

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Executive Committee
<b>Date of Meeting:</b>	1 June 2022
<b>Subject:</b>	The Leigh Neighbourhood Development Plan Referendum
<b>Report of:</b>	Interim Planning Policy Manager
<b>Corporate Lead:</b>	Head of Development Services
<b>Lead Member:</b>	Lead Member for Built Environment
<b>Number of Appendices:</b>	Two

## **Executive Summary:**

Local Planning Authorities have a statutory duty to advise and assist communities in the preparation of Neighbourhood Development Plans, often referred to as 'Neighbourhood Plans', or by the acronym 'NDP'. The Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012, as amended, set out the responsibilities at each stage of the preparation of an NDP.

The Leigh NDP was submitted to Tewkesbury Borough Council on 19 July 2021 and an Examination of the plan was undertaken by an independent Examiner during March and April 2022.

The Examiner's Final Examination Report (Appendix 1) concludes that, subject to the modifications recommended, The Leigh NDP meets the basic conditions and may proceed to referendum. The examiner also recommends that the referendum boundary is the designated Neighbourhood Plan area.

Having regard to the Examiner's conclusions, Officers are not aware of any reasons why the Plan should not proceed to referendum in accordance with the Examiner's Report. Members are therefore recommended to approve The Leigh NDP to be sent for a referendum.

If the decision of the Committee is to send the plan to referendum, the Council is then required to publish a decision statement within 56 days. The Borough Council is responsible for organising a referendum of those people in the Neighbourhood area who are entitled to vote in local elections.

## **Recommendation:**

- 1. That the Leigh Neighbourhood Development Plan, modified according to the Examiner's recommended amendments, is formally approved to progress to Community Referendum, prescribed by Regulation 18 of the Neighbourhood Planning (General) Regulations 2012, as amended.**
- 2. That authority be delegated to the Head of Development Services, in consultation with the Lead Member for Built Environment, to make any necessary minor amendments prior to referendum.**

**Reasons for Recommendation:**

To seek authorisation for The Leigh Neighbourhood Development Plan to proceed to referendum.

**Resource Implications:**

If the Neighbourhood Development Plan is judged to meet the 'Basic Conditions' there will be human resource implications as the Council is required to arrange the Referendum; and, subject to the result of the Referendum, bring the plan into force within 56 days of a successful Referendum. This is a statutory requirement of the Council.

**Legal Implications:**

The Council has a duty to undertake this work under the Town and Country Planning Act 1990 (as amended), the Localism Act 2011, the Neighbourhood Planning (General) Regulations 2012, as amended and the Neighbourhood Planning (Referendums) Regulations 2012, as amended.

Notwithstanding the referendum date, as soon as publication of the decision statement has been made detailing the Council's intention to send a neighbourhood plan to referendum, that plan may be given additional weight in decision-making, so far as the plan is material to the application.

**Risk Management Implications:**

Tewkesbury Borough Council has an obligation, under Schedule 4B of the 1990 Town and Country Planning Act, to arrange a Referendum, unless the Examiner's recommended modifications and/or conclusions are to be challenged.

**Performance Management Follow-up:**

Since the 'Neighbourhood Planning (Referendums) (Amendment) Regulations 2016' came into force on 1 October 2016, the Referendum must be held within 56 days of the Decision Statement being published, following the expiry of the call-in period for this Executive Committee meeting.

**Environmental Implications:**

The implications for biodiversity, habitats, energy usage, waste and recycling or protected species have been considered by the Qualifying Body, with the assistance of the Borough Council, 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 is essential for supporting economic growth, improving people's quality of life and protecting the natural environment. Neighbourhood Planning was introduced in the Localism Act 2011 with secondary legislation including the Neighbourhood Planning (General) Regulations 2012, as amended. It gives communities the power to create a shared vision for their local area and to shape future development and growth through the setting of planning policies.
- 1.2** Neighbourhood Plans which are adopted or 'made' by a Local Planning Authority form part of their development plan, alongside the Local Plan. Decisions on planning applications within the designated neighbourhood plan area will be made using both the

local plan and the neighbourhood plan, and any other material considerations.

**1.3** There are five key stages in the preparation of a Neighbourhood Plan:

Stage 1 – Defining the Neighbourhood Area and apply to the Borough Council to have it formally designated.

Stage 2 – Preparing the Plan includes a number of activities including public consultation undertaken by the Neighbourhood Planning Group, submission of a draft plan, as a proposal to the Borough Council and then the Borough Council undertaking its own public consultation.

Stage 3 – With the agreement of the Qualifying Body (Parish Council), the Borough Council is required to appoint an independent examiner to check that it meets the basic standards required. It is when the Examiner publishes their final report that the Borough Council must consider any recommendations of changes to be made so that the plan meets the basic conditions and formally decide whether to send the plan to Referendum.

Stage 4 – The Borough Council is responsible for organising a referendum of those people in the Neighbourhood Area who are entitled to vote in local elections.

Stage 5 – If more than 50% of people voting in the referendum support the plan then the Borough Council must bring it into legal force.

**1.4** The Leigh Neighbourhood Plan area was designated on 31 August 2016 and since that time the Parish Council have progressed through the stages of Neighbourhood Plan preparation.

**1.5** The Leigh NDP was submitted to Tewkesbury Borough Council on 19 July 2021 and the Borough Council undertook a consultation under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012 for a 6-week period from September to November 2021. A total of 12 representations were received.

**1.6** An independent Examiner was appointed to conduct the examination for the Neighbourhood Plan and his final report was received on 25 April 2022.

**1.7** In conducting his examination, the Examiner had due regard to the representations made by the Local Planning Authority and all other consultees.

**2.0 THE EXAMINER'S REPORT AND RECOMMENDED MODIFICATIONS**

***Examiner's Overall Findings***

**2.1** The Examiner's Report (Appendix 1) sets out his overall view on whether the ARNDP meets the necessary legal requirements.

**2.2** The Examiner concludes that subject to the modifications recommended, as summarised below, The Leigh NDP meets the basic conditions and may proceed to referendum. The examiner also recommends that the referendum boundary is the designated neighbourhood plan area.

### **Examiner's Key Findings**

- 2.3** The following summarises the Examiner's key findings and, where appropriate, sets out where modifications are recommended in order for the plan to meet the basic conditions.
- 2.4** The plan covers matters of landscape and countryside; nature, ecology and biodiversity; historic environment; sustainable housing development; caravan and camping sites; flooding; and the rural economy. Generally, the policies relating to these were accepted as meeting the basic conditions. However, the Examiner recommended that modifications are necessary to the following policies in order to make them acceptable.
- 2.5** **Policy E1** sought to require development to protect, maintain and enhance all public rights of way. The Examiner recommended the re-wording of one of the policy criteria which was considered excessive in that it would impose on development obligations that do not relate to the development concerned.
- 2.6** The Examiner also recommended deletion of the final criterion of **Policy E1** which relates only to residential allocation CO02, development of which is well underway and therefore it is too late to impose further policy requirements.
- 2.7** **Policy E2** introduces criteria for conserving and enhancing biodiversity. The Examiner has recommended a modification to the policy in part, to ensure it is not too onerous in respect of seeking to resist a total loss of some non-protected species/ habitats/ hedgerows and proposing to require 'like for like' compensation of natural features.
- 2.8** The Examiner has concluded that part of **Policy E3** is excessive insofar as it sought to place obligations on development, at sites allocated in the local plan, to provide interpretation of the wider historic character of the parish. He has recommended a modification to ensure the obligation relates to the development concerned.
- 2.9** **Policy H1** sought to introduce a requirement of all development to meet lifetime homes standards, however the Examiner is not persuaded that this is justified by evidence and recommends that it is removed from the policy. He has also raised a particular concern with the plan seeking to maintain lower densities of residential development and as such recommends deletion of this reference in both the policy and supporting text.
- 2.10** In relation to the conversion and extension of existing dwellings, **Policy H2** sought to ensure there is no reduction in off street parking capacity. The Examiner concluded that this was excessive and not justified by evidence and therefore has recommended the policy is amended.
- 2.11** **Policy H3** sets out that developer contributions will be sought from the local plan site allocations and any other major development for certain projects. The Examiner has recommended that the policy is modified to ensure allowance for any community infrastructure levy and that due regard is paid to National Planning Policy in respect of payments being "*necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*"<sup>1</sup>.
- 2.12** **Policy H4** sought to set specific parking standards in new residential development. The Examiner considered these not to be justified by sufficient evidence. Deletion of two of the policy criteria is therefore required.

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<sup>1</sup> NPPF Para 56

**2.13** **Policy H5** set out that proposals for new caravan and camping sites would only be supported where it could be demonstrated that the proposed location is essential and where alternative appropriate sites have been proven to be unachievable. The Examiner has recommended deletion of the policy as he is not satisfied that it is supported by national or local policy, nor justified by evidence.

### **3.0 MOVING FORWARD TO REFERENDUM**

**3.1** The Borough Council must consider each of the Examiner's recommendations, including the recommendation relating to the referendum boundary, and publish a 'Decision Statement' on whether the amended plan meets the 'Basic Conditions' and if it should progress to a 'Referendum'. Officers have, in liaison with the Parish Council, considered the modifications and are satisfied with Examiner's conclusions (Appendix 2).

**3.2** The decision to refuse a plan proposal can only be made on the following grounds:

- If the Council is not satisfied that the plan proposal meets the basic conditions;
- If the Council does not believe that with modifications the plan proposal can meet the basic conditions;
- If the Council considers that the plan proposal constitutes a repeat proposal; and
- If the Council does not believe that the Qualifying Body is authorised or that the proposal does not comply with that authorisation.

**3.3** Within 56 days of the publication of the 'Decision Statement', the Borough Council must organise a Referendum on any plan or order that it has determined meets the 'Basic Conditions'. A Referendum version of the NDP that incorporates all of the amendments as set out in Appendix 2 will also be made available.

### **4.0 OTHER OPTIONS CONSIDERED**

**4.1** The options open to the Council are limited by legislation. The Committee can either:

- (i) Make modifications to The Leigh NDP in accordance with the examiner's recommendations and approve the plan to proceed to referendum; or
- (ii) Make a decision that differs from the examiner's recommendation (Option (ii) is not recommended because the Council would need to consult on such a proposal and refer the issue to a further independent examination if appropriate); or
- (iii) Refuse the plan if it is not satisfied with the plan proposal with respect to meeting the basic conditions, compatibility with Convention rights, definition and provisions of the NDP even with modifications. Option (iii) is not recommended. Without robust grounds, which are not considered to be present in this case, refusing to take the plan to a referendum could leave the Council vulnerable to a legal challenge.

## **5.0 CONSULTATION**

**5.1** Consultation has been undertaken in order to legally comply with the requirements of the Neighbourhood Planning (General) Regulations 2012, as amended. In addition to public engagement throughout the process of preparing the plan the regulations require two statutory six week periods of consultation in the second stage of the process:

- Under Regulation 14 the Qualifying Body is required to consult; and
- Under Regulation 16 the Council is required to consult on the plan submitted as a plan proposal (under Regulation 15) and forward the responses to the Independent Examiner for consideration.

## **6.0 RELEVANT COUNCIL POLICIES/STRATEGIES**

**6.1** Tewkesbury Borough Council Plan.

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

Tewkesbury Borough Local Plan 2006 – 2011.

Emerging Tewkesbury Borough Plan 2031.

## **7.0 RELEVANT GOVERNMENT POLICIES**

**7.1** National Planning Policy Framework and Planning Practice Guidance.

## **8.0 RESOURCE IMPLICATIONS (Human/Property)**

**8.1** If the plan is judged to meet the 'Basic Conditions' there will be human resource implications as the Council is required to arrange the Referendum; and, subject to the results of the Referendum, bring the plan into force within another 56 days of a successful Referendum.

**8.2** The resource implications are corporate including Development Services, Community Development, Financial Services and One Legal. However, at the Referendum stage the greatest demand will be on Democratic 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, as part of the planning framework for the area, the sustainable development they need.

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

**10.1** As part of the Examination process the plan was found to meet the Basic Conditions as set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. A requirement of meeting these conditions is that the plan must be compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations.

## **11.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS**

- 11.1** Decision of Council to delegate to the Executive Committee the authorisation for Neighbourhood Plans to go to Community Referendum – 20 September 2016.

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**Background Papers:** The Leigh Submission Draft Neighbourhood Development Plan (July 2021).

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**Appendices:**

- 1 Report of the Examination into The Leigh Neighbourhood Development Plan (April 2022).
- 2 Schedule of the Examiner’s recommended modifications.