



Report to rescind the decision for Hazlemere Neighbourhood Plan to proceed to a referendum and to propose and consult on further modifications to the plan

PROPOSED DECISION

1. To rescind the decision for the Hazlemere Neighbourhood Plan to proceed to a referendum, made on the 4th April 2023, as published on the Council's website.
2. To propose further modifications to the plan, in addition to the modifications proposed in the examiner's report to bring the plan into conformity with the development plan - See Appendix A.
3. To consult on these further modifications and, after the consultation, to determine whether the modifications are required for the plan to meet the Basic conditions and whether the plan can proceed to a referendum.

Executive Summary

4. The Council is deciding to rescind its decision made on 4th April 2023 (that the Hazlemere Neighbourhood Plan meets the Basic Conditions, subject to examiners modifications being made, and can proceed to a referendum).
5. The Council proposes further modifications to the plan, in addition to those proposed by the Examiner, that take into consideration the arguments put forward in the proposed judicial review that have merit. This is with a view to ensuring that the plan meets the basic conditions and can proceed to a referendum without successful challenge.
6. A schedule of the proposed modifications will be published alongside the reasoning for them as part of the consultation.
7. The proposed modifications will be consulted upon in accordance with Regulation 17A of the Neighbourhood Planning (General) Regulations 2012 (as amended) and responses will be considered when coming to a new decision and determining whether the modifications are required to ensure the plan meets the basic conditions and can proceed to a referendum.
8. The Council will issue its decision following the close of the consultation.

Reasons for the decision

9. On 22nd March, the Council received the Examiner's report for the Hazlemere Neighbourhood Plan. On 4th April 2023 the Council, by an exercise of delegated authority, decided to accept the Examiner's recommendations to modify the Neighbourhood Plan and that the plan could proceed to a referendum.

10. On 25th April 2023 the Council received correspondence from an interested party advising that it had obtained legal advice that there would be a strong case for legal challenge if the Hazlemere Neighbourhood Plan was to proceed to referendum on the basis that certain policies in the Plan were not in conformity with the development plan.
11. The Council has sought legal advice on, and discussed internally, the information provided and concluded that issues raised regarding parts of HAZNP5 lacking conformity with the basic conditions have merit and that further modifications of the plan should be proposed and put forward for public consultation, including to supporting text and figures where necessary. See Appendix A.
12. To ensure that the issues can be considered further, it is recommended that the initial decision is rescinded, modifications are proposed, and a new decision is made following the expiry of the consultation period as set out in Regulation 17A of the Neighbourhood Planning (General) Regulations 2012 (as amended).

Financial and Legal Implications

Financial – There will be some costs in officer time and in carrying out the consultation.

Legal – The legislation gives provision for a Local Authority to accept the examiner’s modifications in full, or to suggest further modifications to a plan, or to reject the examiner’s modifications. When a Local Authority deviates from an examiner’s recommendations they are required to consult on the modified proposals before deciding whether to proceed to a referendum. There is also provision to refer issues to further independent examination.

In any instance above there is the possibility of an application for a Judicial Review of the relevant decisions, these proceedings can be brought within six weeks of the date a decision to proceed to referendum is made.

Delegated authority

Part I Section 2 (Scheme of Delegation to Officers) Para 2.21 of Buckinghamshire Council’s Constitution authorises the Director of Planning and Environment to determine all decisions relating to neighbourhood planning. The Director of Planning and Environment has further delegated authority to the Head of Planning Policy and Compliance, the Planning Policy Manager and Planning Policy Team Leaders to make decisions relating to neighbourhood planning in a note dated August 9th 2021 titled ‘Non-Financial Delegations to Officers’; ‘Relating to Planning and Development Management’.

Exercise of Delegated Authority

I, Steve Bambrick, Service Director, Planning and Environment, having received a referral from the original decision maker requesting a review of the decision made on 4th April 2023 that Hazlemere Neighbourhood Plan should proceed to a referendum, have determined that that decision is rescinded as my review has found that the neighbourhood plan does not meet the basic conditions. I determine that further modifications in addition to those made by the examiner will be consulted upon in accordance with regulation 17A of the Neighbourhood Planning (General) Regulations 2012 (as amended) and a new decision will be taken following the expiry of the consultation.

Signed:

A handwritten signature in black ink, appearing to be 'S. L. M.', written on a light-colored background.

Date: 27/04/2023

Background Papers:

Submission version of the neighbourhood plan

Examiner's report

Decision to proceed to a referendum 04/04/2023

Appendix A: Proposed modifications to the Hazlemere Neighbourhood plan.

Note: these modifications are proposed **in addition** to the examiner’s modifications contained within the examiner’s report.

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
<p>Page 32 policy HAZNP5 First paragraph</p> <p>Policies Map page 45</p>	<p>“The main site as shown on the Policies Map is allocated in the Wycombe District Local Plan for residential use (Policy HW8). The Neighbourhood Plan includes some additional parcels of land to bring the policy up to date.”</p>	<p>No Examiner modification; however, it can be inferred from the Examiner’s report that there should have been one at para 4.43 of his report as follows:</p> <p>“and to show the amended boundary of the Amersham Road/Tralee Farm site.”</p>	<p>The submission document Policies Map does not show the correct HW8 site boundary. This is contrary to the strategic site policy and therefore the plan does not meet the Basic Conditions.</p> <p>As the Examiner has recommended that Plan E should include all the land in the development brief (PM19), it is therefore an additional proposed consequential change that the line for the site on the NDP policies map should also reflect this.</p> <p>The Examiner intended for this.</p> <p>Policy HW8 is not out of date; as the Examiner set out, the decision maker will have to look at both policies HW8 and HAZNP5, as well as the development brief.</p>	<p>Change to policy text: “The site as shown on the Policies Map is allocated for residential use.”</p> <p>Change to the Policies Map: Change boundary to reflect HW8 allocation and additional land parcels as per the development brief.</p>

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
Page 34 Supporting text Para 5.33	<i>'HAZNP5 brings HW8 up to date. At the time HW8 was adopted, it was envisaged that land in Chiltern District – adjacent to the north-eastern boundary of the site – would be allocated for housing. Since then, the Chiltern District Local Plan has fallen away (with the merger of the local authorities in Buckinghamshire), and the adjacent land remains within the Green Belt. Once HW8/HAZNP5 is developed, the new homes will therefore not form part of Holmer Green. Instead they need to integrate into Hazlemere. The layout illustrated on Diagram 14 accompanying HW8 is therefore out of date'.</i>	No Examiner modification	Policy HW8 is not out of date as the policy is written in relation to the site located in the Wycombe District Plan only. To ensure that there would be no policy conflict between the WDLP and the HNP. This is to ensure the HNP meets the basic conditions test relating to general conformity with national planning policy.	Modify the plan to make it clear that Policy HW8 is not out of date.
Page 32 policy HAZNP5 Clause B1)	B. in respect of its transport proposals 1) "To provide vehicular access from the A404"	PM18 Modify Clause B1 to read: To provide vehicular access from the A404	To ensure general conformity with the strategic policy (HW8), the clause "and Wycombe Road" needs to be inserted. The Council proposes as an additional consequential change to reinstate the word "vehicular" to ensure clarity. This helps to	Change to policy: Modify Clause B1 to read: To provide vehicular access from the A404 and Wycombe Road;

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
		and Wycombe Road;	meet the basic conditions relating to the clarity of plans as set out in the NPPF.	<p>Change to supporting text:</p> <p>Para 5.47 first sentence to say Clause B1 sets out that access is required on to the A404 and Wycombe Road.</p> <p>Change to Plan E:</p> <p>Change the width of the arrow on Plan E to that of vehicular access</p>
Page 37, paragraph 5.50	<p>“Clause B2 addresses the potential vehicular access to the north, to Wycombe Road – as a minimum pedestrian and cycle access will be needed here. This pedestrian and cycle access needs to be of a strategic nature because this is the main route to buses and to other community facilities. It needs to be the dominant function of the street. Some vehicular use may also be able to be accommodated, depending on the exact</p>	No Examiner modification	Clause B2 does not address potential vehicular access and therefore this needs to be modified to reflect Policy HW8 and Neighbourhood Plan Policy 5.	Amend paragraph 5.50 to state: “Clause B2 addresses the need for pedestrian and cycle connections to be made to Wycombe Road to essential services. This pedestrian and cycle access needs to be of a strategic nature because this is the main route to buses and to other community facilities.”

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
	design of the street. Regardless of the vehicular mix, in order to achieve a safe access that achieves appropriate design standards including active frontages and natural surveillance, it is not enough to only include 20 Wycombe Way. The Neighbourhood Plan therefore indicates adjacent land as also being required.”			
Page 32 policy HAZNP5 Clause C4	C4) To enhance Green Infrastructure along the south-western boundary of the site connecting existing isolated pockets of green infrastructure, including the off-site woodland between Badger Way and the A404, and the off-site woodland near the play area at Badger Way, and the larger back gardens with mature trees to the rear of Lacey’s Drive;	No Examiner modification	C4, in combination with C5 and in addition to HW8 part 3 will result in a much-reduced land parcel for development, which in turns impacts on the overall quantum of development that the strategic site would be able to deliver. Although the policy itself does not allocate a specific number, the supporting text indicates that the site is allocated for 350 homes. This figure forms part of the strategic housing figure for the Wycombe District Local Plan as set out in CP4. C5) does not meet the basic conditions as it is not in general conformity with HW8 and with CP4 Delivering Homes. Paragraph 29 of the NPPF states that Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies. Therefore	Change to the policy Delete clause C4 from the policy Delete supporting text relating to clause C4 of the policy Change to Plan E Remove clause C4 from Plan E

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
			Plan E is in conflict with Paragraph 29 of the NPPF as it would not be possible to deliver 350 units within HW8.	
Page 32 policy HAZNP5 Clause C5 Page 33 Plan E	C5 to provide a strategic Green Infrastructure link along the north-eastern boundary of the site, connecting the orchard adjacent the site to the north to the wider countryside to the south, as part of the provision of a sense of separation;	No Examiner modification	<p>Policy HW8 does not seek to determine how a sense of separation should be provided through the development of the site other than through supporting text and the concept diagram at Figure 14 of the WDLP which does not carry the same status as the policy wording itself. Criterion C5 introduces a specific way separation is to be achieved within the policy wording itself, and on Plan E.</p> <p>Since the Local Plan, it has been made clear through the development brief and the Inland Homes public inquiry that the sense of separation between the two settlements has to be achieved alongside the northern boundary of the strategic allocation.</p> <p>Extract from appeal decision: “In my judgement and in the straightforward application of the meaning of part 1 a) of Policy HW8, there is a clear requirement for separation on the northern boundary, this is</p>	<p>Change to the Policy wording C5) to provide enhance a the strategic Green Infrastructure link along the north eastern boundary of the site, connecting the orchard adjacent the site to the north to the wider countryside to the south,as part of the provision of a sense of separation;</p> <p>Change to the supporting text Delete final sentence of para 5.63. Changes to Plan E:</p>

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
			<p>the only part of the appeal site where the two parish boundaries are contiguous”.</p> <p>In planning terms, a sense of separation is taken to mean separation between built-up areas.</p> <p>The northern section of C5 is not ensuring the separation of Hazlemere and Holmer Green (because it is not on the parish boundary). The southern section of C5 is located adjacent to undeveloped land within Holmer Green which already provides the sense of separation.</p> <p>Clause C5 fails to be in general conformity with strategic policy HW8 on that ground.</p> <p>The result is also, in combination with delivering HW8 part 3, a much-reduced land parcel for development, which in turn impacts on the overall quantum of development that the strategic site would be able to deliver. Although the policy itself does not allocate a specific number, the supporting text in the WDLP indicates that the site is allocated for 350 homes. This figure forms part of the strategic</p>	<p>A narrower line needs to be shown between the orchard and Amersham Road running along the boundary. Deletion of the small triangle south-west of the orchard.</p>

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
			<p>housing figure for the Wycombe District Local Plan as set out in CP4.</p> <p>C5 does not meet the basic conditions as it is not in general conformity with HW8 and with CP4 Delivering Homes. Paragraph 29 of the NPPF states that neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies. Therefore Plan E is in conflict with paragraph 29 of the NPPF as it would not be possible to deliver 350 units within HW8.</p> <p>C5 is not consistent with HAZNP2 and HW8 and therefore cannot be shown as a “strategic” green infrastructure link.</p> <p>The plan should enhance the green infrastructure that is already there.</p>	
Page 41 Supporting text	Clause C6 addresses the frontage to the A404 which presents a Green Infrastructure	The Examiner deleted this clause (PM18)	Plan E still shows C6 and should be modified as a consequential change of the Examiner’s deletion of the clause	Change to Plan E: Delete C6

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
Para 5.64	opportunity, as well as providing a suitable setting for the development for the Area of Outstanding Natural Beauty opposite. New development would be set back from the road frontage behind a landscaped area including a generous number of large trees once mature. This will also help reduce the isolation of the small area of woodland adjacent to the A404 near Badger Way.	C6 to provide a landscape setting to the site on its southern boundary, along the A404 which is the boundary to the Area of Outstanding Natural Beauty		Relabel C7 as C6
Page 34 Para 5.37	5.37 Second, at the time HW8 was adopted, it was envisaged that connection with the adjacent urban areas would be to the north. The policy did not, therefore, include any connections into the existing urban area to the south. Since then, the prospect of the land to the north being allocated for development has fallen away, and it remains in the Green Belt. Therefore, connecting the new development into the existing urban area to the south becomes	PM18 Relating to the changes to the site boundary to reflect the development brief additional land parcels	HW8 is not out of date. The fact that the Chiltern and South Bucks allocation has fallen away has no bearing on the policy nor on illustrative figure 14 in the plan. Changing the site boundary of a strategic site allocation is not in general conformity with strategic policy HW8. There is no obvious route into the HW8 area at the current time from the existing residential area in the vicinity of Badger Way.	Change to supporting text: 5.37 Second, at the time HW8 was adopted, it was envisaged that connection with the adjacent urban areas would be to the north. The policy did not, therefore, include any connections into the existing urban area to the south. Since then, the prospect of the land to the north being allocated for development

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
	<p>imperative. HAZNP5 therefore includes in its allocation the turning head and parking area between 44 and 45 Badger Way, to facilitate a future active travel connection in this location, which would allow residents of the new development to access the existing play area, among other things.</p>			<p>has fallen away, and it remains in the Green Belt. Therefore, connecting the new development into the existing urban area to the south becomes imperative. Therefore the housing development within HAZNP5 needs to be planned with the opportunity to join into a footpath cycleway within the adjoining existing residential area, should an opportunity arise in the future. HAZNP5 therefore includes in its allocation the turning head and parking area between 44 and 45 Badger Way, to This would facilitate a future active travel connection in this location, which would allow residents of the new development to access the existing play area, among other things.</p>

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
				Change to Plan E: The site allocation boundary must follow that of the WDLP in that area.
Page 41 Paragraph 5.66	5.66 The exception to this is the sense of separation along the north-eastern boundary. Policy HW8 requires the provision of a sense of separation between Hazlemere and Holmer Green. Since the adoption of HW8, and the falling away of the allocation of adjacent land for housing, separation between Hazlemere and Holmer Green is achieved though the adjacent land remaining in the Green Belt. It is therefore not necessary for HAZNP5 to provide for the whole of a sense of separation, because, should the adjacent land come forward for development through a future local plan,		HW8 is not out of date. The fact that the Chiltern and South Bucks allocation has fallen away has no bearing on the policy nor on illustrative figure 14 in the plan. A sense of separation is not required between a built- up area and the countryside, because the countryside provides that sense of separation between built up areas. The proposed change provides clarity for the decision maker.	Amend paragraph 5.66 to say: 5.66 The exception to this is the sense of separation along the north-eastern boundary. Policy HW8 requires the provision of a sense of separation between Hazlemere and Holmer Green. Since the adoption of HW8, and the falling away of the allocation of adjacent land for housing, separation between Hazlemere and Holmer Green is achieved though the adjacent land remaining in the Green Belt. In respect of C5 It is therefore not necessary for HAZNP5 to provide for the whole of a sense of separation, because, the

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
	<p>the space required to achieve a sense of separation can be 'completed' as part of that development, and in the meantime, it is achieved through the adjacent land remaining in the Green Belt. However, it is essential that the Green Infrastructure that will be provided along this boundary is characterised by the aim of a sense of separation. Open space, and strategic open space, may or may not be located along this boundary (see above). At present there is no need for pedestrian and cycle connections across this boundary to the adjacent land.</p>			<p>boundary is located adjacent to open land and should the adjacent land come forward for development through a future local plan, the space required to achieve a sense of separation can be 'completed' provided as part of that development, and in the mean time it is achieved through the adjacent land remaining in the Green Belt. However, it is essential that the Green Infrastructure that will be provided along this boundary is characterised by the aim of a sense of separation. Open space, and strategic open space, may or may not be located along this boundary (see above). At present there is no need for pedestrian and cycle connections across this boundary to the adjacent land.</p>

Page no. and policy/ paragraph of submission plan	What the submission plan says	Whether or not the examiner has modified it	Reason for change / Why we think it does not meet the basic conditions	The changes we propose to make
Plan E	The current plan E has no explanation as to its status.		It is important for plans to be clear for the decision maker – this helps meet the basic conditions relating to clarity as set out in the NPPF.	Change title of Plan E to say “Plan E – indicative plan for sustainable development at HAZNP5 Insert note under Plan E to say “Please note this plan is indicative”

Consequential Amendments

Please note that in his report, the Examiner stated that “Amendments to the text can be made consequential to the recommended modifications, alongside any other minor non-material changes, updates or corrections in agreement between the Parish Council and Buckinghamshire Council (PPG Reference ID: 41-106-20190509).” It is recognised that the proposed further changes may also lead to consequential and non-material changes, necessary to help the plan’s coherence.