

Report to: **Cabinet**  
Date of Meeting: 10 July 2019  
Public Document: Yes  
Exemption: None  
Review date for release: None



Subject: **Sid Valley Neighbourhood Plan Examiner's Report**

Purpose of report: To provide feedback and set out the proposed modifications following the examination of the Sid Valley Neighbourhood Plan

Recommendation:

1. That Members endorse the Examiner's recommendations on the Sid Valley Neighbourhood Plan (the Plan).
2. That Members agree that a 'referendum version' of the Plan (incorporating the Examiner's proposed 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: There are no direct financial implications.

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 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 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 \(As used to examine the Plan due to the submission date of December 2018\)](#)
- [Neighbourhood Planning Roadmap Guide](#)
- [Sid Valley 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 Sid Valley Neighbourhood Plan has now been examined and, subject to modifications, it has been recommended that it proceed to referendum. The Examiner, Liz Beth, was chosen by EDDC in consultation with Sidmouth Town 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:

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

<b>Task in Neighbourhood Plan Production, Commentary and Formal Processes</b>	<b>Role of the Policy Team at the Council</b>	<b>Role of Other Services at the Council</b>
<p>12b – Consideration of and response to the Examiner’s Report (Paragraph 12 of Schedule 4B of TCPA 90)</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"> <li>-Complies with national policy and guidance from SoS</li> <li>-Contributes to sustainable development</li> <li>-General Conformity with the strategic policy of the Development Plan for the area or any part of that area</li> <li>-Doesn’t breach and is otherwise compatible with EU obligations – this includes the Strategic Environmental Assessment Directive of 2001/42/EC</li> <li>-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 &amp;c) regulations 2007 9(e) (either alone or in combination with other plans or projects))”</li> </ul> <p>(2)is compatible with the Convention rights, and (3)complies with the other legal requirements set out in Sections 38A &amp; 38B of the TCPA 90</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 &amp; 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>

12c - Produce and publish a Decision Statement  (Regulation 18)		
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1.4 The Examiner's proposed modifications are as follows:

Proposed modification number (PM)	Page no./ other reference	Modification
PM1	Throughout	In order to comply with government guidance in the NPPG and thus the Basic Conditions, at the request of the examiner, the Community Actions need to be more clearly differentiated from the land use policies of the SVNP and the Plan. They should be removed from their current location at the end of each topic section and formed into a separate annex to come at the end of the document after the Glossary of Terms and Web links.
PM2	Policy 2 – Protection of key views	<p>In order that Policy 2 meets the Basic Conditions and has regard to government guidance, the following modifications are recommended by the examiner: “<i>Any development must not cause a significant adverse impact on the current valued views as shown in the Key Views Map 8. The <b>visual</b> relationship of settlements in the valley surrounded by hills should</i></p> <p>be protected. <del>building heights should not normally be higher than neighbouring properties.</del> Except when development will not be visible from the viewpoints, <b>proposals outside of the BUAB</b> must demonstrate that they will have a low or negligible impact on the views, assessing:</p> <p>a) the key views from outside the BUAB which are 1, 2, 8 and 9</p> <p>b) the key views from within the settlements to the surrounding AONB or the Coastal Protection</p> <p>Areas (CPA) which are 3,4,5,6,7 and 10;</p> <p>Views to be re-numbered to accommodate the removal of view 8.</p>
PM3	Policy 3 – Settlement Coalescence and Green Wedges	The policy as worded is stating that no development will be acceptable within the designated non-coalescence area. This would provide a degree of protection that would exceed Green Belt designation, and the examiner considers this as too negative. Some development may be acceptable, and the policy instead needs to focus on

		<p>development maintaining the visual and physical separation of Sidbury and Sidford.</p> <p>Policy 3 to be reworded as follows:</p> <p><b>POLICY 3 SETTLEMENT COALESCENCE AND GREEN WEDGES</b></p> <p>There will be a presumption against any built <b>Any development proposal within the 'Green Wedges'</b></p> <p>Sidford-Sidbury Non-Coalescence Area, <i>shown on the Map 10</i>, will only be acceptable if it does not impact on the visual and physical separation of Sidford and Sidbury.</p>
<p>PM4</p>	<p>Policy 4 - Green Corridors</p>	<p>The policy as currently drafted has errors with the placing of bullet points, and for clarity this will need correcting. The examiner has agreed with the Qualifying Body that the borders of the corridors should coincide with the Environment Agency's floodzone 3, and Figures 11 and 12 will need amending therefore. The policy cannot state that there will be a presumption against any built development for reasons of being positive as required by the NPPG. Developers and others need guidelines in policies as to what is not acceptable, and why, so that what may be acceptable can be determined. In order that Policy 4 meets the Basic Conditions, the examiner recommends that it is amended as shown below:</p> <p>The Environment Agency Flood Zone 3 of the River Sid and tributaries; the Green Goyle and Woolbrook Stream in the Neighbourhood Area are defined as Green Corridors as shown on Maps 11 and 12. <del>There will be a presumption against any built</del> <i>Development within the areas shown on the Green Corridors Map other than alterations and extensions within the Green Corridors area where they are supported by alternative planning policy, including flooding considerations.</i> will be required to maintain and where possible enhance <i>the biodiversity of the corridor and allow uninterrupted passage of wildlife.</i></p> <p>Other text to be deleted.</p> <p>Maps 11 and 12 to remove reference to Flood Zone 2. Detail from the Sid Valley Place Analysis</p> <p>Figures 19 and 20 could be added for clarity with regard to the Green Corridors.</p>

PM5	Policy 5 – Local Green Space Designation	<p>With the further details of the LGS sites inserted in the Plan, the examiner considers that reference to the Open Space Study within the Policy will not be necessary. EDDC has pointed out that some development can enhance a LGS, and the ‘presumption against all development’ needs to be qualified in this regard in order that the Plan is not unduly and unhelpfully negative. Policy 5 and supporting text is recommended to be revised as shown in below in order that it meets the basic conditions.</p> <p>“The following areas are designated as Local Green Space as shown on the Sidmouth LGS Designation <b>Maps (13-21)</b> below, where there will be a general presumption against all development <b>that does not promote the attributes and use for which it was designated</b> except in very special circumstances.</p> <p>Specific areas designated as Local Green Spaces are listed in the East Devon District Council Open Space Study Review 2014 <a href="http://eastdevon.gov.uk/planning-libraries/evidence-documentlibrary/chapter8.4-environment/env046-openspacestudyreview2014.pdf">http://eastdevon.gov.uk/planning-libraries/evidence-documentlibrary/chapter8.4-environment/env046-openspacestudyreview2014.pdf</a> and additional areas</p> <p>since this report are included below:</p> <p>Local Green Spaces in the Sid Valley:</p> <p>Include List as shown in Policy 5 ...</p> <p>Maps of each LGS, supporting text detailing the reasons for designation, and the revised justification text, to be inserted in the document after Policy 5. The existing table may remain or not, I do not see it as necessary now, but this is not a Basic Conditions issue. Other maps and references to them</p> <p>will need to be re-numbered.</p>
PM6	Policy 6 – Protected open Spaces	The examiner raised a conflict between this policy and Policy 5 with the Qualifying Body, as the areas designated as LGS were also included within this policy. Duplicating designations in both policies would have confused users of

		<p>the Plan as to what level of protection was intended with the LGS. Discussion on this point has led the Qualifying Body to suggest that Policy 6 is deleted. Open Space is protected in the EDLP, and the policy is not offering any new guidance. The examiner agrees that this is a sensible solution, and recommends that in order that the Plan has the clarity required by the NPPF and NPPG (ID: 41-041-20140306), and does not duplicate policy, it is deleted.</p>
PM7	Policy 8 – Local Distinctiveness	<p>EDDC were concerned that requiring ‘building heights should not normally be higher than neighbouring properties’ is difficult in a context like Sidmouth Parish with sloping sites. The examiner viewed this Plan requirement as overly prescriptive, contrary to the requirements of the NPPF (para59). The alternative wording suggested by the LPA is more flexible as per the proposed modification below:</p> <p>Policy 8 and the Place Analysis are to be amended as follows:</p> <p>The final paragraph of Policy 8 to read as follows:</p> <p><b><i>“Building heights should be in keeping with the context of not normally be higher than neighbouring properties.”</i></b></p> <p>The Place Analysis document to include the authors of the report, and their qualifications.</p>
PM8	Policy 9 – Light Pollution	<p>The examiner recommends that Policy 9 is amended as shown in order that it meets the Basic Conditions with regard to clarity:</p> <p>“There will be a general presumption against all outdoor lighting (both ambient and floodlight) outside the <del>settlement areas</del> <b>BUAB</b>, unless there is overwhelming operational requirement and the illumination has been designed to minimise light spillage and the hours of usage are restricted by planning condition.”</p>
PM9	Policy 10b – Exception Sites	<p>The examiner noted that there are aspects of Policy 10B, as currently drafted, that do not comply with the strategic policy Strategy 35 and are not in ‘general conformity’. East Devon DC has objected that the policy has no size limit, and in the absence of this the examiner proposes that Policy 10B should include the limit in Strategy 35. Policy 10B also needs to be clear that it is exception sites that are being allowed, a requirement for Strategy 35 as well as development in the AONB. The LPA has also objected to a strict local occupancy condition being applied to any</p>



market housing, and this would be unduly onerous for dwellings whose purpose is to improve the viability of the exception site development.

A formula has been agreed between EDDC and the Qualifying Body during this examination whereby a local occupancy condition will be required for market housing on an exception site, unless viability issues are shown to render it an unreasonable restriction on development. In this way, the examiner considers the revised policy to be in general conformity with strategic and national policy.

Additionally, the examiner proposes that Policy 14 on Principal Residency be added to the requirements of this policy. Exception sites are only allowable if they are providing for local need, and it is reasonable to exclude the possibility of 19 holiday accommodation being developed on any market housing allowed outside of the BUAB to facilitate affordable housing provision.

Policy 10B to be amended as follows:

~~The~~ **Exception site** residential development of land which lies immediately adjacent to the built-up area boundary and is well related to the pattern of adjacent developments in the vicinity will be allowed **if it complies with the requirements of this policy and provides for no more than 15 dwellings at any one site.** ~~provides for the specific housing needs of persons resident of or connected to the settlements within the plan area~~

~~Such~~ **Exception site** developments will be required to include at least 66% affordable housing and

all the housing whether market or affordable must be of a type and size required to meet local

housing need as set out in SVNP Housing Policy 12.

**Affordable housing** ~~and~~ must be accompanied by a Planning Obligation requiring that occupants must meet the local connection criteria set out in SVNP Housing Policy 13. **Market housing will also be expected to be accompanied by a Planning Obligation requiring occupants to meet the local connection criteria set out in SVNP Housing Policy 13, unless it is demonstrated that such a restriction would prevent the delivery of**

		<p><b>the affordable housing through its impact on the economic viability of the scheme.</b></p> <p>Any new open market housing will be required to be restricted to being used as a Principal Residence and not as a 'second home', in that the occupier shall be required to use it as their main residence regardless of who owns the Freehold.</p> <p>Such development will only be allowed where it is demonstrated that the development will not detrimentally impact on the setting of the town or the landscape quality of the AONB <b>and</b> it meets all other relevant policies in the development plan. <del>and</del> Its design and layout will be expected to follow the characteristics of the adjacent Character areas, as set out in the Place Analysis.</p>
PM10	Policy 11 – Affordable Housing	<p>The examiner recommends that the final paragraph of Policy 11 is amended as follows in order that it complies with the Basic Conditions and is in conformity with strategic guidance for the</p> <p>development plan:</p> <p>“.....On sites in the AONB schemes of between 6 and <b>9</b> <del>10</del> units a financial contribution equivalent to a 50% site affordable housing provision will be expected to be made in lieu of on-site provision of affordable housing.”</p>
PM11	Policy 12 – Housing by number of bedrooms	<p>In order that the policy has the flexibility required by national policy, and complies with the Basic Conditions, the examiner proposes that it is amended as shown below:</p> <p>The first paragraph of Policy 12 to be amended as follows:</p> <p>All new developments of 11 or more homes <b>should</b> <del>must</del> meet the following requirements:</p> <p>The percentage of one, two and three/four bedrooms homes on any development shall be as follows</p> <p>unless up to date housing need evidence demonstrates an alternative mix would better suit local</p> <p>needs:....</p>
PM12	Policy 13 – Local connection	<p>The examiner recommends that it is not acceptable to require local occupancy on market housing that is being provided to aid viability, and Policy 10B now has a viability clause allowing opt-out if required for viability reasons. The NPPF (para 173) also requires policy burdens to not</p>

		<p>unreasonably threaten viability. In order that Policy 13 applies to the affordable housing on any exception site, and thus complies with the Basic Conditions with regard to conformity with the development plan and the NPPF, the examiner recommends that policy text is amended as shown in Modification 12 below:</p> <p>Apart from sites promoted under SVNP Housing Policy 10 B, the eligibility for affordable housing will be administered by EDDC as the Housing Authority. The definition of local need is therefore laid down by the Council’s Allocation Framework. However, priority will be given to people who can demonstrate a local connection to the parish of the Sid Valley in the first place. In this policy,</p> <p>For the purposes of allocating housing provided for local need on exception sites as allowed by</p> <p><b>Policy 10B, a local connection will be required which</b> means one or more of the following connections in respect of the Sidmouth Town Parish area:</p> <ol style="list-style-type: none"> <li>1. Persons who have been permanently resident in <b>Sidmouth Town Parish</b> for a continuous period of three years out of five years, immediately prior to their occupation of the new dwelling;</li> <li>2. Have been formerly permanently resident therein for a continuous period of five years at some time in the past;</li> <li>3. Having his or her permanent place of work (normally regarded as 16 hours or more a week and not including seasonal employment) within the Sidmouth Town Council area for a continuous period of at least 12 months immediately prior to the occupation of the new dwelling; <b>or</b></li> <li>4. Persons who can demonstrate a close family connection to the Town Council area in that the person’s mother, father, son, daughter or sibling has been permanently resident there for a continuous period of five years immediately prior to the occupation of the new dwelling and where there is independent evidence of a caring dependency relationship.</li> </ol>
PM13	Policy 14 – Principal Residency	<p>Whilst this policy is considered reasonable at exception sites outside of the BUAB, the examiner does not find enough compelling evidence to apply a principal residency policy throughout the parish.</p> <p>In order that the SVNP meets the Basic Conditions with regard to complying with national policy on proportionate</p>

		<p>evidence and policy burdens, the examiner recommends that Policy 14 be deleted.</p> <p>The Policy 14 justification paragraph to be moved to the justification for Policy 10B and altered as follows:</p> <p><u>2nd sentence:</u> "The Neighbourhood Plan is anxious that any new housing built in the plan area should be used for providing homes for persons to live in on a permanent basis."</p> <p><u>Final sentence:</u> "...Where the supply of new <b>market</b> housing is limited <b>provided on an exception site</b> it is important, <b>given the limited development locations in Sidmouth, that it be retained in a way that has the greatest also benefits for those in the need for primary residence housing need</b> locally.</p> <p>Policy numbering to be altered as required.</p>
PM14	Policy 22 – A Safe Town	<p>Policy 22 to be amended to avoid prescriptive design guidance:</p> <p><del>All</del> <b>Proposals for new developments should consider the conform to 'Secured by Design' principles and incorporate them where possible.</b> <del>and the Neighbourhood Plan will support</del> <b>Development proposals aimed at improving community safety which comply with other policy in the development plan will be supported.</b></p>
PM15	Policy 24 – Eastern Town Access	<p>The policy was criticised by EDDC for being onerous in an area with existing good links. It is not unreasonable to want to maintain these links, but improvements should be required 'where possible' in order not to be too burdensome a requirement and contrary to policy in the NPPF. The last sentence of the policy is dealing with highway matters not land-use, and so cannot form part of the policy.</p> <p>Policy 24 to be amended as follows:</p>

		<p>“Any development of Eastern Town will be expected to demonstrate via an access strategy how the scheme will <b>maintain, and where possible</b> improve, the cycle pathway linkages with the town centre and the wider area. The existing levels of car parking spaces will be retained unless alternative parking is provided which is equally accessible to the town centre. The development will be expected to provide high quality environmental and public realm enhancements to the immediate area. <del>Vehicular access to and from the Esplanade turning circle</del></p> <p>should be restricted to service vehicles, coaches and boat trailers.</p>
PM16	Policy 26 – Eastern Town Community Assets	<p>The policy has been criticised by EDDC as being too prescriptive, and it is potentially placing excessive burdens on any development of the site, contrary to the requirements of national policy (NPPF para 173).</p> <p>Policy 26 to be re-worded as follows:</p> <p><del>Any development</del> <b>Redevelopment</b> of the Eastern Town site <del>will be expected</del> <b>is encouraged</b> to retain and/or replace all current community assets, including: The Ham recreation ground, swimming pool and the public toilets. Any such redevelopment will be expected to include a flexible multi-use area capable of acting as a community events space, and/or a flexible cultural /performance space, with catering (bar/restaurant). Developments which enhance the above buildings and/or uses will be supported.</p>

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 Sidmouth will be invited to vote on whether the Neighbourhood Plan should be used to make planning decisions in the Parish. **The date of the referendum, as agreed between East Devon District Council and Sidmouth Town Council, will be delayed until September to avoid the summer holiday period.** 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.