

Appendix B

Changes to be made to the Lamberhurst Neighbourhood Plan as requested by the Independent Examiner's Report 7 May 2021.

The independent examiner has concluded that the Lamberhurst Neighbourhood Development Plan should proceed to referendum, subject to the Plan being amended in line with the independent examiner's recommended modifications, which are required to ensure the plan meets the basic conditions. The following table presents the more noteworthy modifications:

Independent Examiner's Report: main recommended amendments	Commentary	Outcome: changes to LNDP following discussions with the LNDP group
Designation of five local green spaces and clarifying that development on these will only be allowed in very special circumstances.	To reflect the methodology being used by the borough council when preparing the Pre Submission Local Plan	n/a
Removing restrictions on the planting of specific species.	<p>Refers to LNDP Policy L2 Development in the High Weald AONB.</p> <p>The examiner is not satisfied that a planning policy can prevent the planting of laurel or leylandii. The planting of plants and shrubs is not an act of development requiring planning permission and the Borough Council has confirmed that a condition preventing their usage would not meet the 6 tests of a planning condition as set out in paragraph 55 of the NPPF.</p>	Policy amended – no reference to laurel and leylandii
Removing reference to the maintenance of unspecified open land between Lamberhurst and Lamberhurst Down and list	Refers to LNDP Policy L3 Retaining parish character and conserving the landscape. The third bullet of this policy stated	Policy amended to read 'maintain the separate identity of the two settlements Lamberhurst and Lamberhurst Down to

<p>in the policy 12 key views.</p>	<p>‘maintains the separate identity of, and open land between, Lamberhurst and Lamberhurst Down’. The examiner considers that the objective of the policy can be achieved by removing reference to “and open land between” so the objective is clear, namely that any proposal must maintain the identity of the two settlements to prevent their coalescence.</p>	<p>prevent their coalescence’</p>
<p>Delete the flood policy</p>	<p>Refers to LNDP Policy L5 Water management and flood risk.</p> <p>The examiner notes that Lamberhurst is specifically referred to in the 2006 Local Plan as a part of the borough which is known to experience flooding issues. The examiner is not satisfied that this neighbourhood policy offers any additional controls or variations, from that which is already set out in existing local plan policy or indeed from that found in the NPPF or the NPPG regarding flooding issues.</p> <p>He is concerned that the policy could be argued to be less stringent than the existing policy, for example, in terms of sequential approach it refers to “siting as far as possible in areas of low flood risk and avoid areas....”. National policy</p>	<p>Policy deleted</p>

	<p>uses stronger language, such as “directing development away from areas of highest risk” and “steering development to areas with the lowest risk of flooding”.</p> <p>I do not consider that the policy has any local dimension to national policy and it is essentially only repeating existing policy, albeit perhaps using weaker language, apart from the measures which would fall under the heading of water management, where the policy refers to using flood risk management measures for “controlling or eradicating invasive plant species”. I do not consider that the planning system can be used to deal with such issues. I do not consider that the management and eradication of these species would fall within the remit of being a policy for the use and development of land, which is the purpose of a neighbourhood plan policy. These are environmental management measures which fall within the regulatory control of the Environment Agency</p>	
<p>Allow the enhancements to the public right-of-way network.</p>	<p>Refers to LNDP Policy L6 Public Rights of Way.</p> <p>The examiner refers to Paragraph 98 of the NPPF</p>	<p>Policy amended – add ‘enhance’</p>

	<p>that requires that planning policies “should protect and enhance” public rights of way. In this case the emphasis within this policy is maintaining the right-of-way “through the site to a similar standard, wherever possible”. I consider that in line with the Secretary of State approach the opportunity presented by development, should also include the possibility of enhancing the public right-of-way which could, for example, improve access or surface treatment or as suggested by the Borough Council, linking up with other rights of way in the area.</p>	
<p>Listing all the community facilities covered by the assets of community value policy.</p>	<p>Refers to LNDP Policy C1 Assets of value to the community.</p> <p>Provides clarity</p>	<p>Policy amended – community facilities listed within policy</p>
<p>Amendment to the broadband policy.</p>	<p>Refers to LNDP Policy C2 Broadband and mobile infrastructure.</p> <p>The examiner explains that whilst the local plan policy is draft, nevertheless the thrust of the policy is to encourage access to services from a range of providers and, as paragraph 112 of the NPPF states, policies should prioritise fibre connections to both existing and new development. The examiner considers the developers can only be expected to</p>	<p>Policy amended to clarify requirements for the provision of Fibre To The Premises (FTTP) infrastructure</p>

	<p>provide the infrastructure necessary to allow third-party providers to deliver superfast broadband services</p>	
<p>Remove the developer contribution policy</p>	<p>Refers to LNDP Policy C3 Developer contributions.</p> <p>The examiner explains that the requirement for developer contributions is already set out in Core Policy 1 of the Tunbridge Wells Core Strategy which states: “Developments on allocated and unallocated site will be required either to provide, or contribute towards the provision of the services, facilities and infrastructure which they create a need”.</p> <p>Under the terms of Regulation 122 of the Community Infrastructure Levy Regulations 2010, planning obligations must only be sought where they meet all the following tests:</p> <ul style="list-style-type: none"> • are necessary to make the development acceptable in planning terms • be directly related to the development and • fairly and reasonably related in scale and kind to the development <p>The examiner does not consider the policy meets the basic conditions and</p>	<p>Policy deleted</p>

	recommends that this policy be deleted	
Removal of the housing allocation policy	<p>Refers to LNDP Policy H3 Allocating affordable housing.</p> <p>The examiner explains that the neighbourhood plan policy is a policy used to determine the planning application. The allocation of affordable housing is a matter for the Housing Authority rather than the local planning authority and it does so, in line with the Borough Council's housing allocation policy, which may or may not include a local connection policy.</p> <p>He concludes that a specific, parish based, local connection allocation policy does not fall within the definition of a policy for the use and development of land, but is rather proposing a housing allocation policy.</p>	Policy deleted
Removing the requirement to have to justify a one for one replacement of a dwelling	<p>Refers to LNDP Policy H5 Replacement dwellings.</p> <p>The examiner explains that the policy, as originally submitted, only accepted the principal if the current building is found to be unstable or uneconomic to repair. Upon challenging this, in my Initial Comments document, I quoted examples such as a landowner's desire to</p>	Policy amended as recommended

	<p>achieve a more sustainable construction or to allow a building that would make better use of the site. The Parish Council's response was to widen the scope of the policy to allow buildings which are demonstrably more sustainable or allow a better designed building, which fits better with this locality. The policy offers no justification for a stance and I can see no in principle objection to any planning application for a replacement dwelling, so long as it meets the requirements set out in sections a) and b) of the policy. To set applicants an additional test of needing to justify why a replacement is necessary, is in the examiner's opinion, onerous and could introduce uncertainty into the planning process, where it is not justified.</p> <p>It is therefore recommended that Policy H5 wording is amended by replaing the first two paragraphs with "The one for one replacement of existing lawful dwellings will be permitted subject to the following criteria"</p>	
<p>Removing the reference to a maximum density of 30 dwellings per hectare.</p>	<p>Refers to LNDP Policy D5 Housing density.</p> <p>There is no evidence as to</p>	<p>Policy amended – no reference to 30 dwellings/hectare</p>

	<p>why the plan has adopted this figure of 30 dwellings per hectare as the maximum density and consequently the examiner proposes to recommend that the limit be removed as it is not evidence based.</p>	
<p>Amending the heritage policy to differentiate between proposals that cause substantial harm and less than substantial harm to the significance of heritage assets and listing all the non-designated heritage assets</p>	<p>Refers to LNDP Policy D6 Historic Environment.</p> <p>The examiner raises a concern that the policy appears to offer blanket protection, as opposed to the decision maker having to assess the impact on the significance of the assets. Also, the wording would seem to suggest that the policy does not differentiate between proposals that create substantial harm and those that will result in less than substantial harm. A more nuanced approach is proposed, which reflects the Secretary of State's approach</p>	<p>Policy amended as recommended</p>
<p>Deletion of the parking policy.</p>	<p>Refers to LNDP Policy D8 Parking.</p> <p>The examiner notes that although the Parish Council has referred to a parking survey, he does not consider that is measuring current car ownership levels within the parish but rather the number of properties without on-site car parking. Whilst understanding that the issue of car parking will be an</p>	<p>Policy deleted</p>

	<p>important issue from the resident's perspectives, the examiner notes that it is unfortunate that the Parish Council has not presented evidence which would substantiate the adoption of the 1 space per bedroom standard. The examiner therefore does not believe that the policy meets the important requirement that policy should be based on sound and proportionate evidence and accordingly, recommends that this policy be deleted, as not passing basic conditions. He considered that the the parking requirements is already adequately covered by the final bullet point of Policy T1 Sustainable transport 'provide sensitively sites and designed car parking with sufficient spaces to meet the needs of the development's occupiers and their visitors and avoid 'overspill' of parking pressures into nearby areas'.</p>	
<p>The emerging version of the Tunbridge Wells Local Plan now has an end date of 2038 and it is considered that it is expedient that the two plans have the same period and I will be recommending that the neighbourhood plan should also run until 2038 (previously ran to 2036).</p>	<p>The Parish Council has agreed to this suggestion.</p>	<p>Plan period amended 2016 - 2038</p>

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