

Carlyon Parish

Neighbourhood Development Plan

Submission Version 2022 2030

Report of Examination

September 2023

Undertaken for Cornwall Council with the support of Carlyon Parish Council on the submission version of the plan.



Independent Examiner:

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Abbreviations used in the text of this report:

The Carlyon Parish Neighbourhood Development Plan is referred to as ‘the Plan’ or ‘CNDP’.

Carlyon Parish Council is abbreviated to ‘Carlyon PC’.

Cornwall Council is the Local Planning Authority, which is abbreviated to ‘LPA’.

The National Planning Policy Framework is abbreviated to ‘NPPF’.

The National Planning Practice Guidance is abbreviated to ‘NPPG’.

The Cornwall Local Plan Strategic Policies 2010 - 2030 is abbreviated to ‘CLP’.

The Cornwall Site Allocations Development Plan Document is abbreviated to ‘SADPD’.

Climate Emergency Development Plan Document 2023 is abbreviated to ‘CEDPD’.

The key Neighbourhood Plan Regulations are abbreviated to ‘Reg14’ and ‘Reg16’ respectively.

Local Green Space is abbreviated to ‘LGS’.

Summary

- I have undertaken the examination of the Carlyon Parish Neighbourhood Development Plan (CNDP) during August and September 2023, and detail the results of that examination in this report.
- The Qualifying Body have undertaken consultation on this Plan over a period of several years and sought comment from residents and businesses. Consultation undertaken complies with legislative requirements. The Development Plan for Cornwall provides a comprehensive strategic policy framework.
- I have considered the comments made at the Regulation 16 Publicity Stage, and where relevant these have to an extent informed some of the recommended modifications.
- Subject to the modifications recommended, the Plan meets the basic conditions and may proceed to referendum.
- I recommend the referendum boundary is the designated neighbourhood plan area.

Acknowledgements: Thanks to Local Authority and qualifying body staff for their assistance with this examination. My compliments to the local community volunteers and Carlyon Parish Council, who have produced a nicely presented Plan with a good evidence base.

1. Introduction and Background

1.1 Neighbourhood Development Plans

1.1.1 The Localism Act 2011 empowered local communities to develop planning policy for their area by drawing up neighbourhood plans. For the first time, a community-led plan that is successful at referendum becomes part of the statutory development plan for their planning authority.

1.1.2 Giving communities greater control over planning policy in this way is intended to encourage positive planning for sustainable development. The National Planning Policy Framework (NPPF para 29) states that:

“neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood Plans can ... help to deliver sustainable development”.

Further advice on the preparation of neighbourhood plans is contained in the Government’s Planning Practice Guidance website:

<http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/>

1.1.3 Neighbourhood plans can only be prepared by a ‘qualifying body’, and in this parish that is the Carlyon Parish Council. Drawing up the Neighbourhood Plan was undertaken by a Steering Group working to the Parish Council.

1.2 Independent Examination

1.2.1 Once the qualifying body had prepared their neighbourhood plan and consulted on it, they submitted it to Cornwall Council. After publicising the plan with a further opportunity for comment, Cornwall Council were required to appoint an Independent Examiner, with the agreement of Carlyon PC to that appointment.

1.2.2 I have been appointed to be the Independent Examiner for this Plan. I am a chartered Town Planner with over thirty years of local authority and voluntary sector planning experience in development management, planning policy and project management. I have been working with communities for many years, and have recently concentrated on supporting groups producing neighbourhood plans. I have been appointed through the Neighbourhood Plan Independent Examiners Referral Service (NPIERS). I am independent of any local connections to Carlyon Parish and Cornwall Council, and have no conflict of interest that would exclude me from examining this plan.

1.2.3 As the Independent Examiner I am required to produce this report and recommend either:

- (a) That the neighbourhood plan is submitted to a referendum without changes; or
- (b) That modifications are made and that the modified neighbourhood plan is submitted to a referendum; or
- (c) That the neighbourhood plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.

1.2.4 The legal requirements are firstly that the Plan meets the 'Basic Conditions', which I consider in sections 3 and 4 below. The Plan also needs to meet the following requirements under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990:

- It has been prepared and submitted for examination by a qualifying body;
- It has been prepared for an area that has been properly designated by the Local Planning Authority;
- It specifies the period during which it has effect;
- It does not include provisions and policies for excluded development;
- It does not relate to land outside the designated neighbourhood area.

The CNDP complies with the requirements of Paragraph 8(1). The Neighbourhood Area was designated on 28th October 2016 by Cornwall Council. With minor changes detailed in section 4, modification 2 below, the plan will not relate to land outside the designated Neighbourhood Area. It specifies the period during which it has effect as 2022 – 2030 and has been submitted and prepared by a qualifying body and people working to that qualifying body. It does not include policies about excluded development; effectively mineral and waste development or strategic infrastructure.

1.2.5 I made an unaccompanied site visit to Carlyon Parish to familiarise myself with the area and visit relevant sites and areas affected by the policies. This examination has been dealt with by written representations, as I did not consider a hearing necessary.

1.2.6 I am also required to consider whether the referendum boundary should be extended beyond the designated area, should the Plan proceed to a referendum. I make my recommendation on this in section 5 at the end of this report.

1.3 Planning Policy Context

1.3.1 The Development Plan for Cornwall, not including documents relating to excluded mineral and waste development, is the Cornwall Local Plan Strategic Policies 2010-30 (CLP) adopted November 2016, the Cornwall Site Allocations Development Plan Document (SADPD) adopted November 2019, and the Climate Emergency Development Plan Document (CEDPD), adopted February 2023. All policies in these documents are considered strategic.

1.3.2 The National Planning Policy Framework 2021 (NPPF) sets out government planning policy for England, and the National Planning Practice Guidance (NPPG) website offers guidance on how this policy should be implemented. A more recent version of the NPPF was released in September 2023 after this examination had substantially completed. Changes in the NPPF2023 do not materially effect this Plan, and it has been examined with regard to the NPPF2021.

1.3.3 During my examination of the CNDP I have considered the following documents:

- National Planning Policy Framework (NPPF) 2021
- National Planning Practice Guidance (NPPG) 2014 and as updated
- Town and Country Planning Act 1990 (as amended)
- Planning and Compulsory Purchase Act 2004
- The Localism Act 2011
- The Neighbourhood Planning Regulations 2012 (as amended)
- Submission version of the Carlyon Parish Neighbourhood Development Plan (CNDP)
- The Basic Conditions Statement submitted with the CNDP
- The Consultation Statement submitted with the CNDP
- The Strategic Environmental Assessment Screening Decision for the CNDP
- Neighbourhood Area Designation (map)
- Cornwall Local Plan Strategic Policies 2010 – 2030 (CLP)
- Cornwall Site Allocations Development Plan Document (SADPD)
- Climate Emergency Development Plan Document (CEDPD)
- Village Design Statements Areas 1 – 9 Appendices 20 – 23 of the CNDP
- Carlyon Local Landscape Character Assessment Appendix 29 of the CNDP
- Local Green Space Assessments Appendices 15 – 18 of the CNDP
- Representations received during the publicity period (reg16 consultation)

2. Plan Preparation and Consultation

2.1 Pre-submission Process and Consultation

2.1.1 Carlyon Parish is on the eastern edge of St Austell, one of the principle towns in Cornwall. Its boundary to the south is the coast, and the main settlement Carlyon Bay is adjacent to the seafront. Much of the parish is open land, with development associated with agriculture, forestry, tourism and former mining works all visible in the landscape. There are 650 dwellings and a range of businesses.

2.1.2 A Steering Group was set up to lead on the NDP in January 2017, with terms of reference agreed. Meetings were open to the public, notes from the meetings were posted on the Parish Council website, and available to those who wanted them by email. The NDP was a standing item on the Parish Council meetings from January 2021, and decisions minuted accordingly.

2.1.3 The Consultation Statement sets out the nature and form of consultation prior to the formal Reg14 six week consultation. An initial survey was delivered to every household in the parish. Additionally a business survey was hand delivered to 100 local businesses. A follow up survey to residents concentrating on questions shown to be most relevant received a better response rate of 30%. Two public engagement events were organised in 2017 and 2019, the second visited by 123 members of the public.

2.1.4 As required by regulation 14 of the Neighbourhood Planning Regulations 2012, the formal consultation for six weeks on the pre-submission Carlyon Parish Draft NDP ran from the 14th December 2020 to the 10th February 2021. The Consultation was advertised in the parish newsletter and on parish noticeboards. The draft Plan was available on the Parish Council website, and hard copies were available to view at the Parish Council Offices.

2.1.5 Representations were received from 2 members of the community – including agents for the proposed development at Carlyon Bay during the Reg14 consultation period. Additionally 8 statutory bodies responded, most with specific comment. Amendments have been made to the Plan as a result of some of the responses and I am satisfied that due process has been followed during the consultation undertaken on the Plan. The Consultation Statement details all consultation activities, and the record of comments and objections received during the regulation 14 consultation shows that these were properly considered, and where appropriate resulted in amendments to the plan to accommodate points raised.

2.1.6 As required, the amended plan, together with a Basic Conditions Statement, a Consultation Statement, the Screening Opinion and a plan showing the neighbourhood area was submitted to Cornwall Council on the 5th October 2022.

2.2 Regulation 16 Consultation Responses

2.2.1 The LPA (Cornwall Council) undertook the Reg 16 consultation and publicity on the CNDP for six weeks, from the 8th June to the 20th July 2023. Fourteen Representations were received during this consultation, six from various sections of Cornwall Council, five from Statutory consultees, two from developer and landowner interests and one from a local stakeholder organisation. Issues they raise that are pertinent to my consideration of whether the Plan meets the basic conditions are considered in sections 3 and 4 of this report below.

2.2.2 I am specifically limited by legislation to correcting with recommended modifications the Plan's compliance with the Basic Conditions and other legal requirements. Comments in the Reg16 responses suggesting significant additions, such as new sites or new policies, is not something this examination is authorised to consider. Notification of minor corrections needed to the text are very useful, but again cannot be the subject of any modifications I recommend. The LPA will be aware however that it is authorised to correct minor errors that may have been missed so far [Town and Country Planning Act 1990 Schedule 4B section 12(6)].

3. Compliance with the Basic Conditions Part 1

3.1 General legislative requirements of the 1990 Town and Country Planning Act (TCPA) other than the Basic Conditions are set out in paragraph 1.2.4 above. The same section of this report considers that the CNDP has complied with these requirements. What this examination must now consider is whether the Plan complies with the Basic Conditions, which state it must:

- Have regard to national policies and advice contained in guidance issued by the Secretary of State;
- Contribute to the achievement of sustainable development;
- Be in general conformity with the strategic policies of the development plan for the area;
- Be compatible with and not breach European Union (EU) obligations and comply with human rights law; and
- Not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 (*prescribed basic condition since December 2018*).

3.2 The Basic Conditions Statement discusses how the Plan promotes sustainable development, primarily with reference to its conformity with national and strategic local plan policy that requires this. I accept that if modified as proposed in this report, the Plan will contribute to sustainable development in line with the Basic Conditions.

3.3 A screening opinion has been issued by Cornwall Council which considers whether Strategic Environmental Assessment (SEA) and/or Habitat Regulations Assessment (HRA) are required for the CNDP. These environmental requirements are incorporated into UK law by the Environmental Assessment of Plans and Programmes Regulations 2004, and implement the main EU Directive that neighbourhood plans still need to comply with. The Screening opinion states (paras 5.1 and 5.2) that HRA is not required because it is unlikely there were be any significant environmental effects on European Sites arising from the CNDP. SEA is not required because “The plan provides for small scale development, which is not judged to affect sensitive receptors”.

3.4 The CNDP in my view complies with Human Rights Legislation. It has not been challenged with regard to this, and the consultation statement showed that the need to consult with different interests in the community was appreciated.

4. Compliance with the Basic Conditions Part 2: National Policy and the Development Plan

4.1 The final and most complex aspect of the Basic Conditions to consider is whether the CNDP meets the requirements as regards national policy and the development plan. This means firstly that the Plan must have regard to national policy and guidance, which for this neighbourhood plan is the NPPF 2021 and the NPPG. Secondly the Plan must be in general conformity with the strategic policies of the development plan. The phrase 'general conformity' allows for some flexibility. If I determine that the Plan as submitted does not comply with the Basic Conditions, I may recommend modifications that would rectify the non-compliance.

4.2 The Plan and its policies are considered below in terms of whether they comply with the Basic Conditions as regards national policy and the development plan. If not, then modifications required to bring the plan into conformity are recommended.

Modifications are boxed in this report, with text to *remain in italics*, new text **highlighted in Bold** and text to be deleted ~~shown but struck through~~. Instructions for alterations are underlined.

4.3 The information in the Plan is generally clear and well-illustrated. Some text is split unfortunately between pages, the title of Policy H2 for example. I also find the numbering of policies confusing and not consistent. Policy 1 for example has Policy 1a) also called 'H1 Housing Development'. Policy 1b) then includes policies labelled H2 and H3. Policies 2 and 3 have within them sub-policies that could stand alone, with different reference numbers. Policy 4 has no such subdivision. Policy 5 just uses a) and b) to distinguish policies that are dealing with quite separate issues but are justified jointly. As the policies are the most important part of any development plan, I consider this needs to be corrected in order that the CNDP complies with the Basic Conditions and has due regard for the NPPF requirement that policies are unambiguous (para 16d). I recommend therefore that labelling of the policies is amended as set out in modification 1:

Modification 1: Policy numbering to retain the existing number system of 1 – 10 for each issue. Where separate sub-policies are identified within these policies they shall be distinguished by the labels a), b), c) and so on. Use of other lettering to distinguish sub-policies to be removed.

4.4 Policy 1a: Housing Development The policy makes reference to development which is partly outside of the neighbourhood plan area in criteria c. Additionally this criteria is not policy, but a statement of fact that is not needed. The settlement boundaries need to be formally defined in the policy, and it is not for policy to state something will be 'permitted', that is a decision taken on a planning application. For clarity reasons, as required by the NPPF (para16d), repetition within the policy should be removed. In order that Policy 1a does not deal with land outside of the neighbourhood area, and has the clarity required by the NPPF, I recommend it is amended as shown in Modification 2:

Modification 2: The policy title to be amended to 'Policy 1a Housing Development'.

The first paragraph of Policy 1a and criteria a) to be amended and amalgamated as follows:

“Development boundaries for the village of Tegrehan with Boscundle, the Gwallon Keas estate and the settlement of Carlyon Bay are designated as shown in figures 2, 3, 4 and 5. Housing developments and small scale infill, rounding off and development on previously developed land will be supported within these development boundaries where it conforms with other relevant policies of the development plan.”

Delete criteria a) and c). Criteria b) to become criteria a). Criteria d) to become criteria b).

4.5 Policy 1b Housing Design and Replacement Dwellings The replacement dwellings sub policy is now only repeating policy in the recently adopted CEDPD, and may in fact undermine that policy. Policy is required by the NPPF to not be repetitious (para 16f). Criteria f) is ambiguous, as it is not clear what the density on site should not be increased from. Communication with the qualifying body and LPA has agreed the ambiguity should be amended with the addition of a reference to the density of surrounding residential development. Policy 1b needs to have the clarity required by the NPPF, avoid repetition as required by the NPPF, and be in general conformity with the Development Plan in order to comply with the Basic Conditions. I recommend it is amended as shown in Modification 3 in order that it meets these requirements.

Modification 3: Policy 1b to be amended as follows:

The Policy title to be amended to 'Policy 1b: Housing Design'.

The sub-policy H3 to be deleted.

Criteria f) to be revised to read: "The housing density of the site should not be significantly ~~increased~~ **greater than the density of surrounding residential development; and"**

4.6 Policy 2: Green Buffers The policy is dealing with a 'buffer area' between the settlements of Carlyon Bay and Tergrehan with Boscundle, but also the landscape setting of Carlyon Bay. The policy title needs to reflect this for clarity. An error of designation has occurred with the Football Golf facility to the south of Trenowah Road, and needs to be corrected in Figure 6, the facility should be shown as a recreational facility. For clarity the appendix number of the Landscape Character Assessment should be quoted. References to 'typical views' are not clearly identified in the Village Design Statement Appendices, and the second bullet point is ambiguous and not clear, contrary to the requirements of the NPPF. Reference to the need to have due regard to the Village Design Statements is covered in Policy 3.

4.6.1 In order that the CNDP complies with the Basic Conditions and has paid due regard to the NPPF requirement for clarity (para 16d), and to correct an acknowledged error, I recommend that Policy 2 and Figure 6 are amended as shown in Modification 4 below.

Modification 4: Policy 2 to be amended as follows:

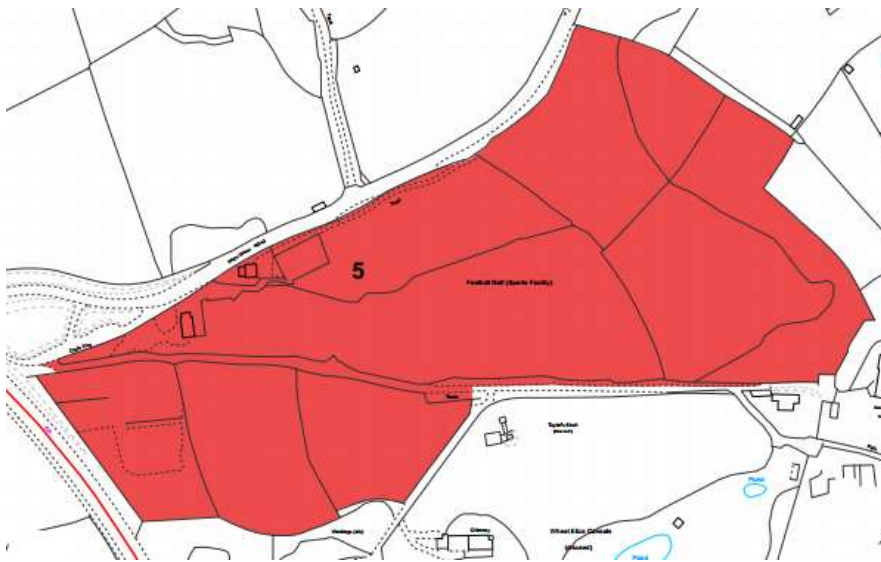
The Policy title to be amended to 'Policy 2: Green Buffers and Landscape Setting'. 'GB1. Green Buffers' to be deleted.

As for Policy 1a) Modification 2, the word 'permitted' in the second paragraph should be changed to 'supported'. This needs to be generally corrected in the document.

The first bullet point should include reference to the Landscape Character Assessment document being 'Appendix 29'.

The second bullet point to be deleted.

Figure 6 should show the Football Golf land shaded red below as a recreational area (but not LGS):



4.7 Policy 3: Character and Heritage Complies with the Basic Conditions when references to 'CH1' in the second paragraph and 'CH2' in the fourth paragraphs are removed – refer to Modification 1.

4.8 Policy 4: Climate Change and Green Infrastructure It has been suggested that the policy merely repeats the CEDPD and should be deleted. I am content though that issues of particular relevance to Carlyon Parish have been identified, and thus the policy complies with the Basic Conditions.

4.9 Policy 5a: Protection of formal open spaces, playing pitches and leisure facilities The policy offers protection of these sites for their existing use. However the policy includes sites identified as Local Green Spaces (LGS) in Policy 5b), and these sites cannot be included in both policies. Different levels of protection are offered in policy 5a and 5b, LGS is not replaceable and it is not appropriate to include them in Policy 5a. It is reasonable to protect other recreational areas that are not to be designated as LGS, and require replacement should development proposals threaten their continued use. A policy doing this is specifying that these facilities in the parish are considered important with reference to Policy 25 of the CLP, and I accept that a general policy removing reference to the LGS designated sites is appropriate. In order that Policy 5a complies with government policy with regard to LGS and thus the Basic Conditions, I recommend it is amended as shown in Modification 5.

Modification 5: The first paragraph of Policy 5a to be amended as follows:

“Land that provides important formal or informal recreational space or sports pitch or leisure facilities is to be retained wherever possible. ~~for the Plan area are shown in figures 10, 11 and 12 and Appendices 15, 16 and 18 of this plan.~~ Permission will only be granted for development that results in the partial or total loss of this space in exceptional circumstances where:”

4.10 Policy 5b: Local Green Space. This policy designates four sites as LGS, as the NPPF sets out (paras 101-103). An objection was received to the designation of the Carlyon Recreation Area and Coastal Path from the hotel that owns a significant section of the site. However I do not consider the site to be an extensive tract of land, and it is in close proximity to the community it serves. It is a well-used path, with exceptional views over the sea and coast taken from it, and currently a unique part of the tourist offer for the parish as well as a recreational resource. Policy CC1 in the CEDPD protects the South West Coast Path which is located on the site, a nationally significant recreational route. I accept that the site is special therefore, and suitable for LGS designation. Land in private ownership is admissible for designation as LGS, although it should be understood that the designation does not in itself grant public access.

4.10.1 The policy has three criteria for any proposed development on the sites. However the NPPF is clear that the level of protection LGS has needs to be consistent with those for Green Belts (NPPF

para 103). The criteria are not consistent with this national policy, and in order that Policy 5b complies with the Basic Conditions and has due regard to national policy they should be removed. The policy also needs to include the designations removed from Policy 5a in Modification 5 above. I recommend therefore that Policy 5b is amended as shown in Modification 6 in order that it complies with the Basic Conditions and properly designates the LGS evidenced and consulted on.

Modification 6: Policy 5b to be rewritten as follows:

“The land listed below and shown on Figures 9, 10, 11, and 12 are designated as Local Green Space.”

Reference to the Appendices detailing the reasons for designation to be moved to the justification for each LGS (carries on from para 14.10 of the CNDP).

4.11 Policy 6: Footpaths, Access and Public Rights of Way The Policy has identified two sub-policies but these are not necessary and as discussed in para 4.3 above the extra numbering system creates confusion contrary to the requirements of the NPPF for policy clarity. The second paragraph title can be worked into the first sentence of the second paragraph. In order that Policy 6 complies with the Basic Conditions and has regard to the NPPF requirement for policy clarity I recommend that it is amended as shown in Modification 7.

Modification 7: Policy 6 to be amended as follows:

~~FP1. Carlyon Bay Beaches~~

Development proposals which retain and improve access to the beach facilities at Carlyon Bay will be supported, mobility.

~~FP2 Footpaths, Cycle paths and Figure 14 below.~~

Support will be given to proposals for the rights of way network and cycle routes shown in Figure 14 that: ...

Criteria a. to d. to remain as shown

4.12 **Policy 7: infrastructure** The policy has two parts, but the first part under the heading ‘IN1 Sustainable Design’ could undermine the more specific and targeted strategic policies of the CEDPD. Thus in order that the CNDP complies with the Basic Conditions, and is in general conformity with the strategic policies of the development plan I recommend that this part of the policy is deleted and the policy modified as set out in Modification 8.

Modification 8: Policy 7 to be amended as follows:

The policy to be renamed ‘Policy 7: Traffic and Transport’. Reference to sub-policies IN1 and IN2 and their headings to be deleted.

The entire sub-policy IN1 to be deleted.

4.13 **Policy 8: Employment** The policy will read as separate paragraphs with the removal of the four sub-policy headings and numbering of EE1 – EE4 as recommended in Modification 1. The third paragraph (was EE3) has been suggested by the LPA to need modification in order that it better complies with strategic policy 5 in the CLP, and I agree with this assessment. In order that Policy 8 complies with the Basic Conditions and is in general conformity with the strategic policies of the development plan, I recommend it is amended as shown in Modification 9.

Modification 9: The third paragraph of Policy 8 (was EE3) to be amended as follows:

*“The conversion of vacant rural buildings for business use will be supported where **the building is suitable for conversion and it can be demonstrated that there is a locational and business need to be in that location** ~~need it meets the needs of Carlyon Parish.~~”*

4.14 **Policy 9: Tourism** The policy’s sub divisions should be removed as required by Modification 1. The first paragraph dealing with rural diversification for reasons of tourism is more specific to the parish than the more general strategic policy in the CEDPD, but mention of the requirements of this document should be made in the policy for clarity and to ensure conformity.

4.14.1 The second paragraph deals with retention of hospitality businesses, but in order to conform to CLP Policy 5 the requirement for vacancy and proof of non-viability needs to be in line with Policy 5 of the CLP. In order that Policy 9 Complies with the Basic Conditions and is in general conformity with the strategic policies of the development plan, I recommend it is amended as shown in Modification 10.

Modification 10: Policy 9 to be amended as follows:

*“Applications for rural diversification relating to tourism activities **that comply with policy in the Climate Emergency Development Plan Document** will be supported, especially when new jobs will be created or existing jobs secured.*

*Proposals for the redevelopment or change of use of buildings and land from local retail facilities and service trade use (including cafes, pubs and restaurants) to residential use will not supported except where **the requirements of Policy 5 of the Cornwall Local Plan 2010 – 2030 and any development plan policy superseding that policy have been met.**”*

4.15 **Policy 10: Retail and Small Business** Will comply with the Basic Conditions when the title and numbering of ‘ER1’ is removed, as recommended in Modification 1.

5. The Referendum Boundary

5.1 The CNDP has no policy or proposals that have a significant enough impact beyond the designated Neighbourhood Plan Boundary that would require the referendum boundary to extend beyond the Plan boundary. Therefore I recommend that the boundary for the purposes of any future referendum on the Carlyon Parish Neighbourhood Development Plan 2022 – 2030 shall be the boundary of the designated Neighbourhood Area for the Plan.