

Report to: Cabinet
Date of Meeting: 6 February 2019
Public Document: Yes
Exemption: None
Review date for release None



Agenda item: 21

Subject: Exmouth Neighbourhood Plan Examiner's Report

Purpose of report: To provide feedback and set out proposed changes following the examination of the Exmouth Neighbourhood Plan

Recommendation:

1. That Members endorse the Examiner's recommendations on the Exmouth Neighbourhood Plan.
2. That Members agree that a 'referendum version' of the Neighbourhood Plan (incorporating the Examiner's modifications) should proceed to referendum and a decision notice to this effect be published.
3. That Members congratulate the Neighbourhood Plan Steering Group on their hard work.

Reason for recommendation: The legislation requires a decision notice to be produced at this stage in the process. The Plan is the product of extensive local consultation and has been recommended to proceed to referendum by the Examiner subject to modifications which are accepted by the Town Council.

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Financial implications: No specific financial implications at this stage.

Legal implications: As the report identifies, it is a formal requirement for the Council to consider the Examiner's recommendations and satisfy itself that the proposed plan meets the prescribed 'Basic Conditions'. The purpose of the report is to satisfy this formal requirement. Assuming Members agree then the Council is obliged to publish notice to this effect, pursuant to the applicable Regulations, and Recommendation 2 covers this aspect. The report also identifies that the District Council is responsible for organising the referendum and requires a resolution to

progress this. At this stage there are no other legal observations arising.

Equalities impact:

Low Impact

The Neighbourhood Plan has gone through wide consultation with the community and has been advertised in a variety of formats to increase accessibility. Neighbourhood planning is designed to be inclusive and extensive consultation is a fundamental requirement. All electors are invited to vote in the referendum.

Risk:

Medium Risk

There is a risk that the Neighbourhood Plan could fail the referendum if a majority of the community vote against it.

Links to background information:

- [Localism Act 2011](#)
- [Neighbourhood Planning Regulations 2012](#)
- [Neighbourhood Planning Roadmap Guide](#)
- [Exmouth Neighbourhood Plan and Examiner's Report](#)
- [EDDC Local Plan 2013-2031](#)

Link to Council Plan:

Neighbourhood planning helps to deliver the priorities identified in the Council plan by:

Encouraging communities to be outstanding

Developing an outstanding local economy

Delivering and promoting our outstanding environment

1.0 The Examination

1.1 The Exmouth Neighbourhood Plan has now been examined and, subject to modifications, it has been recommended that it proceed to referendum. The Examiner, Jill Kingaby, was chosen by EDDC in consultation with Exmouth Parish Council.

1.2 The examination was undertaken on the basis of considering the written material which forms the Plan, its appendices and accompanying statements as well as any representations received in response to the formal consultations. The Examiner did not consider it necessary to hold a public meeting. The Plan and Examiner's report are available to download on our website (you may need to copy and paste the link into your browser search):

<http://eastdevon.gov.uk/planning/neighbourhood-and-community-plans/neighbourhood-plans/neighbourhood-plans-being-produced-in-east-devon/exmouth/#article-content>

1.3 The legislation, reflected in the Council’s neighbourhood planning protocol (excerpt below), requires the Policy Team to notify members of the findings and recommendations of the Examiner and how the Council proposes to respond to the recommendations. This response will then be published as a decision notice.

Task in Neighbourhood Plan Production, Commentary and Formal Processes	Role of the Policy Team at the Council	Role of Other Services at the Council
<p>12b – Consideration of and response to the Examiner’s Report <i>(Paragraph 12 of Schedule 4B of TCPA 90)</i></p> <p>The legislation requires the Council to consider and respond to the Examiner’s recommendations.</p> <p>In addition, and before moving on to the next stage, the Council must be satisfied that the draft plan;</p> <p>(1) meets the ‘basic conditions’ being,</p> <ul style="list-style-type: none"> -Complies with national policy and guidance from SoS -Contributes to sustainable development -General Conformity with the strategic policy of the Development Plan for the area or any part of that area -Doesn’t breach or is otherwise compatible with EU obligations – this includes the Strategic Environmental Assessment Directive of 2001/42/EC -The making of the NP is not likely to have a significant effect on a European site (as defined in the Habitats Regulations or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats &c) regulations 2007 9(e) (either alone or in combination with other plans or projects)” <p>(2)is compatible with the Convention rights, and (3)complies with the other legal requirements set out in Sections 38A & 38B of the TCPA 90</p> <p>12c - Produce and publish a Decision Statement <i>(Regulation 18)</i></p>	<p>Consider each of the Examiner’s recommendations and decide what action to take in response.</p> <p>This could be to accept the Examiner’s recommendations to progress to a referendum or to refuse the proposal. It could be to accept recommendations to make modifications or make our own modifications, so as to make the NP meet the ‘basic conditions’, Convention rights or other legal requirements. It could also be to extend the area for the referendum. We could also decide we are not satisfied that the plan meets the minimum requirements notwithstanding the Examiner’s view.</p> <p>We will need to consider if our proposed decision differs from the Examiner’s recommendations and whether this is as a result of new evidence or new fact. If so, and prior to making the decision, we will notify the plan producers and those making representations on the NP and invite further representations. This may entail referring this matter back to the Examiner.</p> <p>A report will be taken to the Determining Committee notifying members of the findings and recommendations of the Examiner and how the Council proposes to respond to the recommendations. In the event of the Officers recommending refusal of the proposal it will not be necessary for the matter to be considered by the Determining Committee unless a Ward Member requests the committee consider the matter.</p>	<p>The Policy Team & Legal Services will assess each of the Examiner’s recommendations and decide what action to take in response.</p> <p>Legal Services will advise whether they are satisfied that the draft plan meets the basic conditions, is compatible with the Convention rights and complies with the other legal requirements</p>

1.4 Essentially the Examiner has recommended a number of textual and related mapping modifications to the Plan. The Examiner’s recommendations are as follows:

Proposed modification number (PM)	Page no./ other reference	Modification
PM1	Plan cover and	Text revision to clearly state the plan period: Exmouth Neighbourhood Plan (2018 – 2031)

	Page 11	3. The Plan will provide the community's vision for the future, from 2018 to 2031.
PM2	Pages 12 & 13	To improve clarity through mapping and identification of areas, text revisions and reference to the Exmouth Masterplan.
PM3	Page 20	Removal of a reference to Environmental Impact Assessment that was considered misleading.
PM4	Page 24	Text revision to add source of supporting evidence: Add a reference to the sentence ending "... Barbastelle Bat of which fewer than 5,000 are known to exist" in paragraph 9. The reference document is <i>The Ecological Appraisal by The Environmental Dimension Partnership (EDP) (2014).</i>
PM5	Pages 23 and 26	Text improvements to indicate support for development within the BUAB and ensure that Policy EN1 has regard for the positive approach to planning as set out in the NPPF.
PM6	Pages 27 to 31	Addition of a new figure, Exmouth Green Spaces, to illustrate the text on Page 27 and provide a revised map and supporting text to restrict the proposed Valley Park to areas outside of the BUAB.
PM7	Page 32 & 34	Text revisions to improve legibility and remove unreasonably onerous requirements relating to solar panels and outdoor lights.
PM8	Page 35	Text revision to Policy EN4: Development proposals character and appearance of the area, to protect the amenity of residents or occupiers of holiday accommodation , and mitigate against
PM9	Pages 44 - 47	Text revisions to add in chapter headings and improve legibility.
PM10	Page 47-50	Text revisions to add robust detail with regard to conservation areas and designated heritage assets. Figure 10 – Conservation Area Map Amendment to the map so that it names each conservation area, and shows the location of clusters of listed buildings. Addition of a footnote to the map to refer to the website for British listed buildings in Exmouth. Addition- Appendix 1 – to include Tables 1 and 2, as set out in letter of 13 th Dec 2018, to IPE from the Town Council.
PM11	Page 51	Text revision to introduce link to forthcoming document: Policy EB1- modify second bullet as follows: - be in compliance ...(2010) and the "Exmouth Register of Historic and Architectural Features", once established.
PM12	Page 56	Bourne Leisure Limited suggested that a tourism policy should be added to the Neighbourhood Plan as tourism is acknowledged within the Neighbourhood Plan to be a major element in Exmouth's economy.

		<p>Paragraph 10.6 of the Local Plan aims to promote the town as a high quality tourist destination, capitalising on the seafront assets. The addition of such a policy should contribute to the promotion of sustainable development and be in general conformity with the Local Plan. A new policy encouraging tourism to be added after paragraph 12 on Page 56 as set out below:</p> <p><i>Policy EEx : Tourism Proposals for tourist facilities and holiday accommodation in the Exmouth Neighbourhood Plan area will be supported in order to boost the local economy and enhance the promotion and development of the area as a suitable holiday destination. Proposals must consider and not adversely affect the character and functioning of the local area.</i></p>
PM13	Page 58	Text revision to improve Policy EE1 and remove overly restrictive content.
PM14	Page 59	Text revision to identify the Magnolia Centre as privately owned.
PM15	Page 62	Text revision to provide detail relating to existing planning permission for the Queen's Drive Development
PM16	Page 66	Text revision to improve positivity of planning content and new action plan to address monitoring of housing delivery.
PM17	Page 66 & 67	Text revisions to improve legibility and supporting text to remove impression that there would be a cap on care/extra care homes.
PM18	Page 67	Text revision to improve local connection criteria and have regard to the data on local need for social housing.
PM19	Page 74	<p>Change from 'Action' to 'Policy':</p> <p>Action GAA4 to be re-written as</p> <p><i>Policy GAx: Development proposals which include public electric charging points at the following types of facility will be supported:</i></p> <ul style="list-style-type: none"> - supermarkets - Large Business premises.
PM20	Pages 84 & 85	Text revisions to enhance text relating to education, pupil numbers and funding.
PM21	Page 88	Text revision to provide improved clarity.

- 1.5 Under para 12 of the Town and Country Planning Act it is for the Local Planning Authority (EDDC) to consider the recommendations made in the report and the reasons for them and decide what action to take in response to each recommendation.
- 1.6 The District Council must be satisfied that the Neighbourhood Plan meets the 'Basic Conditions', compatible with the convention rights and complies with the provisions under s 38A and 38B or that the draft Neighbourhood Plan would meet those conditions be compatible with those rights and comply with those provisions if modifications were made to the draft Neighbourhood Plan (whether or not recommended by the Examiner) before a referendum is held.
- 1.7 The regulations go on to state that if-
 - a) the Local Planning Authority propose to make a decision which differs from that recommended by the Examiner, and
 - b) 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 reason for it) and invite representations.
- 1.8 The legislation, which is reflected in our protocol, requires the Council to consider and respond to this report. The amendments suggested by the Examiner, mean that the Council can be satisfied that the Plan:
 - 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 of the Development Plan for the area;
 - does not breach, and is compatible with European Union obligations and the European Convention of Human Rights and therefore meets the 'Basic Conditions'.

Given that this is the case and the 'Basic Conditions' are met, there are not considered to be any grounds to reject the findings of the report. Members are asked to agree to accept the recommendations of the Examiner's report and agree that a notice to this effect be published.

- 1.9 A revised version of the Plan (known as the 'Referendum Version'), incorporating the recommended changes, will be available to view on the EDDC website before the Cabinet meeting. The District Council will be responsible for arranging a referendum where all electors within the Parish of Exmouth will be invited to vote on whether the Neighbourhood Plan should be used to make planning decisions in the Parish. If more than 50% of those who vote say 'yes' the Neighbourhood Plan will be made and will form part of the Development Plan for East Devon.