

TEWKESBURY BOROUGH COUNCIL

Report to:	Executive Committee
Date of Meeting:	6 February 2019
Subject:	Designation of a Neighbourhood Area for Deerhurst Parish Council and Amendment to Scheme of Delegation for Future Neighbourhood Areas
Report of:	Planning Policy Officer
Corporate Lead:	Deputy Chief Executive
Lead Member:	Lead Member for Built Environment
Number of Appendices:	Two

Executive Summary:

Local planning authorities have a statutory duty to advise or assist communities in the preparation of Neighbourhood Plans, as explained in planning practice guidance. The Localism Act 2011, and the Neighbourhood Planning (General) Regulations 2012 (as amended), set out the local planning authority's responsibilities including designating "Neighbourhood Areas" for the purpose of preparing a Neighbourhood Development Plan.

An application to designate a new neighbourhood area has been received from Deerhurst Parish Council. The application has been assessed against the requirements set out in the legislation and is considered to meet the requirements to enable the designation of the neighbourhood area.

Approval is also sought to change the Scheme of Delegation for future neighbourhood area designations to be delegated to the Head of Development Services.

Recommendation:

- 1. To APPROVE the designation of a neighbourhood area covering the Parish of Deerhurst.**
- 2. To APPROVE an amendment to the Scheme of Delegation to delegate authority to the Head of Development Services to approve the designation of neighbourhood areas where a relevant body proposes a neighbourhood area that follows their Parish Council boundary meeting the requirements of r5A of SI 2012/637 (The Neighbourhood Planning (General) Regulation 2012).**

Reasons for Recommendation:

1. To enable the above Parish to prepare a Neighbourhood Development Plan for the area covered by the neighbourhood area designation.
2. To enable the Council to fulfil its duties under the amended neighbourhood planning regulations in a timely way.

Resource Implications:

Financial support is provided by the Department of Housing, Communities and Local Government (DHCLG) to assist local planning authorities to meet their neighbourhood planning obligations. However, there have been some changes that relate to claims for neighbourhood area designations. A limit of five neighbourhood areas has been set. Therefore, Tewkesbury Borough Council, having designated over five areas, has no further available claims for neighbourhood area designations, unless a business forum wishes to proceed with a neighbourhood plan. Funding remains for the Council in connection with neighbourhood plan examinations and referendums.

The additional duty to advise and assist communities engaged in neighbourhood planning, as explained in planning practice guidance, may increase existing human resource requirements, particularly for Development Services. However, the expectation is that this will be handled by existing staff resources, who will continue, in accordance with the Neighbourhood Planning Regulations 2012 (as amended) to: advise and assist communities in the preparation of a Neighbourhood Development Plan; check that a submitted plan meets the basic conditions and other legal requirements; arrange for statutory consultation and the independent examination of the plan; arrange a referendum; and, subject to the results of the referendum, bring the plan into force. The resource implications are corporate including Development Services, Community Development, Financial Services, Democratic Services and One Legal.

Legal Implications:

The Council has a duty to undertake this work under the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012 as amended.

Risk Management Implications:

The designation of neighbourhood areas is a statutory requirement on local planning authorities. The process and timescales for designating neighbourhood areas has changed and therefore amending the Scheme of Delegation will ensure compliance with the amended Regulations, in particular: The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulation 2016.

The 2016 changes mean that, where a relevant body proposes their neighbourhood area that follows their local Council boundary, for example a Parish boundary, Tewkesbury Borough Council must designate the neighbourhood area and is no longer required to advertise and consult on it. This was introduced to help speed up the initial stages of plan-making.

Performance Management Follow-up:

There are further statutory stages in neighbourhood planning; however, these are dependent on the timescales of the relevant Parish, in their role as the Qualifying Body for the preparation of a Neighbourhood Development Plan.

Environmental Implications:

The implications for biodiversity, habitats, energy usage, waste and recycling, or protected species will be considered by the local planning authority on behalf of the Qualifying Body as required by the Environmental Assessment of Plans and Programmes Regulations 2004 and the Conservation of Habitats and Species Regulations 2010.

1.0 INTRODUCTION/BACKGROUND

1.1 The planning system helps decide what gets built, where and when. It is essential for supporting economic growth, improving people's quality of life, and protecting the natural environment. The government's intention is to give local communities a greater say in planning decisions that affect them by providing the opportunity to prepare a neighbourhood plan if they wish. Neighbourhood planning was introduced in the Localism Act 2011 with specific legislation, the Neighbourhood Planning (General) Regulations (2012) (as amended).

1.2 There are three aspects of neighbourhood planning: Neighbourhood Development Plans (NDPs); Neighbourhood Development Orders (NDOs) and Community Right to Build Orders (CrtBO). NDPs establish planning policies applicable to the determination of planning applications. NDOs and CrtBOs grant planning permission for development in differing levels of specificity. NDOs can grant permission for types of development subject to limits and conditions. It does not have to be limited to identified sites. CrtBOs are a form of NDO that can be used to grant planning permission for small scale development for community benefit on a specific site or sites. The most common form of neighbourhood planning is the NDP. Town or Parish Councils are "qualifying bodies" entitled to lead on neighbourhood planning.

1.3 NDPs set out planning policies for the development and use of land in all or part of a designated neighbourhood area, for example where new homes and businesses should be built and what they should look like. The plan can be detailed or general, depending on what local people want. However, they should not be used to prevent growth and development; they are to be pro-growth documents. They are required to be in general conformity with the strategic policies of the statutory development plan in force when the NDP is being promoted.

1.4 NDPs must be subject to full public engagement, examination and public referendum. Once adopted, a NDP will form part of the statutory development plan, which, subject to material considerations indicating otherwise, planning applications are to be determined in accordance with. If there is conflict between development plan policies, the policy contained in the later adopted document prevails. In Tewkesbury Borough, at the time of writing, this is the saved policies of the Tewkesbury Local Plan adopted 2006 and the adopted Joint Core Strategy 2017 (JCS). The emerging revised JCS and Tewkesbury Borough Plan 2011 – 2036 will replace these plans as the statutory development plan, once adopted.

1.5 There are five key stages to preparing a NDP as summarised below:

Stage 1: Defining the neighbourhood area

The first formal stage in the NDP preparation process is for local people to decide how they want to work together and then for the "Qualifying Body" that wishes to prepare the plan to apply to the local planning authority (LPA) for their area to be designated as a neighbourhood area.

The LPA then checks that the suggested boundary for a neighbourhood area makes sense and fit together. They could say no if, for example, two proposed neighbourhood areas overlap.

Stage 2: Preparing the plan

Local people will need to prioritise their early ideas, and draw up their plans following some ground rules:

- they must be generally in line with local and national planning policies;
- they must be in line with other laws;

- if the LPA says that an area needs to grow, then communities cannot use neighbourhood planning to block the building of new homes and businesses; they can, however, use neighbourhood planning to influence the type, design, location and mix of new development;
- neighbourhood plans must contribute to achieving sustainable development; and
- the NDP must be subject to public consultation.

Stage 3: Independent Examination

Once a NDP has been prepared, the LPA will organise and pay for the examination of the plan. An independent examiner will check that it meets specified statutory criteria. These include it being appropriate having regard to national policy and advice and; it contributing to the achievement of sustainable development. If the plan does not meet these criteria the examiner will recommend changes. The LPA will then need to consider the examiner's views, consult with the Town or Parish Council, and decide whether to make those changes. If the examiner recommends significant changes, then the Town or Parish Council may decide to consult the local community again before proceeding.

Stage 4: Community referendum

The LPA must organise a referendum on any neighbourhood plan that meets the specified statutory criteria. This ensures that the community has the final say on whether a neighbourhood plan comes into force. People living in the neighbourhood area who are registered to vote in local elections will be entitled to vote in the referendum. If more than 50% of people voting in the referendum support the plan, then the LPA must bring it into force, make or adopt the plan. The question to be asked at referendum is set as:

“Do you want Tewkesbury Borough Council to use the [*insert name of plan*] Neighbourhood Plan to help it decide planning applications in the [*insert name of area*] Neighbourhood Area?”

Stage 5: Legal force

Once a neighbourhood plan has been made/adopted, following a successful referendum, it becomes part of the statutory development plan for its applicable area.

1.6 LPAs have a statutory duty to advise and assist communities in the preparation of neighbourhood plans and to take plans through a process of independent examination and public referendum. The Localism Act 2011 sets out the LPA's responsibilities:

- designating the neighbourhood area;
- checking a submitted plan meets the legal requirements;
- carrying out public consultation on a submitted plan proposal on behalf of an independent examiner;
- arranging and paying for the independent examination of the plan;
- determining whether the neighbourhood plan meets the basic conditions and other legal requirements;
- arranging and paying for a referendum to ensure that the local community has the final say on whether a neighbourhood plan comes into force in their area; and
- subject to the results of the referendum, bringing the plan into force, making or adopting the plan.

2.0 PROCESS FOR DESIGNATION OF A NEIGHBOURHOOD AREA

2.1 On receiving an application from a Parish Council (which includes Town Councils for this purpose) for designation of a neighbourhood area, the LPA must determine the application having regard to the following matters:

- 1) the desirability of designating the whole of the area of a Parish Council as a neighbourhood area;
- 2) the desirability of maintaining the existing boundaries of areas already designated as neighbourhood areas;
- 3) would the area more appropriately be designated as a business area i.e. the area is wholly or predominantly in business use?; and
- 4) consider the need for public consultation (e.g. the proposed neighbourhood area includes more than one neighbouring Parish).

2.2 On applying for designation of a neighbourhood area the Regulations (2012) as amended, specify the relevant body must submit the following:

- a map identifying the proposed neighbourhood area;
- a statement explaining why the area is appropriate to be designated; and
- a statement explaining that the body making the area application is capable of being a qualifying body (i.e. is a Parish or Town Council).

2.3 On accepting a valid application for area designation, the LPA is required to publish the application for a period of not less than six weeks to invite representations on the application. This is to be via the LPA website and 'in any other such manner as is considered likely to bring the application to the attention of people who live, work or carry out business in the area to which the application relates'.

2.4 On 29 January 2013 the Council resolved to adopt the statutory six week minimum period and also resolved that authority be delegated to the Executive Committee to agree designated neighbourhood area proposals. However, the process and timescales for designating neighbourhood areas has changed since 2013. This report seeks to amend the Scheme of Delegation to ensure the Council complies with the amended regulations, in particular: The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulation 2016. The basic rule is that if the Council does not determine an area application within 13 weeks of publication for representations then it must make such decisions as are necessary to ensure that the whole of the area covered by the application is designated as a neighbourhood area.

2.5 The 2016 changes also imposed a duty (Reg 5A) to designate as a neighbourhood area where the applicant is the relevant Parish Council and the application relates to that entire Parish (not affecting an existing cross parish boundary designation). Reg 5A applications do not have to be advertised and are not subject to the 13 week default duty to designate. As the designation must be made representations upon it would not serve a purpose and there is no point in imposing a duty to designate after 13 weeks given that the same duty applies from the date of application receipt.

3.0 THE DEERHURST APPLICATION TO DESIGNATE A NEIGHBOURHOOD AREA

3.1 An application to designate Deerhurst Parish boundary as a neighbourhood area was validated on 7 December 2018. On the basis that the application was made on behalf of the Parish Council, as the relevant body, and was for the whole Parish it satisfied the provisions of Regulation 5A of the Neighbourhood Planning (General) Regulations 2012 (as amended) and therefore a six week consultation period was not required. The Council is under an obligation to designate. It has no discretion to decline to do so.

3.2 The area proposed for designation cannot be described as being wholly or predominantly in business use and, therefore, to the power to designate the area as a business area it not exercisable.

4.0 OTHER OPTIONS CONSIDERED

4.1 No other options have been considered as an application to designate a neighbourhood area is governed by a statutory process.

4.2 In connection with changes to the Scheme of Delegation, no other options have been considered as such r5A applications to designate a neighbourhood area is governed by a statutory duty as opposed to a power exercisable by the Council, which seeks to speed up the early stages of plan making.

5.0 CONSULTATION

5.1 On the basis that the application was made on behalf of the Parish Council, as the relevant body, and was for the whole Parish it satisfies the provisions of Regulation 5A of the Neighbourhood Planning (General) Regulations 2012 (as amended) and therefore a six week consultation period is not required.

6.0 RELEVANT COUNCIL POLICIES/STRATEGIES

6.1 Tewkesbury Borough Council Plan until 2011, adopted 2006.

6.2 Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031, adopted 2017.

7.0 RELEVANT GOVERNMENT POLICIES

7.1 The National Planning Policy Framework (2018) supported by the National Planning Practice Guidance.

8.0 RESOURCE IMPLICATIONS (Human/Property)

8.1 Financial support is provided by the DHCLG to assist LPAs in meeting their neighbourhood planning obligations. Claims can be made three times a year. The next is due in March 2019.

8.2 Tewkesbury now has over five neighbourhood areas designated and therefore no further funds are available to claim for neighbourhood area designations, unless a business forum wishes to proceed with a neighbourhood plan. However, £20,000 is available to the Council for each plan once the LPA has set a date for a referendum, following a successful examination, where a neighbourhood plan has not previously been made for that area.

8.3 The additional duty to advise and assist communities engaged in neighbourhood planning may increase existing human resource requirements, particularly for Development Services.

9.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

9.1 Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and Town Councils can use neighbourhood planning to set planning policies to ensure that communities get the right types of development for their area within the overarching framework set by the statutory development plan.

10.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

10.1 The neighbourhood plan process requires evidence, set out in a consultation statement, that must be submitted to the LPA along with the draft neighbourhood plan as a proposal of involvement by the community including hard to reach groups. This is a matter for the relevant, Qualifying Body preparing the plan to address. However, the LPA is responsible for checking the plan meets with basic conditions as per Paragraph 12 of Schedule 4B of the 1990 Act as applied by s38A(3) of the 2004 Act. Working proactively with communities throughout the plan preparation, will ensure that impact on finances, equalities, Human Rights and other legislation are minimised and have been met.

11.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

11.1 Council on 29 January 2013 delegated power to designate neighbourhood plan areas to the Executive Committee.

Background Papers: None.

Contact Officer: Planning Policy Officer Tel: 01684 272208
Email: jane.wormald@teWKesbury.gov.uk

Appendices: 1. Deerhurst Parish Council neighbourhood area application form.
2. Neighbourhood Area boundary map.