

Penrith Neighbourhood Development Plan 2019 - 2032

Clarification Note

Prepared by

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10th January 2022

1. On 14th December 2021, I issued the Beacon Hill Consultation Note wherein I sought views on a proposed policy covering Beacon Hill.
2. The Town Council's Legal Officer has asked for clarification as to, by what powers, I could introduce a new policy into the neighbourhood plan.
3. The position is that paragraph 10 of Schedule 4B of the Town and Country Planning Act 1990 requires me, as examiner, to make recommendations in my report. Such recommendations include any modifications required to enable me to recommend whether the plan is modified and then be submitted to referendum.
4. The circumstances wherein the examiner can make recommendations, includes any modifications needed to ensure the neighbourhood plan / development order meets the basic conditions, mentioned in paragraph 8(2). Note - Reference to neighbourhood development orders applies to neighbourhood development plans by virtue of Section 38C (5) of the Planning and Compulsory Purchase Act 2004.
5. The Act does not limit whether a recommended modification to the plan needed to meet basic conditions, has to be via an amendment to a proposed policy, or the deletion of a policy or indeed the insertion of a new replacement policy. My examination report will be concluding that Policies 8 and 9 of the neighbourhood plan, covering local green space and other open spaces, do not meet basic conditions as the criteria for their designation has not had regard to Secretary of State policy and advice, which is one of the basic conditions. I will be fully setting out my rationale for this conclusion in the relevant section of my final report and I am not inviting any representations on that particular topic.
6. As I explained in my Post Hearing Note, I had at an early stage, concluded that Penrith Beacon could not be designated as a local green space in its own right, as it constituted an extensive area of land. At the hearing, I heard compelling representations stressing the value placed upon The Beacon by the local community. Also, I representations from the landowner as to its limited commercial aspirations for the use of some of the land at The Beacon, which could be argued would be in accordance with local plan policy.
7. As parties will be aware I had hoped that the Parish Council and the landowners would have been able to come up with a mutually agreeable policy, which I could be asked to make as a recommendation to include in my report. It has not been possible to reach agreement and I received proposals for a new policy, put forward by the Town Council and also on behalf of Lowther Estates, the landowners, neither of which I am minded to support to the reason set out in my draft report extract.
8. I am confident that it is within my jurisdiction, as examiner, to propose a modification to the neighbourhood plan that seeks to offer a degree of protection to The Beacon which the Town Council had sought initially, through its proposed designation as local green space, but without resulting in a policy which would not be in accordance with Policy EC4 of the Eden Local Plan. This, I believe, constitutes an appropriate modification of the submitted neighbourhood plan as it is based on evidence set out in the plan, and an aspiration set out in a policy, which I have had to reject as it did not

meet the basic conditions, nevertheless is a matter which deals with a strong community aspiration.

9. I am therefore satisfied that the introduction of a new policy can constitute a modification of the neighbourhood plan, as it deals with a topic area which the neighbourhood plan had addressed, but which was put forward via a route which I have had to reject because it did not meet the basic conditions test.
10. In closing, I would stress that I am not proposing a totally new policy, unrelated to matters which are discussed in the submitted neighbourhood plan. In my experience it is quite usual for examinations to introduce a re-drafted policy or a new policy which addresses matters which had been the subject of neighbourhood plan proposals.

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