

SHOBNALL NEIGHBOURHOOD PLAN – 2017-2031

(Submission Version July 2017)

**Report of the Examination into the**  
**Shobnall Neighbourhood Plan**

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# **Report of the Examination into the Shobnall Neighbourhood Plan**

## **1. Introduction**

### *Neighbourhood planning*

1. The Localism Act 2011 Part 6 Chapter 3 introduced neighbourhood planning, including provision for neighbourhood development plans. A neighbourhood development plan should reflect the needs and priorities of the community concerned and should set out a positive vision for the future, setting planning policies to determine decisions on planning applications. If approved by a referendum and made by the local planning authority, such plans form part of the Development Plan for the neighbourhood concerned. Applications for planning permission should be determined in accordance with the Development Plan, unless material considerations indicate otherwise.<sup>1</sup>

*Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes... can use neighbourhood planning to: set planning policies through neighbourhood plans to determine decisions on planning applications...*<sup>2</sup>

2. This report concerns the Submission Version of the Shobnall Neighbourhood Development Plan July 2017 (“the Draft NDP”).

### *Appointment and role*

3. East Staffordshire Borough Council (“ESBC”), with the agreement of Shobnall Parish Council (“SPC”), has appointed me, to examine the Draft NDP. I am a member of the planning bar and am independent of ESBC, SPC, and of those who have made representations in respect of the Draft NDP. I have been trained and approved by the Neighbourhood Planning Independent Examiner Referral Service (NPIERS). I do not have an interest in any land that may be affected by it.

4. My examination has involved considering written submissions and an unaccompanied site visits on Thursday 26<sup>th</sup> October 2017. The site visit included views of all local green spaces shown on the map in the Draft NDP’s Appendix G and all proposed buildings of local interest shown in the Map in its appendix F. In addition to the site visit, I am familiar with the A38 in the parish, the A5121 from its southern junction with the A38 to the town centre, the immediate vicinity of Burton-upon-Trent station and the railway line north of the station.

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<sup>1</sup> It does not retrospectively affect decisions already made as some of the representations by Nurton Developments suggest.

<sup>2</sup> The Framework, paragraph 183.

5. My role may be summarised briefly as to consider whether certain statutory requirements have been met, to consider whether the Draft NDP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in paragraph 12 below applies and, if appropriate, to consider the referendum area. I must act proportionately, recognising that Parliament has intended the neighbourhood plan process to be relatively inexpensive. In seeking to act proportionately I have borne in mind the relatively recent adoption of the East Staffordshire Local Plan.

## **2. Preliminary Matters**

### *Public consultation*

6. I am satisfied that SPC took public consultation seriously and that there was sufficient consultation resulted. I bear in mind that parish councillors are democratically accountable, subject to a code of conduct and likely to be in close contact with the community they represent. I do not consider there has been any failure in consultation, let alone one that would have caused substantial prejudice. The consultation met the requirements of the Neighbourhood Planning (General) Regulations 2012 (“the General Regulations”).

### *Other statutory requirements*

7. I am satisfied of the following matters:

- (1) The Draft NDP area is the parish of Shobnall. SPC is authorised to act in respect of this area (Town and Country Planning Act 1990 (“TCPA”) s61F (1) as read with the Planning and Compulsory Purchase Act 2004 (“PCPA”) s38C (2)(a));
- (2) The Draft NDP does not include provision about development that is excluded development (as defined in TCPA s61K), and does not relate to more than one neighbourhood area (PCPA s38B (1));
- (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2));
- (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)); and
- (5) The draft NDP specifies the period for which it is to have effect, namely 2017-2031, as required by PCPA s38B(1)(a).

## **3. The Extent and Limits of an Examiner’s Role**

8. I am required to consider whether the Draft NDP meets the basic conditions specified in TCPA Sch 4B para 8(2) as varied for neighbourhood development plans, namely:

(a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;

(d)<sup>3</sup> The making of the Plan contributes to the achievement of sustainable development;

(e) The making of the 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);

(f) The making of the Plan does not breach, and is otherwise compatible with, EU obligations; and

(g) Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with in connection with the proposal for the Plan.

9. There is one prescribed basic condition:<sup>4</sup> *“The making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2010) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (either alone or in combination with other plans or projects)”*.

10. The combined effect of TCPA Sch 4B para 8(6) and para 10(3)(b) and the Human Rights Act 1998 means that I must consider whether the Draft NDP is compatible with Convention rights. ‘*Convention rights*’ are defined in the Human Rights Act 1998 as (a) Articles 2 to 12 and 14 of the European Convention on Human Rights (“the Convention”), (b) Articles 1 to 3 of its First Protocol, and (c) Article 1 of its Thirteenth Protocol, as read with Articles 16 to 18 of the Convention. The Convention rights that are most likely to be relevant to town and country planning are those under the Convention’s Article 6(1), 8 and 14 and under its First Protocol Article 1.

11. In my examination of the substantial merits of the Draft NDP, I may not consider matters other than those specified in the last three paragraphs. In particular I may not consider whether any other test, such as the soundness test provided for in respect of examinations under PCPA s20, is met. Rather it is clear that Parliament has decided not to use the soundness test, but to use the, to some extent, less demanding tests in the basic conditions. It is not my role to write or to rewrite a neighbourhood development plan to reflect my personal views.

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<sup>3</sup> The omission of (b) and (c) results from these clauses of paragraph 8(2) not applying to neighbourhood development plans (PCPA s38C (5)(d)).

<sup>4</sup> Sch 2 of the General Regulations prescribes this.

12. Having considered the basic conditions and human rights, I have three options, which I must exercise in the light of my findings. These are: (1) that the Draft NDP proceeds to a referendum as submitted; (2) that the Draft NDP is modified to meet basic conditions and then the modified version proceeds to a referendum; or (3) that the Draft NDP does not proceed to referendum. If I determine that either of the first two options is appropriate, I must also consider whether the referendum area should be extended. My power to recommend modifications is limited by statute in the following terms:

*The only modifications that may be recommended are—*

*(a) modifications that the examiner considers need to be made to secure that the draft [NDP] meets the basic conditions mentioned in paragraph 8(2),*

*(b) modifications that the examiner considers need to be made to secure that the draft [NDP] is compatible with the Convention rights,*

*(c) modifications that the examiner considers need to be made to secure that the draft [NDP] complies with the provision made by or under sections 61E(2), 61J and 61L,*

*(d) modifications specifying a period under section 61L(2)(b) or (5), and*

*(e) modifications for the purpose of correcting errors.<sup>5</sup>*

13. The word “only” prevents me recommending any other modifications. That includes any proposed modification emanating from a statutory agency that is not within one of the categories just specified. The fact that a modification is desirable is not a sufficient ground to recommend it. So, for example, a proposed modification which gives additional information cannot be justified simply because some would find that information helpful. It is not within my powers to recommend avoidance of repetition or other matters that some may consider unnecessary, unless it happens to come with one of the categories specified in paragraph 12 above.

#### **4 Consideration of Objections**

14. I have given all objections careful consideration, but have not felt it necessary to comment on most of them. Rather in accordance with the statutory requirement I have mainly concentrated on giving reasons for my recommendations.<sup>6</sup> Where I am required to consider the effect of the whole Draft NDP, I have, of course, borne it all in mind.

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<sup>5</sup> TCPA Sch 4B, para 10(3).

<sup>6</sup> TCPA Sch 4B, para 10(6). I do not consider that this require express reasons to be given for corrections to obvious minor errors, since these speak for themselves. These minor errors are dealt with in Appendix A to this report, but not in the body of this report. Where I say that I have no concerns, or no other concerns, in respect of part of the draft NDP, I am not bearing in mind those minor errors.

## **5. Public Hearing**

15. The general rule is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However an examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure (1) adequate examination of the issue or (2) a person has a fair chance to put a case. Neither of those exceptions to the general rule applied in this case and I did not hold a public hearing.

## **6. Basic conditions and human rights**

### *Regard to national policies and advice*

16. The first basic condition requires that I consider whether it is appropriate that the plan should be made “*having regard to national policies and advice contained in guidance issued by the Secretary of State*”. A requirement to have regard to policies and advice does not require that such policy and advice must necessarily be followed, but it is intended to have and does have a significant effect.

17. The principal document in which national planning policy is contained is the National Planning Policy Framework (March 2012) (“the Framework”) and I have borne that in mind. I have also borne in mind national Planning Practice Guidance (“NPPG”). The phrase “local plan” in national policies and advice does not include “neighbourhood plan”.

### *Contributing to the achievement of sustainable development*

18. The second basic condition means that I must consider whether the making of the Plan contributes to the achievement of sustainable development. Unless the Draft NDP, or the Draft NDP as modified, contributes to sustainable development, it cannot proceed to a referendum. This condition relates to the making of the Plan as a whole. It does not require that each policy in it must contribute to sustainable development.

19. The bulk of the Framework constitutes guidance on sustainable development. Its paragraph 6 says, “*The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development... means in practice for the planning system.*”

20. I welcome the draft NDP’s concern for “*people on low incomes, young and elderly people, and people with limited mobility and disabilities*”<sup>7</sup> and its recognition of the way

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<sup>7</sup> Paragraph 7.29 and also policy HD3, Also paragraph 8.6 and Appendix J in respect of young families and young people.

in which its age profile and ethnic composition differs from average<sup>8</sup>. These contributes to the social element of sustainable development, as well as showing recognition of duties under the Equality Act 2010, the principle of equality inherent in EU law and the human rights of disadvantaged people and minorities.

21. I also welcome the approach to walking and cycling.<sup>9</sup> The draft NDP's emphasis on these contributes significantly to the environmental element of sustainable development.

22. The draft NDP's support for heritage assets, summed up in its objective 5, is consistent with the duties imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990 and contributes to the environmental element of sustainable development.

#### *General conformity with the development plan's strategic policies*

23. The third basic condition means that I must consider whether the Draft NDP is in general conformity with the strategic policies contained in the development plan for the area of the authority.

24. The adjective '*general*' allows a degree of (but by no means unlimited) flexibility and requires the exercise of planning judgement. This condition only applies to strategic policies - there is no conformity requirement in respect of non-strategic policies in the development plan or in respect of supplementary planning documents. In assessing whether a policy is strategic, I must bear in mind the advice in NPPG para 074.<sup>10</sup>

25. The relevant part of the development plan is the East Staffordshire Local Plan (2012-2031) ("ESLP"), which was adopted in November 2015. I have considered the whole of this.

#### *EU obligations*

26. The fourth basic condition requires me to consider whether the Draft NDP breaches or is otherwise incompatible with, EU obligations. I have in particular considered the following Directives: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); and the Water Framework Directive (2000/60/EC). I am satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality directive.

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<sup>8</sup> Paragraphs 3.11 and 3.12.

<sup>9</sup> Paragraph 3.9, page 13 objective 1, paragraph 6.1, policies T2 and T3, paragraph 7.18 and 7.25, policy T6 and T7, paragraphs 7.35-7.37, policy HD4, and Appendices B, D, I and J.

<sup>10</sup> Reference ID: 41-074-20140306. O also bear in mind ESLP policy NP1.

27. I am satisfied that the making of the NDP would not breach, and be otherwise incompatible with, EU obligations and that it is not necessary to consider the matter further in this report.

#### *European site and European offshore marine site*

28. The draft NDP is unlikely to give rise to significant environmental effects on these sites. I am satisfied that the making of the NDP would not breach, and be otherwise incompatible with the prescribed basic condition and that it is not necessary to consider the matter further in this report.

#### *Human Rights*

29. English Planning law in general complies with the Convention. This matter can also be dealt with briefly in advance of detailed consideration of the contents of the Draft NDP. I have considered whether anything in the Draft NDP would cause a breach of any Convention right. In particular I have considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. Nothing in my examination of the Draft NDP indicates any breach of a Convention right, so that no modifications need to be made to secure that the draft NDP is compatible with the Convention rights. It is therefore not necessary to consider human rights in the parts of this report that deal with specific parts of the Draft NDP.

## **7. The contents of the Draft NDP**

### **General Comments**

30. It will be apparent from the above that, having been satisfied in respect of basic conditions (f) and (g) and human rights, I have needed to concentrate on basic conditions (a), (d) and (e). My recommended modifications are those that I consider need to be made to secure that the Draft NDP meets these basic conditions and to correct errors.

31. Before moving to specific matters, I shall deal with my approach to further growth in Shobnall. It is necessary to recognise the nature of Shobnall. The parish lies within Burton upon Trent, the largest and most sustainable settlement in East Staffordshire borough and a sub-regional "economic, retail, leisure and cultural centre" with "excellent transport links".<sup>11</sup> Burton upon Trent as a whole has to make a significant contribution towards development needs. The East Staffordshire Local Plan provides, among other things:

*2.17 Burton upon Trent and Uttoxeter are identified as main towns. These two settlements currently accommodate the majority the Borough's population and*

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<sup>11</sup> ESPLP p 47.

*through the spatial strategy they will accommodate the majority of the Borough's growth.*

*The suggested split of development across the Borough is:*

*Burton upon Trent - 73.5%*

*Uttoxeter - 17.7%*

*Villages (Tier 1) - 6.3%*

*Villages (Tier 2 and 3) – 2.5%*

*2.18 The majority of new development should be directed to sites in and around Burton. This is the largest settlement in the Borough, and the one with most regeneration needs, particularly with regard to attracting investment in industries that will provide a more varied economic base to the town. It is also has the most facilities to serve an increased population, with the most potential to increase and enhance the level of provision. New development which is accessible to existing facilities is likely to be the most sustainable option. The evidence base shows low vacancy rates and relatively strong prices, indicating confidence in strong market demand for the levels of growth the Council is proposing. The transport evidence base also indicates that growth can be accommodated and mitigated in key locations.*

*3.23 In accordance with the NPPF the Council has based the provision of housing and employment upon an objective assessment of needs derived from the local area. The updated SHMA assessment identifies housing need between 2012 – 2031 as 11,648 houses. Planning for this housing requirement figure will enable the Council to fully meet its demographically derived housing requirements as well as supporting the projected growth of the economy and net employment gains.*

32. It follows that particular care need to be taken to ensure that the draft NDP as a whole does not impose a level of constraint that would be inconsistent with Burton upon Trent meeting the bulk of the borough's development needs. The representation of Gladman Developments Ltd ("Gladman") included the following:

*"Within this plan period of the Local Plan, the Council are looking to deliver at least 11,648 homes proportionately across settlements within the authority. The Shobnall Parish is closely related to Burton upon Trent and as such it is essential that the SNP has regard to the housing target of 6,473 dwellings attributed to the settlement. Accordingly, the SNP must ensure that it allows for sufficient flexibility to assist ESBC in meeting its objectively assessed need for market and affordable housing."*

33. I agree with that. Burton upon Trent as a whole has to meet a sizeable housing need and the SNP should not be so restrictive that it prevents Shobnall playing a part in doing this. That involves consideration of site-specific constraints, particularly those shown in Appendix G in respect of Open Spaces in Shobnall, and the demands of general policies. Having done that, it requires consideration of the draft NDP as a whole.

34. The relative sustainability of Shobnall does not negate the need for appropriate provision for alternatives to travel by private motor vehicle, especially where that is single car occupancy.

### **Sections 1 - 6**

35. I have no concerns with these sections

### **Section 7. Transport and Highways**

#### Page 21, Policy T1 Transport Assessment

36. The initial sentence is too demanding, requiring total mitigation whatever the circumstances.

37. ‘Guidance on transport assessment’ was withdrawn on 22<sup>nd</sup> October 2014 and was superseded by the ‘Transport evidence bases in plan making’ in NPPG. The latter does not define major development. I can see no breach of the basic conditions in adopting a definition in a withdrawn document, but what is being done should be recognised to avoid confusion and a suggestion that this was a mistake. Since that is the definition that has been consulted upon and no alternative is being put forward, I am recommending only a minor modification in respect of it.

#### Recommended modifications in respect of policy T1

(1) Replace the initial sentence of Policy T1 with, “New development will be expected to mitigate its own traffic generation and impact.”

(2) Replace “(as defined by Appendix B of the Guidelines for Transport Assessment (GTA) or any subsequent replacement guidelines)” with “(namely development that exceeds the “Indicative thresholds for transport assessments” in Appendix B of the revoked “Guidance on Transport Assessment”.

#### Page 24: Aspirational Project

38. As Staffordshire County Council (“SCC”) in its highways authority capacity has explained the second sentence of the first paragraph is wrong. As such it is an error that should be deleted.

#### Recommended modification

Delete: “Already approved developments in the area will mean the road will exceed its design capacity when all are implemented, as a result calming will be vital in ensuring the road continues to function.”

#### Page 25: Policy T3

39. S278 Agreements as to the execution of works under section 278 of the Highways Act 1980 as amended are more suited to larger projects. As requested by SCC in its highways authority capacity, the appropriate term is “Highways Agreements”.

Recommended modification

Replace the two mentions of “S278 Agreement” with “Highways Agreements”.

40. I have no other concerns in respect of section 7.

**Section 8 Houses and Development**

Page 37, policy HD2

41. I have considered the comments of Gladman and am satisfied that this policy is not unduly restrictive.

Page 39, Policy HD4

42. I note the Environment Agency’s representations in respect of policy HD4. To some extent they are outwith my power to recommend modifications explained in paragraphs 12 and 13 above. I do however share its view that location must be specified as well as design. While I cannot recommend modifications that it has suggested in respect of specific sites, I have born in mind the constraints on those sites that their representations disclose. Their capacity to meet development needs is significantly limited by those constraints.

Recommended modification

Replace the fourth paragraph of policy HD4 with: “On all sites, the appropriateness of the development types set out below is subject to avoiding or reducing the risk of flooding through appropriate location and design.”

Pages 42-43 Policy HD5 Character Areas

43. I do not consider that there is an objection in principle to the inclusion of character areas in NDPs.

44. I have given careful consideration to Sports England’s objection to the wording of the policy in respect of Site 2. However, I am satisfied that the wording in the draft does not conflict with any basic condition. NDPs are not required to refer to paragraphs in the Framework or to documents produced by statutory consultees, although this is sometimes convenient.

45. I have no other concerns in respect of section 8.

**Section 9 Community Services**

46. I have no concerns with this section

## **Section 10 Shops and Businesses**

### Page 47 Policy SB2

47. The placing of the word “innovative” in brackets makes the policy unclear. This lack of clarity is not resolved by the supporting text, which justifies short-term use whether it is or is not innovative. I recommend the deletion of this word.

#### Recommended modification

Delete “[*innovative*]” in policy SB2, 1st sentence

48. I have no other concerns in respect of section 10.

## **Section 11 Built Environment and Heritage**

### Page 52, policy BH1

49. While I do not in general terms consider that a policy need specifically refer to the Framework, I do consider that it would not be appropriate to make an NDP that does not follow it, at least broadly, unless there are reasons for doing otherwise. That applies to the clear distinction in the Framework between designated and non-designated heritage assets. Policy BH1 departs significantly from the Framework without giving any justification for so doing. The appropriate modification is one that reflects the Framework.

#### Recommended modification.

Replace policy BH1 with:

“Policy BH1: Protecting Shobnall’s Heritage Environment

New development proposals will be expected to protect and enhance the character and value of Shobnall’s heritage environment, including Listed Buildings, Conservation Areas, and other statutorily protected assets. Development will also be expected to protect any locally listed building identified by the Local Planning Authority, the schedule of structures (at Appendix F) identified by the local community as contributing positively to the character of the local built environment and archaeology not subject to statutory protection.

Applications for development that will harm designated and non-designated heritage assets heritage will be refused unless the circumstances that would permit approval specified in the appropriate part of paragraphs 133 to 135 of the NPPF apply.”

50. I consider Appendix F in paragraphs 56 to 67 below.

51. I have no other concerns in respect of section 11.

## **Section 12 Green Spaces and the Natural Environment**

### Page 54: Policy GN1: Local Green Spaces

52. It is not appropriate to identify green spaces that do not meet the Framework’s criteria for Local Green Spaces.

53. I share Nurton Developments concern about the last sentence of this policy.<sup>12</sup> The terms of this are unique in my experience and could substantially reduce the amount of land available for needed housing development. It has not been justified. Whether such green buffers are needed should be assessed on a case-by-case basis.

#### Recommended modification to policy GNI

Delete the second paragraph and the final sentence of the policy.

54. I consider Appendix G, about which I have substantial concerns in paragraphs 68 to 75 - below. I have no other concerns in respect of section 12.

#### **Appendices A-E**

55. I have no concerns in respect of these Appendices.

#### **Appendix F**

56. NDPs can show existing heritage assets and also identify ‘non-designated heritage assets’, such as ‘locally listed buildings’. The former is a statement of existing fact and requires no further comment from me, other than to point out that Shobnall Grange should be shown as a listed building, not as a building of local interest.<sup>13</sup> The identification of a non-designated heritage asset requires justification. I have therefore considered each of the eleven locations described as “Non-Designated Heritage Assets identified by the Community” in Appendix F.

57. The Charlotte James care home, off Shobnall Road and now adjacent to the A38, is a beautiful 19<sup>th</sup>-century house that was originally owned by rich coal merchants. It is now a private care home, set in extensive grounds. It is clearly visible from publicly accessible land to the east.

58. The Victorian former Grange School Buildings at the junction of Grange Street and Casey Lane have attractive architectural detailing and are a good example of school building of the time.

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<sup>12</sup> “Developments delivering 10 or more homes will be expected to include a green buffer of landscaped or planted land, sufficient to provide foiling views of the development and to provide functional green infrastructure.”

<sup>13</sup> Its list entry number is: 1288698.

59. The Victorian former School Buildings in Waterloo Street has attractive decorative gables with stone decoration and attractive and distinct chimneys.
60. St Aidan's Church on Shobnall Road was built in 1884 as a chapel of ease to Saint John the Divine in Horninglow. I was easily able to see all sides of this attractive small church.
61. Shobnall Primary School at the junction of Shobnall Road & Reservoir Road was opened in 1888 and many original features remain.
62. The Albion Public House in Shobnall Road was built as a hotel in the 1880s and named after a nearby brewery. It is an imposing and flamboyant, multi-gabled public house that was designed as and remains a landmark building. I was able to see clearly all sides of the Albion Public House and also its associated outbuildings, and to see the publicly accessible part of its ground floor.
63. The Town Hall Extension in King Edward Place is in a Conservation Area, the King Edward Place Conservation Area. The Appraisal for that Conservation Area<sup>14</sup> identifies this as a building that makes "*a positive contribution to the conservation area*" and elsewhere states that it makes "*a special contribution to the area*". It also states: "*The final Art Deco extension of the Town Hall was constructed in 1939 and was designed by the Borough Surveyor George Moncur*". There is also a little about the extension on an information board in King Edward Place.
64. The L-shaped Gothic-style Victoria Community School Buildings at junction of York Street and Victoria Road were opened as a school in 1874 and is an interesting example of a large early Board School. There are late 19th-century additions.
65. The villas and terraced houses along Outwoods Street form an attractive street with a strong and distinct character that despite some modern alterations largely retains its character as an elegant street designed for the relatively affluent.
66. I viewed each of the above properties and have been able to read and to see enough to be satisfied that each of them is properly included as a non-designated heritage asset.
67. I have insufficient information to be satisfied that the other two properties in Appendix F (Bass's Cottages off Shobnall Road and the Alms Houses on York Street) should be identified as non-designated heritage assets and therefore recommend modification of Appendix F to specify only the properties identified in paragraphs 57 to 65 above as such assets. The list in Appendix F is not necessarily exhaustive and it remains open to future decision-makers to determine whether other properties are non-designated heritage assets. My conclusion is based on insufficiency of evidence and should not be

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<sup>14</sup> King Edward Place Conservation Area Conservation Area Appraisal, July 2008.

taken as indicating that the other properties identified in the list are necessarily to be excluded from the category of non-designated heritage assets.

### Recommended Modifications

(1) The list of “Non-Designated Heritage Assets identified by the Community” in Appendix F should be altered to read:

“Charlotte James care home, off Shobnall Road (adjacent to the A38)

Former Grange School Buildings, Junction of Grange Street and Casey Lane

Former School Buildings, Waterloo Street

St Aidan’s Church, Shobnall Road

Shobnall Primary School buildings & house, junction of Shobnall Road & Reservoir Road

The Albion Public House and Associated Outbuildings, Shobnall Road

Town Hall Extension, King Edward Place

Victoria Community School Buildings, junction of York Street and Victoria Road

Villas and terraced houses along Outwoods Street.”

(2) The map in the Submission draft’s Appendix F should be modified so that only the above properties are shown in light blue and so that those properties that I have recommended be excluded from the list of ‘Non-designated Heritage Assets identified by the Community’ are not coloured.

(3) The label for the light blue colouring on the map in the Submission draft’s Appendix F should be amended to read “Identified Non-designated Heritage Assets”.

### Appendix G

68. My biggest single concern with the draft NDP has been the extent of the constraints shown in Appendix G. All comments in respect of this section relate to the plan made available to the general public and to me with the submission draft.

69. I share Sports England’s concern about the lack of clarity in this Appendix. Local Green Spaces (“LGSs”) must meet the requirements of the Framework paragraphs 76 and 77, have been consulted on properly and be clearly identifiable from a plan to an Ordnance Survey base. I also share Gladman’s view that LGS designation is significant and needs to be properly evidenced. I was concerned at the extent of allocation of land shown in the Appendix G annexed to the submission draft and spent some time looking at the various sites. Applying those principles I am not satisfied that all the proposed LGSs should be allocated.

*The land coloured red*

70. This land described as ‘Street scene - incidental green spaces’ does not meet the requirements for Local Green Spaces and no sufficient justification has been given for its designation. Whether any of these small areas of land are suitable for infill development is not a matter for a Plan and should be determined on a case-by-case basis.

*The land coloured yellow*

71. This has not been clearly identified as local green space and it would not be appropriate to add it to the draft NDP without further consultation, which I do not recommend. I have additional concerns about two of the parcels of yellow land:

(1) Shobnall Leisure Complex is one of three existing sports hubs that are identified in the Outdoor Sports Delivery and Investment Plan for protection and improvement and that this is recorded in the ESLP.<sup>15</sup> It would not be appropriate in the absence of clear evidence to apply a policy to the complex that prevented extension. Further it has not been shown as a Local Green Space in the version of Appendix G that was made available to the public with the submission draft.

(2) Shobnall Sports and Leisure Club is site 2 in policy HD4 which states that limited residential development may be acceptable in certain circumstances. It would not be appropriate to have a policy to this site that was in conflict with this. Further it has not been shown as a Local Green Space in the version of Appendix G that was made available to the public with the submission draft.

*The land coloured green*

72. I am satisfied that the following land that is both west of the A38 and north of the B5017 should be allocated as Local Green Space: Oaks Wood (D); Outwoods Park (E) and the land to the north and west of the houses on the B5017 and Reservoir Road (G).

73. I am satisfied that the Woods at Sinai Park (I) should be allocated as Local Green Space, but am not satisfied that any other land that is both west of the A38 and south of the B5017 should be allocated (*i.e.* the land marked J).

74. I am satisfied that the Marston’s Sports and Social Club (C) should be allocated. I am not satisfied that any other land between the A38 and the Trent and Mersey Canal should be allocated (*i.e.* the land marked K and the relevant part of B1).

75. With regard to land to the east of the Trent and Mersey Canal, I am satisfied that the following should be allocated: the landscaped area on Parkway (H); and the Kingfisher Trail and Canal corridor to the east of the canal and north of Shobnall Road (including the

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<sup>15</sup> P 155, para 3.217.

canal towpath, but not the canal itself) (B2 and part of B1 ). I am not satisfied that any other land to the east of the canal should be allocated.

#### Recommended modification

Appendix G should be modified so that it shows only the following areas of land. These are currently coloured green and described as ‘Green Spaces in the submission draft. No other areas of land should be coloured.

- Oaks Wood (D);
- Outwoods Park (E);
- The land to the north and west of the houses on the B5017 and Reservoir Road (G);
- The Woods at Sinai Park (I);
- The Marston’s Sports and Social Club (C);
- The landscaped area on Parkway (H); and
- The Kingfisher Trail and Canal corridor to the east of the canal and north of Shobnall Road (including the canal towpath, but not the canal itself) (B2 and part of B1).

[The lettering within this recommendation is solely to relate to the submission draft and there is no reason why it should not be re-lettered or numbered.]

The text of the key should be replaced with the following:

“This map identifies, by colouring them green, the Local Green Spaces to which policy GN1 applies”.

#### *Updating*

76. It may be that certain passages need updating. Nothing in this report should deter appropriate updating prior to the referendum in respect of incontrovertible issues of primary fact.

### **8. The Referendum Area**

77. I have considered whether the referendum area should be extended beyond the designated plan area, namely the parish of Shobnall. In this respect, particular care is needed where the designated area immediately adjoins land containing people’s homes and businesses, as is the case here. Having considered the matter, I am satisfied that nothing in the draft NDP would make development that would have a significant impact on those homes and businesses significantly more or less likely, or otherwise have a major impact on them. I therefore recommend that the referendum area be limited to the parish of Shobnall.

## **9. Summary of Main Findings**

78. I commend the Draft NDP for being well written, logical, clear, appropriately concise and intelligible to a reasonably intelligent lay reader with no expertise in town and country planning.

79. I recommend that the draft NDP be modified in the terms specified in Appendix A to this report in order to meet basic conditions and to correct errors. I am satisfied with all parts of the draft NDP to which I am not recommending modifications.

80. With those modifications the draft NDP will meet all the basic conditions and human rights obligations. Specifically

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the NDP;
- The making of the NDP contributes to the achievement of sustainable development;
- The making of the NDP is in general conformity with the strategic policies contained in the development plan for the area of SPC (or any part of that area);
- The making of the NDP does not breach, and is not otherwise incompatible with, EU obligations;
- The making of the NDP 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); and
- The modified draft NDP is in all respects fully compatible with Convention rights contained in the Human Rights Act 1998.

81. I recommend that the modified NDP proceed to a referendum, the referendum area being the parish of Shobnall.

Timothy Jones, Barrister, FCI Arb,

Independent Examiner,

No 5 Chambers

20<sup>th</sup> November 2017.

## **Appendix A: Recommended Modifications**

*Page 8, paragraph 2.12, 1<sup>st</sup> and 3<sup>rd</sup> sentences*

Use the British English spelling of “Neighbourhood”.

*Page 11, paragraph 3.16 1<sup>st</sup> sentence*

Replace “two conservation areas” with “three conservation areas”.

*Page 21, policy T1*

(1) Replace the initial sentence of Policy T1 with, “New development will be expected to mitigate its own traffic generation and impact.”

(2) Replace “(as defined by Appendix B of the Guidelines for Transport Assessment (GTA) or any subsequent replacement guidelines)” with “(namely development that exceeds the “Indicative thresholds for transport assessments” in Appendix B of the revoked “Guidance on Transport Assessment”.

*Page 24: Aspirational Project*

Delete: “Already approved developments in the area will mean the road will exceed its design capacity when all are implemented, as a result calming will be vital in ensuring the road continues to function.”

*Page 25: Policy T3*

Replace the two mentions of “S278 Agreement” with “Highways Agreements”.

*Page 39, policy HD4: Development Sites*

Replace the fourth paragraph of policy HD4 with: “On all sites, the appropriateness of the development types set out below is subject to avoiding or reducing the risk of flooding through appropriate location and design.”

*Page 41, paragraph 8.7, 1<sup>st</sup> sentence*

Replace “Policy HD3” with “Policy HD4”.

*Page 47, policy SB2, 1st sentence*

Delete “[innovative]” in policy SB2, 1st sentence.

*Page 52, policy BH1*

Replace policy BH1 with:

“New development proposals will be expected to protect and enhance the character and value of Shobnall’s heritage environment, including Listed Buildings, Conservation Areas, and other statutorily protected assets. Development will also be expected to protect any

locally listed building identified by the Local Planning Authority, the schedule of structures (at Appendix F) identified by the local community as contributing positively to the character of the local built environment and archaeology not subject to statutory protection.

Applications for development that will harm designated and non-designated heritage assets heritage will be refused unless the circumstances that would permit approval specified in the appropriate part of paragraphs 133 to 135 of the NPPF apply.”

*Page 54: Policy GNI*

Delete the second paragraph and the final sentence of the policy.

*Appendix F text*

The list of “Non-Designated Heritage Assets identified by the Community” in Appendix F should be altered to read:

“Charlotte James care home, off Shobnall Road (adjacent to the A38)

Former Grange School buildings, Junction of Grange Street and Casey Lane

Former School Buildings, Waterloo Street

St Aidan’s Church, Shobnall Road

Shobnall Primary School Buildings & house, junction of Shobnall Road & Reservoir Road

The Albion Public House and Associated Outbuildings, Shobnall Road

Town Hall Extension, King Edward Place

Victoria Community School Buildings, junction of York Street and Victoria Road

Villas and terraced houses along Outwoods Street.”

*Appendix F Plan*

Shobnall Grange should be shown as a listed building, not as a building of local interest.

The map in the Submission draft’s Appendix F should be modified so that only the properties just specified under ‘Appendix F text’ above are shown in light blue and so that those properties that I have recommended be excluded from the list of ‘Non-designated Heritage Assets identified by the Community’ are not coloured.

The label for the light blue colouring on the map in the Submission draft’s Appendix F should be amended to read “Identified Non-designated Heritage Assets”.

Appendix G

Appendix G should be modified so that it shows only the following areas of land. These are currently coloured green and described as ‘Green Spaces in the submission draft. No

other areas of land should be coloured. This relates to the version of appendix G in the submission draft made available for public consultation.

- Oaks Wood (D);
- Outwoods Park (E);
- The land to the north and west of the houses on the B5017 and Reservoir Road (G);
- The Woods at Sinai Park (I);
- The Marston's Sports and Social Club (C);
- The landscaped area on Parkway (H); and
- The Kingfisher Trail and Canal corridor to the east of the canal and north of Shobnall Road (including the canal towpath, but not the canal itself) (B2 and part of B1).

[The lettering within this recommendation is solely to relate to the submission draft and there is no reason why the draft should not be re-lettered or numbered.]

The text of the key should be replaced with the following:

“This map identifies, by colouring them green, the Local Green Spaces to which policy GN1 applies”.

#### *Updating*

If necessary, there should be appropriate minor updating relating to incontrovertible matters.

#### **Suggestion that does not constitute a recommendation**

Page 27, policy T4 replace the ambiguous spelling “*routing*” (which may relate to either a ‘rout’ or a ‘route’) in the four places where it occurs with the unambiguous “*routeing*”. The same applies to the box beneath the policy and to paragraph 7.22.

## **Appendix B: Abbreviations**

The following abbreviations are used in this report:

Convention	European Convention on Human Rights
Draft NDP	draft Shobnall Neighbourhood Development Plan 2016-2031
ESBC	East Staffordshire Borough Council
ESLP	East Staffordshire Local Plan (adopted 2015)
EU	European Union
Framework	National Planning Policy Framework (DCLG, March 2012)
General Regulations	Neighbourhood Planning (General) Regulations 2012 (as amended)
Gladman	Gladman Developments Ltd
LGS	Local Green Spaces
NDP	Neighbourhood Development Plan
NPPG	national Planning Practice Guidance
p	page
para	paragraph
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
s	section
SCC	Staffordshire County Council
Sch	Schedule
SPC	Shobnall Parish Council
TCPA	Town and Country Planning Act 1990 (as amended)

Where I use the verb '*include*', I am not using it to mean '*comprise*'. The words that follow are not exclusive.