

Executive

22 October 2020

Report of the Director of Economy and Place

Portfolio of the Executive Member for Economy & Strategic Planning

Huntington Neighbourhood Plan – Examiner’s Report and Proposed Modifications

Summary

1. The Huntington Neighbourhood Plan has been independently examined following submission by Huntington Parish Council in 2019. The Huntington Neighbourhood Plan Examiner’s Report is attached at Annex A to this report. The Examiner’s recommended modifications, including the City of York Council’s proposed response to the Examiner’s recommended modifications, is set out at Annex B.
2. Annex C sets out proposed additional recommended modifications to the plan pertaining to the Green Belt policies following a challenge through the examination process. The further modifications proposed clarify that, in advance of the adoption of the Local Plan, decisions on whether to treat land as falling within the Green Belt for development management purposes will be taken in accordance with the approach supported in the recent case of *Christopher Wedgewood v City of York Council Group* [2020] EWHC 780 (Admin).
3. The report recommends to Executive that Members approve an additional Neighbourhood Plan (Regulation 17A (2)) consultation so that interested parties can comment on proposed modifications to the approach to Green Belt policies in the Neighbourhood Plan as set out in Annex C prior to Member’s making a decision to progress the plan to referendum. These issues were previously considered at Local Plan Working Group on the 20th October 2020.

Recommendations

4. The Executive is asked to:

- i) Approve the proposed additional modifications set out in Annex C for consultation purposes.

Reason: To allow public consultation on the proposed modifications.

- ii) Approve a Neighbourhood Plan (Regulation 17A (2)) consultation on the proposed additional Modifications to the Huntington Neighbourhood Plan set out in Annex C.

Reason: So that interested parties can comment on the proposed modifications to the approach to the Green Belt policies.

- iii) Agree the proposed additional modifications and consultation strategy is delegated to the Assistant Director for Planning and Public Protection in consultation with the Executive Member for the Economy and Strategic Planning.

Reason: To allow public consultation on the proposed modifications set out in Annex C.

- iv) Defer consideration of the Examiner's report (Annex A) and proposed modifications schedule (Annex B) until the consultation on additional modifications (Annex C) has taken place.

Reason: To allow Members to make a decision on how to proceed with the Neighbourhood Plan in relation to all proposed modifications with consideration for the consultation responses received to the Neighbourhood Plan (Regulation 17A (2)) consultation on Annex C.

Background

5. 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"). Additionally, the

Regulations were updated in-line with the Conservation of Habitats and Species Regulations 2017 (as amended) and most recently, as a result of new government guidance in relation to the Covid-19 pandemic.

6. The Huntington Neighbourhood Plan has been prepared by Huntington Parish Council with on-going engagement with the local community and City of York Council. Officers welcome the Parishes hard work and dedication to undertaking a neighbourhood plan for Huntington in the context of an emerging Local Plan for York.
7. Prior to Examination, the Neighbourhood Plan has been through the following stages of preparation:
 - a. Designation as a Neighbourhood Area (28 September 2015)
 - b. Consultation on Pre-Submission Version (29 January to 23 March 2018)
 - c. Submission to City of York Council (31 July 2019)
 - d. Submission Consultation (7 October to 18 November 2019)
8. 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”¹. 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).
9. 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.

¹ set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990

10. 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.
11. 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.
12. 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 21 February 2020.
13. Overall, the Examiners 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”*.
14. The Council has the capacity to modify the report, if required. The Regulations² state that if the local planning authority *“propose to make a decision which differs from that recommended by the examiner”* and the *“reason for the difference is (wholly or partly) as a result of new evidence or a new fact or a different view taken by the authority as to a particular fact”*, the authority must notify prescribed persons of their proposed decision (and the reason for it) and invite representations. Where the authority consider it appropriate, they may refer the issue to independent examination³.
15. The guidance suggests that where an authority “proposes” to make a decision, the requirement to notify and invite representations must be carried out before the decision is made on the plan to proceed to Referendum.

² Paragraph 13 (1) of Schedule 4B to the Town and Country Planning Act 1990 (TCPA 1990)

³ Paragraph 13(2) of Schedule 4B to the Town and Country Planning Act 1990 (TCPA 1990)

16. Since the Submission of the Neighbourhood Plan, the Council has received the outcome of the High Court Judgement 'Wedgewood v. City of York Council [March 2020]' pertaining to and clarifying the approach to decision-making in relation to York's Green Belt. It is proposed that the outcomes of this judgement should be reflected in the Neighbourhood Plan in order to secure that the Plan meets the Basic Conditions.

Examiner's Recommendations

17. The Examiner's Report is attached as Annex A to the Executive report. Annex B to the Executive report sets out all of the Examiner's detailed recommended modifications to the Neighbourhood Plan. The majority of modifications were minor. However the examiner did include key points in relation to housing and retail.
 - **Policy H1: Meeting Housing Needs**

The examiner has suggested that the policy and elements of the supporting text take a more neutral and general approach towards future housing development to clarify the cross over with the emerging Local Plan. Specifically, as submitted, the second criterion require that proposals are 'functionally and physically' connected to Huntington village. The examiner indicated that this approach is very prescriptive in general terms and may prevent otherwise acceptable development from coming forward. The examiner therefore recommends the replacement of the second criterion to a requirement for development proposals are 'well-related' to Huntington Village. To remedy the potential conflict between the application of general planning design principles and the specific requirements of the proposed strategic site at Monks Cross, the examiner also recommends that the supporting text clarifies that the second criterion in the policy would not apply to ST8.

The alteration will also avoid any conflict with site ST8 in the emerging Local Plan, which indicates the site is identified as being part of an important transitional area between the existing urban area at Huntington and more modern and commercial developments at Monks Cross. As such it is proposed to be separated from the existing urban area by a green wedge to protect the setting of Huntington, maintaining the separate identities of the existing and new neighbourhoods. This will reinforce the special circumstances found in the wider City where the general extent of the green belt provides a landscape and visual context for component settlements such as Huntington in order to protect the special character of the historic city.

- Policy H10: Vangarde/Monks Cross shopping parks.
As submitted the examiner suggests the policy is general in the way that the policy supports the continued roles of the retail centre as a sub-regional centre and in particular the policy does not directly relate to the development management process. The examiner suggests that the policy should take a more proactive role in resisting uses that would detract from their sub-regional shopping function and recommends that the policy is modified accordingly. The examiners also suggests modifications to the supporting text to highlight the relationship which would exist between this policy and the broader strategic approach to retail provision in the City included in the emerging Local Plan to protect the role of York city centre and to direct any new retail floorspace initially to the city centre through the application of a sequential test process.

Additional Officer Recommendations

18. Annex C sets out the proposed additional recommended officer modifications to the plan pertaining to Green Belt policies following the receipt of the recent High Court Judgement 'Wedgewood v. City of York Council [2020] EWHC 780 (Admin)', a challenge to the green belt policy in the Neighbourhood Plan through the examination process and the consideration of legal advice.
19. The High Court judgement of Christopher Wedgewood v City of York Council Group [2020] EWHC 780 (Admin) clarifies the approach to decision-making in advance of the adoption of a Local Plan. This clarifies that, in advance of the adoption of the Local Plan, decisions on whether to treat land as falling within the Green Belt for development management purposes should take into account the RSS general extent of the Green Belt, the draft Local Plan (April 2005), the emerging Local Plan, insofar as can be considered against paragraph 48 of the NPPF (2019) and site specific features in deciding whether land should be regarded as Green Belt.
20. It is important to note that the receipt of this judgement was post examination of the Neighbourhood Plan being concluded and the Examiner's report issued in February 2020. Consequently, neither the Parish or the appointed Examiner could take this to consideration in the preparation and examination of the neighbourhood plan.
21. A challenge to the Green Belt policy in the Neighbourhood Plan was made by Redrow Homes through the Neighbourhood Plan examination process. Following the publication of the Examiner's report for

information ahead of a decision by Members, Redrow Homes have raised a further challenge and threatened Judicial Review on the basis they do not consider the proposed modifications address or make clear the decision-making process relevant to York's Green Belt. Redrow Homes claim that Map 3 in the submitted Huntington Neighbourhood Plan, which shows the draft Green Belt Boundary as defined in the Local Plan Fourth Set of Changes (2005), in conjunction with the wording of Policy H14, would unlawfully define an inner Green Belt boundary, which is the function of the Local Plan.

22. Legal advice has been sought in relation to the Examiner's report, which considers that the Council should propose to modify the submitted Neighbourhood Plan as follows, so that it fully reflects the approach to decision making supported in the recent Wedgewood case and to secure that the Neighbourhood Plan meets the Basic Conditions:
- a) amend Policy H14: Green Belt to indicate that the general extent of the Green Belt has been established by the Regional Spatial Strategy (RSS);
 - b) Policy H14 should remove reference to Map 3 and cross reference the saved RSS key diagram showing the general extent of York's Green Belt;
 - c) amend Policy H14 to indicate that the inner boundary of the Green Belt will be defined through the Local Plan process, and that this policy shall apply to land included with the Green Belt boundary that is defined in an adopted Local Plan;
 - d) amend Policy H14 and its supporting text to state that until the Green Belt boundaries are defined in an adopted Local Plan, decisions on whether to treat land as falling within the Green Belt for development management purposes will be taken in accordance with the approach supported in the recent case of Christopher Wedgewood v City of York Council [2020] EWHC 780 (Admin);
 - e) Amend supporting text to policy H14 to indicate that the 2005 draft Local Plan map shows what was approved in 2005 for development control purposes and that in advance of the adoption of the Local Plan this will be taken into account along with the emerging Local Plan, RSS general extent of the Green Belt and site specific features in deciding whether land should be regarded as Green Belt for

development control purposes, but that the 2005 draft Local Plan should not be treated as establishing a Green Belt boundary;

f) Remove the 2005 Green Belt boundary from Map 3 'Proposals Map'.

23. Officers have contacted the Examiner about the recent challenge to the green belt policies, the recent Wedgewood Judgement and the proposed necessary modifications as a result of legal advice. On the basis of the information presented, the Examiner has confirmed in a letter to the Council that he is satisfied that it is appropriate for the Council to propose to exercise its ability to reach a different decision on elements of the submitted Plan which depart from the recommended modifications in his report of 21 February 2020.
24. Consequently, Annex C sets out the proposed additional recommended officer modifications to the Neighbourhood Plan required to secure that it meets the Basic Conditions, in accordance with the legal advice received specifically in relation to modifying Policy H14: Green Belt and Map 3 of the draft Neighbourhood Plan.

Next Steps

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.
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. Subject to Members acceptance of making a decision different to the Examiners, Officers propose a consultation on the proposed additional modifications pertaining to policies H14 and Map 3 in the submitted

Huntington Neighbourhood Plan ahead of any decision to accept the Neighbourhood Plan Examiner's report and to proceed to Referendum.

28. This consultation would satisfy the Council's obligations under the legislation and Regulations⁴ wherein it states that where the Council propose to make a decision which differs from that recommended by the examiner and the *"reason for the difference is (wholly or partly) as a result of new evidence or a new fact or a different view taken by the authority as to a particular fact"*, the authority must notify prescribed persons of their proposed decision (and the reason for it) and invite representations. It would also minimise the risk of a judicial review in relation to the policies contained in the Neighbourhood Plan by clarifying the approach to York's Green Belt ahead of a formal decision by Members.
29. Following the completion of this consultation, Officers will report the outcomes to Executive for Members to make a decision on whether to accept the Examiner's and additional modifications in order for the Neighbourhood Plan to proceed to Referendum. The Council must then publish its decision and its reasons for it in a 'Decision Statement'.

Consultation

30. The Huntington Neighbourhood Plan has been through several stages of consultation. These are: consultation on designation as a Neighbourhood Area (September 2015), consultation on the Pre-Submission version of the Plan (January to March 2018), consultation on a Submission version (October to November 2019).
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.
32. The proposed consultation on the additional modifications to the Neighbourhood Plan will be in line with the updated Statement of Community Involvement (SCI). It is recommended that the consultation strategy is delegated to the Assistant Director for Planning and Public

⁴ Paragraph 13 (1) of Schedule 4B to the Town and Country Planning Act 1990 and Regulation 17A of the Neighbourhood Planning (General) Regulations 2012.

Protection in consultation with the Executive Member for the Economy and Strategic Planning.

Options

33. Officers request that Members:

- i) *Approve the proposed additional modifications in Annex C for consultation purposes*
- ii) *Approve a Neighbourhood Plan (Regulation 17A (2)) consultation on the proposed additional Modifications in Annex C to the Huntington Neighbourhood Plan.*
- iii) *Agree the proposed additional modifications and consultation strategy is delegated to the Assistant Director for Planning and Public Protection in consultation with the Executive Member for the Economy and Strategic Planning.*
- iv) *Defer consideration of the Examiner's report (Annex A) and proposed modifications schedule (Annex B) until the consultation on additional modifications (Annex C) has taken place.*

34. The following alternative options have been identified and rejected:

- v) *That the Executive accept the Examiners recommendations and progress to referendum without additional modifications*
- vi) *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.*

Analysis

35. The Examiner has concluded that the modifications set out at Annex B 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.

36. The receipt of the High Court Judgement 'Wedgewood v. City of York Council [2020] EWHC 780 (Admin)' together with a potential legal challenge to the Neighbourhood Plan has required officers to seek advice and consider proposed additional modifications to those

proposed by the Examiner in order to secure that the Neighbourhood Plan meets the Basic Conditions. This advice has recommended the approach and proposed changes as set out in paragraphs 18-24 of this report, which has been endorsed by the independent Examiner. Officers therefore recommend Members proceed with Options (i)-(iv).

37. The alternative option (v) of accepting the Examiners recommendations without consultation on proposed modifications to the Green Belt policies leaves open the potential for legal challenge. Option (v) is therefore not recommended.
38. The alternative option (vi) rejecting all of the Examiners recommendations can only be justified on the grounds listed under paragraph 26. Option (vi) is therefore not considered appropriate at this stage.

Financial Implications

39. The responsibility for a further consultation will lie with the authority. Table 1 sets out a breakdown of the non-staffing costs of producing the Huntington Neighbourhood Plan to date and also sets out the approximate costs associated with the Examination and Referendum. The approximate cost of a further consultation will therefore be circa. £500.

Table 1: Non staffing costs for Neighbourhood Plan Production

Stage	Cost
Designation consultation	£500
Submission consultation	£500
NP grant to Parish Councils	£3,000
Examination	£5,800
Referendum	Circa £7,000 (tbc)
Total	£ 16,800

40. It should also be noted that the responsibility and therefore the costs of the Examination and Referendum stages of the Neighbourhood Plan production lie with the City of York Council. 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).

41. Financial support from Central Government is available for Local Planning Authorities (LPAs) involved with Neighbourhood Plans. A sum of £5000 was claimed for the designation of the Huntington Neighbourhood Plan in 2015. The LPAs can also claim £20,000 once they have set a date for a referendum following a successful examination.
42. Huntington Parish Council was provided with a £3k grant from the Council to support the development of the neighbourhood plan.
43. 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

44. The following implications have been assessed:

- **Financial** – The examination and future 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). The approximate cost of a further consultation will therefore be circa. £500. 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 E
- **Legal** - The Legal implications are set out within the body of this report.
- **Crime and Disorder** - None
- **Information Technology (IT)** None
- **Property** - None
- **Other** – None

Risk Management

45. In compliance with the Council's risk management strategy, the main risks associated with the Huntington Neighbourhood Plan are as follows:
- Risk of Judicial Review should it not be proposed to modify policies and maps pertaining to York's Green Belt within the Neighbourhood Plan. 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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Wards Affected:	Huntington & New Earswick		
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Background Papers:

CYC's Huntington Neighbourhood Plan Webpage:

<https://www.york.gov.uk/planning-policy/huntington-neighbourhood-plan?documentId=764&categoryId=20051>

Annexes

- Annex A Huntington Neighbourhood Plan Examiner's Report
- Annex B Examiner's Recommended Modifications
- Annex C Additional Recommended Modifications
- Annex D Huntington Neighbourhood Plan (submission version)
- Annex E 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*