

Executive

27 September 2018

Report of the Director for Economy and Place
Portfolio of the Executive Member for Transport & Planning

Rufforth with Knapton Neighbourhood Plan – Examiner’s Report

Summary

1. The Rufforth with Knapton 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 Executive agree the Examiner’s recommendations to enable the Neighbourhood Plan to proceed to Referendum. These issues were previously considered at Local Plan Working Group on 20 September 2018.

Recommendations

2. The Executive is asked to:
 - i) Agree the Examiner’s modifications and the consequential minor modifications set out at Annex B to the Rufforth with Knapton 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) Agree that the Rufforth with Knapton Neighbourhood Plan as amended proceeds to a local referendum based on the geographic boundary of the parish of Rufforth with Knapton 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 Rufforth with Knapton Neighbourhood Plan has been prepared by Rufforth with Knapton 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 (July 2015)
 - Consultation on Pre-Submission version (7 July to 18 August 2017)
 - Submission to City of York Council (February 2018)
 - Submission consultation (19 March to 2 May 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; and

- iv) To not breach, and be otherwise compatible with, EU and European convention on Human Rights obligations.
- 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 17 July 2018.
- 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 Rufforth with Knapton Neighbourhood Plan should proceed to referendum” and that “the neighbourhood area is entirely appropriate for the purpose of the referendum”.

Examiner’s Recommendations

- 11. Annex A and B set out the Examiner’s detailed and minor consequential modifications to the Neighbourhood Plan. In summary, the key points relate to:

- Policy Rwk01: Draft Green Belt

12. A series of modifications are suggested in relation to Rwk01 (Draft Green Belt policy) to reflect the policy context of York's Green Belt. In particular, the modifications take account of national advice on the principle of the identification of detailed Green belt boundaries whilst safeguarding the general application of this important and nationally-recognised planning tool.
13. 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 RSS and the Fourth Set of Changes Development Control York Local Plan (2005) on an interim basis until such times as the emerging Local Plan is adopted. He states 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. He also recognises that this will also provide full and proper opportunity for developers and land owners to contribute to this debate both in general terms and to provide the agreed levels of development for the City. The examiner also recommends that, with agreement from Rufforth with Knapton Parish Council, once the emerging Local Plan has been adopted the neighbourhood will be reviewed in order to ensure that the two elements of the development plan are consistent on this matter.

- Policy RK H1: Middlewood Close, Rufforth (Housing Allocation)

14. For the same reasons as set out within the context of Policy Rwk01, the Examiner states that it is not within the remit of the neighbourhood plan to allocate land within the general extent of the Green Belt for residential purposes. He makes it clear that this is properly a role for the emerging Local Plan.
15. The examiner recognises that the policy seeks to set out locally distinctive criteria intended to add value to the allocation of this site in the emerging Local Plan (Site H38 in the emerging Local Plan). The

examiner also recognises that allocating these housing sites in the neighbourhood plan would assist in boosting significantly the supply of housing land in the neighbourhood area and that based on a site visit to the area it is clear how the site has been chosen and would fit comfortably with the context of the village.

16. Nevertheless, the examiner recommends the deletion of the site from the Plan recognising that whilst the City of York Local Plan has now been submitted for examination there are still various procedural stages that need to be overcome before it is adopted, a key element being the merits or otherwise of the various sites proposed to meet the strategic housing requirements of the City. Some of those potential alternatives in the neighbourhood area have been included within the representations received on the submitted Rufforth with Knapton neighbourhood plan.
17. The report states that the deletion of the policy (RK H1) is consistent with the recommended modification in respect of policy Rwk01 on the green belt itself and has regard to paragraphs 83-85 of the National Planning Policy Framework (NPPF). These sections of national policy are clear that the identification and modification of green belt boundaries are matters for the Local Planning Authority to determine. By definition this approach also extends to the allocation of housing sites which are proposed to be released from the green belt at the same time.
18. The report also states that whilst it is recognised that this approach will be a disappointment to the Parish Council who have worked hard to produce a distinctive set of local criteria to underpin the site's development that in the event that the adopted Local Plan includes this site it could be incorporated at that point within a review of the neighbourhood plan – the Parish Council have already highlighted that they are committed to undertaking such a review.

- Policy RK H2 – Milestone Avenue, Rufforth

19. This policy proposes the allocation of a site for approximately 9 houses off Milestone Avenue and is not included in the emerging Local Plan as a housing allocation. The allocation of the site in the neighbourhood plan is associated with the construction of a footpath/cycle path linking the end of Milestone Avenue with the existing cycle path around Harewood Whin. For the reasons set out above at paragraph 16 of this report the examiner recommends the deletion of policy RK H2 from the neighbourhood plan.

- Policy RK H3 (Back Lane/Main Street, Knapton)

20. This policy offers support to the allocation of this site in the emerging Local Plan (Site H53). The examiner recognises that in doing so it sets out locally distinctive criteria that are intended to add value to the approach in the emerging plan and to boost significantly the supply of housing land in the neighbourhood area. The examiner however, recommends deletion of the site from the Plan based on the reasoning set out in paragraph 16 of this report. The examiner notes that in the event that the adopted Local Plan includes this site it could be incorporated at that point within a review of the neighbourhood plan.

21. There are a number of other minor modifications to policy wording advised which includes the amendment of some policies that the examiner does not consider to be land-use based. If a policy is not considered to be land-used based the examiner has recommended modifications so as to identify those aspects of the policies as 'community actions'.

Next Steps

22. 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.

23. 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.

24. 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.
25. 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.
26. 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.
27. 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 Councils response as part of the Decision Statement in Annex B.
28. 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

29. 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.
30. 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 Rufforth with Knapton. 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 20th November 2018, 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.
31. 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

32. 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 Rufforth with Knapton 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

33. As mentioned earlier in the report, the Rufforth with Knapton Neighbourhood Plan has been through several stages of consultation. These are: consultation on designation as a Neighbourhood Area (July 2015), consultation on a Pre-Submission version of the Plan (7 July to 18 August 2017), consultation on a Submission version (19 March to 2 May 2018).
34. 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

35. 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 Rufforth with Knapton Neighbourhood Plan to proceed to Referendum.

Analysis

36. 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

37. 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 26.*

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

38. 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 Rufforth with Knapton Neighbourhood Plan to date and also sets out the costs associated with the Examination and Referendum.

Table 1

Stage	Cost
Designation consultation	£500
Submission consultation	£500
NP grant to Parish Council	£3000
Examination	Circa £7,000 (tbc)
Referendum	Circa £7,000 (tbc)
Total	£18,000

39. 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).

40. 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 Rufforth with Knapton 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. This will be available for the Rufforth with Knapton Neighbourhood Plan.
41. The City of York Council Budget 2016/17 included a recurring budget item of £33,000 for Neighbourhood Planning which is to be distributed as £3,000 per Parish Council or Neighbourhood Forum to be used to develop a Neighbourhood Plan. This is for the neighbourhood planning body to spend independent to the Council.
42. 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

43. 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

44. In compliance with the Council's risk management strategy, the main risks associated with the Rufforth with Knapton 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.

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Wards Affected: Rural West

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Background Papers:

Rufforth with Knapton Neighbourhood Plan documents:

https://www.york.gov.uk/info/20051/planning_policy/1663/rufforth_and_knapton_neighbourhood_plan

Annexes

- Annex A Rufforth with Knapton Neighbourhood Plan Examiner's Report
- Annex B Decision Statement
- Annex C Rufforth with Knapton 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

EU – European Union

LPA – Local Planning Authority

NP – Neighbourhood Plan

SEA – Strategic Environmental Assessment

HRA – Habitats Regulation Assessment