

# **Allithwaite and Cartmel Neighbourhood Development Plan 2022 - 2032**

Plan submitted to LPA for examination

November 2022

## **Report to the Westmorland and Furness Council on the Independent Examination of the submission draft Allithwaite and Cartmel Neighbourhood Development Plan**

July 2023

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## **Summary of main findings**

0.1 It is a requirement of the Localism Act that this report should contain a summary of its main findings. The reasons for each of the recommendations are given in the following sections of the report.

0.2 The principal findings in this report are that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in the Town and Country Planning 1990 Act (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

0.3 It is recommended that the plan, as modified, be submitted to a referendum and that the referendum area need not be extended beyond that of the neighbourhood area. Most of the recommendations I make are for wording changes to policies to ensure that they are clear of meaning for ease of interpretation in determining planning applications and to remove any possible ambiguity, taking the development plan as a whole once the neighbourhood plan becomes part of it. Otherwise, the more significant modifications are that policies AC9 and AC10 be deleted as policies with the matters covered in the supporting text.

## **Section 1 - Introduction**

### Appointment

1.01 I have been appointed by the Westmorland and Furness Council (WFC), acting as the Local Planning Authority (LPA), under the provisions of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, to carry out an independent examination of the Allithwaite and Cartmel Neighbourhood Development Plan (ACNDP) as submitted to the LPA on 11 November 2022. The LPA carried out publicity for the proposed plan for a period of 6 weeks between 2 February and 16 March 2023 giving details of how representations might be made, in accordance with Regulation 16 of the Neighbourhood Plans (General) Regulations 2012 ('the 2012 Regulations')<sup>1</sup>. I was formally appointed as examiner on 20<sup>th</sup> April 2023 and sent a link to the documentation required under

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<sup>1</sup> All subsequent reference to a Regulation followed by a number is a reference to the 2012 Regulations.

Regulation 17, which included copies of all of the representations received under Regulation 16. I have taken that documentation and all of the representations into account in carrying out the examination.

1.02 I am a Chartered Town Planner (Member of the Royal Town Planning Institute) with over 50 years post-qualification professional experience in local and central government and latterly as a sole practitioner specialising in development plan policy work. I am independent of the Allithwaite and Cartmel Parish Council ('the Parish Council' – ACPC) and of the Local Planning Authority. I have no land interests in any part of the plan area.

#### My role as an examiner

1.03 The terms of reference for the independent examination of a Neighbourhood Development Plan are statutory. They are set out in the Localism Act 2011 and in the 2012 Regulations. As an examiner I must consider whether the plan meets what are called 'the basic conditions'<sup>2</sup>. In summary, these require me to consider:-

- whether, having regard to national policies and to advice contained in guidance issued by the Secretary of State, it would be appropriate to make the plan;
  - whether the making of the plan would contribute to the achievement of sustainable development;
  - whether the making of the plan would be in general conformity with the strategic policies contained in the development plan for the area;
- and to ensure that:-
- the making of the plan would not breach, and would otherwise be compatible with EU obligations<sup>3</sup> relating to Strategic Environmental and Habitats Assessment and that the plan would be compatible with Convention rights, within the meaning of the Human Rights Act 1998; and

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<sup>2</sup> These are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (as introduced in Schedule 10 of the Localism Act 2011)

<sup>3</sup> As the United Kingdom has formally left the European Union, the provisions of the European (Withdrawal) Act 2018 apply. At the time of writing, no change to the wording of the relevant primary and secondary legislation has been notified which change references to 'European Obligations'.

- that 'prescribed conditions' would be met and 'prescribed matters' would be complied with in plan preparation and submission<sup>4</sup>.

1.04 Legislation requires that my report on the draft plan should contain one of the following recommendations:-

- a) that the draft plan is submitted to a referendum, or
- b) that modifications are made to the draft plan and the modified plan is submitted to a referendum, or
- c) that the proposal for the plan is refused.

I may make recommendations for modifications which I consider need to be made to secure that the plan meets the basic conditions or for compatibility with EU obligations and (Human Rights) Convention Rights. The only other modifications which I may recommend are those to correct errors.

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<sup>4</sup> One such prescribed condition is that the making of the plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

## **Section 2 – Statutory compliance and procedural matters**

2.01 Local Government re-organisation. At the time of the submission of the plan and during the Regulation 16 consultation period the Local Planning Authority was the South Lakeland District Council (SLDC), within the County of Cumbria. However, on 1<sup>st</sup> April 2023 the planning functions of the SLDC passed to a new unitary council, the Westmorland and Furness Council. That council is now the Local Planning Authority responsible for progressing the plan through its later stages. All references in this report to the plan stages completed prior to 1<sup>st</sup> April 2023 are to be taken as being to the South Lakeland District Council.

2.02 Following the statutory consultation period, the SLDC formally designated the Allithwaite and Cartmel Neighbourhood Area on 28<sup>th</sup> January 2015. The plan has been submitted by the ACPC as the 'qualifying body' and it relates solely to the designated Neighbourhood Area of Allithwaite and Cartmel Parish.

2.03 The title of the plan is given on the front sheet as the 'Allithwaite and Cartmel Neighbourhood Plan 2022 – 2032' and, therefore, the statutory requirement<sup>5</sup> that the plan 'must specify the period for which it is to have effect', has been met. I note that there are a number of references within the plan text to the full title of 'Neighbourhood Development Plan', in other cases describing it simply as a Neighbourhood Plan. I do not regard that as being of any significance nor is it an error requiring correction. In this report I will refer to it simply as a 'neighbourhood plan', solely for brevity, except where the formal title is appropriate.

2.04 The plan does not include provision about development which is 'excluded development'<sup>6</sup> and a plan showing the area to which the Neighbourhood Plan relates has been included as Map 1 on page 5 of the plan. Accordingly, the statutory provision in Regulation 15(1)(a) has been met.

2.05 The legislation states that the 'general rule' is that the examination of the issues by the examiner should take the form of the consideration of written representations. However, an examiner must hold a hearing 'for the purpose of receiving oral representations about an issue' where he or she considers a hearing 'is necessary to ensure adequate examination of the issue or a person

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<sup>5</sup> This statutory requirement is to be found in Section 38B of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011)

<sup>6</sup> Sections 61J(2) and 61K of the 1990 Act, introduced by section 2 of Schedule 9 to the Localism Act 2011

has a fair chance to put a case<sup>7</sup>. Before deciding whether a hearing would be required I issued<sup>8</sup> a list of written questions seeking clarification and further information by way of justification for plan policies. Only after receiving that clarification<sup>9</sup> was I able to conclude that I had adequate information to proceed with the examination without recourse to a hearing. I will be referring to my questions and the responses to them in sections 3 and 4 of this report.

2.06 I visited the neighbourhood plan area on Saturday 27<sup>th</sup> May 2023, which happened to coincide with the first day of the Cartmel Races. That made for a very lively atmosphere in the village but the only effect on my site visit was to prevent access to Cartmel Park and the racecourse area. However, there are adequate photographs available in the Green Space assessment report. I walked through Allithwaite village and up towards the old quarry (which is currently closed for safety reasons) and on towards Kent's Bank.

2.07 The ACPC have submitted a Basic Conditions Statement (BCS) in accordance with the Regulations<sup>10</sup>. It is a very comprehensive document which deals with the legal requirements in section 2. Two of which are covered by paragraph 2.04 and 2.05 above. Section 3.1 provides a comprehensive analysis of the extent to which national policy (NPPF) and advice (NPPG) has been taken into account in formulating the plan and its policies, particularly in the achievement of sustainable development (Table 1) and for plan-making (Table 2). Section 3.5 and Table 3 analyse in detail general conformity of the neighbourhood plan policies with strategic local plan policies. Finally, sections 3.5 and 3.6 deals with compatibility with various EU obligations, including Strategic Environmental Assessment, Habitats Regulations Assessment and Human Rights requirements. I summarise these briefly in the next few paragraphs of this report. In overall terms I am satisfied that the BCS ably illustrates the extent to which the basic conditions are met in the plan although there are certain more detailed aspects, most especially related to national policy and guidance on policy interpretation and implementation, which require some detailed scrutiny and in the light of representations made.

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<sup>7</sup> Paragraph 9 of Schedule 4B to the 1990 Act (as in reference 1 above)

<sup>8</sup> By email dated 2 May 2023

<sup>9</sup> Email from the WFC on 31 May with additional information on census data on 15 June 2023

<sup>10</sup> Regulation 15(1)(d)

## European Union (EU) Obligations<sup>11</sup>

2.08 *Human Rights*. This is dealt with fully in paragraphs 3.6.17-33 of the BCS. No representations have been made to suggest that any infringement of human rights would be likely to occur as the result of the application of the policies in the plan. Consequently, I have no reason to conclude other than that the approach taken in the plan is fully compatible with, and does not breach, Convention Rights.

2.09 *Strategic Environmental Assessment (SEA),<sup>12</sup> and Habitats and Species Assessment (HRA)<sup>13</sup>* The European Directives have been applied in England through the provisions of the Environmental Assessment Regulations<sup>14</sup> and the Habitats Regulations<sup>15</sup>.

2.10 This Neighbourhood Plan does not make any allocations of land for development although it does identify areas of land to be identified as Local Green Space and thus protected from development. In so far as there is to be any development within the plan area this is as provided for in the South Lakeland Local Plan which was, in itself, subject to SEA and HRA procedures. It is evident, as stated in BCS paragraphs 3.6.3-10 for SEA and paragraphs 3.6.11-16 for HRA that the appropriate procedural stages were followed and that the necessary consultations were undertaken with the statutory agencies. Significantly, (3.6.7) there was concurrence with the conclusions that an SEA would not be required and that (3.6.16) there would be no likely significant effect on any European Site, which includes any European Offshore Marine Site.

2.11 BCS Section 3.7 deals briefly with the prescribed basic condition for procedural compliance with Chapter 8, Part 6, of the Habitats and Species Regulations 2017. However, as it has been concluded that there would not be a likely significant effect on a European Site that condition is satisfied.

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<sup>11</sup> The UK has left the European Union and equivalent legislative provisions have been written into UK law. However, no information is currently available of any amendments in the legislation dealing with neighbourhood plans to provide an alternative to the term 'EU Obligation'. It is, therefore, used in this report to all requirements stemming from EU Directives

<sup>12</sup> Directive 2001/42/EC

<sup>13</sup> Article 6(3) of Council Directive 92/43/EEC

<sup>14</sup> The Environmental Assessment of Plans and Programmes Regulations 2004 (Generally referred to as the 'SEA Regulations')

<sup>15</sup> The Conservation of Habitats and Species Regulations 2017 (abbreviated to the Habitats Regulations)

2.12 As a result of the analysis provided in the BCS, I am satisfied that the submitted plan is compatible with all EU obligations and meets the basic condition prescribed by section 1 of Schedule 2 to the Neighbourhood Planning (General) Regulations 2012 (as amended).

### **Section 3 - Preparation of the plan and the pre-submission consultation processes**

3.01 As required by legislation<sup>16</sup>, the ACPC have submitted a Consultation Statement. It sets out in detail the various approaches followed to consult the community during the initial preparation stages of the plan. Following designation, a steering group was established and two presentation days were held in July 2016 with a questionnaire circulated on draft policies. Work on the plan was then suspended until 2019 with a further consultation round in September that year. Formal consultation under Regulation 14 took place for 6 weeks in September and October 2021. The statutory 'Consultation bodies' were informed. As required, the statement includes a table setting out the Parish Council responses to the representations made including the amendments which were made to the draft plan in consequence. The statement also covers, in section 5, amendments to the Design Code

3.02 The Consultation Statement adequately demonstrates that all of the statutory processes for plan preparation have been followed. Consequently, I am satisfied that the public engagement undertaken during plan preparation satisfies the relevant basic condition.

### **Section 4 - The Plan. Consideration against the basic conditions**

4.01 This section of my report sets out my conclusions on the extent to which the plan itself meets the basic conditions which are set out in the first three bullet points in paragraph 1.03 above. There is a strong link between the matter of general conformity of the NDP with the strategic policies of the South Lakeland Local Plan<sup>17</sup> and that of the achievement of sustainable development. I find that the plan is in general conformity with the strategic policies of the SDLP and will contribute to the achievement of sustainable development.

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<sup>16</sup> The Neighbourhood Development Planning (General) Regulations 2012, Regulations 15(1)(b) and 15(2)

<sup>17</sup> Primarily in the Core Strategy, adopted October 2010

4.02 In the set of questions put to the ACPC in my email of 2<sup>nd</sup> May 2023 I raised a number of issues about certain aspects of the plan policies. Many of these are matters of detail in the wording of policy but I have identified one issue which I regard as being of greater significance. That is as provided for in Policy AC8 in the application of a 'Principal Residency' requirement for any new housing permitted within the settlement of Cartmel and a 200 metre zone beyond the current development boundary (plan Map 7). I will deal with that matter first before moving on to discuss other aspects of plan policy, in plan order. Should I conclude that the inclusion of a policy, or part of a policy in the plan means that, as submitted, it does not meet one or more of the basic conditions, I recommend a modification to the plan policy to ensure that the plan, taken as a whole, does meet those conditions. In most instances I will focus on the policy wording itself as included in the plan in emboldened text and, where I conclude that a modification should be made it is implicit that corresponding and appropriate amendments will need to be made to the plan text.

Main issue 1 – Policy AC8. The justification for the imposition of a Principal Residency requirement for new housing development

4.03 Given the significance of this issue, I raised 10 written questions about the application of policy AC8. The policy would apply only to the village of Cartmel and a 200 metre zone around the settlement rather than to the whole parish and is justified by an analysis of census data and data from the SLDC revenues and benefits system, basically council tax returns and those paying business rates, as given in Tables 4 and 5 of the plan along with the text in paragraphs 2.4.6-8.

4.04 The census data given in Table 5 is for 2011 only and is of limited value in that it identifies only those 'household spaces' with no usual resident(s), which includes vacant properties, and for the parish as a whole in comparison with the then SLDC area, the north-west region and England as a whole. It does, however, show a much higher proportion in that category than either the national or regional figures. I asked whether data from the 2021 census might be available but, I understand that would take some time and would be unlikely to be conclusive. That provided shows only a small increase in 'zero-resident households'.

4.05 Much more informative is Table 4. It shows separate statistics for second homes for council tax purposes and holiday lets run on a commercial basis and is able to identify the position in Cartmel, plus 200 m., and the parish as a whole. It shows that taking second homes and holiday lets together, Cartmel has twice the proportion in those categories (23.4%) than the parish as a whole (12.4%). The latter is roughly comparable to the census data. In itself, this provides an adequate basis for applying the policy to Cartmel rather than to the whole parish, including Allithwaite village.

4.06 The high proportion of properties within the specified categories are clear indication of the popularity of the area. Cartmel is a very attractive conservation village conveniently located close to the Lake District as well as Morecambe Bay with the added attraction of the occasional races. There is understandably concern within the community about the impact on local services. That is not to say that temporary residents would not make use of local shops. Holiday lets are also part of the local tourism industry which the local plan strategy looks to support although I accept that the policy can relate only to new build housing which, under current local plan policy, would only be a small proportion of the total dwelling stock.

4.07 Most importantly, Cartmel is identified in adopted Core Strategy policy CS1.2 as a Local Service Centre. It is a focus for local community facilities and housing to meet primarily local needs, including affordable housing, under policy CS4. The housing land allocations made in Cartmel under the Site Allocations Development Plan Document (DPD) are, therefore, part of that strategy to provide for local needs and support local services. On that basis, I consider that policy AC8 would be in general conformity with the objectives of the local plan settlement strategy. Without the proposed occupancy restriction it seems likely that at least a proportion of the new housing stock would become second homes or holiday lets, reducing the availability of homes for local people and thus not represent sustainable development.

4.08 There is considerable emphasis in national policy on ensuring that new development is viable to ensure deliverability. In the short term, within the next 5 years, apart from a few single plots, it appears that only one site for housing is

likely to be developed on an allocated site in Cartmel, at Haggs Lane<sup>18</sup>. There is on-going discussion about the proportion of affordable housing to be provided on that site for the development to be viable. An appeal was dismissed and a new application is currently under consideration for which a Viability Assessment<sup>19</sup> was commissioned by the LPA. At the time of writing the outcome of the current discussions on the application cannot be determined. The Viability Assessment does not, and cannot, take into account the implications of the application of policy AC8.

4.09 Affordable housing is the most appropriate means to support local services because it is generally made available only to those with local connections. It is also to accommodate younger families helping to support the local school. Should the imposition of an occupancy condition in accordance with policy AC8 result in a reduction of affordable housing provision on the site in order for it to be viable, or for the site not to be delivered at all, it would run contrary to government policy and guidance. Furthermore, it would undermine local plan policy and fail to provide for sustainable development.

4.10 However, I am assured in response to my questions that the above scenario is an unlikely one. Given the timescale involved before the neighbourhood plan is likely to be 'made' and thus become part of the statutory development plan, I agree. Even should that not prove to be the case, all of the above factors would be 'material considerations' in the determination of a planning application.

4.11 There is only one other site in Cartmel allocated in the SDLP<sup>19</sup> and that is at the racecourse stables which, as I saw on a race day, is very much still in use. The evidence is that it is unlikely to be available in the first five years of the neighbourhood plan period. The plan would, therefore, be in effect by the time any development proposal came forward on that site and could be taken into account.

4.12 It is an interesting concept to draw a 200 m. line around the settlement, as shown on Map 7, in order to 'future proof' the policy. It would encompass any

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<sup>18</sup> Land Allocations DPD, adopted December 2013

<sup>19</sup> Assessment prepared by Continuum, October 2022

new land allocations which might be made in the proposed review local plan for Westmorland and Furness. It means that, for the time being at least, it would have very little, if any, effect. Government policy is that all plans should be effective. For a neighbourhood plan to remain up-to-date, it would need to be reviewed once a new local plan was adopted, especially should it no longer be in 'general conformity' with it. However, that would take time. I do not find that particular provision to be contrary to any basic condition.

4.13 The policy would be implemented through the imposition of a planning condition on the grant of planning permission or through a planning obligation. The circumstances under which either a condition or obligation may be imposed or sought are clearly set out in paragraphs 55 to 57 of the NPPF and in the Government's published guidance on the use of planning conditions. It would be a matter for the LPA to enforce such requirements and I have some reservations about the reasonableness of some of the provisions set out in the box at the top of page 44 in the plan but they are not all-inclusive and would give scope for the LPA to expand or clarify them. On balance, therefore, I find them to be acceptable within the framework set by the NPPF and planning practice guidance.

4.14 My overall conclusion on policy AC8 is, therefore, that it is sufficiently well justified, would be likely to assist in the achievement of sustainable development, having regard to Government planning policy and guidance and in general conformity with the adopted local plan. It meets the basic conditions in those respects.

4.15 I do, however, find that certain more detailed aspects of the policy wording require clarification in order to remove any uncertainty or ambiguity in application and implementation by the LPA when deciding planning applications. This applies more generally to the wording of other policies in the plan and which I identify below as the second main issue. I will deal with the policies in turn, including the wording of policy AC8.

Main Issue 2 – Whether the policies in the plan are sufficiently clear and unambiguous for a decision-maker to apply them consistently and with confidence when determining planning applications.

4.16 This issue derives from the guidance given in paragraph 41-041 in National Planning Practice Guidance (NPPG). Although generally there is a good deal of scope for the way in which policies in neighbourhood plans may be expressed it has to be borne in mind that the plan, once 'made', has statutory force as part of the development plan. Consequently, the 'decision-maker', whether that be the Local Planning Authority or the Secretary of State (in most cases a Planning Inspector), should be in no doubt as to the policy intent<sup>20</sup>. For this reason, should the plan contain policies which are not sufficiently clear or unambiguous it would not have had adequate regard to the practice guidance in this regard and would not satisfy the relevant basic condition. The same paragraph in the NPPG also states that a neighbourhood plan should be distinct and reflect the unique characteristics of the neighbourhood area. A policy which simply repeats local plan policy does not have regard to that guidance.

4.17 In this light, my first written question sought clarification of the meaning in practical terms of the word 'support' in the sense of 'development will be supported' usually provided that certain criteria are met. I am aware that this is a terminology often used, even in local plans, but in a statutory context it can only convey an expectation that permission is to be granted in the stated circumstances. The converse applies in that 'not supported' can only be interpreted as 'refuse'. In some cases, the Parish Council have responded to my question by suggesting alternative wording having regard to the guidance and I will take that on board. Otherwise, as long as the meaning is clearly understood by all concerned, the plan does not fail the basic condition for that reason alone.

4.18 Policy AC1. From paragraphs 2.1.6 and 2.1.8 in the NP, although it is not explicitly stated, it is apparent that this policy is intended to provide the context for decisions taking account of the design principles contained within the Design Code, applied across the parish although the focus will be in the villages. That is borne out by paragraphs 1.3, 1.4 and 1.10 in the Design Code itself. Consequently, I have treated the Code as being in the nature of supplementary guidance rather than as part of the plan itself.

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<sup>20</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that any determination under the planning Acts must be made in accordance with the plan unless material considerations indicate otherwise

4.19 The PC suggest moving the first sentence of the second paragraph of Policy AC1 into the first paragraph. To do that re-wording is required to avoid 'support' terminology and I recommend accordingly. Re-wording the remainder of the second paragraph in line with the first option suggested by the PC is the most appropriate.

4.20 In the first paragraph is a reference to the 'key attributes' of the parish without an indication as to where the plan-user might find a definition of that term. I agree that a cross-reference to the Design Code would assist and provide clarification. Also, in the second paragraph, it is stated that development which would have a 'detrimental' effect on the character of the area 'will not be supported'. That does not reflect the positive approach to development advocated by Government policy and requires a clear identification of harm before a refusal of permission would be justified.

4.21 A re-wording of the first two paragraphs is necessary to ensure that the policy, and the plan as a whole, has sufficient regard for Government policy and guidance.

4.22 As currently worded the criteria within the policy are linked by the word 'and' which could be interpreted as meaning that all of the criteria should be met for all applications. The PC accept that clarification is needed to make clear that all of the criteria will apply only where relevant and applicable. That should be clear at the outset, not just for criteria F, G and H. I recommend accordingly, including deleting the word 'and'. Other minor modifications to the policy wording will be needed for grammatical correctness.

4.23 Criterion E covers two different aspects. The first refers to the effect on the 'amenities' of the occupiers of adjoining properties. Although the term may be generally understood by a decision-maker it needs to be spelt out: sunlight, visual dominance, overlooking (loss of privacy), noise, air quality and pollution. I do not use the term 'outlook' which suggests the effect on a private view which, in itself, is not a material planning consideration. There has to be a more direct effect on the quality of the residential environment. 'Giving consideration' to something is inconclusive. It is whether a proposed development would cause significant harm which is the appropriate test. The second part of the policy deals with more general public 'amenity' in open space and views and the PC have accepted that it should be subject to a separate criterion, for clarity.

4.24 Finally on policy AC1 I drew attention in my question 8 to the fact that criterion F very largely overlaps with policy AC7. As a result, the PC have suggested that policy AC7 be deleted. Certainly, both are not necessary. Criterion F is more succinct. A difficulty is in implementation unless it so happens that an existing footpath or cycle route runs through a development site or land within the ownership and control of the applicant, so that a condition or planning obligation might secure the desired improvement. It would need to be reasonably related to the development and meet the other tests for such requirements. The inclusion of the words 'relevant and applicable' in the criterion are pertinent in this regard. I agree to the deletion of all after 'cycling' in line 3 because an applicant cannot be expected to know where any future footpath links might be if they are not specified in the plan. That might be a matter for a future plan review.

4.25 The modification to policy AC1 recommended below is necessary to ensure that the plan meets the basic conditions.

### **Recommendation 1.**

**a. Delete the first two introductory paragraphs to Policy AC1 and replace them by the following:**

**All new development proposals will be expected to respond positively to the key characteristics of the parish and the local design features of the villages as defined in the Allithwaite and Cartmel Design Code. Development should not result in significant harm to the character of the area in which it is located.**

**Development proposals will be expected to satisfy the following criteria, in so far as they are relevant and applicable to the proposal. A proposal should show that it:-**

**b. Delete the word 'and' from the end of each criterion;**

**c. Split criterion E into parts 1 and 2 and reword as follows:-**

- 1. Demonstrates that no significant harm would be caused to the amenities of adjoining occupiers by reason of loss of sunlight or daylight, overlooking and loss of privacy, visual dominance, noise, air quality or pollution;**
- 2. Would result in the loss .... (no change to wording) ... and function.**

**d. In criterion F delete the words 'where relevant' and all after 'cycling' in line 3;**

- e. In criterion G, delete the words 'where possible and appropriate' and amend to read 'orientates and sites buildings to maximise ...'**
- f. Delete the words 'where appropriate' in criterion H and commence with 'Incorporates'**

4.26 Policy AC2. Although, generally, I do not concern myself with the supporting text the content of paragraph 2.1.22, in dealing with 'significant views', has a direct bearing on the scope of this policy as intended to be applied through the second paragraph. The hyperlink built into the electronic version of the plan does not work, which is a common problem, especially over time. The plan-user has to know to what areas a policy is intended to apply. I accept that the Townscape Features Map in the Conservation Area Appraisal is difficult to reproduce. There are many views identified in it. Although, in general, it is better to include the necessary information within the plan, in this instance that appears not to be feasible. In the circumstances a simple cross-reference to the Features Map is preferable unless hyperlinks are proven to be reliable and durable. I recommend deletion of the hyperlinks. Additionally, it appears that this policy also relates to the additional 'significant views' (6, 7 and 8) listed in policy AC3 and shown on map 4B. Although there is a degree of overlap and duplication, policy AC2 is specific to Cartmel Conservation Area and a further cross-reference to Map 4B is required. I note (paragraph 2.1.21) that the 'CAMP' has now been adopted as SPD. An update should be treated as an 'error'.

4.27 In the second line of this policy the word 'maintain' is used in relation to protecting the character of the conservation area whereas, as the PC accept in response to my question 9, national policy is to 'conserve', having a more positive connotation.

4.28 I have drawn attention to the fact that it adds nothing to the plan if it states only that a pre-existing local plan policy applies. It is a matter of fact, rather than as new policy, that the fields separating the east and west parts of the village, are already identified as open space and amenity areas (NP map 3) and safeguarded under policy LA1.10 in the Site Allocations DPD. For that reason, a statement to that effect should be included in the plan text, for information, not included within the policy box.

## **Recommendation 2**

- a. Update paragraph 2.1.21 and delete the hyperlink in paragraph 2.1.22 unless it can be made reliable and durable as well as the reference to it in brackets at the end of the second paragraph in policy AC2;**
- b. In the second line of policy AC2 replace the word 'maintain' by 'conserve';**
- c. Add a reference to Map 4B at the end of the second paragraph of policy AC2;**
- d. In the last paragraph of policy AC2, delete all after the first sentence and include as an informative within the plan text, describing the areas shown on Map 3, separating the east and west parts of the village.**

4.29 Policy AC3. As I have pointed out, there is an error in the wording of the second paragraph in this policy. The PC agree that 'takes preserves' should be replaced by 'respects'.

4.30 In the fourth paragraph of the policy there is reference to maintaining the dispersed settlement pattern of the parish. That could be interpreted as allowing new dispersed development which would not be in general conformity with the adopted Core Strategy. That reference should be removed for that reason.

4.31 Significant views. As indicated above, there is a degree of overlap here with policy AC2. The same comment applies to the inclusion of a hyper-link. Also the additional views shown on the Landscape Features Map are not listed in paragraph 2.1.22 itself. I make similar recommendations to those for policy AC2. I looked at all of the views listed in the policy with the exception of No. 7 because of the race meeting, but there are photographs of all of them included in the plan. It was easy to see why those views are of value to the community. There may well be others which are valued by individuals and which might be considered upon a plan review. The use of the word 'preserved' in line 4 is unduly negative; I recommend 'protected'

4.32 A representation draws attention to the last paragraph in the policy not making reference to the rebuilding of dry stone walls. That is an aspect of hard landscaping which it would be appropriate to include for consistency with the previous paragraph.

**Recommendation 3.**

- a. In the first line of policy AC3 replace the words 'takes preserves' by 'respects';**
- b. In the fourth paragraph of policy AC3 delete the words between the two commas plus the following 'and' and replace by a single comma;**
- c. In the section on significant views, delete the reference to paragraph 2.1.22 and replace it by reference to the Townscape Features Map and replace the word 'preserved' in line 4 by 'protected';**
- d. Delete the hyperlink in the paragraph relating to Cartmel unless it can be made reliable and durable;**
- e. In the final paragraph of policy AC3 include a reference to the rebuilding of dry stone walls as part of landscaping schemes.**

4.33 *Policy AC4.* The analysis of green spaces of importance to the local community is a thorough one with a separate document produced setting out the attributes of each site in terms of the criteria set out in national policy (NPPF). I looked at all of them on my site visit and have no issue with any, as a matter of principle. However, I did raise some questions in respect of detailed aspects of policy wording.

4.34 It is generally undesirable and unnecessary to include, in a policy, a statement that the national policy applies, especially referencing paragraph numbers. The areas identified are locally specific and shown on maps 5 and 6. They are the same as in the assessment document, which does not need to be referenced in policy. It is justification. There is a repeat of the policy wording taken from the NPPF but it is not entirely consistent and does not 'have regard' to the fact that not all development is 'inappropriate', even within Local Green Spaces, although the scope for that is likely to be very limited. I have suggested some amendments which have all been agreed by the Parish Council and which I recommend below to ensure that the plan has had regard to these factors.

#### **Recommendation 4.**

- a. In lines 1 and 2 of policy AC4, within the brackets, delete the reference to the maps in the Local Green Space Assessment;**
- b. In the first paragraph, delete the words after the brackets and insert 'are designated as' between 'following' and 'Local' in the first line;**
- c. In the penultimate paragraph of policy AC4, insert the word 'inappropriate' after 'New' at the beginning of the first line;**
- d. In the final paragraph of policy AC4, second line, insert the words 'by reason of inappropriateness and any other harm' before 'caused by new development'.**

4.35 Policy AC5. This policy reflects recent policy and legislative changes at national level. However, the wording of the second paragraph of this policy requires development to 'avoid any impacts ...' rather than to 'minimise' such impacts in line with the approach taken in paragraph 174(d) of the NPPF. The Parish Council have agreed to amending the wording accordingly. Also, in criterion A of the policy, the siting of new development has the potential to impact on habitats and requires mention.

#### **Recommendation 5.**

**Amend policy AC5 by replacing the word 'any' by 'minimise' in the first line of the second paragraph and insert the words 'siting and' before 'design' in the first line of criterion A.**

4.36 Policy AC6. The second paragraph in this policy duplicates, in a little more detail, criterion A. On drawing this to the attention of the Parish Council in my question 20, the Council suggests deleting the second paragraph and provide more detailed text for criterion A. That is a sensible approach to avoid any ambiguity and I recommend it.

4.37 I have also drawn attention (Q21) to the fact that the second sentence in AC6(B) and the final paragraph in the policy are more in the nature of factual informatives rather than policy statements. In response, the Parish Council have put forward alternative wording phrased as policy which, in principle, should provide the necessary clarity in the interpretation and application of the policy.

4.38 However, care is needed when referring to documents or guidance produced by other bodies, such as 'Towards a Dark Sky'. Firstly, it is important that the plan-user should be able to find those documents easily. The source should be clearly identified in the plan text. Secondly, although it is reasonable to expect an assessment to be undertaken 'in accordance' with a technical methodology, 'guidance' has to be what the word suggests and policy should not require a planning decision to be in accordance with it. Guidance is to be taken into account. I adjust the wording in my recommendation to reflect this.

### **Recommendation 6.**

#### **Modify policy AC6 as follows:-**

- a. Delete the second paragraph and replace criterion A by the following:-**  
**An assessment is required to determine the need for lighting, whether the benefits of lighting outweigh any harm caused, and to identify any alternative measures available, in accordance with the external lighting methodology in 'Towards a Dark Sky Standard'.**
- b. Replace criterion B by the following:-**  
**The nature of the proposed lighting and the level of illumination is appropriate for its use and location taking account of The Institution of Lighting Professionals' guidance for the reduction of obtrusive light.**
- c. Delete the final paragraph and replace it by the following:-**  
**Where relevant, an assessment of the internal lighting/glazing is required in accordance with the internal lighting methodology in Towards a Dark Sky Standards to determine the visual light transmission of new openings and any mitigation measures required.**
- d. Include a clear reference in supporting text to the source of documents 'Towards a Dark Sky' and the Institution of Lighting Professionals' guidance.**

4.39 Policy AC7. In my questions and comments I drew attention to the overlap between this policy and criterion F in policy AC1 which covers the matter of improved pedestrian and cycle links in a relatively succinct way. It is right that the community should have aspirations to improve these facilities which is entirely in line with Government policy to improve active travel and achieve a healthy society with less reliance on the private car, especially for short journeys. However, there is a difficulty in that the scope for achieving these aims through

decisions on planning applications is limited unless the development scheme is large enough to incorporate such measures within the site layout and where the applicant has control over land to improve access to rights of way. Off-site improvements, especially within the highway, may be achieved in other ways and the use of CIL payments, where meeting statutory criteria, can be on means but that is not an appropriate matter for inclusion within a land use policy statement. Furthermore, if the parish council is to identify improvements to the footpath or cycle network, perhaps also to mention equestrian interests, such improvements should be identified in the plan so that a developer would know what would be required to dovetail with any such improvements.

4.40 In the circumstances the parish council have agreed that policy AC7 may be deleted as a policy in its own right with reliance placed on criterion F in policy AC1. A consequential renumbering of policies will be required. Reference to Community Infrastructure Levy (CIL) money would be most appropriately placed in paragraph 3.1. Any other aspects would move into section 2.3.

#### **Recommendation 7.**

**Delete policy AC7 with any relevant text moved to section 2.3 of the plan text and with a consequential renumbering of policies. Reference to the priorities for spending CIL receipts should be moved to section 3.1 of the plan.**

4.41 *Policy AC8.* This policy is fully considered in paragraphs 4.03-15 in this report. The only other matter relates to the use of the term 'will only be supported'. The parish council suggest using the word 'accepted' but I do not consider that to be any more clear as to intention. All planning applications have to be 'accepted' unless there are procedural activities. It is clear that in the context of the first paragraph of this policy it means 'will be permitted only (when ...)'. That is unambiguous. The meaning would then be 'plain on its face' and I recommend it.

4.42 In the second paragraph there is reference to a requirement for a 'legal agreement'. Section 106 of the Town and Country Planning Act 1990 (as amended) provides for planning 'obligations' which term covers both agreements and unilateral undertakings. There is no justification to exclude the latter. The second sentence in the second paragraph, which also uses the 'supported'

terminology, adds nothing to the policy being the converse of what is stated in the first paragraph. It should be deleted to avoid any possible confusion.

**Recommendation 8.**

- a. At the end of the first paragraph in policy AC8 replace the words 'will only be supported' by 'will be permitted only';**
- b. In the second paragraph, second line replace 'legal agreement' by 'obligation' and delete the second sentence.**

4.43 *Policy AC9.* The ACPC have acknowledged the very large degree of overlap between this policy and Policy DM18 in the adopted South Lakeland Development Management Policies DPD. Although it is the case, as stated in the introductory paragraphs that there are a number of caravan and camping sites within the plan area and some pressure for extension or improvements that does not make the policy locally specific. There is a great deal of detail in policy DM18 so that, in certain respects, policy AC9 is less so. It is important to recognise that in taking decisions on planning applications the Local Planning Authority has to consider the development plan as a whole, which means that it is not helpful, and can lead to uncertainty, if policies overlap and duplicate. The Neighbourhood Plan is negatively worded, contrary to the positive approach to plan-making advocated in paragraphs 15 and 16 of the NPPF, although the tone of it remains that permission may be granted provided the criteria are met.

4.44 The fact of the matter is that the wording of the policy is only subtly, if at all, different to that of the section of DM18 which deals with 'All proposals'. Furthermore, the addition of references to long-distance views and sewerage infrastructure, although not in DM18 are covered by DPD policies DM1, 6 and 7, the latter in particular detail about drainage requirements. It is not enough to say that a policy is included to give local emphasis if it does not provide any additional locally specific detail. I do not consider that this policy achieves that. Adequate regard has not been had to national policy and guidance on these matters and the policy should be deleted for the plan to meet the respective basic condition.

4.45 There is no reason why the plan should not continue to include text on this issue referring to local concerns and, perhaps, drawing attention to relevant local plan (Local Development Framework (LDF)) policies.

**Recommendation 9.**

**Delete policy AC9**

4.46 Policy AC10. In so far as the last part of this policy seeks merely to apply policy DM8 in the Development Management Policies DPD, it is unnecessary, for the same reasons given above. That is that the development plan has to be read as a whole and overlap and duplication can give rise to uncertainty in interpretation. The rest of the policy is not worded in such a way that it clearly relates to matters which are implemented through the planning system. Connection to utilities or the effect on highways infrastructure is a matter for due consideration but it is adequately covered by policies in the LDF. The whole policy is aspirational in its tone and does not provide a clear context for taking planning decisions. However, as for policy AC9, there might well be continuing reference to the issue within the plan text, identified as parish aspirations.

**Recommendation 10.**

**Delete policy AC10.**

**The correction of errors**

4.47 The Local Planning Authority is empowered to make corrections if required during later procedural stages. Nevertheless, it may be helpful should I draw attention to those I have noticed during my reading of the draft plan. I will then make a generic recommendation to cover them. I regard any necessary updates to the plan as being in the nature of corrections to (now) factual errors. That, of course, includes the need to replace references to the South Lakeland District Council by reference to the Westmorland and Furness Council except where they are historic references to actions taken prior to 1<sup>st</sup> April 2023 (see paragraph 2.01 in this report).

4.48 There are a few minor typological errors as follows:-

Paragraph 2.1.11 appears twice, at the bottom of page 17 and on page 19;

In line 3 of the first paragraph in policy AC3 and line 2 of the second paragraph, there is an errant apostrophe in the word 'it's';

**Recommendation 11**

**Make any necessary amendments to the plan to ensure that it is up-to-date and without error.**

## **Section 5 - Formal conclusion and overall recommendations including consideration of the referendum area**

### **Formal Conclusion**

5.01 I conclude that the draft plan, subject to the modifications recommended in this report, meets the basic conditions as set out in Schedule 4B to the Town and Country Act 1990 (as amended), does not breach and is otherwise compatible with EU obligations and is compatible with Convention Rights.

### **Overall Recommendation A.**

**I recommend that the modifications recommended in this report be made to the Allithwaite and Cartmel Neighbourhood Development Plan 2022 - 2032 and that the draft plan as modified be submitted to a referendum.**

### **The referendum area**

5.02 As I have recommended that the draft plan as modified be submitted to a referendum I am also required under s10(5)(a) of Schedule 4B to the Town and Country Planning Act 1990 to recommend whether the area for the referendum should extend beyond the neighbourhood area.

5.03 There have been no representations to suggest that the referendum area should be other than the parish of Allithwaite and Cartmel. The parish has well defined boundaries and I see no need for the referendum area to be other than the plan area.

### **Overall Recommendation B.**

**The referendum area should not be extended beyond that of the neighbourhood area.**

Signed:

*John R Mattocks*

JOHN R MATTOCKS BSc DipTP MRTPI FRGS

11 July 2023

## APPENDIX

### Abbreviations used in this report

the 2012 Regulations	The Neighbourhood Plans (General) Regulations 2012
ACNDP	The Allithwaite and Cartmel Neighbourhood Development Plan
ACPC	The Allithwaite and Cartmel Parish Council ('the Parish Council')
BSC	Basic Conditions Statement
CIL	Community Infrastructure Levy
DPD	Development Plan Document
EU	European Union
HRA	Habitats Regulations Assessment
LDF	Local Development Framework
LP	Local Plan
LPA	Local Planning Authority (SLDC until 31.03.23; WFC from 01.04.23)
N(D)P	Neighbourhood (Development) Plan (generic term)
NPPF	The National Planning Policy Framework
NPPG	National Planning Practice Guidance
PC	Parish Council
SEA	Strategic Environmental Assessment
SLDC	The South Lakeland District Council
WFC	The Westmorland and Furness Council