

Appendix C

Changes to be made to the Benenden Neighbourhood Plan as requested by the Independent Examiner's (IE) Report.

The independent examiner has concluded that the Benenden 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. These are set out below.

Policy	Main Recommended Changes ¹	Examiners commentary
Policy LE2: Distinct Views	Delete policy	This policy effectively duplicates the protection of the key views which are set out in Figures 10 and 11. The Parish Council recognises that this is unnecessary and has suggested that that the policy be omitted.
Policy LE3: Local Green Space	<p>Replace the first paragraph with the "The following green areas are designated as local green spaces as shown on Figure 18:</p> <p>East End Old Cricket Pitch Corner Green at junction of Goddard s Green Road and Walkhurst Road Catholic Chapel Field New Pond Corner Central Green Area, Cherryfields Benenden Recreation Ground Beadle Platt St George's Churchyard Beacon Field Iden Green Recreation Ground Glebe Field/Playing Fields Remove Hilly Field from the map on Figure 18</p>	<p>IE considers that it is important for the policy to actually designate the local green spaces, which currently it does not. IE is satisfied that all but one of the areas have been justified and meet the criteria set out by the Secretary of State in paragraph 102 of the NPPF.</p> <p>There was an objection at the Regulation 16 stage to the inclusion of Hilly Fields on behalf of the landowner. Whilst the IE noted the open aspect of the land and the views, it was not clear whether this space met the criteria of being considered demonstrably special by the local community. This was the one area of open space which was not identified by the Borough Council in its Pre-Submission version of the Local Plan for its designation as local green space within the parish. The Parish Council has subsequently agreed to Hilly</p>

¹ The table includes main changes only. Other changes are listed below the table

	<p>Remove subscript 6 at the end of the second paragraph Delete the final paragraph</p> <p>Note: following written confirmation from the independent examiner (Final Report Addendum Sheet 5 November 2021), 'Glebe Field/Playing Fields' was also included in the above list</p>	<p>Fields being removed from the list of local green space.</p>
<p>Policy LE4 – Public Rights of Way</p>	<p>Delete “Any” Replace the last two sentences with “New PROW should be created, where appropriate, to increase connectivity for non-motorised users, if necessary, using funding delivered by a Section 106 contribution. Planning applications that would adversely affect the existing PROW network will not be permitted”.</p>	<p>The second section refers to when new footpaths and new cycle paths are to be created. For example, a decisionmaker would not know under what circumstances, contributions should be properly sought. The IE uses the Kent County Council suggestion that contributions should be sought “where necessary to increase connectivity for non-motorised users”.</p>
<p>Policy LS5: Trees, Woodlands and Hedgerows</p>	<p>Replace the policy wording with “There will be a presumption in favour of the retention enhancement of existing trees, woodland and hedgerow cover on site and the restoration of lost trees, woodland and hedgerows. Any new tree or hedgerow establishment should avoid damaging valued areas such as species rich grassland or mediaeval fields. New development including building and hard surfacing shall be located as sufficient distance to existing or new trees and hedgerows to avoid damaging their health or future capacity for growth”</p>	<p>The IE has no fundamental concerns regarding this policy; however, it should be appreciated that there is no planning control over pre-emptive felling of trees unless the trees and woodland are covered by a tree preservation order or the trees are within a conservation area. The protection of hedgerows is subject to greater statutory control, subject to specific exemptions and their retention as continuous green wildlife corridors is to be encouraged, as pointed out by Kent County Council. The IE recommends the imposition of the additional requirements partially as suggested by the High Weald AONB Unit, which is supported by the Parish Council.</p>

<p>Policy LE7: Protection of Habitats Adjacent to Developments</p>	<p>Replace the policy with “Where new housing or commercial development is proposed, an appropriate depth of buffer must be provided between the development and any protected habitat, ancient woodland, any local wildlife site or other areas of natural or ecological importance and the size of that buffer shall be appropriate to safeguard the significance of that habitat. Where appropriate, the buffer itself must be kept a natural wildlife haven and will not be expected to be used as an amenity area unless it is demonstrated that such use will not adversely affect that feature of natural importance.”</p>	<p>The IE considers that the principle of the using buffers can be a sensible policy approach, but it is inappropriate to be quoting specific distances, where they should be based on the constraints of the site and the specific species that should dictate the depth of buffer which is required IE recommends that the policy be changed to be less prescriptive and should be based on the site’s habitats and its specific requirements.</p>
<p>Policy LE8 – Ongoing Involvement for Maintenance</p>	<p>In the first sentence replace “must, where required by the Parish Council or TWBC” with “will be expected, where appropriate to” and replace “wildlife related aspects of” with the “green infrastructure elements”. In the second sentence replace “must where required, also” with “will be expected, where appropriate, to”</p>	<p>The IE does not consider that it is reasonable for a developer to only be required to consider appropriate management measures, where “required by the Parish Council or TWBC”. IE considers the approach being taken by the Borough Council in its Green Infrastructure Plan SPD is appropriate, as it differentiates between small schemes, which will be limited in terms of green infrastructure to such items as the inclusion of bird boxes, and larger sites where the green infrastructure is integrated into the development. These are matters that are traditionally dealt with at the development management stage, which looks at the adequacy of maintenance regimes and possible transfer responsibility of developers to other bodies, along with commuted payments towards future maintenance. IE does not consider the policy</p>

		<p>which differentiates between wildlife related sites and other green infrastructure is necessarily helpful and the more holistic approach should be adopted, which can also consider specific requirements based on the ecological significance of the site.</p>
<p>Policy LE9: Features to Encourage Wildlife</p>	<p>In a) insert at the start, “Where it is practical to do so, schemes are encouraged to” and after “use” insert “of” Delete the final paragraph</p>	<p>IE considers it unrealistic to require the rear boundaries between the new properties to have to be native hedgerows. That raises issues of responsibility for future management and maintenance of the new hedge, providing privacy for occupiers in the early years whilst the hedge becomes established as well as the containment of small children and pets.</p>
<p>Policy HS2: Delivering a Balanced Community</p>	<p>Replace the policy with “Where developments trigger a requirement for the inclusion of affordable housing alongside market housing in accordance with Local Plan policy, the design and layout shall be such so that the appearance of the affordable houses is undistinguishable from the market housing. All developments will be expected to deliver a mix of different house sizes and housing types including where appropriate, flats, maisonettes and bungalows to ensure the development meets the needs of the local community, including homes capable of being suitable for the needs of an aging population.”</p>	<p>IE queries the clarity of this policy with the Parish Council and in its response, it indicated that it had also concluded that the wording of the policy could be clearer. IE was told that what the policy was actually seeking to achieve is that the required mix of units and the split between affordable / market housing should be in accordance with the existing Tunbridge Wells policy and that affordable housing should be indistinguishable from market housing. The IE has therefore proposed an alternative wording.</p> <p>The objective of having housing which is capable of being suitable for occupation by elderly persons is appropriate, but it cannot be restricted just to elderly persons, by providing a stock of new homes which existing residents would then be able to choose to purchase, when they decide to downsize. Again, the absence of a local connection policy prevents any differentiation for parishioners and new residents</p>

Policy H4: Live/Work units	That the policy be deleted.	IE raised the question as to why, if the principle of residential use was acceptable, the policy seeks to prevent the dwelling reverting to wholly residential use, in the case of where the workplace element was abandoned. The Parish Council has subsequently advised that after consideration and following representations it had decided to withdraw the policy.
Policy HS6: Housing Development	Replace the policy with “The layout of new housing should make efficient and effective use of the site as long as it does not detract from the character and distinctiveness of the locality.”	<p>IE found this policy somewhat conflicted, in that it acknowledges the need, as set out in the NPPF, for development to make efficient use of land but it also requires the densities should be comparable with adjacent development. The plan’s rationale is to “maintain the character and distinctiveness of the location.”</p> <p>IE proposes that that the policy should promote the efficient use of land so long as the development maintains the character and distinctiveness of the locality</p>
Site Specific Policy 1 (SSP1) – Land adjacent to the Feoffee Cottages, Walkhurst Road	<p>That Figure 25 shows the split between the residential use and the open space/leisure use in the same manner as set out in Map 52 of the Pre Submission Version of the Local Plan.</p> <p>Delete requirements 3. ,8. And 10.</p> <p>In 4, after “details and planting of the buffer area” insert “, which will be expected to deliver biodiversity enhancements,”</p> <p>In the final paragraph regarding contributions, delete ii.</p>	<p>It will be clearer if the map in Figure 25 replicates that used in Map 52 of the TWBC Pre-Submission Local Plan which identifies the landscape buffer area in line with the approved scheme.</p> <p>IE considers paragraph 3 dealing with parking, essentially repeats the policy already set out in Policy BD6 and Policy T4.</p> <p>IE considers the requirements set out in 8. (Conservation Area) and 10 (dark skies) are unnecessary as it is repeating policy already referred</p>

		<p>to in neighbourhood plan and is effectively a policy requiring compliance with another policy.</p> <p>IE recommends that the provision for collecting unspecified further contributions (ii) be removed.</p>
<p>Site-Specific Policy 2 (SSP2): Uphill, New Pond Road</p>	<p>In requirement 1. after “with” insert “40%” Delete requirement 3 and 13 In requirement 6. replace “the MAGIC database identified” with “land has been identified with” In the final paragraph regarding contributions, delete iv.</p>	<p>policy to be explicit in terms of requiring 40% affordable housing.</p> <p>IE considers paragraph 3 dealing with parking, essentially repeats the policy already set out in Policy BD6 and Policy T4; para 13 dark skies is covered by Policy BD5</p> <p>IE recommends that reference to the MAGIC website is removed, as that is a mapping tool of environmental constraints, not the mechanism for the designation of BAP priority habitats.</p> <p>IE recommends that the provision for collecting unspecified further contributions (iv) be removed.</p>
<p>Site-Specific Policy (SSP3): Land at Benenden Hospital, South East Quadrant</p>	<p>In the second paragraph, replace “an additional number of residential units of 22-25” with “up to an additional 25 units”</p> <p>In the second sentence, replace “a total of 46-49” with “up to 49”</p>	<p>IE considers that to leave the policy as providing a range of 22 to 25 units on top of the 24 already approved, could put undue pressure on the protection of the local wildlife site. IE proposes that the policy should depart from the approach set out in the other allocations and instead of a range, the capacity should be quoted as “up to 25 units”</p> <p>To reflect above change</p>

	<p>In the fifth paragraph after “Masterplan” replace “must” with “should ideally”</p> <p>In 1. replace “of an additional 22-25 C3 dwellings” with “up to 25 additional C3 dwellings, which will be in addition to the 24 dwellings already approved on part of this allocation site”</p> <p>and insert 30% before “affordable housing”</p> <p>Delete 3.and 13. as duplication of other policy</p> <p>Replace 9. with “A management plan shall be submitted outlining proposals for the ongoing protection and enhancement of all the LWSs and once approved, the future management of the site shall be carried out in accordance with that plan, to protect the significance of the designated LWS in terms of its biodiversity”</p> <p>In 10. delete all text after “remodelling” and insert “as set out in a Construction Management Plan”</p> <p>Delete 12. (highways) and 14. (phasing)</p> <p>Insert a new requirement to state, “Any proposals shall include an assessment of</p>	<p>As above</p> <p>IE notes that the TWBC draft local plan’s proposals require, notwithstanding the consent for its demolition, that applicants are required to submit an assessment</p>
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	<p>the feasibility of retaining the Garland Wing as part of the redevelopment of the site, which could include refurbishment and conversion of this building to provide separate residential units.</p> <p>Insert a policy requirement “An archaeological assessment of the site to be carried out”</p> <p>Insert another new policy requirement “The occupation of the development should be phased to align with the delivery of improved sewerage infrastructure, in liaison with the service provider”</p> <p>In the emboldened paragraph replace “contributions” with “planning obligations”</p> <p>Delete ii. (reduce speed limit from 30mph to 20mph)</p> <p>Replace iv. with “Means to secure the public use of the hospital café and the provision of a small publicly accessible retail outlet within the existing hospital building for a minimum of 10 years, from the occupation of 50% of the gross residential units on the allocation site”</p>	<p>of the feasibility of retaining the wing. Despite the weakness of the Borough Council’s position, due to the implications of the planning consent, the IE concurs that would be a desirable outcome, so that at least the feasibility of the building’s conversion can be tested</p> <p>The IE does not believe that it is a planning requirement, which if not granted under the traffic regulations, would render the development unacceptable in planning terms</p> <p>The approach adopted by Borough Council, is to facilitate the use of hospital facilities, with the added expectation that the hospital café could be encouraged to offer a selection of day-to-day items which would be available to local residents, as well as staff and visitors. This had been accepted by the Benenden Healthcare Society, who also indicated that it would also accept the possibility of residents having access to the hospital chapel as a community building</p>
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	<p>Amend vi., before “minibus” insert “a financial contribution to fund the purchase and ongoing maintenance of a” and after “Benenden Primary School” replace “and provide funding to maintain and” and insert “to”. Delete the final sentence and replace with – “This service to be continued for 10 years from the occupation of 50% of the gross residential units on the allocation site”</p> <p>In vii., delete the second sentence</p> <p>Delete viii (unspecified contributions)</p>	<p>At the hearing it was agreed that a more practical solution to ensuring school transport for the children attending the local primary school would be for the developer to make a contribution to the purchase of a minibus by the school.</p>
<p>Site-Specific Policy 4 (SSP4): Land at Benenden Hospital, North East Quadrant</p>	<p>Amend the map on Figure 33 to accord with Map 54 of the draft Tunbridge Wells Local Plan – Pre-Submission version</p>	<p>The IE states that there is a mismatch between the extent of the allocation site as set in the neighbourhood plan and the area allocated for residential use in the Pre- Submission Local Plan. The IE understands from the Parish Council that its intention is for the boundaries to be consistent with those being proposed in the emerging local plan. The IE recommends revision to the map set out in Figure 33 to replicate the map shown in the draft Local Plan.</p>

	<p>At the end of the second paragraph insert “in addition to the 18 dwellings currently on the site, which may also be redeveloped or refurbished”</p> <p>In the fifth paragraph after “Masterplan” replace “must” with “should ideally”</p> <p>In 1. After “C3” insert “additional” and insert “30%” before “affordable housing”</p> <p>In 8. delete all text after “remodelling” and insert “as set out in a Construction Management Plan”</p> <p>Delete 9. (traffic impact study)</p> <p>Replace 12 and 13. with “A management plan shall be submitted outlining proposals for the ongoing protection and enhancement of the LWS and once approved, the future management of the site shall be carried out in accordance with that plan, to protect the significance of the designated LWS in terms of its biodiversity”</p> <p>Insert a policy requirement “An archaeological assessment of the site to be carried out”</p> <p>Insert another new policy requirement “The occupation of the development should be phased to align with the delivery of improved sewerage</p>	
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	<p>infrastructure, in liaison with the service provider”</p> <p>In the emboldened paragraph replace “contributions” with “planning obligations”</p> <p>Delete ii.</p> <p>Replace iv. with “Means to secure the public use of the hospital café and the provision of a small publicly accessible retail outlet within the existing hospital building for a minimum of 10 years, from the occupation of 50% of the gross residential units on the allocation site”</p> <p>Amend vi., before “minibus” inserts “a financial contribution to fund the purchase and ongoing maintenance of a” and after “Benenden Primary School” replace “and provide funding to maintain and” and insert “to”. Delete the final sentence and replace with – “This service to be continued for 10 years from the occupation of 50% of the gross residential units on the allocation site”</p> <p>In vii., delete the second sentence</p> <p>Delete viii. (unspecified contributions)</p>	<p>The approach adopted by Borough Council, is to facilitate the use of hospital facilities, with the added expectation that the hospital café could be encouraged to offer a selection of day-to-day items which would be available to local residents, as well as staff and visitors. This had been accepted by the Benenden Healthcare Society, who also indicated that it would also accept the possibility of residents having access to the hospital chapel as a community building</p> <p>At the hearing it was agreed that a more practical solution to ensuring school transport for the children attending the local primary school would be for the developer to make a contribution to the purchase of a minibus by the school.</p>
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<p>Policy BE1: Rural Industries</p>	<p>That the policy be deleted</p>	<p>The planning system has only limited scope when it comes to supporting farming and forestry operations. Such operations take place without recourse to having to make a planning application. The neighbourhood plan is therefore not able to positively offer support to such operations, except in the case where planning permission is required. Similarly, the land management practices are beyond the scope of planning control. IEI therefore recommends the policy be deleted as it does not constitute a policy for the use and development of land that can be used to determine a planning application. IE recommends that it can be retained within the supporting text.</p>
<p>Policy T2: Improving Road Safety and Impact of Traffic</p>	<p>Replace in the first paragraph “required” with “supported where the Highway Authority is satisfied that the applicant has been able to”</p> <p>After the colon, replace “this” with “where necessary, this may include contributing to the installation of measures which include”</p> <p>In the final paragraph, delete the first sentence and in the second sentence, after “identified”, insert “for example within a Transport Assessment”</p>	<p>IE does not consider it necessary for every development have to demonstrate that its highway access is safe.</p> <p>IE rewords the policy to say that where a transport assessment has identified a negative impact on the non-motorised users, mitigation measures must either be provided or at least be funded by the developer.</p>

List of other changes

Policy LE1 Protect and Enhance the Countryside

In the second paragraph delete “only”

In a) replace “must” with “should”

In d) delete “and where possible, enhance”

Policy LE6: Ecological and Arboricultural Site Surveys

Retitle policy “New Green Spaces”

Delete the first paragraph : a neighbourhood plan policy cannot dictate what documents/ surveys must be submitted with a planning application.

Policy LE 10: Sustainable Drainage for New Housing and Commercial Development

In the first sentence replace “ must” with “will be expected to”: some developments will not have any surface water drainage implications such as changes of use

Move the second sentence to the supporting text.

Policy HS1: Site Allocations and Number of New Dwellings

That the policy be deleted and the references to the 4 allocation and the windfall policy be referred to in the supporting text and remove reference to Walkhurst Road being an extant consent: IE considers that this is actually a statement of fact, rather than a statement of policy in that it is referring to sites which are being allocated by the four other neighbourhood plan policies,

Policy HS3: Almshouses

Replace “Parish Council” with “Neighbourhood Plan”

Delete the text after “site ref 277) and” and insert “the almshouses they provide will be treated as affordable housing” : IE is satisfied that the existence of the Benenden Almshouse Charities offers a local dimension which can justify its inclusion as the provider of affordable housing in the parish.

Policy HS5: Windfall Sites

After “redevelopment” insert “or” and delete “or extension”: reference to extensions should be omitted

Policy BD1: General Design Policy

Replace the first line of the second paragraph to read “Developments will be expected to:”

Omit from the third bullet, “create designs that are” and at the end of third of the sentence, insert “Design Guide and the Benenden Character Assessment

Policy BD2: General Appearance

In the first paragraph, replace “BDA3, BDA4 and BDA5” with “the Benenden Character Assessment, Summary of Materials Used in Existing Housing Stock and Survey Results of Houses.”

In c) replace all the text after” area” and insert “will be encouraged”

Delete f)

In h) replace “must” with “will be encouraged to”

Policy BD3: Layout

At the start of the policy, insert “Housing layouts will be expected to meet the following requirements”

In b) replace “encouraged” with “expected”

Policy BD4: Landscaping

At the start of the policy, insert “Housing layouts will be expected to meet the following requirements”

In e) replace “encouraged” with “expected”

Policy BD5: Dark Skies

Delete f)

Delete the final paragraph

Policy BD8: Materials and Technology

In a) replace “must be constructed” with “is encouraged to”: In a Written Statement to the House of Commons dated 25th March 2015, the Secretary of State said that neighbourhood plans should not set any additional local technical standards or requirements related to the construction, internal layout or performance of new dwellings.

Delete c) and d): IE does not consider requirement c) is actually setting out a policy, it is merely stating that the impact of solar panels on heritage assets will be assessed at the planning stage. IE recommends the sentence be removed from the actual planning policy, but moved to the supporting text along with requirement d).

Policy BE2: Current Major Employers/Businesses in the Parish

Replace “BNDP” with “development plan”

Policy BE3: Retaining Existing Commercial Areas

Remove Benenden School and Benenden Hospital from Figure 37: IE concludes that Benenden School, whilst being a major employer, would not be described as a commercial area. IE also recommends the removal of the Benenden Hospital site from the definition of being a commercial area.

Policy BE4: Shops and Public Houses

After “loss” insert “(to the extent that planning permission is required)”

Policy BE5: Community Services

Delete all the text after “parish” in the first paragraph and replace the first sentence of the second paragraph with “and the community facilities identified in Figures 44 and 45 will be expected to be retained.”

Policy BE7: Encouraging the Right future business

In a) after “commercial areas” insert “as shown in Figure 37”

Policy T1: Car- free Connectivity

Delete the text after “meeting” and inserting “the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 namely, that the contribution is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development” : requirement to meet the three tests that are in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

Policy T3: Community Cohesion and Recreation Facilities

In the first sentence, after “required” insert “where it meets the 3 tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010”

At the end of the second sentence, add “again where the contributions will meet the above 3 tests”

Policy T4: Renewable Energy and Low Emission Technology

In the first sentence after “and” insert “where it meets the Regulation 122 of the Community Infrastructure Levy Regulations tests”

Delete the final bullet point; In the final paragraph insert “and” after “Benenden Village Hall car park” and omit “Benenden Hospitals car parks”

Policy T5: Infrastructure, Broadband and Mobile

Replace “as agreed with the Parish, Borough and County Councils with “which arise as a direct result of the development.”

In the final sentence after “will” add “be expected to”