

# **LOW CONISCLIFFE AND MERRYBENT NEIGHBOURHOOD PLAN 2018-2036**

**Report to Darlington Borough Council of the Independent  
Examination**

**By Independent Examiner, Tony Burton CBE BA MPhil (Town Planning) HonFRIBA FRSA**

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**March 2019**

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# 1. Executive Summary

1. I was appointed by Darlington Borough Council with the support of Low Coniscliffe & Merrybent Parish Council to carry out the independent examination of the Low Coniscliffe & Merrybent Neighbourhood Plan.

2. I undertook the examination by reviewing the Plan documents and written representations, and by making an unaccompanied visit to the Neighbourhood Area.

3. I consider the Plan to be an adequate expression of the community's views and ambitions for Low Coniscliffe & Merrybent. It is based on an effective programme of public consultation which has informed a Vision and five Objectives for the Neighbourhood Area. These are translated into planning policies dealing with issues distinct to the locality. They are supported by other aspirations which go beyond the scope of the neighbourhood plan. The Plan is supported by a Consultation Statement, Basic Conditions Statement and screening reports. There is significant supporting evidence provided on most aspects of the Plan including primary evidence produced during the Plan's preparation. There is good evidence of community support.

4. I have considered the ten representations made on the submitted Plan and addressed them in this report as appropriate.

5. Subject to the recommended modifications set out in this report I conclude that the Low Coniscliffe & Merrybent Neighbourhood Plan meets all the necessary legal requirements, including satisfying the Basic Conditions. I make a small number of additional recommendations.

6. I recommend that the modified Plan should proceed to Referendum and that this should be held within the Neighbourhood Area.

## 2. Introduction

7. This report sets out the findings of my independent examination of the Low Coniscliffe & Merrybent Neighbourhood Plan. The Plan was submitted to Darlington Borough Council by Low Coniscliffe & Merrybent Parish Council as the Qualifying Body.

8. I was appointed as the independent examiner of the Low Coniscliffe & Merrybent Neighbourhood Plan by Darlington Borough Council with the agreement of Low Coniscliffe & Merrybent Parish Council. My selection was facilitated by the Neighbourhood Planning Independent Examiner Referral Service.

9. I am independent of both Low Coniscliffe & Merrybent Parish Council and Darlington Borough Council. I do not have any interest in any land that may be affected by the Plan. I possess the appropriate qualifications and experience to undertake this role.

10. My role is to examine the Neighbourhood Plan and recommend whether it should proceed to referendum. A recommendation to proceed is contingent on the Plan meeting all legal requirements as submitted or in a modified form, and on the Plan addressing the required modifications recommended in this report.

11. As part of this process I must consider whether the submitted Plan meets the Basic Conditions as set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. To comply with the Basic Conditions, the Plan must:

- have regard to national policies and advice contained in guidance issued by the Secretary of State; and
- contribute to the achievement of sustainable development; and
- be in general conformity with the strategic policies of the development plan in the area; and

- be compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations, including the Conservation of Habitats and Species Regulations 2017.

12. I am also required to make a number of other checks under paragraph 8(1) of Schedule 4B of the Town and Country Planning Act 1990.

13. In undertaking this examination I have considered the following documents as the most significant in arriving at my recommendations:

- the submitted Low Coniscliffe & Merrybent Neighbourhood Plan and its Annex and Appendix
- the Basic Conditions Statement
- the Consultation Statement
- the Strategic Environmental Assessment and Habitat Regulations Assessment screening reports and responses
- relevant parts of the development plan for the neighbourhood area (Darlington Core Strategy, 2011; saved policies of Darlington Local Plan, adopted 1997 with alterations 2001)
- representations made on the submitted neighbourhood plan
- relevant material held on Low Coniscliffe & Merrybent neighbourhood plan and Darlington Borough Council's websites
- National Planning Policy Framework, March 2012
- Planning Practice Guidance
- relevant Ministerial Statements

14. A revised National Planning Policy Framework was published in July 2018. This states that *“the policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019”* (paragraph 214). I have considered the Low Coniscliffe & Merrybent Neighbourhood Plan, which was submitted on 26 September 2018, on this basis.

15. I have also given consideration to the emerging new Darlington Local Plan which was consulted on between June and August 2018. There are representations, including from Darlington Borough Council, which state that the neighbourhood plan is not in conformity with the emerging Local Plan for the area. It is entirely appropriate for the Plan to be prepared in advance of the Local Plan review and the Basic Condition that it be *“in general conformity with the strategic policies of the development plan in the area”* in this context relates to the 2011 Core Strategy and saved policies from the 1997 Local Plan. I deal with the issues raised around the location and quantum of new housing development in my consideration of the Plan’s policies below.

16. Having considered the documents provided and the representations on the submitted Plan I was satisfied that the examination could be undertaken by written representations without the need for a public hearing.

17. I carried out an unaccompanied visit to the Neighbourhood Area on a bright February weekday. I walked around both Low Coniscliffe and Merrybent and visited other parts of the neighbourhood area to experience the landscape and its relationship to the nearby urban area and the River Tees. I reviewed each of the proposed Local Green Spaces and housing site allocations along with other locations including the “green approach” to Low Coniscliffe, the settlement boundaries and the “wildlife corridors”. I also visited the site allocations in the draft Darlington Local Plan and the housing commitment site east of Low Coniscliffe.

18. The contrasting character of the two settlements was apparent, as was the high quality of much of the surrounding countryside. Their physical separation from each other and the main urban area provides important definition. Both settlements are fine examples of a linear form and comprise predominantly two storey buildings. The Tees provides a clear boundary and the area is intersected by both a major dual carriageway and pylons. It includes significant rural views.

19. Throughout this report my recommended modifications are bulleted. Where modifications to policies are recommended they are highlighted in **bold** print with new

wording in “speech marks”. Modifications are also recommended to some parts of the supporting text. Where modifications are not essential for the Plan to meet the Basic Conditions they are indicated by [square brackets].”

20. Producing the Low Coniscliffe & Merrybent Neighbourhood Plan has clearly involved significant effort by a wide range of people and organisations, led by the volunteer Steering Group established by Low Coniscliffe & Merrybent Parish Council and with support from Jo-Anne Garrick Ltd. There is evidence of collaboration with Darlington Borough Council and this will continue to be important in ensuring delivery of the Plan. I should like to congratulate all those who have worked so hard over a long period of time to prepare the Plan and to thank the officers at Darlington Borough Council and Low Coniscliffe & Merrybent Parish Council who have supported this examination process.

### **3. Compliance with matters other than the Basic Conditions**

21. I am required to check compliance of the Plan with a number of matters.

#### Qualifying body

22. I am satisfied that the Plan has been prepared by a suitable Qualifying Body –Low Coniscliffe & Merrybent Parish Council – which being a parish council is the only organisation that can prepare a neighbourhood plan for the area.

#### Neighbourhood Area

23. I am satisfied that the Plan relates to the development and use of land for a designated neighbourhood area and that this does not overlap with any other designated neighbourhood area. The Low Coniscliffe & Merrybent Neighbourhood Area was agreed by Darlington Borough Council on 26<sup>th</sup> May 2017 and a map depicting the area is included in the Plan. The map is poorly produced and much of the writing on the map is illegible. The map is also wrongly titled as being the “*Proposed*” neighbourhood area boundary.

- Delete “*Proposed*” in title of map showing neighbourhood area
- Provide a higher definition version of the map which is legible

#### Land use issues

24. I am satisfied that the Plan relates to relevant land use planning issues. Where considerations relating to non-land use planning matters are included in policies these have been addressed through my recommendations.

#### Plan period

25. The period of the neighbourhood plan is stated as being from 2018 – 2036 on the cover of the Plan. This is also the length of period considered by the Plan’s Vision in paragraph 3.2 and its consideration of the need for new housing in paragraph 4.51 and Policy LCM 12.



Excluded development

26. I am satisfied that the neighbourhood plan makes no provisions for excluded development (such as national infrastructure, minerals extraction or waste).

## 4. Consultation

27. I have reviewed the Consultation Statement and relevant information provided on the Low Coniscliffe & Merrybent Neighbourhood Plan. This provides a clear and comprehensive assessment of the extensive consultation process undertaken in preparing the Plan. It covers the early engagement and awareness raising around the Plan as well as the pre-submission consultation. The supporting materials are of good quality. The Plan also received a Health Check.

28. The approach to consultation is sound, exploring issues, developing and consulting on a Vision and Objectives and developing and consulting on a draft Plan. Engagement was achieved through a range of techniques including community events, a dedicated website, email, and printed material distributed to all addresses and made available in public places. More than 40 people attended some events and nearly 70 responses were received.

29. The public consultation was informed by commissioned research on key issues such as housing need and included the results of studies of potential local green spaces and sites for housing development.

30. The Statement records the consultees specifically invited to comment on the consultation draft plan and this includes relevant statutory organisations. There is also evidence of engagement with business and development interests.

31. More than 40 responses were received to the pre-submission consultation draft plan. The Consultation Statement includes summary tables of the issues raised through consultation and how these have been addressed in finalising the Plan. There is significant evidence of the Plan being amended in response to consultation feedback. The feedback from local residents on the pre-submission draft is very supportive.

32. 10 representations have been made on the submitted Plan. There are no detailed representations from Darlington Borough Council although it did make detailed representations on the pre-submission consultation draft plan which I have considered.

33. I am satisfied with the evidence of the public consultation undertaken in preparing the Plan over a long period of time and commend all those who have worked so hard over such a long time to engage and involve people in the future of the area. The Plan has been subject to wide public consultation at different stages in its development. It is also informed by original evidence, including information prepared by both external consultants and local volunteers. The process has allowed community input to shape the Plan as it has developed and as proposals have been firmed up. The local planning authority has been engaged throughout the process.

## 5. General comments on the Plan's presentation

### Vision and themes

34. I have reviewed the Vision and the five objectives which structure the 19 Policies in the Plan. The Vision takes a positive approach to development which respects the area's rural character. It reflects the feedback received through consultation and is supportive of sustainable development.

35. The policies are distinguished from the rest of the Plan by the use of green tinted boxes. This is effective in defining the policies separate from the remaining content of the Plan.

### Other issues

36. The Plan is well structured and supported by relevant evidence. The key evidence documents are provided on the neighbourhood plan website. The objectives listed in paragraph 4.1 and which are used as headings in the rest of the Plan are not entirely consistent with those provide in the Box supporting paragraph 3.3. There is also a mismatch between the Contents and the Plan for one subheading.

37. A separate Policies Map is provided to support the Plan and referenced in a number of policies. This should be included as an integral part of the Plan and not be labelled as "*Draft*". The map is presented clearly and at an appropriate scale. The double annotation of Policy LCM7c on the map means that one of the sub-areas of Local Green Space is not clear.

- Include the Policies map within the Plan, delete "*Draft*" in its title and ensure the location of the full area of Local Green Space LCM7c is visible
- Amend the titles of the objectives in the Box supporting paragraph 3.3 to align with those in paragraph 4.1
- [Delete "*The*" and insert "Low Coniscliffe and Merrybent" before "*Parish*" in the first subheading of Section2 of the Contents]

## 6. Compliance with the Basic Conditions

### National planning policy

38. The Plan is required to “*have regard*” to national planning policies and advice. This is addressed in the Basic Conditions statement which relates the Plan’s policies to the National Planning Policy Framework (NPPF) (March 2012).

39. The Basic Conditions statement provides a table testing compatibility of each of the Plan’s policies with relevant sections of the National Planning Policy Framework and providing a commentary. This identifies no areas where there is a conflict.

40. There are some areas where the drafting of the Plan’s policies needs to be amended in order to meet the National Planning Policy Framework’s requirement for plans to provide a clear framework within which decisions on planning applications can be made. The policies should give a clear indication of how a decision-maker should react to a development proposal (paragraphs 17 and 154). It is also important for the Plan to address the need expressed in Planning Practice Guidance (paragraph 041 Reference ID: 41-041-20140306) for policies in neighbourhood plans to be drafted with sufficient clarity for a decision-maker to apply them consistently and with confidence when determining planning applications. Policies should be concise, precise and supported by appropriate evidence. The Plan’s policies do not always meet these requirements and a number of recommended changes are made as a result.

41. Generally, the Plan has regard to national planning policies and guidance but there are exceptions set out in my comments below. These cover both conflicts with national planning policy and the need for some policies to be more clearly expressed and/or evidenced.

42. I am satisfied that the Plan meets this Basic Condition other than where identified in my detailed comments and recommendations on the Plan policies.

### Sustainable development

43. The Plan must “*contribute to the achievement of sustainable development*”. This is addressed in the Basic Conditions statement with an analysis that identifies both policies and objectives relevant to each of the economic, social and environmental dimensions of sustainable development. This covers all the Plan’s objectives and policies.

44. I am satisfied that the Plan meets this Basic Condition. It takes a positive approach overall to meeting the social and economic development needs of the Neighbourhood Area and respecting the natural and historic environment and where individual policies are unduly restrictive modifications are recommended. I recommend modifications to the Plan to ensure it takes a positive approach to housing development.

### Development plan

45. The Plan must be “*in general conformity with the strategic policies of the development plan.*” The Basic Conditions statement concludes this is the case based on a policy by policy comparison.

46. Darlington Borough Council did not make any detailed representations on the submitted plan. In response to my request for feedback it stated that “*Overall it is considered that the neighbourhood plan is in strategic conformity with the existing development plan.*” It identified some concerns with the approach to meeting housing requirements but this did not result in questioning general conformity. There have been representations by others on development plan conformity in respect of the emerging Local Plan and its approach to the number and location of new homes. I address these in relation to the relevant Plan policies later in this report.

47. Darlington Borough Council provided me with a list of existing development plan policies which it considers to be strategic and my own assessment is that the Plan is in general conformity subject to addressing my detailed comments and recommendations on the Plan policies.

### Strategic Environmental Assessment & Habitat Regulations Assessment

48. The Plan must be informed by a Strategic Environmental Assessment if it is likely to have significant environmental effects and by a Habitats Regulations Assessment if it is likely to lead to negative significant effects on protected European sites.

49. A screening assessment has been prepared by Darlington Borough Council which concludes that the Plan *“is unlikely to result in significant environmental impacts and as such does not require a Strategic Environmental Assessment (SEA). It is also considered that the NP will not have a likely significant effect in relation to the Habitat Regulations Assessment (HRA).”*

50. Evidence is provided that Natural England, Historic England and the Environment Agency agree with these conclusions in respect of the lack of any requirement for a Strategic Environmental Assessment. At my request Darlington Borough Council consulted Natural England on the Habitats Regulations Assessment requirements and it responded *“Your assessment concludes that the plan can be screened out from further stages of assessment because significant effects are unlikely to occur, either alone or in combination. On the basis of the information provided, Natural England concurs with this view.”*

### Other European obligations

51. The Plan must be compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations. The Basic Conditions Statement references the ECHR obligations and asserts compliance. I am satisfied that the Plan has appropriate regard to the rights and freedoms guaranteed under the ECHR and complies with the Human Rights Act 1998 and no contrary evidence has been presented. There has been adequate opportunity for those with an interest in the Plan to make their views known and representations have been handled in an appropriate and transparent manner. The Plan meets this Basic Condition.

## 7. Detailed comments on the Plan policies

52. This section of the report reviews and makes recommendations on each of the Plan's policies to ensure that it meets the Basic Conditions. I provide comments on all policies in order to give clarity on whether the Plan meets the Basic Conditions. Some of the supporting text will need to be amended to take account of the recommended changes.

### **A conserved and enhanced natural environment**

53. **Policy LCM1** – This establishes a requirement for development proposals to address landscape character.

54. The Policy is supported by the Darlington Landscape Character Assessment which describes both the Tees Valley and Denton and Walworth Farmland character areas which are within the neighbourhood area. It acknowledges that this evidence may be updated during the period of the Plan.

55. There is a requirement for all planning applications to be accompanied by evidence demonstrating consideration of landscape character. This is unduly onerous in respect of some planning applications, including for changes of use, and such information should only be required where it is appropriate.

56. The Policy seeks development which "*preserves and enhances*" rural character. The relevant Plan objective is for a "*conserved and enhanced*" natural environment. Conservation is about management and is consistent with national planning policy to "*plan positively*" for development. Preservation is about maintaining in the current state.

57. The Policy could be more clearly presented by numbering the two limbs.

58. Policy LCM1 does not meet the Basic Conditions.

- **Amend Policy LCM1 to:**



- **Insert “where appropriate” between “be required” and “to demonstrate” in the second limb**
- **Replace “Preserves” with “Conserves”**
- **[Number the limbs “i” (before “Development proposals”) and “ii” (before “Applicants will”)]**

59. **Policy LCM2** – This seeks to protect tranquillity and requires some development to assess its impact on tranquillity.

60. The supporting text acknowledges the intrinsic challenges of measuring tranquillity and the Policy requirements relate only to larger developments which are required to provide a Design and Access statement. The Policy is consistent with national planning policy to protect tranquil areas. There is evidence supporting the inclusion of noise, traffic and light levels in the approach to tranquillity. I note concerns from Taylor Wimpey and Gladman Developments about the definition of tranquillity but am satisfied it is consistent with national planning policy.

61. The Policy drafting could be clearer in the way in which it limits the additional requirements to undertake an assessment of the impact on tranquillity to those developments which require a design and access statement. It can also be more clearly presented by numbering the two limbs.

62. Policy LCM2 meets the Basic Conditions.

- **[Amend Policy LCM2 to:**
  - **Replace the second limb with “Where a Design and Access Statement is required this should demonstrate the impact of the proposed development on tranquillity, including noise, traffic and light levels.”**
  - **Number the limbs “i” (before “Development which”) and (“ii” before “In order”)]**

63. **Policy LCM3** – This addresses the impact and opportunities for development on green infrastructure.

64. The Plan supports the broad definition of green infrastructure in national planning policy. This definition goes much wider than the proposed policy support for “*native species*”.

65. The second policy limb is negatively worded in stating development which results in the net loss of green infrastructure “*will not be supported*” instead of seeking evidence that alternative provision will be made. This is in breach of the Basic Conditions.

- **Amend Policy LCM3 to:**
  - **Insert “including” before “using native species”**
  - **Replace “will not be supported unless” with “should demonstrate that”**
  - **[Number the limbs “i” (before “Development proposals”) and “ii” (before “Proposals that”)]**

66. **Policy LCM4** – This protects the distinct “green approach” to Low Coniscliffe.

67. The location of the green approach is clearly defined on the Policies Map. Its protection is supported in public consultation and I noted its distinct and positive contribution to the area during my visit. It provides a marked transition entering the village from the A67. The supporting text describes the qualities of the green approach which the policy aims to protect. There is some unnecessary wording at the end of the Policy.

68. Policy LCM4 meets the Basic Conditions.

- **[Amend Policy LCM4 to delete “in these areas”.]**

69. **Policy LCM5** – This seeks to protect and enhance biodiversity in the neighbourhood area.

70. The diversity of wildlife in the neighbourhood area and the habitats which support it is evidenced by reference to information from both Natural England and the Environmental Records Information Centre. I share Natural England's view that the policy should support both protection and enhancement of biodiversity without caveat. National planning policy addresses the impact of development causing "*significant*" harm (NPPF paragraph 118, 2012 & paragraph 175, 2018) rather than the "*unacceptable*" harm identified in the Policy and I recommend this is the most appropriate wording in order for the Policy to meet the Basic Conditions.

71. The Policy drafting can be improved to make it clearer, including by numbering the two policy limbs.

- **Amend Policy LCM5 to:**
  - **Delete "*where possible*"**
  - **Replace "*unacceptable*" with "*significant*" in both policy limbs**
  - **[Replace "*new development does not result in the*" with "no"**
  - **Delete the comma after "*biodiversity by*"**
  - **Number the limbs "i" (before "*Development should*" and "ii" (before "*Where development*")**

72. **Policy LCM6** – This seeks to protect and enhance the biodiversity and connectivity of identified wildlife corridors.

73. The Policy is supported by seven wildlife corridors identified on the Policies Map and described in the supporting text. A Biodiversity Background Paper provides further evidence although this contains limited additional information. The Parish Council has confirmed to me that the reference to "*wildlife links*" in the Policy as drafted should be to "*wildlife corridors*".

74. The Policy addresses a significant issue and the value of many of the corridors identified was self-evident during my visit. There is, however, a lack of evidence supporting the corridors. I was provided with evidence from the Environment Records Information

Centre of the diversity of wildlife in the neighbourhood area but no sources have been provided which relate to the particular locations mentioned in the Plan. Given that as drafted the Policy relates to existing and not potential future wildlife corridors it needs to be supported by proportionate evidence of their wildlife value. There are also other linear corridors in the area which arguably perform at least an important role and which are not identified. The significant corridor along the A1 is notably absent.

75. I consider the following stretches of wildlife corridor do not adequately perform a significant wildlife function by comparison to others in the neighbourhood area and should be deleted:

- North West edge of Low Coniscliffe – this is marked by a low, narrow hedge with a drystone wall and a single mature tree
- Stretch along the right of way between A67 and Coniscliffe Grange – this is marked by a thin strip of uncultivated land with very low vegetation
- Stretches of the field boundaries linking Baydale Beck and Coniscliffe Grange – this is marked by a low, narrow hedge with a single mature tree
- Stretches west of Coniscliffe Grange – this lack significant vegetation and contains gaps

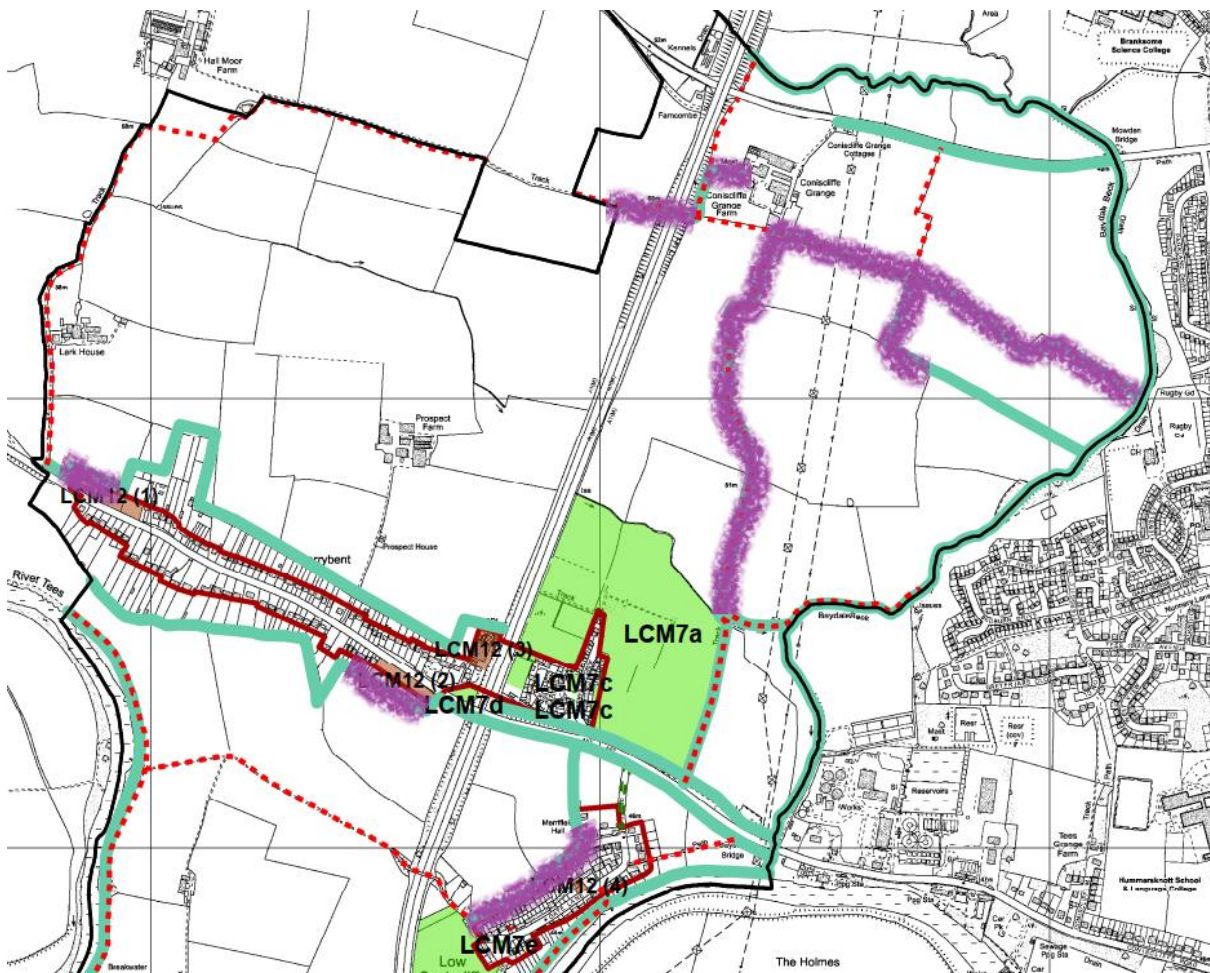
76. There are also some corridors where there is no feature on the ground and these seem more aligned with future development sites than the existence of a wildlife corridor. These are located alongside proposed development sites LCM12(1) and LCM12(2) at either end of Merrybent.

77. I share Natural England's view that the policy should support both protection and enhancement of biodiversity without caveat.

78. Policy LCM6 is also unduly prescriptive in stating that all development "must" protect and enhance biodiversity. It can also be drafted more clearly.

79. Policy LCM6 does not meet the Basic Conditions.

- Amend Policy LCM6 to:
  - replace “*must wherever possible protect and enhance the biodiversity quality and connectivity of the wildlife corridor*” with “*should protect and enhance its biodiversity quality and connectivity*”
  - replace “*links*” with “*corridors*” in both instances
- Amend the Policies Map to delete the wildlife corridors described above and shown below marked in purple



80. Policy LCM7 – This defines five areas as Local Green Space and establishes the policy approach to development.

81. The five areas proposed as Local Green Space are identified on the Policies Map. A systematic and well-presented background paper is provided which assesses each site in terms of the criteria in national planning policy. Eleven sites were rejected through the assessment, including two proposed sites deleted during the consultation. There is evidence of public support for their designation in public consultation.

82. I visited each of the sites and concur with the assessment:

*Merrybent Community Forest* - this clearly plays an important community role and it can be anticipated this will grow as the neighbourhood develops. On visiting it was apparent the small area of paddock north of the kennels currently performs a very different function and is physically separated from the Community Forest by a high line of conifers and fenced off. It does not currently contribute to the Community Forest. On request I was provided with details of the section 106 obligation for the Merrybent Drive development. This excludes the paddock within the 16ha of land dedicated as Community Forest. The boundary of the proposed Local Green Space in the background paper (page 25) is different to that on the Policies Map. I also note that the Consultation Statement records the Parish Council's response to Darlington Borough Council's representations that the boundary is altered in the south west of the site is to "amend" the Plan. Consequently, I recommend that the paddock is not included in the proposed Local Green Space.

*Medieval Manor, Dovecot and Tower* – this is prominently located and rich in visible remains of historic interest. I note Darlington Borough Council's observations about the lack of evidence of community use but am satisfied the evidence provided shows that the site is of significance to the local community.

*Merrybent Drive Green* – this is an area of green space integral to the design and functioning of the recent Merrybent Drive development. It serves to function as an important shared visual space and public realm. I note Darlington Borough Council's view that it is not demonstrably special or significant but agree with the evidence provided of its important local community role.

*Merrybent Green* – this is a rare area of open green space within the linear development of Merrybent. It is prominently located and plays an important role in the village’s identity. I note Darlington Borough Council’s view that it is not demonstrably special or significant but agree with the evidence provided of its important local community role.

*Low Coniscliffe Green Space* - this is a characterful and important area of green space at the west end of Low Coniscliffe. It provides a clear visual focus and is important to the area’s identity. I note Darlington Borough Council’s view that it is not demonstrably special or significant but agree with the evidence provided of its important local community role.

83. The proposed policy approach is too sweeping in applying the test of “*very special circumstances*” to all rather than “*inappropriate*” development. This is not consistent with national planning policy. The policy drafting can also be clearer and the two limbs numbered.

84. Policy LCM7 does not meet the Basic Conditions.

- **Amend Policy LCM7 to:**
  - **[delete “*and will be protected from development*” in the first limb]**
  - **Insert “*Inappropriate*” before “*development*” in the second limb**
  - **Number the limbs “i” (before “*As shown*”) and “ii” (before “*Inappropriate development*”)[as amended])**
- Amend the supporting text in paragraph 4.27 to insert “*inappropriate*” before “*new development*”
- Remove the paddock alongside the A1 between the kennels and line of conifers from Merrybent Community Forest Local Green Space on the Policies Map. The boundary should align with that proposed on page 25 of the Local Green Space Background Paper and Assessment Report.

## **A Rich Built Environment**

85. **Policy LCM8** – This supports development of high quality design and establishes policy criteria which need to be addressed in Design and Access Statements.

86. The Policy is supported by ten design principles developed by AECOM and published in February 2018 (not January 2018 as in the Plan). These were drawn up in collaboration with the parish council and neighbourhood plan steering group. The Policy establishes 13 design criteria. It is unclear how these relate to the AECOM principles but the two sets are complementary.

87. The Policy fails to meet the Basic Conditions because it prescribes that development “*must*” demonstrate high quality design, including where a Design and Access Statement is required. The two limbs of the Policy should be numbered.

- **Amend Policy LCM8 to:**
  - **Replace “*must*” with “*should*” in both limbs**
  - **[Number the limbs “i” (before “*All new*”) and “ii” (before “*Where a*”)]**
  
- [Replace “*January 2018*” with “*February 2018*” in paragraph 4.34]

88. **Policy LCM9** – This supports small scale renewable energy generation which has no significant adverse impacts on relevant land use considerations.

89. No definition of “*small scale*” is provided although the supporting text describes this as “*micro renewable*” by “*individuals, small businesses and communities to meet their own needs*”. This is not consistent with the definition of “*micro generation*” in the Darlington Core Strategy as “*small technologies at individual homes*” (paragraph 3.3.2, Policy CS3). Neither the development plan nor national planning policy distinguishes between different scales of renewable energy development in their policy considerations. National planning policy recognises “*community-led initiatives*” (NPPF paragraph 97, 2012, NPPF paragraph 152, 2018) and also “*local renewable energy*” as part of the definition of “*Decentralised energy*”. A clearer definition is needed to meet the Basic Conditions. A clearer definition would also more readily connect to the policy intention as described in paragraph 4.36.



90. The Policy includes superfluous wording to ensure that it only applies to developments “*which require planning permission*”. This is true of all planning policies as they cannot apply to development where no planning application is required and so I recommend its removal. The Policy can also be more clearly punctuated.

- **Amend Policy LCM9 to:**
  - **Replace “*small scale*” with “Local or community-led”**
  - **[Delete “*which require planning permission*”**
  - **Insert commas between “*development*” and “*either*” and between *development* and “*on*”]**
- Retitle Policy as “Local or community-led renewable energy generation” throughout the Plan
- Replace both instances of “*Micro*” with “Local or community-led” in paragraph 4.36

91. **Policy LCM10** – This requires development impacting on heritage assets to describe their significance and introduces policy criteria to inform the determination of development proposals.

92. The Policy is supported by a Background Paper that describes over 20 undesignated heritage assets and there is evidence of support for these from the consultation process. Some additional supporting information for 1 Low Coniscliffe, 1A Low Coniscliffe and 8 Low Coniscliffe was provided on request and the Parish Council proposes to amalgamate the entries for 1 and 1A Low Coniscliffe in an updated Background Paper. I visited a majority of the undesignated heritage assets in the Background Paper and concur with the Plan’s assertion of their local significance.

93. The second limb of the Policy is broadly consistent with national planning policy.

94. The Policy fails to meet the Basic Conditions because it prescribes that applicants “*must*” provide information describing the significance of heritage assets. National Planning policy is that this “*should*” be provided (NPPF, paragraph 128, 2012). The two limbs of the Policy should be numbered.

- **Amend Policy LCM10 to:**
  - **Replace “*must*” with “*should*”**
  - **[Number the limbs “i” (before “*Where a*”) and “ii” (before “*In the*”)]**

### **Vibrant and Thriving Communities**

95. **Policy LCM11** – This focuses the majority of new development within the settlement boundaries of Low Coniscliffe and Merrybent and introduces policy criteria against which development outside the settlement boundaries will be considered.

96. The amendment and definition of settlement boundaries is an appropriate role for a neighbourhood plan. Both settlement boundaries differ from the development limits defined in Policy E2 of the existing Local Plan and Policy H3 of the Consultation Draft Local Plan. In Low Coniscliffe the differences are small. In Merrybent they include the recent residential development east of the A1 and accommodate potential and existing development sites. The Policy is supported by the Settlement Boundaries Background Paper which describes a logical approach to their definition, including local consultation and the involvement of landowners. In the context of the housing needs identified by the Plan the settlement boundaries are appropriate and, despite differences, are in strategic conformity with the Local Plan.

97. The Policy could more clearly express its designation of settlement boundaries for Merrybent and Low Coniscliffe. Its two limbs should be numbered.

98. The Policy is for the “*majority of development*” to take place within these villages. While this is consistent with Policy E2 of the existing Local Plan, the development strategy has changed and Local Plan Policy H3 that “*new housing development will normally be approved within the development limits.....*” is no longer in force. For the reasons given in respect of Policy LCM12 below I conclude that it would be inappropriate for the Plan to stipulate that the “*majority of development*” will take place within the settlement boundaries while this should still be the focus.

99. Policy LCM11 establishes criteria which would allow development outside the settlement boundaries to be supported. These are broadly consistent with both national planning policy and Local Plan policy for protection of the countryside, including paragraph 55 of the 2012 National Planning Policy Framework in relation to the design of individual dwellings in the countryside. The final part of the Policy is overly prescriptive. There are concerns from Gladman Developments and Taylor Wimpey that this part of the Policy conflicts with site allocations emerging through the review of the Local Plan. I am satisfied that it is clear that if the Local Plan is adopted with these sites included then it will take precedence over the neighbourhood plan if it is made before the Local Plan is adopted. It will be for the Parish Council to consider at that stage whether a neighbourhood plan review should be initiated.

100. Policy LCM11 does not meet the Basic Conditions

- **Amend Policy LCM11 to**
  - **Replace “majority” with “focus”**
  - **Replace “will take place” with “should be”**
  - **Insert “settlement boundaries of” after “within”**
  - **Replace “must” with “should” in the penultimate line of subsection f.**
  - **[Number the limbs “i” (before “To promote”) and “ii” (before “New development”)]**

101. **Policy LCM12** – This makes provision for 28 dwellings over the Plan period and identifies four sites with identified capacity for 28 dwellings. It supports new housing development within settlement boundaries where it meets a range of policy considerations.

102. The Policy is supported by a Housing Sites Background Paper which summarises the site assessment process. This was informed by the Darlington Housing and Employment Land Availability Assessment which identified seven potential sites. Six of these were rejected through the assessment process and only part of the remaining site was considered suitable. A further three sites were assessed and considered suitable, one of which comprises a small part of a site identified in the Darlington study. A further site with

permission for the development of three dwellings was added, resulting in the four sites proposed in Policy LCM12. The sites were consulted on during preparation of the Plan and landowners' views were sought.

103. The site assessment approach is logical and well presented. It arrives at different conclusions over some sites to those of Darlington Borough Council in the preparation of its Local Plan and I note that Darlington Borough Council did not support the sites in the North West and South East of Merrybent. Nevertheless I am satisfied that the sites identified are appropriate and have been agreed through an adequate process. They do not raise strategic conformity issues with the Local Plan and Darlington Borough Council has not raised a strategic objection. They are appropriate for inclusion.

104. I observed during my visit that development of the former nursery site is underway and it should not be included as a site allocation. It will still make a contribution to meeting the area's housing requirements.

105. Darlington Borough Council has confirmed that it has not provided a housing requirement figure for the neighbourhood area. A Housing Needs Assessment has been undertaken for the neighbourhood area by AECOM which produced a range of figures between 17 and 79 dwellings for the period 2016-2036 depending on the method chosen. There is a minor difference between the start date of the Housing Needs Assessment (2016) and the figures used in the Housing Sites Background Paper (2017). This is further confused by the start date of the Plan being 2018. Darlington Borough Council has also updated the Strategic Housing Market Assessment since publication of the Housing Needs Assessment.

106. The Plan's housing requirement is not based on any of the results of the needs assessment and takes a capacity-led approach. It identifies four sites and converts their capacity for 28 dwellings into the Plan's housing requirement.

107. There is, additionally, a significant question over the Plan's strategic conformity with the development strategy for Darlington. The consultation draft Local Plan includes significant allocations within the neighbourhood area that lie outside its settlement

boundaries. These are not addressed in the neighbourhood plan and the parish council considers this would be premature.

108. Representations from Darlington Borough Council, Taylor Wimpey and Gladman Developments all question the robustness of the Plan's approach to determining its housing requirement and the quantum identified.

109. National planning policy states that *"Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies."* (paragraph 184, NPPF, 2012).

110. In considering my recommendations I am aware of the stress in national planning policy on neighbourhood planning that *"provides a powerful set of tools for local people to ensure that they get the right types of development for their community."* (paragraph 184, NPPF, 2012). While this must be aligned with strategic needs it is also apparent that these are not yet settled and the Local Plan is still under review. National Planning Practice Guidance is clear that it is appropriate for a neighbourhood plan to be prepared in advance of a Local Plan review and also states that *"the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development."* (PPG Paragraph 009 Reference ID: 41-009-20160211

111. I conclude that the proposed housing requirement is not based on a rigorous assessment which addresses the different aspects set out in national planning policy. This is regardless of whether it meets the wider requirements emerging through the Local Plan review. I also conclude that given the emerging strategy in the Local Plan it would be inappropriate for the Plan to stipulate that the *"majority of development"* will take place within the settlement boundaries while these should be the focus. I agree with the proposed site allocations subject to the deletion of the former nursery site which is being built out. I believe these recommended changes will best meet the intentions of the parish

council and ensure the Plan supports sustainable development. It is for the parish council to consider whether a review of the neighbourhood plan will be necessary once the Local Plan has been adopted if it renders any aspect of the neighbourhood plan out of date.

112. The second part of the Policy seeks to relate only to *“open market”* housing development whereas the criteria would relate to all types of housing development.

113. The limbs of the Policy should be numbered.

- **Amend Policy LCM12 to**
  - **Delete the first sentence**
  - **Replace *“Sites to deliver this are”* with *“The following sites (with indicative capacities) are allocated for housing development as”***
  - **Delete *“3. Former nursery site (3 dwellings)”***
  - **Delete *“open market”* in the second limb**
  - **[Number the limbs *“i”* (before *“The following”* [as amended]) and *“ii”* (before *“Proposals for”*)]**
- In paragraph 4.45 replace *“majority of the development will take place”* with *“the focus of development will be”*
- In paragraph 4.56 replace *“four”* with *“three”*, *“28”* with *“25”* and *“9%”* with *“8%”*

114. **Policy LCM13** – This supports development of small scale exception sites for affordable homes subject to a number of policy considerations and seeks to remove permitted development rights for residential extensions on exception sites.

115. Local housing needs are defined in terms of the *“Compass Allocations Policy”*. This is not explained or referenced in the supporting text.

116. The supporting text seeks any new development permitted under this Policy to remain affordable *“in perpetuity”* but the Policy makes no provision for this. National planning policy also defines exceptional sites in terms of providing affordable homes in perpetuity (page 55, NPPF, 2012).

117. The second limb seeks to remove permitted development rights for extensions to housing built on exceptions sites. This is not a matter of planning policy and would require approval of an Article 4 Direction.

118. The Policy is prescriptively worded.

119. Policy LCM13 does not meet the Basic Conditions.

- **Amend Policy LCM13 to:**
  - **Replace “*must*” with “*should*”**
  - **Insert new subsection b. “*affordable in perpetuity*”**
  - **Delete the second limb beginning “*Permitted development rights*”**
- Delete second sentence of paragraph 4.59 after “*in perpetuity*”
- Add “The criteria for allocating dwellings according to need under Policy LCM13 are provided by Compass (<https://www.compasscbl.org.uk>)” at end of paragraph 4.60

120. **Policy LCM14** – This supports development which enhances community services and facilities subject to a number of policy criteria and sets requirements to be met before permitting their loss. It seeks to introduce particular policy considerations for designated Assets of Community Value.

121. The Plan notes that there are few existing community services and facilities and is encouraging of measures to enhance provision. It identifies the Baydale Beck public house and Low Coniscliffe Village Library and book exchange as existing, valued, facilities.

122. The Policy does not meet the Basic Conditions in two aspects. It is negatively worded in stating that proposals involving the loss of land or buildings in the community “*will not be supported*” unless relevant evidence is provided. It also seeks to apply particular policy considerations to designated Assets of Community Value. The primary purpose of an Asset of Community Value designation is to afford the community an opportunity to purchase the identified asset, not to prevent otherwise acceptable

development. The Policy describes a separate statutory process for managing disposal and does not add to the protections afforded by the second limb.

123. The Policy limbs should be numbered.

- **Amend Policy LCM14 to:**
  - **Replace “not be supported unless the applicant has robustly demonstrated, to the satisfaction of the Local Planning Authority” with “need to demonstrate that”**
  - **Delete the third limb beginning “Where proposals for”**
  - **[Number the limbs “i” (before “Development proposals”) and “ii” (before “Proposals that”)]**
- Delete paragraph 4.64

124. **Policy LCM15** – This requires development to meet related infrastructure needs and in a timely manner.

125. Darlington Borough Council has confirmed that it does not currently intend to make provision for introducing the Community Infrastructure Levy. The Policy does not meet the Basic Conditions in prescriptively requiring that infrastructure “*must*” be made available within an agreed timescale.

- **Amend Policy LCM15 to replace “*must*” with “*should*”**

### **A Strong and Diversified Economy**

126. **Policy LCM16** – This supports agriculturally related development, including farm diversification, subject to it not having an unacceptable impact on relevant land use considerations.

127. The Policy is positively worded. It meets the Basic Conditions subject to an amendment to address its syntax.



- Amend Policy LCM16 to replace “it” with “they”

128. **Policy LCM17** – This supports tourism and leisure related development within the settlement boundaries subject to relevant land use considerations.

129. The second limb of the Policy should be more positively worded to meet the Basic Conditions and includes unnecessary text about the robustness of evidence and the local planning authority. The three limbs should be numbered.

- Amend Policy LCM17 to:
  - Delete “only” in the second limb
  - Delete “robustly” and “to the satisfaction of the Local Planning Authority”
  - [Number the limbs “i” (before “The development”), “ii” (before “In the”) and “iii” (before “Tourism development”)]

### **Movement and Connectivity**

130. **Policy LCM18** – This supports development that addresses relevant transport related land use considerations.

131. The Policy is too clumsily worded to meet the Basic Conditions and includes an unnecessary reference to the local planning authority.

- Amend Policy LCM18 to
  - Replace “The” with “Will not significantly” at the beginning of section b.
  - Delete “will not be severe” in section b.
  - Delete “as required by the Local Planning Authority” in section c.

132. **Policy LCM19** – This addresses the impact of development on active travel routes.

133. The Policy is supported by linear active travel routes identified on the Policies Map. These are defined as being used by pedestrians, cyclists and horse-riders. I note the concerns of Darlington Borough Council that the proposed routes are a mix of public

footpaths and bridleways and so not all can be used by cyclists and horse riders. There is further risk of confusion as the supporting text refers to the routes including *“paths of a more informal nature”* and also to undefined *“wayfarer walks”*. I share the concerns about the lack of clarity and it was confirmed to me that all the routes are public rights of way and one of them is a bridleway.

134. The second part of the Policy needs to be more positively worded to meet the Basic Conditions.

- **Amend Policy LCM19 to:**
  - **Replace all mentions of *“Active Travel Routes”* with *“Public Rights of Way”***
  - **Replace *“not be supported unless”* with *“need to demonstrate”***
- **Retitle Policy LCM 19 as *“Public Rights of Way”* throughout the Plan**
- **Replace *“Active Travel Routes”* with *“Public Rights of Way”* throughout the Plan (including Contents, section title on page 31 and paragraph 4.78)**
- **Replace paragraph 4.77 with *“Public Rights of Way include footpaths, used by pedestrians only, and bridleways available to pedestrians, cyclists and horse-riders. The Teesdale Way crosses the Parish along with numerous Public Rights of Way which are used by the local community, dog walkers, ramblers, anglers and other visitors.”***

## **8. Recommendation and Referendum Area**

135. I am satisfied the Low Coniscliffe & Merrybent Neighbourhood Plan meets the Basic Conditions and other requirements subject to the modifications recommended in this report and that it can proceed to a referendum. I have received no information to suggest other than that I recommend the referendum area matches that of the Neighbourhood Area.