

**Local Plan Working Group**

**27 February 2019**

Report of the Corporate Director for Economy and Place

Portfolio of the Executive Member for Transport and Planning

## **Earswick Neighbourhood Plan – Examiner’s Report**

### **Summary**

1. The Earswick Neighbourhood Plan Examiner’s Report is attached at Annex A to this report. Annex B sets out a Decision Statement which includes the Council’s proposed response to the Examiner’s recommended modifications. This report asks Members to recommend to Executive to agree the Examiner’s recommendations to enable the Neighbourhood Plan to proceed to Referendum.

### **Recommendations**

2. Members are asked to recommend that Executive:
  - i) Agree the Examiner’s modifications set out at Annex B to the Earswick Neighbourhood Plan and that subject to those changes the Plan meets the Basic Conditions and other legislative requirements.

Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

- ii) Agree that the Earswick Neighbourhood Plan as amended proceeds to a local referendum based on the geographic boundary of the parish of Earswick as recommend by the Examiner.

Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

- iii) To approve the Decision Statement attached at Annex B to be published on the City of York Council’s website.

Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

## Background

3. The Localism Act 2011 introduced new powers for community groups to prepare neighbourhood plans for their local areas. The Council has a statutory duty to assist communities in the preparation of Neighbourhood Plans and to take plans through a process of Examination and Referendum. The local authority is required to take decisions at key stages in the process within time limits that apply, as set out in the Neighbourhood Planning (General) Regulations 2012 as amended in 2015 and 2016 (“the Regulations”).
4. The Earswick Neighbourhood Plan has been prepared by Earswick Parish Council with on-going engagement with the local community and City of York Council. Prior to Examination it has been through the following stages of preparation:
  - Designation as a Neighbourhood Area (9<sup>th</sup> December 2015)
  - Consultation on 1<sup>st</sup> Pre-Submission Version (20<sup>th</sup> November 2016 to 7<sup>th</sup> January 2017)
  - Consultation on 2<sup>nd</sup> Pre-Submission Version (4<sup>th</sup> December 2017 to 5<sup>th</sup> February 2018)
  - Submission to City of York Council (5<sup>th</sup> February 2018)
  - Submission Consultation (4<sup>th</sup> October to 15<sup>th</sup> November 2018)
5. Following the close of Submission consultation and with the consent of the Parish Council, Mr Andrew Ashcroft BA (Hons) MA, DMS, MRTPI was appointed to undertake an Independent Examination of the Neighbourhood Plan. The purpose of the Examination is to consider whether the Plan complies with various legislative requirements and meets a set of “Basic Conditions” set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. The Basic Conditions are:
  - i) To have regard to national policies and advice contained in guidance issued by the Secretary of State;
  - ii) To contribute to the achievement of sustainable development;
  - iii) To be in general conformity with the strategic policies contained in the development plan for the area;
  - iv) To not breach, and be otherwise compatible with, EU and European convention on Human Rights obligations; and

- v) To be in conformity with the Conservation of Habitats and Species Regulations 2017(3).
6. The Examiner can make one of three overall recommendations on the Neighbourhood Plan namely that it can proceed to referendum (i) with modifications; (ii) without modification; or (iii) that the Plan cannot be modified in a way that allows it to meet the Basic Conditions or legal requirements and should not proceed to referendum.
  7. Modifications can only be those that the Examiner considers are needed to:
    - a) make the plan conform to the Basic Conditions
    - b) make the plan compatible with the Convention rights
    - c) make the plan comply with definition of a neighbourhood plan and the provisions that can be made by a neighbourhood plan or
    - d) to correct errors.
  8. If a recommendation to go to a referendum is made, the Examiner must also recommend whether the area for the referendum should go beyond the Neighbourhood Area, and if so what the extended area should be.
  9. The Regulations presume that Neighbourhood Plans will be examined by way of written evidence only, with a requirement for a hearing only in cases where the Examiner feels the only way to properly assess a particular issue is via a discussion with all parties. The Examiner decided that examination by written representations was appropriate in this case and provided his final report on 7<sup>th</sup> January 2019.
  10. Overall, the Report concluded that “Subject to a series of recommended modifications set out in this report I have concluded that the Neighbourhood Plan meets all the necessary legal requirements and should proceed to referendum”.

### **Examiner’s Recommendations**

11. Annex A and B set out all of the Examiner’s detailed and consequential minor modifications to the Neighbourhood Plan.
12. The majority of modifications were minor however the examiner did include a key point in relation to the Green Belt.

13. Modifications were suggested by the examiner in relation to Policy ENP4: Green Belt to reflect the policy context of York's Green Belt. The Examiner recommends that the neighbourhood plan continues to apply the approach to the identification of the Green Belt as set out currently in the saved policies relating to Green Belt in the revoked RSS and the Fourth Set of Changes Development Control (draft) York Local Plan (2005) on an interim basis until such times as the emerging Local Plan is adopted. The Earswick Neighbourhood Plan does not seek to allocate any sites within the general extent of Green Belt as per the saved RSS policies. The examiner concludes that this will ensure that the preparation of the emerging Local Plan is used as the mechanism for the detailed identification of the York Green Belt boundaries in accordance with national planning policy.

### **Next Steps**

14. The next stage of the relevant legislation requires the Council to:
  - Consider each of the recommendations made by the Examiner's Report (and the reasons for them), and
  - Decide what action to take in response to each recommendation.
15. If the LPA is satisfied that the Neighbourhood Plan meets the Basic Conditions, is compatible with the Convention rights, and complies with the definition of an NP and the provisions that can be made by a NP or can do so if modified (whether or not recommended by the Examiner), then a referendum must be held.
16. The Council must publish its decision and its reasons for it in a 'Decision Statement'. The Decision Statement must be published within 5 weeks beginning with the day following receipt of the Examiner's Report unless an alternative timescale is agreed with the Parish Council. The March 7<sup>th</sup> Executive date is more than 5 weeks from the receipt of the examiners report (7<sup>th</sup> January 2019) however the Parish Council has agreed this alternative timescale in writing.
17. The Examiner's recommendations on the Neighbourhood Plan are not binding on the Council, who may choose to make a decision which differs from the Examiner's. However, any significant changes from the Examiner's recommendations would require a further period of public consultation, along with a statement from the Council setting out why it has taken this decision.

18. A decision to refuse the Neighbourhood Plan proposal could only be made on the following grounds:
- the LPA is not satisfied that the Neighbourhood Plan meets the Basic Conditions;
  - the LPA does not believe that with modification Neighbourhood Plan can meet the Basic Conditions;
  - the LPA considers that the Neighbourhood Plan constitutes a repeat proposal; or
  - the LPA does not believe the qualifying body is authorised or
  - that the proposal does not comply with that authorisation.
19. The Examiner's Report concludes that the Neighbourhood Plan meets the Basic Conditions required by legislation, and that subject to the modifications proposed in his report, the Neighbourhood Plan should proceed to a referendum to be held within the Neighbourhood Area. Officers have considered all of the recommendations and the Examiner's reasons for them and have set out the Council's response as part of the Decision Statement in Annex B.
20. It is recommended that all of the Examiner's recommended modifications be made as set out in Table 1 at Annex B. The Officer recommendation is that subject to those modifications the Plan meets the Basic Conditions, is compatible with the Convention Rights and complies with the provisions that can be made by a neighbourhood plan. Subject to the Executive's agreement of the Decision Statement, the Neighbourhood Plan will be amended accordingly and the Neighbourhood Plan will proceed to local referendum.

### **Referendum**

21. The Council must organise a referendum on any Neighbourhood Plan that meets the legislative requirements. This ensures that the community has the final say on whether a Neighbourhood Plan comes into force.
22. The Examiner's Report confirms that the referendum area should be the same as the Neighbourhood Area designated by the Council, which is the parish of Earswick. The Neighbourhood Planning (Referendum) Regulations 2012 as amended require the Local Planning Authority to hold the referendum within 56 days of the date that a decision to hold

one has been made. In this case, the decision whether to hold a referendum will be made at Executive on 7<sup>th</sup> March 2019. Assuming the Executive endorse the recommendations in this report, it is anticipated that the referendum will be held on or before 30<sup>th</sup> May 2019, within the 56 day period set out in the amended Regulations. The date for the referendum and further details will be publicised once a date is set by the Council. This is currently being discussed with colleagues in Electoral Services.

23. If over 50% of those voting in the referendum vote in favour of the Neighbourhood Plan, then under the legislation the Council must bring it into force within 8 weeks of the result of referendum (unless there are unresolved legal challenges). If the referendum results in a “yes” vote a further report will be brought to Executive with regard to the formal adoption of the Neighbourhood Plan as part of the statutory Development Plan.

### **Decision making**

24. As the Plan is now at an advanced stage, its policies where relevant have legal weight in decision making with regard to any planning applications to be determined within the Earswick parish. This is reflected in The Neighbourhood Planning Act 2017 which recognises that, when determining an application, a LPA must have regard to “a post examination draft neighbourhood development plan as far as material to the application”. If a LPA make a decision to allow a draft neighbourhood plan with modifications to proceed to referendum, then the modifications recommended must also be taken into account.

### **Consultation**

25. As mentioned earlier in the report, the Earswick Neighbourhood Plan has been through several stages of consultation. These are: consultation on designation as a Neighbourhood Area (9<sup>th</sup> December 2015), consultation on the 1<sup>st</sup> Pre-Submission version of the Plan (20<sup>th</sup> November 2016 to 7<sup>th</sup> January 2017), Consultation on 2<sup>nd</sup> Pre-Submission Version (4<sup>th</sup> December 2017 to 5<sup>th</sup> February 2018) consultation on a Submission version (4<sup>th</sup> October to 15<sup>th</sup> November 2018).
26. A Consultation Statement accompanied the submission version of the Neighbourhood Plan and sets out all the consultation undertaken. All the consultation undertaken by City of York Council has been carried

out in accordance with the Council's Statement of Community Involvement.

## **Options**

27. Officers request that Members recommend to Executive that they:
- i) endorse the recommendations in paragraph 1 of this report and agree with the Examiner's Recommendations and approve the Decision Statement attached at Annex B to enable the Earswick Neighbourhood Plan to proceed to Referendum.

## **Analysis**

28. The Examiner has concluded that the modifications will satisfy the Basic Conditions, the Council has an obligation, under Schedule 4B of the 1990 Town and Country Planning Act, to arrange a local referendum, unless the Examiner's recommended modifications and/or conclusions are to be challenged. The Officer recommendation to Members is that the modifications made by the Examiner are well justified and that, with these modifications, the Neighbourhood Plan proposals will meet the legislative requirements. The Council must organise a referendum on any Neighbourhood Plan that meets the legislative requirements. This will give the local community the opportunity to vote on whether they deem the Neighbourhood Plan to meet the needs and aspirations for the future of their neighbourhood.

## **Alternative Options and Reasons for Rejection**

29. The following alternative options have been identified and rejected for the reasons as set out below
- ii) *That Members recommend to Executive that they provide modified recommendations to those made by the Examiner and, if considered to be significant, agree that these will be subject to further consultation along with a statement explain why the decision differs from the Examiner's;*

*This option is not considered appropriate as the proposed modifications make the Neighbourhood Plan more robust and enable it to meet the Basic Conditions.*

- iii) *That Members recommend to Executive that they reject the Examiner's recommendations and refuse the Neighbourhood Plan*

*proposal. This decision can only be justified on the grounds listed under paragraph 17.*

*This option can only be justified if the Examiner recommends that the Plan should not proceed to a referendum, or the Council is not satisfied that the plan has met the procedural and legal requirements. This option is not considered appropriate.*

## **Financial Implications**

30. The responsibility and therefore the costs of the Examination and Referendum stages of the Neighbourhood Plan production lie with the City of York Council. Table 1 below sets out a breakdown of the non-staffing costs of producing the Earswick Neighbourhood Plan to date and also sets out the approximate costs associated with the Examination and Referendum.

**Table 1**

<b>Stage</b>	<b>Cost</b>
Designation consultation	£500
Submission consultation	£500
NP grant to Parish Councils	£3,000
Examination	£5,580
Referendum	Circa £5,000 (tbc)
<b>Total</b>	<b>£ 14,580</b>

31. There is also a significant level of officer costs required throughout the process to provide the required support to each of the Neighbourhood Planning Bodies. A significant level of officer input at an appropriate level is needed throughout the process to ensure legal conformity, appropriate plan content, technical advice, including provision of mapping and assistance with Strategic Environmental Assessment (SEA) and Habitat Regulation Assessment (HRA).
32. Financial support from Central Government is available for Local Planning Authorities (LPAs) involved with Neighbourhood Plans. Some LPAs can claim £5,000 for the designation of neighbourhood areas.



Whilst this was claimed for the designation of the Earswick Neighbourhood Plan in 2015, it is no longer available for neighbourhood areas in York as more than 5 neighbourhood areas are designated. LPAs can also claim £20,000 once they have set a date for a referendum following a successful examination.

33. Earswick Parish Council was provided with a £3k grant from the Council to support the development of the neighbourhood plan.
34. Communities with Neighbourhood Plans in place can also benefit financially should York adopt a Community Infrastructure Levy (CIL). They can benefit from 25% of the revenues from the CIL arising from the development that takes place in their area.

## Implications

35. The following implications have been assessed:

- **Financial**– The examination and referendum will be funded by City of York Council. Once a date for the referendum is set the Council can apply for a government grant of £20,000 towards the costs of the Councils involvement in preparing the Plan (including the costs of the Examination and referendum). Any shortfall will need to be accommodated within existing resource.
- **Human Resources (HR)** - none
- **One Planet Council / Equalities** - Better Decision Making Tool attached at Annex D.
- **Legal** - The Legal implications are set out within the body of this report. The decision to proceed to referendum is, like all decisions of a public authority, open to challenge by Judicial Review. The risk of any legal challenge to the Neighbourhood Plan being successful has been minimised by the thorough and robust way in which it has been prepared and tested.
- **Crime and Disorder** - None
- **Information Technology (IT)** None
- **Property** - None
- **Other** – None

## Risk Management

36. In compliance with the Council's risk management strategy, the main risks associated with the Earswick Neighbourhood Plan are as follows:

- Risks arising from failure to comply with the laws and regulations relating to Planning and the SA and Strategic Environmental Assessment processes and not exercising local control of developments.

### Contact Details

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### Background Papers:

[https://www.york.gov.uk/info/20051/planning\\_policy/1747/earswick\\_neighbourhood\\_plan](https://www.york.gov.uk/info/20051/planning_policy/1747/earswick_neighbourhood_plan)

## **Annexes**

- Annex A Earswick Neighbourhood Plan Examiner's Report
- Annex B Decision Statement
- Annex C Earswick Neighbourhood Plan (Submission version)
- Annex D Better Decision Making Tool

## **List of Abbreviations Used in this Report**

- BA (Hons) MA, DMS, MRTPI – Bachelor of Arts, Masters, Diploma in Management Studies, Member of the Royal Town Planning Institute.
- CIL - Community Infrastructure Levy
- EU – European Union
- HRA – Habitats Regulation Assessment
- LPA – Local Planning Authority
- NP – Neighbourhood Plan
- SEA – Strategic Environmental Assessment