

**Report to:** Cabinet  
**Date of Meeting:** 21 July 2020  
**Public Document:** Yes  
**Exemption:** None  
**Review date for release** None



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

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

**Recommendation:**

- 1. That Members endorse the Examiner's recommendations on the Otterton 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.

**Officer:** Angela King, Neighbourhood Planning Officer  
[aking@eastdevon.gov.uk](mailto:aking@eastdevon.gov.uk) 01395 571740

**Financial implications:** No Specific 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. The actual date of the referendum will however be postponed following the provisions of the Coronavirus Act 2020 and the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and

Referendums) (England and Wales) Regulations 2020. 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](#)
  - [Plain English Guide to the Localism Act](#)
  - [National Planning Policy Framework \(revised 2019\)](#)
  - [Neighbourhood Planning Regulations 2012](#)
  - [Neighbourhood Planning Roadmap Guide](#)
  - [Otterton 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 actively encouraging, promoting and supporting the development of:
- Outstanding place and environment
  - Outstanding homes and communities
  - Outstanding economic growth, productivity and prosperity

## 1.0 The Examination

- 1.1 The Otterton 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 Otterton 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.

<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><b>12b – Consideration of and response to the Examiner’s Report</b> <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"> <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><b>12c - Produce and publish a Decision Statement</b> <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 &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>

1.4 The Examiner has recommended nine textual modifications to the Plan. The Examiner’s recommendations are as follows:

<b>Proposed modification number (PM)</b>	<b>Page no./ other reference</b>	<b>Modification</b>  (strike-through text = recommended for deletion; Text in bold italics = recommended for addition)

PM1	Pages 3 & 4	<p><b>2.3 Major events during the project</b></p> <p>9 Formal Plan inspection and revision <b>examination and modification</b></p> <p>Modify the dates for items 9, 10 and 11, as appropriate.</p>
PM2	Page 37	<p><b>4.4.4 River Flooding</b></p> <p>River flooding.....</p> <p>As such no development will be supported that might exacerbate flooding issues. <b>Strategy 5 of the Local Plan aims to protect areas that are vulnerable to surface water runoff and flooding from development. Local Plan Policy EN22 has specific requirements for new development that creates surface water runoff implications, and this Plan endorses these requirements. Policy EN21 addresses river and coastal flooding with a sequential approach. Wherever possible developments should be sited in Flood Zone 1(low probability), as defined in the East Devon District Council Flood Risk Assessment.</b></p> <p><b>Otterton has recently experienced significant surface water runoff during the wet winter months. This has particularly been the case following autumn maize harvesting, following which land has been left bare; the resulting unrestrained runoff has given rise to a serious loss of valuable topsoil from the land. This practice should be discouraged as it represents poor land management, and has resulted in several overtopping incidents along Otterton Brook through the village.</b></p>
PM3	Page 49	<p><b>PO.4 – Economy/Business/Employment</b></p> <p>Support small businesses including home working, small scale tourism and farming as the main economic activities in the parish. <b>Farm and rural diversification with re-use of existing buildings will be supported, as will new and start-up small businesses, especially those engaging skilled and higher paid workers.</b> Such support would only be given if there is <b>Development to provide new or expanded businesses should have no significant</b> detrimental effect on the natural or the built environment.</p>
PM4	Pages 50 & 51	<p><b>6.1 Sustainable Development – Policy ONP1</b></p> <p>Development proposals to meet ....</p> <p><b>b. are located so as to avoid areas at risk of river and coastal flooding, and</b> incorporate sustainable drainage .....</p> <p>Relevant policies: NPPF .....</p> <p>EDLP Policies D1, D6, D7, D8, E5, EN21, <b>EN22</b>, .....</p>
PM5	Pages 51 & 52	<p><b>6.2 Protecting and Enhancing the Conservation Area and other Heritage Assets</b></p> <p>Development within or adjacent to the Conservation Area <del>or any heritage assets</del> must preserve ..... as described in sections 3.1 <b>and 4.3</b> above, and, where possible, enhance the historic or architectural character <b>and appearance</b> of the site .....from its setting <del>or that of any heritage assets</del>. <b>Development across the Parish should not cause harm to the designated listed buildings or structures, or to local heritage assets, having regard to their significance.</b></p>

		Justification: Heritage assets ..... existing and future generations. <b>Appendix I of this Plan provides information as to the significance of individual heritage assets. It names the designated listed buildings and proposed local heritage assets.</b>
PM6	Pages 52 & 53	<p><b>6.3 Protecting and Enhancing the Built Environment – Policy ONP3</b></p> <p>Development must not detract .....</p> <p>1) The open green spaces ...that define its character, <b>should</b> be retained, .....</p> <p>4) The green open spaces .... its character <b>should</b> be retained, safeguarded .....</p> <p>6) Protection, enhancement and creation ..... (Devon Banks) <del>to</del><b>should</b> form an integral...</p> <p>10) Off road parking .....<del>is</del><b>should be</b> integral to any new development. ....</p>
PM7	Pages 54 & 55	<p><b>6.5 Protecting and Enhancing Wildlife in the Natural Environment – Policy ONP5</b></p> <p>Development must follow the following key principles to help protect and enhance the fauna and flora, <b>and secure net gains in biodiversity:</b> .....</p> <p>Justification: Otterton Parish has two ..... Sidmouth. <del>Such sites have to consult</del><b>Consultation with</b> Natural England <b>has to take place</b> before any operations .....</p> <p>Add a new final sentence to Justification:</p> <p><b>Any harmful effects on designated and undesignated sites should be avoided by new development, or mitigated by appropriate measures.</b></p> <p>Relevant policies: EDLP Policies EN4, EN5, <b>EN21, EN22</b> ....</p>
PM8	Page 56 & 57	<p><b>6.6 Encouraging Small-scale Economic Development – Policy ONP6</b></p> <p>Small scale economic ..... expansion of existing businesses <del>providing jobs for local people</del> will be supported where .....</p> <p>3. If for agriculture, ... <del>in sustainability terms</del> <b>to have no detrimental environmental impact on</b> the farm and surrounding areas. ....</p> <p>ii. the local highway .....forecast increase in traffic;</p> <p><del>Both i and ii</del> <b>should be demonstrated through a Traffic Assessment.</b></p> <p>iii. There will be no detrimental impact .....</p> <p>Relevant policies: ....</p> <p>EDLP policies D1, D2 .... EN18, <b>EN21, EN22</b> ....</p>
PM9	Pages 57 & 58	<p><b>6.7 Ladram Bay Holiday Park Development – Policy ONP7</b></p> <p>Development will only be permitted within the area outlined in red on the map below if it is for the replacement of an existing structure or pitch, is designed to be sustainable and does not harm the <b>landscape or setting of the East Devon AONB, the Jurassic Coast World Heritage Site and Coastal Protection-Preservation Area.</b> <del>No new development of any kind will be</del></p>

		<p><del>permitted anywhere</del> Outside the existing site <del>red line</del> boundary defined on the map below, <b><i>new development must be limited and should not provide any additional holiday units or visitor accommodation.</i></b> Support will be given for any proposal <b><i>meeting the above criteria</i></b> that .....</p> <p>The map of Otterton – Ladram Bay Holiday Park and associated infrastructure boundaries, on Page 58, should be modified to show the recently constructed depot at the northern end of the site, and a revised site boundary as proposed by EDDC.</p>
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- 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 section 38A and 38B of the Act, 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, is available to view on the [East Devon District Council website](#).

## 2.0 Next Steps

- 2.1 The District Council will be responsible for arranging a referendum where all electors within the Parish of Otterton 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.

- 2.2 It should be noted that due to the Coronavirus Act 2020 and the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 made in response to the coronavirus crisis, the referendum will not currently be able to take place until after 6 May 2021. However, in recognition of the hard work undertaken in communities like Otterton to progress plans to such an advanced stage, updated Government guidance has clarified that where the local planning authority has issued a decision statement detailing its intention to send a neighbourhood plan to referendum, that plan can be given significant weight as a material consideration in decision-making on planning applications. If accepted, this will be the effect therefore of the recommendation of this report.