

Cherwell District Council

Executive

7 April 2015

<p style="text-align: center;">Neighbourhood Planning: Hook Norton Neighbourhood Plan Examiner's Report</p>
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Report of Head of Strategic Planning and the Economy

This report is public

Purpose of report

The Hook Norton Neighbourhood Plan (HNNP) has now been examined by an appropriately qualified independent Examiner who has produced a report with recommendations for modifications. Cherwell District Council as the Local Planning Authority is required to consider the recommendations and to determine whether the Plan should proceed to a referendum and the area of the referendum.

This report presents the Neighbourhood Plan, the background to the Examination and the process followed. The report outlines the next stages in the process which includes the holding of a referendum. On completion the Neighbourhood Plan will become part of the Development Plan and decisions on planning applications will then be made in accordance with the Plan.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the modifications to the HNNP in accordance with the Examiner's recommendations, and to authorise the issue of a decision statement to that effect;
- 1.2 To approve all of the Examiner's recommendation and modifications to enable the Plan to proceed to a referendum;
- 1.3 To approve the area for the referendum as recommended by the examiner to be the Hook Norton parish council area (which is the approved designated neighbourhood area) and that there will be no extension to the area.

2.0 Introduction

- 2.1 The designation of Hook Norton Parish Council as an area for neighbourhood planning was approved by the Executive on 3 June 2013. The designation was publicised on the Cherwell District Council website in accordance with the relevant Regulations.

- 2.2 A six week pre-submission consultation on the Draft Plan was undertaken by Hook Norton Parish Council between 18 November 2013 and 6 January 2014. The preparation of the Plan was undertaken by a Steering Group established by the Parish Council. It was based on extensive community consultation and input in accordance with the Regulations.
- 2.3 The Steering Group also produced a Sustainability Appraisal (SA) Report which incorporates a Strategic Environmental Assessment (SEA). The SA was also made available for comments and representations. The approach to public consultation is detailed in the Consultation Statement produced by the Parish Council. The Consultation Statement sets out all the responses received to the Pre-Submission Consultation draft.
- 2.4 Following the pre-submission consultation the Plan as well as the SA report were revised and submitted to the District Council on the 14 July 2014. The submitted HNNP was subsequently publicized for comments for six weeks from 11 September 2014 until 23 October 2014. An Examination of the Plan subsequently took place over February/March 2015. The Examiner's report has been received and he is satisfied that the HNNP would meet the prescribed 'basic conditions' subject to recommended modifications

3.0 Report Details

Submission

- 3.1 The submitted Plan is attached as Appendix A to this report. Also submitted were the following supporting documents:
- Hook Norton Neighbourhood Plan 2014-2031 Consultation Statement, July 2014 (Appendix B)
 - Hook Norton Neighbourhood Plan 2014-2031 Basic Conditions Statement, July 2014 (Appendix C)
 - Hook Norton Neighbourhood Plan Sustainability Appraisal Report, Submission Version July 2014 (Appendix D)
- 3.2 The submitted HNNP was publicized for comments for six weeks from 11 September 2014 until 23 October 2014. A public notice was placed in the 11 September edition of the Banbury Guardian; letters were sent out to consultees on the local plan consultee database; and a form was produced for making comments. The Plan and supporting documents were also made available on the Council's website. A statement of representations provided details of where and when the Plan may be inspected; and details of how to make representations. Hard copies of the documents were made available at Bodicote House and at Hook Norton Library. The representations received were sent to the Parish Council and placed on the Council's website

The Examination

- 3.3 Under the neighbourhood planning legislation introduced by the Localism Act 2011 the appointed examiner must be;
- independent of the parish council
 - has no interest in any land that may be affected by the draft plan
 - has an appropriate qualification and experience.

- 3.4 Mr Richard High was appointed by Cherwell District Council, with the consent of Hook Norton Parish Council, to carry out the independent examination, through the Neighbourhood Planning Independent Examiner Referral Service (NPIERS). He has confirmed that he is independent of the Parish Council, has no interest in any land that may be affected by the Draft Plan and that he has appropriate qualification and experience. Mr High is a Chartered Town Planner with over 30 years' experience in local government, including 15 years as a Chief Planning Officer.
- 3.5 When considering the content of a neighbourhood plan proposal, an independent examiner's role is limited to testing whether or not a draft neighbourhood plan meets specified 'basic conditions'. Neighbourhood plans are not examined in the same manner as local plans produced by the LPA. The independent examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.
- 3.6 When examining a neighbourhood plan, the Examiner is required to consider the following:
- a) whether the draft neighbourhood development plan meets the basic conditions as outlined in 3.7 below.
 - b) whether the draft neighbourhood development plan complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004
 - c) whether the area for any referendum should extend beyond the neighbourhood area to which the draft neighbourhood development plan relates
 - d) whether the draft neighbourhood development plan is compatible with the European Convention on Human Rights
- 3.7 The draft neighbourhood development plan meets the basic conditions if:
- a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood development plan
 - b) the making of the neighbourhood development plan contributes to the achievement of sustainable development
 - c) the making of the neighbourhood development plan is in general conformity with the strategic policies contained in the development plan for the area,
 - d) the making of the neighbourhood development plan does not breach, and is otherwise compatible with EU obligations.
- 3.8 Following the six weeks public consultation the plan and all of the supporting information and documents including copies of the representations on the post submission consultation (Appendix E) were sent to the Examiner.
- 3.9 The examination was conducted by written representations during February/March 2015. The Examiner did not consider that a public hearing was necessary in this case. Formal hearings maybe used in the interest of fairness, or where an issue needs to be discussed in more depth.
- 3.10 Under the legislation the examiner must make a report with recommendations, the reasons for them and a summary of findings, the report must recommend either:
- a. the draft plan is submitted to referendum,
 - b. modifications specified in the Examiner's report are made and the draft report as modified is submitted to referendum, or

c. the proposal is refused.

- 3.11 Modifications can only be those that the examiner thinks are needed to:
- a) make the plan conform to the basic conditions
 - b) make the plan compatible with the European Convention on Human Rights
 - c) make the plan comply with definition of an NDP and the provisions that can be made by a NDP or to correct errors.
- 3.12 If a recommendation to go to a referendum is made it must also be accompanied by a recommendation as to whether the area for the referendum should go beyond the neighbourhood, and if so what the extended area should be.
- 3.13 The Council and Hook Norton Parish Council were formally sent a copy of the Examiner's report (Appendix F) on the 12 March 2015. The examiner has recommended that the HNNP should proceed to a referendum subject to a number of modifications.
- 3.14 The Council is now required to consider the recommendations and to decide on what action to take.

Examiner's Report

- 3.15 The examiner has recommended that the HNNP should proceed to a referendum. The Examiner's findings are presented in his report (Appendix F). The recommended modification in relation to each of the policies have been extracted and displayed below the policy of the submitted plan (Appendix G)
- 3.16 The Examiner is satisfied that the HNNP subject to the recommended modifications would meet the four basic tests, that:
- a) It broadly complies with the provisions of National Planning Guidance, in particular the NPPF, and the PPG;
 - b) the Plan contributes to the achievement of sustainable development;
 - c) it is in is in general conformity with the strategic policies of the development plan for the area;
 - d) it does not breach and is otherwise compatible with European obligations.
- 3.17 On this basis, the Examiner is satisfied that the HNNP should proceed to the referendum. The Examiner has not recommended that the referendum area should be extended beyond the neighbourhood plan area.
- 3.18 In reaching his decision the Examiner recognized the following issues:
- that the Plan has been prepared in accordance with Sections 38A and 38B of the Town and Country Planning Act 1990 and the Neighbourhood Planning Regulations 2012;
 - that the plan was prepared in a difficult strategic context in the absence of an up to date local plan;
 - that the intention to achieve conformity with the emerging local plan has been complicated by modifications to that plan which increased the amount of housing being planned for in the District;
 - that there has been thorough engagement with the community throughout the process and the Plan reflects a strong consensus within the community about the main issues to be addressed.

- that the Sustainability Appraisal has helped in the development of the goals, objectives and policies that are included in the Plan. In this way it has helped to ensure that the policies in the Plan contribute to sustainable development. It has also been updated following the pre-submission consultation to take account of changes to the Plan in response to the consultation.

Proposed Modifications

3.19 The key proposed modifications can be summarized as follows:

- The Examiner considered that Policy HN-H1 does not set any limits on the number of developments and so it could theoretically be capable of accommodating any number of dwellings. The recommended modification would permit proposals for up to 20 dwellings where it would not result in more than 20 dwellings being built at any one location.
- The examiner has recommended the deletion of Policy HN-COM3 which requires the LPA to consult with the Parish Council regarding the provision of Section 106 Agreements. It was considered as procedural and not related to the development and use of land.
- The deletion of the “Bell Public House” and “Brewery” from the table of locally valued resources. The Bell Public House was no longer in use as a public house and was being used as a photo copying shop ... it cannot now be regarded as a locally valued resource, particularly as there are 3 other public houses in the village. The Brewery is a manufacturing industry within Use Class B2, changes of use to other uses within use classes B1 and B2 would not be subject to planning control and, while it contains a café ... it cannot be regarded as a community resource in the same way as the other facilities in Table 1.
- The requirement in Policy HN – H4 for applicants to submit an objective assessment of housing need for Hook Norton was considered too onerous. The Examiner recommended its deletion and the insertion of ... “with any planning application a statement setting out how the proposed housing types, sizes and tenures comply with the most up to date Strategic Housing Market Assessment and Local Housing Needs Survey.”
- Recommended amendment to Policy HN – H5 to ensure that allocation of affordable housing takes into account Cherwell District Council’s Housing Allocation Scheme.

Proposed Actions

Decision Statement

3.20 Subject to endorsement by the Executive of the recommendations the next step is to produce a ‘Regulation 18 decision statement’ in accordance with the Regulations to accept the recommendations. This should be published along with the examiner’s report on the CDC website. The decision statement and the report should also be made available at the CDC Offices and locations in Hook Norton. A period of 6 weeks should also be worked into the timetable for any possible legal challenges, from the date of publication of the statement. The Council is in any case required to

give 28 days' notice of a referendum. It should be noted that under the legislation where a LPA does not agree with the Examiner's recommendation then there would need to be another round of consultation including notifying all those on the consultation statement of the Parish Council.

- 3.21 Under Paragraphs 12(5) and (6) of Schedule 4B of the Town and Country Planning Act 1990 the LPA is responsible for making the modifications to the Plan to take into account the Examiner's recommended modifications and other minor updating and typographical corrections and publish before the Referendum. If the Parish Council is not happy with the proposed modifications then it has the option of withdrawing the Plan.

Referendum

- 3.22 The referendum must be undertaken in accordance with The Neighbourhood Planning (Referendums) Regulations 2012. There will be cooperation on this between Strategic Planning and Democratic and Elections Team. This stage requires a timetable to be drawn up for the referendum and the publication of an information statement with a requirement to publish and to give at least 28 days' notice of the Referendum. This information will also need to be made available on the website and at locations in Hook Norton.

- 3.23 The information statement prepared by the Council must include the following information:

- a) that a referendum will be held
- b) the date of the referendum
- c) the question to be asked (the question is set out in legislation – see note below)
- d) a map of the referendum area, which in Hook Norton's case will be the neighbourhood plan area as designated and recommended by the examiner)
- e) a description of those entitled to vote in each referendum
- f) the referendum expenses limit applicable and the number of people identified as entitled to vote on which the limit was calculated
- g) that the referendum will be conducted in accordance with procedures similar to those for local government elections, and
- h) the address and times at which a copy of the specified documents can be inspected.

- 3.24 The referendum question as set out in the Regulations will be:

'Do you want Cherwell District Council to use the Neighbourhood Plan for Hook Norton to help it decide planning applications in the neighbourhood area?'

- 3.25 Should more than half of the people who vote in the referendum vote in support of the question then the Executive would need to ratify the plan before it is made and publish this on the website.

- 3.26 Once the Plan is ratified by the LPA it would then form part of the Cherwell District Council's Development plan meaning that it becomes a material consideration in the determination of planning applications in Hook Norton.

4. Conclusion and Reasons for Recommendations

- 4.1 The HNNP as recommended for modification by the Examiner would satisfy the basic conditions, the preparation has been in accordance with the legislation and it complies with the definition of a Neighbourhood Plan.
- 4.2 The Examiner's modifications involve additions and amendments which do not raise issues of major concern. The majority of the recommended modifications are intended to provide more clarity particularly in relation to compliance with the strategic policies of the submitted and examined Cherwell Local Plan. The Hook Norton neighbourhood plan as recommended for modification by the Examiner should therefore proceed to a referendum.

5.0 Consultation

- 5.1 Cllr Michael Gibbard, Lead Member for Planning,
Hook Norton Parish Council
Hook Norton Neighbourhood Plan Team.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below:

- Option One** Not to approve some of the Examiners recommendations and to proceed to a referendum. Where a LPA proposes to make a decision that differs from the Examiner's recommendation then there would need to be another round of consultation including notifying all those on the consultation statement of the Parish Council. This would take more time and would have cost implications.
- Option Two** Not to accept the examiner's report of recommendations and not to proceed to a referendum. 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.
- Option Three** To extend the area in which the referendum is to take place. Under the neighbourhood planning legislation the LPA cannot make a decision that differs from the Examiner's recommendation about the referendum area.
- Option Four** To adopt the course of action proposed in this report. This is consistent with both the Hook Norton Neighbourhood Plan, the Examiners proposed modifications and the Regulations that apply to Neighbourhood Plans.

7.0 Implications

Financial and Resource Implications

- 7.1 The costs of appointing the Examiner, undertaking the examination and the holding of the referendum are the responsibility of Cherwell District Council.
- 7.2 There have been costs associated with the preparation for and the undertaking of the examination mainly the examiner's fees and staff resources, which have been met from the CDC Planning Policy budget. The decision not to hold a hearing contributed to lower costs.
- 7.3 The preparation for and the undertaking of the referendum will require a significant amount of officer time from Planning Policy and the Democratic Elections team.
- 7.4 The elections team have estimated that the cost for the referendum will be approximately £3,000 in Hook Norton. The team will have to create brand new templates for every document poll cards (ordinary, postal and proxy), envelopes, postal packs etc.
- 7.5 However, as the Plan has been successful at examination the Council qualifies to claim the third phased payment of £20,000 from the DCLG Neighbourhood Planning Grant. This is to cover costs of the examination and any other further steps that may be needed for the neighbourhood plan to come into legal force, including the referendum. However, the payment is not dependent on pursuing the referendum route if both parties agree the neighbourhood plan could be taken forward as part of the local plan or as a supplementary planning document).
- 7.6 The Council have already taken the decision not to combine any referenda with the May elections.

Comments checked by:

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Legal Implications

- 7.7 When completed the HNNP will become part of the Development Plan for Cherwell District council and become a 'material consideration' in the determination of planning applications in the Hook Norton Parish Council areas.
- 7.8 The HNNP has been prepared in accordance with the Town and Country Planning Act 1990 (as amended), the planning and Compulsory Purchase Act 2004, and has followed the Neighbourhood Planning Regulations 2012.

Comments checked by:

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Risk Management

- 7.9 There is a risk that the Council's decision to proceed to a referendum may be legally challenged by a claim for judicial review. It is therefore important to follow

the regulations and to ensure that the council's decision making process is transparent.

- 7.10 There is also risk that the plan may fail to achieve the 50% support required at the referendum. However the plan has had strong community support and this risk is considered to be relatively low.

Comments checked by:

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8.0 Decision Information

Key decision No

Financial Threshold Met No

Community Impact Threshold Met: No

Wards Affected

Hook Norton

Links to Corporate Plan and Policy Framework

- Accessible, Value for Money Council
- District of Opportunity
- Safe and Healthy
- Cleaner Greener

Lead Councillor

Councillor Michael Gibbard - Lead Member for Planning

Document Information

Appendix No	Title
Appendix A	HNNP – Submitted Plan, July 2014
Appendix B	HNNP – Consultation Statement, July 2014
Appendix C	HNNP – Basic Conditions Statement, July 2014
Appendix D	HNNP – Sustainability Appraisal Report
Appendix E	HNNP – Rule 16 Representations to the Submitted Plan
Appendix F	HNNP – Examiners Report, March 2015
Appendix G	HNNP – Extract of Examiner's Recommended Modifications.
Background Papers	
None	
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