

**WORLINGHAM NEIGHBOURHOOD PLAN  
2021-2036**

**Submission Version**

**Report**

**By**

**Christopher Lockhart-Mummery QC**

**Independent Examiner**

**July 2022**

## SUMMARY

I was appointed in May 2022 to undertake the examination of the Worlingham Neighbourhood Plan 2021-2036, Submission Version (the NP).

The Neighbourhood Area was designated by the former Waveney District Council (superseded by East Suffolk Council) and The Broads Authority in March 2017. The Area is contiguous with the boundary of Worlingham parish, the north of which falls within the Broads area.

A Consultation Statement December 2021 sets out the consultation carried out, showing a level of consultation at least meeting statutory requirements.

I decided that the statutory conditions for the holding of a hearing did not exist, and the examination proceeded on the basis of the documents only.

My Report reviews the NP. I find that it is well-researched, well-evidenced and clearly presented. I have recommended a limited number of modifications to ensure that it complies with the basic conditions and other statutory requirements.

I recommend that, subject to those modifications being made, the NP can proceed to Referendum.

***Note:** This report is an erratum version dated 18 July 2022. A typographical error regarding the plan period date in paragraph 27 has been corrected.*

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## **Introduction**

1. I was appointed by East Suffolk Council (ESC) and the Broads Authority (BA) with the support of Worlingham Parish Council (WPC), the qualifying body, to undertake the examination of the submission draft of the Worlingham Neighbourhood Plan 2021-2036 (the NP).
2. I am a Queen's Counsel with over 40 years' experience of planning law and practice. I am a member of the NPIERS Panel of Independent Examiners. I am independent of any local connections or interests, and have no conflicts of interest.

## **Worlingham Parish in Context**

3. In March 2017 the former Waveney District Council (superseded by ESC on 1 April 2019) and The Broads Authority (BA) designated a neighbourhood area for the whole of the parish area to enable WPC to prepare the NP.
4. Figure 1 of the NP shows the NP area, which is contiguous with the boundary of Worlingham parish. The north of the parish also falls within the Broads Area. The BA, as local planning authority for the Broads, has its own local plan, adopted in 2019.
5. The Waveney Local Plan (the WLP) was adopted also in 2019. Policy WLP3.1 allocates for development the Beccles and Worlingham Garden Neighbourhood, an area of some 90 hectares. It is allocated for approximately 1,250 dwellings, a retirement community, a 2 form entry primary school, a country park and other recreational and sporting facilities, a community hub and employment development. Paragraph 3.22 of the LP states:

*The Neighbourhood Plan for Beccles, Worlingham and Weston can play a role in shaping the detailed design of development in this area, promoting local distinctiveness.*

The outline masterplan is shown at Figure 13 of the LP, reproduced at Figure 19 of the NP. That part of the Garden Neighbourhood within Worlingham parish is shown hatched red on the Policies Map on page 62 of the NP. This Policies Map, and the Inset Map at page 63, are very clear and helpful guides to the content of the NP.

6. As paragraph 4.3 of the NP states:

*Given the scale and comprehensive nature of the East Suffolk (Waveney) Local Plan Policy WLP3.1, this Neighbourhood Plan will not allocate further sites within or outside the settlement boundary for development of any nature. Nor does it seek to modify the settlement boundary.*

### **The Structure of the NP**

7. The NP is very clearly and logically presented. The Policies are clearly distinguished (by blue print) from the supporting text. The Figures (including photographs) are very clear and helpful. I have one (mild) criticism: I find it helpful for neighbourhood plans to have – perhaps below the Contents on page 3 – a paginated reference to each of the Policies, and for the purposes of clarity and easy navigation, I so **Recommend**. (Alternatively, paginated reference to the Policies could be indented within the existing chapter headings).

### **The Evolution of the NP**

8. A brief summary is given in paragraphs 1.8-1.12. A full account is given in the Consultation Statement December 2021. This includes the measures undertaken to overcome the difficulties posed by Covid. An extended period of Regulation 14 consultation was carried out between 1 April and 9 June 2021. Appendix 2 clearly and comprehensively records the representations received, and the responses and actions taken. Regulation 16 consultation was undertaken between 10 January and 21 February 2022.

9. I commend the PC and its Neighbourhood Plan Team for the nature and extent of the consultation, and its presentation in the Consultation Statement. I conclude that the consultation fully met the statutory requirements.
10. Twelve representations were received following the Regulation 16 consultation. I have taken careful account of all of these. I respond (and respond only) in this Report to those which (a) are directed to the statutory test (see below) and (b) cause me to make a recommendation(s) or modification.
11. However, two of the representations had not been properly logged, had not been published as representations, and had not previously been supplied to me. The principal representation was from WPC, which responds to comments made by Suffolk County Council which were not addressed at the regulation 14 stage. This representation is a substantial piece of material, and contains a long series of modifications that the WPC would have wished to have made to the NP.
12. I have carefully considered all the suggested modifications/changes. They are, in my view, all acceptable changes to the NP, and in many cases would represent improvements to it. However, my powers are very limited at this stage. As mentioned above, the statute only enables me to recommend modifications where they are necessary, in effect, for the NP to comply with the basic conditions. I regret that I do not find that the NP would breach the basic conditions if these “new” modifications were not made.
13. Accordingly, I am unable to make recommendations in relation to these additional representations.

### **SEA and HRA**

14. In February 2020 the (then) draft NP was subject to an initial Screening report by ESC. This was published in February 2020 for consultation with the relevant statutory bodies. In March 2020 ESC issued its Screening Opinion to the effect that a Strategic Environmental Assessment was not required. The continued

applicability of the screening opinion was confirmed by ESC on 6 December 2021 and submitted at the Regulation 16 stage.

15. In February 2020 a Habitats Regulation Assessment (HRA) was prepared by ESC for consultation with Natural England. Following feedback from NE, ESC issued its screening opinion in March 2020 to the effect that an HRA would not be required because the NP was not likely to have a significant effect on European Protective Species or Sites.
16. I have no reason to doubt the validity of the above screening opinion.

### **The Examination Process**

17. I was appointed in May 2022. The examination formally commenced on 17 May (albeit I had commenced preliminary reading beforehand). I was supplied electronically with all relevant documents (and sent hard copies of key documents). I have carefully reviewed all the documents supplied.
18. On 16 May (as a result of my preliminary reading) I notified ESC that the statutory conditions for holding a hearing did not exist. Hence the examination proceeded on the basis of consideration of the documents only (and my visit to the area).
19. I carried out an unaccompanied visit to Worlingham on 6 June 2022.

### **Basic Conditions - General**

20. Schedule 4B paragraph 8 to the Town and Country Planning Act 1990 provides that a neighbourhood plan meets the Basic Conditions if it meets those specified in paragraphs (a), (d), (e), and (f). One further basic condition has been prescribed under paragraph 8(2)(g), as follows:

*“The making of the Neighbourhood Development Plan is not likely to have a significant effect on a European Site...or a European Off-shore marine site...either alone or in combination with other plans or projects”.*

21. As the courts have frequently emphasised, as I do now, the role of a Neighbourhood Plan Examiner is tightly constrained. It is (apart from dealing with other statutory requirements referred to at paragraphs 20-24 below) confined to considering compliance with the basic conditions. The Examiner cannot consider anything else: paragraph 8(6). Therefore the Examiner is not able to consider whether – as would be the case for a local plan – the NP is “sound” (in accordance with paragraph 35 of the NPPF). Accordingly, the Examiner can only consider the content of the NP (the planning judgments made, the choices made, the views regarded as important etc.) insofar as those matters impact on the basic conditions. This inevitably limits, significantly, the extent to which it is proper to respond to what I might call wider “planning merits” points made by representors.
22. I address the criteria in the basic conditions where relevant as I assess, below, the contents of the NP.

### **Other statutory requirements**

23. These are set out in the Town and Country Planning Act 1990 (as amended) and sections 38A-38C of the Planning and Compulsory Purchase Act 2004.
24. The NP was prepared and submitted for examination by a qualifying body: section 38A.
25. It has been prepared for an area designated under section 61G of the 1990 Act.
26. The NP meets section 38A(2) in that it sets out policies in relation to the development and use of land in the neighbourhood area.
27. The NP meets the requirements of section 38B – it specifies the period for which it is to have effect (2021-2036), it does not include provisions about



development which is excluded development, and does not relate to more than one neighbourhood area.

### **Assessment of NP**

28. Policy WORL1 addresses Village Identity. Part A suggests that there is to be a number of bullet points, but there is only one. For clarity I **Recommend** that the bullet point is removed, and the existing text presented as a single paragraph.
29. As ESC has represented, as written Parts A and B apply to applications for development of all sizes. I agree that this is too onerous in its potential application to small scale development such as householder development. I **Recommend** that at the start of Part A the following text should be inserted: as *appropriate to their nature and size, development proposals...*
30. I also agree that Part B appears to be written (and this is its sense) for large scale development. I therefore **Recommend** that “Development proposals for” be deleted and substituted by “Proposals for major development (as defined in NPPF) in...”.
31. Policy WORL2 addresses Housing Mix on, in particular, the Worlingham part of the Garden Neighbourhood. It requires schemes to demonstrate “how they have considered and addressed the need for provision of” a specified housing mix. However, the mere requirement to “consider and address” the mix seemingly hardens to a more rigid requirement in, for example, paragraph 5.16. I therefore have sympathy for the Larkfleet representations (paragraphs 3.21-3.22) to the effect that development viability etc. needs to be considered. I do not think that it should be the driver – “be dependent on” – but **Recommend** that the following text be added at the end of (and within) the Policy:
- Such a mix will have regard to local market circumstances, the viability of the development and any additional localised housing need information at the time of the determination.*

32. I have carefully considered Policies WORL3-WORL11. I note Larkfleet's concerns that the local plan objective of achieving a comprehensive development of the Garden Neighbourhood is at odds with the NP's concerns for the local distinctiveness and identity of Worlingham. I also note that the Inspector's report on the examination of the LP acknowledged the validity of the local community's concern for "maintaining the distinction between Beccles and Worlingham". He considered that these concerns could be satisfactorily addressed in the detailed masterplan/planning application process.
33. Overall, I find that none of these sections of the NP raised basic condition issues, and therefore make no recommendation.
34. Policy WORL12 addresses Landscaping, in particular for the Garden Neighbourhood. Whilst it may be thought that some of the text in paragraphs 8.1-8.7 is somewhat prescriptive, I do not find that this matter amounts to a breach of the basic conditions.
35. However, the last sentence of Policy WORL12 B ii) states that "Evidence of views is sought from the occupants of all adjoining homes must be provided". This could, in my view, act as an unjustifiable constraint or delay to needed, sustainable development, and I therefore **Recommend** its deletion.
36. Policy WORL13 addresses Country Park Landscaping and Management. However, it fails to deal, despite the heading, with the important factor of management. To ensure that the Policy is effective, I **Recommend** that a Part C be added, repeating the terms of paragraph 8.13 of the text:
- A suitable mechanism for the management of the country park should be developed through close engagement with the local community and the parish council.*
37. Paragraphs 8.15-8.23, leading to Policy WORL14, are headed Wildlife Corridors (as is the Policy). Paragraph 8.21 refers to a specific wildlife corridor within the proposed Garden Neighbourhood as helping "the development to achieve net biodiversity gain, as required by the NPPF and the Environment Act

2021”. Objective E (paragraph 3.3) refers to the protection and enhancement of the natural environment (and heritage assets). Despite these references, the NP contains no policy dealing with biodiversity net gain.

38. Paragraph 174(c) of NPPF states that planning policy should contribute to and enhance the natural and local environment by “providing net gains for biodiversity”. The LP for The Broads (BALP) and the WLP contain policies and underpinning text to encourage biodiversity gain (Policy SP6 of the former, Policy WLP 8.34 of the latter).
39. Accordingly, the introduction of such a policy would be consistent with national policies, contribute to sustainable development, and accord with the local plans. That being the case, I raised the possibility of recommending the inclusion of such a policy with the authorities, and also with Larkfleet, the principal developer of that part of the Garden Neighbourhood lying within the NP area.
40. I had a very positive response from all the above, and am extremely grateful to the PC who supplied a draft of suggested amendments, which was supported by relevant officers of both authorities. I **Recommend** the incorporation of that draft, without alteration.
41. I therefore **Recommend**:
- (1) That the part of the current text currently titled as “Wildlife Corridors” be instead titled “Biodiversity and Wildlife Corridors”.
  - (2) That existing paragraph 8.15-8.28 be renumbered as 8.23-8.36, with the following new paragraph inserted:

***Biodiversity and Wildlife Corridors***

*8.15 The Local Plan for the Broads and the East Suffolk (Waveney) Local Plan have policies (SP6 and WLP 8.34 respectively) that specifically cover matters surrounding biodiversity protection and enhancement.*

*8.16. The NPPF (particularly para. 174(d)) says that planning policies and decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity. NPPF paragraphs 176 and 177 emphasise the importance of landscape and wildlife enhancement for National Parks, the Broads and Areas of Outstanding Natural Beauty.*

*8.17 The Environment Act 2021 contains provisions for the protection and improvement of the environment, including the elevating of “Biodiversity Net Gain” (BNG) to a statutory footing. However, secondary legislation will need to pass through the parliamentary process to bring the mandatory Biodiversity Net Gain requirement into force.*

*8.18 There are several Priority Habitats in Worlingham Parish, including floodplain grazing marsh, ponds, wet woodland, mixed deciduous woodland and the historic parkland surrounding Worlingham Hall.*

8.19 *The neighbourhood plan area is spanned by part of the Broads. As nature is clearly blind to organisational boundaries, the proximity to County Wildlife Sites (CWS) such as the River Waveney CWS and the North Cove Alder Carrs CWS should be recognised in local assessments of biodiversity.*

8.20 *Wildlife corridor creation should focus on linking and buffering the existing ecological assets of the neighbourhood plan area, including Priority Habitats and local green spaces and future green space creation within the Beccles and Worlingham Garden Neighbourhood. This could be achieved with native planting and wildlife friendly verge management as well as the creation of nectar rich arable field margins and ponds.*

8.21 *Worlingham is a stronghold for species such as hedgehogs, with a high number of records across the parish (Suffolk Biodiversity Information Service), that depend on the protection, enhancement and creation of wildlife corridors. Birdlife is well documented with some 76 species recorded adjacent to or on the proposed development site in Worlingham for the Garden Neighbourhood (Policy WLP3.1).*

8.22 *Worlingham has experienced a high level of development (housing and industrial) since 2001. The Beccles and Worlingham Garden Neighbourhood development (Policy WLP3.1) requires much built infrastructure and the largest housing development so far experienced within the neighbourhood plan area. Provision of biodiversity net gain will be an important element in delivering this site.*

- (3) That Policy WORL14 Part B be labelled as Part C, and that Parts A and B become as follows:

***Policy WORL 14: Biodiversity Net Gain and Wildlife Corridors***

*A. Proposals for major development (e.g. 10 or more dwellings) in the Worlingham Neighbourhood Plan area must provide for a minimum Biodiversity Net Gain of 10% that is secured for at least 30 years and is subject to the following criteria:*

- *The whole of the net gain must be delivered on site unless exceptions permitting off-site delivery within the neighbourhood plan area are formally agreed with the Local Planning Authority;*

- *In the case of a development site spanning the neighbourhood plan boundary, the 10% (minimum) Biodiversity Net Gain requirement of this policy applies to that part of the site lying within the neighbourhood plan area;*
- *Biodiversity Net Gain should be measured using the most recently available Biodiversity Metric at the time of the submission of the planning application, unless otherwise agreed with the Local Planning Authority.*

*The requirements of this policy will be superseded by legislative requirements once mandatory Biodiversity Net Gain comes into force.*

*B. Proposals that identify, protect and enhance wildlife corridors in the Worlingham Neighbourhood Plan area will be supported where they provide a net gain in biodiversity, through creation and enhancement of natural habitats, and restoring fragmented biodiversity networks. These must be designed and implemented to maximise their wildlife value, provide connectivity through the site for terrestrial and aerial species. They must exploit suitable opportunities to link with the maintained and varied habitats provided by established residential gardens adjacent to the site. They must also be maintained as dark corridors as far as possible to increase their value for nocturnal species.*

42. Paragraphs 8.24-8.28 and Policy WORL15 deal with the identification and protection of Local Green Spaces (LGS). Three are proposed for designation, identified on the Policies Map and in Appendix 5. They are a. All Saints Green, b. Woodfield Park and c. Werel's Loke Park. Having visited the area, I have no reason to doubt that they comply with the criteria indicated in paragraph 102 of NPPF.
43. The proposed policy for protection is Part B of the Policy: "Proposals for built development on any of these Local Green Spaces will only be permitted in very special circumstances". The question for appropriate LGS policy is now the subject of guidance from the Court of Appeal in R (Lochailort) v. Mendip DC [2020] EWCA Civ 1259 to the effect that, unless exceptional circumstances exist and are given, LGS policy should be consistent with NPPF policy in

relation to Green Belt. However, the range of built development regarded as not “inappropriate” includes (paragraph 149) limited infilling in villages, limited affordable housing and the like. Such development would conflict with the special value of the LGS in Worlingham, and with other policies of the NP. I therefore find that Part B is suitable for the local circumstances, and make no recommendation.

### **Conclusion**

44. I accept that the NP has had regard to the fundamental rights and freedoms guaranteed by the European Convention on Human Rights and complies with the Human Rights Act.
45. The NP is well-researched, well-evidenced, and clearly and logically presented. It is easy to navigate. If it is made, it will – in my opinion – form a valuable and positive element of the statutory development plan for the area.
46. In my judgment the NP, with the modifications recommended in this Report, will comply with the basic conditions and other statutory requirements.
47. I therefore **Recommend** that, subject to such modifications, it should proceed to referendum.
48. In accordance with the Town and Country Planning Act 1990 Schedule 4B paragraph 10(5) I must consider whether the area for the referendum should extend beyond the Neighbourhood Plan Area. I find that there are no sound reasons to make such a recommendation in the present case.

**Christopher Lockhart-Mummery QC**  
**Examiner**

**July 2022**