

Report to: Cabinet
Date of Meeting: 27 November 2019
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Subject: Membury Neighbourhood Plan

Purpose of report: This report explains that the Membury Neighbourhood Plan has been to Referendum and has been found to meet the basic conditions subject to some changes. The Parish Council have agreed with most of the changes but wish to reduce the number of houses to be allowed. As a result the relevant policy of the Plan needs to be subject to a further 6 weeks of consultation. If no substantive objections are received, it can proceed to Referendum.

Recommendation:

1. That Members endorse the Examiner's recommendations on the Membury Neighbourhood Plan (the Plan) but agree in principle to the reduction in the number of proposed houses in Membury village from 15 to 10 (Policy HP1).
2. That Members agree that a further 6 week consultation be undertaken in respect of Policy HP1 of the Plan.
3. If no substantive objections are received in response to Policy HP1, that Members agree that a 'referendum version' of the Plan (incorporating the Examiner's modifications and the amended Policy HP1 reduced to 10 houses) should proceed to referendum and a decision notice to this effect be published.

Reason for recommendation: The Plan is the product of extensive local consultation and has been recommended to proceed to referendum by the Examiner subject to modifications which, with one exception, are accepted by the Parish Council. This exception is that the Parish Council wish to reduce the number of new houses allowed in the village to reduce from the 15 recommended by the Examiner, to 10. This change would be acceptable in principle as it still meets the Basic Conditions (and is in broad conformity with the Local Plan) but would need to be subject to further consultation. If this change does not receive substantive objections and Members agree that it should proceed to Referendum, the legislation requires a decision notice to be produced.

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Financial implications: Growth within the region provides the council with funding through government incentive schemes and increases our tax base. Although the reduction recommended is not a large number any reduction in growth will have a detrimental financial impact.

Legal implications: As set out within the report, it is a formal requirement for the Council to consider the Examiner's recommendations and satisfy itself that the proposed modified plan meets the prescribed 'Basic Conditions'. The purpose of this officer report is to satisfy this formal requirement and

advise that further amendments are required. The extra step for consultation in respect of the proposed amendments to Policy HP1 is required to be agreed. Following the outcome of the consultation 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.

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:

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

Report in full

1.0 The Examination

- 1.1 The Membury Neighbourhood Plan was examined in March 2018 and, subject to modifications, it has been recommended that it proceed to referendum. The Examiner, Andrew Mead, was chosen by EDDC in consultation with Membury 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, however there were a number of written queries raised by the Examiner and the Parish Council responded to the Examiners Report after its publication. The Plan, the Examiner's report and the other written material are available to download on our website:

- 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 and 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 The Examiner has recommended nine textual modifications to the Plan. The Examiner's recommendations are as follows:

Proposed modification number (PM)	Page no./ other reference	Modification
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PM1	Page 25: Statement of Principle	Delete the Statement of Principle.
PM2	Page 25: Definition of Infill	Delete the Definition of Infill.
PM3	Policy HP1	Delete policy HP1 and substitute: “Policy HP1 – Meeting new build within Membury Any proposals for new housing development must meet the requirements and standards of the Design Statement, not detract from the landscape and not increase flood risk to others and will be supported: 1) where they are of appropriate type, design, and scale to the village, and 2) providing the cumulative effect does not harm the heritage or character of the village, and 3) the cumulative new build within the whole parish over the plan period does not exceed 15 properties.”
PM4	Policy HP5	Delete point 5) and substitute: “5) are located within Membury village and meet the criteria of Policy HP1.”
PM5	Policy NE2	Change “... no adverse effect ...” in points 1) and 2) to: “... no significantly adverse effect...”
PM6	Policy BHE1	Include in point 2): “... historic assets and their settings in the parish...”
PM7	Policy BHE1	Delete point 1) from the policy. Delete point 3) from the policy.
PM8	Policy CFS3 2)	Delete “... at least two years ... ” and substitute: “... at least 12 months (and up to 2 years depending on market conditions) ...”
PM9	Policy F1 a) 2	Delete a) 2 from the policy.

- 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'.

This is the case and the 'Basic Conditions' are met, however the Parish Council has raised a concern which is felt to be valid.

2.0 Amendment to the Examiner's Recommendations

- 2.1 The Neighbourhood Plan, as submitted to Examination, pursued an approach whereby new housing would be distributed amongst the hamlets as well as in the village itself. The District Council expressed concern at this approach, particularly as the hamlets offer no services and are accessible only by the private car, but the Parish Council were keen to avoid concentrating a comparatively large number of houses in the main village and decided to let the principle be tested at examination.
- 2.2 The Examiner considered the issues and states in his report:
- "4.16I have very strong reservations about the locational principles of the housing policies which seek to enable dwellings to be built in open countryside, albeit in four named hamlets. The EDLP indicates that in rural areas outside villages the policy approach is one of development constraint and countryside conservation, whilst recognising the needs of those who live or work there. There will be scope for small villages without BUABs to benefit from limited development specifically to meet a proven local need, for instance for affordable housing or local employment, but generally these settlements will be expected to look to the larger villages and towns to provide general housing, employment and facilities. I note that, prior to the adoption of the EDLP, Membury used to have a BUAB. However, this is no longer the case and Membury is not identified in the emerging Villages Local Plan as a village where a BUAB is being defined.*
- 4.17 Strategies 6 and 27 of the EDLP enable development to be proposed at settlements without a BUAB by the production of a Neighbourhood Plan. The definition of a settlement is not included in the EDLP but whereas, due its size and function, I accept that Membury is a settlement, I consider that Rock, Furley, Webble Green and Longbridge are hamlets and are locations in the open countryside where the EDLP would not normally seek to locate new houses. Therefore, in this regard, Policy HP1 is not in general conformity with strategic policies and I shall recommend the deletion of the named hamlets.*

4.18 I realise that a strong theme of the Plan is to disperse development away from Membury village and several reasons are given. The NP states that the EDLP restriction on “small scale (hamlet) development” will encourage an ageing population, but there is no evidence that this would be the case any more than building focussed on Membury. The higher than national average number of people working from home and the investment in broadband facilities are not sound reasons to encourage the building of new houses in the four small hamlets in the open countryside in the AONB. The dispersal of new houses to the hamlets outside Membury would encourage car usage to obtain services and facilities found in the village. There is no public transport and the interconnecting lanes are very narrow, mostly steep and lack safe paths. I agree that maintaining the primary school and the pre-school facilities are important. However, any children from Longbridge or Webble Green may well use educational facilities at Stockland rather than Membury...

4.21 Therefore, I consider that any new housing development as provided for in the Plan should only be located at Membury village...

4.24 Policy HP1 5) states that the cumulative “new build” within the whole parish over the Plan period should not exceed 10 to 15 new properties. Given that I am recommending that the focus of new housing should be at Membury village, I shall modify the policy accordingly. Furthermore, relating the new housing limitation to the whole parish would not take into account any dwellings permitted under EDLP Policy H4 for those employed in rural businesses. In order to be sufficiently clear, I shall place the housing limitation at 15 new dwellings permitted over the Plan period which would meet the aspirations of the NP for the parish and which would still be subject to criteria 1) and 2) of Policy HP1. I have recommended appropriate modifications to the policy to reflect my conclusions outlined above. (PM3)”

- 2.3 The Parish Council are concerned that their Plan originally proposed 10-15 houses throughout the Parish during the Plan period, but the Examiner has amended Policy HP1 to only focus new housing into the main village of Membury and has specified a maximum of 15 houses. They have reluctantly agreed to the village focus, but fear that the overall number is excessive, particularly if 15 houses are focussed on a single site, and have requested that the Examiners modification be changed, downwards, to allow a maximum of 10 dwellings during the Plan period.
- 2.4 The District Council had already expressed concern at the scale and location of the new housing, so whilst the village focus is welcomed, 10 houses are considered more appropriate than 15, especially as the post office/shop has closed since the Examination, making the village less sustainable in planning terms. Whilst 10 or 15 houses would meet the Basic Conditions the lower figure would conform more closely to Strategy 27 of the adopted East Devon Local Plan which restricts development in the countryside. Concerns remain among Officers that there is a lack of precision in the Examiners report regarding what constitutes Membury village (as there is no boundary or criteria defining it), however for Development Management purposes each application will be considered on its merits against the development plan and case law and it is not considered appropriate to attempt to redefine it at this late stage.
- 2.5 Under Para 13 (of the Town and Country Planning Act, 1990) the District Council are able to reach a different view to the Examiner but must “notify prescribed persons of their proposed decision (and the reason for it) and invite representations”, before deciding whether any responses are so substantive as to warrant a further examination.

- 2.6 Members are asked to agree that Policy HP1 should be amended to state 10 rather than 15 houses and that a six week consultation, undertaken by the Planning Policy Team, should commence as soon as possible. This will relate only to Policy HP1.
- 2.7 It should be noted that, since the Examination, the main facility in the Village- the Post Office/café/shop- has closed, although a regular community café now runs from the village hall. The Plan has been updated to reflect the change of venue but this is considered very minor, and factual, and does not warrant reconsultation in this respect.
- 2.8 A revised version of the Plan, incorporating the recommended changes and the reduced number of houses in HP1, will be available to view on the EDDC website during the consultation. If no substantive objections to HP1 are received, this Plan will be known as the 'Referendum Version' and will proceed to the next stage in the process. If substantive objections are received the matter will be returned to Cabinet for consideration.
- 2.9 Depending on the outcome of the consultation the District Council could consider that a further Examination is necessary. Given the relatively minor nature of the change to HP1, and the situation whereby the housing numbers are reduced and the Examiner has already considered the issues, this seems very unlikely but nevertheless cannot be ruled out until the consultation concludes.
- 2.10 Assuming the change to Policy HP1 is acceptable, the District Council will be responsible for arranging a referendum where all electors within the Parish of Membury 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.