

Executive

29 June 2017

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

Upper and Nether Poppleton Neighbourhood Plan – Examiner’s Report

Summary

1. The Upper and Nether Poppleton 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.

Recommendations

2. The Executive is asked to:

- i) Agree the Examiner’s modifications and the further minor modifications set out at Annex B to the Upper and Nether Poppleton 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 Upper and Nether Poppleton Neighbourhood Plan as modified by recommendation i) proceeds to a local referendum based on the geographic boundary of the parishes of Upper and Nether Poppleton 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 Upper and Nether Poppleton Neighbourhood Plan has been prepared jointly by both Upper Poppleton Parish Council and Nether Poppleton 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 (October 2014)
 - Consultation on a Pre-Submission version (March 2015)
 - Consultation on a 2nd Pre-submission version (May 2016)
 - Submission to City of York Council (November 2016)
 - Submission consultation (December 2016)
5. Following the close of Submission consultation and with the consent of the two Parish Councils, Mr Andrew Ashcroft BA (Hons) MA, DMS, MRTPI was appointed via the Neighbourhood Planning Independent Examiner Referral Scheme 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 and an unaccompanied visit to the Neighbourhood Area was appropriate in this case and provided his final report on 16th May 2017.
10. Overall, the Report concluded “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 Poppleton Neighbourhood Plan should proceed to referendum”

Examiner's Recommendations

11. Table 1 of Annex A sets out all of the Examiner's detailed modifications to the Neighbourhood Plan as identified in his Report. In summary, the key modifications relate to:
 - Policy PNP1 Green Belt
12. A series of modifications are suggested in relation to PNP1 (Green Belt policy) to reflect the policy context to 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 to the City of York Draft Local Plan (approved for development management purposes in 2005) on an interim basis until such times as the emerging City of York Local Plan is adopted. He states that this will ensure that the preparation of the emerging City of York 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.
 - Policy PNP6A Housing (Housing Allocations)
14. For the same reasons as set out within the context of Policy PNP 1, 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 City of York Local Plan.
15. The Examiner highlights that this position is further reinforced given the current lack of certainty over the allocation of housing sites in the emerging City York Local Plan. He acknowledges that the Preferred Sites Consultation was approved by the Council for public consultation only and at this point the document does not represent the Council's position in relation either to levels of housing and employment growth or to the draft portfolio of sites identified to meet that need. He recognises that within this context several other sites within the Neighbourhood

Plan area are also being promoted for residential development and have been highlighted as part of the representation process.

16. On this basis, the Examiner recommends that a modification is made to this part of the policy to delete reference to site H4 (Civil Service Sports Ground). He states, for clarity to all parties, it is emphasised that this recommendation has been made simply on the basis of national policy and the processes that follow. In doing so, the Examiner makes no comments on the appropriateness or otherwise of this site coming forward as a housing allocation in the emerging City of York Local Plan. He clarifies that this will properly be a judgement for City of York Council which will also come to its own judgement on the other sites currently within the general extent of the Green Belt that are being promoted for residential development. Ultimately the City of York Local Plan will be subject to its own examination based on the tests of soundness.
 - Policy PNP 7B: Business and Employment (allocation of Wyevale Garden Centre for employment uses)
17. The Examiner states that the consideration of this policy overlaps significantly with policies PNP 1 (Green Belt) and PNP 6 (Housing). He recognises that the submitted Plan has proactively sought to bring forward sustainable development and has used common evidence with the City of York Council to do so. Nevertheless, he states that national policy is clear that it is the role of the City of York Local Plan to identify the spatial extent of the Green Belt. In this case, Wyevale Garden Centre site is within the general extent of the Green Belt as identified in the 2005 draft Local Plan. On this basis, the Examiner recommends the deletion of the policy.

Next Steps

18. 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.
19. 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.

20. 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 Councils. The Parish Councils have agreed to extend the of the decision to 30 June 2017.
21. 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.
22. 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.
23. 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.
24. Table 2 of the Decision Statement (Annex B) sets out a list of some further minor modifications to the general text agreed by the Council and Upper and Nether Poppleton Parish Councils for the purpose of achieving consistency with the modified policies or to correct typographical errors. As this is not a different view to the Examiner's, it

is not necessary for the Council to re-consult on those minor modifications.

25. It is recommended that all of the Examiner's recommended modifications and all of the additional minor modifications in be made as set out in Table 1 and Table 2 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

26. 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.
27. The Examiner's Report confirms that the referendum area should be the same as the Neighbourhood Area designated by the Council, which are the parishes of Nether and Upper Poppleton. 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 24th August 2017, 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.
28. 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

29. As the Neighbourhood 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 Upper and Nether Poppleton Parishes. This is reflected in a provision in The Neighbourhood Planning Act 2017 which, once brought into effect provides 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

30. As mentioned earlier in the report, the Upper and Nether Poppleton Neighbourhood Plan has been through several stages of consultation. These are: consultation on the Neighbourhood Area boundary (October 2014), consultation on a Pre-Submission version of the Plan (March 2015 and May 2016), consultation on a Submission version (November 2016) and a consultation on a revised SEA (April 2017).
31. 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

32. 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 Upper and Nether Poppleton Neighbourhood Plan to proceed to Referendum.

Analysis

33. As both Parish Councils have accepted all of the recommended modifications of the Examiner, and the Examiner has concluded that this will then 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

34. 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 22 .

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

35. 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 Poppleton 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 Councils	£3000
Examination	£8,600
SEA consultation	£500
Referendum	£5,460
Total	£18,560

36. 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).
37. 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 Upper and Nether Poppleton Neighbourhood Plan in 2014, 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 Upper and Nether Poppleton Neighbourhood Plan.
38. 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.
39. 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

40. 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

41. In compliance with the Council's risk management strategy, the main risks associated with the Poppleton 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
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Date 15-06-17

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Wards Affected: Rural West

For further information please contact the author of the report

Background Papers:

Upper and Nether Poppleton Neighbourhood Plan documents

https://www.york.gov.uk/info/20051/planning_policy/706/upper_and_nether_poppleton_neighbourhood_plan

Annexes

- Annex A Upper and Nether Poppleton Neighbourhood Plan Examiner's Report
- Annex B Decision Statement
- Annex C Upper and Nether Poppleton Neighbourhood Plan (Examination version)
- Annex D Better Decision Making Tool

Abbreviations

BA (Hons) MA, DMS, MRTPI – Bachelor of Arts, Masters, Diploma in Management Studies, Member of the Royal Town Planning Institute.

EU – European Union

PNP (as in Policy PNP1 etc) – Poppleton Neighbourhood Plan

LPA – Local Planning Authority

NP – Neighbourhood Plan

SEA – Strategic Environmental Assessment

HRA – Habitats Regulation Assessment