Neighbourhood Development Order Examination - Basic Conditions Statement

Town and Country Planning Act 1990 (as amended) Paragraph 8(2) of Schedule 4B Statement Submission Date

Greenhollows Neighbourhood Development Order Proposal

by

Skelton Parish Council acting as Qualifying Body



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Document Information

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Client Skelton Parish Council and Messrs Martin of Greenhollows Country Park

Approved by Tom Woof MRTPI

INTRODUCTION

- 1. This Basic Conditions Statement (BCS) has been prepared by H&H Land and Property Ltd as part of its Neighbourhood Planning work with Skelton Parish Council. The Parish area has been designated a Neighbourhood Area and Skelton Parish Council is a qualifying body under the 2012 Neighbourhood Planning Regulations.
- 2. This BSC is submitted together with its appendices to Eden District Council (EDC) under Part 6 paragraph 22 of the Neighbourhood Planning Regulations 2012.
- 3. By way of explanation 'Park Home' means a twin caravan unit providing greater living accommodation than would a single caravan.

Background to the Greenhollows NDO

- **4.** The planning history of the site starts with a planning consent for on 31st October 2002 for the 'change of use to land for caravans' subject to 3 conditions. These conditions related to 1) foul drainage 2) landscaping and 3) occupation limited to less than 28 in 31 days per party.
- **5.** In 2003 prospective residents asked EDC information about park home sites which were suitable for full residential use. EDC provided information by letter, by telephone and at meetings that included Greenhollows Country Park.
- 6. The first caravan was brought onto the site in March 2004 and occupied in May 2004. EDC were informed by the site owner and the Valuation Officer assessed the home for Band A council tax. We understand that EDC considered this was unlawful because of the non-compliance with the landscaping condition although there is no evidence to say that EDC informed residents of this at the time.
- 7. In 2005 EDC began informing residents that they did not have the right to live there permanently.
- 8. This view was confirmed by an inspector in 2008, following a Cert of Lawfulness application which was refused in 2007, who also commented that if the landscaping is provided the condition will be regularized. He also commented that condition 3 on occupation was an enforceable condition.
- 9. In November 2008 EDC brought enforcement action seeking to 1) cease the use of the land for caravans for residential use and 2) remove all caravans and other domestic paraphernalia from the land.
- 10. The enforcement notice was upheld by an inspector in October 2009 who commented that the policies in the Development Plan (at that time the RSS, the 1996 Local Plan) sought to focus development in main centres. He also commented that to allow permission for permanent residential occupation would 'set a precedent for similar development elsewhere in the area'.
- 11. Under the threat of the upheld enforcement notice, in 2009 further planning application was made for the 'retrospective siting of caravans' which was to be accompanied by a s106 agreement between EDC and all the owners of the 14 caravans and the site owner which had the provision to allow the current residents (i.e. those who signed the s106 agreement) the right to live there permanently but if any caravan was sold or disposed of to another resident then that person could not live there permanently. They could only occupy the caravan for holiday use and not as their sole or principle residence at any time. The terms of the s106 were dictated by EDC under threat of the enforcement notice.

- 12. This is the current situation which is considered to be unjust because the residents of Greenhollows feel they were misinformed by EDC about the status of the Park when they purchased their caravans. The consequences of the 2009 planning application and the terms to which they were forced to agree to are that they are unable to sell their caravans for any more than approximately 30% of their value which in turn has trapped them at the site, unable to leave despite the fact that these caravans are no longer suitable for all the residents as they move into old age. Without the ability to sell the caravans at their true worth as a permanent residential site (as they were originally bought) there is little prospect of them being able to move to more suitable accommodation.
- 13. This NDO is promoted by the Parish Council which is mindful both of the need to set right this injustice, and allow certain of the parishioners to sell their homes, and of the need to provide opportunities locally for people to purchase accommodation such as these caravans as low cost housing. Skelton Parish is a parish without any Local Service Centre or any location where new housing is to be permitted under the policies of EDC. Greenhollows is a location within the parish where much needed housing can be provided through this NDO.

BASIC CONDITIONS

- 14. Neighbourhood Development Plans must meet the following basic conditions¹.
- (1) The examiner must consider the following—
 - (a) whether the draft neighbourhood development plan meets the basic conditions (see sub-paragraph (2)),
 - (b) whether the draft neighbourhood development plan complies with the provision made by or under sections 61E(2), 61J and 61L,
 - (d) whether the area for any referendum should extend beyond the neighbourhood area to which the draft neighbourhood development plan relates, and
 - (e) such other matters as may be prescribed.
- (2) A draft neighbourhood development order meets the basic conditions if—
 - (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,
 - (b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,
 - (c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order.
 - (d) the making of the order contributes to the achievement of sustainable development,

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¹ Paragraph 8 of Schedule 4B to the 1990 Act

- (e) the making of the order 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 order does not breach, and is otherwise compatible with, EU obligations, and
- (g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.
- (6) The examiner is not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft order is compatible with the Convention rights).
- 15. To meet these basic conditions the following information is presented to help the Examiner in his or her consideration.

Schedule 4B Paragraph 8 Section (1)

- 1a) This is for the Examiner to determine having had regard to the information presented in this Statement. It is considered in detail below under Section (2).
- b) the provisions of 61E(2), 61J and 61L as amended by s38C(5)(b) is a reference to the provisions of 38A and 38B.
 - 61E(2) the NDO grants planning permission in relation to a particular area specified in the order, namely Greenhollows Park and identified on the Plan.
 - 61J (1) the NDO relates to a site specified in the Order
 - (2) the NDO is not excluded development
 - (4) the NDO does not grant planning permission for development which already has permission because the NDO grants a different permission for the development without reference to the s106 agreement that materially affects the permission already granted.
 - (5) the NDO does not relate to more than one Neighbourhood Area
 - (6) Not applicable
 - 61L (1) The NDO is subject to the conditions specified in the order

In relation to the provisions of 38A the following is submitted.

38A

- 1) Skelton Parish is a qualifying body and entitled to submit a neighbourhood development order (NDO) for its own parish area
- (d) Whether the area for the referendum should extend beyond the area that the draft Neighbourhood Development Plan relates.

It is not considered that there is any benefit in extending the area for the referendum beyond the Designated Neighbourhood Plan Area because the effect of the policies in the NDP are specific to the Greenhollows part of Skelton Parish.

(e) Prescribed Matters

There are no prescribed matters other than those considered below under paragraph 2 (g).

Schedule 4B Paragraph 8 Section (2)

(a) SoS Guidance - National Planning Practice Guidance

16.NPPG 070 says:

A qualifying body is advised to set out in its basic conditions statement how they have had regard to national policy and considered whether a particular policy is or is not relevant. A qualifying body is encouraged to set out the particular national polices that it has considered, and how the policies in a draft neighbourhood plan or the development proposals in an Order take account of national policy and advice.

17. The National Policies that have been considered for relevance are listed below

NPPF Paragraph	Summary of Relevance to Neighbourhood Planning	How the NPPF is taken account of in the Greenhollows NDO
NPPF 2	Confirms the significance of the adopted development plan unless material considerations indicate otherwise	
NPPF 6 – 15	Puts sustainability at the heart of the planning system and the importance of local circumstances in plans.	The NDO is intended to improve the sustainability of the community of Greenhollows and Skelton Parish by addressing a local housing issue, in a locally distinctive way.
NPPF 16	Refers to neighbourhood planning and seeks that communities engage with the process and develop policies for housing, economic development and positively shape and direct development	The NDO considers housing issues explicitly through active engagement of the community with the process

	that is outside the strategic elements of the local plan.	
NPPF 17	Seeks that neighbourhood planning plays a part in developing an empowering and succinct planning system.	The NDO is an empowering process for the community in Greenhollows and Skelton and deals with housing that is referred to in this paragraph of the NPPF.
NPPF18 – 22	Seeks the encouragement and protection of sites for economic growth	Not applicable
NPPF 23 - 27	Refer to town centres	Not applicable
NPPF 28	Refers to policies to support economic growth in rural areas	The NDO supports economic growth in so far as it will allow new residents to move to the site and take up jobs locally or stay in the area in response to job offers.
NPPF29 – 40	Refers to supporting sustainable transport	Not relevant to this NDO
NPPF 42 - 45	Refers to supporting high quality communications infrastructure	Not relevant to this NDO
NPPF47 – 55	Refers to the delivery of a wide choice of housing and in particular NPPF 50 refers to mixed communities which reflect local demand	The NDO seeks to deliver an increased amount of housing for future residents which will be more affordable than any other housing in the parish.
NPPF 56 – 68	Refers to the requirement for good design and in particular NPPF 58 seeks that NDPs should set out how that quality is to be provided	Not applicable.
NPPF 69 – 78	Refers to the promotion of healthy communities and in particular to the use of neighbourhood plans to designate open green space	Not applicable
NPPF 79 – 92	Refers to the protection of Green Belt land	Not applicable
NPPF 86	This policy refers to the criteria for inclusion of a village within the Green Belt and the openness of the character of the	Not applicable

	village as part of the open character of the Green Belt.		
NPPF 93 – 108	Refers to climate change and flooding	Not applicable	
NPPF 109 - 125	Refers to the conservation of the natural environment including biodiversity	•	
NPPF 126 - 141	Refers to the conservation and enhancing of the historic environment. There is no specific reference to Neighbourhood Plans in this section of the NPPF.	All developments must also take due account of national or international designations for landscape.	
NPPF 142 – 149	Refers to safeguarding minerals	No relevant to this NDP	
NPPF 150 – 182	Refers to Plan making and specifically to local authority plan making as neighbourhood planning is considered in the next section.	Not applicable	
NPPF 183	Confirms that Neighbourhood Planning provides powers to grant planning permission	The NDO does this.	
NPPF184	·	The NDO promotes a wider form of development than the Local Plan and does not undermines its strategic policies.	
NPPF 185	Sets out the relationship of NDPs with other policies	Not applicable	
NPPF186 - 219	Refers to decision taking and implementation	These policies are not directly relevant to the issues set out in the NDO except 198 which says that planning permission is not required where an NDO has been brought into force.	

^{18.} The Rt Hon Greg Clark MP says in his forward to the NPPF that Planning should be a creative exercise, a collective enterprise, not excluding people and communities, and Neighbourhood Planning is intended to address this.

19. The presumption in favour of sustainable development within the NPPF means that neighbourhoods should plan positively to support local development that is outside the strategic elements of the local plan².

Schedule 4B Paragraph 8 Section 2

(b) listed buildings

There are no listed buildings within the NDO area or nearby.

Schedule 4B Paragraph 8 Section 2

(c) conservation areas

There are no conservation areas nearby to the NDO area.

Schedule 4B Paragraph 8 Section 2

(d) Sustainable Development

- 20. The thrust of the Neighbourhood Order is to increase the sustainability of the communities in Greenhollows by allow the existing residents to leave when the accommodation they have is no longer suitable. This will in turn allow new people to occupy the caravans and contribute to the local community, in the same way as others on the adjoining site do at present.
- 21. Greg Clark, Minister for Planning and Decentralisation said:

"Most people love where they live, yet the planning system has given them almost no say on how their neighbourhood develops. The Coalition Government will revolutionise the planning process by taking power away from officials and putting it into the hands of those who know most about their neighbourhood - local people themselves. This will be a huge opportunity for communities to exercise genuine influence over what their home town should look like in the future. It will create the freedom and the incentives for those places that want to grow, to do so, and to reap the benefits. It's a reason to say yes."

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² NPPF paras 15 and 16

Schedule 4B Paragraph 8 Section 2

(e) General Conformity with Strategic Policies

The meaning of general conformity

- 22. The term 'general conformity' is not defined in law but has been discussed in a number of judgements; particularly with regard to the relationship between Structure Plans and Local Plans. The use of the adjective 'general' is to introduce a degree of flexibility, although not unlimited flexibility. The judgements seem to conclude that the degree of flexibility this phrase permits will depend upon the planning judgement of the decision maker and the particular circumstances of the case.
- 23. In this case, the test is to be applied to a new and different tier of planning policy formulation; that between the strategic elements of a Local Plan and a Neighbourhood Development Plan or Order. This relationship has not been tested in the Courts and there is no case law to consider to help in these circumstances, other than in the most general sense. It is useful therefore to consider what was the intention of the legislator in choosing these words to define this relationship. The SoS states in the NPPF;

Neighbourhood planning gives communities the direct power to plan the areas in which they live through setting planning policies for the development and use of land. Parishes can use neighbourhood planning to grant planning permission though neighbourhood development orders for specific development that complies with the order.

- 24. This is what the Greenhollows NDO intends to do. The process of preparing a NDO is a discretionary one that is undertaken by the Community, it is intended to be a locally driven process and one which is not undertaken by Local Authorities. As such, for a local community, it is a significant undertaking and one that is made voluntarily and not made lightly. To be worth this effort and time, the result of a NDO must be sufficiently different from the Local Plan and to allow a difference that, although not undermining the overall strategy, does provide for decision making that would not otherwise be possible without a NDO. To this extent then the subject and scope of an NDO will require more flexibility rather than less in the range of flexibility that 'general conformity' allows. The converse of this, if a more rigid approach to 'general conformity' were to be adopted, would tend to reduce the chances that Local Communities would undertake the process of NDO making and the purpose of the Localism Act would be severely diminished.
- 25. The scope of NDOs will tend to seek out those areas of permission that will make the most positive difference for Local Communities and the phrase 'general conformity' needs to be interpreted accordingly.
- 26. For the relationship between the London Plan and Borough UDPs a definition of general conformity was proposed which referred to the significance of harm caused a spatial development strategy. This level of planning and the level of 'general conformity' between Structure Plans and Local Plans has the potential to affect a larger and inherently more strategic area than that between a Local Plan and Neighbourhood Area. It is therefore natural that the degree of conformity between policies of higher tiers within the overall framework need to be tighter than those between lower tiers of policy; which may be looser, because they affect a smaller and inherently less strategic area; and looser still where the proposal is for a single site as in the case with this NDO.

- 27. The NPPF³ says that *Neighbourhood planning is a powerful set of tools for local people.* This wording is intended to give local communities ambition and higher goals than is possible with Area Action Plans, Village Design Guides and the like. To be powerful a NDO must be intended to allow a locally distinctiveness to be tangible and real and not be completely in conformity with higher tier policy. A level of variation within the strategic framework is part of neighbourhood planning.
- 28. For all these reasons the NDO needs to be considered with an understanding of 'general conformity' that is generally looser than that used to consider the relationship between Structure and Local Plans or between the London Plan and UDPs.

NPPG 74 says:

What is meant by 'general conformity'?

When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:

- 1. whether the neighbourhood plan policy or development proposal supports and upholds the general principle that the strategic policy is concerned with
- 2. the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy
- 3. whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy
- 4. the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach

These four issues are considered below.

1. whether the neighbourhood development proposal supports and upholds the general principle that the strategic policy is concerned with

The Core Strategy is concerned with a number of factors which are aimed at delivering the vision which is to "develop, maintain and improve a vibrant economy and to provide affordable housing, supporting active and inclusive sustainable communities building on natural assets, protecting and enhancing Eden's unique environment and heritage."

The NDO supports and upholds the general principle of providing housing affordable to local people and of supporting communities to remain active and inclusive. The NDO removes a restriction on the occupation of the caravans that has the effect of trapping people within these caravans unable to sell them with any hope of buying another property. This will lead to elements of the community living increasingly isolated lives as they age is inappropriate properties. It also denies other local people from buying these properties and bringing much needed change, energy and vitality to the community who live there.

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³ NPPF para 184

2. the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy

Among the strategic policies is the spatial distribution of housing alongside all the other matters to support local people to live actively and sustainably within the environment society and the economy.

Although the spatial distribution of housing in Eden is for 60% new housing within Penrith, 20% in KSC and 20% in LSCs, in this case the proposal is not for new housing but for an amendment to the permission that allows permanent occupation within a site already used for caravan living (but only for the current occupiers) and adjoining a site that is already used for permanent occupation of caravans. It should be noted that the strategic policies contain no specific provision for Park Home housing of this type.

The last published Annual Monitoring Report shows that the annual requirement for housing is not being met and the land supply for housing is at 3.85 years. In these circumstances the NPPF suggests that housing policies should be considered out of date⁴ if LPAs cannot demonstrate a five year housing supply. Therefore it is arguable that there is no actual conflict at all with up to date strategic policies.

In any case, it is not felt that the NDO undermines the general strategy of focusing development within Penrith and the larger settlements because it does not restrict the process of doing so. Nor does it set a precedent for further developments of this type, because it will be subject to a local referendum which has come about as a result of a particular set of circumstances; and not subject to policy or case law. The amount of housing involved is a mere 14 units, which when set against the number of houses to be provided in Eden of 4300, represents 0.3% of the housing required over the plan period.

EDC have commented that a previous proposal (the 2007 application) which attempted to remedy the situation on the site was refused permission and the subsequent enforcement appeal dismissed because of the site's location and the issue of 'precedent'. While this is correct, the situation is not as uncomplicated as simply seeking permission to develop new housing in the open countryside. There is considerable planning history and unique factors at play here. Overall, even if the strategic housing policies are considered up to date the degree of conflict with them is slight given the scale of the proposal and the unique circumstances that surround it and well within the bounds of 'general conformity' that NDOs must achieve.

3. whether the draft development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy

Yes, the NDO will add to the range of housing within the local area and provide further opportunities for people to buy relatively low cost accommodation. It will also allow those that live in the affected caravans to move to suitable accommodation when the caravans become inappropriate for their circumstances. This approach is particularly appropriate

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⁴ NPPF Para 49

to this location because this is the only caravan park in Eden District which is affected by a s106 of this type.

4. the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach

This approach is justified by the evidence of local people who consider the current position unjust, and unfair to the residents of the affected part of Greenhollows. This sense of injustice has come about through misinformation about the status of the site being given to purchasers of the caravans by EDC. This is evidenced by the letters from Eileen Wain, Mrs M Webb, Barbara Casson and Margaret Day, Mr and Mrs Butterworth, Ann Marie and Brian Chivers among others.

The approach of using an NDO to resolve this problem is a suitable use of this power and appropriate to these circumstances. The residents of Greenhollows have gained the support of the Parish Council (PC) in their cause and the PC has agreed to promote this solution - to allow local people to vote on the appropriateness of this proposal.

The use of an NDO in this instance is particularly appropriate when a major part of EDC's and the Inspector's reasoning to refuse permission was the issue of precedent. There can be no issue of precedent with an NDO as all such orders are subject to a local referendum, in which the proposal is decided by popular vote and not by application of policy or practice.

Assessment of the NDO against the main themes of the Strategic Policies of Eden District

In addition to assessing the NDO against the four issues set out in the NPPG, an assessment has been undertaken to assess it against the main themes of the Strategic Policies as set out below.

For the purposes of this exercise and following previous conversations with EDC officers, it is considered that the Strategic Policies for Eden comprise of the 2010 Core Strategy.

In this case the NDO has been assessed against the latest EDC 2010 Core Strategy as the approach required by the National Policy Guidance. It is therefore possible to see to what extent the NDO supports and upholds the strategy. Where any conflict exists, it is considered that it is both within the margins permitted by the term 'general conformity' and outside the test of being considered against 'adopted strategic policy'.

NDO Issue/EDC Core Strategy Objective	General conformity with Strategic Policy	Deliverability	Sustainability	Breach of EU regulat ions
Housing quantity	Yes. The last published Annual Monitoring Report shows that the annual requirement for housing is not being met and the land supply for housing is at 3.85 years. In these circumstances any additional new housing is to be welcomed.	Yes, the NDO require no construction or implementation.	This level of housing is sustainable on the site.	No
Strategic distribution of housing	Yes - Negligible level of conflict (if any). The strategic distribution of housing is for 60% new housing within Penrith, 20% in KSC and 20% in LSCs. However, in this case the proposal is not for new housing but for an amendment to the permission to allow permanent occupation within a site already used for housing. Although there is no provision within the strategy for housing of this type within this type of location it is not felt that the NDO undermines the strategy of focusing development within Penrith and the larger settlements because it does not restrict the process of doing so nor does it set a precedent for further developments of this type, because it will be subject to a local referendum and not subject to policy or case law.	Yes, housing in this location is deliverable because no works are required	Housing is this location is sustainable because there is an existing community of residents at Greenhollows who are suffering from a s106 agreement that curtails their ability to sell their properties for a price that would allow them to move to appropriate accommodation when it is required.	No

Sustainable development	Yes - This NDO will provide low cost housing on a site currently available only for the current residents or for holiday makers, it will complement the existing housing on the site and will allow the existing residents to move to appropriate housing when it is required.	Yes, no works are required.	N/A	No
Living Communities	Yes, The NDO will add to the range of housing within the local area and provide further opportunities for people to buy relatively low cost accommodation. It will also allow those that live in the affected caravans to move to suitable accommodation when the caravans become inappropriate for their circumstances.	Yes, no works are required.	The NDO will provide an equal status within the wider Greenhollows site between residents who live in the caravans that are currently subject to the s106 agreement and those who are not.	No
Working Communities	Yes This section of the Core Strategy is not relevant to the NDO.	N/A	N/A	N/A
The Environment	The NDO will not alter the existing environment	No change	No change	No
Active and Inclusive Communities	Yes - The NDO will improve the likelihood that the community of Greenhollows will remain active and inclusive.	Yes, the evidence form residents suggest that there are many waiting for the NDO in order to instigate change in their lives and allow new people to move in.	Yes, having the ability for residents to change on a fair basis will keep the community of Greenhollows sustainable.	N/A

Schedule 4B Paragraph 8 Section 2

(f) EU obligations

29. The NDO has been subject to a Screening Exercise by the appropriate environmental body (Eden District Council) which was prepared and submitted to the statutory environmental bodies (English Heritage, Natural England and the Environment Agency) at draft and final stage who agreed with the report's conclusions that no detailed assessments to comply with the SEA Directive or HRA were required. Therefore the plan is considered to be compatible with EU obligations.

Schedule 4B Paragraph 8 Section 2

(g) Prescribed matters and conditions

30. Paragraph 1 of Schedule 2 of the Neighbourhood Planning Regulations 2012 prescribes the following condition for the purpose of this section of the Basic Condition Statement.

The making of the neighbourhood development order is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2010(d)) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007(e)) (either alone on in combination with other plans or projects).

31. The effect of this condition and the explanatory note to the Neighbourhood Planning Regulations 2012 is that provided the appropriate environmental body (Eden District Council) is of the view that the NDO is not likely to have a significant effect upon a European Site (as considered above in Section (f) of the Statement) then, in the Examination of the Plan, the Examiner must apply the prescribed condition.

CONCLUSION

32. The Basic Conditions as set out in Schedule 4B to the TCPA 1990 are considered to be met by the Greenhollows NDO. It is therefore respectfully suggested to the Examiner that the Greenhollows NDO complies with Paragraph 8(1)(a) of Schedule 4B of the Act.

Appendix 5

List of background documents and weblinks

- 1. Eden Core Strategy http://www.eden.gov.uk/planning-and-development/eden-local-development-framework/development-plan-documents/core-strategy-dpd/
- 2. Living Working Countryside Matthew Taylor Report <u>Living Working Countryside: The Taylor Review of Rural Economy and Affordable Housing</u>
- 3. EDC Report to Executive November 2011 report PP62/11 of the Director of Policy and Performance (PDF: 218 Kb / 8 pages)