

Report to: Cabinet



Date of Meeting 1 December 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

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## **Dalwood Neighbourhood Plan Examiner's Report**

### **Report summary:**

The purpose of the report is to provide feedback and set out proposed changes following the examination of the Dalwood Neighbourhood Plan. The independent examination of the Plan has now concluded and the final Examiner's report received. In accordance with the relevant legislation, the District Council must now consider its response to the Examiner's recommendations and also satisfy itself that the Plan meets the necessary 'basic conditions'. If the recommendation to accept the Examiner's recommendations in full is accepted, a decision notice will be published accordingly. This will confirm that the Plan can go forward for public vote in a local referendum as the penultimate stage in the plan-making process. An updated (Referendum Version) of the Neighbourhood Plan will also be published. The publishing of the decision notice itself will give the Plan significant weight in the determination of planning applications in the Dalwood parish area.

### **Is the proposed decision in accordance with:**

Budget Yes  No

Policy Framework Yes  No

### **Recommendation:**

1. That Members recommend that the Examiner's recommendations on the Dalwood Neighbourhood Plan (the Plan) are endorsed.
2. That Members recommend approval of a 'referendum version' of the Plan (incorporating the Examiner's modifications) to proceed to referendum and that 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 significant local consultation and has been recommended to proceed to referendum by the Examiner subject to modifications which are accepted by the Parish Council.

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Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

### **Equalities impact** Low Impact

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

### **Climate change** Low Impact

**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** [The Localism Act](#); [Plain English Guide to the Localism Act](#); [National Planning Policy Framework \(2021\)](#); [Neighbourhood Planning Regulations](#); [Neighbourhood Planning Roadmap Guide](#); [East Devon Neighbourhood Planning webpages](#); [Dalwood Parish Neighbourhood Development Plan \(Submission Version\)](#); [Examiner's Final Report](#).

### **Link to [Council Plan](#)**

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

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## **Report in full**

### **The Examination**

- 1.1 The Dalwood Neighbourhood Plan has now been examined and, subject to modifications, it has been recommended that it proceed to referendum. The Examiner, Jill Kingaby, was appointed by East Devon District Council, following consultation with Dalwood 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 \(as submitted for examination\)](#) and the [Examiner's report](#) are available to view on our website.
- 1.3 The legislation, reflected in the Council's [Neighbourhood Planning Protocol](#), 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. The agreed response will then be published as a decision notice.

- 1.4 The Examiner has recommended textual modifications to 11 of the 13 policies within the Plan as well as various amendments and additions to supporting text, maps, aims and objectives and community actions, for reasons of clarity/accuracy and to meet the 'Basic Conditions'. These amendments are summarised and explained in Annex 1.
- 1.5 In the process of considering her recommendations, the Examiner consulted with both the Parish and District Council and gave the opportunity for responses to be made to specific questions. The questions and the responses can be viewed on the [Dalwood neighbourhood plan webpage](#). The Examiner's reasons for all of the amendments are explained in more detail in the Examiner's report.
- 1.6 The Examiner congratulated Dalwood Parish Council and its neighbourhood plan steering group, for "producing a Plan which covers the wide range of planning policy matters relevant to Dalwood" which she considered "should contribute positively to decision-making by the EDDC planning department." Overall, the examiner concluded that, "Dalwood Neighbourhood Plan has been duly prepared in compliance with the procedural requirements" and recommended that, "the Plan, once modified, proceeds to referendum".

### **Response to the Examiner's Recommendations**

- 1.7 Under paragraph 12 of the Town and Country Planning Act it is for the Local Planning Authority (EDDC) to consider the recommendations made in the Examiner's report and the reasons for them and decide what action to take in response to each recommendation.
- 1.8 The District Council must also be satisfied that the Neighbourhood Plan:
- i. meets the necessary 'Basic Conditions' by;
    - having regard to national policies and advice contained in guidance issued by the Secretary of State;
    - contributing to the achievement of sustainable development;
    - being in general conformity with the strategic policies of the Development Plan for the area;
    - not breaching, and being compatible with European Union obligations (as retained and/or incorporated into UK law)
  - ii. is compatible with the European Convention of Human Rights (within the meaning of the Human Rights Act 1998), and;
  - iii. complies with the provisions under section 38A and 38B of the Planning And Compulsory Purchase Act,

(or that the draft Neighbourhood Plan would do so if modifications were made to it, whether or not recommended by the Examiner, before a referendum is held.)

- 1.9 The Neighbourhood Plan 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, then,
- the authority must notify prescribed persons of their proposed decision (and reason for it) and invite representations.
- 1.10 The legislation, which is reflected in our protocol, requires the Council to consider and respond to the Examiner's report. Officer assessment is that with the incorporation of the amendments suggested by the Examiner, the Council can be satisfied that the Plan meets

the legal requirements. There are not considered to be any grounds to reject the findings of the report.

- 1.11 Members are therefore asked to agree to accept the recommendations of the Examiner's report and agree that a notice to this effect be published.

## **Next Steps**

- 1.12 A revised version of the Plan (known as the 'Referendum Version'), incorporating the recommended changes, will be made available to view on the [Dalwood page](#) of the East Devon District Council website, together with the Decision Notice. As well as incorporating the Examiner's recommended changes, East Devon District Council Officers will work with Dalwood Neighbourhood Plan Steering Group to help ensure the accessibility of the plan document. This may require some changes in formatting and layout, together with addition of descriptive text ('alt text') for images, but will not otherwise amend any part of the plan.
- 1.13 The District Council will be responsible for arranging a referendum where all electors within the parish of Dalwood 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, where it will carry full weight in the planning decision making process.

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## **Financial implications:**

Central Government funding is available for Neighbourhood plans. This income covers not only examination fees but also all other associated costs such as employment and all other supplies and services. Any residual funds are placed into an earmarked reserve and utilised to cover funding gaps in subsequent years.

## **Legal implications:**

On 26th July 2021, the Council agreed that all decision making bodies (Council, Cabinet and main committees) together with Panels, Forums etc. will be held virtually with decisions delegated to senior officers until 23.59hrs on 17th January 2022 (or earlier if there is a subsequent decision to this effect). As the report identifies, it is a formal requirement for the Council to consider the Examiner's recommendations and satisfy itself that the proposed neighbourhood plan, as modified, meets the prescribed 'Basic Conditions'. The purpose of the report is to satisfy this formal requirement. Assuming Members recommend endorsement and the Senior Officer approves the proposed recommendations then the Council is obliged to publish a 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 such time the Council will arrange such referendum under relevant Government Covid-19 guidance. At this stage there are no other legal observations arising.

## **Annex 1: Examiner's Proposed Modifications (PM) and Officer Responses**

### **1. References to the emerging new Local Plan for East Devon (PM1 and PM4)**

Add wording to acknowledge that there is an emerging new Local Plan for East Devon and that the Parish and District Council will work to seek to ensure that the emerging new Local Plan's policies and the policies of Dalwood Neighbourhood Plan are complementary.

*EDDC Officer Comment: Agree. It is helpful to highlight the changing context for the neighbourhood plan and set the intention for the relationship between the plans going forward.*

### **2. References to the latest National Planning Policy Framework July 2021 (PM5, PM10, PM11 and PM14)**

The plan as a whole to reference the updated NPPF July 2021 which was issued during the course of the examination.

*EDDC Officer Comment: Agree. This will help ensure the plan remains up to date.*

### **3. References to the East Devon Area of Outstanding Natural Beauty (PM2, PM6 and PM8)**

Add wording where relevant throughout the plan to acknowledge that the parish of Dalwood lies partially within the East Devon Area of Outstanding Natural Beauty (AONB), and not solely the Blackdown Hills AONB, but also to clarify that the Blackdown Hills AONB policies have been the main point of reference for the neighbourhood plan.

*EDDC Officer Comment: Agree. This is required for accuracy.*

### **4. Plan aims and objectives (PM7, PM12 and PM18)**

Make minor wording changes to several aims of the plan for clarity and accuracy. Add a new objective, as put forward by the Parish Council, to aim 6 to help create, support and sustain local businesses, to read, "Support the provision of improved connectivity for local businesses and people working from home, through policies and community actions which respond to Aims 12-14".

*EDDC Officer Comment: Support the aims and objectives as modified.*

### **5. Policy NE1: Conserving and Enhancing the Natural Beauty of the Parish (PM9)**

- Remove the clause, "where there is the opportunity to do so" from part 1(ii) of the policy to confirm that 'development proposals will only be supported where they enhance the natural environment'.
- Modify the first part of criteria 2 from, "Where mitigating measures are unavoidably required for development to be acceptable within its landscape setting...." to, "Where any adverse landscape impact can be suitably mitigated, this must ensure compatibility with local landscape character for development to be acceptable within its landscape setting...."
- Condense and correct the wording of criteria 4 to read, "There is a presumption of conservation of any existing natural features even where they are not afforded specific protection by law. Any removal must be justified in the planning application, and new or replacements must be of suitable locally present native trees, shrubs and hedges.
- Insert an additional criteria (new no. 5) relating to flooding to read, "Proposals for development should not increase flood risk or undermine flood protection/mitigation measures, especially in the Corry Brook corridor, where green infrastructure which will give benefits in terms of flood risk management and protecting water quality will be supported.

- Insert an additional criteria (no. 6) relating to supporting biodiversity to read, “Opportunities to incorporate provision for nesting birds and roosting bats must be considered, and included wherever possible/practical in new developments, to protect and enhance biodiversity. A minimum of one integral bird box designed for swifts shall be incorporated into each new build residential unit, and/or where existing buildings are being altered/extended, an ecologist should be instructed to check for existing nests/roosts of birds or bats. These should be retained where possible or replaced with an integral box, or if not practical, an external box. Wherever possible and practicable, this minimum requirement should be exceeded through other appropriate measures including, but not limited to, external nest cups for house martins and swallows, and internal oxygen “tubes” for bats, at all times in accordance with current legislation for specially protected species.”
- Remove reference to ash in the list of native species that should be used where the appropriate planting is part of mitigation planting/planting schemes in view of the fact that currently ash will not be a sustainable planting choice, given there are no disease tolerant ash on the market.
- Correct reference to Devon County Council highways guidance to ‘Highway Management in Protected Landscapes Guidance’, and add footnote with weblink to same.

*EDDC Officer Comment: Agree. This improves clarity of the wording and function of the policy.*

#### 6. **Policy NE2: Preserving Tranquillity and Dark Skies (PM10)**

- Add a new sentence to the end of the policy to read, “New development should follow the guidance on lighting contained in the Blackdown Hills AONB Management Plan 2019-24, and its Design Guide for Houses.” and reference this in the corresponding footnote.

*EDDC Officer Comment: Agree. This improves clarity of the policy for developers and decision makers.*

#### 7. **Built Environment chapter (PM11)**

- Modify the explanatory text relating to the background and reasoning for policies (at paragraph 4.1.1 of the plan to read, as follows:

“Dalwood has several buildings of historic significance, some of which already have national protection through listed building status and others which are present on the Historic Environment Record. Of particular importance to us are: St Peter’s Church (Grade I listed) and the adjacent cottages (Grade II listed), The Tuckers Arms (Grade II listed), Village Hall, Loughwood Meeting House (Grade II\*), The Methodist Chapel and The Reading Room (see Figure 7). National planning policy requires assets to be conserved in a manner appropriate to their significance. The table following Figure 7 provides additional information as to the status of the named assets. The green open space of the Jubilee Field, Green river-bank and Corry Bridge and St Peter’s Church Cottages were all raised as significantly important, in historic terms, throughout consultations. Our objective above (4a) therefore reflects the desire to protect them. The Parish Council will work with EDDC to secure the inclusion on the local list of assets which do not have protection in place, but which demonstrably merit protection.”

- **Policy BHE1 Maintaining the Built Character of the Parish through High-Quality Design (PM11)**

- Amend the first sentence of the policy from, “To ensure that new housing development is of high-quality design and sympathetic to the traditional built character of the Parish, proposals will be supported where they:”, to, “All new

- development should achieve high-quality design and be sympathetic to the traditional built character of the Parish. Proposals will be supported where they:"
- Extend the first criteria of the policy from, "take fully into account the Blackdown Hills AONB Design Guide for Houses (March 2012);" to, "in the case of housing development, take fully into account the Blackdown Hills AONB Design Guide for Houses (March 2012) alongside the National Design Guide and the National Model Design Code."
  - Insert the words "for all development" for application of the remaining criteria.
  - Add a new criteria (vii) to read, "are designed to minimise the occurrence of crime, disorder or anti-social behaviour."
- **Policy BHE2 Protecting Locally Valued Heritage Assets (PM11)**
    - Amend the title of the policy to, "Protecting Heritage Assets".
    - Remove reference to figure 7 showing locally valued heritage assets from the policy wording to the supporting text only, and amend policy wording from, "Proposals for development affecting these assets and their settings will only be supported where..." to, "Proposals for development affecting designated and non-designated heritage assets and their settings will only be supported where..."
    - Reverse the ordering of the 2 criteria in the policy and amend the new first criteria from, "where relevant, they have considered fully any additional local evidence documenting local historic sites" to, "they have fully considered the Historic Environment Record (HER) as well as other available local evidence documenting local historic sites.."
    - Amend Community Action 13 (CA13) to add the words, "including to utilise the EDDC Heritage Strategy to proposed non-designated Heritage Assets for inclusion on the EDDC local list" to the existing wording of, "The Parish Council will work in partnership with the community and Devon County Council, East Devon District Council, and other partners to ensure as necessary to protect the sites of local value."

*EDDC Officer Comment: Agree with minor tweak to Examiner's proposed wording of additional criteria to Policy BHE1 for grammatical reasons only replacing 'are' with 'to be'. These amendments in combination improve clarity, relevance and application of the text and policies relating to the heritage.*

## 8. Housing and Population chapter (PM13)

- Revise the wording of Policy HP1 (Housing Development in Dalwood), the associated Figure 9, and supporting text in line with that put forward by the Parish Council during the examination. This proposed modification centres on the replacement of the proposed 'Settlement Boundary' for Dalwood Village with a 'Dwelling Downsizing and Annexe Zone' to reduce potential for confusion with the Built Up Area Boundaries (BUABs) used in the adopted Local Plan policy and to increase the level of control over proposals that may be supported. The intention being to allow, in limited circumstances and subject to strict criteria, for,
  - annexes to existing dwellings, within the existing curtilage of a dwellinghouse, which provide additional residential space for family members being cared for, but who wish to retain a degree of independence in their living arrangements, or,
  - 1 or 2 bedroom units, developed on land within the curtilage of an existing dwellinghouse and suitable in their size and design to meet the needs of the existing residents wishing to downsize or to establish a first home to rent or buy.
- Wording to be added to the Plan under PM13 also clarifies that the introduction of the downsizing and annexe zone "does not replace or remove the village's designation as

being in the countryside, as defined in Strategy 7 of the adopted East Devon Local Plan 2013-31”.

*EDDC Officer Comment: Agree that these proposed modifications reduce the potential for confusion with BUABs, make the intention of the policy clearer and align the policy better with principles of sustainable development. In combination with the tightly drawn boundary of the zone, this has helped to address concerns raised by EDDC at the Regulation 16 consultation stage, and mitigate the risks identified. Due to the small scale of development that would be envisaged to be supported by the policy and confidence that the approach reflects the wishes of the community, it is considered that this can now be supported.*

#### **9. Policy CFS2: Improvements to Existing Community Facilities, Amenities and Assets (PM15)**

- Modify the first part of point 1 of the policy from, “Figure 10 identifies the Parish’s valued community assets, facilities and amenities.”, to, “Figure 10 identifies the Parish’s community assets, facilities and amenities valued for protection/retention and/or improvement.”
- Modify the first part of point 2 of the policy from, “Proposals which seek to enhance or improve Dalwood’s existing local community facilities, amenities and assets will be supported where:”, to, “Proposals relating to but not limited to the assets named above which seek to enhance or improve Dalwood’s existing local community facilities, amenities and assets will be supported where:”
- Modify point 3 of the policy from, “Proposers of development should consult with the Parish Council at the earliest opportunity to ensure that proposals meet the aims and objectives of this Plan and take into account the views of the local community”, to read, “Applicants for development will be expected to demonstrate how their proposals meet the aims and objectives of the Neighbourhood Plan and how they have consulted and engaged with the Parish Council, users of the facility, and with the wider community.

*EDDC Officer comment: Agree. This aligns to EDDC comments made on the Submission version of the plan and submitted to the examination.*

#### **10. Policy CFS3: Loss of Local Community Facilities through Redevelopment or Change of Use (PM15)**

- Modify criteria ‘i’ of point 1 of the policy from, “it does not have an adverse impact on the special character of the area’s natural and built environments”, to “they would not have an adverse impact on the special character of the area’s natural and built environments”
- Modify point 2 of the policy to read same as the modified part 3 of Policy CFS2 (above) in respect of pre-application consultation and consideration of the neighbourhood plan.

*EDDC Officer comment: Agree. This improves clarity of the policy and furthers EDDC comments made on the Submission version of the plan and submitted to the examination.*

#### **11. Transport and Accessibility Chapter (PM16)**

- Extend the last sentence on page 55 of the plan (“This Plan’s intent is to recognise the necessity of the motor car and enhance both the intra-support within the Parish whilst continuing to make walking, riding and cycling safer and more appealing”) to read, “This Plan’s intent is to encourage sustainable travel and minimise the use of the car wherever possible, having regard for national planning policy (section 9 of the NPPF) and the East Devon Local Plan (eg. Policy TC2). The adverse effects of increased road traffic – noise, air pollution (causing harm to biodiversity, human health and climate change), road accidents and loss of visual amenity) – could also undermine the tranquillity and beauty of Dalwood within the AONBs. This Plan, nevertheless,

recognises the necessity of the motor car for local people within the Parish, whilst it will continue to make walking, riding and cycling safer and more appealing.”

- Add a new Community Action relating to sustainable transport, that, “The Parish Council will continue to explore sustainable transport schemes and solutions to retain and improve accessibility for residents to local facilities and services, working with partners within the community.”

*EDDC Officer comment: Welcome this strengthening of the Plan’s intent in respect of sustainability.*

## **12. Policy TA2: Rights of Way (Public Footpaths and Bridleways) (PM17)**

- Insert a requirement when proposals for development affecting rights of way can be supported, to make this, “Subject to compliance with all other relevant policies” in the Plan;
- Make the relationship between all 3 criteria of the policy for assessing proposals affecting Public Rights of Way ‘and/or’;
- Add wording to the 3<sup>rd</sup> criteria of the policy to make it explicit that proposals for or affecting rights of way should “include measures designed to” ‘prevent motorised vehicles (except those specifically designed for the disabled) illegally using designated footpaths, bridleways and cycleways (where established).’

*EDDC Officer comment: Agree. This improves clarity and application of the policy.*

## **13. Policy EE1: Superfast Connectivity (PM19)**

- Add an additional sentence to the policy wording to state, “Where practicable, all new residential, educational and business premises will be required to make provision for the latest high-speed broadband and other communication networks.”

*EDDC Officer comment: Agree. This improves clarity of the expectation and aligns to EDDC comments made on the Submission version of the plan.*

## **14. Policy EE2: Farming (New Development Proposals) (PM20)**

- Add two additional criteria at the start and end of the policy respectively to require proposals to demonstrate how they will, “meet an agricultural need and be commensurate in size with the intended future use” and “include minimal new lighting, and comply with Policy NE2: Preserving Tranquillity and Dark Skies”.

*EDDC Officer comment: Agree. This improves clarity of the expectation and aligns to EDDC comments made on the Submission version of the plan.*

## **15. Policy ELC1: Renewable and Low Carbon Energy Schemes (PM21)**

- Add, “heritage assets (including their settings and any archaeology needs)” to the list of factors in point 1 of the policy that renewable and low carbon energy schemes would need to demonstrate that they have ‘no adverse impact on’ in order to be supported.
- Modify the supporting text to ensure the ‘Devon Landscape Policy Advice Group’ is correctly titled.

*EDDC Officer comment:* Agree. This improves accuracy and responds to comments made by EDDC on the Submission Version of the plan.

#### **16. Amendments to Figures (PM3, PM10 and PM17)**

- Amalgamate figures 2a and 2b to show the location and key features of the parish of Dalwood / Dalwood Neighbourhood Plan Area into a single map (Figure 2), entitled, “Dalwood Neighbourhood Plan Area”.
- Modify Figure 7 to retitle it, “Heritage Assets Most Valued by the Local Community”, amend the key so that it is clear which assets are listed, add arrows to the map so that the location of individual assets is clearer, and insert a table provided by the Parish Council during the examination after Figure 7 to set out information on the ‘Status of Local Heritage Assets’ shown.
- Replace the map on page 58 (Figure 11) with the updated map provided to the examiner by East Devon District Council on 7 October 2021, entitled ‘Dalwood Map – Oct 2021 – PROW’ which takes account of comments made at the Regulation 16 consultation by Devon Countryside Access Forum and East Devon District Council.

*EDDC Officer comment:* Agree. This improves clarity and responds to comments made on the Submission Version of the plan.