

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



Agenda item: To be completed by Democratic Services.

Subject: **Payhembury Neighbourhood Plan Examiner's Report**

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

Recommendation:

- 1. That Members endorse the Examiner's recommendations on the Payhembury Neighbourhood Plan (the Plan).**
- 2. That Members agree that a 'referendum version' of the 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 Parish Council.

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Financial implications: There are no direct financial implications for East Devon District Council.

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. Assuming Members agree 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. The Inspector's report correctly refers to the transition requirements to the revised 2018 NPPF issued during the plan making process, these set out that the submitted

Neighbourhood Plan is to be examined against the 2012 NPPF. 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](#)
- [Payhembury 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 Payhembury Neighbourhood Plan has now been examined and, subject to modifications, it has been recommended that it proceed to referendum. The Examiner, Mary O'Rourke, was chosen by EDDC in consultation with Payhembury 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](#):
- 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 a five textual modifications to the Plan. The Examiner’s recommendations are as follows:

| Proposed modification number (PM) | Page no./ other reference | Modification |
|-----------------------------------|---------------------------|--|
| PM1 | Page 22 | <p>To improve general conformity with the strategic policy contained in East Devon Local Plan, and to encourage the delivery of the identified housing need for smaller properties:</p> <p>In the last sentence of policy PNP1 delete the words ‘of brownfield sites’ and add after ‘Local Plan’ the words <i>‘and with the maximum internal space standard set out above’</i>.</p> |

| | | |
|-----|---------|--|
| PM2 | Page 24 | <p>Suggested modification of policy PNP3 to clarify that marketing of an employment site must be for the existing or similar use:</p> <p>In policy PNP3 after the word ‘marketed’ add <i>‘for the existing or similar employment use’</i> before ‘at a realistic price’.</p> |
| PM3 | Page 26 | <p>The words <i>‘further development of existing buildings or within their curtilage ...’</i> are not sufficiently clear and unambiguous. Further, proposals should also have regard to any impact they might have on the natural environment and biodiversity. Suggested modification to the wording along the lines suggested by the District Council:</p> <p>Reword policy PNP4 as follows:</p> <p><i>Proposals for individual and community scale renewable energy projects, and other forms of green technology, will be supported subject to the proposed development not having an unacceptable adverse impact on:</i></p> <ul style="list-style-type: none"> • <i>the character and appearance of the area;</i> • <i>the amenity of local residents; and</i> • <i>the natural environment and local biodiversity.</i> |
| PM4 | Page 31 | <p>The policy, as drafted, lacks a level of clarity in its use of ambiguous words like ‘safe pedestrian zones’, ‘possibly’, ‘defined walkway’, and ‘safe pedestrian area’. Suggested modifications to text:</p> <p>Reword policy PNP6 as follows:</p> <p><i>All proposals for new development should make appropriate safe provision for pedestrians. Improved or increased provision for pedestrians in the village centre will be supported.</i></p> |
| PM5 | Page 30 | <p>Suggested clarification on the level of protection afforded to Green Belts:</p> <p>Reword policy PNP5 as follows:</p> <p><i>The Church Lane Play Area, indicated in Figure 3, is designated as Local Green Space and where any proposals for development should be consistent with national Green Belt policy.</i></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 Payhembury 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.