

Eden District Council

Executive
7 July 2015

**Greenhollows, Skelton Neighbourhood Development
Order – Inspector’s report and next steps**

Reporting Officer: Communities Director

Responsible Portfolio: Communities

1 Purpose of Report

- 1.1 To inform the Executive about the recommendations in the Greenhollows Neighbourhood Development Order Independent Examiner’s report and to determine whether to accept the examiners recommendation.

2 Recommendation:

- | | |
|----|--|
| 1. | The recommendation of the independent examiner in relation to the draft Greenhollows, Skelton Neighbourhood Development be accepted. |
| 2. | The draft Greenhollows, Skelton Neighbourhood Development Order be refused as it does not meet three of the six relevant basic conditions, namely: <ul style="list-style-type: none">a) having regard to national policies and advice containing guidance issued by the Secretary of State it is appropriate to make the Order;d) the making of the Order contributes to the achievement of sustainable development; ande) the making of the Order is in general conformity with the strategic policies contained in the Development Plan for Eden District Council. |
| 3. | The draft Greenhollows, Skelton Neighbourhood Development Order is considered not to meet each of the above basic conditions for the reasons which are set out by the independent examiner in his report. |
| 4. | The decision on the draft Greenhollows, Skelton Neighbourhood Development Order is publicised as required by the relevant Regulations. |

3 Report Details

- 3.1 Following the designation of the Skelton Neighbourhood Area by the Executive in July 2014, the Parish Council, the Qualifying body for the Area, has promoted a Neighbourhood Development Order aimed at providing planning consent for permanent residential use at the Greenhollows Caravan Park.
- 3.2 A Neighbourhood Development Order (NDO) is available to designated Parishes under the neighbourhood planning framework provided by the Localism Act 2011. An NDO allows Qualifying bodies, (Parish and Town Council in parished areas) to seek consent for development without the need for an application to the District Council for planning permission.
- 3.3 The draft Order was submitted to the Council on 18 November 2014 after a pre submission consultation exercise. As required it was published by the Council for a further 6 weeks. The proposal was then referred to Mr T Jones a Barrister and an independent examiner selected through the Neighbourhood Planning Independent Examiners Referral Service. This selection was agreed with Skelton Parish Council.
- 3.4 It is the role of the Local Authority to consider each of the recommendations made by the examiner and determine whether the proposed Neighbourhood Development Order should proceed to a referendum.
- 3.5 Mr Jones' report is attached as Appendix 1. Mr Jones recommendation is:
- “On the basis of the evidence before me, I have concluded that the draft Greenhollows Neighbourhood Development Order (“The NDO”) does not satisfy three of the six relevant basic conditions and that this cannot be rectified by modification. I therefore recommend that the proposal for a Neighbourhood Development Order be refused.”
- 3.6 The Independent Examiner is required to determine whether the draft NDO meets the Basic Conditions, there are:
- a. Having regard to national policies and advice contained in guidance issued the Secretary of State it is appropriate to make the order.
 - b. Having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order.
 - c. Having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order.
 - d. The making of the order contributes to the achievements of sustainable development.

- e. The making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).
 - f. The making of the order does not breach, and is otherwise compatible with, EU obligations.
 - g. Prescribed conditions are met in relation to the Order and prescribed matters have been complied with in connection with the proposal for the Order.
- 3.7 The Council in its consultation response provided to the examiner as part of the process did not make any judgement on whether the Basic Conditions have been met, leaving that judgement to the examiner, but highlighted considerations that should be taken into account particularly with regard to conditions a. and e.
- 3.8 The examiner concluded that conditions b,c,f and g were all met by the Order.
- 3.9 However, he concluded that conditions a,d and e have not been met and these matters cannot be rectified by modification of the Order.
- 3.10 With regard to condition a. above, Mr Jones considered that the proposal did not comply with Paragraph 55 of the National Planning Policy Framework which relates to sustainable development in rural areas.
- 3.11 With regard to condition d. above the Examiner considered the case had not been made that any significant social or economic benefits would be created that could be weighed against “the environmental harm of a permanent residential development in a relatively remote location that has not been shown to need such a location.”
- 3.12 With regard to condition e. regarding conformity with the development plan Mr Jones concluded that, in his planning judgement, in particular Core Strategy policies CS1, CS2, CS3. Attached as Appendix 2.
- 3.13 The decision of the independent examiner is in line with previous decisions made by this Council and by a Planning Inspector on appeal in relation to the use of this site.

4 Policy Framework

- 4.1 The Council has four corporate priorities which are:
- Decent Homes for All
 - Strong Economy, Rich Environment
 - Thriving Communities
 - Quality Council

5 Implications

5.1 Legal

- 5.1.1 The Neighbourhood Development Order proposal for Greenhollows, Skelton was submitted for independent examination by Mr Jones. The Council was required to appoint an independent person to carry out an examination but only if Skelton Parish Council consented to that appointment. The appointed person had to be someone who was independent of both the qualifying body and the Council, did not have an interest in the land affected by the draft Order and had appropriate qualifications and experience.
- 5.1.2 The independent examiner was obliged to consider the basic conditions which are set out in the report and all the relevant statutory criteria. The Council must consider each of the recommendations made by the independent examiner and decide what action to take in response to each recommendation. The Council would only be able to hold a referendum on the making of a Neighbourhood Development Order if it was satisfied, properly directing itself, that the basic conditions and all of the other relevant criteria were met.
- 5.1.3 The Council must publish the decisions which are made in connection with the independent examiner's report and the reasons for those decisions. If the Council proposes to make a decision which differs from that recommended by the independent examiner and the reason for the difference is, in whole or in part, as a result of new evidence or a new fact or a different view taken by the Council on a particular fact then the Council must notify all the relevant prescribed persons of the proposed decisions and invite representations. The Council must identify the reasons for any proposed decision. If it is considered to be appropriate the Council may refer the matter to independent examination.
- 5.1.4 Were the Council minded to take a different view on any of the recommendations of the independent examiner there would have to be cogent and relevant reasons for that view. It may be that new facts or evidence is presented. In this case no new evidence or new facts have come to light and there are no apparent reasons to disagree with the recommendations of the independent examiner.
- 5.1.5 Whatever decision the Council makes on this matter will require to be published. The reasons for the decision will also require to be identified and published. The Council's decision has to be brought to the attention of the qualifying body and relevant people within the Skelton Neighbourhood Area. In the event that the Council is minded to accept the Inspector's recommendations it would be on the basis that the draft Order does not satisfy three of the six relevant basic conditions as identified by the Examiner and for the reasons which he specifies.

5.2 Financial

- 5.2.1 Any decision to reduce or increase resources must be made within the context of the Council's stated priorities, as set out in its Council Plan 2015-19 as agreed at Council on 16 April 2015.
- 5.2.2 The costs of the work the Council has carried out in relation to this process, including the cost of commissioning the examiner (£3,000) have, in this case, been covered by the grant of £5,000 received on submission of the proposed Order to the Council.
- 5.2.3 Had the Order been approved following examination and referendum, an additional £20,000 grant would have been received.

5.3 Equality and Diversity

- 5.3.1 The Council has to have regard to the elimination of unlawful discrimination and harassment and the promotion of equality under the Equality Act 2010 and related statutes.
- 5.3.2 No relevant considerations.

5.4 Environmental

- 5.4.1 The Council has to have due regard to conserving bio-diversity under the Natural Environment and Rural Communities Act 2006.
- 5.4.2 Bio-diversity has not been regarded as an issue of significance in this case.

5.5 Crime and Disorder

- 5.5.1 Under the Crime and Disorder Act 1998 the Council has to have regard to the need to reduce crime and disorder in exercising any of its functions.
- 5.5.2 No relevant considerations.

5.6 Children

- 5.6.1 Under the Children Act 2004 the Council has to have regard to the need to safeguard and promote the welfare of children in the exercise of any of its functions.
- 5.6.2 No relevant considerations.

5.7 Risk Management

- 5.7.1 Risk Management is a process whereby attempts are made to identify, actively control and reduce risk to protect the Council. This covers not only the traditional areas of insurable risk but also the organisational risk that the Council faces in undertaking all its activities.
- 5.7.2 No relevant considerations.

6 Reasons for decision/recommendation

- 6.1 The recommendation of the Independent Examiner should be accepted as it has been found the proposal does not meet three of the 'basic conditions' and no new facts or interpretation of facts, have arisen to lead to an alternative decision.

Ruth Atkinson
Communities Director

Governance Checks:

Checked by or on behalf of the Chief Finance Officer	✓
Checked by or on behalf of the Monitoring Officer	✓

Background Papers: Appendix 1 Independent Examiners Report, Skelton NDO
Appendix 2 Core Strategy Policies CS1, CS2 and CS3

Contact Officer: Fergus McMorrow, Neighbourhood Planning Officer
Telephone Number: 01768 212474

GREENHOLLOWS NEIGHBOURHOOD DEVELOPMENT ORDER

Report of the Examination into the draft Greenhollows Neighbourhood Development

Order

Timothy Jones, Barrister,

No 5 Chambers

17th March 2015

<u>Contents</u>	Page(s)
Summary	1
Appointment of Independent Examiner	1
The Principal Role of the Independent Examiner	1
Guidance and Directions	1 - 2
Preliminary Matters	2
The NDO	2 - 3
Statutory Requirements	3 - 4
Human Rights	4 - 5
The Basic Conditions	5 - 12
The wording of the NDO	12
Modification	12
Referendum Area	12
Concluding Comments	12 -13
Appendix A: Documents	14 - 15
Appendix B: Abbreviations	15

Report

Summary

1. On the basis of the evidence before me, I have concluded that the draft Greenhollows Neighbourhood Development Order (“The NDO”) does not satisfy three of the six relevant basic conditions and that this cannot be rectified by modification. I therefore recommend that the proposal for a Neighbourhood Development Order be refused.

Appointment of the Independent Examiner

2. Eden District Council (“EDC”), with the agreement of Skelton Parish Council (“SPC”), has appointed me to examine the NDO. SPC is promoting the NDO. EDC has adopted a neutral role and played a limited part in the examination. Mr Tom Woof MRTPI of H&H Land and Property Ltd has acted for SPC.

3. 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 Plan and I possess appropriate qualifications and experience.

The Principal Role of the Independent Examiner

4. My principal role is to consider and to report on whether the NDO meets the basic conditions contained in the Town and Country Planning Act 1990 (“TCPA”) Sch 4B, para 8(2) and whether it is compatible with Convention rights. This is therefore the principal purpose of the examination.

5. Having considered those matters, I must make a report on the NDO containing recommendations. The report must recommend one of the following: (a) that the draft order is submitted to a referendum, or (b) that modifications specified in the report are made to the draft order and that the draft order as modified is submitted to a referendum, or (c) that the proposal for the order is refused. If my report recommends that an order (with or without modifications) is submitted to a referendum, it must also make (a) a recommendation as to whether the area for the referendum should extend beyond the neighbourhood area to which the order relates, and (b) if a recommendation is made for an extended area, a recommendation as to what the extended area should be.

Guidance and Directions

6. On 7th February 2015, in order to assist the examination, I issued Guidance and Directions. This resulted in SPC and EDC supplying me with more documents. On 21st February 2015 I issued further directions. As a result of these directions I received further documents from SPC. A list of the documents that I considered is contained in Appendix A.

7. I issued a confidential draft of this report for fact-checking and error-checking. I also issued further guidance and directions explaining the limits of comments appropriate in response to such drafts. Mr Woof did not follow these, but submitted a further two and a half pages of closed-spaced substantial comments. In these circumstances it was necessary for me to consider in respect of each comment whether I admitted it and, if so, whether it would be necessary to re-open the examination and invite EDC's comments upon it, or whether I should exclude it as late material. While I am conscious of the danger that admitting such comments could be argued to be a precedent that would discourage the submission of reports for fact-checking, I have concluded that on the facts of this case they can be admitted. This should not be treated as a precedent for other examinations. I have therefore considered them. Bearing in mind that EDC has been the only other active participant in the examination, that its involvement has been limited and that it has seen the comments but not asked to comment on them, I have concluded that no injustice would be done by not inviting further comments from EDC.

Preliminary Matters

8. SPC carried out the consultation required by the Neighbourhood Planning (General) Regulations 2012. There was also an initial consultation. Although this was premature and not legally effective, it means that awareness of the NDO is likely to be greater than it would have been from the later statutory consultation alone. I also bear in mind that parish councillors are democratically accountable, subject to a code of conduct and likely to be in close contact with the community they represent. I note: support from residents directly affected, a neighbouring parish council and a nearby public house; and an absence of objections. The non-replies do not give rise to concern.

9. I am satisfied of the following matters:

- (1) The NDO area is wholly within the parish of Skelton, a designated Neighbourhood Area and SPC is authorised to act in respect of this area [TCPA s61F(1)];
- (2) The NDO would not grant planning permission for any development that is excluded development as defined in TCPA s61K;
- (3) The NDO would not grant planning permission for development in any particular case where planning permission is already granted for that development and hence would not be contrary to TCPA s61L(4);
- (4) The order satisfies TCPA s61J and s61L;¹
- (5) To date the relevant requirements of the Neighbourhood Planning (General) Regulations 2012 have been met.

¹ The Basic Conditions Statement is not correct to speak of these being amended by Planning and Compulsory Purchase Act s38C(5)(b). This relates to neighbourhood development plans, not neighbourhood development orders.

10. Neither EDC, not SPC, asked for a hearing. EDC suggested a site visit, but did not pursue this suggestion, when I gave reasons for not considering one necessary, while at the same time saying that I would hold one if either EDC or SPC wanted it. SPC did not ask for a site visit.

The NDO

11. The NDO would permit the following *“Change of use to siting of residential caravans (retrospective) at Greenhollows Country Park Southwaite Carlisle, CA4 0PT”*. It would be subject to one condition: *“The development shall be carried out strictly in accordance with the details shown on the layout drawing ref. SPC NDO14/01 and shall not be varied other than by prior agreement in writing by the Local Planning Authority.”* It also contains: *“Informative: This Order will not be subject to the s106 agreement dated 21st December 2009 which restricts occupation of these caravans to holiday use only.”*

12. Neighbourhood development orders can be used to permit material changes of use. This includes a change to permanent residential caravan-site use. In appropriate circumstances a neighbourhood development order can properly be used to permit such a use retrospectively. The NDO satisfies TCPA s61E(2). I deal with the wording of the condition below.

13. Layout drawing SPC NDO14/01 shows 16 numbered rectangles, which appear to be 16 caravans. At present 14 pitches are occupied. For planning purposes caravans has the meaning given to it by the Caravans Sites and Control of Development Act 1960 s29(1) as extended to certain twin-units (often called park homes) by the Caravan Sites Act 1968 s13 as amended. This same definition applies to mobile homes legislation as well as to caravan sites and planning legislation. Many structures that in everyday English would be called ‘mobile homes’ would for the purpose of planning law and hence of this report be within the term ‘caravan’. There is a photograph of some of the park homes on the site on the Basic Conditions Statement and the Consultation Statement. The NDO would allow these to be replaced by different caravans provided they fell within the statutory definition. It would not give effect to the assurance that future caravans would be better insulated.

14. EDC has left the initial determination of whether the basic conditions are met to me, while helpfully drawing my attention to matters that may be relevant to my determination.

Statutory Requirements

15. The basic conditions are contained in TCPA Sch 4B, para 8(2). These conditions are:

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

(b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,

(c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,

(d) the making of the order contributes to the achievement of sustainable development,

(e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),

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

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

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

17. In my examination of the substantial merits of the NDO, I may not consider matters other than the basic conditions and human rights. In particular I may not consider whether any other test, such as the soundness test, is met.

18. I shall address human rights first and then the basic conditions in the order (e), (d), (a), (b), (c), (f), and (g).

Human Rights

19. I have considered whether anything in the NDO would cause a breach of any Convention right. In particular I have considered the Convention’s Articles 6(1), 8 and its First Protocol Article 1. English planning law in general complies with the Convention.

20. In certain circumstances human rights could be relevant to consideration of the basic conditions. Nobody has argued that in this case. I have nonetheless considered whether they are. There is only limited evidence before me on the matter.² It is clear that residents who

² I noted that the Basic Conditions Statement p 13 refers to various letters from residents that had not been supplied either originally or in response to my directions of 7th February 2015. I therefore requested these in my directions of 21st February 2015. A reason for my request was that letters from residents might contain material that might have raised significant human rights arguments in favour of the NDO.

signed a deed of planning obligation can continue to live on the land permanently, but that this benefit would not pass to a purchaser who would be subject to a condition limiting the extent of occupation. The extent (if any) of any unfairness would depend on whether the purchasers made the usual local authority search when they purchased the land,³ whether any reply to these was misleading, the disputed content of statements and whether the price paid for the plots reflected the planning condition limiting occupation. Limited information as to disputed assurances, coupled with the fact that a plot bound by a condition is likely to be worth less than one that is not (without evidence as to whether the original price was reduced for this reason), does not assist me. SPC has not contradicted EDC's statement in its formal response that "*legal action against the site owners... has been successful when pursued*", nor has SPC given reasons for other residents not pursuing legal action (if there are some who did not do so). SPC has also not explained why those who succeeded in legal actions would suffer hardship, or asserted that the result of the legal action did not provide full compensation for any losses.

21. I am concerned about EDC's statement in its formal response that it is "*under a duty to ... enforce against any breaches in planning control*". It is not. It should enforce when, having borne all material considerations in mind, it considers it expedient to do so. There will be occasions when it is not expedient to enforce. This approach could impact on human rights in cases where proportionality was engaged. However the planning history does not show EDC to be over-zealous in enforcement. In particular it reached an agreement that allows the residents to remain in their homes.

22. The evidence before me does not show that a recommendation in favour of the NDO would breach the Human Rights Act 1998. It also does not show human rights considerations that alter what would otherwise have been my conclusions in respect of the basic conditions.

The Basic Conditions

(e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

23. The phrase '*development plan*' in basic conditions (e) means the adopted development plan only.

24. The fifth basic condition means that I must consider whether the NDO is in general conformity with the strategic policies contained in the adopted development plan for the area concerned. The adjective '*general*' allows a degree of (but not unlimited) flexibility. If there are policies contained in a development plan document, and they are strategic policies, then

³ SPC has not disputed EDC's statement in its formal response that they did not.

the NDO must be in general conformity with them. This is a matter of degree and of planning judgement.

25. In considering basic condition (e) I note the following in Planning Practice Guidance:⁴

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

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

26. The statutory requirement is that the NDO as a whole should be in general conformity with the development plan as a whole.⁵ Subject to that I respectfully agree with and have applied the above advice.

27. In this case the only development plan documents that any person making representations has relied on or indicated may be relevant are: the Eden Core Strategy, March 2010; and saved Policies from the 1996 Local Plan. I have considered those policies that have been supplied by EDC together with those mentioned by SPC. SPC did not dispute EDC's statement that the Upper Eden neighbourhood plans is "*not relevant to this order as it covers another area*".

28. Among other things CS1 states:

... development should be located to minimise the need to travel and to encourage any journeys that remain necessary to be possible by a variety of sustainable transport modes; and

... follow the sequential approach to land use; where practicable appropriate re-use, conversion or re-development of existing buildings... and previously developed land within settlements, followed by suitable infill sites and only then the use of undeveloped land which is well located in relation to services and infrastructure.

⁴ Neighbourhood Planning para 074, Reference ID: 41-074-20140306 .

⁵ BDW Trading v Cheshire West and Chester Borough Council [2014] EWHC 1470.

29. Approximate distances from Greenhollows are: the nearest village hall, Gaitsgill, 2.5 km; the nearest primary school, Ivegill, 3 km; the nearest regular bus stop, Stone Raise School, 3.5 km – there is also a Fellrunner bus service available by pre-booking; the nearest place of worship, Raughton Head, 4 km; and the nearest shops, secondary school, GP's surgery and railway station, Dalston, 7 km.⁶ There are employment opportunities in some local farms and elsewhere. The Crown Inn public house is within easy walking distance of the site. There do not appear to be any public footpaths within easy walking distance. I conclude Greenhollows is in a relatively remote location, but not such a remote location that would rule out development if other development plan policies pulled substantially in its favour, or if a proven need for permanent caravan site accommodation could not be met in any less isolated location.

30. There is no evidence (and no reason to believe in rural Cumbria) that there are not potential deliverable sites for occupation for permanent residential caravans sites that are significantly better located in terms of policy CS1 than Greenhollows.

31. Policy CS2 states where new development shall be focused. Its fourth category, "*Smaller Villages, Hamlets and Open Countryside: development limited to meeting an identified need*" refers to policy CS3. Mr Woof has argued that the neighbouring caravan site is a hamlet. I am not satisfied on the evidence that this is so and note that it is not one of the hamlets listed in SPC's application for designation as a neighbourhood area. I share Inspector Braithwaite's assessment that Greenhollows Caravan Park is in the countryside.⁷

32. Among other things, Policy CS3 provides that open countryside should be protected from inappropriate development and that new development should respect and reinforce "*the character of the wider landscape and the special character and sense of place of villages and hamlets.*" It would not be right to interpret "*inappropriate development*" as having the same meaning as it does in respect of Green Belts. Caravan sites are often found in the countryside. However planning inspectors have distinguished between the amount of domestic paraphernalia associated with a permanent residential caravan use and that associated with a holiday caravan use.⁸ I am not satisfied that this site respects and reinforces the wider landscape and do not agree with Mr Woof that adding 16 permanent residential caravans to an already substantial caravan site is what is intended by the policies referring to reinforcing

⁶ I don't consider it appropriate to give significant weight to the suggestion made on behalf of SPC that I should bear in mind Southwaite services on the M6 whether or not the no-entry signs to this are legally enforceable.

⁷ Paragraph 12 of his report.

⁸ An example of this is Twin v Tendring District Council [2012] PAD 22 "... *the likely accumulation of paraphernalia needed for everyday domestic life rather than for holiday use significantly change the nature of the use.*"

the character.. I do not have evidence whether a landscaping scheme could be secured that would result in a net neutral or positive effect on the countryside.

33. Policy CS5, among other things, seeks to reduce the environmental impact of travel, to conserve energy and reduce air pollution by limiting the growth in traffic and to promote development that will reduce reliance on the private car to access shops, services and employment opportunities. CS5 does not conflict with the National Planning Policy Framework (March 2012) ("the Framework"). If it did it would still be a part of the Development Plan. As with CS1, there is no evidence (and no reason to believe) that there are not deliverable potential sites for occupation for permanent resident caravans sites that are significantly better located for this purpose than Greenhollows.

34. EDC has stated: "*The Core Strategy also includes an annual housing target of 239 homes per year (paragraph 6.5), monitored through policy CS7. However, as EDC cannot currently demonstrate a five year supply of housing land any policies relating to the supply of housing cannot be considered up to date under the terms of the National Planning Policy Framework, para 49.*" However the statutory test that I must apply is "*general conformity with the strategic policies contained in the development plan*". That includes that annual housing target, but it does not exclude policies that are not up-to-date under para 49. Among other things, policy CS7 seeks to ensure that development provides for a full range and choice of housing types to meet the needs of the whole community. If justified by evidence, this could include provision of permanent residential caravan sites. The evidence in the papers that I have seen does not do that.

35. Policy CS22 seeks to protect rural services, pointing out that these are often on the margin of viability. This could weigh in favour of a permanent residential caravan site, but I have no evidence of any rural service that would close, or be threatened with closure, but for the NDO.

36. I have also read policies CS9 and CS10, which Mr Woof mentioned.

37. The other policy to which I have been referred is Eden Local Plan 2006 saved policy NE1. In view of the fact that it deals with topics now covered by the Core Strategy, I consider it appropriate to give it little weight when considering when there is general conformity with strategic policies contained in the development plan as a whole. Had I considered otherwise, it would have weighed against the NDO.

38. I am satisfied that each of the above is a strategic policy. In its comments on the confidential draft report SPC submitted that a pre-Framework policy can only be considered part of the adopted Development Plan in so far as it is not in conflict with the Framework. This is not correct. Each of the above policies is a part of the adopted Development Plan as a matter of law and the statutory test under basic condition (e) applies to *the strategic policies*

contained in the development plan", without any reference to the effect of the subsequent policy on them. Policy cannot change that. The matter is however academic. There is no relevant conflict between the above policies and the Framework. In reaching this conclusion, I have not found it necessary to turn to the Taylor report in order to interpret the Framework. In issuing the Framework the clear intention of the Government was to simplify policy. It does not simplify policy if readers have to turn to previous reports in order to interpret it.

39. In considering basic condition (e) I have concluded that SPC has not established that it would be met. Rather, on the balance of probabilities applying my planning judgement to the evidence before me. I consider that it would not be met.

(d) the making of the order contributes to the achievement of sustainable development

40. The fourth basic condition means that I must consider is whether the NDO contributes to the achievement of sustainable development.

41. The bulk of the Framework constitutes guidance on sustainable development. As its para 6 says, *"The policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development... means in practice for the planning system."* There are three dimensions to sustainable development: economic, social and environmental.

42. In an e-mail of 9th February Mr Woof said *"It is not clear where the degree of isolation, or otherwise, as measured by distance from facilities such as a shop, schools, GP surgery etc. fit into the basic conditions."* I found that surprising. Such matters are often considered in respect of the environmental dimension of sustainability since they may relate to the private motor-vehicle mileage to which a development gives rise. They are however not the only matters that should be considered under the environmental dimension.

43. I do not consider it appropriate to give weight to fears of precedent, having no reason to believe that there are other potential qualifying bodies that would seek a similar neighbourhood development order.

44. The evidence before me of economic benefit is negligible. In particular, given the evidence from EDC that *"legal action against the site owners... has been successful when pursued"*, I do not consider that economic benefit is intended to require the giving of weight to obtaining what may be double compensation or to relieving the caravan site owners of legal liability. The evidence of social benefit is small. Against this there is the environmental harm of permanent residential development in a relatively remote location that has not been shown to need such a location.

45. In considering basic condition (d) I conclude that SPC has not established that it would be met. Rather, on the balance of probabilities applying my planning judgement to the evidence before me. I consider that it would not be met.

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

46. The first basic condition requires that I consider whether it is appropriate that the order should be made “*having regard to national policies and advice contained in guidance issued by the Secretary of State*”. A requirement to have regard to policies and advice is not a consistency test and does not require that such policy and advice must necessarily be followed, but it is intended to have and does have an effect. I must use my judgement to determine whether or not it is appropriate that the Plan shall proceed “*having regard to*” national policy.

47. The principal document in which national planning policy is contained is the Framework. I have reread the Framework (other than parts that cannot possibly be relevant) in the course of the examination. It contains guidance that pulls in different directions. It favours localism and the provision of homes. On the other hand it seeks to protect the environment in general and the countryside in particular.

48. Para 50 supports delivering “*a wide choice of high quality homes*” and “*widening opportunities for home ownership*”. I have no doubt that this includes permanent residential caravans, but have no evidence of any general need for such homes in the area. Indeed Mr Woof has stated that “*the proposal is not seeking to meet a general need*”.

49. EDC has referred to the Framework’s para 55 which provides:

To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as...

50. None of the examples that follow apply in this case; although, as examples, they do not exclude other special circumstances.

51. Whether this paragraph applies to the present circumstances is not immediately clear. Whether the word ‘*housing*’ includes permanent residential caravans depends on the context. The Framework does not contain specific policy on permanent residential caravans.⁹ There is no reason, apparent to me why dwelling houses and permanent residential caravans should be treated differently in the context of para 55. I therefore consider that, in this context,

⁹ And Planning Policy for Traveller Sites, of course, does not apply.

‘housing’ does include permanent residential caravan sites. SPC considers that the neighbouring caravan site is a rural community. While a caravan site could fall within the phrase ‘*rural community*’, I have not seen evidence that shows that this is the case here. Hence para 55 would be against the development unless there are special circumstances.

52. I note that in 2009 Inspector John Braithwaite decided¹⁰ that the development was not in a sustainable location and would be contrary to national, regional and local plan policy on development in the countryside. I treat that decision with respect, but must bear in mind that the evidence before him was different to the evidence before me and that policy has changed. Having done that, I consider that overall the order departs significantly from national policy. Having reached that conclusion and in the absence of compelling evidence of need, I further conclude that it is not appropriate to make the order. Hence basic condition (a) is not met.

(b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order, and (c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,

53. The heritage assets of the parish of Skelton includes six Grade I, four Grade II* and fifty-eight Grade II listed buildings. None of these are near Greenhollows and nobody has suggested that they or their setting would be affected by the NDO. Rather English Heritage (“EH”) considers that there appears to be minimal impact on the historic environment with regard to its remit. Nor has anybody suggested that any Conservation Area would be affected it. Nothing in the papers that I have seen causes me to suspect that this is an omission.

54. Basic conditions (b) and (c) are met.

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

55. The sixth basic condition requires me to consider whether the NDO breaches or is otherwise incompatible with, EU obligations. There are no European sites within or adjoining the parish or affected by the proposed development. No written or oral representation submitted that there was any breach of or incompatibility with EU obligations. EDC has screened the NDO and submitted it to the appropriate statutory bodies (EH, the Environment Agency (“EA”) and Natural England (“NE”)). Nobody has sought an SEA or HRA and EDC has concluded that an SEA is not required and that an HRA is not required. A caravan site of 16 plots, 2.9 kilometres from the nearest European site is not the type of development that would normally require either.

56. Basic condition (f) is met.

¹⁰ APP/H0928/C/09/2096659.

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

57. No condition has been prescribed for neighbourhood development orders that are not EIA development.¹¹ Hence basic condition (g) does not require consideration.

The wording of the NDO

58. The wording at the end of the NDO's condition departs from current good practice. It would allow for variation by the local planning authority "*by prior agreement in writing*", despite the fact that this formerly widely used practice has for several years been rejected as avoiding the statutory requirements for variation of a condition. If this were the only problem with the NDO, a modification could overcome it.

Modification

59. I have considered whether my concerns about basic conditions (a), (d) and (e) could be met by modification, but have concluded that they cannot.

Referendum Area

60. Had I concluded that the NDO (whether modified or not) should be submitted to a referendum, I would have needed to consider whether the referendum area should be extended and, if so, to what extent. Given the proximity to the parish boundary, this would have been an issue of substance. In view of my recommendation that the NDO should not proceed to a referendum, it is not necessary for me to consider the matter.

Concluding Comments

61. I commend SPC for taking the initiative to try to resolve what they consider to be a problem in their parish. However I have concluded that SPC as a qualifying body has not shown that the basic conditions (a), (d) and (e) have been met in respect of the NDO and that I cannot rectify the matter by modifications. This conclusion is based on the evidence before me and on the nature of a neighbourhood development order examination. The evidence before a decision-maker considering an application for planning permission or an application to modify or discharge the planning obligation under TCPA s106A, or an examiner considering a neighbourhood development plan may be different and the nature of their roles would be different. This report does not seek to address matters that would be relevant to those procedures, but which are not relevant to the matter that I have had to consider. In particular it does not dispute the appropriateness of the policies found to be suitable for Upper Eden in its neighbourhood development plan or indicate whether such policies would

¹¹ Paragraph 30 of the Basic Condition Statement is wrong. The condition mentioned there applies to neighbourhood development plans, not neighbourhood development orders.

be appropriate to the parish of Skelton. Such matters are not for me, but may be relevant for future decision-makers.

Timothy Jones,

Barrister, FCI Arb, NPIERS neighbourhood planning examiner

No 5 Chambers

17th March 2015.

Appendix A: Documents

In examining the Draft NDP I have considered and borne in mind what I consider to be the relevant parts of, the following documents:

- (1) Area Application for Designation as Neighbourhood Area 2.4.14;
- (2) The draft NDO, undated, together with layout drawing SPC NDO14/01;
- (3) Notice of NDO proposal dated 20.05.14;
- (4) EDC, Executive Report for 1.7.14;
- (5) Designation of Skelton Neighbourhood Area;
- (6) Letter EH to EDC 1.9.14;
- (7) Letter NE to EDC 8.9.14;
- (8) NDO Basic Conditions Statement 25.9.14;
- (9) NDO Proposal - Consultation Statement, undated;
- (10) The draft NDO plan dated 14.10.14;
- (11) Letter NE to EDC 23.10.14;
- (12) Letter EA to EDC 10.11.14;
- (13) Letter EA to EDC 14.11.14;
- (14) SEA Screening Report (Draft) 14.11.14;
- (15) Habitats Regulations Screening Report 14.11.14;
- (16) Letter EA to EDC 4.12.14;
- (17) Letter EH to EDC 10.12.14;
- (18) The Regulation 23 Notification, undated (responses to be received by 21.01.15);
- (19) Letter Paul Fellows (EDC) to Fergus McMorrow 19.1.15;
- (20) E-mail NE to EDC 20.1.15;
- (21) E-mail United Utilities to EDC 21.1.15;
- (22) The 2009 Appeal Decision (Ref. APP/H0928/C/09/2096659);
- (23) Town and Country Planning Act 1990 in its current form;
- (24) The National Planning Policy Framework;
- (25) Planning Practice Guidance;
- (26) Local Plan Policies supplied by EDC in response to my Guidance and Directions of 7.2.15;
- (27) A response and attached documents supplied by SPC in response to my Guidance and Directions of 7.2.15;
- (28) A local facilities map;

- (29) Documents supplied by SPC in response to my directions of 21.2.15;
- (30) E-mail correspondence common to EDC, SPC, Mr McMorrow (as point of contact) and me;
- (31) Judgment in R. (Gladman Developments Ltd) v Aylesbury Vale DC; and
- (32) Judgment in BDW Trading v Cheshire West and Chester BC.

Appendix B: Abbreviations

The following abbreviations are used in this report

EA	Environment Agency
EDC	Eden District Council
EH	English Heritage
EU	European Union
Framework	National Planning Policy Framework (March 2012)
HRA	Habitats Regulations Assessment
km	kilometre
NDO	the examination draft Greenhollows Neighbourhood Development Order
NE	Natural England
p	page
para	paragraph
s	section
Sch	Schedule
SEA	Strategic Environmental Assessment
SPC	Skelton Parish Council
TCPA	Town and Country Planning Act 1990 (as amended)

Greenhollows Neighbourhood Development Order

CS1 Sustainable Development Principles

Development should:

1. Be located to minimise the need to travel and to encourage any journeys that remain necessary to be possible by a variety of sustainable transport modes.
2. Follow the sequential approach to land use; where practicable appropriate re-use, conversion or re-development of existing buildings including traditional farm buildings and previously developed land within settlements, followed by suitable infill sites and only then the use of undeveloped land which is well located in relation to services and infrastructure.
3. Contribute towards the creation of locally distinctive, aesthetically pleasing, sustainable, healthy, active, empowered, inclusive and vibrant communities.
4. Make appropriate provision of services, facilities and infrastructure to meet its own needs consistent with Policies **CS2, CS3 & CS5**.
5. Contribute to raising the hopes, aspirations and achievement of young people and adults.
6. Be constructed and operated using a minimum amount of non-renewable resources, minimising the generation of waste and prudent use of water.
7. Be designed to a high standard consistent with Policy CS18.
8. Maintain and enhance the District's environmental, cultural and heritage resources, improving their understanding, appreciation and sustainable use.
9. Contribute to reducing the causes of climate change and flood risk and respond by adaptation to those impacts that are unavoidable.
10. Contribute towards a strong, stable and more diverse economy.
11. Avoid adverse effects on European ecological sites (Natura 2000 sites).
12. Reflect and enhance landscape character having regard to the sensitivity of the Eden Valley, the North Pennines AONB, the Lake District National Park, and their settings.

CS2 Locational Strategy

New development will be focused as set out below:

Key Service Centre – Penrith: sustained development appropriate to that of a large town. Regenerating the town centre and encouraging redevelopment of important brownfield sites; provision of strategic employment land; provision of new housing; upgrading links to the strategic road network; improving the public transport system; the location for any large scale individual developments.

Key Service Centres – Alston, Appleby and Kirkby Stephen: moderate development appropriate to the scale of the town but including new housing, provision of employment, improvements to accessibility.

Local Service Centres: small scale development to sustain local services, support rural businesses and meet local needs, including housing, provision of employment and improvements to accessibility.

Smaller Villages, Hamlets and Open Countryside: development limited to meeting an identified need (see Policy **CS3**).

In all cases the scale and nature of the development should take into account the capacity of essential infrastructure and should respect the character of the town or village concerned.

CS3 Rural Settlements and the Rural Areas

Rural settlements and the rural areas will be sustained by:

1. Identifying opportunities for the provision of rural exceptions affordable housing where there is a local need proven by an up-to-date housing needs survey.
2. Supporting the retention of local community facilities (see Policy **CS22**) and encouraging the provision of necessary new facilities.
3. Supporting rural transport initiatives that improve accessibility.
4. Supporting a sustainable agricultural industry including the facilitation of appropriate rural economic diversification.
5. Ensuring new development respects and reinforces the character of the wider landscape and the special character and sense of place of villages and hamlets.
6. Protecting the open countryside from inappropriate development.