

Appendix B: Changes to be made to the Pembury Neighbourhood Development Plan as requested by the Independent Examiner's Report 6 April 2023.

The independent examiner has concluded that the Pembury 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.

Independent Examiner's (IE) Report: main recommended amendments	Commentary
<p>Policy P1: Location of Development In A. after "Limits of Built Development" insert "within the solid black line as shown on the map in Figure 4.1, but upon the adoption of the Tunbridge Wells Local Plan the boundary should then include the areas within the black dotted line" and delete "as defined in Figure 4.1".</p> <p>Replace B (iv) with "it relates to limited infilling or the partial or complete redevelopment of previously developed land so long as it meets the criteria set out in paragraphs 149 (g) and 177 of the NPPF."</p> <p>In v) after "farm buildings" insert "into use" and replace "optimal use" with "viable use consistent with their conservation".</p> <p>Insert "or" at the end of (i) to (iv).</p>	<p>To provide clarity</p> <p>The replacement criterion iv allows for limited or redevelopment including partial redevelopment of previously developed sites in the Green Belt so long as it meets the criteria set out in paragraph 149 g) of the NPPF.</p>
<p>Policy P3: Character of Development In A. replace "'Hotch-potch" of architectural variety found locally" with "variety of architectural styles found locally." Delete the penultimate sentence in A.</p> <p>In (iv) delete the text up to "P12" and all text after "in accordance with" and insert "the following minimum parking requirements: 1 bed units 1 space 2 bed units 1.5 spaces 3 bed and above 2 spaces</p>	<p>To provide clarity</p> <p>Policy TP3 Parking Standards of the draft TWBC Local Plan is a policy that has not been adopted. The Independent Examiner has therefore concluded that the best way the parking requirements can be put into the development plan, is to allow this neighbourhood plan policy to be explicit, by setting the residential parking standards it is expecting to be applied to development in Pembury. These are based on the proposed Tunbridge Wells standards, as their</p>

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<p>Plus 0.2 additional visitor parking spaces per unit “</p> <p>Delete (v)</p> <p>In (vi) delete “in accordance with P6”</p> <p>In C. after “rural boundary edge” insert “(which does not include development that backs directly on to the A21)”</p>	<p>appropriateness does not seem to have been challenged by the TWBC Examination Inspector’s published comments.</p> <p>Developer concerns has been expressed about the implications of the requirement set out in C), namely that development on the edge of a residential site, where it meets open countryside, should be of a lower density, would not be justified, and would be unwarranted, in the circumstances where the site is abutted by the major highway – the A21. Whether this road can be considered as open countryside is a matter of debate – the Independent Examiner has proposed a minor modification that specifically excludes sites which abut the A21</p>
<p>Policy P4: Energy Efficiency and Design</p> <p>Delete (vii) and the following paragraph.</p>	<p>In a Written Statement to the House of Commons on 25th March 2015, the Secretary of State stated explicitly that “<i>neighbourhood plans should not set additional local requirements or technical standard’s relating to the construction, internal layout or performance of new dwellings.</i>” The neighbourhood plan has not sought to place its own requirements aimed at achieving higher standards of sustainable construction, than required by the Building Regulation or as set in Local Plans.</p> <p>It does this by saying that schemes which address the points set out in the policy, will be supported. However, it does require the developer to justify why the requirements cannot be reached. The Independent examiner has concluded this to be over onerous and unjustified, and contrary to the intentions set out in the Secretary of State’s statement, especially due to the fact that the policy is only offering support, rather than imposing a requirement on development.</p> <p>It is now unnecessary for planning policy to require the installation of electric vehicle charging infrastructure on individual dwellings, as this is a recently introduced requirement imposed by Part S of the Building Regulations.</p>
<p>Policy P5: Sewerage and Drainage Infrastructure</p>	<p>There is a requirement imposed in B) that schemes will not be supported unless it is</p>

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<p>In B, delete "it can be shown by rigorous analysis that"</p>	<p>shown. through "rigorous analysis", that there is sufficient capacity in the system. The Independent Examiner has concluded that the inclusion of "after rigorous analysis" is unnecessary as the planning system will always be based on proposals being assessed on an objective basis</p>
<p>Policy P6: Conserving heritage assets Replace paragraph A. with "The following buildings and structures as shown on Figure 6.2 are designated as non- designated heritage assets</p> <ul style="list-style-type: none"> • The Horse Trough on the Green • Gimble Grove, Gimble Way • Postillions, Hastings Road • 30 Hastings Road • Hawkwell Cottages, Maidstone Road • The Oast, 36 Henwood Green Road • Lavender Cottage, 50 Henwood Road • Wayland House, 20 High Street • The Cottage, 70 Henwood Green Road • Pembury Hall, Pembury Hall Road • 138, 140 and 142 Henwood Green Road • The Waterworks, Old Church Road • York House/ "Amberleaze", Lower Green Road/Hastings Road • Sunhill Place, High Street" <p>In B. after "Development proposals affecting" insert "designated" and delete "– including non- designated heritage assets" and replace the last sentence of that paragraph with "Proposals affecting non designated heritage assets will be assessed having regard to the scale of any harm or loss against the significance of the heritage asset.</p> <p>Delete C.</p> <p>At the end of D. insert "consistent with their conservation."</p>	<p>The policy identifies 14 non-designated heritage assets, by reference to a paragraph in the supporting text. The Independent Examiner considers that the intention would be clearer if the assets are listed, in the policy rather than the supporting text, on the basis that it is the policy that confers the heritage status. The policy, as submitted, confers the same status on assets that are identified in the Kent Heritage Environment Record. The Independent Examiner has concluded that it would be unreasonable for users of the plan to have to interrogate that database to try to ascertain whether a subject policy is deemed to be considered a non-designated heritage asset. The Parish Council has subsequently confirmed that it is happy for the policy just to refer to the 14 assets being nominated through the policy.</p> <p>The requirements set out in B) impose the same test on proposals affecting designated and non-designated heritage assets, namely that they both are expected to conserve and enhance the significance of the assets and their setting where it contributes to their significance. The NPPF sets the Secretary of State's aspiration for decision makers, when considering potential impacts of development on heritage assets, and he sets out a different test for proposals that affect non - designated heritage assets compared to designated assets. The test, in terms of non-designated assets is set out in paragraph 203 of the Framework, the implications of which are that proposals are not expected to conserve or enhance the significance of the asset, but rather that there should be a balanced judgement, having regard to the scale of any harm or loss with the significance of the heritage asset. That distinction reflects the lower status which are accorded to non-designated heritage assets,</p>

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	<p>which are not subject to the statutory tests that affect listed buildings.</p> <p>The Independent Examiner considers that the aspirations of the policy, in respect of designated heritage assets are justified and can be retained. The recommended changes focus on the non-designated heritage assets, and on how potential impacts resulting from planning proposals will be assessed, reflecting the tests set out in the in paragraph 203 of the Framework.</p> <p>The requirement to provide a Heritage Statement with any planning application, is not something that is within the gift of a neighbourhood plan policy, as the documents which are required to be submitted with a planning application are set out in the Local Validation Checklist as provided by the Town and Country Planning (Development Management Procedures) Order 2015. This list is issued by the Borough Council and covers the whole of the district.</p> <p>The Independent Examiner concludes that the requirements as set out in C) could require any building work in the parish to have to investigate whether the works are likely to have a potential impact on above and below ground archaeological deposits. It is concluded this would be an unreasonable requirement for most locations but is a legitimate request in those parts of the parish where there is evidence of the possibility of archaeological remains. This is a matter that is more appropriately dealt with through the local validation checklist produced by the Borough Council which holds maps and information, and which identify the areas where a Heritage Statement or a desk based archaeological assessment is required to accompany a planning application.</p>
<p>Policy P8: Green and Blue Infrastructure and Delivering Biodiversity Net Gain</p> <p>At the start of A. insert "Where it is appropriate to the type of development being considered", delete "(where net gain involves a post development net gain of 10%)"</p>	<p>The policy in A) requires, by implication, all proposals to have to create, conserve, enhance and manage green spaces and connect chains of green infrastructure. These requirements only need to apply to some types of development that will be taking place within the parish such as significant new residential</p>

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<p>In the final sentence, delete “for development must be supported by a biodiversity appraisal which”</p> <p>Delete C.</p>	<p>developments and it would be an irrelevant consideration for many planning applications. Nevertheless, where it is relevant, the policy</p> <p>The Independent Examiner comments about the extent to which the policy requirements overlap with the new statutory requirements that are being introduced as a consequence of the Environment Act 2021, whose provisions, requiring the delivery of a 10% minimum net biodiversity gain, will be introduced for larger schemes in November 2023 and for smaller development next April.</p> <p>He concludes that the new legal provisions will override any neighbourhood plan policy requirements and it is unnecessary and indeed over onerous to duplicate the requirements imposed on applicants, through having to separately demonstrate how the required minimum 10% net biodiversity improvements will be calculated and delivered, whether it is on site, off site or through purchasing biodiversity credits. He therefore proposes the removal of the specific requirements within the policy which are effectively going to be covered by the statutory scheme and specifically the reference to the minimum 10% net gain.</p>
<p>Policy P9: Local Green Spaces</p> <p>Replace the first paragraph with “The following green spaces are designated as local green space as shown in Figure 8.3:</p> <ul style="list-style-type: none"> • Pembury Allotments • Open space at Beagles Wood Road • Pembury Cricket Ground • Woodside Recreation Ground • Lower Green Recreation Ground • Belfield Road open space • Lower Green Burial Ground • Pembury Burial Ground • Green space adjacent to 33 and 37 Ridgeway • Old Church Burial ground • Bo Peep Corner • Church lawn • War Memorial Lawn • Downingbury Pond 	<p>The plan acknowledges that the new draft Local Plan proposes to designate 7 local green spaces and the neighbourhood plan seeks to identify an additional 7. The Independent Examiner notes that it is likely that the neighbourhood plan, if approved at referendum, will be made before the Tunbridge Wells Local Plan is adopted, it could leave the local plan proposed designations unprotected by this policy for a period of time. He concludes that there is no reason why this plan cannot designate all 14 sites as local green spaces</p>

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<p>Policy P10: Managing the Environmental Impact of Development In B.(i) replace "If veteran or notable trees must be removed" with "ancient woodland and ancient or veteran trees must not be removed except in exceptional circumstances and in that case"</p> <p>In (vii) delete "and not be fragmented"</p> <p>In (viii) replace "natural barriers would be preferred, where it is necessary for the space."</p> <p>In (ix) insert at the start," where appropriate"</p>	<p>The Independent Examiner's concern with this policy is that the Secretary of State test for schemes that involve the loss of irreplaceable habitats, which the NPPF includes ancient woodland and ancient or veteran trees, is that proposals should only be approved in exceptional circumstances. He believes the policy should be more closely aligned with the Secretary of State's view as to the weight to be ascribed to their retention.</p>
<p>Policy P11: Protection of Locally Significant Views Replace "in paragraph 8.33 and" with "as shown" and replace "safeguards the locally significant view or views concerned" with "demonstrates how it has taken into consideration the importance of the locally significant view or views, in the layout, design or masterplanning of the site(s) and mitigates any adverse impact on those views."</p> <p>Delete the second paragraph</p>	<p>The Independent Examiner notes that the issue that has arisen in the representations is whether the requirements that the development proposals should safeguard these views, with particular reference to the viewpoints V2 and V3, where the arc covers land which are proposed as strategic allocations in the emerging Local Plan. The descriptions of the views, as set out in Appendix E, seem to acknowledge that, in these cases, the view cannot be protected in an unaltered state. The Examiner is of the opinion that the masterplanning of these sites should acknowledge and take into consideration, the importance of the views and it should be a constraint that influences how the site is to be developed, without affecting the principle that the sites should be residentially developed.</p>
<p>Policy P12: Dark Skies Delete "in accordance with TWBC Local Plan policy EN8 or its successor policy"</p>	<p>The policy refers to compliance with a draft local plan policy, which is some way away from adoption.</p>
<p>Policy P13: Improving Walking, Cycling and Equestrian Opportunities In A. after "all new" insert "major residential"</p> <p>In B. delete" as set out in paragraph 9.7"</p> <p>In C. delete the rest of the final sentence after "local character"</p>	<p>The scope of this policy, as submitted, covers again all development, which the Independent Examiner considers would be inappropriate for many types of development taking place in the parish. The Examiner recommends that it should apply to major residential development.</p>
<p>Policy P14: Publicly Accessible Parking In C. (ii), delete all text after "(wireless charging facilities)"</p>	<p>The Independent Examiner comments that the planning system cannot ensure that public vehicle charging points are "affordable, reliable and open access" as these are not a matter for planning regulatory control</p>

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<p>Policy P15: Community Facilities</p> <p>In A. replace “those identified in paragraph 10.2” with “facilities for teenagers, new cafe and public toilet facilities at Lower Green Recreation Ground, improved and additional sport pitches and improvements to the church hall”</p> <p>Delete A.(v)</p> <p>In B. delete “and designed in accordance with Sport England’s design guidance notes”</p>	<p>Regarding the issue of cross referencing the information in the supporting text, the Independent Examiner advises that the policy can become a stand-alone policy, by referring to the facilities that have been identified in the policy itself as needing improvement.</p> <p>The Examiner does not consider that it is the role of the planning system to ensure that new facilities “are fit for purpose and built to Sports England design guidance” as that is the role of the client / applicant, who is specifying and funding the new facilities.</p> <p>It would not be possible to refuse a planning application on the grounds that the building did not meet a particular specification or a pitch dimension, for example, did not meet guidance.</p>