

**Local Plan Working Group**

**7<sup>th</sup> March 2022**

Report of the Corporate Director of Place

## **YORK MINSTER PRECINCT NEIGHBOURHOOD PLAN – EXAMINER’S REPORT**

### **Summary**

1. The York Minster Precinct 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 requests that the LPWG recommends to Executive that it agrees the Examiner’s recommendations to enable the Neighbourhood Plan to proceed to Referendum.

### **Recommendations**

2. LPWG Members are asked to recommend the report to Executive with any additional observations they wish Executive to consider:  
Reason: In order that Executive can consider the observations and recommendations of the LPWG in their decision making.

Executive Recommendations:

- i) Agrees the Examiner’s modifications set out at Annex B (Decision Statement) to the York Minster Precinct Neighbourhood Plan and that subject to those modifications the Neighbourhood Plan meets the Basic Conditions and other legislative requirements.

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

- ii) Agrees that the York Minster Precinct Neighbourhood Plan as amended proceeds to a local referendum based on the neighbourhood area and residential properties within the immediate vicinity of the neighbourhood area, to include the postcodes outlined in Appendix A of the Examiners Report (in Annex A).

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

- (iii) Approves 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") and within new government guidance in relation to the Covid-19 pandemic.
4. The York Minster Precinct Neighbourhood Plan has been prepared by York Minster Neighbourhood Plan Forum with the support of York Minster and Alan Baxter, and the 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 (14<sup>th</sup> March 2019)
  - Issues and Options (25<sup>th</sup> May to 30<sup>th</sup> June 2019)
  - Draft Plan (17<sup>th</sup> May to 7<sup>th</sup> July 2019)
  - Consultation on Pre-Submission Version (Regulation 14) (11<sup>th</sup> January to 23<sup>rd</sup> February 2020)

- Second Pre-Submission Version (Regulation 14) (16th December 2020 to 14th February 2021)
- Submission to City of York Council (26<sup>th</sup> April 2021)
- Submission Consultation (Regulation 16) (14<sup>th</sup> July to 8<sup>th</sup> September 2021)

5. Following the close of submission consultation and with the consent of the York Minster Precinct Neighbourhood Plan Forum, 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 2022.
10. Overall, the Report concluded that *“On the basis of the findings in this report I recommend to the City of York Council that subject to the incorporation of the modifications set out in this report that the Minster Precinct Neighbourhood Development Plan should proceed to referendum.”*
11. On the matter of the Referendum going beyond the Neighbourhood Plan area, the Examiner stated: *“I recommend that the referendum area is the neighbourhood area and residential properties within the immediate vicinity of the neighbourhood area. It is the area where the immediate effects of the development proposed in the Plan could be experienced.”*

## **Examiner’s Recommendations**

12. Annex A to this Committee report sets out the Examiner’s Report, including modifications.
13. Positively the Examiner summarises that:  
*“It is distinctive in addressing a specific set of issues that have been identified and refined by the wider community. It is a very impressive Plan in its own right and it positively overlaps with other strategic documents produced by the Minster. Following the independent examination of the Plan I have concluded that the Minster Precinct Neighbourhood Development Plan meets the basic conditions for the*

*preparation of a neighbourhood plan subject to a series of recommended modifications.”*

14. The examiner also identified that: *“The Plan has been underpinned by community support and engagement. It is clear that all sections of the community have been actively engaged in its preparation.”*
15. He also identified that: *“Subject to a series of recommended modifications set out in this report I have concluded that the Minster Precinct Neighbourhood Plan meets all the necessary legal requirements and should proceed to referendum.”*
16. The Examiners Report assesses the policies in the Neighbourhood Plan and makes a series of recommended modifications where necessary, to ensure that the policies have the necessary precision to meet the basic conditions. The proposed Modifications by the Inspector are outlined in Annex B, together with the Council’s Consideration / Justification. The bold text in the ‘Recommended Modification’ column shows recommended modifications to policies and the modifications not in bold shows other recommended changes, primarily to text and justifications.
17. The Examiner has proposed modifications to the following policies:
  - **Policy A2: Sustainable Development:**
  - **Policy A3: Policies Map**
  - **Policy A4: Design Excellence**
  - **Policy B1: Landscape and Biodiversity Net Gain**
  - **Policy C1: Historic Environment**
  - **Policy C2: Listed building Consent**
  - **Policy C3: Archaeological and Scheduled Monument Consent:**
  - **Policy D1: Wellbeing**
  - **Policy E1: Movement and Public Realm**
  - **Policy E2: Accessibility and Wayfinding**
  - **Policy E3: Electric Vehicles and Parking**

- **Policy E4: Green Travel Plan**
- **Policy F1: Monitoring and Securing Delivery**
- **Policy PA1: Minster Yard and College Green**
- **Policy PA2: West Front and Queen Elizabeth Square**
- **Policy PA3: Learning and gardens**
- **Policy PA4: Own Use Properties**

## **Community Actions**

39. Additionally the examiner has made a series of amendments which will bring the clarity required by NPPF to the Community Actions which are identified in the plan to provide context for these Actions which are not land use policies but which complement the land use policies and enhance the legibility of the plan.

## **Other matters**

40. The Examiner also considered a number of other, consequential changes to the general and specific text in other parts of the Plan in so far as they are necessary to ensure that the Plan meets the basic conditions.
41. The Examiner also identified changes to the general text may be required elsewhere in the Plan as a result of the recommended modifications to the policies.

## **Next Steps**

42. 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.
43. 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.

44. 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 Neighbourhood Plan Forum. The 17th March Executive date is more than 5 weeks from the receipt of the examiner's report (7<sup>th</sup> January 2022) however York Minster Neighbourhood Plan Forum has confirmed acceptance of this alternative timescale in writing.
45. 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.
46. 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.
47. The Examiner's Report concludes that, subject to the modifications proposed in his report, the Neighbourhood Plan meets the Basic Conditions required by legislation and that 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.
48. 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

49. 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.
50. The Examiner considers that the referendum area presents a number of geographic and administrative challenges – on the one hand the proposed neighbourhood area had been drawn to be as tight as possible, to reflect the scale, nature and influence of the Minster, and on the other hand, the policies and proposals in the Plan have the ability to affect local residents within the immediate vicinity of the neighbourhood area itself. Consequently, the Examiner’s Report recommends that the referendum area should be the neighbourhood area and residential properties within the immediate vicinity of the neighbourhood area. Appendix A of the Examiners report identifies the postcodes which are included in the referendum area. However, it should be noted that a new block of student flats at The Brickworks, Hallfield Road, York has the postcode YO31 7AD (which is within the list of postcodes in Appendix A of the Inspectors Report). It is geographically well outside the buffer zone area identified as being of influence from the Minster Precinct area. It is considered as being an anomaly and consequently, the block of student flats won’t be included within the referendum.
51. 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. Assuming the Executive endorse the recommendations in this report, it is anticipated that the referendum will be held on or before 12<sup>th</sup> May 2022 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.
52. 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**

53. 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 York Minster Precinct area. 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.
- 54 The government have published updated guidance on the weight of the Neighbourhood Plan policies. The new government guidance states that ‘where the local planning authority has issued a decision statement (as set out under Regulation 18 of the Neighbourhood Planning (General) Regulations 2012) detailing its 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’.

### **Consultation**

- 55 As mentioned earlier in the report, the York Minster Precinct Neighbourhood Plan has been through several stages of consultation. These are:
- Designation as a Neighbourhood Area (14<sup>th</sup> March 2019)
  - Issues and Options (25<sup>th</sup> May to 30<sup>th</sup> June 2019)
  - Draft Plan (17<sup>th</sup> May to 7<sup>th</sup> July 2019)
  - Consultation on Pre-Submission Version (Regulation 14) (11<sup>th</sup> January to 23<sup>rd</sup> February 2020)
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  - Submission Consultation (Regulation 16) (14<sup>th</sup> July to 8<sup>th</sup> September 2021)
56. 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**

57. Officers request that Members:
- i) endorse the recommendations in paragraph 2 of this report and agree with the Examiner's Recommendations and approve the Decision Statement attached at Annex B to enable the York Minster Precinct Neighbourhood Plan to proceed to Referendum.

## **Analysis**

58. 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.
59. Council Officers understand that the York Minster Precinct Neighbourhood Plan Forum are considering their position in relation to the York Minster Precinct Neighbourhood Plan Examiners Report.

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

60. The following alternative options have been identified and rejected for the reasons as set out below
- ii) *That the Executive 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 the Executive reject the Examiner’s recommendations and refuse the Neighbourhood Plan proposal. This decision can only be justified on the grounds listed under paragraph 46.*

*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**

61. 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 York Minster Precinct Neighbourhood Plan to date and also sets out the estimated costs associated with the Examination and Referendum.

**Table 1**

<b>Stage</b>	<b>Cost</b>
Designation consultation	£500
Submission consultation	£500
NP grant to Neighbourhood Forum	£3,000
Examination	£4362
Referendum	Circa £12,000 (tbc)
<b>Total</b>	<b>£20,362</b>

62. 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. This officer input seeks 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).

63. 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. However, it is no longer available for neighbourhood areas in York as more than 5 neighbourhood areas are designated. Local Planning Authorities can also claim £20,000 - they apply for this once they have set a date for a referendum following a successful examination. A claim will be able to be made at the point when the local planning authority issues a decision statement (as set out under Regulation 25 of the Neighbourhood Planning (General) Regulations 2012) detailing its intention to send the plan to referendum (rather than when a referendum date has been set).

64. York Minster Neighbourhood Plan Forum was provided with a £3k grant from the Council to support the development of the neighbourhood plan.
65. 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

66. The following implications have been assessed:
  - **Financial** – The examination and referendum will be funded by City of York Council. A claim by the City of York Council will be able to be made to government for a grant of £20,000 at the point when the City of York Council issues a decision statement (as set out under Regulation 25 of the Neighbourhood Planning (General) Regulations 2012) detailing its intention to send the plan to referendum. The government grant of £20,000 can be put towards the costs of the City of York Council's 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**

67. In compliance with the Council's risk management strategy, the main risks associated with the York Minster Precinct 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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**Report**  **Date** 24.2.22  
**Approved**

## **Specialist Implications Officer(s)** List information for all

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### **Wards Affected:**

**Guildhall**

**For further information please contact the author of the report**

### **Background Papers:**

<https://www.york.gov.uk/planning-policy/minster-precinct-neighbourhood-plan/1>

### **Annexes**

Annex A York Minster Precinct Neighbourhood Plan Examiner's Report  
Annex B Decision Statement  
Annex C York Minster Precinct Neighbourhood Plan (Submission Version)  
Annex D Better Decision Making Tool  
Annex E Equalities Impact Assessment (EqIA)

## **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.*

EU – *European Union*

LPA – *Local Planning Authority*

NP – *Neighbourhood Plan*

SEA – *Strategic Environmental Assessment*

HRA – *Habitats Regulation Assessment*