

**Local Plan Working Group**

**18 May 2021**

Report of the Corporate Director of Place

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

### **Summary**

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

### **Recommendations**

2. Members are asked to recommend that Executive:
  - i) Agree the Examiner’s modifications and the consequential minor modifications set out at Annex B to the Heslington 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 Heslington Neighbourhood Plan as amended proceeds to a local referendum based on the geographic boundary of the parish of Heslington 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") and within new government guidance in relation to the Covid-19 pandemic.
4. The Heslington Neighbourhood Plan has been prepared by Heslington 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 (22<sup>nd</sup> November 2016)
  - Consultation on Pre-Submission Version (29<sup>th</sup> January to 12<sup>th</sup> March 2019)
  - Submission to City of York Council (2<sup>nd</sup> October 2019)
  - Submission Consultation (30<sup>th</sup> October to 11<sup>th</sup> December 2019)
5. Following the close of Submission consultation and with the consent of the Parish Council, Mr Andrew Ashcroft BA (Hons) MA, DMS, MRTPI was appointed to undertake an Independent Examination of the Neighbourhood Plan. The purpose of the Examination is to consider whether the Plan complies with various legislative requirements and meets a set of "Basic Conditions" set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. The Basic Conditions are:
  - i) To have regard to national policies and advice contained in guidance issued by the Secretary of State;
  - ii) To contribute to the achievement of sustainable development;
  - iii) To be in general conformity with the strategic policies contained in the development plan for the area;

- iv) To not breach, and be otherwise compatible with, EU and European convention on Human Rights obligations; and
  - v) To be in conformity with the Conservation of Habitats and Species Regulations 2017(3).
6. The Examiner can make one of three overall recommendations on the Neighbourhood Plan namely that it can proceed to referendum (i) with modifications; (ii) without modification; or (iii) that the Plan cannot be modified in a way that allows it to meet the Basic Conditions or legal requirements and should not proceed to referendum.
7. Modifications can only be those that the Examiner considers are needed to:
- a) make the plan conform to the Basic Conditions
  - b) make the plan compatible with the Convention rights
  - c) make the plan comply with definition of a neighbourhood plan and the provisions that can be made by a neighbourhood plan or
  - d) to correct errors.
8. If a recommendation to go to a referendum is made, the Examiner must also recommend whether the area for the referendum should go beyond the Neighbourhood Area, and if so what the extended area should be.
9. The Regulations presume that Neighbourhood Plans will be examined by way of written evidence only, with a requirement for a hearing only in cases where the Examiner feels the only way to properly assess a particular issue is via a discussion with all parties. The Examiner decided that examination by written representations was appropriate in this case and provided his final report on 24<sup>th</sup> March 2021.
10. Overall, the Report concluded that *“Subject to a series of recommended modifications set out in this report I have concluded that the Heslington Parish Neighbourhood Plan meets all the necessary legal requirements and should proceed to referendum.”*

### **Examiner’s Recommendations**

11. Annex A and B set out the Examiner’s detailed and minor consequential modifications to the Neighbourhood Plan.
12. Positively the Examiner identifies that:

*“The Plan includes a range of policies and seeks to bring forward positive and sustainable development in the neighbourhood area. It addresses potential development opportunities at the campuses of the University of York. It also proposes the designation of a suite of local green spaces.”*

13. 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.”*
14. The majority of modifications were minor however the examiner did include key points in relation to the following policies:

### **Policy HES:1 Main Street Change of Use**

15. Policy HES:1 was developed in good faith by the Parish in the period leading up to its submission. However, in September 2020 the Use Classes Order was substantially revised. It introduces three new use classes as follows:
  - Class E Commercial, business and service uses
  - Class F1 Learning and non-residential uses
  - Class F2 Local community uses
16. The new Use Class E incorporates several former use classes including A1(shops), A2 (financial and professional services) and A3 (cafes or restaurants). In this context there is now considerable flexibility for different business functions to be undertaken in towns and village centres without the need for planning permission.
17. In this context the Examiner recommended specific modifications to the policy to take account of the revised approach and details of the 2020 Use Classes Order. In particular the Examiner recommended that the former references to Class A uses and D1 uses are replaced by the relevant use class categories in the 2020 Use Classes Order.
18. This approach will offer support for the ongoing safeguarding and extension of the role, importance and significance of the village centre. In doing so it acknowledges the government’s wider ambition to stimulate the role of town and village centres both in general, and in response to the Covid pandemic in particular.

## **Policy HES12: Purpose Built Student Accommodation**

19. This policy seeks to address the issue of purpose-built student accommodation. Its approach is that such accommodation will only be supported within the existing development boundaries of the University campuses. The policy has attracted an objection from the University. It comments that the submitted policy is at odds with Policy SS22 of the emerging Local Plan. The University also comments about the inconsistencies between the policy (which applies throughout the neighbourhood area) and the Interpretation (which has a focus on Heslington village).
  
20. The Examiner sought advice from the Parish Council on how the policy was anticipated to be applied across the neighbourhood area. It commented that it had been designed to apply within the existing University campuses and within the strategic development sites. That approach would be restrictive and may prevent otherwise acceptable development proposals from coming forward. In this context the Plan provides no compelling evidence about the extent to which such development would be unacceptable. That approach would not align with the approach in Policy SS22 of the emerging Local Plan. This comments about future expansion of the University. Whilst that policy supports the development of new student accommodation as part of that wider package it does not prevent purpose-built student accommodation proposals elsewhere. Similarly, Policy HES12 is not supported by any detailed evidence about the impacts of student accommodation within the wider parish and the ability or otherwise of the University to accommodate all its accommodation needs on land within its direct control. The Examiner has considered all the information available and he recommends that the Policy and the Interpretation are deleted.

## **HES14: Green Infrastructure**

21. This policy addresses green infrastructure and in particular Significant Green Space. The proposed significant green spaces have generally been well-received. However, the University commented about the

Campus East Lake and Grounds (Site 1) and CYC commented about the Elvington Airfield Grassland (Site 3). The University's comments are primarily based on its views about the dated nature of both Figure 5 (showing details from a reserved matters application from 2008) and Figure 6 (showing the broader location of the proposed significant green spaces). The Examiner recommends that this issue is resolved by the deletion of Figure 5 and the preceding element of supporting text. The Examiner also recommends that a revised figure is included in the Plan showing the extent of Site 1.

22. The representation from CYC concentrates on the potential inconsistency between the identification of the Elvington Airfield Grasslands as a significant green space and the proposed allocation of a strategic housing allocation in the same general location in the emerging Local Plan. In its response to the clarification note the Parish Council proposes a reduced extent of the Grasslands as a significant green space in the event that the strategic allocation is included in the adopted Local Plan.
23. The Examiner considered this matter very carefully and recommends that the whole of the Elvington Airfield Grasslands is not included as a significant green space and is deleted. By definition the identification of strategic sites in the emerging Local Plan is a strategic matter which will find its own level in the examination of that Plan. In this context it would be inappropriate for a neighbourhood plan to seek to influence or shape this matter. In the event that the adopted Local Plan includes the proposed strategic housing location (ST15) in the general vicinity of the Elvington Airfield any review of a 'made' neighbourhood plan could consider the identification of a significant green space at the western end of the wider site based on appropriate evidence.

### **HES16: Vehicular and Pedestrian Traffic**

24. This policy is very specific in its nature, it seeks to ensure that the strategic allocation site (ST15) in the emerging Local Plan is fully served by a new principal access road to the A64, bypassing the village and the immediate locality. There is a potential conflict between the

submitted policy and Policy SS13 in its emerging Local Plan. The York Local Plan Policy SS13 and the key principles in relation to transport which are highlighted in this policy should be tested through the Local Plan Examination process and not through the Neighbourhood Plan process.

25. The NPPF provides clear guidance on the distinction between strategic policies (paragraphs 20-23) and non-strategic policies (paragraphs 28-30). In particular it comments in paragraph 29 that:  
*'Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies'*
26. In this context the Examiner has concluded that the identification, the design and the transport arrangements associated with the strategic allocation sites in the emerging Local Plan is a strategic matter. In this context it would be inappropriate for an emerging neighbourhood plan to seek to influence this matter. The Examiner is not satisfied that the neighbourhood plan policy has produced any specific evidence to justify its approach. Certainty on the potential development of the proposed allocated site will only be available once the Local Plan examination has concluded, any main modifications are published and the Inspectors' report is available. The Examiner recommends that the policy and the Interpretation are deleted. However, to recognise the significance of this matter to the local community the Examiner also recommends that a modified version of the policy is repositioned so that it would form an additional Community Action.

### **HES17: Traffic in Heslington Conservation Area**

27. This policy comments about traffic in the conservation area. It has two related parts. The first offers support to development proposals where any increase in traffic would cause no significant harm to the character of the conservation area. The second part comments that highways improvements in the conservation area should preserve or enhance and cause no significant harm to its character. The Interpretation comments that 'the policy seeks to protect the conservation area and the amenity of residents without compromising the provision of flexible, sustainable

transport solutions'. The Examiner indicates that the proposed policy captures issues which are beyond the direct control of the planning system. In addition the Examiner highlights that the policy offers no direct evidence about the way in which increased traffic would cause harm to the conservation area and the level of any harm which might otherwise be acceptable. As such the Examiner recommends its deletion. However, to recognise the significance of this matter to the local community the Examiner also recommends that the second part of the policy is repositioned so that it would form an additional Community Action.

## **Green Belt**

28. Section 5 of the Neighbourhood Plan makes specific reference to the Green Belt. In particular Figure 2 of the Plan indicates the Green Belt boundary insofar as it affects the neighbourhood area (and as extracted from the Fourth Set of Changes Local Plan 2005). In March 2020 the High Court (*Wedgewood v City of York Council* EWHC 780 Admin) considered a case which centred about the way in which Green Belt issues should be considered in the City whilst definitive boundaries are being prepared in the emerging Local Plan. The effect of this judgement is that such decisions will take into account the Regional Spatial Strategy general extent of the Green Belt, the draft Local Plan (April 2005), the emerging Local Plan and site-specific features in deciding whether land should be regarded as Green Belt in advance of the adoption of the Local Plan. As the Plan was submitted before this judgement it is important that it takes its findings into account. This approach will also be consistent with the approach which CYC has taken since that time both in relation to development management issues and in decisions on the neighbourhood planning agenda. In this context the Examiner recommends that the Neighbourhood Plan text and maps are updated to take account of this new evidence.

## **Next Steps**

29. 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.

30. 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.
31. The Council must publish its decision and its reasons for it in a 'Decision Statement'. The Decision Statement must be published within 5 weeks beginning with the day following receipt of the Examiner's Report unless an alternative timescale is agreed with the Parish Council. The 20th May Executive date is more than 5 weeks from the receipt of the examiner's report (24<sup>th</sup> March 2021) however Heslington Parish Council has agreed this alternative timescale in writing.
32. 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.
33. 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.
34. 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.

35. 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**

36. 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.
37. 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 Heslington. 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 9<sup>th</sup> August 2021, 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.
38. 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**

39. 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 Heslington 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.

40. In light of the Covid-19 pandemic 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**

41. As mentioned earlier in the report, the Heslington Neighbourhood Plan has been through several stages of consultation. These are: consultation on designation as a Neighbourhood Area (2016), consultation on the Pre-Submission version of the Plan (29<sup>th</sup> January to 12<sup>th</sup> March 2019), consultation on a Submission version (30<sup>th</sup> October to 11<sup>th</sup> December 2019).
42. 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**

43. Officers request that Members recommend to Executive that they:
  - 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 Heslington Neighbourhood Plan to proceed to Referendum.

### **Analysis**

44. 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.

45. Council Officers understand that Heslington Parish Council are considering their position in relation to the Heslington Neighbourhood Plan Examiners Report.

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

46. 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 33.*

*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**

47. 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 Heslington Neighbourhood Plan to date and also sets out the approximate costs associated with the Examination and Referendum.

**Table 1**

<b>Stage</b>	<b>Cost</b>
Designation consultation	£500
Submission consultation	£500
NP grant to Parish Councils	£3,000
Examination	£5,750
Referendum	Circa £7,000 (tbc)
<b>Total</b>	<b>£ 16,750</b>

48. 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).
49. 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 Heslington Neighbourhood Plan in 2016, 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 can usually apply for this once they have set a date for a referendum following a successful examination. However Ministry of Housing, Communities and Local Government (MHCLG) has set out new government guidance due to the Covid-19 pandemic. The guidance states that in order to minimise the financial impact of delays to neighbourhood planning referendums, the government will allow local planning authorities in 2020/21 to submit claims for new burdens grants at an earlier point in the neighbourhood planning process. 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).

50. Heslington Parish Council was provided with a £3k grant from the Council to support the development of the neighbourhood plan.
51. 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**

52. The following implications have been assessed:

- **Financial**– The examination and referendum will be funded by City of York Council. 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** - none
- **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**

53. In compliance with the Council's risk management strategy, the main risks associated with the Heslington 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

### Author:

**Anna Pawson**  
Development Officer  
Strategic Planning  
01904 553312

**Alison Cooke**  
Forward Planning Manager  
(interim)

### Chief Officer Responsible for the report:

**Mike Slater**  
Interim Assistant Director - Place  
Directorate

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## Specialist Implications Officer(s)

Financial Implication:  
Patrick Looker  
Finance Manager  
01904 551633

Legal Implication:  
Sandra Branigan  
Senior Solicitor  
01904 551040

### Wards Affected:

**Heslington**

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

### Background Papers:

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

## Annexes

Annex A Heslington Neighbourhood Plan Examiner's Report  
Annex B Decision Statement  
Annex C Heslington Neighbourhood Plan (Submission Version)

### **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