

**Executive**

**16 March 2023**

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

## **Strensall with Towthorpe Neighbourhood Plan – Examiner’s Report and Decision Statement**

### **Summary**

1. The Strensall with Towthorpe 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 Executive agree the Examiner’s recommendations and the Council’s Decision Statement, to enable the Neighbourhood Plan to proceed to Referendum. This report was considered by the Local Plan Working Group on 6<sup>th</sup> March 2023.

### **Recommendations**

2. It is recommended that Executive:
  - i) Agrees the Examiner’s modifications set out at Annex B (Decision Statement) to the draft Strensall with Towthorpe Neighbourhood Plan and that subject to those modifications the Neighbourhood Plan meets the Basic Conditions and other legislative requirements.  
Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.
  - ii) Agrees that the draft Strensall with Towthorpe Neighbourhood Plan as amended proceeds to a local referendum based on the neighbourhood area outlined in the Examiners Report (Annex A).  
Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

- iii) Approves the Decision Statement attached at Annex B to be published on the City of York Council's website.  
Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

## Background

3. The Localism Act 2011 introduced new powers for community groups to prepare neighbourhood plans for their local areas. The Council has a statutory duty to assist communities in the preparation of Neighbourhood Plans and to take plans through a process of Examination and Referendum. The local authority is required to take decisions at key stages in the process within time limits that apply, as set out in the Neighbourhood Planning (General) Regulations 2012 as amended in 2015 and 2016 ("the Regulations") and within any government guidance in force in relation to the Covid-19 pandemic.
4. The Strensall with Towthorpe Neighbourhood Plan has been prepared by Strensall with Towthorpe Parish Council with the support from Mike Dando at Directions Planning Consultancy, and the on-going engagement with the local community and City of York Council. Prior to Examination it has been through the following stages of preparation:
  - Area to be covered by Neighbourhood Plan submitted to City of York Council (27<sup>th</sup> August 2015);
  - Consultation on Neighbourhood Plan area (16<sup>th</sup> November -14<sup>th</sup> December 2015);
  - Designation as a Neighbourhood Area (6<sup>th</sup> January 2016);
  - Submission of an amended application boundary (to include the whole of Towthorpe Moor Lane and the area around its junction with the A64 (April 2017);
  - Consultation on amended application boundary (28<sup>th</sup> March – 11<sup>th</sup> May 2018);
  - Amended application boundary approved by City of York Council (14<sup>th</sup> June 2018);
  - First Pre-Submission consultation Regulation 14 (1<sup>st</sup> June – 15<sup>th</sup> July 2018);
  - Second Pre-Submission consultation – Regulation 14 (1<sup>st</sup> March – 12<sup>th</sup> April 2019);
  - Further consultation (1<sup>st</sup> July – 26<sup>th</sup> August 2019);
  - Submission of Neighbourhood Plan to City of York Council (June 2021);

- Submission Consultation – Regulation 16 (15<sup>th</sup> November 2021 – 7<sup>th</sup> January 2022).

5. Following the close of submission consultation and with the consent of Strensall with Towthorpe Parish Council, Mrs Rosemary Kidd Dip TP, 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 Neighbourhood 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. On the matter of the Referendum area, the Examiner stated: *“I am required to consider whether the referendum area should be extended*

*beyond the Neighbourhood Plan area. In all the matters I have considered I have not seen anything that suggests the referendum area should be extended beyond the boundaries of the plan area as they are currently defined. I recommend that the Neighbourhood Plan should proceed to a referendum based on the neighbourhood area designated by City of York Council on 14 June 2018.”*

10. 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 her final report on 13<sup>th</sup> October 2022.

### **Examiner’s Recommendations**

11. Annex A to this Committee report sets out the Examiner’s Report, including modifications.
12. Overall, the Report concluded that *“I am pleased to recommend to City of York Council that the Strensall with Towthorpe Neighbourhood Plan should, subject to the modifications I have put forward, proceed to referendum.”*
13. Positively the Examiner summarises that:  
*“The Strensall with Towthorpe Neighbourhood Plan reflects the view held by the community as demonstrated through the consultations and, subject to the modifications proposed, sets out a realistic and achievable vision to support the future improvement of the community. I am satisfied that the Neighbourhood Plan meets all the statutory requirements, in particular those set out in paragraph 8(1) of Schedule 4B of the Town and Country Planning Act 1990 and, subject to the modifications I have identified, meets the Basic Conditions namely:*
  - *has regard to national policies and advice contained in guidance issued by the Secretary of State;*
  - *contributes to the achievement of sustainable development;*
  - *is in general conformity with the strategic policies contained in the Development Plan for the area; and*
  - *does not breach, and is otherwise compatible with, EU obligations and human rights requirements”*
14. The Examiners Report assesses the policies in the Neighbourhood Plan and makes a series of recommended modifications where necessary, to

ensure that the policies have the necessary precision to meet the Basic Conditions. The Modifications proposed by the Inspector are outlined in Annex B, together with the Council's Consideration / Justification. The Examiner also considered a number of other, consequential changes to the general and specific text in other parts of the Neighbourhood Plan in so far as they are necessary to ensure that the Neighbourhood Plan meets the basic conditions, including sections on policy context, general issues, Community Infrastructure Levy, Appendix 2 (Local Green Space) and Appendix 3 (Local Connections Criteria for Affordable Housing).

15. In summary, the Examiner has proposed modifications to the following policies:

- Policy CP1 (Safeguarding Existing Car Parking);
- Policy CP2 (Increased Public Car Parking);
- Policy CF1 (Protection of Community Facilities and Services);
- Policy CF2 (Local Green Space);
- Policy DH1 (Promotion of Local Distinctiveness);
- Policy DH2 (General Design Principles);
- Policies DH3 (General Shopfront Design) and DH4 (Shopfront Signage) – combined into one policy;
- Policy DG1 (Strensall Park);
- Policy DG2 (Alexandra Road);
- Policy DG3 (Howard Road);
- Policies DG4 (Queen Elizabeth Barracks – Design) and DG5 (Development Brief for the Redevelopment of the Queen Elizabeth Barracks – Master Planning / Planning Principles) – delete DG4 and retitle DG5 to 'Development at Queen Elizabeth Barracks, Strensall and revise policy;
- Policy DG6 (Affordable Housing)

16. The Examiner identified that the main recommendations concern:

- Combining policies DH3 and DH4;
- Combining policies DG4 and DG5;
- The deletion of the Queen Elizabeth Barracks Tennis Courts from Policy CG2 and amalgamation of other sites;
- Clarification of the wording of policies and the supporting text; and
- The improvement of clarity of the Policies Map.

17. Queen Elizabeth Barracks was particularly complex in terms of its reference in the Neighbourhood Plan. The Queen Elizabeth Barracks

was allocated as Strategic Site ST35 and housing site H59 in the Publication Draft City of York Local Plan (February 2018), which was submitted for Examination in May 2018. However, based on evidence from the Local Plan Habitat Regulations Assessment (HRA), City of York Council is proposing that sites SS19/ST35 and H59 are deleted from the plan. The HRA concludes that, in consultation and agreement with Natural England, if these sites were to be developed for housing, it could not rule out the potential for the proposals to have an adverse effect on the integrity of Strensall Common SAC due to increased recreational pressure and urban edge effects. In addition to this deletion, policy GI2a (Strensall Common Special Area of Conservation (SAC)) was proposed as a new policy to provide protection to the SAC in the Composite Modification Schedule April 2021. Detailed discussion of these matters was held at Phase 3 of the Local Plan Examination hearing sessions in July 2022.

18. Consequently, examination on the Neighbourhood Plan was temporarily postponed to align with the Local Plan hearing sessions on this matter and subsequently, a policy for Queen Elizabeth Barracks has been agreed with the Examiner for inclusion in the Neighbourhood Plan (see policy DG4 – Development at Queen Elizabeth Barracks, Strensall). This policy will be applicable should the site come forward for redevelopment as an unallocated ‘windfall’ or if re-instated as an allocation through the Inspectors Report for the Local Plan Examination.
19. In her report, the Examiner also requested that in relation to the Queen Elizabeth Barracks:
  - a diagram is included within the text to show the location of the sports provision and the community hall at the Barracks – these only need to be shown on the Proposals map where they are referenced under other policies.
  - Show the site on the Proposals Map in accordance with that shown on the Updated Proposals Map May 2022, renamed from DG4 & DG5 to Policy DG5.
  - Update paragraph 5.4.22 to reflect the outcome of the Local Plan Examination.
20. The Examiner also recommended that policies DH3 (General Shopfront Design) and DH4 (Shopfront Signage) should be reworded and combined into one policy (Recommendation 13), as the existing policies did not reflect the policies in the emerging Local Plan. The Examiner

also recommended moving the final paragraph of Policy DH3 on historic photographs to the justification.

### **Next Steps**

21. 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.
22. 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.
23. The Council is required to 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 relevant Parish Council and / or its agents. The Executive date (16<sup>th</sup> March 2023) is more than 5 weeks from the receipt of the examiner's report (13<sup>th</sup> October 2022) due to logistical issues relating to timescales for reporting the Examiners report, that the referendum must be held within 56 day of publishing the Council's Decision Statement and fitting this around a formal pre-election period, which runs from 29 March to 3 May 2023. Strensall Parish Council and their Planning Agents have both confirmed acceptance of this alternative timescale in writing.
24. 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.
25. 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.
26. The Examiner's Report concludes that, subject to the modifications proposed in her report, the Neighbourhood Plan meets the Basic Conditions required by legislation and that the Neighbourhood Plan should proceed to a referendum to be held within the Neighbourhood Area. Officers have considered all of the recommendations and the Examiner's reasons for them and have set out the Council's response as part of the Decision Statement in Annex B.
27. 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 Neighbourhood 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**

28. 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.
29. The Examiner considers that the referendum area should be based on the neighbourhood area designated by City of York Council on 14<sup>th</sup> June 2018.
30. 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. Subject to Executive endorsing the recommendations in this report, the referendum will be held on Thursday 4<sup>th</sup> May 2023, alongside the local elections. This is 49 days from the Decision Statement being agreed at

Executive and is the earliest available date after the formal pre-election period that the referendum could be held. This date is agreed in principle with the Director of Governance at the Council with whom it was agreed that the advantage of the referendum running alongside the elections results in better co-ordination of resources and consequently, a significant cost saving. The date for the referendum and further details will be publicised following Executive's decision.

31. If over 50% of those voting in the referendum vote 'yes' 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 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 the Strensall with Towthorpe Neighbourhood Plan area. This is reflected in The Neighbourhood Planning Act 2017 which recognises that, when determining an application, a LPA must have regard to "*a post examination draft neighbourhood development plan as far as material to the application*". If a LPA makes a decision to allow a draft neighbourhood plan with modifications to proceed to referendum, then the modifications recommended must also be taken into account.
33. The government have published guidance on the weight of the Neighbourhood Plan policies. The 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**

- 34 Paragraph 4 of this report sets out all of the stages of consultation that the Strensall with Towthorpe Neighbourhood Plan has been through. A Consultation Statement prepared by the Parish Council accompanied the submission version of the Neighbourhood Plan and sets out all the

consultation undertaken in preparation of the plan's submission to the Council.

35. In accordance with Regulation 16, City of York Council carried out consultation on the Submitted version of Strensall with Towthorpe Neighbourhood Plan between 15 November 2021 – 7 January 2022. This consultation was in accordance with the Council's adopted Statement of Community Involvement.

### **Options**

36. 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 Strensall with Towthorpe Neighbourhood Plan to proceed to Referendum.

### **Analysis**

37. 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**

38. The following alternative options have been identified and rejected for the reasons as set out below
  - ii) *That the Executive provide modified recommendations to those made by the Examiner and, if considered to be significant, agree that these will be subject to further consultation along with a statement explain why the decision differs from the Examiner's;*

*This option is not considered appropriate as the proposed modifications make the Neighbourhood Plan more robust and enable it to meet the Basic Conditions.*

*iii) That the Executive reject the Examiner’s recommendations and refuse the Neighbourhood Plan proposal. This decision can only be justified on the grounds listed under paragraph 46.*

*This option can only be justified if the Examiner recommends that the Plan should not proceed to a referendum, or the Council is not satisfied that the plan has met the procedural and legal requirements. This option is not considered appropriate.*

## **Financial Implications**

39. 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 Strensall with Towthorpe Neighbourhood Plan to date and also sets out the estimated costs associated with the Examination and Referendum.

**Table 1**

| <b>Stage</b>               | <b>Cost</b>               |
|----------------------------|---------------------------|
| Designation consultation   | £500 (estimate)           |
| Submission consultation    | £500 (estimate)           |
| NP grant to Parish Council | £3,000 (paid Jan 2017)    |
| Examination                | £6,083 (Examiner costs)   |
| Referendum                 | £2,000 (estimate)         |
| <b>Total</b>               | <b>£12,083 (estimate)</b> |

40. There is also a significant level of officer costs required throughout the process to provide the required support to each of the Neighbourhood Planning Bodies. This officer input seeks to ensure legal conformity, appropriate plan content, technical advice, including provision of mapping and assistance with Strategic Environmental Assessment (SEA) and Habitat Regulation Assessment (HRA).

41. Financial support from Central Government is available for Local Planning Authorities (LPAs) involved with Neighbourhood Plans. Some LPAs can claim £5,000 for the designation of neighbourhood areas. However, it is no longer available for neighbourhood areas in York as more than 5 neighbourhood areas are designated. Local Planning

Authorities can also claim £20,000 - they apply for this once they have set a date for a referendum following a successful examination. A claim will be able to be made at the point when the local planning authority issues a decision statement (as set out under Regulation 25 of the Neighbourhood Planning (General) Regulations 2012) detailing its intention to send the plan to referendum (rather than when a referendum date has been set).

42. Strensall with Towthorpe Parish Council was provided with a £3k grant from the Council to support the development of the neighbourhood plan, in January 2017.
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. At the Council's Executive meeting on 26<sup>th</sup> January 2023, the Council made the decision to formally consult on the draft CIL Charging Schedule and associated Instalment Plan, prior to CIL being published and charged, in line with the CIL Regulations 2010 (as amended 2019). It is anticipated that public consultation will take place during February / March 2023, examination summer 2023 and adoption autumn 2023.

## **Council Plan**

44. The Neighbourhood Plan supports the achievement of the following outcome areas of the Council Plan 2019-2023:
  - Well paid jobs and an inclusive economy;
  - A greener and cleaner city;
  - Getting around sustainably;
  - Good health & wellbeing;
  - Safe communities and culture for all;
  - Creating homes and world class infrastructure;
  - A better start for children and young people;
  - An open and effective council.

## **Implications**

45. The following implications have been assessed:
  - **Financial** – The examination and referendum will be funded by City of York Council. A claim by the City of York Council will be able to be made to government for a grant of £20,000 at the point when the City

of York Council issues a decision statement (as set out under Regulation 25 of the Neighbourhood Planning (General) Regulations 2012) detailing its intention to send the plan to referendum. The government grant of £20,000 can be put towards the costs of the City of York Council's involvement in preparing the Plan (including the costs of the Examination and referendum). Any shortfall will need to be accommodated within existing resource.

- **Human Resources (HR)** - none
- **One Planet Council / Equalities** – see Equalities Impact assessment 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**

46. In compliance with the Council's risk management strategy, the main risks associated with the Strensall with Towthorpe Neighbourhood Plan are as follows:

- Risks arising from failure to comply with the laws and regulations relating to Planning and the SA and Strategic Environmental Assessment processes and not exercising local control of developments.

## **Contact Details**

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**Report**  **Date** 3/3/23  
**Approved**

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### **Wards Affected:**

Strensall Ward

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

### **Background Papers:**

<https://www.york.gov.uk/planning-policy/strensall-towthorpe-neighbourhood-plan>

### **Annexes**

Annex A Strensall with Towthorpe Neighbourhood Plan Examiner's Report  
Annex B Decision Statement  
Annex C Strensall with Towthorpe Neighbourhood Plan (Submission Version)  
Annex D Equalities Impact Assessment (EqIA)

## **List of Abbreviations Used in this Report**

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

EU – European Union

LPA – Local Planning Authority

NP – Neighbourhood Plan

SEA – Strategic Environmental Assessment

HRA – Habitats Regulation Assessment