

# **DATCHET NEIGHBOURHOOD PLAN 2022 - 2033**

Datchet Neighbourhood Plan Examination  
A Report to the Council of the Royal Borough of Windsor and  
Maidenhead

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**Contents**

**1, Summary**

**2, Introduction**

**3, Basic Conditions and Development Plan Status**

**4, Background Documents and the Datchet Neighbourhood Area**

**5, Public Consultation**

**6, The Neighbourhood Plan: Introductory Section**

**7, The Neighbourhood Plan: Policies**

**8, The Neighbourhood Plan: Other Matters**

**9, Referendum**

## **1. Summary**

- 1 Subject to the recommendations within this Report, made in respect of enabling the Datchet Neighbourhood Plan to meet the basic conditions, I confirm that:
  - having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan;
  - the making of the neighbourhood plan contributes to the achievement of sustainable development;
  - the making of the neighbourhood 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);
  - the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations; and
  - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.
  
- 2 Taking the above into account, I find that the Datchet Neighbourhood Plan meets the basic conditions<sup>1</sup> and I recommend to the Council of the Royal Borough of Windsor and Maidenhead that, subject to modifications, it should proceed to Referendum.

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<sup>1</sup> It is confirmed in Chapter 3 of this Report that the Datchet Neighbourhood Plan meets the requirements of Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990.

## **2. Introduction**

### **The Neighbourhood Plan**

- 3 This Report provides the findings of the examination into the Datchet Neighbourhood Plan (referred to as the Neighbourhood Plan) prepared by the Datchet Neighbourhood Plan Steering Group on behalf of Datchet Parish Council.
- 4 As above, the Report recommends that the Neighbourhood Plan should go forward to a Referendum. At Referendum, should more than 50% of votes be in favour of the Neighbourhood Plan, then the Plan would be formally *made* by the Council of the Royal Borough of Windsor and Maidenhead.
- 5 The Neighbourhood Plan would then form part of the relevant development plan and as such, it would be used to determine planning applications and guide planning decisions in the Datchet Neighbourhood Area.
- 6 Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.  
  
*“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood Plans can shape, direct and help to deliver sustainable development.”*  
(Paragraph 29, National Planning Policy Framework)
- 7 Datchet Parish Council is the *Qualifying Body*, ultimately responsible for the Neighbourhood Plan. Paragraph 1.6 of the Basic Conditions Statement, submitted alongside the Neighbourhood Plan, confirms that the Neighbourhood Plan relates only to the designated Datchet Neighbourhood Area. There is no other neighbourhood plan in place in the Datchet Neighbourhood Area.
- 8 The above meets with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2021) and Planning Practice Guidance (2014).

Role of the Independent Examiner

- 9 I was appointed by the Council of the Royal Borough of Windsor and Maidenhead to conduct the examination of the Datchet Neighbourhood Plan and to provide this Report.
- 10 As an Independent Neighbourhood Plan Examiner, I am independent of the Qualifying Body and the relevant Local Authority. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I possess appropriate qualifications and experience.
- 11 I am a chartered town planner and have over ten years' direct experience as an Independent Examiner of Neighbourhood Plans and Orders. I also have over thirty years' land, planning and development experience, gained across the public, private, partnership and community sectors.
- 12 As the Independent Examiner, I must make one of the following recommendations:
  - that the Neighbourhood Plan should proceed to Referendum, on the basis that it meets all legal requirements;
  - that the Neighbourhood Plan, as modified, should proceed to Referendum;
  - that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
- 13 If recommending that the Neighbourhood Plan should go forward to Referendum, I must then consider whether the Referendum Area should extend beyond the Datchet Neighbourhood Area to which the Plan relates.
- 14 Where modifications are recommended, they are presented as bullet points and highlighted in **bold print**, with any proposed new wording in *italics*.

### Neighbourhood Plan Period

- 15 A neighbourhood plan must specify the period during which it is to have effect.
- 16 The title page of the Neighbourhood Plan refers to the plan period as "2022 – 2033."
- 17 Taking this into account, the Neighbourhood Plan meets the requirement in respect of specifying the period during which it is to have effect.

### Public Hearing

- 18 According to the legislation, it is a general rule that neighbourhood plan examinations should be held without a public hearing – by written representations only.
- 19 However, it is also the case that *when the Examiner considers it necessary* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.
- 20 Further to consideration of the information submitted, I determined not to hold a public hearing as part of the examination of the Datchet Neighbourhood Plan.
- 21 However, further to consideration of the submission documents, I wrote to the Qualifying Body in respect of matters where further information was sought. At the same time, in line with good practice, the Qualifying Body was provided with an opportunity to respond to representations received during the Submission consultation process.

### **3. Basic Conditions and Development Plan Status**

#### **Basic Conditions**

- 22 It is the role of the Independent Examiner to consider whether a neighbourhood plan meets the “*basic conditions.*” These were *set out in law*<sup>2</sup> following the Localism Act 2011.
- 23 Effectively, the basic conditions provide the rock or foundation upon which neighbourhood plans are created. A neighbourhood plan meets the basic conditions if:
- having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan;
  - the making of the neighbourhood plan contributes to the achievement of sustainable development;
  - the making of the neighbourhood 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);
  - the making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations; and
  - prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.
- 24 Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation and referred to above. Of these, the following basic condition, brought into effect on 28<sup>th</sup> December 2018, applies to neighbourhood plans:
- the making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations.<sup>3</sup>

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<sup>2</sup> Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

<sup>3</sup> *ibid* (same as above).

- 25 In examining the Plan, I am also required, as set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act), to check whether the neighbourhood plan:
- has been prepared and submitted for examination by a qualifying body;
  - has been prepared for an area that has been properly designated for such plan preparation (under Section 61G of the Town and Country Planning Act 1990 (as amended));
  - meets the requirements to i) specify the period to which it has effect; ii) not include provision about excluded development; and iii) not relate to more than one Neighbourhood Area and that:
  - its policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004.
- 26 An independent examiner must also consider whether a neighbourhood plan is compatible with the Convention rights.<sup>4</sup>
- 27 I note that, in line with legislative requirements, a Basic Conditions Statement was submitted alongside the Neighbourhood Plan and this sets out how, in the Qualifying Body's opinion, the Neighbourhood Plan meets the basic conditions.

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<sup>4</sup> The Convention rights has the same meaning as in the Human Rights Act 1998.



### European Convention on Human Rights (ECHR) Obligations

- 28 I am satisfied, in the absence of any substantive evidence to the contrary, that the Neighbourhood Plan has regard to fundamental rights and freedoms guaranteed under the ECHR and complies with the Human Rights Act 1998.
- 29 In the above regard, information has been submitted to demonstrate that people were provided with a range of opportunities to engage with plan-making in different places and at different times. A Consultation Statement was submitted alongside the Neighbourhood Plan and the role of public consultation in the plan-making process is considered later in this Report.

### European Union (EU) Obligations

- 30 In some limited circumstances, where a neighbourhood plan is likely to have significant environmental effects, it may require a Strategic Environmental Assessment. In this regard, national advice states:
- “Draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects.”*  
(Planning Practice Guidance<sup>5</sup>)
- 31 This process is often referred to as “screening”<sup>6</sup>. If likely environmental effects are identified, an environmental report must be prepared.
- 32 The Council of the Royal Borough of Windsor and Maidenhead produced a Strategic Environmental Assessment Screening Report for the Neighbourhood Plan. This concluded that:
- “...the Datchet Neighbourhood Plan is unlikely to have significant environmental effects...(and) does not itself need to be subject to SEA.”*

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<sup>5</sup> Planning Guidance, Paragraph 027, Ref: 11-027-20150209.

<sup>6</sup> The requirements for a screening assessment are set out in in Regulation 9 of the Environmental Assessment of Plans and Programmes Regulations 2004.

- 33 The statutory bodies, Historic England, Natural England and the Environment Agency were all consulted. Each of the statutory bodies agreed with the conclusion that there are unlikely to be any significant environmental effects and that a full SEA is not required.
- 34 In addition to SEA, a Habitats Regulations Assessment identifies whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans and projects. This Assessment must determine whether significant effects on a European site can be ruled out on the basis of objective information<sup>7</sup>. If it is concluded that there is likely to be a significant effect on a European site, then an appropriate assessment of the implications of the plan for the site must be undertaken.
- 35 In the case *People Over Wind & Sweetman v Coillte Teoranta* (“*People over Wind*” April 2018), the Court of Justice of the European Union clarified that it is not appropriate to take account of mitigation measures when screening plans and projects for their effects on European protected habitats under the Habitats Directive. In practice this means that if a likely significant effect is identified at the screening stage of a habitats assessment, an Appropriate Assessment of those effects must be undertaken.
- 36 In response to this judgement, the government made consequential changes to relevant regulations through the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018, allowing neighbourhood plans and development orders in areas where there could be likely significant effects on a European protected site to be subject to an Appropriate Assessment to demonstrate how impacts will be mitigated, in the same way as would happen for a draft Local Plan or a planning application.
- 37 The Council of the Royal Borough of Windsor and Maidenhead produced a Habitat Regulations Assessment Screening Report alongside the Strategic Environmental Assessment Screening Report referred to above.
- 38 This Report assessed whether the policies of the Neighbourhood Plan would give rise to the potential for a likely significant effect on Natura 2000 European sites.

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<sup>7</sup> Planning Guidance Paragraph 047 Reference ID: 11-047-20150209.

- 39 The Report noted that, whilst the South West London Water Bodies Special Protection Area (SPA) is located within 5km of the Neighbourhood Area, the Neighbourhood Plan:

*“...is in compliance with adopted BLP policy NR2 which ensures that designated sites of international and national importance will be maintained, protected and enhanced... There will be no significant effects from the Neighbourhood Plan on the SAC.”*

- 40 Each of the statutory bodies were consulted as part of the process and none demurred from the Council of the Royal Borough of Windsor and Maidenhead's conclusion.

- 41 Further to this, I am mindful that national guidance establishes that the ultimate responsibility for determining whether a draft neighbourhood plan meets EU obligations lies with the local planning authority:

*“It is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a neighbourhood plan proposal submitted to it have been met in order for the proposal to progress. The local planning authority must decide whether the draft neighbourhood plan is compatible with EU regulations (including obligations under the Strategic Environmental Assessment Directive)”* (Planning Practice Guidance<sup>8</sup>).

- 42 The Council of the Royal Borough of Windsor and Maidenhead has no outstanding concerns in respect of the Neighbourhood Plan's compatibility with EU obligations.

- 43 Taking this and the recommendations contained in this Report into account, I am satisfied that the Neighbourhood Plan is compatible with European obligations.

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<sup>8</sup> ibid, Paragraph 031 Reference ID: 11-031-20150209.

#### **4. Background Documents and the Datchet Neighbourhood Area**

##### Background Documents

- 44 In completing this examination, I have considered various information in addition to the Datchet Neighbourhood Plan. I also spent an unaccompanied day visiting the Datchet Neighbourhood Area.
- 45 Information considered as part of this examination has included the following main documents and information:
- National Planning Policy Framework (referred to in this Report as “*the Framework*”) (2021)
  - Planning Practice Guidance (2014, as updated)
  - Town and Country Planning Act 1990 (as amended)
  - The Localism Act (2011)
  - The Neighbourhood Plan Regulations (2012) (as amended)
  - The Royal Borough of Windsor and Maidenhead Local Plan 2013-2033 (2022) (referred to in this Report as the “Local Plan”)
  - Basic Conditions Statement
  - Consultation Statement
  - Supporting Documents
  - Representations received
  - SEA/HRA Screening Report

##### Datchet Neighbourhood Area

- 46 The boundary of the Datchet Neighbourhood Area is identified on a plan on page 6 of the Neighbourhood Plan.
- 47 The Datchet Neighbourhood Area was designated by the Council of the Royal Borough of Windsor and Maidenhead in March 2013.
- 48 The designation of the Neighbourhood Area satisfies a requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended).

## **5. Public Consultation**

### **Introduction**

- 49 As land use plans, the policies of neighbourhood plans form part of the basis for planning and development control decisions. Legislation requires the production of neighbourhood plans to be supported by public consultation.
- 50 Successful public consultation enables a neighbourhood plan to reflect the needs, views and priorities of the local community. It can create a sense of public ownership, help achieve consensus and provide the foundations for a 'Yes' vote at Referendum.

### **Datchet Neighbourhood Plan Consultation**

- 51 A Consultation Statement was submitted to the Council of the Royal Borough of Windsor and Maidenhead alongside the Neighbourhood Plan. The information within it sets out who was consulted and how, together with the outcome of the consultation, as required by the neighbourhood planning *Regulations*<sup>9</sup>.
- 52 Further to a number of aborted starts, Neighbourhood Plan consultation commenced with the creation of the Datchet Neighbourhood Plan Steering Group in 2016. An introductory leaflet was produced and widely distributed throughout the Neighbourhood Area in March 2017. This was accompanied by an online survey. A Neighbourhood Plan website and social media presence were established in the same year.
- 53 Between 2018-2020, a number of Character Assessment Walks were scheduled, publicised and carried out. Residents were invited to join the walks. The resulting 15 assessments were published for comment and a related drop-in event was held in January 2019.

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<sup>9</sup> Neighbourhood Planning (General) Regulations 2012.

- 54 During the plan-making process, the Steering Group attended numerous events to engage with various groups, disseminated leaflets and carried out surveys including surveys relating to open spaces, climate change and movement. Feedback informed the Pre-Submission Draft Neighbourhood Plan, the consultation on which took place between March and May 2022.
- 55 Consultation was promoted via a leaflet, delivered to all households, via articles in local publications and via posters, emails and social media. Comments received were duly recorded, considered and led to amendments to the emerging plan.
- 56 Taking the Consultation Statement and the above into account, I find that there is considerable evidence to demonstrate that public consultation was central to the plan-making process, that there were opportunities for people to have a say and that matters raised were duly considered.
- 57 Taking this and the submitted information into account, I am satisfied that the consultation process for the Datchet Neighbourhood Plan was robust and that it complied with the neighbourhood planning regulations referred to above.

## **6. The Neighbourhood Plan – Introductory Section**

- 58 Some parts of the Neighbourhood Plan have been overtaken by subsequent events<sup>10</sup>.
- 59 Taking this into account and for clarity, I recommend the following changes (in *italics*) to the introductory section of the Neighbourhood Plan:
- **Para 1.1, change first sentence to: “*The Neighbourhood Plan for Datchet covers the period 2022-2033.*”**
  - **Delete Para 1.3, which is unnecessary and appears confusing**
  - **Para 1.4, replace “jurisdiction” with “*scope*”**
  - **Para 1.5, change to: “*The Neighbourhood Plan forms part of the development plan...*”**

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<sup>10</sup> In this regard, I also note that the Joint Central and Eastern Berkshire Minerals and Waste Plan was adopted in November 2022 by all four participating Councils, including the Royal Borough of Windsor and Maidenhead.

## **7. The Neighbourhood Plan – Neighbourhood Plan Policies**

### Housing Needs of Specific Groups

#### **Policy DAT1: Housing Suitable for the Needs of Older People**

- 60 Paragraph 60 of the Framework supports the objective of significantly boosting the supply of homes to, amongst other things, ensure:

*“...that the needs of groups with specific housing requirements are addressed...”*

- 61 Local Plan Policy HO2 (“*Housing Mix and Type*”) sets out clear and specific requirements in respect of how new housing should deliver accessible, adaptable and wheelchair-friendly dwellings.
- 62 In contrast to the clarity of the above, Policy DAT1 appears vague. It is predicated on a situation whereby development “*is required to provide 2- and 3-bed units,*” but provides no indication of where, or even whether, such a thing might occur within the Neighbourhood Area. In considering housing mix and type, Local Plan Policy HO2, referred to above, does not specify 2 and 3 bed units.
- 63 Policy DAT1 then goes on to set out a general list of things that “*may*” be included within a development to meet the needs of older people. It is not clear why the Policy draws a direct link between 2 and 3 bed units and older people. Indeed, the supporting text indicates that there is a general need for 2 and 3 bed dwellings, rather than a specific need for 2 and 3 bed dwellings for older people. In this regard, the supporting text states that the majority of the population is under the retirement age and that there is a need for 1-bed units in the affordable sector.



- 64 Further to the above, in the absence of any substantive information, it is not clear why all 2 and 3 bed units within major developments must meet the needs of older people; and in addition, the list of things which “*may*” be included appear ambiguous and open to wide interpretation.
- 65 For example, it is not clear how “*generous*” (storage space) and “*spacious*” (living areas, bathrooms) might be measured, who by and on what basis; or how large a space must be to “*accommodate outdoor activities,*” what a “*quiet position*” is, or what a “*good outlook*” might be.
- 66 Use of the word “*may*” means that the criteria in Policy DAT1 are not requirements and as such, they simply provide general ideas as to what might be useful in respect of the design for a home for use by an older person or persons. This adds to the ambiguous nature of the Policy, which is contrary to national guidance, which requires planning policies to be unambiguous<sup>11</sup>:

*“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”*

- 67 The Policy does not provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 16 of the Framework:

*“Plans should...contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals.”*

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<sup>11</sup> Planning Guidance, Paragraph: 041 Reference ID: 41-042-20140306.

68 Taking all of the above into account, I recommend:

- **Delete the wording of Policy DAT1**
- **Replace with a newly worded Policy DAT1:**

***“Major residential development must provide a mix of dwelling types to include units designed meet the needs of older people.”***

- **Add new paragraph of supporting text, following on from Para 4.10: “New homes designed to meet the needs of older people may include the following: (PROVIDE THE FOUR BULLET POINTS (a. to d. from the deleted policy wording) HERE.**

## Design and Character

### **Policy DAT2: High Quality Design and Character**

69 National planning policy recognises that:

*“Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*

(Paragraph 126, the Framework)

70 Local Plan Policy QP3 (“*Character and design of new development*”) requires all development to contribute towards achieving sustainable high quality design.

71 Policy DAT2 seeks to ensure that all new development is in keeping with the attractive qualities of the Neighbourhood Area’s character. In this way, the Policy has regard to national policy and is in general conformity with the strategic policies of the Local Plan.

72 Use of the phrase “*In particular, this means:*” in the opening paragraph of the Policy, when combined with the use of the word “*must*” within the criteria that follow, effectively results in *guidance* becoming a *requirement*, without substantive evidence to demonstrate that each of the requirements set out are, in all cases, necessary to make development acceptable in planning terms, directly related to development, and fairly and reasonably related in scale and kind to the development. Thus, as worded, the first paragraph of the Policy does not have regard to Paragraph 57 of the Framework.

73 As an example, there is no evidence to justify a requirement for a household extension to demonstrate that it responds to negative key features of the character area or that it maximises potential to achieve biodiversity net gain. Similarly, an absolute requirement for no reduction in green screening is not supported by, for example, substantive quantitative information setting out the amount of green screening that currently exists.

74 Whilst the above matters are matters addressed in the recommendations below, I am mindful that the purpose of Policy DAT2 ties in well with the Datchet Design Guide, which itself provides a wealth of information to help support and guide development proposals within the Neighbourhood Area and provide a positive land use planning framework for good design.

75 I recommend:

- **Policy DAT2, delete second sentence in the opening paragraph and replace with: “...Guide 2021. *Development proposals should:*”**
- **Policy DAT2, change criteria to reflect the above:**  
  
***“a. respond to...b. utilise and/or augment the...c. integrate the...”***
- **Policy DAT2, policy wording on page 32, replace “must” with “*should*” in column one line 5, line 8, line 18 and line 23; and in column two, line 1, line 7 and line 13.**

**For clarity, it is recommended that the word “must” is replaced by the word “*should*” in all seven instances of the Policy criteria included in Section B.**

**Policy DAT3: Shopfront Design**

- 76 The Neighbourhood Area enjoys a wealth of attractive, historic built development features which make a significant positive contribution to local character. These features include traditional shopfronts and evidence has been provided to demonstrate that the local community would like to see these conserved for the benefit of residents and visitors.
- 77 Chapter 12 of the Framework, "*Achieving well-designed places,*" recognises the importance of ensuring that development is sympathetic to local character and history, as well as the importance of ensuring that development helps to maintain a strong sense of place.
- 78 Further, Local Plan Policy QP3 ("*Character and design of new development*") is explicit in requiring development to retain existing high quality townscapes and to incorporate interesting frontages and design details to provide visual interest at pedestrian level.
- 79 Policy DAT3 establishes a clear planning policy framework for the protection of the Neighbourhood Area's high quality shopfronts. In so doing, it has regard to national policy and it is in general conformity with the Local Plan.
- 80 Policy DAT3 meets the basic conditions and no changes are recommended.

## Heritage

### **Policy DAT4: Non-Designated Heritage Assets**

- 81 Chapter 16 of the Framework, "*Conserving and enhancing the historic environment*," recognises that the nation's heritage assets comprise an irreplaceable resource.
- 82 Paragraph 189 of the Framework requires all heritage assets to:
- "...be conserved in a manner appropriate to their significance..."*
- 83 The Framework requires the significance of a non-designated heritage asset to be taken into account when determining planning applications and specifically requires that in:
- "...weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."*  
(Paragraph 203, the Framework)
- 84 Local Plan Policy HE1 ("*Historic Environment*") affords protection to heritage assets in line with national policy.
- 85 The first part of Policy DAT4 identifies a number of non-designated heritage assets in the Neighbourhood Area. The identification of these assets has emerged through the plan-making process. The approach set out does not prevent other non-designated assets being identified and it provides prospective applicants with useful information.
- 86 However, the second part of Policy DAT4 introduces criteria for the consideration of an application affecting a non-designated heritage asset which go beyond requirements set out in Chapter 16 of the Framework, "*Conserving and enhancing the historic environment*." No substantive evidence is provided to support an approach which is different to and which does not have regard to national policy. Consequently, I am unable to determine that part B of the Policy meets the basic conditions.

- 87 In its representations to the submission version of the Neighbourhood Plan, the Council of the Royal Borough of Windsor and Maidenhead suggested various additions to the Policy and to the supporting text. Whilst I note that such additions might provide further information, they do not comprise changes that are necessary to ensure that the Neighbourhood Plan meets the basic conditions.
- 88 As noted earlier in this Report, neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work. In this case, plan-makers have sought to focus on non-designated heritage matters in the manner that they have and subject to the recommendations below, Policy DAT4 meets the basic conditions.
- 89 I recommend:
- **Delete the wording of part B of Policy DAT4 and replace with: “*In respect of development proposals that have a direct or indirect effect on non-designated heritage assets, consideration will be given to the scale of any harm or loss and the significance of the heritage asset.*”**

## Green and Blue Environment

### Policy DAT5: Views

- 90 National policy, in Chapter 12 of the Framework, "*Achieving well-designed places,*" recognises the importance of identifying the special qualities of a Neighbourhood Area and requires planning policies:

*"...to ensure that developments...are sympathetic to local character."*  
(Paragraph 130, the Framework)

- 91 Policy DAT5 identifies river views and views of St Mary's Church spire as having special qualities that contribute significantly to local character. The Policy seeks to ensure that development does not harm these views and in so doing, it has regard to national policy.
- 92 As worded, however, Policy DAT5 requires the "*retention*" of river views. Views can change over years, seasons, months, days and even on an hourly basis. Given this and in the absence of knowing precisely what must be "*retained,*" the Policy and its supporting information provide insufficient information to make it evident how a decision maker should react to development proposals, having regard to Paragraph 16 of the Framework.
- 93 Deletion of the word "*retention*" addresses this matter and together, other parts of part A of the Policy prevent significant adverse impacts arising from development and require development to respect local character.
- 94 St Mary's Church is a designated heritage asset and as such, planning policy affords protection to both the Church and its setting. Whilst a minor point, rather than "*preserve*" the significance of heritage assets, national policy affords weight to conservation and this is reflected in the recommendations below.
- 95 As with the first part of Policy DAT5, part B seeks to ensure that development does not have a significantly adverse impact on views of St Mary's Church spire – which are an attractive and distinctive feature of the village – and in so doing, this part of the Policy meets the basic conditions.



96 I recommend:

- Policy DAT5, last line of part A, delete “retained and”
- Policy DAT5, second line of part B, replace “preserve” with “conserve”
- Para 7.2, line 9, change sentence to “...undergrowth. *Nevertheless, it is important that such views for those using the Thames Path are respected, are improved where possible and are not adversely impacted by riverside development. Moreover...*”
- Para 7.3, change last line to “...small – are protected *from harm.*”
- Para 7.4, change last sentence to “It is *important that views of the spire are protected from harm.*”

**Policy DAT6: Waterside Activities**

- 97 The Framework requires planning policies to contribute to and enhance the natural environment by

*“...minimising impacts on and providing net gains for biodiversity...”*

(Paragraph 174, the Framework)

- 98 The supporting text to Policy DAT6 identifies Local Wildlife Sites in Datchet, two of which are subject to pressures from commercial activity. Given this, the purpose of Policy DAT6 is to ensure that appropriate levels of protection are in place to prevent development resulting in adverse impacts on wildlife habitats.

- 99 National policy, in Chapter 15 of the Framework, *“Conserving and enhancing the natural environment,”* states that plans should identify and safeguard local wildlife-rich habitats (Paragraph 179) and:

*“...if significant harm to biodiversity resulting from a development cannot be avoided...adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.”*

(Paragraph 180, the Framework)

- 100 Whilst, in general terms, Policy DAT6 seeks to achieve the above, its wording results in ambiguity and uncertainty, to the extent that it would fail to provide the protection sought.

- 101 In effect, as set out, the Policy could provide support for development not requiring direct access to water to harm its surroundings, so long as there are no other suitable sites in the local area where its activities can take place.

- 102 As set out, the Policy would also require a decision maker to make a judgement on the impacts of a proposal, without any base-line information on which to formulate such a decision; and would, in part, only consider harm relating to impacts on tranquility and the natural environment.

103 I recommend:

- **Policy DAT6, delete the wording of the Policy and replace with:**  
  
***“Development impacting on Datchet Common and Gravel Pits, and/or Queen Mother Reservoir Local Wildlife Sites must enhance biodiversity and must not result in any significant harm.”***
- **Change the title of the Policy to “Biodiversity”**
- **Para 7.6, change to: “...are protected. As well as seeking to ensure that development minimises its impact on wildlife, national policy is clear in establishing that development has a role to enhance the natural environment by providing net gains for biodiversity (see also Policy DAT8).”**

**Policy DAT7: Local Green Space**

104 Local communities can identify areas of green space of particular importance to them for special protection. Paragraph 101 of the Framework states that:

*“The designation of land as a Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them.”*

105 Paragraph 103, of the Framework requires policies for the managing of development within a Local Green Space to be consistent with those for Green Belts. A Local Green Space designation therefore provides protection that is comparable to that for Green Belt land. Consequently, Local Green Space comprises a restrictive and significant policy designation.

106 Given the importance of the designation, Local Green Space boundaries should be clearly identifiable. The Neighbourhood Plan provides an overview plan showing all areas of Local Green Space (*Figure 7.3*) on page 42 and supplements this with four plans at a larger scale, which clearly identify the boundaries of each Local Green Space, on pages 44 – 47. This precise approach ensures that the Neighbourhood reduces any scope for dispute in respect of Local Green Space boundaries.

107 The Local Green Space tests set out in the Framework are that the green space is in reasonably close proximity to the community it serves; that it is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and that it is local in character and is not an extensive tract of land.

108 The Neighbourhood Plan provides clear and detailed evidence to demonstrate why the areas of Local Green Space identified are demonstrably special. This meets the national policy tests set out in the Framework.

- 109 National policy is explicit in respect of requiring policies for managing development within a Local Green Space to be consistent with those for Green Belts. National Green Belt policy is precise. National Green Belt policy does not limit development to that demonstrating “*very special circumstances*” but rather, amongst other things, it identifies development that is not inappropriate in the Green Belt.
- 110 The wording of the second part of Policy DAT7 introduces scope for inconsistency with national Green Belt policy, as set out in Chapter 13 of the Framework, “*Protecting Green Belt land,*” and this is a matter addressed in the recommendations below.
- 111 I recommend:
- **Policy DAT7, delete part B and replace with: “*The management of development within areas of Local Green Space will be consistent with that for development within Green Belts, as set out in national policy.*”**

**Policy DAT8: Provision for Wildlife in New Development**

112 As noted earlier in this Report, the Framework requires planning policies to contribute to and enhance the natural environment by:

*"...minimising impacts on and providing net gains for biodiversity..."*  
(Paragraph 174, the Framework)

113 Local Plan Policy NR2 (*"Nature Conservation and Biodiversity"*) supports and sets out requirements for the protection and enhancement of biodiversity.

114 Policy DAT8 requires development to protect habitats and species and to deliver net biodiversity gains. Policy DAT8 has regard to national policy and is in general conformity with the Local Plan.

115 Policy DAT8 meets the basic conditions and no changes are recommended.

**Policy DAT9: Roadway Verges**

116 National policy states that:

*“The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.”*

(Paragraph 126, the Framework)

117 It goes on to state that planning policies should ensure that developments:

*“...will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development...are visually attractive as a result of...effective landscaping...establish or maintain a strong sense of place...”*

(Paragraph 130, the Framework)

118 There are numerous grass verges between roads and pavements in the Neighbourhood Area. Many of these make a significant positive contribution to the attractive and distinctive character of Datchet. The Neighbourhood Plan has identified local community aims to not only protect grass verges from damage - their location adjacent to highways can result in inappropriate parking and damage – but also to encourage their enhancement and ideally, to encourage the creation of new grass verges.

119 Policy DAT9 seeks to achieve this and in this respect, it has regard to national policy.

120 As set out, the Policy places a requirement on all development to maximise the provision of grass verges and to ensure that existing verges will not be degraded by day-to-day activity, but this approach is not supported by evidence in respect of deliverability, having regard to Paragraph 16 of the Framework, which requires planning policies:

*“...to be prepared positively, in a way that is aspirational but deliverable.”*

121 The recommendations set out below address this matter whilst enabling Policy DAT9 to encourage the creation of new grass verges alongside the protection of existing ones, to the benefit of local character.

122 Taking all of the above into account, I recommend:

- **Policy DAT9, change part A to: “...be retained. *Development should seek to provide new grass verges where possible. These should be designed to prevent degradation, for example, by preventing vehicles from driving over them or from using them for parking.***
- **Policy DAT9, change part B to: “*B. The protection and/or enhancement, including biodiversity enhancement, of existing grass verges will be supported.*”**



**Policy DAT10: Flooding, Drainage and Water Efficiency**

- 123 The supporting text to Policy DAT10 highlights that flooding is one of the topics raised most frequently by residents during consultation. This is reflective of Datchet's location within an area where there are four main rivers and an extensive range of smaller watercourses, drains and ditches.
- 124 Policy DAT10 sets out a comprehensive approach to ensuring that development takes account of flood risk, having regard to Chapter 14 of the Framework, "*Meeting the challenge of climate change, flooding and coastal change*" and in general conformity with Local Plan Policy NR1 ("*Managing Flood Risk and Waterways*").
- 125 As set out, the use of the word "*must*" in the Policy results in it setting requirements not supported by substantive evidence in respect of deliverability, or in respect of having regard to the tests for planning obligations, as set out in Paragraph 57 of the Framework and this is a matter addressed in the recommendations below.
- 126 A representation made during the Submission stage consultation flags up that part C of Policy DAT10 applies to all forms of development, rather than to new development in areas at risk of flooding; and that Para 7.35 includes a general, unsubstantiated reference. These are also matters addressed in the recommendations below.
- 127 Whilst the same representation suggests the inclusion of further information in the supporting text, the text suggested appears open-ended and would not add clarity to the Neighbourhood Plan.
- 128 A further representation made during Submission stage consultation proposed that the Neighbourhood Plan should specify "*water-compatible development*" that falls outside the exceptions test in respect of flood risk. However, subject to the recommendations below, Policy DAT10 would not prevent appropriate exemptions. It is not necessary to specify the types of development that may be exempted from the exception test in order for the Neighbourhood Plan to meet the basic conditions.

129 Taking the above into account, I recommend:

- Policy DAT10, part B, line 3, change “must” to “*should*”
- Policy DAT10, part C, first sentence, add “...for new development *in areas at risk of flooding* subject to...”
- Policy DAT10, part E., line 3, change “must” to “*should*”
- Policy DAT10, part F., lines 1 and 8, change “must” to “*should*”
- Para 7.35, delete first sentence (“Datchet’s...capacity.”)

Community Assets

**Policy DAT11: Provision of Community Infrastructure**

130 National policy promotes the creation of healthy and safe communities and states that, in order to provide the facilities and services the community needs, planning policies should:

*“...plan positively for the provision and use of shared spaces, community facilities...”*

(Paragraph 93, the Framework)

131 Policy DAT11 supports the provision of new community facilities and in so doing, the Policy has regard to national policy.

132 No changes are recommended.

## Getting Around

### **Policy DAT12: Key Movement Routes**

133 National policy, in Chapter 9 of the Framework, "*Promoting sustainable transport,*" requires plans to take:

*"...opportunities to promote walking, cycling and public transport use..."*  
(Paragraph 104, the Framework)

134 The Framework goes on to require development to consider the design of streets and to:

*"...address the needs of people with disabilities and reduced mobility..."*

135 Policy DAT12 aims to encourage sustainable modes of transport, the securing of safe access for mobility-impaired people and the reduction of air pollution through good design and the protection of trees. In these ways, it has regard to national policy.

136 As set out, the policy runs the risk of supporting any form of development so long as it includes improvements to cycling and walking. This could give rise to inadvertent support for inappropriate forms of development and it is a matter addressed in the recommendations below.

137 The Policy also includes an onerous requirement for all development to "*ensure safe and continuous pedestrian routes that connect to Key Movement Routes.*" There is no evidence to demonstrate that this is a deliverable requirement, having regard to Paragraph 16 of the Framework, or that such a requirement passes the tests for planning obligations set out in Paragraph 57 of the Framework:

*"Planning obligations must only be sought where they meet all of the following tests: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development."*

138 The Policy also includes vague and ambiguous references, including to unidentified “*busy*” and “*adjacent*” routes and to “*unacceptable impacts*,” making it difficult for a decision maker to react to a development proposal, having regard to Paragraph 16 of the Framework.

139 I recommend:

- Policy DAT12, delete part A. and replace with: “*A. The development of segregated cycle and pedestrian routes that provide for suitable access by disabled users, those with sensory impairments and users of mobility scooters, will be supported.*”
- Policy DAT12, delete part B. (To ensure...Policies Map)
- Policy DAT12, part C, change to: “*The protection and/or enhancement of the positive features of Key Movement Routes, including the protection and maintaining of existing trees and the provision of new trees, hedging, verges and/or pollution-mitigating planting, will be supported.*”
- Policy DAT12, delete part D and replace with: “*Development should not result in harm to highway safety or to the accessibility of Key Movement Routes.*”
- Para 9.4, delete wording and replace with “*The Parish Council will promote enhancements to Key Movement Routes. Suggested improvements are listed and described in Appendix A.*”

### **Policy DAT13: Provision for Cycle Storage and Parking**

- 140 National planning policy, in Chapter 9 of the Framework, "*Promoting sustainable transport*," encourages cycling and the promotion of the provision of cycle parking in Policy DAT13 has regard to this.
- 141 The Policy refers explicitly to a site that has already been allocated in the development plan. Site allocations in adopted plans have already undergone a robust examination process and it is not the role of Neighbourhood Plans to seek to impose additional planning requirements upon existing development allocations.
- 142 Further to the above, the first paragraph of the Policy is confusingly worded such that it requires cycle parking to be provided "*commensurate*" with a calculation relating flats above ground floor level without individual ground floor storage space regardless of the form of development proposed. This results in an unclear Policy which does not provide a decision maker with a clear indication of how to react to a development proposal, having regard to Paragraph 16 of the Framework.
- 143 I recommend:
- **Policy DAT13, delete part A and replace with: "*The development of new dwellings should provide for secure cycle parking and storage.*"**
  - **Para 9.5, retain first sentence and delete the rest of the paragraph ("The housing...AL39"). Add new sentence to follow the retained sentence: "*To encourage cycling, the development of new housing will be expected to include provision for cycle parking and for thoughtfully-designed secure storage allowing for easy access.*"**

## **8. The Neighbourhood Plan: Other Matters**

- 144 The recommendations made in this Report will have a subsequent impact on Contents, including paragraph and page numbering.
- 145 The Neighbourhood Plan cannot impose requirements on the Local Planning Authority and the recommendations below highlight changes to the "*Possible actions*" section of Chapter 10 of the Neighbourhood Plan.
- 146 A representation made during Submission stage consultation stated that the Neighbourhood Plan should recognise the potential for minerals development and infrastructure improvements to come forward during the plan period. There is no requirement for the Neighbourhood Plan to do this in order to meet the basic conditions.
- 147 I recommend:
- **Update the Contents, paragraph and page numbering to take into account the recommendations contained in this Report**
  - **Chapter 10, Issue Numbers 30, 31 and 36 change start of "*Possible actions*" by deleting "*DPC and RBWM to*" and changing to "*DPC to work with RBWM and...*"**

## **9. Referendum**

148 I recommend to the Council of the Royal Borough of Windsor and Maidenhead that, subject to the recommended modifications, **the Datchet Neighbourhood Plan should proceed to a Referendum.**

### **Referendum Area**

149 I am required to consider whether the Referendum Area should be extended beyond the Datchet Neighbourhood Area.

150 I consider the Neighbourhood Area to be appropriate and there is no substantive evidence to demonstrate that this is not the case.

151 Consequently, I recommend that the Plan should proceed to a Referendum based on the Datchet Neighbourhood Area approved in March 2013.

**Nigel McGurk, January 2023**  
**Erimax – Land, Planning and Communities**