

# **Boxted Neighbourhood Plan**

## **The Report by the Independent Examiner**

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5 May 2016



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## Summary

Boxted is a geographically large parish with a relatively small and very dispersed population. It thus presents a very distinct set of challenges for a community preparing a neighbourhood plan. However, the BNPG has addressed these challenges in a positive way focussing on the key issues that were identified by the community during the early stages of consultation.

It is evident that it has not always been easy to engage the community in the plan process, but I am satisfied that the BPC has met the requirements of the regulations in this regard.

The timing and nature of the appeal decision relating to proposed development at Hill Farm just as regulation 16 publicity on the submitted plan was ending presented a further unique challenge to which the BPC responded positively. While a case could definitely be made for withdrawing the Plan and repeating the regulation 14 consultation at this stage, CBC and BPC worked effectively together to address the issues raised and I am satisfied that the very limited nature of the changes made as a result of the appeal decision and new consultation did not necessitate this.

The Plan takes a positive approach towards new development by allocating a significant site for housing and open space in a relatively small community with a limited range of services. In doing so, it addresses the problem of a derelict site at the heart of the largest cluster of development, makes provision for affordable housing necessary to meet local needs and seeks to enhance the facilities available to the community.

I have found it necessary to suggest some modifications to enable the Plan to meet the basic conditions and other legal requirements. In most cases these are relatively minor, but I have recommended the amendment of the proposed settlement boundary to include and the small strip of land between the primary school and Crossfield Way. It has also been necessary to recommend modifications in relation to the allocation of affordable housing and securing contributions to community infrastructure to limit the policies to what is deliverable within the legal framework.

I have concluded that, if the modifications that I have recommended are made:

The Boxted Neighbourhood Plan has been prepared in accordance with Sections 38A and 38B of the Town and Country Planning Act 1990 and the Neighbourhood Planning Regulations 2012;

having regard to national policies and advice contained in guidance issued by the Secretary of State it would be appropriate to make the Plan;

The making of the Plan would contribute to the achievement of sustainable development;

The making of the Plan would be in general conformity with the strategic policies of the development plan for the area;

The making of the Plan would not breach and would be otherwise compatible with European Union obligations and the European Convention on Human Rights.

**I am therefore pleased to recommend that the Boxted Neighbourhood Development Plan should proceed to a referendum subject to the modifications that I have recommended.**

I am also required to consider whether or not the referendum area should extend beyond the Neighbourhood Plan Area. The Plan covers the whole of the Parish of Boxted and I have seen nothing to suggest that the policies of the Plan will have “a substantial, direct and demonstrable impact beyond the neighbourhood area”.<sup>1</sup> **I therefore conclude that there is no need to extend the referendum area.**

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<sup>1</sup> PPG Reference ID: 41-059-20140306

## **Introduction**

1. The Localism Act 2011 has provided local communities with the opportunity to have a stronger say in their future by preparing neighbourhood plans which contain policies relating to the development and use of land.
2. Boxted Parish Council is the qualifying body for the Boxted Neighbourhood Development Plan 2014-2029 (which I shall refer to as the BNP or the Plan). The Plan area covers the whole of the parish of Boxted. It has been prepared by a Steering Group (the BNPG) consisting of 6 parish councillors, 1 borough councillor and 5 other volunteers.
3. The parish of Boxted lies to the north of Colchester. It covers a large rural area which extends from the northern fringe of Colchester in the south to the valley of the River Stour in the north. The settlement pattern is dispersed with four separate clusters of development and intermittent development along the length of Straight Road which runs from the southern boundary to Boxted Cross, the largest cluster of development. It has a population of 1,363 (2011 census) with a recently expanded modern primary school and an otherwise limited range of services. The northern part of the parish which slopes down to the Stour valley lies within the Dedham Vale Area of Outstanding Natural Beauty.
4. If, following a recommendation from this examination, the Plan proceeds to a local referendum and receives the support of over 50% of those voting, it can be made and will then form part of the statutory development plan. As such it will be an important consideration in the determination of planning applications, as these must be determined in accordance with development plan policies unless material considerations indicate otherwise.

## **Appointment of the Independent Examiner**

5. I have been appointed by Colchester Borough Council (CBC) with the agreement of Boxted Parish Council (BPC) to carry out the independent examination of the BNP. I have been appointed through the Neighbourhood Planning Independent Examiner Referral Service (NPIERS).
6. I confirm that I am independent of both Colchester Borough Council and Boxted Parish Council and have no interest in any land which is affected by the BNP.

7. I am a Chartered Town Planner with over 30 years' experience in local government, working in a wide range of planning related roles, including 15 years as a chief officer. Since 2006 I have been an independent planning and regeneration consultant. I have completed 10 neighbourhood plan examinations and three health checks. I therefore have the appropriate qualifications and experience to carry out this examination.

### **The Scope of the Examination**

8. The nature of the independent examination is set out in Sections 8-10 of Schedule 4B of the Town and Country Planning Act 1990.
9. I must:
  - a) decide whether the Plan complies with the provisions of Sections 38A and 38B of the Planning and Compulsory Purchase Act 2004. These requirements relate primarily, but not exclusively, to the process of preparing the Plan and I shall deal with these first.
  - b) decide whether the Neighbourhood Development Plan meets the basic conditions contained in Schedule 4B paragraph 8(2) of the Town and Country Planning Act 1990. This element of the examination relates mainly to the contents of the Plan.
  - c) make a recommendation as to whether the Plan should be submitted to a referendum, with or without modifications, and whether the area for the referendum should extend beyond the Plan area.
10. The Plan meets the basic conditions if:
  - a) having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the Plan;
  - b) the making of the Plan contributes to sustainable development;
  - c) the making of the Plan 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);
  - d) the making of the Plan does not breach, and is otherwise compatible with, EU obligations.



11. Paragraph 9 of Schedule 4B indicates that as a general rule the examination should be carried out on the basis of written representations unless a hearing is necessary to allow adequate consideration of an issue or to allow a person a fair chance to put a case. In carrying out the examination I came to the conclusion that the examination could be completed without a hearing.
12. The documents which I have referred to in the examination are listed below.
  - Boxted Neighbourhood Plan 2014-2029 Submission Version January 2016
  - Boxted Neighbourhood Plan Boundary
  - Boxted Neighbourhood Plan 2014-2029 Basic Conditions Statement January 2016
  - Boxted Neighbourhood Plan 2014-2029 Consultation Statement January 2016
  - Boxted Neighbourhood Plan Submission Stage Consultation (regulation 16) Documents January 2016
  - Boxted Neighbourhood Plan Submission Stage Consultation (regulation 16) documents November 2014.
  - Boxted Neighbourhood Plan Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment Screening Determination
  - Appeal Decision ref APP/A1530/A/14/2216873
  - Housing Needs Survey Boxted 2013 Rural Community Council of Essex
  - Boxted Traffic Issues, Neighbourhood Development Plan October 2013 Waterman Transport and Development Ltd
  - Colchester Borough Council's response to the Boxted Neighbourhood Plan (Submission Consultation – Regulation 16) March 2016
  - Assessment of Open Countryside between Settlements in the Borough of Colchester, (extract relating to countryside between Colchester and Boxted), Chris Blandford Associates July 2009
  - Colchester Local Development Framework Proposals Maps, October 2010, Colchester Borough Council
  - Colchester Local Development Framework Core Strategy Adopted December 2008 Selected policies revised July 2014, Colchester Borough Council (CS)
  - Colchester Local Development Framework Development Policies Adopted October 2010 Selected policies revised July 2014, Colchester Borough Council (DPDPD)
  - Boxted Parish Plan incorporating the Village Design Statement Boxted Parish Council (undated)
  - Public Rights of Way Improvement Plan Essex County Council 2009

- Colchester Borough Council Strategic Housing Market Assessment Final Report 2013
- Colchester Local Plan Issues and Options Report 2015.
- The Neighbourhood Planning (General) Regulations 2012 as amended in 2015 which are referred to as the NPR
- The Environmental Assessment of Plans and Programmes Regulations 2004 (EAPPR).
- The National Planning Policy Framework which is referred to as the NPPF
- National Planning Practice Guidance referred to as PPG

13. I made an unaccompanied visit to Boxted 8 April 2016 to familiarise myself with the village and help me to understand the implications of the Plan policies. I spent most of a day walking round the village and its surroundings to view all the key locations referred to in the Plan.

### **The Preparation of the Plan**

14. An application for the designation of the whole of the parish of Boxted as a Neighbourhood Area was submitted by BPC to CBC on 7 August 2012. The Borough Council undertook consultation as required by regulation 6 of the NPR from 21 August to 2 October 2012 and the CBC Local Plan Committee approved the designation at its meeting on 8 October 2012. The designation was subsequently published on the Council's website in accordance with regulation 7(1) of the NPR.
15. As required under Section 38B (1) (a) of the Planning and Compulsory Purchase Act 2004 the Plan clearly states the period to which it relates, which is 2014-2029.
16. The Plan must not include any provision about development that is excluded development as defined in Section 61K, which is inserted into the 1990 Town and Country Planning Act. Excluded development includes "county matters" such as mineral extraction and waste disposal and major infrastructure projects. I am satisfied that the submitted plan contains no such provision.
17. I am also satisfied that the BNP does not relate to more than one neighbourhood area.

## **Public Consultation**

18. The process of public consultation on the preparation of the BNP started with an Open Day on 14 July 2012. The event was publicised widely on the parish website, in the village newsletter, with posters and by means of a flyer distributed to all households. At the event several questions were posed about key issues for the future of the village. A questionnaire was also distributed to all households in the parish in October 2012 which gave residents 6 weeks to reply. The questionnaire posed the same questions as those asked at the open day. There were 212 responses to the questionnaire which suggests a good level of engagement at this early stage of the plan process for a village of this size. The questionnaire gave a clear indication of the key issues to be addressed by the plan.
19. A further open day was held in June 2014 to present the response to the first draft of the proposed policies. The policies were presented as a response to the issues that were raised in the first phase of consultation.
20. Formal regulation 14 consultation on the Pre-Submission Plan took place from 21 July to 15<sup>th</sup> September 2014. It is evident from the Consultation Report that the Parish Council took reasonable steps to bring the Draft Plan to the attention of residents of the parish, through publicity on its website, information in the parish newsletter which is distributed to all households, posters displayed in the village and letters to statutory consultees, businesses and community organisations. The village newsletter encouraged people to look at the online version of the Plan or to request a hard copy. However, the response to the consultation was disappointing with only 13 responses. Almost all of these were from statutory consultees, landowners or business who received written consultation rather than from members of the public.
21. The comments received during the Regulation 14 consultation and the responses of the Parish Council to them are set out in the Consultation Statement as required by the regulations.
22. Following the submission of the Plan in 2014 CBC publicised it in accordance with regulation 16 of the NPR from 24 November 2014 to 5 January 2015. The responses to this publicity indicated that that some individuals had not been aware of the emerging neighbourhood plan until this point. This awareness had been prompted by an outline planning application for the development of up to 45 houses at Hill Farm, adjacent to the junction of Boxted Straight Road and Carters Hill at Boxted Cross. The application was refused by CBC and, following an appeal, a public inquiry was held on

27-28 November 2014, just after the publicity on the submitted neighbourhood plan had started. The appeal was unsuccessful and the decision was issued on 14 January 2015, just after the end of the regulation 16 publicity.<sup>2</sup>

23. In reaching his conclusions the Inspector expressed concerns regarding the sustainability of the site for residential development, because of its location in a relatively small village with limited services and public transport. He was also not satisfied that the scale and density of the development proposed would be compatible with the character and appearance of the area. He carefully considered the content and status of the emerging BNP in the light of PPG on the weight to be attached to emerging neighbourhood plans<sup>3</sup>. He was concerned that “support for the allocation through the neighbourhood plan process would at best be described as ‘inconsistent’.” He concluded that it would be prejudicial to the neighbourhood plan process to grant permission for a proposal which was fundamental to the Plan but which had not been examined or subject to a referendum.
24. It is evident from the documentation submitted to me that the appeal decision led ultimately to the resubmission of the BNP in January 2016 with some changes to Policy HF1 relating to the Hill Farm site. I shall consider the issues raised in the Inspector’s decision and their influence on the amended proposals for the Hill Farm site in more detail when I consider Policy HF1 but it also had specific implications for the public consultation process which I shall consider here.
25. From the documentation it was not exactly clear to me what happened in procedural terms between the receipt of the appeal decision and the submission of the slightly amended plan in January 2016. I therefore sought factual clarification of this and my e mails and the responses from CBC are included in Appendix 1.
26. It is evident that both CBC and BPC had concerns about the implications of the appeal decision for the Neighbourhood Plan in its originally submitted form. However, there seems initially to have been a distinct absence of communication on how to deal with this in procedural terms. In effect, the submitted plan was placed on hold while BPC considered how to address the points made by the Inspector in his decision. It is not normal practice for amendments to be made to a plan by the qualifying body once it has been submitted to the local planning authority. In circumstances where such changes were necessary it would often be necessary for the Plan to be withdrawn from

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<sup>2</sup> Appeal Decision APP/A1530/A/14/2216873

<sup>3</sup> PPG Reference ID 41-007-20140306

examination and for the revised plan to be subject to consultation in accordance with regulation 14 prior to being re-submitted.

27. In the summer of 2015 BPC carried out further consultation in relation to the issues relating to the proposals for development at Hill Farm to which the appeal decision referred, in particular the scale and nature of development there. This included an open session as part of a Parish Council meeting which was well attended and a questionnaire that was sent to all the households in the village. There was a difficulty with the distribution of the questionnaire due to errors by a mailing distribution company and the Parish Council extended the period for response and invited people to request a hard copy or complete the survey online. Notwithstanding the distribution difficulties there were 358 replies to the questionnaire which is a very substantial response, given the population and dispersed character of the village.
28. The consultation that has been carried out by BPC in re-considering the policy has addressed the issues that were relevant to the amendments that were made. There was clearly support for the principle of some residential development on the site and most respondents favoured rather less development than had been proposed in the original submission. Thus this consultation has, to a large extent, served the same purpose as regulation 14 consultation, even though the actual revised wording of the policy was not subject to consultation prior to submission.
29. BPC considered the response to the additional consultation and the points made by the Inspector in the appeal decision and resubmitted the Plan in January 2016 with some amendments to Policy HF1 and consequential changes to the Consultation Statement and Basic Conditions Statement. (The 4 changes to the policy are shown in Appendix 1). CBC again publicised the Plan in accordance with regulation 16 of the NPG from 1 February to 14 March 2016. The second round of regulation 16 consultation has provided the opportunity for comment on the revised policy. Significantly, the response to the first round of regulation 16 consultation in December/January 2015 generated significant objections to some aspects of the proposals at Hill Farm but that was not the case in relation to the modified policy which was the subject of regulation 16 publicity early in 2016.
30. The proposed changes are very limited in extent, relating to just one policy and to issues and comments that have been made at various stages of the plan preparation process and have been reinforced by the decision of the Inspector on the appeal. For these reasons I am satisfied that the withdrawal of the Plan from the examination and the repetition of the regulation 14 consultation process would serve no useful purpose.

31. I am satisfied that the consultation that was undertaken meets the requirements of regulation 14 of the NPR and that the Consultation Statement fully meets the requirements of Regulation 15 of the NPR.

### **The Development Plan**

32. The statutory development plan is made up of:
- The Colchester Local Development Framework Core Strategy CS adopted in December 2008 with selected policies revised in July 2014
  - The Colchester Local Development Framework Development Policies adopted in October 2010 with selected policies revised in July 2014. (DPDPD)
  - The Essex Minerals Plan adopted in July 2014
  - The saved policies of the Essex and Southend Waste Local Plan adopted in September 2001. The pre-submission draft of the Replacement Waste Local Plan for Essex and Southend is the subject of consultation at the time of writing.
33. While the CS is still in force, it does not provide a strategic context for the whole of the plan period of the BNP. The time horizon for its housing policies is 2023 and for employment forecasts 2021. A new Local Plan, with a planning horizon of 2032 is currently being prepared but is at an early stage with consultation on a draft plan anticipated in the summer of 2016 and it is currently envisaged that it will be adopted in 2017.
34. The basic conditions simply require that neighbourhood plans are in “general conformity with the strategic policies of the development plan”. However, in relation to emerging local plans, PPG suggests that “the reasoning and evidence informing the local plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested.”<sup>4</sup>
35. In addition to the adopted development plan, and in the absence of a strategic context which covers the whole of the plan period for the BNP the statement of national policy

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<sup>4</sup> PPG Reference ID: 41-009-20140306

in the National Planning Policy Framework (NPPF) supported by the national Planning Practice Guidance (PPG) is a very important consideration in my examination.

### **The Basic Conditions Test**

36. The Basic Conditions Statement submitted with the Plan correctly sets out the basic conditions which must be satisfied. It then sets out the relationship of the Plan to national policy as expressed in the core principles in the NPPF by relating the objectives of the BNP to the goals of the NPPF and by relating each of the policies of the BNP to the relevant sections of the NPPF. I have found this to be a helpful and concise approach. It also looks at the contribution of the plan to sustainable development with regard to the evaluation of possible sites for development. This is a rather restricted approach and it is necessary for me to have regard to the contribution of all of the policies in the Plan to sustainable development.
37. I shall consider the Neighbourhood Plan with regard to basic conditions a), b) and c) in relation to each of its policies but will first consider whether it meets European Union obligations.

### **European Union Obligations**

38. Included with the submission documents is a statement prepared by CBC which sets out a determination that neither a Strategic Environmental Assessment (SEA) or an Appropriate Assessment under the Habitats Regulations (HRA) is necessary. In each case this conclusion is reached following a screening assessment and consultation with the appropriate bodies.
39. An SEA screening assessment is set out following the guidance in Figure 2 of the Practical Guide to the Strategic Environmental Assessment Directive. The assessment sets out factors which Schedule 1 to the Environmental Assessment of Programmes and Plans Regulations 2004 lists for consideration when determining the likely significance of effects on the environment. The table identifies some positive environmental effects which are likely to occur as a result of the Plan's policies but concludes that none of these is likely to be significant because the Plan is in effect a minor modification of the Colchester Borough Local Plan. I have no reason to question the conclusion that these effects will not be significant.

40. During the screening assessment process the consultation bodies were consulted and all have replied confirming that a SEA is not necessary. In accordance with the regulations<sup>5</sup> the consultation bodies were also sent a copy of the determination.
41. In relation to the Habitats Regulations Assessment, the screening report identifies the European sites which could potentially be affected as: The Colne Valley Estuary SPA (Special Protection Area), Abberton Reservoir SPA, Blackwater Estuary SPA and the Essex Estuaries SAC (Special Area of Conservation). It concludes that the Plan would have no effects on these sites and this view is confirmed by Natural England and the Environment Agency.
42. I am also satisfied that nothing in the BNP is in conflict with the requirements of the European Convention on Human Rights.
43. I therefore conclude that the BNP would not breach and would be otherwise compatible with EU obligations.

### **Vision and Objectives**

44. The Plan sets out a Vision for Boxted in 2029 and 5 objectives which, it is envisaged, the Plan will help to deliver. The Vision is a broad aspirational statement for Boxted to be a thriving rural community which retains its distinct character and does not harm the Dedham Vale Area of Outstanding Natural Beauty. It also seeks the improvement of local facilities and infrastructure. The four objectives to some extent repeat the vision but focus more specifically on the aims of the BNP. Each is linked in the Basic Conditions Statement to the relevant key theme in the NPPF. I am satisfied that there is no conflict between these objectives and the aim of achieving sustainable development which runs through the NPPF.

### **The Policies of the Plan**

45. I have considered each of the policies having regard to the basic conditions. I have also had regard to the views expressed in response to public consultation both in the early stages of the preparation of the Plan and, in particular, in the responses to the

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<sup>5</sup> Regulation 11 (1) of the Environmental Assessment of Plans Regulations, not regulation 9 (1) as quoted in last sentence of the determination



regulation 16 consultation. However, I am only empowered to recommend modifications where they are necessary to enable the Plan to meet the basic conditions or to correct errors. PPG<sup>6</sup> requires that policies should be “clear and unambiguous” and “drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications” and some modifications have been recommended with this in mind. Although I have not referred specifically to all the representations and suggestions that have been made I have taken them all into account.

### **Policy SB1: Village Settlement Boundaries**

46. The policy defines the village settlement boundary and spells out the significance of the settlement boundary in policy terms. There are three separate settlement boundaries in Boxted: Boxted Cross, Boxted Mill Road and Boxted Workhouse Hill. The policy proposes the extension of the settlement boundary at Boxted Cross to include the Hill Farm site where the plan proposes residential development in Policy HF1. This proposal is considered in detail later in this report but I am satisfied from this that the settlement boundary is consistent with the basic conditions. While the settlement boundaries are otherwise unchanged, the map is at too small a scale to be clearly visible. As the boundary is to be used to determine the policies that apply in a specific location it needs to be at a larger scale to enable it to be applied in this way.
47. One of the comments received in response to the regulation 14 consultation on the draft BNP made representations for the inclusion of a strip of land of about 0.12ha between the primary school and Crossfield Way within the village settlement boundary. This is about 20m wide and 75m deep. Mr Sexton makes the point that this land is isolated from other farmland and not capable of beneficial use in this undeveloped state. He also suggests that the school is now an established part of the street scene and defines the entrance to the village as it is approached along Carters Hill. I have considerable sympathy with this view and can see no sound reason in planning terms for the exclusion of this strip of land from the settlement boundary. It is a small site which because of its shape could only accommodate a very small number of dwellings and if left unused it is likely to detract from the character of the village. I conclude that its exclusion would not be consistent with the presumption in favour of sustainable development in the NPPF and would therefore not satisfy the basic conditions.

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<sup>6</sup> PPG Reference ID: 41-041-20140306

## **Recommendations**

**Replace Figure 4.1 with a map or maps at a larger scale (1:5000 or 1:10000) so that the extent of the settlement boundary is more clearly defined.**

**On the new map extend the settlement boundary at Boxted Cross to include the small strip of land between Crossfield Way and the Primary School.**

**Amend the second sentence of Policy SB1 to read “The settlement boundary of Boxted Cross shall include the allocation of the Hill Farm site (Policy HF1), and the land between the primary school and Crossfield Way.**

## **Policy LC1: Coalescence with Colchester Urban Area**

48. The policy aims to prevent development which would have the effect of eroding the clear separation between the urban area of Colchester and Boxted. Major development is taking place on the northern fringes of the Colchester built up area including a large park and ride site that abuts the southern edge of the parish. The policy justification draws extensively on the Colchester Borough Landscape Character Assessment 2005 and the Assessment of Open Countryside between Settlements in the Borough of Colchester. The policy is consistent with Policy ENV1 of the Core Strategy in which one of the aims is to maintain settlement separation. It is also worded positively to allow development which does not cause this sort of harm and complies with Policy SB1. I am satisfied that it meets the basic conditions.

## **Policy LC2: Protection of Landscape Character**

49. The policy aims to protect the landscape character of Boxted by requiring proposals for new developments of 3 dwellings or more or 500m<sup>2</sup> or more which are outside a settlement boundary or inside but contiguous to it to be accompanied by a landscape assessment. I find that this is a proportionate and reasonable requirement that will assist the aims of Policy ENV1 of the Core Strategy and is consistent with the encouragement in paragraph 61 of the NPPF for policies to address the integration of new development into the natural, built and historic environment.

## **Policy SM1: Loss of Visual Amenity/ Unacceptable Noise Impact from Commercial Activity**

50. One of the distinctive features of Boxted is Straight Road and the small holdings on either side of it. The evolution of these small holdings since they were first established at the beginning of the twentieth century by the Salvation Army has had a significant

effect on the character of the village as a whole. The sporadic development along Straight Road associated with the smallholdings including houses, equestrian uses and a variety of business uses is at the same time part of the character of the parish and a potential threat to its rural character. Commercial uses provide employment but can also generate traffic and noise and cause visual intrusion. Policy SM1 aims to address this issue by not precluding commercial development on smallholdings but only permitting it where any harm can be effectively mitigated to a level that is acceptable. The policy strikes an acceptable balance which respects Policy DP4 of the DPD 2010 and the approach to business development in rural areas in paragraph 28 of the NPPF.

51. I am satisfied that the policy meets the basic conditions subject to the resolution of a contradiction between the policy and the supporting text. Paragraph 6.10 states that the “policy applies not only to smallholdings but all commercial activity in the parish...”, but Policy SM1 states that “Any unacceptable loss.... on any smallholding in Boxted parish...”. As it stands the wording of the policy would outweigh paragraph 6.1 and the policy or supporting text need to be modified to clarify the intentions of the policy.

**Recommendation:**

**Either delete paragraph 6.10 or in Policy SM1 delete “on any smallholding”.**

**Policy HF1: Hill Farm Site, Carters Hill/Boxted Straight Road**

52. Policy HF1 provides for residential development of the former employment site at Hill Farm in Boxted Cross and sets out criteria to be met by any development scheme.
53. The site is allocated as a Rural Local Employment Zone in policy DP5 of the DPD 2010 which, among other things, aims to safeguard sites used or allocated for employment purposes unless a number of criteria are met. One of these is the provision of evidence to demonstrate that no suitable and viable employment use can be found. However, the buildings that accommodated employment uses on the site have been demolished for some time and a planning permission for new commercial units granted in 2007 has not been implemented despite having been renewed twice. At the inquiry into the earlier proposal for residential development on the site already referred to CBC did not maintain its objection to the loss of the employment use of the site, as it accepted that there was no realistic prospect of any demand. The Inspector also accepted that there was no realistic prospect of the site being developed for industrial or office uses for the foreseeable future and paragraph 22 of the NPPF discourages the long term protection of sites for employment purposes in these circumstances. I

am therefore satisfied that the release of the site for housing development would not be in conflict with policy DP5 and that the proposal for housing development should be considered in the context of paragraph 22 of the NPPF.

54. The early stages of consultation on the neighbourhood plan identified the Hill Farm site as the most popular site for residential development, although only 41% of respondents to the questionnaire supported more residential development in the village.
55. It does not appear that there was any explicit evaluation of the Hill Farm site or alternative sites in the stages leading up to the regulation 14 consultation. However, the Basic Conditions Statement contains an evaluation of the sites that were suggested in the early stages of consultation against a range of criteria. Having regard to the advice on site selection in PPG<sup>7</sup> it would have been preferable for this to have been carried out earlier in the plan preparation process where it could have informed the development of the policy rather than provide a retrospective justification. However, I am satisfied on the basis of this evaluation that The Hill Farm site has clear advantages over the other sites considered in terms of sustainability. Its central location in the village gives it better access to the school, village hall, playing field and sports and social club. Moreover, it would be a positive reuse of previously developed land. None of the alternative sites considered has comparable advantages or significant support from the community.
56. Boxted is in the “other villages” category in the settlement hierarchy set out in the CS. In these villages, substantial development is not envisaged in the period up to 2021 and provision is made for 435 dwellings in 42 villages within which Boxted Cross and Boxted Workhouse Hill are identified as two separate villages. There is no specific figure for any of the individual villages and the priority in these villages is “protecting distinct local character and supporting the provision of affordable housing, open space, rural employment, key services and community facilities”. It follows that the amount of housing proposed should be related to these aims rather than the maximum capacity of the site.
57. Policy ENV2 of the CS relating to Rural Communities, which was revised in July 2014 supports the development of infill sites and previously developed land within the settlement boundaries of villages. It places an emphasis on the quality of design and construction and meeting locally identified needs. It also encourages communities to

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<sup>7</sup> PPG Reference ID: 41-043-20140306

prepare Neighbourhood Plans to address the specific needs of their communities. The proposal in Policy SB1 of this Plan to include the Hill Farm site with the settlement boundary brings the site within the scope of Policy ENV2.

58. I have considered the evidence base of the emerging local plan in the form of the Colchester Strategic Housing Market Assessment 2013. This suggests that there will be a need for a somewhat higher overall rate of housebuilding than in the current plan, approximately 1065pa rather 830. However, there is at this stage no indication of whether this will imply a change of strategy that would require a substantially higher rate of development in villages.
59. At the 2014 Open Day on the emerging Neighbourhood Plan a draft policy to allow up to 43 houses on the site was put forward. This is equivalent to a density of almost double the average density in Boxted Cross of 15 dpha. The Consultation Statement reports that there was “Broad support for a residential scheme at Hill Farm and associated affordable housing for Boxted people, but some concern about density being too high.” The draft BNP which was subject to regulation 14 consultation also referred to a maximum of 43 dwellings on the site and CBC expressed concern that there was no clear justification for this figure. Notwithstanding this, the original submission version of the Plan also referred to a maximum of 43 dwellings which closely reflected the planning application that had already been submitted.
60. The appeal decision on the proposal for up to 45 dwellings on the Hill Farm site prompted the BPC to reconsider the detailed wording of Policy HF1. In particular the concern of the Inspector that the proposal in the planning application “could result in a development that would appear incongruously cramped compared to the established grain of development at this location” and that the scale of the development envisaged in the application was “redolent of that envisaged for higher order villages ...where there is better access to services and facilities” suggested that the scale of development should be reconsidered.
61. The public consultation that took place in the summer of 2015 after the appeal decision suggested a preference for rather less than 43 houses. The revised submission did not specify the total number of dwellings on the site, though it did specify the number and size of affordable houses. It also included references for the potential inclusion within the development of houses with a live-work element in their design and a community shop. In other respects the detailed criteria of the policy were unchanged from the originally submitted version. The detail of both the original and resubmitted versions of the policy are shown in Appendix 1.

62. It is important to carefully address the relationship between the proposals for the Hill Farm site and Policies H1, H2 and ENV2 of the CS, particularly as the appeal Inspector considered that Policy ENV2 “does not provide a sufficient policy basis to support estate scale development in isolated and rural locations.” At the time the Inspector considered the proposal, the site lay outside the village boundary and the proposed development was clearly contrary to Policy ENV2. The proposal of Policy SB1 in the BNP to extend the settlement boundary to include the Hill Farm site changes the policy context, and means that the development of the site is potentially consistent with CS policy ENV2.
63. The removal of any reference in Policy HF1 to a specific amount of development means that any proposals relating to the site can be considered in the context of the Core Strategy policies and the detailed criteria which emphasise the importance of the effect on the character of the village. I attach significant weight to the status of the site as previously developed land. Policy ENV2 specifically refers to the appropriate development of previously developed land within the settlement development boundaries of villages. Policy H2 provides for a lower density of development where access to centres and public transport is more limited and detailed proposals can be addressed in this context. In the response to the regulation 16 publicity relating to the originally submitted Plan there were strong objections from Amanda Clowe and Lisa Scott to the density of the proposed development at Hill Farm and it is noteworthy that there were no such objections to the revised policy where the number of dwellings is not specified and will be determined with reference to the detailed criteria in the policy.
64. I accept that the limited range of services available in the locality undermines the sustainability of the site to an extent and suggests that the scale of development on the site should be limited in order to comply with policy ENV2. However, there will clearly be a need for some housing development, including affordable housing in Boxted over the neighbourhood plan period and this site is better located to available facilities than any of the other sites that have been considered. Thus the element of conflict between the principle of residential development on the Hill Farm site and policy ENV2 is slight, and is outweighed by the support in the policy for the development of previously developed land and the encouragement for Neighbourhood Plans to provide locally-determined policies. I am therefore satisfied that the proposal for residential development on the Hill Farm site is in general conformity with CS policies H1, H2 and ENV2 and will contribute to sustainable development providing it has regard to the rural character of the location. However, it is necessary for me to recommend some modifications to the detailed criteria to meet the basic conditions.

65. In the first criterion the word “reflects” suggests that new development should be similar in style to existing development. That is too prescriptive as it would preclude innovative design which is explicitly encouraged in paragraph 60 of the NPPF and the word “respects” would allow more flexibility and meet the basic conditions.
66. There is no explicit justification for the requirement that at least 25% of the market properties built should be 1-2 bed, and at least 25% 3-bed properties. This point was raised by CBC in its comments on the regulation 14 consultation and the BPC response provided evidence from both the Boxted Housing Needs survey and The Colchester Strategic Housing Market Assessment 2013 in its response in the Consultation Statement. PPG suggests that “Proportionate, robust evidence should be drawn upon to explain the intention and rationale of the policies ..”<sup>8</sup> The inclusion of this evidence in the supporting text is necessary to provide the justification necessary to satisfy the basic conditions. However, it is possible that over the plan period there will be changes in the type of dwellings needed and the rigid application of this standard could not be justified if more up to date evidence suggested different needs. A modification to reflect this is also necessary to meet the basic conditions.
67. The expectation that the applicant will be able to agree with CBC the mechanism to ensure that some of the affordable housing is allocated to local residents is a reasonable aspiration, but there is no evidence relating to the allocations policy of CBC to demonstrate that it is deliverable. While it is acceptable to require a planning obligation which specifies the mechanism for the allocation of affordable housing there is no justification for assuming that it will be possible to prioritise local need. Many neighbourhood plans do have such policies but they are normally supported by evidence of the approach of the housing authority to the allocation of affordable housing. The same reservation relates to the intention that affordable housing should be held in perpetuity for local people. Provisions such as that proposed are normally only deliverable on exception sites unless housing allocation policies explicitly prioritise local needs and I have no evidence that is the case. In the absence of such evidence it has been necessary for me to recommend the deletion of these aspects of the policy to meet the basic conditions.<sup>9</sup>
68. The proposal to encourage an element of “live-work” in the design of at least some of the dwellings is an attempt to retain at least an element of economic activity on the

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<sup>8</sup> PPG Reference ID 41-040-20140306

<sup>9</sup> PPG Reference ID 41-041-20140306 requires policies to be “clear and unambiguous” ...and “supported by appropriate evidence”.

site. There is no indication of public opinion on this proposal in the summary of the response to the questionnaire in June 2015 and I conclude from this that views were neither strongly positive or strongly negative. The policy is phrased with considerable flexibility to the extent that it is not clear how “where it is possible” is to be determined or what “a proportion” means. This does not comply with the requirement in the PPG reference already cited for the policy to be “clear and unambiguous”. I have therefore suggested a modification to address this.

69. The seventh bullet point requires the proposed development to contribute towards improvements to the sports and recreation facilities at the King George Playing Fields and the Sports and Social Club and addressing parking issues at the school. All planning obligations have to meet the legal requirements set out in paragraph 204 of the NPPF. They must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

It is not clear at this stage that all of these requirements would meet these tests. Some of the improvements may not be directly related to the development and without any indication on the scale of contribution it is not clear that the third bullet point can be met. There must be a risk that cumulatively, having regard to the limited scale of development likely to be appropriate on the site, together with the costs of site remediation and affordable housing, they would undermine the viability of development on the site. Paragraph 173 of the NPPF indicates that “sites and development ...should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened”. To meet the basic conditions in this regard a modification is necessary to clarify the need to apply the statutory tests.

70. The aspiration to provide a community shop is laudable and would contribute to sustainable development. However, I do not consider that “demonstrable interest from the community” is sufficient to require such provision as interest may not translate into viability, again having regard to NPPF paragraph 173. I have therefore suggested a modification to comply with the basic conditions.
71. I am satisfied that the bullet points that I have not directly referred to and, subject to the modification below to reflect the points I have made, I am satisfied that Policy HF1 meets the basic conditions.



## **Recommendations**

**In the first bullet point under Policy HF1 delete “reflects” and insert “respects”.**

**In the first sub-bullet of the second bullet point of Policy HF1 after “...3 bed properties” insert “unless up to date published evidence of housing needs suggests otherwise”.**

**After paragraph 7.9 in the supporting text insert a new paragraph to provide reasoned justification for the first section of the second bullet point in Policy HF1 to read: “The Boxted Housing Needs Survey suggested that all the local need for market housing was for housing of 1-3 bedrooms and the Colchester Strategic Housing Market Assessment 2013 found that 75% of need for market housing is for houses of 3 bedrooms or less. The policy seeks to reflect this need with an element of flexibility to assist the viability of the development and during the plan period more up to date assessments of housing need may identify a need for a different mix of dwellings.”**

**Delete the second sentence of the 3<sup>rd</sup> bullet point and the 4<sup>th</sup> bullet point in Policy HF1, from “It is expected that the applicant...” to “...why this is not possible”.**

**Delete paragraph 7.11 of the supporting text.**

**Modify the 4<sup>th</sup> bullet point to read “Proposals which incorporate an element of ‘live-work’ into their design will be encouraged”.**

**Modify the start of 8<sup>th</sup> bullet point (beginning “it shall contribute to..”) to read “subject to the statutory requirements for planning obligations a contribution will be sought through a planning obligation or Community Infrastructure Levy income may be used for improvements to and ...”.**

**Modify the beginning of the 12<sup>th</sup> bullet point to read “subject to the effect on the viability of the development as a whole if there is demonstrable interest from the community at the time a community shop shall be provided on the site.”**

## **Policy RE1 Provision of a Community Shop**

72. This policy supports the provision of a community shop by the change of use of an existing building in the village, subject to satisfactory parking and access. It is consistent with NPPF paragraphs 28 and 70 and I am satisfied that it meets the basic conditions.

### **Policy B11 High Speed Broadband**

73. The policy seeks to ensure that new development has access to high speed broadband, or if this is not possible that the necessary infrastructure is installed to facilitate access when it is available. For development not within or adjacent to settlement boundaries it provides for the possibility of a contribution through the Community Infrastructure Levy to facilitate this. I am satisfied that the policy meets the basic conditions.

### **Policy TM1 Highway Safety and Parking**

74. Highway safety, particularly at junctions with Straight Road and associated with the primary school drop off and pick up was identified as an important issue in public consultation. The policy requires new development to adhere to adopted parking standards, and, where appropriate, that new development should make contributions to measures to improve road safety. It also requires that proposals for new development that would affect the highway should be accompanied by a transport assessment or statement. I have noted the County Council's comment that a transport assessment or statement is unlikely to be necessary for the majority of new development proposals. However, a transport statement may be very brief and an amendment to indicate that such a statement should be proportionate to the development proposed would enable the policy to meet the basic conditions. The policy wording is however loose as it is clearly the intention that it is development proposals rather than the development itself that need to be accompanied by a transport statement whereas any contributions to road safety will come from the development. To comply with PPG a minor change is necessary to reflect this.
75. As I have already pointed out contributions through planning obligations must meet the statutory requirements. Subject to a modification to clarify this I am satisfied that the policy meets the basic conditions.

### **Recommendation**

**Reword Policy TM1 from the third line onwards to read:**

**"All proposals for new development which impacts on the highway will be accompanied by a transport assessment or transport statement proportionate to the scale of the proposed development.**

**Where appropriate developments will be expected to contribute through a planning obligation towards measures to improve road safety including junction**

**improvements and signage. Community Infrastructure Levy income may also be used for this purpose.”**

**In the supporting text in paragraph 10.4 amend the third sentence to read:**

**“Where new development has a direct impact on these issues it may be appropriate to seek a contribution towards measures to improve highway safety. To assess the impact on road safety a transport assessment or statement proportionate with the scale of development is required but this is would not be an onerous requirement for small scale development”**

### **Policy TM2: Improving the Bridleway Network**

76. This policy aims to improve the bridleway network in response to concerns expressed through consultation about the lack of bridleways in the area. The supporting text also refers to other desirable improvements to footpaths and the provision of new cycleways. However, the policy is simply a statement of an intention to work together and is not a policy for the development and use of land. It could not be applied effectively in the determination of planning applications which is the purpose of development plan policies.

#### **Recommendation**

**Delete policy TM2 and move the whole of section 10 to become a subsection in what is now section 11 after the subsection headed “Improving bus services”. Delete paragraph 11.8 as it repeats what is in the section to be moved.**

### **Summary and Referendum**

77. Boxted is a geographically large parish with a relatively small and very dispersed population. It thus presents a very distinct set of challenges for a community preparing a neighbourhood plan. However, the BNPG has addressed these challenges in a positive way focussing on the key issues that were identified by the community during the early stages of consultation.
78. It is evident that at some stages of the process it has not been easy to engage the community in the plan process, but I am satisfied that the BPC has met the requirements of the regulations in this regard. The timing and nature of the appeal decision relating to proposed development at Hill Farm just as regulation 16 publicity on the submitted plan was ending presented a further unique challenge to which the BPC responded positively. While a case could definitely be made for withdrawing the Plan and repeating the regulation 14 consultation at this stage, CBC and BPC worked

effectively together to address the issues raised and I am satisfied that the very limited nature of the changes made as a result of the appeal decision and new consultation did not necessitate this.

79. The Plan takes a positive approach towards new development by allocating a significant site for housing and open space in a relatively small community with a limited range of services. In doing so it addresses the problem of a derelict site within the largest cluster of development and makes provision for affordable housing necessary to meet local needs and seeks to enhance the facilities available to the community.

80. I have found it necessary to suggest some modifications to enable the Plan to meet the basic conditions and other legal requirements. In most cases these are relatively minor, but I have recommended the amendment of the proposed settlement boundary to include the small strip of land between the primary school and Crossfield Way. It has also been necessary to recommend modifications in relation to the allocation of affordable housing and securing contributions to community infrastructure to limit the policies to what is deliverable within the legal framework.

81. I have concluded that, if the modifications that I have recommended are made:

The Boxted Neighbourhood Plan has been prepared in accordance with Sections 38A and 38B of the Town and Country Planning Act 1990 and the Neighbourhood Planning Regulations 2012;

Having regard to national policies and advice contained in guidance issued by the Secretary of State it would be appropriate to make the Plan;

The making of the Plan would contribute to the achievement of sustainable development;

The making of the Plan would be in general conformity with the strategic policies of the development plan for the area;

The Plan would not breach and would be otherwise compatible with European Union obligations and the European Convention on Human Rights.

82. **I am therefore pleased to recommend that the Boxted Neighbourhood Plan should proceed to a referendum subject to the modifications that I have recommended.**

83. I am also required to consider whether or not the referendum area should extend beyond the Neighbourhood Plan Area. The whole of the parish of Boxted and I have

seen nothing to suggest that the policies of the Plan will have “a substantial, direct and demonstrable impact beyond the neighbourhood area”.<sup>10</sup> **I therefore conclude that there is no need to extend the referendum area.**

Richard High 5 May 2016

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<sup>10</sup> PPG Reference ID: 41-059-20140306

## **Appendix 1**

### **Changes to Policy HF1 following initial submission of the Plan in November 2014**

The Appendix sets out the detail of the changes to Policy HF1 and an e mail received from Colchester Borough Council in response to questions to establish what happened between the original submission and the revised submission.

In the November 2014 submission Policy HF1 was as follows:

#### **Policy HF1: Hill Farm Site, Carters Hill/Boxted Straight Road**

**Development of the Hill Farm Site, Carters Hill/Boxted Straight Road, will be permitted provided that it complies with the following criteria;**

- **It shall deliver a maximum of 43 dwellings, subject to the density of development reflecting the local character of the built-up area and its rural setting.**
- **It shall provide the following mix of residential properties:**
  - **For market housing – at least 25% of the market properties delivered should be 1-2 bedroom properties and at least 25% should be 3-bed properties.**
  - **For affordable housing – at least three no. 1-bed properties and at least two no. 2-bed properties in line with the Boxted Affordable Housing Needs Survey. This requirement may change if a subsequent Parish Affordable Housing Needs Survey identifies an alternative level and mix of local affordable housing need.**
- **The total number of affordable housing units delivered must comply with Colchester Borough Council Local Plan Policy H4, with a proportion of these expected to be required specifically to address local needs in line with the most recent Boxted Affordable Housing Needs Survey. It is expected that the applicant will seek to agree with Colchester Borough Council the mechanism for allocating the required number and mix of affordable housing units to local residents in Boxted as a priority.**
- **It is expected that the affordable housing units required to address local needs shall be held in perpetuity for local people. If this is not the case then evidence must be provided as to why this is not possible.**
- **It shall provide appropriately located public open space, in the form of a village green or equivalent, which is accessible and available for use by all the community, rather than just the residents of the new development. Contributions towards ongoing maintenance of this space will be required.**
- **The boundary of the site shall have effective screening, both through retention of existing trees and hedgerows and new planting. Existing trees that are subject to Tree Preservation Orders shall be retained within the development.**
- **It shall contribute towards improvements to, and expansion of, open space, sports and recreation facilities at King George Playing Fields in Boxted, with a specific need for improvement of the Sports and Social club.**
- **It shall include and appropriate scheme of sustainable urban drainage (SUDS).**

The only differences between this version and the version which is the subject of this examination are:

In the first point the deletion of “ maximum of 43 dwellings, subject to the density of the development reflecting the local character “ and the insertion in place of the deleted text of “residential scheme at a density that reflects the “

The insertion of two new bullet points:

- Where it is possible to be incorporated into the design, a proportion of residential units should be built with an element of ‘live-work’ in their design.
- If there is demonstrable interest from the community at the time then a community shop shall be provided on site.

E mail from Beverley Maclean dated 15 April 2016

Dear Richard.

Please find the Borough Council's response to issues 1 & 4 from your email dated 10 April 2016.

1. While I have evidence of the decision of the Borough Council on the designation of the neighbourhood area, I do not have a copy of the formal notification to the Parish Council of this.

In response to issue 1, I can confirm that notification about the Area Designation approval for the Boxted Neighbourhood Plan was published on the Council's website following Local Plan committee on 8 October 2012 in accordance with section 7 (!) of the Neighbourhood Plan Regulations 2012.

<http://www.colchester.gov.uk/article/13338/Adoption-of-Boxted-Neighbourhood-Plan-Area>

The decision was also published on the Boxted Parish Council website -

<http://www.essexinfo.net/boxted-parish-council/neighbourhood-development-plan-6/>

It would seem that no formal notification was sent to Boxted Parish Council confirming that the Area Designation had been approved.

4. On p6 of the Borough Council response the submission Plan – doc E10 – there is reference to the delivery of a questionnaire to every household in Boxted being ineffective and to a second distribution which was also ineffective. I cannot reconcile this to the Consultation Statement para 3.1 which makes no reference to any questionnaire but does refer to the distribution of the parish newsletter. Could you please clarify this for me and if there is a questionnaire could I have details of it and the response to it.

In response to issue 4 above, I can confirm that the questionnaires referred to on page 6 of the Colchester Borough Council's response to the Submission Plan refers to questionnaires distributed after the appeal decision was issued in January 2015 and are

same questionnaires referenced in paragraphs 4.4 - 4.6 of the Consultation Statement. These questionnaires did not form part of 2014 Pre Submission consultation exercise.

In response to your query about what happened following the appeal I can confirm that neither Boxted Parish Council or Colchester Borough Council formally requested withdrawal of the Submission Neighbourhood Plan. I received a very brief email on 14 January 2015 from Mr Chris Bowden, the Planning Consultant appointed by Boxted Parish Council to assist with the preparation of the Boxted Neighbourhood Plan. Mr Bowden was responding to an email from me also dated 14 January 2015 in which I had attached the decision notice. In this email Mr Bowden confirmed that he had already received the decision notice which raised '*Some things for the NP Group to consider I feel*'.

The Borough Council was also of the opinion that the Hill Farm appeal decision raised a number of issues which were relevant to the Neighbourhood Plan which needed to be addressed. These were:

1. The amount of residential development is redolent of development envisaged for named higher order villages in Table H1A where there is better access to services and facilities. (CBC has raised concerns in past consultation responses about the decision to retain the number of houses proposed for Hill Farm at 43).
2. Policy ENV2 does not provide sufficient policy to support estate scale residential development in isolated rural locations.
3. The impact of the development on the character and appearance of Boxted Cross would be unduly harmful....with significant harm on the environmental dimension of sustainability.
4. Local support for the Hill Farm allocation would be at best described as inconsistent.

Boxted Parish Council were notified of the need to address these issues via email on 3<sup>rd</sup> December 2015 prior to submission. It is fair to note that after the appeal I was not invited to attend any Neighbourhood Plan meeting. I was not made aware that the Neighbourhood Plan Working Group were planning to organise an extra public consultation following release of the Hill Farm appeal decision.

I made contact with the Parish Council for an update on the Boxted Neighbourhood Plan via email on 13 May 2015 and attended a Parish Council meeting on 8 July 2015. It was at this meeting that I learned about the post appeal questionnaire referred to in the Borough Council's response to the Submission Neighbourhood Plan (page 6 ref doc E10) and also where I learned about the problems with the distribution of the questionnaire and the need to redistribute the questionnaire again. I will copy of this questionnaire when I receive it from the Parish Council hopefully in the next few days. It is my understanding that the additional questionnaire was prepared and issued for consultation in response to criticisms received from a number of local residents in Boxted who were not aware that a Neighbourhood Plan was being developed for Boxted.

Colchester Borough Council and Boxted Parish Council were in regular contact between the Autumn 2015 through to the start of the Submission Consultation for the Boxted Neighbourhood Plan which started on 1 February and ended on 14 March 2016.

I hope this satisfactorily addresses issues 1 & 4 raised in your previous email. I hope to be able to send all the requested copies of questionnaires and reports to you early next week.

Kind regards

Beverley



