

North East Derbyshire District Council BRACKENFIELD NEIGHBOURHOOD PLAN

Decision Statement: Brackenfield Neighbourhood Plan Proceeding to Referendum

1. Summary

- 1.1 In line with Regulation 18 of the Neighbourhood Planning (General) Regulations 2012 (NPR) North East Derbyshire District Council has produced this 'Decision Statement' in relation to the Brackenfield Neighbourhood Development Plan (the 'Plan') submitted to them by Brackenfield Parish Council.
- 1.2 The Plan sets out a vision for the Parish and comprises policies to determine development needed to help sustain the community. If made, it will become part of the development plan for land use and development proposals within the Parish until 2034.
- 1.3 Following an independent examination of written representations, North East Derbyshire District Council confirms that the Plan will proceed to a local referendum subject to specified modifications set out in the table below.
- 1.4 In accordance with the examiner's recommendation, the Brackenfield Neighbourhood Plan will proceed to Referendum scheduled for **Thursday, 5th September 2019**.
- 1.5 This Decision Statement, along with the independent Examiner's report and the plan documents can be inspected:
 - At North East Derbyshire District Council's Offices at Mill Lane, Wingerworth between 9am – 4.30pm
 - At the following location in the Plan area:
 - The Plough Inn, Matlock Road, Brackenfield, DE55 6DD
 - Online via the Council's website:-
<http://www.ne-derbyshire.gov.uk/index.php/resident/local-plan?accid=2>

2. Background

- 2.1. On 28 March 2017 Brackenfield Parish Council submitted an application to North East Derbyshire District Council for the designation of the Parish as a Neighbourhood Area. This was confirmed on 20 June 2017 for the Brackenfield Neighbourhood Plan.
- 2.2. The Parish Council subsequently prepared the Brackenfield Draft Neighbourhood Plan. Consultation on the Parish's Draft Plan was held for 6 weeks ending on 16 November 2018.
- 2.3. The Submission version of the Neighbourhood Plan for Brackenfield was completed and submitted to the District Council on 21 January 2019. North East Derbyshire District Council accepted the Plan was legally compliant and held a 6 week consultation period

ending on 12 April 2019, in accordance with Regulation 16 of the Neighbourhood Planning Regulations.

- 2.4. An Independent Examiner was appointed in April 2019 to undertake the examination of the Submission version of the Brackenfield Neighbourhood Plan and this was completed with the final examination report sent to both the Parish Council and District Council on 12 June 2019.

3. Decisions and Reasons

- 1.1 The Examiner has concluded that, subject to specified modifications, the Plan meets the Basic Conditions and other relevant legal requirements. The Council concurs with this view.
- 1.2 The District Council must consider each of the recommendations made in the Examiner's report and decide what action to take in response. The table attached to this statement sets out the examiner's recommended modifications, his reasoning (summarised by the Council) and the Council's decisions in respect of each of them.
- 1.3 The District Council is therefore satisfied that, subject to the modifications being made, the Draft Neighbourhood Plan meets the legal requirements and basic conditions as set out in legislation; thus the plan can proceed to referendum.
- 1.4 Therefore, to meet the requirements of the Localism Act 2011, a referendum which poses the question "*Do you want North East Derbyshire District Council to use the Neighbourhood Plan for Brackenfield to help it decide planning applications in the neighbourhood area?*" will be held in the Parish of Brackenfield on Thursday, 5th September 2019.

Decision Statement Brackenfield Parish Neighbourhood Plan:

Table of Examiner’s Recommendations, North East Derbyshire District Council’s decisions and proposed amendments

Section in Examined Document	Examiner’s Recommendation	Examiner’s Reasons (summarised by the Council)	Local Authority’s decision	Action to be taken
<p>Policy CH1 Protecting the Countryside and Landscape, p. 20</p>	<p>Recommended modification 1: Replace Policy CH1 with <i>“To be supported development proposals must protect and enhance the historic landscape and local character identified in the Brackenfield Historic and Character Assessment Report 2018.</i> <i>To be supported development proposals that have potential to adversely affect ancient enclosures; preserved medieval strips of cultivation; or the important woodlands, trees and hedgerows identified in Appendix B, must protect and incorporate those features into a landscape design scheme.</i> <i>To be supported development proposals must not significantly harm the important views identified on the Map in Appendix F and described in the Brackenfield Important Views Report 2018.”</i></p>	<p>Policy CH1 is without consequence. The terms “should recognise and seek to”, “should be”, etc. do not provide a basis for the determination of a planning application. The terms “such as” and “if necessary” introduce uncertainty.</p> <p>With regards to Hedgerows it is appropriate for the Plan to seek to introduce an additional regime of protection to apply in the context of development proposals. The Framework states development resulting in the loss of aged or veteran trees found outside ancient woodland should be refused unless the need for, and benefits of, the development in that location clearly outweigh the loss. The Framework also requires Plans to be viable and deliverable. The “ensuring” of long-term maintenance of landscape features is not appropriate in the context of paragraphs 203 to 206 of the Framework relating to planning conditions and obligations. I have recommended a modification so that the policy has regard for national policy and can operate efficiently in association with Policy NE3.</p> <p>I am satisfied the policy identifies the locations where an important view will be a factor in the assessment of a proposal based on the Brackenfield Important Views Report 2018. I am also satisfied the selection of important views has been adequately explained and the important views are seen from locations which are publicly accessible. I have recommended the Plan includes a copy of the map of the important views.</p>	<p>Agree</p>	<p>Amend according to examiner’s recommendation</p>

Section in Examined Document	Examiner's Recommendation	Examiner's Reasons (summarised by the Council)	Local Authority's decision	Action to be taken
		Overall, I have recommended modifications so that the Plan provides a practical framework for decision-taking as required by the Framework.		
Supporting Text & Appendices for Policy CH1	<p>Extend the legend of the Map in Appendix B to name items 1 to 9 (as in paragraph 123).</p> <p>Insert the Map of Important Views from the Brackenfield Important Views Report 2018 as Appendix F of the Neighbourhood Plan.</p> <p>In the supporting text refer to policies, GS6 & NE1 of the adopted Local Plan.</p>	<p>I have recommended a modification so that the policy makes reference to Appendix B where important woodlands, hedgerows and trees are identified.</p> <p>See reasoning for amendments to the inclusion of Important Views Map above.</p> <p>Reference to existing Local Plan policies GS6 and NE1 in the supporting text would assist Plan users and contribute to the achievement of a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency as required by paragraph 17 of the Framework. I have recommended a modification in this respect.</p>	Agree	Amend according to examiner's recommendation
Policy CH2 Protecting Local Character and Distinctiveness, p. 23	<p><u>Recommended modification 2:</u></p> <p>In Policy CH2</p> <ul style="list-style-type: none"> • commence the policy with <i>"To be supported"</i> • commence the second sentence with <i>"Where proposals will have a significant effect on the character of the area"</i> • replace "Proposals should as appropriate" with <i>"To be supported development proposals must"</i> • replace part d) with <i>"ensure any landscaping and boundary treatments are local in character and that any proposed trees and hedgerows are native species"</i> • replace "conserve" with <i>"avoid harm to the significance of"</i> 	<p>The Framework states it is proper for planning policy to seek to promote or reinforce local distinctiveness. Policy CH2 has regard for this approach but the first paragraph is without consequence. The term "should as appropriate" does not provide a basis for the determination of planning proposals and introduces uncertainty. The District Council suggestion regarding the second sentence of Policy CH2 will assist policy implementation. In the context of part e) of the policy the term "conserve" is imprecise. I have recommended a modification so that the policy has sufficient regard for national policy, and provides a practical framework for decision-taking as required by the Framework. I have recommended a modification so that the policy has regard to the balanced approach of national policy relating to the significance of heritage assets.</p>	Agree	Amend according to examiner's recommendation

Section in Examined Document	Examiner's Recommendation	Examiner's Reasons (summarised by the Council)	Local Authority's decision	Action to be taken
Policy CH3 Local Character Buildings, Structures and Archaeology, p. 25	<p><u>Recommended modification 3:</u> In Policy CH3</p> <ul style="list-style-type: none"> • after "identifies" insert <i>"the following"</i> • continue the first sentence with <p><i>HA 1 Brackenfield Green</i> <i>HA 2 Ogston Sailing Club (formerly Amber Valley Camp School)</i> <i>HA 3 Methodist Chapel 1890 (Brackenfield Green)</i> <i>HA 4 Sunken Lane leading towards Trinity Chapel</i> <i>HA 5 Millers Lane</i> <i>HA 6 The Griffs</i> <i>HA 7 Cold Harbour Lane</i> <i>HA 8 Dark Lane</i> <i>HA 9 Medieval Pottery Kiln</i> <i>HA 10 Primitive Methodist Chapel</i> <i>HA 11 19th Century Parish Marker, Cold Harbour Lane</i> <i>HA 12 Bumpmill Lane and Stephenson's Amber River Bridge (see Map in Appendix G)"</i></p>	<p>In a representation the District Council states "The Policy would be strengthened by listing the buildings HA1 – HA12 within the policy itself and cross referencing to a map which identifies the location of these Locally Valued Heritage Assets. I have recommended a modification in this respect.</p> <p>I have recommended a modification with regards to paragraph 135 of the Framework and the Planning Practice Guidance so that the policy provides a practical framework for decision-taking as required by the Framework.</p>	Agree	Amend according to examiner's recommendation
Supporting Text, Appendices & Section 5 for Policy CH3	<p>Insert the Map in Appendix B of the Brackenfield Neighbourhood Plan Local Character Buildings, Structures and Archaeology Report March 2019 as Appendix G of the Neighbourhood Plan.</p> <p>The status of the locally identified non-designated heritage assets should be clarified in supporting text.</p> <p>Include in Section 5 of the Neighbourhood Plan an action to propose the list of assets HA1 to HA12 is submitted to the District Council to be</p>	<p>It is appropriate for a community to use the neighbourhood plan preparation process to identify buildings and structures of local interest, and to include policies to require particular consideration of identified assets in the determination of planning applications. The emerging Local Plan states with respect to non-designated heritage assets the District Council "will aim to identify and establish a list of locally important buildings and structures". Work in connection with the preparation of such a list would usually include an invitation for nominations in line with published criteria and a scoring system. The status of the locally identified</p>	Agree	Amend according to examiner's recommendation

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	considered for inclusion in a list of locally important buildings and structures.	non-designated heritage assets should be clarified in supporting text, and the action required to achieve their formal recognition should be included in Section 5 of the Neighbourhood Plan. I have recommended a modification in this respect.		
Policy CH4 Protecting and Enhancing Archaeological Sites, p. 26	<p><u>Recommended modification 4:</u></p> <p>In Policy CH4</p> <ul style="list-style-type: none"> • replace "Where appropriate, development proposals" with "<i>Where development proposals have potential to impact on archaeological remains included in the Historic Environment Record (HER), they</i>" • delete the final sentence 	The policy is seeking to establish information requirements in support of planning applications. Related to the District Council Local Area Planning Applications Requirements List that is subject to modification during the Plan period I have made a recommendation to address this. The term "where appropriate" is imprecise. I have recommended a modification in this respect so that the policy provides a practical framework for decision-taking as required by the Framework.	Agree	Amend according to examiner's recommendation
Policy NE1 Biodiversity, p. 30	<p><u>Recommended modification 5:</u></p> <p>In Policy NE1</p> <ul style="list-style-type: none"> • replace the first paragraph with "<i>Development proposals that demonstrate their design and landscaping will achieve a net gain in biodiversity will be supported.</i>" • delete "(listed above)" and insert "<i>identified on Figure 4 at Brackenfield Green; Amber River Water Meadow; Church Farm Meadow; Brackenfield Lodge (formerly Ryecroft House) Meadow; and School Lane Meadow</i>" • replace "unacceptable" with "<i>significant</i>" 	The first sentence of the policy does not provide a basis for the determination of planning applications and unnecessarily includes the term "of Brackenfield". The term "ecological enhancements" is imprecise, however the examples provided in paragraph 108 of the supporting text assist interpretation. The term "unacceptable" does not provide the basis for the determination of planning proposals. Inclusion of the names of the Locally Important Ecological Sites will improve clarity for Plan users. Policy NE1 has regard for the approach to the formulation of planning policies set out in paragraph 117 of the Framework, however a modification is necessary so that the policy has sufficient regard for the approach to determination of planning applications set out in the first bullet point of paragraph 118 of the Framework. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a	Agree	Amend according to examiner's recommendation

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	<ul style="list-style-type: none"> commence point 1 with <i>"Development of the site cannot be avoided and"</i> in point 2 replace "fully mitigate or" with <i>"adequately mitigate or, as a last resort,"</i> 	practical framework for decision-taking as required by the Framework.		
Policy NE2 Dark Skies, p. 31	<p><u>Recommended modification 6:</u> In Policy NE2 replace the text after "skies" with <i>"to be supported planning proposals must: (a) only include external lighting that is essential; and (b) include measures to avoid light spillage beyond the application site."</i></p>	The policy includes the term "an assessment of the need for lighting". See summary of recommendation 4 above. I have made a recommendation of modification in this respect. I am satisfied the term "to maintain" provides sufficient clarity for plan users however the term "appropriate for its use and location" is imprecise. I have recommended a modification in this respect so that the policy provides a practical framework for decision-taking as required by the Framework.	Agree	Amend according to examiner's recommendation
Policy NE3 Woodland, Trees and Hedgerows, p. 34	<p><u>Recommended modification 7:</u> Replace Policy NE3 with <i>"To be supported development proposals must retain established woodland, trees and hedgerows that are of existing or proposed visual significance, or historic importance. Proposals must include measures to prevent harm to such trees and hedgerows during the course of development.</i></p> <p><i>Where it is demonstrated the benefits of development clearly outweigh the loss, and hedgerows or trees that are protected or considered worthy of protection are unavoidably lost, they must be replaced with species native to the landscape character, as close as</i></p>	<p>The term "of good quality" is imprecise. The final sentence of the policy refers to protection of trees but its positioning within a paragraph that otherwise refers to loss of trees is confusing. I have recommended this sentence is relocated to become part of the first paragraph which relates to retention of trees.</p> <p>It is appropriate for the Neighbourhood Plan to seek to introduce an additional regime of protection to apply in the context of development proposals. The Framework states development resulting in the loss of aged or veteran trees found outside ancient woodland should be refused unless the need for, and benefits of, the development in that location clearly outweigh the loss. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework for decision-taking as required by the Framework. I have recommended a modification so that the policy can operate efficiently in</p>	Agree	Amend according to examiner's recommendation

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	<i>possible to the location where the loss is to occur."</i>	association with Policy CH1 which refers to woodlands, trees and hedgerows in the context of landscape features.		
Policy NE4 Protecting Important Local Green Spaces, p. 35	<u>Recommended modification 8:</u> In Policy NE4 delete "and where it is consistent with the function of the Local Green Space"	I have noted the policy seeks to introduce the term "and where it is consistent with the function of the Local Green Space." A full explanation of "very special circumstances" may be found in paragraph 78 of the Framework. The Framework also states that communities will be able to rule out development other than in very special circumstances and no other circumstances. Therefore, I have recommended a modification in this respect.	Agree	Amend according to examiner's recommendation
Supporting Text & Appendices for Policy NE4	Expand the notation on the map in Appendix 3 [sic] to identify each Local Green Space by name or reference number. Include reference to Holy Trinity Church churchyard in the supporting text	Designation of a LGS can only follow identification of the land concerned. The proposed LGS are presented at a scale that is just sufficient to identify the precise boundaries of each LGS designation. The notation should be expanded to identify each Local Green Space by name or reference number. This will ensure that the policy provides a practical framework for decision-taking as required by the Framework. In a representation the District Council states "Policy NE4 designates two Local Green Spaces. The supporting text to Policy NE4 only refers to Brackenfield Green. I have recommended a modification to include a paragraph justifying the special characteristics of Holy Trinity Churchyard." to assist clarity for Plan users.	Agree	Amend according to examiner's recommendation – correcting minor error (reference should be to Appendix C).
Policy REE1 Rural Tourism, p. 37	<u>Recommended modification 9:</u> In Policy REE1 • replace "or disproportionate extension" with " <i>and any extension</i> "	The Policy title on the Neighbourhood plan contents page and the Policy title below paragraph 145 should reflect the policy content. The term "disproportionate" is imprecise. The Framework states "development should only be prevented or refused on transport grounds	Agree	Amend according to examiner's recommendation

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	<p>would not dominate the existing building”</p> <ul style="list-style-type: none"> • after “safety and” insert “not result in severe cumulative impacts on” <p>Change the Policy title to “Rural Tourism Enterprise”</p>	<p>where the residual cumulative impacts of development are severe.” I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework for decision-taking as required by the Framework.</p>		
Supporting Text for Policy REE1	<p>Change the title on the Neighbourhood Plan contents page to “Rural Tourism Enterprise”</p>	<p>See Examiner's Reason above</p>	<p>Agree</p>	<p>Amend according to examiner's recommendation</p>
Policy REE2 Working from Home, p. 39	<p><u>Recommended modification 10:</u></p> <p>In Policy REE2</p> <ul style="list-style-type: none"> • replace “encouraged” with “supported” • after “design” insert “of any building proposals” 	<p>The term “will be encouraged” does not provide a basis for the determination of planning applications. The term “scale and design” is imprecise. I have recommended a modification so that the policy provides a practical framework for decision-taking as required by the Framework.</p>	<p>Agree</p>	<p>Amend according to examiner's recommendation</p>
Policy H1 Housing, p. 41	<p><u>Recommended modification 11:</u></p> <p>In Policy H1 replace the text after “being” with “visually attractive and reinforcing local distinctiveness”</p>	<p>The term “well designed” is imprecise. The Framework states planning policies should aim to ensure developments are visually attractive and reinforce local distinctiveness whilst avoiding unnecessary prescription. It is unnecessary and confusing for a policy to state “meeting all relevant requirements set out in other policies in this plan and the Local Plan” as the Neighbourhood Plan and the Development Plan should be read as a whole. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework for decision-taking as required by the Framework.</p>	<p>Agree</p>	<p>Amend according to examiner's recommendation</p>

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Policy HW1 Protection and enhancement of community facilities, p. 43	<u>Recommended modification 12:</u> In Policy HW1 after "facilities" insert " <i>(identified on the Map in Appendix H)</i> "	I have recommended a modification so that the named community facilities are identified on a map. The policy has sufficient regard for national policy and provides a practical framework for decision-taking as required by the Framework.	Agree	Amend according to examiner's recommendation (amending to Appendix H)
Appendix for Policy HW1	Insert a Map identifying the location of the named community facilities as Appendix H.	See Examiner's Reason above (Appendix should be H)	Agree	Amend according to examiner's recommendation
Policy HW2 Asset of Community Value, p. 44	<u>Recommended modification 13:</u> In Policy HW2 <ul style="list-style-type: none"> • delete "will be encouraged" and insert "<i>(in the Register of Assets of Community Value held by the District Council) will be supported</i>" • delete "will not be supported" and insert "<i>will only be supported where it is demonstrated the asset is no longer viable or no longer required by the community; or the asset is replaced by an equivalent or better facility in terms of quantity and quality in an equally suitable location</i>" Amend the Policy title to match the Neighbourhood Plan contents page	Encouragement does not provide a basis for the determination of planning applications. I have recommended a modification in these respects so that the Plan provides a practical framework for decision-taking as required by the Framework. Policy HW2 seeks to supplement the community right to bid by not supporting a change of use that would result in loss of an Asset of Community Value. The more restrictive approach than that adopted in Policy HW1 is not sufficiently justified and does not have sufficient regard for attention to viability as required by paragraph 173 of the Framework. I have recommended a modification in this respect so that the policy has sufficient regard for national policy and the Plan provides a practical framework for decision-taking as required by the Framework. The Policy title does not precisely match the Neighbourhood Plan contents page.	Agree	Amend according to examiner's recommendation
Policy HW3 Road safety measures, p. 45	<u>Recommended modification 14:</u> Replace Policy HW3 with " <i>To be supported development proposals must demonstrate they will not adversely</i> "	The first paragraph of the policy is without consequence. Paragraph 32 of the Framework states "Development should only be prevented or refused on transport grounds where the residual cumulative impacts of	Agree	Amend according to examiner's recommendation

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	<p><i>affect vehicular or pedestrian safety and not result in severe adverse cumulative traffic impacts.</i></p> <p><i>Development proposals that incorporate design features to improve localised issues of vehicular and pedestrian safety and movement will be supported where those design features do not harm local character."</i></p>	<p>development are severe." Encouragement and "viewed sympathetically" do not provide a basis for the determination of planning applications. Measures "that address speed" are often not matters requiring planning permission and therefore not suitable to be the subject of a development plan policy. The terms "unacceptable", "to the benefit of residents and visitors", and "appropriate to the character of the Plan area" are imprecise. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework for decision-taking as required by the Framework.</p>		
<p>Policy HW4 Footpaths and bridleways, p. 47</p>	<p><u>Recommended modification 15:</u> In Policy HW4</p> <ul style="list-style-type: none"> • transfer the first paragraph to Section 5 of the Neighbourhood Plan • in the second paragraph replace the text after "bridleways)" with "<i>to create a more comprehensive network will be supported.</i>" • replace the third and fourth paragraph with "<i>To be supported development proposals that affect any public right of way must demonstrate this cannot be avoided, and include mitigation measures to ameliorate the impact.</i>" 	<p>Active working is not a land use matter, and it is not possible for the Neighbourhood Plan to commit other Councils or agencies to such working. The term "existing and future" is unnecessary. The terms "will be encouraged", "should be", and "will be expected to" do not provide a basis for the determination of planning applications. The reference to surrounding areas introduces ambiguity regarding application of the policy. I have recommended a modification so that the policy has sufficient regard for national policy in these respects, and provides a practical framework for decision-taking as required by the Framework.</p>	<p>Agree</p>	<p>Amend according to examiner's recommendation</p>