

MORETON, BOBBINGWORTH AND THE LAVERS NEIGHBOURHOOD PLAN 2017-2035

Moreton, Bobbingworth and the Lavers
Neighbourhood Plan Examination
A Report to Epping Forest District Council

by Independent Examiner, Nigel McGurk BSc(Hons) MCD MBA MRTPI

June 2019



Contents

1, Summary

2, Introduction

3, Basic Conditions and Development Plan Status

**4, Background Documents and the Moreton, Bobbingworth and the Lavers
Neighbourhood Area**

5, Public Consultation

6, The Neighbourhood Plan: Introductory Section

7, The Neighbourhood Plan: Policies

8, The Neighbourhood Plan: Other Matters

9, Referendum

1. Summary

- 1 Subject to the recommendations within this Report, made in respect of enabling the Moreton, Bobbingworth and the Lavers Neighbourhood Plan to meet the basic conditions, I confirm that:
 - having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
 - the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations; and
 - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.

- 2 Taking the above into account, I find that the Moreton, Bobbingworth and the Lavers Neighbourhood Plan meets the basic conditions¹ and I recommend to Epping Forest District Council that, subject to modifications, it should proceed to Referendum.

- 3 I note, in the Community Engagement section of this Report (page 17), that a previous version of the Moreton, Bobbingworth and the Lavers Neighbourhood Plan was found not to meet the basic conditions. The Moreton, Bobbingworth and the Lavers Neighbourhood Plan the subject of this examination differs from that previous version and has emerged through the appropriate pre-submission (Regulation 14) and submission (Regulation 16) stages of public consultation.

¹ It is confirmed in Chapter 3 of this Report that the Moreton, Bobbingworth and the Lavers Neighbourhood Plan meets the requirements of Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990.

2. Introduction

The Neighbourhood Plan

- 4 This Report provides the findings of the examination into the Moreton, Bobbingworth and the Lavers Neighbourhood Plan (referred to as the Neighbourhood Plan) prepared by Moreton, Bobbingworth and the Lavers Parish Council.
- 5 As above, the Report recommends that the Neighbourhood Plan should go forward to a Referendum. Epping Forest District Council must decide what action to take in response to the recommendations in this Report. Should it accept the recommendations, the Neighbourhood Plan will progress to Referendum.
- 6 Should Epping Forest District Council propose to make a decision which differs from the recommendations, it must notify Moreton, Bobbingworth and the Lavers Parish Council, anyone whose representation was submitted to the examiner and any consultation body that was previously consulted of its proposed decision and invite representations. Following a six week consultation period, Epping Forest District Council must then issue its final decision within 5 weeks (or within 5 weeks of receipt of the Examiner's report, should it decide to refer the issue to examination).
- 7 Should the Neighbourhood Plan go forward to Referendum, this will be arranged by Epping Forest District Council. At the Referendum, should more than 50% of votes to be in favour of the Neighbourhood Plan, then the Plan would be formally *made* by Epping Forest District Council. The Neighbourhood Plan would then form part of the development plan and as such, it would be used to determine planning applications and guide planning decisions in the Moreton, Bobbingworth and the Lavers Neighbourhood Area.

- 8 Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.

“Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.”

(Paragraph 183, National Planning Policy Framework)

- 9 As confirmed on page 3 of the Basic Conditions Statement, submitted alongside the Neighbourhood Plan, Moreton, Bobbingworth and the Lavers Parish Council is the *Qualifying Body*, ultimately responsible for the Neighbourhood Plan.
- 10 The Neighbourhood Plan relates only to the designated Moreton, Bobbingworth and the Lavers Neighbourhood Area and there is no other neighbourhood plan in place in the Moreton, Bobbingworth and the Lavers Neighbourhood Area.
- 11 The above meets with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2012²) and Planning Practice Guidance (2014, as updated).

Role of the Independent Examiner

- 12 I was appointed by Epping Forest District Council, with the consent of the Qualifying Body, to conduct the examination of the Moreton, Bobbingworth and the Lavers Neighbourhood Plan and to provide this Report.
- 13 As an Independent Neighbourhood Plan Examiner, I am independent of the Qualifying Body and the Local Authority. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I possess appropriate qualifications and experience.

² A replacement National Planning Policy Framework was published in July 2018. Paragraph 214 of the replacement document establishes that the policies of the previous National Planning Policy Framework apply for the purpose of examining plans, where those plans are submitted on or before the 24th January 2019. The Moreton, Bobbingworth and the Lavers Neighbourhood Plan was submitted to Epping Forest District Council ahead of consultation which commenced on 22nd January 2019 and consequently, it is appropriate to examine the policies of the Neighbourhood Plan against the National Planning Policy Framework published in 2012.

- 14 I am a chartered town planner and have seven years' direct experience as an Independent Examiner of Neighbourhood Plans. I also have thirty years' land, planning and development experience, gained across the public, private, partnership and community sectors.
- 15 As the Independent Examiner, I must make one of the following recommendations:
- that the Neighbourhood Plan should proceed to Referendum, on the basis that it meets all legal requirements;
 - that the Neighbourhood Plan, as modified, should proceed to Referendum;
 - that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 16 If recommending that the Neighbourhood Plan should go forward to Referendum, I must then consider whether the Referendum Area should extend beyond the Moreton, Bobbingworth and the Lavers Neighbourhood Area to which the Plan relates.
- 17 Where modifications are recommended, they are presented as bullet points and highlighted in **bold print**, with any proposed new wording in *italics*.

Neighbourhood Plan Period

- 18 A neighbourhood plan must specify the period during which it is to have effect.
- 19 The title of the Neighbourhood Plan clearly establishes the plan period as running from 2017 to 2035.

Moreton, Bobbingworth and the Lavers Neighbourhood Plan 2017-2035
Examiner's Report

- 20 In contrast to the above, page 3 of the Basic Conditions Statement states that:

“The Moreton, Bobbingworth and the Lavers NDP specifies that the plan period is to run from 18 years from the point of adoption (assuming the plan is adopted before the end of 2019).”

- 21 This is not the case. The Neighbourhood Plan does not specify that the Neighbourhood Plan is to run from 18 years from the point of adoption. Rather, page 5 of the Neighbourhood Plan states that the plan period covers both an 18 year and a 20 year period.
- 22 Taking the above into account and noting the plan period clearly established on the title page of the Neighbourhood Plan, I recommend:
- **Page 5, Neighbourhood Plan, penultimate paragraph, delete first sentence (“This is a long term plan covering the next 20 years.”)**
- 23 Subject to the above recommendation, the Neighbourhood Plan meets the requirement in respect of specifying the period during which it is to have effect.

Public Hearing

- 24 According to the legislation, *when the Examiner considers it necessary* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.
- 25 However, the legislation establishes that it is a general rule that neighbourhood plan examinations should be held without a public hearing – by written representations only.
- 26 Further to consideration of the information submitted, I determined not hold a public hearing as part of the examination of the Moreton, Bobbingworth and the Lavers Neighbourhood Plan.
- 27 However, in order to clarify a number of points in respect of the examination, I wrote to the Qualifying Body and to Epping Forest District Council. My letter and the responses provided were published on the Epping Forest District Council website.

3. Basic Conditions and Development Plan Status

Basic Conditions

- 28 It is the role of the Independent Examiner to consider whether a neighbourhood plan meets the “basic conditions.” These were *set out in law*³ following the Localism Act 2011. Effectively, the basic conditions provide the rock or foundation upon which neighbourhood plans are created. A neighbourhood plan meets the basic conditions if:
- having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
 - the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations; and
 - prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.
- 29 Regulations 23 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation and referred to above. Of these, the following basic condition, brought into effect on 28th December 2018, applies to neighbourhood plans:
- the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations.⁴

³ Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

⁴ *ibid* (same as above).

Moreton, Bobbingworth and the Lavers Neighbourhood Plan 2017-2035
Examiner's Report

- 30 In examining the Plan, I am also required, as set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act), 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 (under Section 61G of the Localism Act);
 - 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 in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004.
- 31 An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.⁵
- 32 I note that, in line with legislative requirements, a Basic Conditions Statement was submitted alongside the Neighbourhood Plan. This sets out how, in the qualifying body's opinion, the Neighbourhood Plan meets the basic conditions.

⁵ The Convention rights has the same meaning as in the Human Rights Act 1998.

European Convention on Human Rights (ECHR) Obligations

- 33 Paragraph 6.3 of the Basic Conditions Statement submitted alongside the Neighbourhood Plan sets out why, in the Qualifying Body's view, the Neighbourhood Plan is compatible with the ECHR.
- 34 I am satisfied that the Neighbourhood Plan has regard to fundamental rights and freedoms guaranteed under the ECHR and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.
- 35 In the above regard, I also note that Information has been submitted to demonstrate that people were provided with a range of opportunities to engage with plan-making in different places and at different times. Many comments were received during the plan-making process and the Consultation Statement submitted alongside the Neighbourhood Plan provides a summary of responses and resulting changes.

European Union (EU) Obligations

- 36 In some limited circumstances, where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment. In this regard, national advice states:
- "Draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects."*
(Planning Practice Guidance⁶)
- 37 This process is often referred to as "*screening*"⁷. If likely environmental effects are identified, an environmental report must be prepared.

⁶ Paragraph 027, Ref: 11-027-20150209, Planning Practice Guidance.

⁷ The requirements for a screening assessment are set out in in Regulation 9 of the Environmental Assessment of Plans and Programmes Regulations 2004.

- 38 The Basic Conditions Statement states that a Strategic Environmental Assessment (SEA) is not required. This is a conclusion supported by Epping Forest District Council, which wrote to Moreton, Bobbingworth and the Lavers Parish Council to advise that:

"...the MBL Neighbourhood Plan does not need an environmental assessment to be prepared...there will be no significant environmental effects to result from the proposals in the Plan..."

- 39 In determining the above, the two Councils took into account the fact that the Neighbourhood Plan does not allocate any sites for development.

- 40 The statutory bodies, Historic England, Natural England and the Environment Agency, have all been consulted. None of these bodies has raised any concerns in respect of the Neighbourhood Plan and its need to meet European obligations. Further, Natural England has stated:

"Natural England is satisfied that the Local Planning Authorities (sic) conclusion that an SEA is not required is appropriate."

- 41 In addition to SEA, a Habitats Regulations assessment identifies whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans and projects. This assessment must determine whether significant effects on a European site can be ruled out on the basis of objective information⁸. If it is concluded that there is likely to be a significant effect on a European site, then an appropriate assessment of the implications of the plan for the site must be undertaken.

- 42 In consideration of Habitats Regulations Assessment, the Basic Conditions Statement concludes that:

"...a full assessment...is not required...the proposed plan does not breach and is otherwise compatible with EU Obligations."

- 43 This conclusion is supported by Epping Forest District Council and as above, none of the statutory bodies has raised any issues in respect of European obligations.

⁸ Planning Practice Guidance Paragraph 047 Reference ID: 11-047-20150209.

- 44 National guidance establishes that the ultimate responsibility for determining whether a draft neighbourhood plan meets EU obligations lies with the local planning authority:

“It is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a neighbourhood plan proposal submitted to it have been met in order for the proposal to progress. The local planning authority must decide whether the draft neighbourhood plan is compatible with EU regulations (including obligations under the Strategic Environmental Assessment Directive)” (Planning Practice Guidance⁹).

- 45 In carrying out the work that it has and in reaching the conclusions that it has, Epping Forest District Council has not raised any concerns in respect of the Neighbourhood Plan's compatibility with EU obligations.
- 46 In addition to all of the above, I note that, in April 2018, in the case *People Over Wind & Sweetman v Coillte Teoranta (“People over Wind”)*, the Court of Justice of the European Union clarified that it is not appropriate to take account of mitigation measures when screening plans and projects for their effects on European protected habitats under the Habitats Directive. In practice this means if a likely significant effect is identified at the screening stage of a habitats assessment, an *Appropriate Assessment* of those effects must be undertaken.
- 47 In response to this judgement, the government made consequential changes to relevant regulations through the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.
- 48 The changes to regulations allow neighbourhood plans and development orders in areas where there could be likely significant effects on a European protected site to be subject to an *Appropriate Assessment* to demonstrate how impacts will be mitigated, in the same way as would happen for a draft Local Plan or planning application.
- 49 These changes came into force on 28th December 2018. This post-dated the submission of the Neighbourhood Plan and the subsequent consultation period.

⁹ *ibid*, Paragraph 031 Reference ID: 11-031-20150209.

Moreton, Bobbingworth and the Lavers Neighbourhood Plan 2017-2035
Examiner's Report

- 50 In undertaking the work that it has, Epping Forest District Council has taken all of this into account and considers the Neighbourhood Plan to be compatible with European obligations.
- 51 Taking this and the above into consideration, I am satisfied that the Neighbourhood Plan is compatible with European obligations.

4. Background Documents and the Moreton, Bobbingworth and the Lavers Neighbourhood Area

Background Documents

- 52 In undertaking this examination, I have considered various information in addition to the Moreton, Bobbingworth and the Lavers Neighbourhood Plan.
- 53 I draw attention to the fact that a replacement version of the National Planning Policy Framework was published in July 2018, after the submission of the Neighbourhood Plan. The previous National Planning Policy Framework was published in 2012 and the replacement version differs from it in a number of ways.
- 54 However, as noted earlier in this Report, Paragraph 214 of the replacement document establishes that the policies of the previous National Planning Policy Framework apply for the purpose of examining relevant plans, like the Moreton, Bobbingworth and the Lavers Neighbourhood Plan, submitted prior to the 25th January 2019.
- 55 I also note that, whilst the basic conditions require neighbourhood plans to be examined against adopted strategic planning policies, the emerging Epping Forest Local Plan (2011-2033) is at an advanced stage. At the time of writing this Report, the emerging Local Plan was being considered by a Planning Inspector at an Examination in Public.
- 56 Notwithstanding that the Neighbourhood Plan must be examined against adopted planning policies, Planning Practice Guidance advises¹⁰ that the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which the Plan is tested.

¹⁰ Paragraph: 009 Reference ID: 41-009-20160211.

Moreton, Bobbingworth and the Lavers Neighbourhood Plan 2017-2035
Examiner's Report

57 Taking this into account, information considered as part of this examination has included (but has not been limited to) the following main documents and information:

- National Planning Policy Framework (referred to in this Report as "*the Framework*") (2012)
- Planning Practice Guidance (2014, as updated)
- Town and Country Planning Act 1990 (as amended)
- The Localism Act (2011)
- The Neighbourhood Plan Regulations (2012) (as amended)
- Epping Forest District Local Plan 1998 and Alterations 2006 (2008) (referred to in this Report as "*Local Plan*")
- Emerging Epping Forest Local Plan (2011-2033) and supporting information
- Basic Conditions Statement
- Consultation Statement

Also:

- Representations received

58 In addition, I spent an unaccompanied day visiting the Moreton, Bobbingworth and the Lavers Neighbourhood Area.

Moreton, Bobbingworth and the Lavers Neighbourhood Area

- 59 The boundary of the Moreton, Bobbingworth and the Lavers Neighbourhood Area is shown on a plan provided on page 2 of the Neighbourhood Plan and a Neighbourhood Plan Area Map was also submitted for examination.
- 60 Epping Forest District Council formally designated the Moreton, Bobbingworth and the Lavers Neighbourhood Area on 29th July 2014.
- 61 This satisfies a requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended).

5. Public Consultation

Introduction

- 62 As land use plans, the policies of neighbourhood plans form part of the basis for planning and development control decisions. Legislation requires the production of neighbourhood plans to be supported by public consultation.
- 63 Successful public consultation enables a neighbourhood plan to reflect the needs, views and priorities of the local community. It can create a sense of public ownership, help achieve consensus and provide the foundations for a 'Yes' vote at Referendum.

Moreton, Bobbingworth and the Lavers Neighbourhood Plan Consultation

- 64 A Consultation Statement was submitted to Epping Forest District Council alongside the Neighbourhood Plan. The information within it sets out who was consulted and how, together with the outcome of the consultation, as required by the neighbourhood planning *regulations*¹¹.
- 65 Taking the information provided into account, there is evidence to demonstrate that the Neighbourhood Plan comprises a "*shared vision*" for the Moreton, Bobbingworth and the Lavers Neighbourhood Area, having regard to Paragraph 183 of the National Planning Policy Framework ("*the Framework*").
- 66 Moreton, Bobbingworth and the Lavers Parish Council commenced community engagement with a presentation on the Localism Act, attended by around 80 residents, in 2012. A Forward Planning Committee was then established and further to voting to progress a neighbourhood plan, the Parish Council established a Steering Group, comprising residents and Parish Councillors

¹¹ Neighbourhood Planning (General) Regulations 2012.

- 67 Further to public meetings and questionnaires, a draft plan was produced and consulted upon during February and March 2014. Taking into account representations received, a further draft plan was produced and consulted upon during February and March 2015. Just five consultation responses were received and further to amendments, the plan was submitted in September 2015.
- 68 This first submission plan was examined and the subsequent Examiner's Report, published in May 2016, recommended that the plan should not progress to Referendum as it did not meet the basic conditions.
- 69 Further to meetings with Epping Forest District Council and the publication of the draft Epping Forest District Local Plan, the Steering Group proposed changes to the previously submitted plan. The plan was thus revised and underwent Regulation 14 consultation during November and December 2017. Responses to the Regulation 14 consultation were considered and some further alterations made to the plan prior to submission to Epping Forest District Council.
- 70 The Consultation Report provides evidence to demonstrate that public consultation formed an important part of the overall plan-making process. Consultation was well-publicised. Matters raised were considered and the reporting process was transparent.
- 71 Taking all of the above into account, I am satisfied that the consultation process was robust and complied with the neighbourhood planning regulations referred to above.

6. The Neighbourhood Plan – Introductory Section

- 72 As noted earlier, the Neighbourhood Plan must be in general conformity with adopted strategic policies. For clarity, I recommend:
- **Page 3, Para A5, change to “...In addition *the emerging Epping Forest District Local Plan is nearing adoption and the Moreton, Bobbingworth and the Lavers Neighbourhood Plan has taken relevant information relating to this emerging District-wide Local Plan into account.*”**
- 73 There are a number of references to the “*draft plan.*” I recommend:
- **Delete “draft” from Paras A11, A14, A17, A24, A27 (second “draft” only),**
 - **Delete Para A28, which has been overtaken by events, but retain the last sentence and change to “*This Neighbourhood Plan will guide...18 years.*”**
- 74 The Neighbourhood Plan Steering Group cannot direct the Local Planning Authority, Epping Forest District Council. I recommend:
- **Page 5, Para A29, change to “...with *monitoring the Neighbourhood Plan, with the aim of ensuring that its objectives and policies are effective.* In addition...for.”**
 - **Para A30, change to “...the next 18 years. It...”**
- 75 The sentence following the Objectives on page 6 appears as a policy, which it is not. Notwithstanding this, the approach set out appears not to provide for sustainable development, by enabling a balanced approach to the consideration of harm and benefits. I recommend:
- **Page 6, delete “Development which has a detrimental...not be supported.”**

7. The Neighbourhood Plan – Neighbourhood Plan Policies

Housing and Development

Policy MBL 1.1 – Type, size, scale and design of new-build homes

Policy MBL 1.2 – Affordable Housing on Rural Exception Sites

Policy MBL 1.3 – Redundant buildings

Policy MBL 1.4 – Replacement of dwellings within the Green Belt

- 76 The whole of the Neighbourhood Area is located within the Green Belt. National Green Belt policy is set out in Chapter 9 of the National Planning Policy Framework 2012 (referred to in this Report as "*the Framework*"), "*Protecting Green Belt land.*"
- 77 Great importance is attached to Green Belts and the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Framework establishes that the essential characteristics of Green Belts are their openness and permanence.
- 78 However, national policy does not seek to prevent all development in the Green Belt. Rather, it recognises various forms of development that are not inappropriate in the Green Belt and in addition, it even provides for inappropriate development in the Green Belt, where very special circumstances exist – i.e. where the benefits of development clearly outweigh the harm.
- 79 Where development is likely to result in harm, then, in line with national policy:
- "...local planning authorities should ensure that substantial weight is given to any harm to the Green Belt."*
(Para 88, the Framework)

- 80 Development in the Green Belt where no development currently exists is very likely to result in harm to openness and according to national policy, such harm must be afforded substantial weight in any planning balance. However, this does not equate to the same thing as Green Belt policy simply preventing any form of development that harms openness. Rather, national policy is explicit in providing for the balanced consideration of the harm and benefits arising from a development proposal in the Green Belt.
- 81 Further, national Green Belt policy, in Paragraph 89 of the Framework, provides for:
- “...limited infilling in villages, and limited affordable housing for local community needs...or limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land)...which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.”*
- 82 Paragraphs 89 and 90 of the Framework also provide for the appropriate extension, alteration and replacement of buildings in the Green Belt and for the re-use of buildings of permanent and substantial construction.
- 83 The first four policies of the Neighbourhood Plan, Policies MBL 1.1 to MBL 1.4, seek to provide for residential development within the context of the Neighbourhood Area's location within the Green Belt.
- 84 The introductory text refers to a local preference for new homes to be generally smaller and to provide for starter homes and homes for older people. It goes on to provide what appears as an incomplete and incorrect summary of Green Belt policy as it applies to housing, as well as a slightly confusing and erroneous reference to the basic conditions. These are simply matters of fact that are corrected in the recommendations below.
- 85 In general terms, the first part of **Policy MBL 1.1** seeks to encourage the provision of smaller homes, taking into account the results of consultation.

- 86 As set out, part a) of the Policy appears vague and imprecise. It is unclear what a "**limited number** (my emphasis) of dwellings providing 3 or more bedrooms" would comprise in practice. Consequently, this part of the Policy fails to have regard to national planning guidance¹², which states that:

"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."

- 87 The Policy then goes on to include the phrase "*may be acceptable*," which appears vague and ambiguous, and does not provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework.
- 88 The second part of Policy MBL 1.1 seeks to ensure that new dwellings respect local character and to ensure that design innovation is not discouraged. Such an approach has regard to Chapter 7 of the Framework, "*Requiring good design*" and is in general conformity with Epping Forest Local Plan (2008) (referred to as the "*Local Plan*") Policy DBE4, "*Design in the Green Belt*," which requires new buildings to respect local character and setting.
- 89 However, as set out, the Policy requires new dwellings to simply "*respect*" the setting of designated heritage assets. Such an approach does not properly reflect the requirements of national policy, which, in Chapter 12 of the Framework, "*Conserving and enhancing the historic environment*," requires all development to conserve heritage assets in a manner appropriate to their significance.
- 90 As a minor point, I note that part c) of the Policy appears unduly predictive in stating that something "*will*" happen and this is something picked up in the recommendations below.
- 91 The final part of Policy MBL 1.1 sets out a requirement addressed by another Policy in the Neighbourhood Plan. As all of the policies of the development plan need to be taken together, this is an unnecessary addition.

¹² Planning Policy Guidance, Paragraph: 041 Reference ID: 41-042-20140306.

- 92 National planning policy supports the provision of affordable housing through rural exception sites “*where appropriate*” (Paragraph 54, the Framework). Whilst **Policy MBL 1.2** attempts to present a supportive framework for rural exception sites, it does not provide any detail in respect of what kind of rural exception site and where, might be appropriate.
- 93 The Policy simply supports the provision of affordable housing on exception sites wherever there is demand shown by a survey. This could result in a supportive approach for rural exception sites anywhere in the Neighbourhood Area and thus, the Policy appears unduly vague and ambiguous. Further, it could result in significant conflict with the Neighbourhood Plan's desire to protect the Green Belt, as well as with other policies in the development plan as a whole. There is no evidence to demonstrate that this would not be the case.
- 94 Much of the rest of part a) of Policy MBL 1.2 is already covered in the requirements set out in the preceding Policy.
- 95 The Policy goes on to state that any development “*shall minimise the impact on the openness of the Green Belt, protect and enhance the landscape...*”
- 96 By its very nature, new residential development in the Green Belt where no development currently exists will almost inevitably result in harm to openness and there is no substantive evidence to demonstrate that any rural exception site can be developed in a manner that will enhance the landscape. Consequently, the Policy seeks to impose an onerous test, but without evidence or justification to lead me to the conclusion that it has regard to the requirements of Paragraph 173 of the Framework, which states that:
- “Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable.”*
- 97 The Policy goes on to refer to the requirements of another Policy elsewhere in the Neighbourhood Plan and relies on an un-adopted Policy in the emerging District-wide Local Plan, which may, or may not, form part of the development plan at some time in the future. This is a matter addressed in the recommendations below.

- 98 **Policy MBL 1.3** states that the conversion of redundant buildings will be "*considered on a case by case basis.*" This is unnecessary information, as it is a legal requirement for registered planning applications to be considered. I am also mindful that national Green Belt policy states that, provided it preserves the openness of the Green Belt and does not conflict with Green Belt purposes, the re-use of buildings (of a permanent and substantial construction) in the Green Belt is not inappropriate (Paragraph 90, the Framework).
- 99 However, Policy MBL 1.3 seeks to introduce the additional policy tests of requiring it to be demonstrated that buildings are "*no longer usable*" for their original purpose *and* no longer "*economically viable*" for their previous use. This conflicts with national policy and introduces an unusual and onerous test – not least as many rural residential conversions are from barns, which by their very nature might be usable as barns and/or economically viable for storage purposes until they fall into a state of ruin.
- 100 This approach departs significantly from national policy, which does not set any such tests and the failure to have regard to national policy in this respect is not supported by any justification founded on substantive evidence.
- 101 The various criteria then set out in Policy MBL 1.3 generally seek to provide for good design, sustainability and the protection of openness. However, a number of the requirements appear unduly vague. For example, it is not clear, in the absence of any information, what the "*current sustainable and renewable energy technologies*" required to be incorporated might be. Similarly, there is no evidence to demonstrate that a requirement for all boundaries, curtilages and landscaping to "*preserve openness*" is deliverable.
- 102 Whether or not a redundant building is "*worthy of keeping*" appears to be a highly subjective matter and there is no substantive information to set out how such a matter might be judged, who by, and on what basis. Consequently, this part of the Policy fails to have regard to Paragraph 154 of the Framework, which requires policies to provide a decision maker with a clear indication of how to react to a development proposal.

- 103 Further to the above, national heritage policy, as set out in Chapter 12 of the Framework does not establish a requirement of “*no harm*” to heritage assets, but rather, provides a carefully nuanced approach to ensuring that heritage assets are conserved in accordance with their significance and in doing so, in line with the principles of sustainable development, by allowing for an appropriately balanced consideration of harm against benefits.
- 104 **Policy MBL 1.4** begins with the ambiguous statement that development “*may be permitted.*” The Policy then goes on, in part i), to state that replacement dwellings will be “*encouraged*” to incorporate various sustainability principles and new technologies. There is nothing in either the Policy or in the supporting text to indicate the basis upon which the land use planning policy will “*encourage*” this and consequently, the reference appears vague.
- 105 The Policy also refers to encouraging the use of technologies “*as may become available where appropriate and viable.*” This part of the Policy lacks precision and does not provide a decision maker with a clear indication of how to react to a development proposal. It results in part of Policy MBL1.4 appearing as general commentary, rather than an implementable land use planning policy within a deliverable plan.
- 106 Whilst a development proposal that results in the total loss of significance of a designated heritage asset should generally result in the refusal of planning permission, in accordance with Paragraph 133 of the Framework, national policy provides for circumstances where substantial harm or loss is necessary in order to achieve substantial public benefits that outweigh such harm or loss. In respect of a non-designated heritage asset, national policy requires a balanced judgement, having regard to the scale of any harm or loss and the significance of the heritage asset (Paragraph 135, the Framework).
- 107 The approach to heritage assets set out in Policy MBL 1.4 seeks to adopt a blunt approach that does not have regard to the above.

108 Taking all of the above into account, I recommend:

- **Policy MBL 1.1, change the Policy text to “*New open market housing developments should predominantly comprise one or two bedroomed homes. All new development should be sensitively designed to respect local character and to conserve heritage assets and their settings. Affordable housing should be of a type and tenure that reflects the latest available local affordable housing needs survey.*” (delete rest of Policy)**
- **Policy Policy MBL 1.2, change the Policy text to “*The delivery of affordable housing through rural exception sites where appropriate should take into account the need to minimise impacts on the openness of the Green Belt.*” (delete rest of Policy)**
- **Policy MBL 1.3, change the Policy text to “*The conversion of a redundant building into residential use will be supported where the building is of permanent and substantial construction and development preserves the openness of the Green Belt. The incorporation of sustainable construction techniques and renewable energy technologies that respect the character of the building and its surroundings will be supported.*” (delete rest of Policy)**
- **Policy MBL 1.4, change the Policy text to “*The replacement of a permanent dwelling will be supported, subject to the new dwelling not being materially larger than the one it replaces. Replacement dwellings should be sympathetic to and respect local character. The incorporation of sustainable construction techniques and renewable energy technologies that respect the character of the building and its surroundings will be supported.*” (delete rest of Policy)**

- Page 9, supporting text, second para, line 10, change to “...must have regard to national planning policy and advice and be in general conformity with our District's Local Plan.” (delete remainder of sentence)
- Page 9, supporting text, last para, delete and replace with *“National Green Belt policy is set out in the Green Belt chapter of the National Planning Policy Framework. This establishes that the construction of new buildings in the Green Belt is inappropriate, but that exceptions to this include the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces; limited infilling in villages, and limited affordable housing for local community needs; the redevelopment of brownfield land; and the re-use of buildings provided that they are of permanent and substantial construction.”*

Farming, business and employment

Policy MBL 2.1 - Homeworking

Policy MBL 2.2 – Development of small businesses

Policy MBL 2.3- Farm diversification

Policy MBL 2.4 – Agricultural land

- 109 Chapter 3 of the Framework, “*Supporting a prosperous rural economy,*” requires planning policies to support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. In the light of this, it states that neighbourhood plans should:

“...support the sustainable growth and expansion of all types of business and enterprise in rural areas...promote the development and diversification of agricultural and other land-based rural businesses...support sustainable rural tourism and leisure developments...promote the retention and development of local services and community facilities...”

- 110 Part of the supporting text on page 12 reads as though it comprises a land use planning policy, which it does not and this is a matter addressed in the recommendations below.
- 111 **Policy MBL 2.1** seeks to provide a supportive planning framework for homeworking. In practice, most homeworking does not require planning permission. Development that does require planning permission would normally be of such a scale, type and/or intensity that it would need to demonstrate that it would be appropriate within a residential environment.
- 112 The wording of Policy 2.1 results in an approach that would effectively allow any type of business use to take place on a residential property, so long as its impacts on local residents would not be “*excessive*” and that it is “*subsidiary*” or “*secondary*” to residential use.

- 113 The approach set out is imprecise. No indication is provided of what “*excessive*” might mean, who would determine this and on what basis. There is also a lack of detailed supporting information in respect of how “*subsidiary*” or “*secondary*” use would meet the aims of the Policy, how it would be judged, who by and on what basis. How, for example, might different types of businesses relate to the dwelling and should this be measured in terms of scale, design, hours of operation, noise and disturbance, highway impacts ?
- 114 The Policy does not provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework.
- 115 Homeworking is extremely common throughout the country and as above, does not generally require planning permission. By its very nature, business development requiring planning permission already needs to go through the planning application process, allowing for the balanced consideration of harm and benefits. In failing to have regard to national policy and advice, Policy MBL 2.1 does not meet the basic conditions, introduces confusion and runs the risk of preventing the achievement of sustainable development.
- 116 **Policy MBL 2.2** states that it supports the growth of existing small businesses and new start-ups. There is a lack of clarity in respect of precisely what is meant by the phrase “*small business*” and it is not clear, in the absence of substantive evidence, why the Policy restricts growth to small businesses and new start-ups.
- 117 Such an approach fails to have regard to national policy, which explicitly supports “*the sustainable growth and expansion of **all types** (my emphasis) of businesses and enterprise*” (Paragraph 28, the Framework). There is no substantive evidence to demonstrate that anything other than (undefined) small businesses and new start-ups would fail to contribute to the achievement of sustainable development.

- 118 In addition to restricting business growth, in conflict with national policy, Policy MBL 2.2 goes on to present a long list of requirements. The first of these is unnecessary, as it simply refers to existing policy. The second and fifth criteria, in requiring “no harm” or “indirect adverse impact” fail to contribute to the achievement of sustainable development, as they do not provide for the balanced consideration of the harm and benefits arising.
- 119 The third criterion is imprecise. It refers to “excessive impact on other local residents” without defining what would be excessive, how this would be determined and who by.
- 120 The fourth criterion relates to traffic and fails to have regard to Paragraph 32 of the Framework, which states that:
- “Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”*
- 121 The final section of the Policy aims to promote a sustainable approach to energy and renewables and whilst worded in an imprecise manner, generally has regard to Paragraph 93 of the Framework, which recognises that:
- “Planning plays a key role in...supporting the delivery of renewable and low carbon energy and associated infrastructure...”*
- 122 **Policy MBL 2.3** aims to support farm diversification. However, the Policy begins with a requirement not to take any agricultural land out of production for anything other than significant development. This approach is contrary to and fails to have regard to, Paragraph 112 of the Framework, which, whilst explicit in requiring the economic and other benefits of the best and most versatile agricultural land to be taken into account, does not seek to prevent less than significant development on agricultural land.
- 123 The Policy goes on to repeat similar requirements to those in the preceding Policy. As noted above, these fail to have regard to the Framework and/or do not contribute to the achievement of sustainable development.
- 124 The final part of the Policy, whilst imprecise, seeks to promote a sustainable approach to energy conservation and energy generation, having regard to Paragraph 93 of the Framework.

125 **Policy MBL 2.4** appears in direct conflict with national policy (as well as with the proposed Policy MBL 2.3). It seeks to “*safeguard*” land for food production by preventing any development of “*best and most versatile agricultural land,*” other than in exceptional circumstances. Such an approach does not have regard to Paragraph 112 of the Framework, which states that:

“Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”

126 National planning policy does not seek to prevent the development of best and most versatile agricultural land other than in exceptional circumstances, but rather, steer significant development towards areas of poorer quality land in preference to that of a higher quality.

127 Whilst in this regard, I note that the intention of the Neighbourhood Plan is to protect farmland for food production, there is no substantive evidence to demonstrate that the approach set out would, in all circumstances, contribute to the achievement of sustainable development.

128 Taking this and all of the above into account, I recommend:

- **Delete Policy MBL 2.1**
- **Policy MBL 2.2, change wording to “*Proposals for the sustainable growth and expansion of business and enterprise, both through the conversion of existing buildings and the development of well-designed new buildings, will be supported, subject to demonstrating respect for local character, residential amenity and highway safety. Development should, where viable and deliverable, incorporate renewable and low carbon technologies.*” (Delete rest of Policy)**
- **Policy MBL 2.3, change wording to “*The development and diversification of agricultural and other land-based rural businesses will be supported, subject to taking into account local character, residential amenity and highway safety. Development should, where viable and deliverable, incorporate renewable and low carbon technologies.*” (Delete rest of Policy)**

- Delete Policy MBL 2.4
- Page 8, supporting text, first para, first line, change to "*The Parish Council is keen to enable small businesses...employment opportunities.*" Delete second sentence.
- Page 8, supporting text, second para, first line, change to "*The Parish Council also seeks to ensure that development is sympathetic to the...signage and parking. The Parish Council is keen to ensure that the approach to new development does not preclude modern...designs; and that business growth does not result in harm to highway safety, for example through a significant amount of extra...rural lanes. The Parish Council is also keen to target zero carbon emissions and encourage the use of renewable technologies.*"

Communications

Policy MBL 3.1 – Broadband and mobile telephones

- 129 Chapter 5 of the Framework, "*Supporting high quality communications infrastructure,*" establishes that advanced, high quality communications infrastructure is essential for sustainable economic growth and that the development of high speed broadband technology and other communications networks also plays a vital role in enhancing the provision of local community facilities and services.
- 130 Broadband speeds and mobile phone signals have been identified as a problem in the Neighbourhood Area and **Policy MBL 3.1** seeks to provide a positive planning policy framework for the development of communications infrastructure. Consequently, the general approach of the Policy has regard to the Framework.
- 131 Whilst the Policy refers to telecommunications development, I note that the phrase used in national policy, "*communications infrastructure,*" takes account of today's wide range of communications technologies.
- 132 The Policy uses the phrase "*will be permitted.*" The Neighbourhood Plan cannot determine planning applications, that is the role of the Local Planning Authority as decision maker and this is a matter addressed in the recommendations below.
- 133 Notwithstanding this, the first three parts of the Policy are aimed at supporting new communications infrastructure, whilst ensuring that development respects its surroundings and makes the most of existing infrastructure. This has regard to Paragraph 43 of the Framework, which states that:
- "Existing masts, buildings and other structures should be used, unless the need for a new site has been justified. Where new sites are required, equipment should be sympathetically designed and camouflaged where appropriate."*

- 134 The final part of the Policy appears vague and imprecise. No indication is provided of what an *“unacceptable effect”* might comprise, who would determine this and on what basis. Consequently, this part of the Policy does not provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 154 of the Framework.
- 135 In the above regard, I note that national and local planning policy affords protection to important areas of ecology, important landscapes and heritage assets.
- 136 Taking all of the above into account, I recommend:
- **Policy MBL 3.1, change first line to *“Proposals for communications infrastructure will be supported provided that the following criteria are met”***
 - **MBL 3.1 ii, add *“...seek to minimise any impact on the external...”***
 - **MBL 3.1 iii, delete the second sentence (*“Such...authority”*) which is a planning application requirement matter for the Local Planning Authority**
 - **Delete the final criterion (*“iv. the development...interest”*)**
 - **Page 14, supporting text, first para, change to *“The Parish Council seeks the improvement of broadband speeds and mobile phone signals for residents and businesses, to enhance quality...our Parish. We will...”***

Traffic, roads and rights of way

Policy MBL 4.1 – Traffic

Policy MBL 4.2 – Parking

Policy MBL 4.3 Improved public rights of way

137 **Policy MBL 4.1** aims to prevent development that harms highway safety. This has regard to Paragraph 58 of the Framework, which requires development to:

“...create safe and accessible environments...”

138 The Policy then goes on to refer to development that *“results in congestion.”* No information is provided in respect of what such development might comprise, how it would result in congestion, how congestion is defined, who by and on what basis. Consequently, the Policy appears vague.

139 Also, as worded, Policy MBL 4.1 seeks to protect against *“the potential”* for development to cause damage to the highway. In the absence of any information demonstrating precisely what this *“potential”* might be and how it would relate directly to development, this adds to the Policy's ambiguous and imprecise approach. The Policy fails to provide a decision maker with a clear indication of how to react to a development proposal.

140 All registered applications for development must be considered. The reference to proposals being *“considered on their merit”* in the last sentence of Policy MBL 4.1 is therefore unnecessary.

141 As a rural community, many people in the Neighbourhood Area are reliant upon cars to travel around. The Neighbourhood Area is characterised by the presence of, often narrow, country lanes. **Policy MBL 4.2** seeks to ensure that new development provides for appropriate levels of car parking, taking into account the local reliance on cars and the need to prevent local lanes becoming blocked by inappropriate parking.

- 142 To achieve this, Policy MBL 4.2 sets out a requirement for all new homes to provide a minimum of 1 space per bedroom plus a visitor space. By way of example, such an approach would, result in two bedroom homes requiring three off-road parking spaces, and four bedroom homes requiring five off road parking spaces.
- 143 Consequently, the approach set out would have a significant impact on the design of development. This would give rise to the potential for development proposals to appear unduly dominated by requirements for car parking spaces and there is no evidence to the contrary. This could result in knock-on impacts in respect of matters of concern to the Neighbourhood Plan, including local character, residential amenity, viability and deliverability.
- 144 The car parking requirements proposed would be significantly different to and considerably greater than, those required by the Essex County Council parking standards¹³.
- 145 Whilst Essex County Council, as the Highway Authority, supports the creation of appropriate local car parking standards in rural areas, it considers this to be on the basis of them being supported by *local evidence* which provides *adequate justification* for a departure from adopted County-wide parking standards.
- 146 Policy MBL 4.2 is not supported by detailed evidence to justify the standards proposed, but essentially relies on the factors referred to above (a local reliance on cars and the presence of narrow lanes). Consequently, the proposed standards do not appear to be justified by evidence of need, for example in respect of why every three bedroomed house requires four car parking spaces; or evidence of detailed consideration of the wider impacts of implementing the requirements set out by the Policy, for example on local character, residential amenity or indeed, highway safety.
- 147 The Policy goes on to state that parking should not harm the setting of heritage assets. As noted earlier in this Report, national heritage policy does not simply impose a “*no harm*” regime, but is more carefully nuanced in order to provide for sustainable development. Notwithstanding this, in making the recommendations below I am mindful that planning policy protects heritage assets from inappropriate forms of development.

¹³ Ref: Essex Parking Standards (adopted September 2009).

148 I also note that car parking requirements do not only arise from residential development, but also from other forms of development.

149 Generally, **Policy MBL 4.3** supports the improvement of public rights of way. This has regard to Paragraph 75 of the Framework, which states:

“Planning policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.”

150 In the absence of information, it is not clear in what way maintenance and retention are land use planning matters. I also note that public rights of way are established and protected by law.

151 As worded, the Policy doesn't focus upon public rights of way, but rather supports any form of development, anywhere, so long as it improves public rights of way. Such an approach could give rise to support for inappropriate forms of development and thus runs the risk of failing to contribute to the achievement of sustainable development. However, this appears as a policy drafting issue and is addressed in the recommendations below.

152 Taking all of the above into account, I recommend:

- **Policy MBL 4.1, change to “Development should not result in harm to highway safety.” (delete rest of Policy)**
- **Policy MBL 4.2, change to “New development should provide sufficient off-road parking spaces such that development does not result in increased on-road car parking. Development must achieve adopted County car parking standards as a minimum.” (delete rest of Policy)**
- **Policy MBL 4.3, change to “Improvements to public rights of way will be supported, as will proposals to enhance rights of way as green corridors in the living landscape.”**

- **Page 15, supporting text, delete Para A69 and replace with:**
“Whilst not an issue that can be tackled by the Neighbourhood Plan, the Parish Council, whilst recognising the need for the movement of people and goods by road, would like to see a reduction in the negative impacts caused by vehicles to roads and lanes within the Parish. The Neighbourhood Plan provides for highway safety, car parking and the enhancement of public rights of way.”

Renewable energy

Policy MBL 5.1 – Renewable energy installations

153 Paragraph 95 of the Framework states that:

“To support the move to a low carbon future, local planning authorities should plan for new development in locations and ways which reduce greenhouse gas emissions; actively support energy efficiency improvements...”

154 The Framework goes on to support the creation of a positive strategy to promote energy from renewable and low carbon sources.

155 Policy MBL 5.1 supports appropriate renewable energy installations and in this way, it meets the basic conditions. As worded, the Policy uses the phrase *“no adverse impact”* which fails to allow for a balanced consideration of harm against benefits and thus runs the risk of preventing the achievement of sustainable development.

156 Part of the Policy makes a reference to (Green Belt) policy that already exists. This is unnecessary as the development plan should be considered as a whole. The Policy also includes what appears as an inappropriately binary approach to the conservation of heritage assets which does not have regard to the more nuanced approach of national policy, as referred to earlier in this Report.

157 I recommend:

- **Policy MBL 5.1, delete wording and replace with *“Renewable energy installations will be supported where they respect local character and residential amenity.”***
- **Page 16, supporting text, Para A72, delete and replace with *“The Parish Council seeks to reduce the carbon footprint of the Parish and will encourage proposals to incorporate the technology to help to achieve this.”***

8. The Neighbourhood Plan: Other Matters

158 The recommendations made in this Report will also have a subsequent impact on Contents, including Policy, paragraph and page numbering.

159 I recommend:

- **Update the Contents and where necessary, Policy, paragraph and page numbering, to take into account the recommendations contained in this Report.**

9. Referendum

160 I recommend to Epping Forest District Council that, subject to the recommended modifications, **the Moreton, Bobbingworth and the Lavers Neighbourhood Plan should proceed to a Referendum.**

Referendum Area

- 161 I am required to consider whether the Referendum Area should be extended beyond the Moreton, Bobbingworth and the Lavers Neighbourhood Area.
- 162 I consider the Neighbourhood Area to be appropriate and there is no substantive evidence to demonstrate that this is not the case.
- 163 Consequently, I recommend that the Plan should proceed to a Referendum based on the Moreton, Bobbingworth and the Lavers Neighbourhood Area approved by Epping Forest District Council on the 29th July 2014.

Nigel McGurk, June 2019
Erimax – Land, Planning and Communities

