

Appendix 5 - Summary of proposed modifications to the Modbury Neighbourhood Plan

Examiner's comment/ proposed changes	District Council Officers comment/ recommendation	Modbury Parish Council implemented
Summary Comments		
I am satisfied that the Referendum Area should be the same as the Plan Area, should the Modbury Parish Neighbourhood Plan go to Referendum.	<p>Recommendation: Agree</p> <p>Advice: Officers see no reason to extend the area of referendum beyond the area to which the plan applies and therefore agree with the examiners recommendation.</p>	No decision needed.
I have read the Modbury Consultation Statement and the representations made in connection with this subject I consider that the consultation process was robust and that the Neighbourhood Plan and its policies reflect the outcome of the consultation process including recording representations and tracking the changes made as a result of those representations.	<p>Recommendation: Agree</p> <p>Advice: Officers have made representation on the Modbury NP and conducted statutory consultations as required by the regulations.</p>	No decision needed.
Comments on the Plan Policies		
VISION Statement - I am satisfied that the Modbury NDP vision and objectives were developed from the consultation process and that the policies within the plan reflect the vision and objectives.	Recommendation: Agree	No decision needed.
POLICY MNP1: LOCATION, SCALE AND CHARACTER OF DEVELOPMENT	<p>Recommendation: Agree</p> <p>Advice: Policy to be modified, basic conditions require the</p>	Yes

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<p>I have carefully considered the proposed development boundaries and am satisfied that the process to establish the modified boundaries was thorough and consistent. The Local Planning Authority are the decision making authority for planning applications and therefore neighbourhood plan policies should refer to “supported” rather than “permitted” within policies in the neighbourhood plan.</p> <p>For clarity and to meet the Basic Conditions, the policy should be modified as follows:</p> <p>POLICY MNP1: LOCATION, SCALE AND CHARACTER OF DEVELOPMENT This policy establishes a settlement boundary for Modbury, as shown on Map 2.</p> <p>1. Development proposals within the settlement boundary will be supported where:</p> <ul style="list-style-type: none"> i. the scale, density and character of development is in keeping with its site and surroundings; and ii. natural or historic assets are protected in accordance with national policy and guidance and the Development Plan; and iii. it protects important views and skylines; and <p>Modbury Neighbourhood Development Plan</p> <p>iv. there is no adverse impact on local amenity, traffic, parking or safety.</p> <p>2. Outside the settlement boundary development will be tightly controlled and only supported where it will meet the proven need for affordable housing for local people (as provided for by JLP policies TTV26 and TTV27 or where it is essential in order to meet agricultural, forestry or other small-scale needs which cannot be met elsewhere. The plan also aims to control the scale, density and character of development so that it is in keeping with the locality and remains geared to meet local housing needs).</p>	<p>removal of ‘permitted’ and change to ‘supported’. Council Officers recommended the inclusion of JLP policies TTV26 and TTV27</p>	
<p>POLICY MNP4: HERITAGE AND CONSERVATION</p> <p>1. Development proposals are required to not harm but enhance nondesignated historic and heritage assets and their settings. New up-to-date uses are encouraged</p>	<p>Recommendation: Agree</p> <p>Advice: Officers recommended the inclusion of JLP policies</p>	

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<p>and must retain, restore and enhance the historic fabric that makes each building special, incorporating sensitive retrofitting of energy efficiency measures. 2. Development proposals shall pay full regard to the provisions and guidelines contained in the Modbury Conservation Area Appraisal and the Modbury Village Design Statement, particularly for guidance on suitable details and materials.</p> <p>COMMENT The policy regime for heritage assets and conservation areas is set out in the NPPF 2021 and does not need to be repeated in a neighbourhood plan policy. For clarity and to meet the Basic Conditions, the policy should be modified as follows:</p> <p>POLICY MNP4: HERITAGE AND CONSERVATION 1. Development proposals affecting heritage assets and their settings or the conservation area must comply with the requirements of national policy and guidance and the Development Plan. New up-to-date uses are encouraged where they retain, restore and enhance the historic fabric that makes each building special, incorporating sensitive retrofitting of energy efficiency measures. 2. Development proposals should pay full regard to the provisions and guidelines contained in the Modbury Conservation Area Appraisal and the Modbury Village Design Statement, particularly for guidance on suitable details and materials.</p>	<p>and TTV27, this was not included. Officers do not deem this to be a point to raise further as the JLP provides guidance</p>	
<p>POLICY MNP5: HOUSING DEVELOPMENT 5. A Community Land Trust or self-build solution will be welcomed as an alternative to the traditional types of affordable housing provision. COMMENT For clarity paragraph 5. of the policy should be modified as follows: 5. Affordable housing delivered by a Community Land Trust or as selfbuild will be welcomed as an alternative to the traditional types of affordable housing provision.</p>	<p>Recommendation: Agree Advice: Clarification made to paragraph 5 in the policy</p>	<p>yes</p>
<p>POLICY MNP6: PRINCIPAL RESIDENCE POLICY</p>	<p>Recommendation: Agree</p>	<p>Yes, the policy has been</p>

<p>COMMENT</p> <p>I have concerns in relation to this policy. Firstly, as I set out in my general comments, Planning Guidance on preparing neighbourhood plans and policies is clear, it states:</p> <p>“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.”</p> <p>This policy seeks to control an event that may occur at some time in the future, when the level of second home ownership reaches a level of 20%. I have not been provided with evidence to support or justify the 20% threshold, why the impact of 20% of second homes would be a tipping point as opposed to 19% or 21%. This would in itself lead to a significant problem in successfully and consistently applying this policy in the determination of a planning application and defending it on appeal if necessary. There is, in addition, a lack of clarity on who would be responsible for gathering the necessary statistical information and how it would be monitored. I am also not convinced that relying on Census information would be adequately robust. My conclusion on this point is that the policy does not provide the certainty and clarity required to meet the tests set out above.</p> <p>Secondly, the evidence before me suggests the overall number of second homes across the parish in 2011 was 8.3% and I accept that this is likely to have increased since that date however this figure is significantly lower than other areas in the South Hams. Whilst I accept that there is an affordability issue within the parishes, I have not been provided with any evidence that links the number of second homes to the level of affordability or the impact of second homes on the local economy or local community, for example the sustainability of local schools due to falling roles resulting from increased second home ownership. I accept that it is not easy to provide the information and statistics relating to ownership/ occupation of houses within any parish area however the imposition of a principal</p>	<p>Advice: Officers agree with the examiners recommendations and comments, Policy MNP6 should be deleted. Policy MNP6 does not meet the threshold of 20% and a policy should be made to account for an unknown future occurrence of this regard. Modbury is currently at 18% and this could continue to rise, however, the imprecise nature of the policy and evidence required would make it difficult to apply consistently leading to uncertainty and the potential for challengeable decisions.</p> <p>Officers would recommend that supporting text be provided so a modification to the NP can be made if and when the threshold is met. This recommendation is consistent with recent Neighbourhood plans (Dartmouth).</p>	<p>deleted and supporting text has been inserted.</p>
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<p>residence policy has serious implications, and it is necessary to ensure that there is strong evidence to support the imposition of such a restriction. I have given very serious consideration as to whether or not I can find that this policy meets the Basic Conditions particularly having regard to the NPPF (2021) – “delivering a wide choice of quality homes” and “delivering sustainable development” together with how the policy meets the requirements of the Human Rights Act 1988 and other European Legislation. I have also considered in detail Mr. Justice (now Lord Justice) Hickinbottom’s judgment in R (RLT Environment Ltd) v Cornwall Council in relation to Policy H2 of the St. Ives Neighbourhood Development Plan. He concluded:</p> <p>“that Policy H2 is in pursuit of legitimate public interests identified in article 8(2), namely the interests of the economic well-being of the country, and for the protection of the rights and freedoms of others.” However, in this instance it was considered that there was adequate evidence to support the policy however, there is always a planning balance to be arrived at in consideration of this type of policy. I have also carefully considered the potential for unintended consequences on the local housing market and the future delivery of affordable housing. I accept that the level of second homes in the parish is likely to increase over the plan period and that this does have implications for the local community however at this time I am not satisfied that this policy meets the Basic Conditions. The imprecise nature of the policy and evidence required would make it difficult to apply consistently leading to uncertainty and the potential for challengeable decisions and implications for Natural Justice and Human Rights. I acknowledge that there is community concern with regard to the growth of second homes and the impact this can have on local house prices, the local economy and local community. However, after careful consideration I have decided that this policy does not meet the Basic Conditions and couldn’t be modified within the scope of my examination to do so. My decision is one of planning balance and I conclude that in this instance POLICY MNP6: PRINCIPAL RESIDENCE POLICY should be deleted.</p> <p>I understand that this may disappoint the community however there is</p>		
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<p>an opportunity to review the plan as a whole or just this policy should the situation arise when the impact of second home ownership can be adequately evidenced to support the introduction of a Principal Residence policy. The supporting text for this policy could be retained in the plan but should be modified as follows. [Please see document for supporting text]</p>		
<p>POLICY MNP7: SAFE MOVEMENT AND TRANSPORT</p> <ol style="list-style-type: none"> 1. Development shall include good, safe pedestrian access and links with enhanced opportunities for walking, cycling, shared mobility and the use of public transport. Improved pedestrian links around the school and to recreational and green spaces are required, in particular at Palm Cross and to the recreation ground. 2. Development shall not worsen traffic congestion or adversely affect highway safety, traffic flow and/or parking conditions, particularly or the congested parts of the network highlighted on the Proposals Map. Proposals that would ease traffic congestion or enhance highway safety, traffic flow and/or parking provision will be supported. 3. Streets shall be designed and laid out so as to instinctively reduce traffic speeds through measures such as Home Zones rather than signs. 4. Support will be given to a study to identify how traffic flow and road safety might be improved in Modbury. 5. Support will be given to a study to explore the feasibility of a relief road. 6. Good, safe pedestrian access to new housing development will be required. <p>COMMENT</p> <p>There are elements of this policy which should be deleted from the policy and included in the community projects/aspiration section of the plan as follows:</p> <ol style="list-style-type: none"> 4. Support will be given to a study to identify how traffic flow and road safety might be improved in Modbury. 5. Support will be given to a study to explore the feasibility of a relief road. <p>For clarity and to meet the Basic Conditions, the policy should be modified as follows:</p>	<p>Recommendation: Agree</p> <p>Advice: On account of the basic conditions points 4 and 5 of policy should be moved to projects/aspiration section of the plan as they create ambiguity in the implementation of the policy it would also make it difficult to apply consistently leading to uncertainty and the potential for challengeable decisions.</p>	<p>Yes</p>

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<p>POLICY MNP7: SAFE MOVEMENT AND TRANSPORT</p> <p>1. Development proposals should include, where appropriate, good, safe pedestrian access and links with enhanced opportunities for walking, cycling, shared mobility and the use of public transport. Improved pedestrian links around the school and to recreational and green spaces are required, in particular at Palm Cross and to the recreation ground.</p> <p>2. Development should not worsen traffic congestion or adversely affect highway safety, traffic flow and/or parking conditions, particularly or the congested parts of the network highlighted on the Proposals Map. Proposals that would ease traffic congestion or enhance highway safety, traffic flow and/or parking provision will be supported.</p> <p>3. Streets should be designed and laid out so as to instinctively reduce traffic speeds through measures such as Home Zones rather than signs.</p> <p>6. Good, safe pedestrian access to new housing development will be required.</p>		
<p>POLICY MNP10 BROADBAND AND COMMUNICATIONS INFRASTRUCTURE</p> <p>1. New development shall incorporate infrastructure to support the installation of, and allow the future upgrade and maintenance of, fiber optic broadband technology.</p> <p>2. All development will be required to submit a connectivity statement to set out the proposed broadband provision. The statement shall include which broadband supplier(s) can provide full fiber or fixed wireless coverage to the development to provide gigabit capable broadband provision.</p> <p>3. On sites of 10 or more dwellings and on all non-residential sites, all new properties must be served with an appropriate open access gigabit capable fiber optic infrastructure to enable high speed and reliable broadband connection in accordance with national and local objectives to increase coverage.</p> <p>4. On sites of fewer than 10 dwellings all new properties shall be served with an appropriate open access fiber optic infrastructure to enable high speed and reliable broadband connection unless there is evidence which demonstrates that providing the required infrastructure is not feasible or economically viable.</p>	<p>Recommendation: Agree</p> <p>Advice: Policy is too onerous to be implemented, Officers agree with the examiner's changes.</p>	<p>Yes</p>

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<p>5. Installed infrastructure should allow all premises that form part of the approved development to access superfast or better broadband prior to occupancy.</p> <p>6. The creation of a building to act as a fiber hub to enable fiber connections within the area will be supported.</p> <p>COMMENT Elements of this policy are overly onerous. Neighbourhood plan policy cannot require the submission of a connectivity statement or prescribe who can deliver broadband services. For clarity and to meet the Basic Conditions the policy should be modified as follows:</p> <p>POLICY MNP10 BROADBAND AND COMMUNICATIONS INFRASTRUCTURE</p> <p>This Plan supports the provision on site infrastructure for the installation of, and allow the future upgrade and maintenance of, fiber optic broadband technology.</p> <p>a) Developers are encouraged to submit a connectivity statement to set out the proposed broadband provision.</p> <p>b) New residential and non-residential development should, wherever possible include appropriate open access gigabit capable fiber optic infrastructure to enable high speed and reliable broadband connection in accordance with national and local objectives to increase coverage.</p> <p>c) The creation of a building to act as a fiber hub to enable fiber connections within the area will be supported.</p>		
<p>For Clarity, the policy should be modified to reflect the requirements of the NPPF 2021 and recent caselaw (see Court of Appeal Judgement in the Case of The Queen (On the Application of Lochailort Investments Limited) and Mendip District Council Norton St Philip Parish Council 2nd October 2020) which clearly states that Local Green Space polices in neighbourhood plans should not deviate from the policy requirements of the NPPF. For clarity and to meet the Basic Conditions the policy should be modified as follows:</p> <p>POLICY MNP16: LOCAL GREEN SPACES AND PUBLIC OPEN SPACE</p>	<p>Recommendation: Agree</p> <p>Advice: Changes needed to meet basic conditions - neighbourhood plans should not deviate from the policy requirements of the NPPF</p>	

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<p>The following are designated as Local Green Space. These areas illustrated in Figure 17 and detailed in Appendix A3.</p> <ol style="list-style-type: none">1. Millennium Meadow (Public open space, community orchard)2. North of Galpin Street (Community orchard/public open space)3. Palm Cross Green (Historic, local character)4. School field (School sports field and play area, community orchard, recreational, wildlife)5. Integral to the Palm Cross development (Public open space, allotment and wildlife, play, proximity to housing)6. Ayleston Park Green (Chestnut tree with Tree Preservation Order, historic, local character)7. Allotments (Community amenity)8. Champernowne playpark (Community recreation)9. Dogapit meadow (Landscape buffer, green lung, local character, wildlife, attenuation for flood risk, planted for wildlife)10. Memorial Hall grounds (Public amenity, play area)11. Recreation ground (Public amenity, community orchard, play area) <p>Inappropriate development will not be supported except in very special circumstances.</p>		
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