup>10</sup>, would generally conform with Policy STR5 of the NFDLP Part 1 and would meet the Basic Conditions.

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<sup>8</sup> NPPF: paragraph 57.

<sup>9</sup> NPPF: paragraphs 57 and 90 a).

<sup>10</sup> NPPF: paragraphs 8 b), 63, 64 b) and 124 c),

4.15 Representations sought the allocation of sites for housing on land north of Torreyanna Gardens, Pennington; the Boat Building Factory, Waterloo Road; and the former Edgards Dairy Yard, Pennington. However, I consider that the Plan generally conforms with the strategic policies of the Local Plan and so I am not required to identify further land for housing. In any event, I accept the reasons advanced by LPTC for not allocating those sites.<sup>11</sup>

#### Policy LP4: Pennington Shopping Parades

4.16 Policy LP4 defines Local Shopping Frontages at Milford Road and South Street, and Pennington Square and South Street as shown on the Policies Map (Inset 1). The aim of the policy is to prevent the loss of uses on ground floors within the Local Shopping Frontages which meet the day-to-day needs of the local community. I can understand that a use which meets “day-to-day” needs may lack the standard precision for development management and that some uses may be lost through permitted development. Nevertheless, I support the aim behind the policy and should a proposal be made for a change of use which would erode the convenience shopping opportunities within a Local Shopping Frontage, I consider that it should be possible for planning permission to be refused for that reason. The additions to paragraph 5.15 of the Plan suggested by NFDL and to paragraph 5.17 suggested by LPTC, both of which I shall recommend, would enhance and provide the necessary clarity to the implementation of the policy. **(PM3)** With this recommended modification, the policy will have regard to national policy<sup>12</sup>, generally conforms with Policy ECON6 of the NFDLP Part 1 and meets the Basic Conditions.

#### Policy LP5: Walkable Neighbourhoods

4.17 Policy LP5 Clause A identifies broad locations at Buckland, Woodside, Lower Pennington and Upper Pennington as Walkable Neighbourhoods which are primarily residential areas located more than a 800m walk from Lymington Town Centre. Policy LP5 Clauses B – F then explain how the policy will be implemented. Clauses C, D, E and F refer to uses defined in Clause B which does not define any uses. LPTC has suggested amendments to the policy which would correct that error and which I shall recommend. With one other exception, I consider that the policy has regard to national guidance<sup>13</sup> and generally conforms with Policies ECON5 and ECON6 of the NFDLP Part 1. The exception is the use of the term “established” use in Clause F which has legal connotations. Therefore, I shall recommend the deletion of that word which would mean the policy would then meet the Basic Conditions. **(PM4)**

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<sup>11</sup> Response from LPTC to my question Q3.

<sup>12</sup> NPPF: paragraphs 97 a) and 97 d).

<sup>13</sup> NPPF: paragraphs 97 a) and 108 c).

## Policy LP6: High Quality Design

4.18 Policy LP6 aims to achieve high quality design in new development that contributes positively to local distinctiveness, the quality of life and enhances the character and appearance of the locality. The policy has regard to national policy<sup>14</sup>, generally conforms with Policies STR1 and ENV3 of the NFDLP Part 1, Policy DP18 of the NFNPLP and meets the Basic Conditions. However, paragraph 5.20 states that the Lymington Local Distinctiveness Supplementary Planning Document (SPD) carries the full weight of the Development Plan in decision making and is not subordinate or supplementary guidance carrying lesser weight. The NPPF states that Supplementary Planning Documents are capable of being a material consideration in planning decisions but are not part of the Development Plan.<sup>15</sup> Therefore, even though the SPD was Appendix C of the Plan and part of the consultation process, it was appended to the Plan and does not form part of the Development Plan. Accordingly, I shall recommend the deletion of the final sentence in paragraph 5.20 and the substitution of an alternative. **(PM5)**

## Policy LP7: Providing A Balanced Mix Of Dwellings To Meet Local Needs

4.19 Policy LP7 aims to provide a balanced mix of dwellings to meet local needs. Clause B states that the number of small dwellings should be greater than 50% of the total in schemes of 5 or more dwellings. I note the concern expressed by NFDC about deliverability on smaller sites and I shall recommend the inclusion of a viability test as in Policy HOU1 of the NFDLP Part 1. **(PM6)** The policy would then have regard to national policy<sup>16</sup>, would generally conform with Policy HOU1 of the NFDLP Part 1, Policy SP1 of the NFNPLP and would meet the Basic Conditions.

## Policy LP8: Green Infrastructure And Nature Recovery Network

4.20 Policy LP8 designates a Green Infrastructure and Nature Recovery Network. Clause C provides that all development should embed Green Infrastructure in a way that helps to support nature recovery, whereas I shall recommend that the policy should apply to appropriate development, which is more reasonable and realistic. **(PM7)** Policy LP8 would then have regard to national policy<sup>17</sup>, would generally conform with Policies STR1 and ENV4 of the NFDLP Part 1, Policy DM9 of the NFDLP Part 2, Policy SP6 of the NFNPLP and would meet the Basic Conditions.

## Policy LP9: Safer Lanes Network

4.21 Policy LP9 identifies a Safer Lane Network in order to protect the rural and historic characteristics of the lanes and promote the lanes as shared

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<sup>14</sup> NPPF: paragraph 132.

<sup>15</sup> NPPF: Annex 2 Glossary.

<sup>16</sup> NPPF: paragraphs 8 b) and 64 b).

<sup>17</sup> NPPF: paragraphs 96 c) and 180.

spaces. Policy LP9 has regard to national policy<sup>18</sup>, generally conforms with Policies STR1 and ENV4 of the NFDLP Part 1, Policy DM9 of the NFDLP Part 2, Policy SP55 of the NFNPLP and meets the Basic Conditions.

#### Policy LP10: Active And Healthy Travel

4.22 Policy LP10 supports measures to encourage active and healthy travel in the Plan area. Policy LP10 has regard to national policy<sup>19</sup>, generally conforms with Policies CCC1 and CCC2 of the NFDLP Part 1, Policy SP55 of the NFNPLP and meets the Basic Conditions.

#### Policy LP11: Net Zero Carbon Building Design

4.23 Policy LP11 is aimed at encouraging efficient energy performance in new development, with paragraphs 5.54 to 5.60 of the Plan offering a clear explanation of the reasoning behind each of the five Clauses of the policy. In general, with some focussed modifications and noting the comprehensive reply from LPTC to my questions, the policy has regard to national guidance<sup>20</sup>, generally conforms with Policies ENV3 and IMPL2 of the NFDLP Part 1, Policies SP1 and SP11 of the NFNPLP and meets the Basic Conditions.

4.24 However, a significant exception is within Clause C, which introduces Post Occupancy Evaluation (POE) an explanation of which is in paragraph 5.56 of the Plan and Appendix B. The basis of POE is that a condition would be imposed on certain planning permissions to require a report to be submitted showing any gap in performance between the predicted energy consumption at the design stage and actual energy consumption when the building is occupied. The planning condition would only be discharged when any performance gap had been rectified.

4.25 I accept that the POE would not set energy efficiency standards and would only incentivise designers and developers to conform with the standards, such as Passivhaus, so that the POE could be avoided, but I note the comments by NFDC that monitoring charges for compliance checking has been introduced by the Council. Therefore, the additional POE costs would fall on the developers and affect either the viability of a scheme or have a consequent impact on property prices. The additional costs would be exacerbated were there to be any disputes between the main parties.

4.26 Even though the court of appeal judgement *R(Rights: Community: Action Ltd) v SoS HCLG [2025] EWCA Civ 990* found that the Written Ministerial Statement (WMS) of December 2023 is not a legal barrier for setting higher energy efficiency standards in Development Plan Documents than advised in Building Regulations, I consider that the effect on viability is a significant criticism of implementing POE via a planning condition. Perhaps

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<sup>18</sup> NPPF: paragraph 180.

<sup>19</sup> NPPF: paragraphs 108 c).

<sup>20</sup> NPPF: paragraphs 8 c) and 159 b).

some form of self-certification is possible, but that would fall outside land use based policies of the Neighbourhood Plan. Therefore, notwithstanding whether the planning condition seeking POE meets the six tests set out in paragraph 56 of the NPPF, I shall recommend the deletion of the relevant section of Clause C and consequent modifications to Clause B. I shall also recommend a modification to Clause A so that it does not apply to householder applications. **(PM8)** With the recommended modifications, Policy LP11 would meet the Basic Conditions.

- 4.27 I note NFDC's response to my question 8 advises, with reference to implementing Policy R10 of the Ringwood Neighbourhood Plan (which is very similar to Policy LP11 of this Plan), that "...NFDC is starting to acknowledge with regards to R10 that there is conflict with wider policy and having to weigh this in the balance, considering the development plan and national framework as a whole".<sup>21</sup> However, I have no substantiating evidence to identify which Clauses of Policy R10 (Ringwood Neighbourhood Plan) or LP11 of this Neighbourhood Plan cause concern.

#### Policy LP12: Urban Greening And Canopy Cover

- 4.28 Policy LP12 aims to maximise urban greening and tree canopy cover. The policy has regard to national guidance<sup>22</sup>, generally conforms with Policies STR1, ENV3 and ENV4 of the NFDLP Part 1, Policy DM9 of the NFDLP Part 2, Policy SP6 of the NFNPLP and meets the Basic Conditions.

#### Policy LP13: Digital Communication Infrastructure

- 4.29 Policy LP13 seeks to encourage the provision of new digital communications infrastructure. This policy also has regard to national guidance<sup>23</sup>, generally conforms with Policy STR8 of the NFDLP Part 1 and meets the Basic Conditions.

#### Local Infrastructure Improvements And Other Non-Planning Matters

- 4.30 The Plan includes a section (paragraph 6.4) on priorities for local infrastructure improvements when appropriate funding is received by the local planning authority. In addition, paragraph 6.5 lists other various non planning matters as actions to be taken or issues to be addressed which cannot be delivered through land-use planning policies. These are not considered as part of the examination and will not form part of the statutory Development Plan. Nevertheless, they represent aspirations or actions which would benefit the community and demonstrate one of the valuable associated attributes of the neighbourhood planning process.<sup>24</sup>

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<sup>21</sup> See response from NFDC dated July 18 2025.

<sup>22</sup> NPPF: paragraph 159 a).

<sup>23</sup> NPPF: paragraph 118.

<sup>24</sup> PPG Reference ID: 41-004-20190509.

## Overview

- 4.31 Therefore, on the evidence before me, with the recommended modifications, I consider that the policies within the LPNP are in general conformity with the strategic policies of the Development Plan, have regard to national guidance, would contribute to the achievement of sustainable development and so would meet the Basic Conditions.
- 4.32 A consequence of the acceptance of the recommended modifications would be that amendments will have to be made to the explanation within the Plan in order to make it logical and suitable for the referendum. Further minor amendments might also include incorporating factual updates, correcting inaccuracies, typographical and punctuation errors, any text improvements suggested by NFDC in their Regulation 16 or Regulation 14 consultation responses and any other similar minor or consequential changes in agreement with the NFDC and the NFNPA. None of these alterations would affect the ability of the Plan to meet the Basic Conditions and could be undertaken as minor, non-material changes.<sup>25</sup>

## 5. Conclusions

### Summary

- 5.1 The Lymington and Pennington Neighbourhood Plan has been duly prepared in compliance with the procedural requirements. My examination has investigated whether the Plan meets the Basic Conditions and other legal requirements for neighbourhood plans. I have had regard to all the responses made following consultation on the LPNP, and the evidence documents submitted with it.
- 5.2 I have recommended eight modifications to ensure the Plan meets the Basic Conditions and other legal requirements. I recommend that the Plan, once modified, proceeds to referendum.

### The Referendum and its Area

- 5.3 I have considered whether the referendum area should be extended beyond the designated area to which the Plan relates. The LPNP, as modified, has no policy which I consider significant enough to have an impact beyond the designated Neighbourhood Plan boundary, requiring the referendum to extend to areas beyond the Plan boundary. I recommend that the boundary for the purposes of any future referendum on the Plan should be that of the designated Neighbourhood Plan Area.

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<sup>25</sup> PPG Reference ID: 41-106-20190509.

## Concluding Comments

- 5.4 The LPTC, the Neighbourhood Plan Steering Group and other voluntary contributors are to be commended for producing a succinct and comprehensive Plan. The Plan is logically presented, informative and extremely well illustrated. The Consultation Statement and the Basic Conditions Statement were concise and very useful. The Plan also benefitted from the constructive comments from the considered responses from the LPTC and NFDC to my questions. Subject to the recommended modifications, the LPNP will make a positive contribution to the Development Plan for the area and should enable the extremely attractive character and appearance of Lymington and Pennington to be maintained whilst enabling sustainable development to proceed.

*Andrew Mead*

Examiner

## Appendix: Modifications

Proposed modification no. (PM)	Page no./ other reference	Modification
PM1	Policy LP2	<p>Amend Clause C by the addition of:</p> <p><b>"... Town Centre Vision, provided the contributions make the proposals acceptable in planning terms and are directly related to the development."</b></p>
PM2	Policy LP3	<p>Amend the final paragraph to:</p> <p><b>"For the avoidance of doubt, strategic policy requirements of Bird Aware Solent, the Mitigation for Recreational Impacts on New Forest European Sites SPD, NFDC air quality monitoring and nutrient neutrality will continue to apply."</b></p> <p>Amend the boundary for site e) on the Policies Map (Inset 2) to match the Hampshire County Council ownership as shown on the map submitted at paragraph 1.11 of the NFDC response to examiner's questions dated 18 July 2025.</p> <p>Rephrase the final sentence of paragraph 5.11 of the Plan to:</p> <p><b>"The Solent Mead site is in split ownership between Hampshire County Council (HCC) and NFDC. A decision was made by HCC in 2025 to close its part of the site and it is therefore likely that that part of the site will become available for development during the Plan period. The NFDC housing on the site will remain."</b></p>
PM3	Policy LP4	<p>Amend paragraph 5.15 of the Plan by the inclusion of the following third sentence:</p> <p><b>"This approach aims to ensure that residents can access day to day services and amenities, for example, convenience shops, education and healthcare facilities."</b></p> <p>Amend paragraph 5.17 of the Plan by the inclusion of a new penultimate sentence:</p> <p><b>"Uses which are considered to meet day-to-day needs include Class E(a)</b></p>

		<p>convenience food retail for up to a total of 500 sq.m of net internal retail floorspace, Class E(b) café, Class E(d) indoor sport and recreation, Class E(e) medical services, Class E(f) day centre or nursery, Class F1 learning and non-residential institution; and/or a Class F2 local community use of an appropriate scale.”</p>
PM4	Policy LP5	<p>Amend Clause C to:</p> <p><b>“Proposals including uses which are intended to meet the local communities’ day to day needs may be delivered as ground floor units in a scheme with housing on upper floors ...”.</b></p> <p>Amend the second sentence of Clause D to:</p> <p><b>“Within this context, clustering of uses intended to meet day-to-day community needs in each broad location is preferred.”</b></p> <p>Amend Clause E to:</p> <p><b>“Proposals including uses which are intended to meet the local communities’ day-to-day needs must demonstrate that the site is located and accessible by walking, ...”.</b></p> <p>Amend Clause F to:</p> <p><b>“Proposals to change the use of land or premises in a walkable community from a use which contributes to meeting the local communities’ day-to-day needs to another use will not be supported.”</b></p>
PM5	Paragraph 5.20	<p>Delete the final sentence and substitute:</p> <p><b>“LTC will seek to work with NFDC and local community groups in the preparation of a District wide Design Code which is intended to retain the emphasis on local distinctiveness. The Code will be consulted upon as part of a separate process in due course.”</b></p>
PM6	Policy LP7	<p>Add the following phrase to the end of Clause B:</p> <p><b>“... taking into account the viability of the scheme.”</b></p>

PM7	Policy LP8	Amend Clause C to: <b>“All appropriate development should embed Green Infrastructure ...”</b>
PM8	Policy LP11	Amend Clause A to: <b>“All development (except for householder development) should be “zero carbon ready” ...”.</b> Amend Clause B to: <b>“Where feasible, buildings should aim to be certified to a Passivhaus or equivalent standard with a space heating demand of less than 15KWh/m2/year.”</b> Amend Clause C to: <b>“All planning applications for new or refurbished buildings should include a demonstration to show that their energy efficiency has been tested to ensure that the buildings will perform as predicted at the design stage.”</b>