

# **DEVONSHIRE PARK NEIGHBOURHOOD DEVELOPMENT PLAN 2014-2030**

**SUBMISSION VERSION**

**A Report to Wirral Council of the Examination into the  
Devonshire Park Neighbourhood Development Plan**

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*Argyle Planning Consultancy LTD*  
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## Summary and Overall Recommendation

0.1 Following my examination of the Devonshire Park Neighbourhood Development Plan (DPNDP), including a site visit to the Neighbourhood Area on 27 March 2015, it is my view that the DPNDP reflects the views of the community and sets out clear plan aims and a small suite of policies to manage housing development in the Neighbourhood Area.

0.2 However my report highlights a number of areas where I consider the wording of the plan as submitted is not wholly in accordance with one or more of the basic conditions. In particular there are some areas of tension with National policy and guidance and with the requirement to be in general conformity with the Wirral Unitary Development Plan.

0.3 I have therefore recommended a number of modifications to the Plan which should be made before the plan can proceed to Referendum. These are intended to ensure that, first and foremost, the Plan can meet the Basic Conditions.

0.4 In proposing the modifications I have tried to ensure that the integrity and value of the DPNDP and its aims are retained and that the intention of neighbourhood planning, where the community's wishes should be central to the plan, is honoured.

0.5 It is possible that the Devonshire Park Neighbourhood Planning Forum will be disappointed that there is a need to modify. However by its nature the examination has to be rigorous. Any criticism is not at all to undermine the huge community effort that has gone into the plan over a number of years. Rather the purpose of the examination is to ensure that the Neighbourhood Plan is as robust as possible and that it can play its part in planning decisions and managing change in the future in an effective way.

0.6 In addition to the recommended modifications it should also be noted that there will be a number of consequential changes to the supporting text and referencing that will be needed as a result of making the modifications. It will also be necessary to ensure all document referencing is up to date. I have not highlighted every one of these changes, but these are matters that will need remedying in the final version of the Plan.

0.7 Subject to the recommended modifications in the report being completed I am satisfied that the DPNDP:

- has regard to national policies and advice contained in guidance issued by the Secretary of State;
- will contribute to the achievement of sustainable development;
- is in general conformity with the strategic policies of the development plan for the area;
- does not breach, and is compatible with European Union and European Convention on Human Rights obligations.
- is not likely to have a significant effect on a European Site either alone or in combination with other plans or projects.

0.8 Subject to the recommended modifications, the DPNDP also complies with the legal requirements set out in Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990.

0.9 With the modifications in place the Devonshire Park Neighbourhood Development Plan will meet the Basic Conditions and can proceed to a Referendum. When that takes place I also recommend that the Neighbourhood Area is taken as the area for the Referendum.

**Peter Biggers**  
**May 2015**  
**Argyle Planning Consultancy Ltd**

## 1. Introduction

### 1.1 Background Context

1.1.1 This Report provides the findings of the Examination into the Devonshire Park Neighbourhood Development Plan (referred to as the DPNDP throughout this report).

1.1.2 The DPNDP was produced by the Devonshire Park Planning Forum (the Forum) in consultation with the community, interested parties and local stakeholders.

1.1.3 Devonshire Park is one of the older residential areas in the historic town of Birkenhead. It has a unique identity born of its heritage and character. The area is one of four remaining examples of Birkenhead's Victorian Villa Estates. Devonshire Park is a peaceful enclave, typified by broad streets with well-spaced large, Victorian and early Edwardian houses, alongside some contemporary properties built post 1945. The houses are generally 2-3 storey, in brick and render, set back from the road, enhanced by attractive gardens and original features such as York stone pavements, ornate Victorian ironwork and garden walls built with Sherwood sandstone.

1.1.4 The area remains almost exclusively in residential use but has seen significant change in recent years as a significant proportion of the large Victorian houses, typically consisting of 4-7 bedrooms, has been converted to flats or bedsits with resultant impacts on the character and quality of the area.

1.1.5 This Examiner's Report provides a recommendation as to whether or not the DPNDP should go forward to a Referendum. Were it to go to Referendum and achieve more than 50% of votes cast in favour of it, then the DPNDP would be '**made**' by Wirral Council. The DPNDP would then be used to determine planning applications and guide planning decisions in the Devonshire Park Neighbourhood Area.

### 1.2 Appointment of the Independent Examiner

1.2.1 I was appointed by Wirral Council, with the consent of the Forum, to conduct the examination and provide this Report as an Independent Examiner. I am independent of the qualifying body and the Local Authority. I do not have any interest in any land that may be affected by the DPNDP nor do I have any professional commissions in the area currently and I possess appropriate qualifications and experience. I have planning and development experience, gained over 30 years across the public and private planning sectors and am a member of the Royal Town Planning Institute and a member of the National Panel of Independent Examiners Referral Service run by the RICS.

### 1.3 Role of the Independent Examiner

1.3.1 It is the role of the Independent Examiner to consider whether a neighbourhood plan

meets the “Basic Conditions.” The Basic Conditions are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (TCPA) as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 (PCPA). In order to meet the Basic Conditions, the making of the DPNDP must:

1. Have regard to national policies and advice contained in guidance issued by the Secretary of State;
2. Contribute to the achievement of sustainable development;
3. Be in general conformity with the strategic policies of the development plan (see Development Plan Status below) for the area.
4. Not breach, and must be otherwise compatible with, European Union (EU) and European Convention on Human Rights (ECHR) obligations.

1.3.2 Regulation 32 of the Neighbourhood Planning (General) Regulations 2012 (as amended) sets out a further basic condition for Neighbourhood Plans in addition to those set out in primary legislation and referred to in the paragraph above - that is:

5. The making of the Neighbourhood Plan is not likely to have a significant effect on a European Site (as defined in the Conservation of Habitats and Species Regulations 2012) either alone or in combination with other plans or projects.

1.3.3 In examining the Plan, I am also required, under the legislation to establish whether:

- The Neighbourhood Plan has been prepared and submitted for examination by a qualifying body as defined in Section 61F of the TCPA as applied to neighbourhood plans by section 38A of the PCPA.
- The Neighbourhood Plan has been prepared for an area that has been designated under Section 61G of the TCPA as applied to neighbourhood plans by section 38A of the PCPA.
- The Neighbourhood Plan meets the requirements of Section 38B of the PCPA (the Plan must specify the period to which it has effect, must not include provisions relating to ‘excluded development’, and must not relate to more than one Neighbourhood Area) and
- The policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of the PCPA Section 38A.

1.3.4 I have examined the DPNDP against the Basic Conditions above and, as Independent Examiner, I must make one of the following recommendations:

- a) that the Plan should proceed to Referendum, on the basis that it meets all legal requirements;
- b) that the Plan once modified to meet all relevant legal requirements should proceed to Referendum;
- c) that the Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.

1.3.5 If I recommend that the Plan should go forward to Referendum, I am also then required to consider whether or not the Referendum Area should extend beyond the Devonshire Park Neighbourhood Area to which the Plan relates. I make my recommendation on the Referendum Area at the end of this Report.

1.3.6 The role of the independent examiner is not to comment on whether the plan is sound or how the plan could be improved but rather to focus on the compliance with the basic conditions and modifications that may be necessary to comply.

## **2. The Examination Process**

2.1 It is a general rule that neighbourhood plan examinations should be held without a public hearing ie by written representations only. However, according to the legislation, when the Examiner considers it necessary to ensure adequate examination of an issue, or to ensure a person has a fair chance to put a case, a public hearing may be held.

2.2 With regard to the above and on consideration of the evidence before me, I am satisfied that there is no need for a hearing in respect of the DPNDP and I confirm that *all* representations on the Neighbourhood Plan received at the Regulation 16 Publicity Stage have been taken into account in undertaking this examination.

2.3 I held a briefing meeting with Wirral Council and the Forum representatives to clarify matters of fact having completed the reading of neighbourhood plan documents and undertook an unaccompanied site visit around the neighbourhood area on 27 March 2015. I am grateful to both the Forum and the Council for facilitating this. At this meeting I requested that the Council provide the latest evidence regarding housing needs and housing land supply to support the documents provided to me.

2.4 In undertaking this examination, I have considered each of the following documents in addition to the Submission Version of the Devonshire Park Neighbourhood Development Plan dated November 2014:

1. National Planning Policy Framework (The Framework) (2012)
2. The National Planning Practice Guidance
3. Town and Country Planning Act 1990 (as amended)
4. The Planning and Compulsory Purchase Act 2004 (as amended)
5. The Localism Act (2011)
6. The Neighbourhood Planning (General) Regulations (2012) (as amended)
7. Wirral Unitary Development Plan (2000)
8. Joint Waste Local Plan for Merseyside and Halton (2013)
9. Wirral Core Strategy Local Plan Proposed Submission Draft (2012)
10. Devonshire Park Neighbourhood Development Plan - Basic Conditions Statement November 2014
11. Devonshire Park Neighbourhood Development Plan - Consultation Statement November 2014

12. Devonshire Park Neighbourhood Development Plan - Sustainability Assessment Report November 2014
13. Devonshire Park Neighbourhood Plan – HRA Screening Report November 2014 (and revision 2015)
14. Devonshire Park Neighbourhood Plan – SEA Screening Report November 2014 (and revision 2015)
15. Devonshire Park Neighbourhood Area Map
16. Devonshire Park Neighbourhood Plan - Background Data Tables
17. Devonshire Park NP Examination Additional Information 30 March 2015
18. Representations received during the Regulation 16 publicity period post submission between 8 December 2014 and Friday 6 February 2015
19. Wirral Council Report of Responses to Post Submission Consultation (March 2015)

### **3. Public Consultation**

#### 3.1 Background

3.1.1 An accessible and comprehensive approach to public consultation is the best way to ensure that a neighbourhood plan reflects the needs and priorities of the community.

3.1.2 The Forum submitted a Consultation Statement, as required by regulation 15 of the Neighbourhood Planning (General) Regulations 2012, to Wirral Council. This document sets out who was consulted and how, together with a brief outline on the outcome of the consultation and what action was taken in response to representations received. The consultation process drew on well-established community networks in Devonshire Park.

3.1.3 Public consultation on the DPNDP commenced with an initial consultation in 2011. This was followed by various consultation stages, culminating in the formal, Regulation 16 publicity stage, the six week consultation period post submission of the plan from Monday 8 December 2014 to Friday 6 February 2015 which resulted in 10 consultation responses. These are referred to in section 5 and 6 below.

#### 3.2 Devonshire Park Neighbourhood Development Plan Consultation

3.2.1 As a Frontrunner Neighbourhood Plan, the Devonshire Park Residents Association, prior to designation of the qualifying body and neighbourhood area for the Plan, were keen to proceed. It undertook an initial consultation over August and September 2011 to establish, through a questionnaire survey and 8 public meetings, the issues facing the area. 118 written responses were received and I am satisfied from the consultation statement appendices that this early stage engaged a wide cross section of the community. It achieved its objective of providing a foundation for the plan.

3.2.2 Using the results from this consultation a draft plan was prepared and consulted on again by the Residents Association in February 2012 which generated 8 comments and responses from 4 statutory consultees. I am satisfied from the consultation statement

appendices that the consultation was appropriately undertaken. The response rate was small but there is nothing to indicate that this was a result of a failing in the consultation process. The Forum and Wirral Council consider it is more a result of a successful first stage consultation and general satisfaction with the plan.

3.2.3 More significantly however it is not possible to tell from the appendices to the consultation statement what happened to these responses and how they were reflected in the subsequent pre-submission draft especially those that were critical of what the plan was trying to achieve.

3.2.4 In response to the enactment of the Localism Act 2011 and the publication of the Neighbourhood Planning Regulations in April 2012 the Association then applied for designation as a Neighbourhood Forum and for the Neighbourhood Area. In order to comply with this significant change in the legislative background to neighbourhood planning the Forum then used the pre-designation plan and early consultation responses to prepare the pre submission draft plan.

3.2.5 It carried out the pre-submission consultation for 8 weeks between 31 May and 26 July 2013. The consultation letters went to 302 stakeholders including those in Schedule 1 of the Regulations and to all residents of the area via the Devonshire Park Newsletter as well as online consultation and press notices advertising the availability of documents locally. I am satisfied from the evidence in the consultation statement that the Forum has satisfactorily complied with regulation 14 of the Neighbourhood Planning Regulations controlling this stage.

3.2.6 The Neighbourhood Plan Regulations are part and parcel of Basic Condition No 1 and regulation 15 (2) sets out clearly what the consultation statement should include.

3.2.7 I am generally satisfied that the statement complies with regulation 15 (2), certainly in respect of the regulation 14 consultation. However, as pointed out at paragraph 3.2.3 above, it is not possible to tell from the statement how responses to the earlier pre-designation draft plan were used and this should be rectified in paragraphs 5 or 7 of the consultation statement.

### **Recommendation 1**

**Paragraphs 5 / 7 of the Consultation Statement should be expanded to summarise what the main concerns were at the pre-designation plan consultation and the main areas of change that resulted.**

*Note - The amended statement should be published online as part of the Council's decision statement under Regulation 18(2) prior to progressing to referendum so that those voting can be reassured that the DPNDP properly reflects consultation carried out.*

## **4. Preparation of the Plan and Legislative Requirements**

In terms of the procedural tests set out in paragraph 1.3.3 of this report my findings are

as follows:

#### 4.1 Qualifying body

4.1.1 An application was made by the Devonshire Park Residents Association on 30 November 2012 to designate a neighbourhood forum - the Devonshire Park Neighbourhood Planning Forum - as the *qualifying body*. This was approved by Wirral Council on 30 April 2013 following consultation.

4.1.2 The Forum is representative of the wider membership of the Residents' Association comprising residents, business representatives, the church and landlords in the area. I am satisfied that the designation requirements set out in the Localism Act (2011) and in Section 61F(5) of the Town and Country Planning Act 1990 (as amended) and in regulations 8, 9 and 10 of the Neighbourhood Planning (General) Regulations 2012 have been met. Devonshire Park Neighbourhood Planning Forum is therefore the *qualifying body* for leading the DPNDP.

#### 4.2 Plan area

4.2.1 The Devonshire Park Neighbourhood Area coincides with the boundary of the Devonshire Park Estate. An application was made by the Devonshire Park Residents' Association on 30 November 2012 to designate the Devonshire Park Neighbourhood Area. This was also approved by Wirral Council on 30 April 2013 following consultation and the Neighbourhood Area was designated.

4.2.2 This satisfied the requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended) and regulations 5, 6 and 7 of the Neighbourhood Planning (General) Regulations 2012.

#### 4.3 Plan period

4.3.1 A neighbourhood plan must specify the period during which it is to have effect. The DPNDP clearly states on its title page that it covers the period 2014 to 2030 to coincide with the emerging Wirral Core Strategy Local Plan (WCSLP). It therefore satisfies this requirement.

#### 4.4 Excluded development

4.4.1 The Plan does not include policies or proposals that relate to any of the categories of excluded development or to matters outside the Neighbourhood Area. In these respects it therefore meets requirements.

#### 4.5 Development and use of land

4.5.1 The Neighbourhood Plan should only contain policies relating to development and use of land. Subject to the modifications proposed in section 6 below the DPNDP complies with this requirement.

## 4.6 Plan Publication Following Submission

4.6.1 Wirral Council undertook a final validation check of the DPNDP on submission in November 2014 and were satisfied that the Plan could proceed to be publicised under Regulation 16 and proceed to this independent examination under Regulation 17.

## **5. The Basic Conditions – General Overview**

### 5.1 National policy and advice

5.1.1 The main document that sets out national policy is the *National Planning Policy Framework* (the NPPF) published in 2012. In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the strategic development needs set out in Local Plans, plan positively to support local development, shaping and directing development that is outside the strategic elements of the Local Plan.

5.1.1 The NPPF also makes it clear that neighbourhood plans should be aligned with the strategic needs and priorities of the wider local area. In other words neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. They cannot promote less development than that set out in the Local Plan or undermine its strategic policies.

5.1.2 The NPPF indicates that plans should provide a framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.

5.1.3 National advice on planning is set out in on-line *Planning Practice Guidance* (PPG) which includes specific advice regarding neighbourhood plans.

5.1.4 I consider the extent to which the plan meets Basic Condition No 1 in section 6.

### 5.2 Sustainable development

5.2.1 A qualifying body must demonstrate how a neighbourhood plan contributes to the achievement of sustainable development. The NPPF as a whole constitutes the Government's view of what sustainable development means in practice for planning. The NPPF explains that there are three dimensions to sustainable development: economic, social and environmental.

5.2.2 Whilst there is no legal requirement to do so, a Sustainability Assessment (SA) was carried out in respect of the DPNDP, in conjunction with screening opinions for Strategic Environmental Assessment and Habitat Regulations Assessment. The SA was carried out by Wirral Council for the Forum following an accepted methodology established for the Council's own development plan documents. The statutory consultees at the Regulation 16 publicity stage were satisfied that the SA as undertaken was satisfactory and did not comment on it.

5.2.3 The SA presents a clear assessment of how the Plan's policies perform against a comprehensive suite of 25 sustainability objectives. The findings of the appraisal were that the policies had no likely negative impacts on the sustainability objectives and no need for mitigating changes. In general I am satisfied that the sustainability appraisal process carried out was a robust one and overall the results support the DPNDP as a sustainable plan but I consider detailed points regarding the plan's ability to meet this Basic Condition No 2 in section 6 below.

### 5.3 The Development Plan

5.3.1 The adopted development plan in force for the Wirral area remains the Wirral Unitary Development Plan (UDP). Therefore in terms of assessing the plan against Basic Condition No 3 it is the UDP that must be used. However this was adopted in 2000 and is now quite dated – preceding the NPPF.

5.3.2 The PPG explains that in these circumstances NDPs can be developed before or at the same time as the LPA is producing its new local plan. The UDP's replacement, the WCSLP, is well advanced and about to be republished with an expected submission for examination at the end of 2015. In view of this the Forum, in consultation with the Council, has collaborated, as advised in the PPG, to align the DPNDP with the policies and proposals of the WCSLP to minimize the possibility of any conflict in the future. I understand why in the circumstances it is reasonable and practical to seek to align the DPNDP with the WCSLP but the DPNDP cannot at this stage be tested for general conformity against the policies in the emerging WCSLP. It is however a requirement of the NPPF that plans are based on sound current reasoning and evidence and I will therefore be considering as part of my assessment against Basic Condition No 1 the extent to which the DPNDP has taken account of the most recent evidence available which will be the evidence base of the WCSLP.

5.3.3 The judicial review of the legal challenge to the Tattenhall Neighbourhood Plan made by Barrett Homes and Wainhomes Developments and the decision by senior High Court judge, Mr Justice Supperstone in 2014, clarifies and confirms the approach that must be taken in respect of Basic Condition No 3.

5.3.2 Wirral Council has confirmed that it has no concerns over the general conformity of the DPNDP with the strategic policies of the UDP. I have no reason to disagree subject to my consideration in further detail in Section 6 below on issues of general conformity.

### 5.4 European Union (EU) and European Convention on Human Rights Obligations

5.4.1 A neighbourhood plan must be compatible with European Union (EU) and European Convention on Human Rights obligations, as incorporated into UK law, in order to be legally compliant.

### Strategic Environment Assessment and Habitat Regulations Assessment

5.4.2 Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment has a bearing on neighbourhood plans. This Directive is often referred to as the Strategic Environment Assessment (SEA) Directive. Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC on the conservation of wild birds (often referred to as the Habitats and Wild Birds Directives respectively) aim to protect and improve Europe's most important habitats and species and can have a bearing on neighbourhood plans.

5.4.3 In addition to the SA of the DPNDP referred to above a screening opinion both in respect of the need for Strategic Environmental Assessment (SEA) and Habitat Regulation Assessment (HRA) was prepared by the Council in consultation with the statutory bodies. These concluded that there would be no need to carry out either assessment. The closest Natura 2000 site to the Devonshire Park NDP Plan Area is the Mersey Estuary SPA/Ramsar, which is approximately 1.6 km from the Plan Area boundary and the Mersey Narrows and North Wirral Foreshore SPA / Ramsar is approximately 3.2 km from the NDP Plan Area. There are no proposed developments other than the possibility of small scale residential windfall development in the plan.

5.4.4 The basic condition test is that the making of the neighbourhood development plan is "not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2010) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 either alone or in combination with other plans or projects." Given the nature and content of the Neighbourhood Plan it seems unlikely there would be any conflict.

5.4.5 However Natural England in response to the Regulation 16 publicity stage has said that, regardless of this, because there is no adopted higher order plan in place that has been through HRA (the new WCSLP is about to be submitted for examination and the HRA has not yet been carried out) it requires neighbourhood plans to safeguard the position.

5.4.6 In response the Council proposed, through a revised HRA screening opinion, to add an additional paragraph in the justification to Policy 1 of the DPNDP comprising the text below without which, Natural England could not agree a finding of no likely significant effect.

*"Development which may result in a likely significant effect on an internationally important site must be accompanied by sufficient evidence to enable the Council to make a Habitats Regulations Assessment. Adverse effects should be avoided, or where this is not possible they should be mitigated, to make sure that the integrity of internationally important sites is protected. Development which may adversely affect the integrity of internationally important sites will only be permitted where there are no alternative solutions and there are imperative reasons of overriding public interest, and where compensatory provision has been made. This also applies to sites and habitats outside the designated boundaries that support species listed as being important in the designations of the internationally important sites."*

5.4.7 In my opinion, as the effect of any development possible within Devonshire Park is unlikely to be significant either alone or in combination, the proposed text addition seems to be taking the precautionary principle to unnecessary extremes and will be completely superfluous when the HRA is carried out for the WCSLP later this year. Furthermore although Natural England state they would be happy for this to appear as text it seems to me to be a policy statement and therefore should normally form part of the policy. However I am reluctant to recommend a policy addition where the circumstance is extremely unlikely to ever arise and in a plan which is limited in its scope, as it would unnecessarily skew its content.

5.4.8 Nevertheless I recognise that the Council is in a difficult situation and cannot dismiss the views of a statutory consultee. Therefore I will recommend the proposed text addition to ensure Basic Condition 4 and 5 is met.

**Recommendation 2** Insert the proposed text above from English Nature at paragraph 7.6. Note the current text at 7.6 is proposed to be relocated see Recommendation 9 so the paragraph numbering will not be affected.

European Convention on Human Rights (ECHR)

5.4.9 The Human Rights Act encapsulates the Convention and its articles into UK Law.

5.4.10 In respect of Article 1 - the right of everyone to the peaceful enjoyment of possessions - although the DPNDP includes policies that would restrict development rights, this does not have a greater impact than the general restrictions on development rights provided for in national law. The restriction of development rights inherent in the UK's statutory planning system is demonstrably in the public interest by ensuring that land is used in the most sustainable way, avoiding or mitigating adverse impacts on the environment, community and economy.

5.4.11 In respect of Article 6 - the right to a fair and public hearing in determination of an individual's rights and obligations - the process for preparing the DPNDP is fully compatible with this Article, allowing for consultation on its policies at various stages, and this independent examination process.

5.4.12 In respect of Article 12 - the enjoyment of rights and freedoms without discrimination on any ground, the policies have been designed to achieve a more balanced and socially sustainable neighbourhood in Devonshire Park from which all residents should benefit. The Equalities Impact Assessment carried out in November 2014 endorses this view.

5.4.13 No consultee has specifically raised objections on the grounds of Human Rights obligations and I am satisfied that the Plan does not breach, and is otherwise compatible with, the ECHR.

### Other EU obligations

5.4.14 I am not aware of any other European Directives which apply to this particular Neighbourhood Plan and no representations at pre or post submission stage have drawn any others to my attention. Taking all of the above into account, I am satisfied that the DPNDP, with Recommendation 2 in place, is compatible with EU obligations and therefore with Basic Conditions Nos 4 & 5.

## **6. The Neighbourhood Plan – Assessment**

The Neighbourhood Plan is considered against the Basic Conditions in this section of my Report following the structure and headings in the Plan. Given my findings in section 5 above that the plan as a whole is compliant with Basic Conditions Nos 4 and 5, this section largely focusses on Basic Conditions No 1 (Compliance with National Policy), No 2 (Delivery of Sustainable Development) and No 3 (General Conformity with the Development Plan). (*These numbers are used throughout this section*)

Where modifications are recommended, they are presented and clearly marked as such and highlighted in bold print, with any proposed new wording in italics.

### 6.1 The General Form of the Plan

6.1.1 The structure of the DPNDP is broadly clear although the running order could be improved in respect of the sections on plan aims and plan delivery which I refer to in more detail below. The policies are clearly distinguished from their justification and each policy is accompanied by adequate supporting text.

6.1.2 The Framework indicates that plans should provide a practical basis within which decisions on planning applications can be made with a high degree of predictability and efficiency. It would be clearer and more consistent with this requirement, and aid the understanding and interpretation of the plan if the policy sections were titled to indicate the purpose of the policy. Thus for example Policy 1 may be “Design Principles” or “Re-establishing a high quality residential environment”. Policy 2 may be “Controlling the type of residential development” or “Controlling the residential development to maintain the character of Devonshire Park”.

**Recommendation 3 – Provide titling for each of the policy sections in the plan to explain their purpose as per the examples in paragraph 6.1.2.**

6.1.3 With this modification in place the plan will be clearer in its intent and better comply with Basic Condition No 1.

### 6.2 Section 1 - Introduction

6.2.1 The first section of the DPNDP sets out the contextual background about the neighbourhood plan area, its community and the governance arrangements for the Neighbourhood Plan.

6.2.2 The section is largely factual background. I do not propose any modifications other than a factual clarification at paragraph 1.17 to clarify that the Neighbourhood Area has also been formally designated which is a requirement of the Neighbourhood Planning Regulations and the plan should refer to this to fully comply with Basic Condition No 1.

**Recommendation 4:** Reword the last sentence of paragraph 1.17 to read :  
***“The application to designate the Devonshire Park Neighbourhood Planning Forum and Neighbourhood Area on 30 November 2012 was subject to public consultation and was confirmed by Wirral Council on 30 April 2013”.***

### 6.3: Section 2 – Devonshire Park Neighbourhood Plan Aims

6.3.1 Section 2 of the DPNDP sets out the plan aims based on the issues arising from the initial consultation stages.

6.3.2 The PPG states that *“Neighbourhood planning provides the opportunity for communities to set out a positive vision for how they want their community to develop... in ways that meet identified local need and make sense for local people”*. Accordingly there should be a clear thread in the DPNDP from the community’s identification of issues to the Plan’s vision and aims and into the policies and proposals. Although all the elements to comply with this are present within the DPNDP and the issues identified are reflected in the plan aims I am not convinced that the thread is entirely clear because the aims are presented in section 2 before there has been any real discussion of the issues in section 6. I consider that the ‘thread’ from issues to plan solutions via vision and aims needs to be as clear as it can be to fully comply with the PPG, and therefore with Basic Condition No 1.

**Recommendation 5:**

- A. Relocate Section 2 Devonshire Park Neighbourhood Plan Aims to follow the discussion of issues in Section 6.**
- B. Retitle Section 6 ‘Evidence and Neighbourhood Plan Issues’ or similar.**

6.3.3 The neighbourhood plan as stated above must be predominantly about development and use of land and I am therefore concerned that the first two aims are straying more into issues around social occupancy than is appropriate for a neighbourhood plan. I recommend that the first 2 aims therefore need to be slightly amended to focus on the development and use of the area but based on the aspirations of paragraphs 2.1 to 2.9 of the plan.

6.3.4 In respect of Aim No 1 paragraph 50 of the NPPF seeks the creation of sustainable communities. I am satisfied from the evidence there would appear to be a high proportion of smaller subdivided housing developing which if allowed to increase substantially will jeopardise the character of the plan area and therefore Aim No 1, slightly adjusted, can accord with the NPPF.

6.3.5 Aim No 2 is of greater concern and needs to refocus on the physical housing stock rather than its potential occupants to be compliant with Basic Condition No 1.

**Recommendation 6:**

**Reword plan aims 1 and 2 as follows :**

1. ***“Building a thriving, sustainable, resident community to invest in the long term future of Devonshire Park***
2. ***Maintaining the remaining stock of larger family sized housing and encouraging the development of new family sized housing where redevelopment and conversion opportunities arise.”***

6.3.6 With the modification at Recommendation 5 implemented, the issues and aims of the Plan will be a more coherent basis for the plan policies. With the modifications at Recommendation 6 (or similar rewording) the plan aims are more clearly focused on the development and use of land and therefore compliant with Basic Condition No 1.

6.3.7 The plan aims themselves as modified are consistent with 2 of the 3 strategic themes of the Wirral UDP at 1.25 in respect of regenerating the older urban area and improving and protecting the environment as well as generally with sustainability objectives at 1.72 and urban regeneration principles at 2.1. The Plan Aims as modified therefore comply with Basic Conditions Nos 2 and 3.

6.4 Sections 3 / 4 / 5 – The Planning Context for the DPNDP

6.4.1 Sections 3 / 4 / and 5 of the plan set out the planning context provided by the national, and local level planning policy including:

- National Planning Policy Framework
- Wirral Unitary Development Plan (UDP)
- Joint Waste Local Plan for Merseyside and Halton
- Wirral Core Strategy Local Plan

6.4.2 I note that the appendices to the basic conditions statement do include both a commentary on which are the strategic policies and the compliance of the plan to them. However, the Basic Conditions statement is not part of the neighbourhood plan and may not be available when people need to understand the policies of the Wirral UDP and the emerging WCSLP that will work alongside the DPNDP. The NPPF indicates that plans should provide a practical basis within which decisions on planning applications can be made with a high degree of predictability and efficiency therefore I recommend that the Wirral Council provide additional sections of text to add to section 4 and 5 briefly setting out the relevant strategic UDP and WCSLP policies for Devonshire Park. Without this the DPNDP does not fully meet the requirements of Basic Conditions Nos 1.

**Recommendation 7 – Wirral Council to provide additional text to sections 4 and 5 of**

**the DPNDP briefly summarising the strategic policies of the UDP and WCSLP that are relevant to Devonshire Park.**

**Relocate paragraph 4.2 introducing the WCSLP to section 5 which deals with the emerging plan and merge with paragraph 5.1.**

#### 6.5 Section 6 – Evidence

6.5.1 Section 6 presents the main evidence base of the plan and outlines the issues facing the plan area arising from earlier consultation stages. The section is largely factual and I have no recommendations to make in respect of it.

#### 6.6 Section 7 Neighbourhood Development Plan Policies

6.6.1 The NPPF at paragraph 184 states that the ambition of the neighbourhood (in this case to create a thriving sustainable community) should be aligned with the strategic needs and priorities of the wider local area. To that end I would have expected to see more of a discussion at the start of the policies as to what is involved in terms of creating a sustainable community in this part of Birkenhead and how this sits with the development strategy for the Wirral.

6.6.2 I accept that there is some discussion of the issues and plan response in the earlier sections of the plan but at present it is left unclear how the neighbourhood plan will align with the strategic regeneration needs and priorities of the wider Birkenhead area and therefore compliance with Basic Condition No 3 is similarly not clear.

6.6.3 It would be misleading for the DPNDP to consider its role as a residential neighbourhood solely against the development strategy set out in the now dated UDP and the NPPF and PPG do require neighbourhood plans to be based on clear and up to date evidence. Therefore to satisfy Basic Condition No 1 the plan should clearly set out its position and intentions against the evidence assembled for the WCSLP shortly to be submitted and its broad spatial strategy at Policy CS2.

6.6.4 The simplest way to resolve this gap in the plan is to include a new section at the start of section 7 which draws the threads together.

**Recommendation 8 - At the start of section 7, draft a new section of introductory text discussing the plan strategy to create a sustainable community based on the DPNDP aims and explaining the contribution the plan will make to the development strategy for this part of Wirral. The text should explain what a sustainable community for Devonshire Park means and lead into the policies. It could be entitled “*Building a Sustainable Community in Devonshire Park*” or similar.**

6.6.5 With this modification in place the starting rationale for the plan would be much clearer and would accord with Basic Condition No 1. It would also more clearly demonstrate general conformity with the development plan and with sustainability

objectives and therefore comply with Basic Conditions Nos 2 and 3.

6.6.6 There has been some criticism throughout the preparation of the plan from agencies representing landlords as well as from the Council's own Public Health Officers at the post submission publicity stage that the policies of the plan are unduly restrictive and represent unwarranted control.

6.6.7 A number of amendments have been made in preparing the submission draft DPNDP to resolve issues, for example around the earlier versions of the policies apparently trying to control development already permitted by the Use Classes Order.

6.6.8 Whilst these have addressed some of the practical difficulties with the policies it is necessary to consider whether the basic rationale of the plan is warranted in terms of the Framework.

6.6.9 One of the principal policies of the Framework in respect of housing is at paragraph 50 and is to deliver a wide choice of high quality homes and widen opportunities for home ownership. Thus at face value restricting the supply of smaller apartments through ongoing subdivision could be viewed to be in conflict. However paragraph 50 goes on to seek the creation of sustainable mixed communities and, in the circumstances where the evidence suggests that Devonshire Park is moving towards a situation where the mix is likely to threaten the sustainability of the community there is some justification.

6.6.10 Moreover the Framework takes a wide view of sustainability and makes it clear that the policies set out must be taken as a whole. As such the policies in section 7 on design are also relevant to the appropriateness of the policies in the DPNP. Paragraph 58 supports policies to protect the character of the area and, whilst I acknowledge that the DPNDP policies will not necessarily optimise the potential of the area as a sustainable location to accommodate development, the policies respond well to all other aspects of the NPPF at Paragraph 58.

6.6.11 I have considered the points raised by Wirral Public Health Officers about the thrust of the plan that it is unnecessarily restrictive in its control in respect of flatted accommodation and HMOs in particular and that the plan will prevent need in these sectors and also need for residential institutions and hostels being met in the plan area. However with respect to the former (covered in DPNDP Policy 2) change of use to small HMOs within Use Class C4 from dwelling house Use Class C3 is permitted within the Use Classes Order and Policy 2 in any event allows for this sort of development in certain circumstances. Similarly, DPNDP Policy 3 would allow a residential institution or hostel to be developed in certain circumstances.

6.6.12 Accordingly I am satisfied that the underlying rationale of the policies is warranted and as proposed to be modified the policies are not unduly restrictive.

## **Policy 1**

6.6.13 The purpose of DPNDP Policy 1 is two-fold, firstly to encourage development of dwelling houses as distinct from other forms of flatted accommodation either through conversion or small scale redevelopment and secondly to set out the design principles that should apply to this and other development.

6.6.14 The focus on 'dwelling houses', although somewhat unusual, is warranted for two main reasons. Firstly as above the evidence base does demonstrate both an expanding population in Devonshire Park which is a direct result of intensification of development through subdivisions of larger properties and a high level of one person households together with an unusually high level of flatted accommodation. There is reasonable evidence on the ground within Devonshire Park that this intensification of use of buildings is resulting in a change of character in the estate. Secondly the evidence provided to me from the Council in the Strategic Housing Market Assessment 2010 does demonstrate that in the market sector and in the affordable intermediate sector the most significant need is in respect of 3 bedroom houses, at 44% and 45% respectively, not flats or apartments. Policy 1 is not specific on the size of dwelling house although the supporting text is clearly encouraging family sized housing. This and the fact that Policy 2, in appropriate circumstances, would not preclude smaller accommodation continuing to be provided through subdivision means that the first part of Policy 1 is justified notwithstanding the Framework's objective to secure a mix of housing.

6.6.15 It is clear from the subsequent policies of the DPNDP however that the criteria of Policy 1 are intended to apply to all development in the plan area. That being the case and in line with the requirement in the PPG that policies in a neighbourhood plan should be clear and unambiguous and drafted with sufficient clarity that a decision maker can apply them consistently, the criteria in Policy 1 should be separated from the first part of the policy. In addition the supporting text at paragraph 7.4 needs to make clear that these design principles will apply to all development not just dwelling houses.

6.6.16 The justification to the Policy at 7.6 was added in response to comments at the pre submission stage that terms were being introduced without adequate definition. Whilst I have no concern about the definition in paragraph 7.6, other than the need to refer to the GPDO 2015, Policy 1 would be clearer, in line with the PPG, if the definition immediately followed the text within the policy box.

## **Recommendation 9**

**i) – Entitle the first part of Policy 1 “A” and reword line 3 and 4 to read :**

***“....subject to the design criteria in part B being satisfied.”***

**ii) Insert new line after “Villa Estate” to read :**

***“B – All development within Devonshire Park will be required to meet the following design criteria in order to restore and preserve the predominant character of the Villa Estate:***

**(1).....etc**

- iii) Add at the end of the Policy (within the policy box) the text from paragraph 7.6 but corrected to refer to the GPDO 2015 which became operative on 15 April 2015. The definition in the consolidated GPDO for a dwelling house remains as before. Delete the former paragraph 7.6.
- iv Insert at the start of paragraph 7.4 – *“Part B of the policy sets out the design principles necessary in order to restore and preserve the character of the estate. Planning applications will need to show how all future development.....”*

6.6.17 With these modifications Policy 1 will meet Basic Condition No 1. The SA confirms that the policy performs well against the sustainability objectives and the modifications proposed will not alter that. I am not persuaded that the social inclusion objectives have as positive an outcome as the SA proposes because of the policy’s selective support for dwelling houses but as discussed above there is justification for this in respect of protecting the character of the area. Policy 1 therefore meets Basic Condition No 2. Policy HS4 of the UDP sets out the criteria for all new housing development and the requirements of Policy 1 of the DPNDP are in general conformity with it. Basic Condition No 3 is therefore met.

### **Policy 2**

6.6.18 The fundamental premise of the Framework is a presumption in favour of development and paragraph 49 of the Framework expressly applies this to applications for housing and therefore to the policies that seek to control housing development. There is therefore a tension with Basic Condition No1 where the policy is expressed in the negative. I accept that the Forum and community want tight control on the further development of flatted accommodation and in particular HMOs however at paragraph 16 on neighbourhood planning the Framework states that neighbourhood plans should plan positively to support local development. The policy would work just as well expressed in the positive subject to the criteria and in that way would better comply with Basic Condition No 1. I accept that Policy HS14 of the UDP in respect of HMOs is expressed in the negative but this significantly predates the Framework and its presumption in favour of development. Policy 2 should therefore be modified to the positive but could use the phrase “will only be permitted.... where the following criteria are met” in order to reflect the desired control.

6.6.19 The PPG requires that policies in a neighbourhood plan should be clear and unambiguous. They should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. Although it can be construed from the first part of Policy 2 what the need in criterion (1) of Policy 2 relates to, it is not precise and the criterion should spell out that the evidence of need is for small flatted accommodation and houses in multiple occupation.

6.6.20 The justification to Policy 2 in paragraph 7.7 starts off with the concerns about the impact of intensification of use in converted and sub-divided dwellings on residential amenity and living conditions for those in neighbouring properties. However what reads like a policy requirement in the justification does not feature in the Policy itself. Again, if the policy base is to be a robust and clear means of addressing the issues and concerns, the

Policy criteria need to reflect the justification. There needs therefore to be an additional criterion.

### **Recommendation 10**

**A - Amend line 2 of the first part to Policy 2 to read:**

**“...including converted or shared houses will *only* be permitted within the Neighbourhood Area where the following criteria are met.**

**B - Amend criterion (1) to read:**

**“A clear local need within Devonshire Park is demonstrated for *small flatted accommodation and homes in multiple occupation where planning permission for a change of use is required and...*”**

**C – Add new criteria (4) to read:**

**“*The development proposed would not harm the living conditions for occupants of neighbouring properties*”**

6.6.21 With these three modifications DPNDP Policy 2 would accord with Basic Condition No 1. The Policy is shown in the S A to perform well against the sustainability objectives and the modifications would not alter this. Again I am not persuaded that the social inclusion objectives have as positive an outcome as the SA suggests because of the policy’s restriction on flatted accommodation but as discussed above there is justification for this in respect of protecting the character of the area and the Policy does allow for continuing flatted accommodation in certain circumstances. Policy 2 therefore meets Basic Condition No 2.

6.6.22 Policies HS13 and HS14 of the UDP deal with subdivision into self-contained flats and houses in multiple occupation respectively. Both would allow these types of development subject to a long list of criteria being satisfied. The criteria in both policies principally control the detailed design issues for these sorts of conversions. The legislation and guidance in respect of neighbourhood planning allows the DPNDP to reflect the local position on development issues and the particular emphasis on need, local design and the unique character of the estate is warranted by the evidence. With the modifications above Policy 2 would be in general conformity with UDP Policies HS13 & HS14.

### **Policy 3**

6.6.23 The issues with DPNDP Policy 3 in terms of Basic Condition No 1 are the same as that with Policy 2 ie the negative wording, the need to define local need and the need for the Policy to include an additional criteria regarding impact on living conditions if this is deemed to be the important issue set out in paragraph 7.17 of the justification.

6.6.24 I note that in response to the concerns raised by Wirral Public Health at the publicity stage the Council’s Report of Responses to Post Submission Consultation points out that Policy 3 does not refer to impacts on noise and disturbance from residential institutions and hostels and that assessment would depend on the UDP policies. However this

potential impact is not covered in UDP policies and if the Forum consider, as the supporting text implies, that this is a potential issue, the Framework in its Core Principles would support an additional criterion regarding residential amenity.

6.6.25 To meet the shortcomings in respect of Basic Condition No 1, I recommend the following modifications are made similar to Policy 2:

### **Recommendation 11**

**A - Amend line 1 of the first part to Policy 3 to read:**

**“...residential institutions and hostels will *only* be permitted within the Neighbourhood Area *where* the following criteria are met.”**

**B - Amend criterion (1) to read:**

**“A clear local need within Devonshire Park is demonstrated *for residential institutions and hostels falling within Use Class 2 and 2A and....*”**

**C – Add new criteria (4) to read:**

**“*The development proposed would not harm the living conditions for occupants of neighbouring properties in particular by giving rise to noise and disturbance.*”**

6.6.26 The SA indicates that Policy 3 would deliver against the sustainability objectives. Again I am not persuaded that the social inclusion objectives have as positive an outcome as the SA proposes because of the Policy’s restriction on residential institutions but as discussed above there is justification for this in respect of protecting the character of the area and the Policy does allow for continuing flatted accommodation in certain circumstances. Policy 3 therefore meets Basic Condition No 2. Policy HS8 of the UDP supports the development of nursing homes and other residential care homes subject to criteria being met. The thrust of Policy 3 is in general conformity with Policy HS8.

## 7. Delivering the Plan and Monitoring and Review

7.1 The Framework indicates that plans should provide a practical basis within which decisions on planning applications can be made with a high degree of predictability.

7.2 As such to satisfactorily meet Basic Condition No 1 there needs to be a clearly identified section on how the plan is to be delivered, monitored and reviewed. I acknowledge that there are brief references to delivery in paragraphs 3.2 and 8.3 but these tend to be lost in the general text. A new section on delivery needs to acknowledge that, as a statutory plan which forms part of the development plan, a key part of delivery is via policy implementation through the management of development and change. The text proposed below draws on some of the statements in the SA and SEA screening documents but can be adapted further if the Council wishes.

**Recommendation 12 – Merge and relocate paragraphs 3.2 and 8.3 into a new Delivery section 8 in the plan as follows:**

## 8. Delivering, Monitoring and Reviewing the Neighbourhood Plan

***“8.1 Once the Neighbourhood Plan has been ‘made’ by Wirral Council the Devonshire Park Neighbourhood Development Plan will carry weight as part of the statutory development plan for Wirral and provides additional local detail to be taken into consideration alongside adopted policies.***

***8.2 The Council will determine all planning applications, pre-application enquiries and other proposals in the light of policies set out in the DPNDP alongside other relevant policies in the Wirral UDP and the Council’s emerging Core Strategy Local Plan. The Devonshire Park Residents’ Association and Neighbourhood Planning Forum will look to actively promote the delivery of the plan and apply the Plan’s policies in its own decision making. Applicants will be expected to demonstrate in their applications how their proposals conform to the neighbourhood plan policies.”***

7.3 In the same way that the NPPF at paragraph 153 requires Local Plans to be kept under review, good practice would suggest that Wirral Council and the Forum as Qualifying Body should put in place mechanisms for monitoring progress with the neighbourhood plan. These need not be unduly onerous and a number of Qualifying Bodies achieve this by presenting an annual monitoring report on the plan to their parent body’s annual meetings for example. A commitment to review the plan as necessary in the light of a significant change in circumstances, for example when the WCSLP is finally adopted or is itself being reviewed, should be made. In this way the risk of contradiction between plans can be avoided.

7.4 Accordingly, the following modification is necessary:

**Recommendation 13** - Add new paragraph 8.3 to the new section 8 as follows:

***“8.3 Devonshire Park Neighbourhood Planning Forum and Wirral Council will work together to monitor progress on the Neighbourhood Plan. They will bring forward proposals to review the plan as necessary during the plan period following procedures for review as may be set out in Neighbourhood Planning Regulations applying at that time. The need for review, for example, will be considered once the Wirral Core Strategy Local Plan is adopted.”***

**Consequential modification – renumber “Conclusions” as Section 9 and delete former paragraph 8.3**

7.5 With this modification in place a clear statement of intent of how the plan is going to be delivered, monitored and reviewed is in place compliant with national advice and therefore Basic Condition No 1. The concept of keeping plans under review is important to ensuring policies remain relevant and able to contribute to sustainable development. This modification therefore helps ensure the DPNDP complies with Basic Condition No 2.

## **8.Referendum**

8.1 Subject to the recommended modifications set out above being completed, the Devonshire Park Neighbourhood Development Plan should proceed to a Referendum.

8.2 I am required to consider whether the Referendum Area should be synonymous with the Devonshire Park Neighbourhood Area or extended beyond it.

8.3 The Neighbourhood Area mirrors the Devonshire Park Estate boundary and there is nothing within the Neighbourhood Plan that would necessitate any other referendum area than the Neighbourhood Area and no evidence has been submitted seeking any alternative approach.

### **Recommendation 14**

**I recommend to Wirral Council that the Neighbourhood Plan, modified as specified above, should proceed to a Referendum based on the Devonshire Park Neighbourhood Area as designated by the Council on 30 April 2013.**

**Peter D Biggers - Argyle Planning Consultancy Ltd.  
Independent Examiner  
May2015**