Highworth Neighbourhood Plan 2 2021 - 2036

Interim Conclusions of the Independent Examiner

Prepared by

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1. On 15th April 2025, I issued a document entitled “Preliminary Questions from the Independent Examiner. This document asked four questions, aimed primarily at Swindon Borough Council as Local Planning Authority, as to whether it is satisfied that the specific legal requirements which affect Modification Proposals had been complied with.
2. In particular, I needed to know whether the Borough Council was satisfied that the legal requirements requiring the Qualifying Body to produce a Modification Statements at Pre - Submission and Submission stage had been fully complied with, in line with the legal requirements. These are set out in Regulation 14 c) (v) and Regulation 15(1)f) of the Neighbourhood Planning (General) Regulations 2012, as amended by the Neighbourhood Planning and the Development Management Procedures (Amendments) Regulations 2017, which was issued following the Neighbourhood Planning Act 2017. The required contents of the Modification Statement are set out in Schedule A2 of the Planning and Compulsory Purchase Act 2004.
3. Similarly, the Regulations impose a requirement on the Borough Council to produce its own Modification Statement when the plan is submitted to examination, as required by Regulation 17(e) of the Neighbourhood Planning Regulations 2012 as amended. That statement needs to address whether the Borough Council considers the modifications set out in the modification proposal are so significant or substantial as to change the nature of the neighbourhood plan and again a requirement for it to give reasons for that opinion.
4. I received the response from Swindon Borough Council on 29th April 2025 and I have asked for a copy of that response along with this note to be placed on the respective websites.
5. From its response, it is clear that the Borough Council is not satisfied that the Modification Statement produced by the Town Council in September 2024 met the legal requirements in terms of the contents of the Statement.
6. The Regulations imposes an absolute requirement upon the qualifying body, by stating that, in the case of a modification proposal, it *must* produce a [specific] statement stating whether or not it considers the modifications are so significant to change the nature of the plan and it is required to give reasons for why the qualifying body is of the opinion.
7. The Borough Council view is that the Town Council’s September 2024 Modification Statement “lacks any comments on the contents of the plan’s policies. Without addressing the specific policies and their implications, the statement fails to provide an assessment of whether the modifications alter the nature of the neighbourhood development plan”.
8. From re-reading the Modification Statement, I note that the Town Council ‘s published opinion was that it is a “substantial / significant material” modification rather than a “less substantial / significant material” modification, but it seems to me that this view was purely based on taking the advice from the Town Council’s

professional planning consultant but does not elaborate on the reasons for reaching that conclusion.

9. It further appears, from an email exchange between the planning department and the Town Clerk, which I was copied in on, that at Submission Stage (Reg 15) the modification statement was not submitted to the Borough Council, but the Town Council relied upon the fact that the statement was available on the Town Council's website and hence was publicly available. The Borough Council is now stating that this version of the Modification Statement was not submitted at that stage in accordance with the Regulations.
10. The Borough Councill has also confirmed that it has not yet prepared its own statement as required by Regulation 17e) (ii) of the Regulations.
11. In view of the Borough Council's responses, I have reached an interim conclusion that the Modification Statement that was prepared at Regulation 14 did not meet the requirements set out in the legislation. Nor was it properly submitted to the LPA in accordance with Regulation 15(1)f) at the Reg 15 submission stage. Further when submitted for examination the LPA has not prepared its Regulation 17 statement.
12. However, it occurs to me that in terms of the Reg 14 and Reg 15 issues, rather than this being a matter for my examination, it is actually a matter for Swindon Borough Council to be ruling upon. I come to this view, because the Borough Council *must*, upon submission, and prior to referring the plan to examination, consider whether the qualifying body has complied with the requirements of the neighbourhood plan regulations. in particular, Regulation 16 states that upon "receiving a modification proposal which *includes each of the documents referred to in Regulation 15 (1)*, the LPA must carry out the Regulation 16 consultation on the modification proposal.
13. The matters that the examiner can recommend are restricted as set out in Paragraph 10 of Schedule A2 in the Town and Country Planning Act 1990,
14. My view is clear, that based on the response from the Borough Council to my Preliminary Comments, it now has no alternative but to conclude that the legislative requirements, in particular those set out in Paragraph 6(2) c) and d) of Schedule A2, have not been met. To do otherwise, would therefore leave the plan open to challenge on the basis that the relevant procedures have not been complied with.
15. Now that these fundamental flaws has been identified, the most expeditious route would, in my opinion, be for the Town Council to withdraw the current version of the plan, as proposed to be modified, and repeat the Regulation 14 consultation, this time including a modified Modification Statement which sets out the reason it has reached the opinion that the modifications do change the nature of the plan.
16. If the Town Council is not minded to withdraw the plan as submitted, I would invite Swindon Borough Council to make a determination, based on its responses to my four preliminary questions as to whether the plan can still be capable of being considered "properly submitted".

17. I appreciate that the Town Council may wish to have a discussion with the Borough Council officers to discuss its findings and agree a way forward.
18. At this point in time, I will hold the examination in abeyance and will not issue my Initial Comments document which would normally do at this stage, until the Borough Council is satisfied that the modification proposal has been properly submitted for examination.
19. I look forward to receiving feedback on the discussions between the Town Council and the Borough officers and an indication of the decision of the Town Council as to whether it chooses to withdraw the plan to repeat the Regulation 14 consultation including the amended Modification Statement. It can then formally re -submit the modification proposal with the necessary Modification Statement.

John Slater BA(Hons), DMS, MRTPI.

Independent Examiner to the modified Highworth Neighbourhood Plan.

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