

STROUD DISTRICT COUNCIL
ENVIRONMENT COMMITTEE

**AGENDA
ITEM NO**

4 JUNE 2020

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Report Title	HORSLEY NEIGHBOURHOOD DEVELOPMENT PLAN: PROGRESS TO REFERENDUM
Purpose of Report	To inform councillors of progress regarding the Horsley Neighbourhood Development Plan (HNDP).
Decision(s)	<p>The Committee RESOLVES:</p> <ul style="list-style-type: none"> a. To accept all recommended modifications of the Examiner’s Report (Appendix A); b. that the Horsley Neighbourhood Development Plan, as modified, meets the basic conditions, is compatible with the Convention rights, complies with the definition of a neighbourhood development plan (NDP) and the provisions that can be made by a NDP; c. to take all appropriate actions to progress the Horsley Neighbourhood Development Plan to referendum no sooner than May 2021.
Consultation and Feedback	<p>The HNDP has been through two statutory consultations. Horsley Parish Council undertook a pre-submission consultation (Regulation 14) from 16th October 2018 to 30th November 2018 and the Council undertook a post-submission consultation (Regulation 16) from 20th November 2019 to 8th January 2020. Both consultations lasted no less than the six weeks as required by the regulations.</p> <p>Horsley Parish Council considered the comments received during the Regulation 14 consultation and made changes to the plan. The comments received during the Council’s Regulation 16 consultation were provided to the examiner of the plan who considered them during the examination.</p>
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<p>Options</p>	<p>Option 1 - Make modifications to the HNBP in accordance with the examiner's recommendations</p> <p>This is the option promoted by this report. It consists of accepting the recommendations made in the neighbourhood plan examination report, determining that the HNBP meets the basic conditions and all legal requirements and should therefore proceed to a referendum.</p> <p>This approach is considered to be the best option for progressing the plan prepared by the community without any unnecessary delay in the decision making process.</p> <p>Option 2 – Make a decision that differs from the examiner's recommendation</p> <p>If the Council were to propose a decision that differs from the examiner's recommendation, the Council is required to:</p> <ol style="list-style-type: none"> 1. notify all those identified on the consultation statement of the town council and invite representations, during a period of six weeks, 2. refer the issue to a further independent examination if appropriate. <p>Option 3 - Refuse the Plan</p> <p>The Council can decide that it is not satisfied with the plan proposal with respect to meeting basic conditions, compatibility with Convention rights, definition and provisions of the NDP even if modified. 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.</p>			
<p>Background Papers</p>	<p>N/A</p>			
<p>Appendices</p>	<p>Appendix A – Horsley NDP Examiner's Report</p>			
<p>Implications (further details at the end of the report)</p>	<p>Financial</p>	<p>Legal</p>	<p>Equality</p>	<p>Environmental</p>
	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>

BACKGROUND

- 1.1 Neighbourhood planning was introduced through the Localism Act 2011. New powers allowed qualifying bodies (parish or town councils) to produce NDPs. NDPs allow communities to set planning policies for their area.
- 1.2 Once adopted, NDPs join the adopted Local Plan in the Council's Development Plan. They must be considered when planning decisions are made, along with the Local Plan and national planning policy.

- 1.3 Following an update to Neighbourhood Planning guidance in response to the COVID-19 pandemic, the plan will now carry significant weight in decision making if approved to proceed to referendum.
- 1.4 Producing a NDP allows parish and town councils to increase the amount of Community Infrastructure Levy (CIL) funds they receive from developments within their area from 15% to 25%.
- 1.5 NDPs must be examined by a suitably qualified independent person, appointed by the Council and agreed by the qualifying body (Town/Parish Council). Neighbourhood plans must also pass a referendum of local voters by a simple majority. If a plan passes referendum, the Council must make (adopt) it, unless it breaches EU obligations or human rights legislation.

HORSLEY NEIGHBOURHOOD DEVELOPMENT PLAN

- 1.6 The Horsley Neighbourhood Area was designated by resolution of the Council's Environment Committee on 4th September 2014.
- 1.7 The HNDP was led by Horsley Parish Council ('the qualifying body').
- 1.8 A submission version of the HNDP was accepted by the Council on 12th November 2019, under regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the regulations'). As prescribed by 'the regulations', the Council consulted on the plan for six weeks and arranged for the plan to be examined.

EXAMINATION

- 1.9 The Council appointed Andrew Ashcroft MRTPI as independent examiner of the HNDP.
- 1.10 The examination concludes once the Examiner's Report is received by the Council. The Examiner's Report contains a recommendation of whether the HNDP, with or without modifications, should proceed to a referendum.
- 1.11 The examiner's findings, including recommendations and the reasons for them, are set out in the Examiner's Report (Appendix A). The examiner only makes recommendations necessary to make the Plan, meet the basic conditions and other legal requirements.
- 1.12 The recommended modifications to the HNDP are set out throughout the Examiner's Report (Appendix A).

CONSIDERATION

- 1.13 Following the completion of the examination, the Council is required to consider each of the examiner's recommendations and the reasons for them and decide what action to take in response to each. Officers have reviewed the Examiner's Report and agree with all the recommendations and the reasons for them.
- 1.14 The Council is required to consider whether the draft HNDP meets the basic conditions, is compatible with the Convention rights and complies with the definition of an NDP and the provisions that can be made by a NDP or can do so as modified.
- 1.15 Officer's have carefully considered the HNDP and the Examiner's report and consider that:
- I. The HNDP, as modified by the Examiner's recommendations, has had regard to national policies and advice contained in guidance issued by the Secretary of State. The HNDP has been assessed against the National Planning Policy Framework and national Planning Practice Guidance and modifications proposed to comply with national policy.
 - II. The HNDP, as modified by the Examiner's recommendations, contributes to the achievement of sustainable development. The HNDP has been subject to sustainability assessment that identifies the plan will have an overall positive effect.
 - III. The HNDP, as modified by the Examiner's recommendations, is in general conformity with the strategic policies contained in the development plan as a whole for the area. The HNDP has been assessed against the adopted Stroud District Local Plan and modifications proposed to ensure the HNDP does not become out-of-date in the context of a review of strategic policies in the Local Plan.
 - IV. The HNDP, as modified by the Examiner's recommendations, would not breach, and be otherwise incompatible with EU obligations. The Examiner's assessment has involved considering the following Directives: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); and the Water Framework Directive (2000/60/EC). In addition, no issue arises in respect of equality under general principles of EU law or any EU equality directive. The Council issued a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Determination in November 2019, which confirmed to Horsley Parish Council that a SEA and a full HRA were not required on the HNDP.
 - V. The HNDP, as modified by the Examiner's recommendations, would not give rise to significant environmental effects on European sites and European offshore marine sites. The Council issued a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Determination in November 2019, which confirmed to Horsley Parish Council that a SEA and a full HRA were not required on the HNDP.

- VI. The HNDP, as modified by the Examiner's recommendations, is in all respects fully compatible with Convention rights contained in the Human Rights Act 1988. The Examiner considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. Nothing in his examination of the Draft HNDP indicated any breach of a Convention right. There has been full and adequate opportunity for all interested parties to take part in the preparation of the Plan and to make their comments known.
- VII. The HNDP, as modified by the Examiner's recommendations, complies with the definition of an NDP and the provisions that can be made by a NDP. The HNDP sets out policies in relation to the development and use of land in the whole of the neighbourhood area; it specifies the period for which it is to have effect; it does not include provision about development that is 'excluded development' and does not relate to more than one neighbourhood area or repeat an existing planning permission.
- 1.16 Subject to consideration at the meeting, members are asked to authorise officers to make the modifications specified in the Examiner's Report and progress the modified version of the plan to a referendum.
- 1.17 The neighbourhood area matches the civic boundary of Horsley Parish; officers recommend that the referendum area should remain that of the Horsley Neighbourhood Area, as designated by the Council on 4th September 2014. However, the Council cannot make a decision that differs from the examiners' recommendations about the referendum area.

NEXT STEPS

- 1.18 The Council must publish a statement setting out its decision and the reason for making it. Once this is published, the plan will carry significant weight in the decision making process in line with revised Neighbourhood Planning guidance in response to the COVID-19 pandemic. The qualifying body will need to modify the plan and produce a final version for the referendum.
- 1.19 The Council would normally be required to hold a referendum within 56 working days from the date that the decision to take the plan forward to a referendum is published. Due to the COVID-19 pandemic, no referendum can take place until May 2021.
- 1.20 If the plan passes referendum, the Council is required to make (adopt) it unless it breaches EU or Human Rights legislation. The Council's scheme of delegation does not delegate this decision to officers or the Environment Committee, so the decision to make the plan will be made by full Council. The plan cannot be modified at that stage.

2. IMPLICATIONS

2.1 Financial Implications

There are no direct financial implications arising from this recommendation. Not to accept the recommendations could lead to costs associated with legal challenge

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2.2 Legal Implications

As stated in paragraph 1.19, ordinarily, a neighbourhood planning referendum must be held within 56 days immediately following publication of the decision. However, Regulation 13 of the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 supersedes Regulation 2A of the Neighbourhood Planning (Referendums) Regulations 2012(1). As such, the referendum will not be held until the 6th of May 2021 as things currently stand.

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 can be given significant weight in decision-making, so far as the plan is material to the application

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2.3 Equality Implications

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
No Equality Impact Assessment has been carried out.

2.4 Environmental Implications

The Neighbourhood Plan General Regulations 2015 require a qualifying body either to submit an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 or a statement of reasons why an environmental report is not required. In order to comply with this requirement, Stroud District Council (SDC) undertook a screening exercise in November 2019 on the need or otherwise for a Strategic Environmental Assessment (SEA) to be prepared for the Plan. As a result of this process SDC concluded that the Plan is not likely to have any significant effects on the environment and accordingly would not require an SEA.

SDC also prepared a Habitats Regulations Assessment (HRA) of the Plan. It concludes that the neighbourhood plan will not give rise to likely significant effects on European sites, either alone or in combination with other plans or projects, and that Appropriate Assessment is not required.

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 contribute to the achievement of sustainable development and not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 (7).