



The Planning Inspectorate

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# **Report to Eden District Council**

**by Melvyn Middleton BA(Econ) Dip Tp, Dip Mgmt, MRTPI  
an Inspector appointed by the Secretary of State**

**Date: 30 August 2018**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Eden Local Plan**

The Plan was submitted for examination on 23 December 2015

The examination hearings were held between 9-12 May, 19-21 July and 12-15 September 2016 and 2-4 May 2017

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## **Abbreviations used in this report**

AONB	Area of Outstanding Natural Beauty
CCC	Cumbria County Council
CS	Core Strategy
d.p.a.	Dwellings per annum
DCLG	Department of Communities and Local Government
HMA	Housing Market Area
LP	Local Plan
MM	Main Modification
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NP	National Park
OAHN	Objectively assessed housing need
ONS	Office for National Statistics
SV	Submission Version
SHMA	Strategic Housing Market Assessment
WMS	Written Ministerial Statement

## Non-Technical Summary

This report concludes that the Eden Local Plan [LP] provides an appropriate basis for the planning of the District provided that a number of main modifications [MMs] are made to it. Eden District Council has specifically requested me to recommend any MMs necessary to enable the Plan to be adopted.

The MMs all concern matters that were discussed at the examination hearings. Following the main set of hearings, during the summer of 2016, the Council prepared and consulted upon updates and changes to some of the supporting policy documents and changes to the plan that resulted from them. In the context of the further representations received, additional hearings were held in May 2017. The Council subsequently prepared schedules of proposed modifications and carried out a sustainability appraisal on them. These MMs were subject to public consultation in July and August 2017. Further representations were received and as a small number related to matters **that could affect the Plan's** soundness; Further Modifications [FMs] were prepared and consulted upon. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation upon them.

The Main Modifications can be summarised as follows:

- An increase in the objectively assessed housing need;
- Revisions to the spatial strategy and the sites proposed for residential development;
- Changes to reflect extensions to the National Parks [NPs] and a reappraisal of the setting of the North Pennines Area of Outstanding Natural Beauty [AONB];
- Changes to Development Management, Environmental Protection and Historic Environment Policies to make them effective and consistent with the National Planning Policy Framework [NPPF];

## Introduction

1. This report contains my assessment of the Eden Local Plan in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It **considers first whether the Plan's preparation has complied with the duty to co-operate**. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The NPPF (at paragraph 182) makes it clear that in order to be sound; a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The Eden Local Plan, Proposed Submission Version [SV] submitted in December 2015 is the basis for my examination. It is the same document as was published for consultation in October 2015. Following this consultation, the **Council published an "initial list of amendments (referenced as MMs, although a number are clearly not MMs) required-Request to Inspector, Post Publication"**. I arranged for persons who had made representations against the SV to be re-consulted about these proposed amendments and where appropriate took the amendments and the responses of the representors into account when considering the soundness of the plan.
3. My approach to this Examination has been to work with the Council and other participants in a positive, solution-orientated and consensual manner, aimed at resolving differences and overcoming any potential unsoundness in the Plan. Hearing sessions were held in May (Strategy), July (Development Policies) and September (Site Allocations) 2016, with a roundup session held at the end of each set of Hearings. At these the Council suggested a number of changes to address matters that I considered to be unsound. It then undertook further work on major areas where I had identified soundness issues and produced additional papers that suggested how the plan could be changed to address the outstanding issues. It undertook a comprehensive consultation into extensive proposed changes in March-April 2017. In response to numerous further representations, particularly from Kirkby Stephen, a further Hearing into matters concerning that town and another roundup Hearing, covering all other outstanding matters, were held in May 2017.
4. Following the conclusion of these Hearings, in the summer of 2017, the Council prepared a schedule of proposed MMs and carried out a sustainability appraisal and an addendum to the Habitats Regulations Assessment on them. The MM schedule was subject to public consultation for six weeks in July-August 2017. There were further representations against some of these MMs, **particularly from Kirkby Stephen. A number affected the plan's soundness and** these resulted in five further modifications (FMs). The FM schedule was subject to public consultation for seven weeks in December 2017 and January 2018. I have taken account of the consultation responses in coming to my conclusions in this report.
5. In addition to the Hearing Sessions, I have examined this plan by correspondence with the Council and others and through a number of independent site visits. This process concluded in February 2018 when I was

satisfied that the sum of the changes proposed by the Council would make the plan sound.

## **Main Modifications**

6. In accordance with section 20(7C) of the 2004 Act the Council requested that I should recommend MMs necessary to rectify matters that make the Plan unsound or not legally compliant and thus incapable of being adopted. My report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearings, are necessary. The MMs are referenced in bold in the report in the form **MM1, MM2, MM3** etc. and are set out in full in the Appendix.

## **Policies Map**

7. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a LP for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the SV. In this case, the submission policies map comprises the set of plans identified as Eden District Planning Area Local Plan as set out in Eden Local Plan, Proposed Submission Version.
8. The policies map is not defined in statute as a development plan document and so I do not have the power to recommend main modifications to it. **However, a number of the published MMs to the Plan's policies require further** corresponding changes to be made to the policies map. In addition, there are some instances where the geographic illustration of policies on the submission policies map is not justified and changes to the policies map are needed to ensure that the relevant policies are effective, whilst other changes have been necessary to correct factual mistakes. These further changes to the policies map were published for consultation alongside the MMs (Revised Allocations Maps – Main Town, Market Towns and Key Hubs).
9. When the LP is adopted, in order to comply with the legislation and give effect to the LP's policies, the Council will need to update the adopted policies map to include all the changes proposed to the Eden LP at submission and the further changes published alongside the MMs

## **Assessment of Duty to Co-operate**

10. Section 20(5) (c) of the 2004 Act requires that I consider whether the Council complied with the **duty imposed on it by section 33A in respect of the Plan's** preparation.
11. The range of consultations, discussions and written exchanges with neighbouring planning authorities undertaken by the Council in the preparation of the LP are summarised in the Statement of Compliance. In particular, I note that there have been regular meetings of the Cumbria Planning Group and the Cumbria Development Plans Officer Group. The latter includes representation from all of the adjacent local planning authorities apart from Durham County Council, as well as a number of national organisations, with a planning interest, such as the Environment Agency. Durham County Council

has nevertheless attended a number of joint meetings with Cumbria County Council (CCC) and Eden District Council, throughout the plan's preparation.

12. A number of joint evidence based documents have been prepared in partnership with other Cumbrian authorities, including ones on Wind Energy, Biodiversity and Gypsy and Traveller Accommodation. There has also been **active involvement in the plan's preparation by CCC** in connection with the services it provides, particularly highways and in data collection and analysis. Infrastructure planning has also been undertaken in conjunction with CCC and **relevant statutory bodies. There have been no objections against the plan's overall strategy from any local planning authority.**
13. Eden District covers a large rural area centred on Penrith. In consequence its administrative boundary, for the most part, is located in remote and/or lightly populated areas and is coterminous with its housing market area [HMA]. Both commuting and migration flows with adjacent authorities are in consequence comparatively small.
14. Overall I am satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the duty to cooperate has therefore been met.

## **Assessment of Soundness**

### **Main Issues**

15. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings I have identified ten main issues upon which the soundness of the Plan depends. Under these headings my report deals with the main matters of soundness rather than responding to every point raised by representors.

### **Issue 1 – Housing requirement:-**

**Is the Plan's housing requirement justified and consistent with national policy? Will it ensure that objectively assessed needs for housing are met in the housing market area, having regard to the economic objectives of the Plan and other relevant factors?**

16. It has been widely reported for a number of years that the country has been building many fewer houses than are needed by the increasing population and growing household numbers. The resulting pressures on the housing stock and associated issues of affordability are particularly acute in Eden District. Although remote from much of the country, as one of the most attractive parts of Britain and containing two National Parks (NPs) and an Area of Outstanding Natural Beauty (AONB) it cannot be insulated from these pressures, including those arising from migration from other areas, and this plan must have a role in addressing them.
17. The Plan's development strategy seeks to boost economic activity within Eden District, whilst at the same time diversifying its economy and encouraging the establishment of more technical and better paid jobs. Eden currently has a low wage economy and is characterised by long established net out migration trends among younger age groups, especially 16-24 year olds and particularly

the better educated. The Council wishes to change these trends through the development of the local economy, such that the area becomes more economically sustainable and prosperous. It also has a desire to increase average incomes in the district from a comparatively low level.

18. To achieve this, its overall Objectively Assessed Housing Need [OAHN] is based on a jobs led calculation using a job forecast provided by Experian (135 additional jobs per annum). This has not been challenged and I do not take issue with it. Nevertheless, a jobs growth forecast of this magnitude, if it is to be achieved, in a small district with a declining working age population, has clear ramifications for in-migration and the level of new housing required to accommodate it.
19. The District also has one of the highest affordability ratios (house prices/incomes) in the North-West region and there is historic evidence of significant numbers of second home purchases and persons migrating to the District to retire. The principal ramifications of these are an affordable housing requirement that is comparatively high and the net out-migration among the younger age groups. In the absence of major investment through the public sector, the private housing market has to bear the brunt of meeting the affordable housing need, if it is to be met. In consequence the higher the provision for market housing, the more likely is the need for affordable housing to be met. Additionally, relative house prices are more likely to fall if there is more choice and competition in the private housing market sector. If this were to happen, it would make Eden more attractive to indigenous young adults wishing to stay and to economically active migrants wishing to relocate, particularly those that are young adults.
20. Furthermore, as well as one of the lowest unemployment rates in the country, the District has a demography that will result in a shrinking indigenous labour market over the coming years. In these circumstances it will only be possible to grow the economy by attracting persons of working age from elsewhere to live and work in the district. At the same time there is a history of persons moving to the district to retire and the Council accepts that housing delivery in recent years has been inadequate. These considerations have a fundamental bearing on the dwelling requirement that this plan should set and meet.
21. Paragraph 159 of the NPPF provides amongst other things that local planning authorities should prepare a Strategic Housing Market Assessment [SHMA] to assess their full housing needs. Technical Paper 1 Housing Numbers describes the action initially taken and includes the SHMA that was subsequently updated in September 2015. There is agreement that the SHMA and its update are based on the appropriate housing market area (Eden District) and that it meets the National Planning Practice Guidance [NPPG] criteria for defining such an area.
22. The NPPG indicates that household projections should provide the starting point for the estimate of overall housing need. The Technical Paper 1 assessment reasonably used the 2012 based Office of National Statistics [ONS] population projections and the corresponding Department of Communities and Local Government [DCLG] household projections as the starting point. It concluded that the full OAHN was 200 dwellings per annum [d.p.a.]. The Local Plan was submitted for examination in December 2015. In

May 2016 the ONS published 2014-based population projections, to be followed by DCLG 2014-based household projections in July. The Council reviewed and produced a report to consider the implications of this new dataset and updated its SHMA, using the more up-to-date data and taking on board some methodological criticisms expressed at the May Hearing by itself and others. Despite a reduction in the DCLG household projections 2012-14, it nevertheless revised its OAHN upwards to 216 d.p.a.

23. Both of these figures were criticised by all of the representatives of the building industry who attended the Strategic Hearings. It was pointed out that whilst the NPPF at paragraph 47 urged local planning authorities to boost significantly the supply of housing, Eden was in fact cutting its estimated housing need from the 239 d.p.a. advanced by the 2010 Core Strategy [CS] to 200 d.p.a. in the SV and 216 d.p.a. thereafter. This is hardly likely to be a game changer
24. At the May 2016 Hearing an alternative OAHN, to the **Council's** 2012 based projection, was submitted on behalf of a local builder. This was supported by the house building industry representatives present. Whilst projecting from the same starting point, it forecasted OAHN to be 283 d.p.a. The principle **differences included the absence from the Council's calculation of any** adjustment to household formation rates in the years immediately before 2011, to accommodate the widely accepted suppression of headship rates among younger adult age groups at that time. Additionally, the extent to which its jobs led forecast includes provision for the housing needs of economically inactive migrants and ones that will retire before the end of the plan period was also a difference. The extent to which second home purchases had been factored into the dwelling requirement was also unclear. There was general agreement that as the 2014 demographic forecast was significantly below the jobs led forecast; there may not be a need for a market signals uplift.
25. The Framework expects the supply of housing to be boosted and without this the affordability of housing in the district is unlikely to improve. This is because a continued comparative shortage of houses will lead, through competition, to a commensurate disproportionate increase in their relative price. Because no land has been specifically allocated for housing development in Eden District since the adoption of the 1996 LP, it is difficult to set a benchmark against which to measure a boost in supply because the market has been historically constrained. Average completions over the 15 years prior to 2016 were only 175 d.p.a., whereas since 2008 the target has been 239. However, the recession probably had a significant impact on these figures, as well as the constrained land supply. The average in the four years, before 2006 was 212 and it has returned to 197 over the past four years despite the supply issues. In this context, the ability of a target of 216 to **make a game changing impact on the area's economic development** aspirations and prospects, as well as upon affordability, has to be questioned.
26. Economically inactive migrants require somewhere to live and their exclusion from the job led calculations is a weakness in **the Council's** methodology. The exclusion of migrating retirees from its calculations probably accounts for much of the difference between **the Council's** forecast and that advanced by the building industry. The absence of an allowance for an increase in the



number of second homes similarly reduces the robustness of **the former's** calculations, although that could be much less significant.

27. Nevertheless I do accept the proposition advanced by CCC that the Popgroup model, used on behalf of the local builder to arrive at its forecast, is such that its circularity and underlying labour supply assumptions are likely to exaggerate the housing requirement from a job led forecast. Whilst it is far from clear as to the extent to which this has a bearing on the actual forecast, I note that caution is also advised by the NPPG where the supply of working age population that is economically active, is less than the projected job growth, which is the case here.
28. My overall concern was that if the housing target is set too low then there will be insufficient dwellings being provided to meet the requirements of both retirees and required economic in-migrants, not to mention purchasers of second homes. For the most part, the former and latter are likely to be financially better placed to afford a constrained supply than young economically active migrants. In consequence there could be insufficient accommodation to house the numbers of economic migrants required to meet the job growth targets. The economic growth expectations will consequently be frustrated. Additionally affordability would be unlikely to get better, which would also further suppress the attraction of Eden to in-migrants seeking work, as well as having ramifications for existing residents who cannot currently afford to buy any accommodation.
29. After the September 2016 Hearings, the Council reassessed its position and in particular took on board the criticisms concerning the headship rates and the assumed level of inward migration by older people and the allied second home purchases. It published a revised assessment " Objectively Assessed Housing Need – Revised Position **Statement**" in which it advances a new OAHN of 242 d.p.a. Whilst this is still noticeably less than the 283 advanced by the private house builders that assessment was based on the 2012 DCLG household projections. No update was forthcoming in response to the lower 2014 projections or to the Popgroup weaknesses discussed above.
30. Assessing housing need is not an exact science and there is no single right method for determining an appropriate figure. The Council recognised the importance of housing delivery rates to the achievement of its economic strategy. Therefore, in addition to its upward revision to the dwelling requirement, it proposed that a requirement to continually monitor the targets and to release identified growth sites at Appleby, Kirkby Stephen, Penrith and in a number of Key Hubs (Brough, Culgaith, Nenthead, Plumpton and Stainton), in certain circumstances of under delivery should be incorporated into Policy LS2. The growth sites, which are necessary to enable the plan to be positively prepared and justified, are identified within **MM04**.
31. In circumstances where housing completions collectively fall more than 20% behind the expected rate of delivery, in the upper two tiers of the settlement hierarchy, the Council would consider the reasons and may release future growth sites, within these upper two tiers, if land shortage is considered to be a central consideration. Similarly, where housing completions in the third tier of the settlement hierarchy (Key Hubs) collectively fall more than 20% behind the expected rate of delivery identified future growth sites within the third tier

may be released for development. Additionally, if a five year supply plus 20% is not being identified I am satisfied that with these changes, which take effect through **MM04**, the plan has sufficient in-built flexibility to be able to deliver the houses necessary to accommodate the required level of in-migration as well as to improve affordability. **In such circumstances the plan's OAHN is justified and consistent with national policy.**

32. Although the NPPF says that local plans should meet the full OAHN, as written both Objective 6 and 7 refer to the meeting of only local need. In an authority that is seeking to expand its economic base and labour market through inward migration, as well as being contrary to national policy, such an approach is not justified. Nor does it reflect the actual assessment that the Council has made through its OAHN calculations. **MM023** removes the references to local need from the objectives and ensures that they are consistent with national policy. Following these changes, the **plan's housing requirement** is justified and consistent with national policy. It will ensure that objectively assessed needs for housing are met in the housing market area, having regard to the economic objectives of the Plan and the other relevant factors discussed.

## **Issue 2 - Affordable housing:-**

### **Does the plan make adequate provision for affordable housing such that it maximises its potential delivery in the context of current government policy?**

33. Paragraph 47 of the NPPF includes the provision that local planning authorities should use their evidence base to meet the full objectively assessed need for affordable housing in the housing market area, as far as is consistent with the policies set out in the NPPF.
34. The SHMA identifies an affordable housing need for nearly 1,000 dwellings (about 55d.p.a.) from 2014 to 2032 after taking account of relets from the existing rented stock. Policy HS1 required 30% affordable provision from private schemes above four units where it is viable. In the five years to 2018 an average of 35 affordable d.p.a. were built (35 affordable d.p.a. average were also built over the last 15 years). This is significantly less than the requirement but was achieved in a period when overall completions were well below the revised target.
35. The policy makes it clear that a level of affordable housing contribution that would render a scheme unviable will not be required. Nevertheless, the updated viability evidence suggests that a 30% requirement is still viable on most greenfield sites outside of Alston Moor. **The Council's assessment of affordable housing delivery** also identifies other likely additional sources of affordable housing provision. If 30% were delivered from an annual output of 242 then 72 dwellings per annum would be achieved. Given this increased dwelling target and allowing for the absence of affordable housing from small omission sites (previously 4 or fewer dwellings) and sites where the provision of affordable housing is economically unviable, it nevertheless seems possible that the policy aspirations could have been met.
36. However, following the West Berkshire Court of Appeal judgement, which **upheld the Secretary of State's Written Ministerial Statement of 28 November 2014**, the NPPG indicates that affordable housing and tariff style contributions

should not generally be sought from sites of 10 units or less, which have a maximum combined gross floor space of no more than 1,000sqm. A significant number of new dwellings are likely to be in this category, particularly outside of Penrith. **A designated 'Rural Area' is therefore to be defined on the Policies Map, and where a commuted sum, to be obtained via a planning obligation, will be required from sites with 6 to 10 units, to be spent on the provision of affordable housing in the rural area.** Consequently, for consistency with national policy and guidance, Policy HS1 Affordable Housing needs to be amended to accommodate this and to confirm that in Penrith, sites of 10 residential units or less are not required to contribute towards the provision of affordable housing. **MM17** achieves these changes and enables the policy to comply with national policy.

37. During the course of the examination, the Government, through the Housing and Planning Act 2016, also introduced a duty for local authorities to promote the supply of Starter Homes, which will be included in the definition of affordable housing. Whilst this part of the Act has not yet been brought into force, it could be implemented during the plan period and will suppress further the number of traditional affordable houses for rent or shared ownership that could be delivered via the private sector.
38. The delivery of most affordable housing in Eden District is intended to be through market housing schemes. What further effect a redefinition of affordable housing, to include starter homes, may have on this is uncertain and awaits further Government guidance. Nevertheless, some additional supply is also expected from the direct activities of registered providers of social housing and overall 55 d.p.a. represents less than 25% of the revised provision. Consequently and despite the Government changes, which have made the task more difficult to achieve, there is some prospect of the affordable housing target being met if the overall housing target is met.
39. Certainly the policy allows for the maximum amount of affordable housing that can be expected from sites, taking into account national policy on thresholds and development viability. Moreover, there is no indication that increased supply through additional allocations would bring about a situation where the private sector could provide more. I consider that the plan maximises the potential delivery of affordable homes within the constraints established by government policy. Nevertheless and given the uncertainties, it would be appropriate for affordable housing provision to be revisited when the plan is reviewed. Following these changes, I am satisfied that in the present circumstances, the plan makes adequate provision for affordable housing in that it maximises its potential delivery in the context of current government policy.

### **Issue 3 –Spatial Strategy:–**

#### **Is the Local Plan's spatial strategy for the distribution of development consistent with its objectives and the guidance in the National Planning Policy Framework (NPPF)?**

40. The spatial strategy appropriately considers the role that the District's settlements can play, particularly those that already have supporting services and infrastructure.

## Settlement hierarchy

41. The LP proposes a hierarchy of settlements under Policy LS1. There are four tiers of settlements and a rural area, which covers everywhere else. Penrith, the **district's main settlement, is the top tier and the Market Towns of Alston, Appleby and Kirkby Stephen** the second. The villages are split into the further two tiers. A group of larger villages were selected to be Key Hubs and the focus of rural development to sustain local services, including new housing and the provision of employment. The remainder, described as Smaller Villages and Hamlets are to receive some market housing development on previously developed land and elsewhere housing to meet local demand only. The position of villages in the hierarchy is based on their size and the presence of services. Development in the Rural Area is restricted to special cases. The principle of the five tier approach is appropriate in a large District, which is generally rural in nature. It facilitates a strategy for supporting sustainable development over a very wide area but concentrated into the most appropriate locations.

## Distribution of development

42. The Core Strategy adopted in 2010 contained a similar hierarchy to that advanced in the LP and sought to concentrate housing development in the most sustainable locations. 60% was proposed in Penrith and a further 20% in the three market towns. However the accompanying Housing Development Plan Document [DPD], which among other things was meant to allocate land for housing development, was never completed and adopted. In its absence and in the context of the very few allocations remaining from the 1996 LP, outside of Alston, residential development in most of the District has been developer led in recent years.
43. In consequence, since the commencement of the plan period in 2014, over 750 dwellings have already been completed or permitted in the Villages and Hamlets and over 1,150 in the rural area as a whole. This represents more than 17% and 27% respectively of the revised housing target for the entire Eden District over the period to 2032. If the CS distribution were to be maintained, then the rural settlements would already be overprovided for. In order to allow some development in the Key Hubs during the rest of the plan period that would enable them to protect and enhance their role as service centres, the revised distribution reduces the housing target at Penrith to 50% and proposes 31% in the rural settlements, of which 20% would be in the Key Hubs. **MM04** amends Policy LS2 – Housing Targets and Distribution, to achieve this and enables this aspect of the policy to be effective. This is a pragmatic outcome and, in the circumstances that now prevails in Eden, a sound one.

## Penrith

44. The changes to the OAHN have resulted in an increase in the proposed housing target for Penrith from 1800 to 2178 dwellings, for which additional land has to be found. In addition, noise concerns and topography necessitated a review of the extent of development at site N2 White Ox Farm and a **reduction in the site's dwelling capacity by** about 100 dwellings. Additional dwellings are proposed through **MM05** at site N1a Salkeld Road/ Fairhill and

P54 Bellevue Farm, Salkeld Road to enable the revised OAHN to be achieved in the context of Penrith and to enable this aspect of the policy to be effective.

45. Whilst noting that infrastructure improvements would be needed, Policy PEN1 did not refer to the detailed Infrastructure Delivery Plan, which the Council has prepared in partnership with CCC or the need for financial contributions from development sites to assist in its funding. **MM05** corrects this omission and makes this aspect of the plan effective by providing some degree of certainty in the context of infrastructure requirements to assist the development industry's investment decisions.

## **Market Towns**

46. **The three Market Towns have traditionally performed the role of vital 'service hubs' for their respective rural hinterlands.** They each contain a range of retail and service facilities as well as concentrations of employment. Although its catchment, which lies to the east of the Pennine watershed, is smaller than that of Appleby and Kirkby Stephen, Alston nevertheless fulfils the role of a **'service hub' for its** hinterland. As well as containing a market, its service base is substantially different to any of the Key Hubs. Although experiencing population decline for many years, Alston, with a population of over 2,000, is still bigger than Kirkby Stephen and noticeably larger than any of the Key Hubs. Whilst its economic prospects are somewhat different to the other Eden towns and a different approach to development proposals is therefore necessary (I return to this later) it is a market town serving a rural hinterland and its status in the Eden settlement hierarchy is fully justified.

### *Alston*

47. For many years Alston and its catchment area, unlike most of the rest of Eden, has seen its population decline. Initially this was as a result of the demise of the local lead mining industry but more recently it followed the closure of the **town's steel works.**
48. The 1996 LP and the CS both sought to stem this tide but with little success. On average 2.6 dwellings have been completed each year at Alston since 2003. **Nevertheless, the previous plans sought to build on the area's history** of community enterprise by attracting new jobs, particularly in creative arts, tourism and outdoor pursuits. To complement this, additional new housing, proportionate to its size and status as a market town, was proposed.
49. Despite this, Alston is the only part of the District where substantial areas of land allocated in the 1996 LP still remain to be developed. Because of topography, the selection of sites that do not have abnormal site development costs is not easy. In a market of low demand and comparatively low house prices, whether some of the ones previously allocated may not have been developed because of high infrastructure costs, rather than through an absence of overall demand at Alston, is debatable.
50. However, to expect a remote town that has been declining for decades to suddenly turn itself around and grow at a rate faster than its natural increase and at the same rate as Penrith and the other market towns, where the economic prospects are clearly better, is unrealistic. Additionally, if residential development is to occur at rates not seen for many years and make provision

for some of the identified need for affordable housing, then the sites chosen need to have a minimum of abnormal costs so that if there is demand then development will occur and an element of affordable housing could be provided.

51. In this context the Council has reviewed housing provision at Alston, reducing the overall numbers, despite an overall increase in the District as a whole as a result of the revised OAHN. It has also reviewed the site allocations, removing the constrained sites at Jollybeard Lane and adjacent to and south of the Primary School, replacing them with an enlarged site at Clitheroe (**MM07**). Clitheroe is a relatively flat site, in the context of Alston, with existing vehicular access and where development costs are unlikely to be abnormally high. It is probably the best opportunity for significant new residential development that is capable of meeting some affordable needs as well as market housing at Alston. This change enables the revised OAHN to be achieved in the context of Alston and this aspect of the policy to be effective.
52. Following the 2016 Hearings and to better reflect historic build rates at Alston, whilst at the same time still seeking to promote its regeneration, the Council cut its proportion of overall housing growth from 4% to 3%. Originally the pre-revised OAHN dwellings to be lost from Alston were added to Kirkby Stephen. Following further representations from Kirkby Stephen and in the context of the rate of development to date in the villages and hamlets, they were moved to the villages and hamlets tier.

### *Appleby*

53. The two sites proposed in Appleby for residential development were either side of Station Road (AP10 & AP11), immediately to the south of the A66 bypass. A re-examination of a 2008 noise report suggested that acceptable external living conditions could not be achieved on parts of the sites close to the A66 without a reduction in other living conditions considerations. Additionally, non-opening windows would be required in the northern elevations of dwellings in some locations.
54. In a rural district where there is no shortage of suitable sites for residential development, such impacts on living conditions are unnecessary and the development of the whole sites would not provide quality living environments. The Council reviewed the capacity of the Station Road sites to accommodate quality development and reduced their targets. Additional sites at Cross Croft (AP16) and Westmorland Road (AP24) were introduced through **MM08** to provide the further dwelling capacity at Appleby. This change enables the revised OAHN to be achieved in the context of Appleby and this aspect of the policy to be effective.

### *Kirkby Stephen*

55. The redistribution of the dwellings lost from Alston, following the 2016 Hearings together with the addition of its proportion of the district wide dwelling requirement, following the uplift in OAHN, resulted in a significant increase in the proposed number of new dwellings at Kirkby Stephen when compared to Appleby. At the same time and following subsidy cuts, there was a substantial reduction in local bus services at Kirkby Stephen.

56. There was considerable representation against the proposed additional sites put forward at Kirkby Stephen to accommodate this additional growth, in the consultation that followed in March-April 2017. In this context and together with further consideration of the relative accessibility of Kirkby Stephen from the perspective of attracting inward investment, the Council resorted to a more equitable distribution, based on existing populations, prior to composing its MMs. It also redistributed 1% of the overall housing provision to the smaller villages and hamlets to accommodate the growing oversupply in that tier. It was accepted that the changed circumstances at Kirkby Stephen would be unlikely to generate employment and population growth to the extent proposed in a sustainable way.
57. Furthermore, and whilst the Plan was being examined, a number of sites not proposed in the Plan for residential development were given planning permission. Representations, following the March-April 2017 consultation, also identified fundamental errors in the site scoring matrix. As the combined capacity of the new sites (with extant planning permission) more than compensated for the reduced, revised allocation of dwellings at Kirkby Stephen, there was a need to reduce the number of sites proposed in the Plan to avoid unsustainable over-provision. **MM09** gives effect to this and enables this aspect of the plan to be positively prepared. Croglam Lane (KS15) was removed at the MM stage. South Road/Whitehouse Farm (KS3b), Croglam Park (KS18) and Manor Court (KS24) were removed at the FM stage.

### Key Hubs

58. There was much criticism from representors, particularly about the revised approach to the definition of Key Hubs and the amount and location of development within them, especially when compared to the different strategy that was advanced at the time of the Preferred Options Consultation.
59. The Planning and Compulsory Purchase Act 2004 says that "**DPDs** must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, **and adaptation to, climate change.**" The NPPG goes on to say that these documents must mitigate against climate change by reducing the need to travel and providing sustainable transport.
60. In paragraph 95 the NPPF says that in order to support the move to a low carbon future, local planning authorities should plan for new development in locations which reduce greenhouse gas emissions. At paragraph 30 it also points out that in preparing LPs, local planning authorities should therefore support a pattern of development which, where reasonable to do so, facilitates the use of sustainable transport.
61. Nevertheless, the NPPF does recognise that opportunities to maximise sustainable transport will vary between urban and rural areas. Additionally, at paragraph 55, it also points out that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The overall thrust of the Framework is nevertheless clear in that planning should be contributing to a reduction in greenhouse gas emissions and that even in rural areas, if there

are realistic choices, development should be located in sustainable locations as far as possible.

62. **The Plan's** objectives take these considerations forward and in particular at Objective 1 it says that the majority of development will be focussed into areas where services are available and where facilities can be supported. Objective 3 refers to the provision of accessible and sustainable transport systems whilst reducing the need to travel (this is carried forward in criteria 2. of Policy DEV1 in the SV of the LP) and Objective 5 to the need to reduce greenhouse gas emissions. However, the thrust of these objectives was not carried through into Policy LS1 in the context of the Key Hubs.
63. Given the size of Eden District and its extensive rural area, which itself makes **a significant contribution to the District's employment base, it is reasonable to** make provision for new development to meet the anticipated needs of that area within the locality. The concentration of market housing within Key Hubs, in addition to significant development in the Market Towns, is an appropriate approach. Additionally, given the rural circumstances, the distribution strategy put forward in Policy LS2 is not overall unsound. However, that does not obviate the need to distribute the growth allocated to the Key Hubs in a sustainable way, particularly as market housing is to be provided there as well as development specifically to meet local needs.
64. The revised list of 28 Key Hubs (increased from 20 at the Proposed Options stage) included a disparate group of settlements ranging from villages that have a full range of facilities and regular public transport, to ones that have limited facilities and in the case of at least one, only community facilities as well as no daily public transport. Some of these settlements are in close proximity to one another and a number are very close to Penrith.
65. One of the driving forces behind the designation of Key Hubs (Objective 1) is a desire to support the viability of local services through the generation of additional population through new development. Discounting completions and commitments, at the time the plan was submitted for examination, there were only 472 dwellings left to be allocated to the Key Hubs. Dividing this between 28 villages would have resulted in an average of 17 additional dwellings per hub. There is no evidence to suggest that such numbers would have a material bearing on the viability of services or facilities. More fundamentally, no evidence to suggest that the strategy would steer sufficient development to settlements with seriously unsubscribed primary schools for example or threatened other key services, thereby ensuring their survival during the **plan's lifetime. I concluded that there would not be sufficient planned** residential development available to support the retention of all facilities and services in all 28 settlements let alone to enhance them.
66. The Framework advocates the focusing of development in locations that are or can be made sustainable. The evidence did not indicate how any of the chosen settlements could be made sustainable or more sustainable by the proposed development, nor did it justify, in locations with hubs in close proximity to one another, why it is preferable to disperse the development rather than to concentrate development in the most sustainable location. Similarly, there was no justification put forward for the need to expand the villages in close proximity to Penrith. That proximity must be a factor in the



comparative decline of services in some of these settlements to a greater extent than in settlements of a comparable or smaller size further away.

67. In the absence of sound evidence justifying the selection of 28 Key Hubs, the defining criteria required revision with the services most in need of protection, such as a primary school or a well-stocked local shop for example, at least given appropriate weight in comparison to less important facilities in the overall selection criteria.
68. In accordance with Objective 3 and Policy DEV1, due regard should also be given to the availability of public transport, as an alternative to the sole use of the private car. In this context, the selection of settlements without at least a daily bus service is not a particularly sustainable outcome. Nevertheless, I recognise that there could be places that have a good range of local facilities, including a primary school, but no longer have a bus service. Such settlements, if a focus for services for a wider rural area should not be automatically dismissed, nor should they be if they are a centre of significant employment. During the examination CCC ceased to financially support a number of rural bus services and they were withdrawn by the operators. In such circumstances a pragmatic approach needs to be taken, with the evidence base demonstrating that whilst places without regular public transport do not meet the overall selection criteria, there may be a sound justification for further market housing in these locations, enabling them to be treated as an exception.
69. Policy LS2 allocated 720 dwellings to the key hubs. However, by March 2015, 249 had already been completed or were under construction or permitted. **The history of the CS's implementation suggests that substantially more dwellings than were proposed have been delivered in some of the Key Hubs and at the expense of development in the higher order locations, particularly Penrith.** Whilst the implementation of the proposed housing location strategy is unlikely to be exact, for a serious over-provision to continue to occur in some of the Key Hubs, at the expense of the more sustainable locations and without any justification, is not a sound process. Consequently without some parameters being established in the plan that indicate the amount of development expected to be delivered within each Key Hub and with some mechanism to ensure that something similar to that is what is delivered, then history would suggest that the Key Hubs will deliver far more dwellings than proposed and at the expense of development in the more sustainable locations (Penrith and the Market Towns), thereby undermining the overall delivery strategy.
70. Policy LS1 said that new housing, which would increase the size of a village by more than 10%, will not normally be supported. In the context of the amount of development still to be identified in Key Hubs and in the absence of any indication as to how the proposed development at Key Hubs was to be distributed among them in the SV this, on its own, could still have led to significant over-provision and was not justified. The development needs of the Key Hubs are likely to differ, as are their opportunities and capacity for development. These should have been assessed as a prelude to identifying where and how the development is to be located and achieved.

71. Some parishes with Key Hubs have prepared, are preparing or have indicated that they will prepare Neighbourhood Plans. However, these are unlikely to provide universal coverage of all the Key Hubs. Where they are to be prepared then, without the establishment of parameters for housing provision in each Key Hub, the Neighbourhood Plans could undermine the overall development strategy by providing too little or too much residential development at a particular location. The NPPF requires that Neighbourhood Plans must be in general conformity with the strategic policies of the LP. Without further direction it would be impossible to determine whether or not **their end product conforms to the LP's strategy.**
72. In other Key Hubs, the amount and extent of development was to be left to windfalls. However, there was no sound evidence justifying that residential development, likely to occur as a result of windfalls, would deliver the required amount of development in the right Key Hubs, whilst not substantially over providing elsewhere. To give some certainty to the deliverability of the strategy, as well as establishing and maintaining a five year housing land supply, there ought to be site allocations covering a substantial amount of the development still to be identified within the Key Hubs or alternatively identified broad locations for development accompanied by development parameters.
73. The Council reviewed its criteria for assessing the appropriateness of settlements to be Key Hubs, using objective criteria and clearly explaining the reasons for special cases. The number was reduced from twenty eight to thirteen (**MM03**), to enable the plan to be justified. It also established a methodology for determining the number of dwellings to be provided at each Key Hub and reassessed the likely contribution, to residential development throughout the settlement hierarchy, from windfalls. Sites were allocated at Key Hubs that are not to be the subject of Neighbourhood Plans on the basis of the comparative scoring criteria contained in the Housing Sites Topic Paper. Where neighbourhood plans are to be provided then the plan now indicates the overall target. **MM10** sets out a new policy RUR1, which sets out the revised list of Key Hubs, the amount of development that they should individually provide and the location of proposed development sites in those that are not to be the subject of a neighbourhood plan. This change enables the revised OAHN to be achieved in the context of the Key Hubs in a sustainable way and this aspect of the policy to be positively prepared justified and effective.

### **Smaller Villages and Hamlets**

74. The changes to the number of Key Hubs have added fifteen more settlements to the list of Smaller Villages and Hamlets (**MM03**). The settlements in this category were identified on the basis that they are a coherent grouping of ten or more dwellings that were not higher order settlements. This seems to me to be one objective way of defining them and despite the representations, I do **not consider the Council's choice of methodology to be unsound or that it has misapplied its definition.**
75. Policy LS1-Locational Strategy, and Policy HS2 – Housing to Meet Local Demand (subsequently reworded to Housing in the Smaller Villages and Hamlets), said that development of an appropriate scale will be permitted in these settlements to support the development of diverse and sustainable

communities but without any reference as to what an appropriate scale was. On past evidence, this could have resulted in substantially more than the 10% of total dwellings, proposed to be allocated in this category of settlement, being provided. It also gave no guidance as to the expected form a particular development should take at these character diverse settlements. **MM03** amends this part of Policy LS1 to make it clear that the scale of development needs to have regard to the service function of the settlement, that the policy only applies to infill sites and rounding off or the re-use of traditional rural buildings and structures and that the proposal should reflect the existing built form of adjoining and neighbouring development. In doing so I consider this aspect of the policy to be positively prepared and justified.

76. **MM18** amends Policy HS2 to further reflect these changes and to clarify that a legal agreement restricting occupancy to those meeting the local occupancy criteria, defined in Appendix 6, will be needed in cases where permission is given for new housing development on greenfield sites in the smaller villages and hamlets. This change makes the policy effective.
77. The policies restrict market development to the reuse of previously developed land, whilst allowing housing to meet local demand on greenfield sites. However, they did not define previously developed land, neither were infill sites defined. It was also not clear exactly where the local occupancy criteria were to be applied. **MM03** also corrects these omissions. The revised policy HS2, which is now titled Housing in the Small Villages and Hamlets, confirms that local occupancy restrictions will not be applied where suitable housing comes forward on previously developed land. Following the above changes to Policy HS2 it is now sound.

## Rural area

78. Policy LS1 restricted development within the rural area to the reuse of traditional buildings or the provision of affordable housing. Some market housing may be acceptable if it facilitates the provision of a significant amount of affordable housing but the amounts were not specified. **MM03** relates the provision of market housing in this context to the criteria in Policy HS1- Affordable Housing, whereas **MM17** makes it clear that the market housing component should be small and restricted to locations within small villages and hamlets. **These changes enable the plan's policies, as applied to the rural area, to be effective.**
- 79. MMs 3-18** have made significant changes to the settlement hierarchy and the amount and location of development therein. They have also introduced a new policy RUR1, which redefines the Key Hubs. These changes were necessary to enable the development strategy advanced by Policy LS1 to be positively prepared, justified, effective and consistent with national policy and thereby sound. As a result of the changes, the distribution of development is **consistent with the plan's objectives and the guidance in the NPPG.**

## **Issue 4 Five Year Housing Land Requirement**

### **Does the plan provide for a continued supply of housing land that is likely to meet the requirement for each five year period and with the appropriate buffer?**

80. In order to ensure that the Council is able to identify and update annually a supply of specific deliverable sites, sufficient to provide a five year supply of housing land against its housing requirements throughout the plan period, the LP needs to be accompanied by an assessment that explicitly sets out what the five year requirement, and supply, is as close to adoption as possible.
81. The latest publication on housing land supply relates to April 2017. At that time, the latest comprehensive information about housing completions showed a deficit of 139 since 2014. In view of recent developer interest, which has led to a number of LP proposed housing sites being granted planning permission during the course of the Examination and work commencing on site, there is **no reason not to adopt the 'Sedgefield' approach to providing this shortfall i.e. within the next five years.**
82. Apart from in 2015-16, during the fifteen year period 2003 to 2018 at no time were more dwellings completed than the relevant annual targets and in most years the number fell far short. This suggests persistent under delivery and in consequence it is appropriate to apply a 20% buffer. Establishing the five year requirement (and supply situation) as at 1 April 2017 on this basis is therefore a sound approach.
83. The LP's annual requirement is 242 dwellings. With a 20% buffer and the **'Sedgefield' approach, the total five year requirement** is thus 1687. A revised assessment of windfalls, which I am satisfied is compelling evidence, suggests that up to 50 d.p.a. are likely to be achieved, although the 2017 assessment **only includes 150. The Council's Housing Land Supply Statement** includes a rigorous assessment of all of the sites put forward to make up the five year supply. Overall this indicates a deliverable dwelling supply of 2295, which represents 6.80 years. I consider this assessment to be sound.

## **Issue 5 – Employment:-**

### **Does the Plan identify sufficient employment land and contain effective and justified policies to ensure that it positively and proactively encourages sustainable economic growth?**

84. Policy EC1 - Employment Land Provision, makes provision for 24.38 ha of employment land to be developed for employment purposes in order to **contribute towards meeting the District's needs**, including its aspirational proposal to grow the economy during the plan period. It is based on the Employment Land Review. Most of this land is in or around Penrith, particularly at an extension to the Gilwilly Industrial Estate and at Skirsgill.
85. Penrith, although in a remote part of England, is well connected by the M6 and A66, as well as the West Coast express railway line. It is also situated at the heart of a very attractive area of countryside with extensive opportunities for outdoor recreation. It is a desirable area within which to live and work. Although ambitious, with the right promotion and investment, I can see no

**reason why the Council's** employment growth aspirations could not be realised. Both employment sites are easily accessible to both national routes via M6 Junction 40.

86. I am satisfied that for the short term, at least, the **plan's employment** proposals are adequate and flexible enough **to meet the Council's aspirations** for employment growth. Whether they are adequate in the long term will depend upon the nature of new employment attracted to Penrith and its land requirements. Depending upon this outcome it may be necessary to look for a further site but at the present time this would be speculation and is better left to a review of the plan.
87. Whilst I note the accessibility advantages of M6 Junction 41, this is within a rural area and detached from Penrith, being some distance to its north. Given the adequacy of the current proposals to meet needs in the short term at least, I have not been persuaded that there is any justification to promote land for employment development at this comparatively unsustainable location at the present time. I consider there to be sufficient flexibility within the current proposals to meet the land demands of employment growth at Penrith for the foreseeable future. In the longer term the Council has aspirations for business development to occur at Newton Rigg College, which is better related to Penrith than is M6 Junction 41.
88. The decision to allocate land within the key hubs has resulted in a requirement to allocate employment at some of them, if there are appropriate locations. **MM10** allocates an additional 2.92 ha of land for employment development at Brough and Tebay, whilst MM20 changes the overall district wide allocation to 27.3 ha. With this change I am satisfied that Policy EC1 is positively prepared, justified, effective and consistent with national policy. The Plan now identifies sufficient employment land and contains effective and justified policies to ensure that it positively and proactively encourages sustainable economic growth.

## **Issue 6 - Area of Outstanding Natural Beauty**

### **Does the plan adequately protect the scenic beauty of the North Pennines Area of Outstanding Natural Beauty and its other environmental assets?**

89. Policy ENV3 - The North Pennines AONB, seeks to ensure that development would conserve and enhance the natural beauty of the designated area and not cause harm to its distinctive character. Major developments will only be allowed where it can be demonstrated that four criteria are met.
90. NPPG at paragraph 115 stresses that the conservation of cultural heritage is an important consideration. The policy made no reference to this. At paragraph 116 it also sets out three assessments that should be considered when assessing whether major developments are in the public interest. The policy as drafted did not adopt this approach; neither did it refer to the North Pennines AONB Planning Guidance. **MM21** revises the policy to enable it to conform to national policy for AONBs. With these changes the plan will adequately protect the scenic beauty of the North Pennines Area of Outstanding Natural Beauty and its other environmental assets.

## Issue 7 - Development Management

### Are the policies that establish the development principles to guide new development positively prepared, effective and consistent with national policy?

91. As written, Policies DEV1 – General Approach to New Development, DEV3 – Transport, Accessibility and Rights of Way, and DEV4 – Infrastructure and Implementation, did not reflect the guidance in the NPPF, in that the former did not properly reflect the presumption in favour of sustainable development contained in paragraph 14. In the other two, the requirement in paragraph 32 to only prevent or refuse development on transport grounds where the residual cumulative effects are severe was also overlooked. **MM12, MM14** and **MM15** remove these inconsistencies and enable these policies to be in accordance with national policy.
92. Policy DEV2 – Water Management and Flood Risk, requires all new development to meet three criteria. The third involves all major development being informed by a flood risk assessment but major development was not defined. The policy also required all such development to incorporate Sustainable Drainage Systems (SuDS). At the Development Management Hearing, the Council accepted that there could be circumstances where major development may not be able to incorporate SuDS systems. **MM13** changes Policy DEV2 by referring to a definition of major development, which has been inserted into Appendix 2. Additionally, whilst establishing a presumption against the discharge of surface water to the sewage network it also now requires SuDS to be used at all new development where they are practicable. Furthermore, all applications for major development are to be referred to the Lead Local Flood Authority, which has recently come into existence. As a result of these changes I consider the policy to be now justified.
93. Policy DEV4 – Infrastructure and Implementation, referred to the need for developer contributions to fund new infrastructure but was vague on the circumstances where they would be required and the different methods of provision. The policy would not therefore have been effective. It also failed to refer to the need to assess the economic viability of proposals and the means by which this would be achieved and contributions negotiated. The policy was **also silent on the Council's intention to review the need for a Community Infrastructure Levy**. **MM15** corrects these omissions such that the policy is now positively prepared and effective.
94. Among other matters Policy DEV5 – Design and New Development, referred to the assessment of design by using a traffic light system against the principles **set out in the twelve 'Building for Life' guidelines**. Whilst the principles can be used to establish a framework for discussion about the design of a particular scheme, its methodology does not provide a basis for a definitive judgement of a scheme. It is therefore inappropriate to use the framework as the sole means of judging the appropriateness of a particular scheme or to prescriptively require applicants to demonstrate how their proposals meet the principle. **MM16** removes the references to 'Building for Life' and makes the policy justified.

95. In setting out the considerations, which new residential schemes will be expected to address when considering the nature of the development, Policy HS4 – Housing Type and Mix, does not refer to the economic viability of the land as required by NPPG Paragraph 159. Additionally it does not make it clear that there needs to be evidence in relation to each of the five criteria set out. These omissions are corrected by **MM19**, which enables the policy to comply with national policy. With these changes the policies that establish the development principles to guide new development are sound.

## **Issue 8 - Environmental Protection**

### **Are the policies that seek to protect the environment effective and positively prepared?**

96. Policy ENV6 – Renewable Energy, supports the provision of renewable and low carbon energy schemes where 11 criteria are met. Criteria 8 referred to wind energy development. **Development has to be located in a 'suitable area'**. Suitable areas are identified on the Policies Map. Since they were identified, the Yorkshire Dales National Park has been extended into Eden District and the Lake District National Park has also been extended within Eden District. The impact of wind developments on the setting of the North Pennines AONB was also overlooked. In consequence the Council commissioned a new study to examine and define new suitable areas in the context of the new extent of the designated areas and their settings. The Policies Map will be revised to indicate the new areas.
97. Additionally, the government through a written ministerial statement introduced a requirement for it to be demonstrated that the planning impacts identified by affected local communities have been fully addressed. **MM22** amends Policy ENV6 to reflect this new consideration. As a result of the changes, the policy is now justified and in accordance with national policy.

## **Issue 9 - Historic Environment**

### **Does the plan effectively protect the historic environment and is it compliant with national policy?**

98. In section 12 the NPPF urges local planning authorities to set out a positive strategy in their local plans for the conservation and enjoyment of the historic environment. It sets out matters that should be taken into account when considering heritage issues and determining planning applications that affect them. Policy ENV10 – The Historic Environment, sought to translate this into guidance for those formulating development proposals that impact upon heritage assets. **However, the policy's wording did not reflect the thrust of the guidance in the NPPF and NPPG. MM23 replaces the policy's text with a format that better reflects the guidance in the NPPF.** In response to additional representations, it also sets out the key elements of Eden's historic heritage in the supporting text. The revised policy is now effective and consistent with national policy on heritage matters.

## **Issue 10 - Community infrastructure**

### **Does the plan appropriately protect all community facilities?**

Policy COM2 – Protection of Open Space, Sport, Leisure and Recreation Facilities seeks to prevent the loss of these facilities unless the loss is unavoidable or benefits of the development outweigh the loss. The principle is supported by the NPPFs desire to guard against the unnecessary loss of valued facilities and services and the general thrust of Section 8. However, the policy omits any reference to cultural facilities and in referring to unavoidable loss without any explanation, as to what this could mean, it is not effective. **MM24** corrects the omission and removes the reference to unavoidable loss. The revised policy is effective and consistent with national policy. It will now appropriately protect all community facilities.

## **Assessment of Legal Compliance**

99. My examination of the legal compliance of the Plan is summarised below. I conclude that the Plan meets them all.
100. **The Eden Local Plan has been prepared in accordance with the Council's Local Development Scheme.**
101. Consultation on the Local Plan and the MMs and FMs was carried out in **compliance with the Council's Statement of Community Involvement.**
102. Sustainability Appraisal has been carried out and is adequate.
103. The Habitats Regulations Appropriate Assessment Scoping Report, July 2014, set out a full assessment of the potential impacts of the plan on the Natura 2000 network of European protected sites to determine whether there would **be any 'likely significant effects'**. It concluded that with appropriate mitigation, no policies or proposals within the LP were likely to have a significant effect on the integrity of any European site (either individually or in combination with any other plan or project) and consequently there was no requirement to carry out an Appropriate Assessment. An addendum to the Assessment was undertaken in June 2017. This looked at the impact of the schedule of Proposed Modifications in the context of the Habitats Regulations. Both documents found an absence of pathways for potential impacts and/or the existence of mitigation measures to negate any potential impacts.
104. Following the result of the case of 'People Over Wind, Peter Sweetman v Coillte Teoranta' in the Court of Justice of the European Union, the Council decided to undertake a revised 'Screening Assessment'. It identified likely significant effects on the River Eden SAC following the development of four housing and one employment site to the east and south of Penrith.
105. The subsequent Appropriate Assessment considered these likely significant effects and identified possible mitigation for them. It concluded that the mitigation would be sufficient to prevent an adverse effect on site integrity provided the following Eden District Council policies are adhered to: COM2, COM3, DEV2, DEV5, ENV1, ENV5 and ENV9 (Site-Specific Principles of



Development identified for strategic sites, in relation to sustainable water management, provision and protection of open space, sport, leisure and recreation facilities and pollution control). These policies can be enforced through the planning system, and therefore are a reliable and proven system for implementing the mitigation.

106. Therefore, it is possible to conclude with reasonable certainty that the Local Plan as a whole is unlikely to have any significant effects on European or International Sites and their designated features
107. The Local Plan includes policies designed to secure that the development and **use of land in the local planning authority's area contribute to the mitigation** of, and adaptation to, climate change. In particular Policies DEV1, DEV2, ENV5 and ENV6 will make a significant contribution towards this but other policies will assist.
108. **During the Plan's examination, in August 2016, the extent of the Lake District National Park within Eden District was increased and the Yorkshire Dales National Park was extended into Eden District.** Eden District Council is no longer the local planning authority for the affected areas. However, the Council and the National Park Authorities have agreed that the policies in this plan will apply to those areas and will continue to be used by the Park Authorities until they are replaced by policies in new National Park Local Plans at some point in the future. **MM01** amends paragraphs 1.2.1 and 1.2.2 to give effect to these legal changes. It enables the plan to be legally compliant in this respect.
109. The Local Plan complies with all relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

## **Overall Conclusion and Recommendation**

110. The Plan had a number of deficiencies in respect of soundness for the reasons set out above, which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
111. The Council has requested that I recommend MMs to make the Plan sound and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix, the Eden Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*M Middleton*

Inspector

This report is accompanied by an Appendix containing the Main Modifications.