

Delegated Report

30 November 2017

Head of Planning Services

Is the final decision on the recommendations in this report to be made by the Head of Planning?

Yes

Hawkhurst Neighbourhood Development Plan: Decision Statement

Final Decision-Maker	Head of Planning
Portfolio Holder(s)	Councillor Alan McDermott, Planning and Transportation Portfolio Holder
Lead Director	Lee Colyer – Director of Finance, Policy and Development
Head of Service	Karen Fossett, Head of Planning
Lead Officer/Author	Kelvin Hinton, Planning Policy Manager
Classification	Non-exempt
Wards affected	Hawkhurst

This report makes the following recommendations to the final decision-maker:

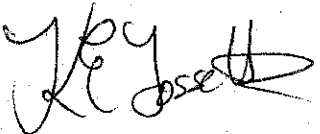
1. That the Reg17A Consultation Responses Statement (Appendix A) in respect of the Hawkhurst Neighbourhood Development Plan be noted and published.
2. That the Hawkhurst Neighbourhood Development Plan be modified in part according to the Examiner's recommendations but also with alternative and additional modifications as agreed by Cabinet on 22 June 2017, which were subject to the Reg 17A consultation.
3. That the Decision Statement attached as Appendix B be published and that the Hawkhurst Neighbourhood Development Plan be put to Referendum.

This report relates to the following Five Year Plan Key Objectives:

- A Prosperous Borough
- A Green Borough
- A Confident Borough

The Parish Council has progressed preparation of a new Neighbourhood Development Plan which will set out local objectives and policies for the Parish for the period 2016 - 2033, including policies related to Housing / Design, Landscape / Environmental Protection, Access / Movement, and Community Infrastructure. The new Plan will be based on achieving sustainable development in the Parish which accords with the Borough Council's key corporate objectives.

Timetable	
Meeting	Date
Cabinet	22 June 2017

Discussion with Portfolio Holder	28 November 2017
Decision by Head of Planning Karen Fossett 	30 November 2017

Hawkhurst Neighbourhood Development Plan: Decision Statement

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The Hawkhurst Neighbourhood Development Plan (HNDP) has been successful at Examination, with the Examiner recommending that the plan should proceed to referendum, subject to a number of recommended modifications.(Final Report January 2017)
- 1.2 The Council as Local Planning Authority is responsible for deciding what action to take in response to the Examiner's recommendations. At the Cabinet meeting on 22nd June 2017 it was agreed that:
 - That the Examiners report dated January 2017 in respect of the Hawkhurst Neighbourhood Development Plan be noted and published.
 - That the Hawkhurst Neighbourhood Development Plan be modified in part according to the Examiner's recommendations but also with alternative and additional modifications recommended by the Council and is published and is subject to a six week consultation period in line with Regulation 17A of the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016.
 - That the consultation responses be reviewed by the Head of Planning who be deleted, in consultation with the Planning and Transportation Portfolio Holder, to either submit the Hawkhurst Neighbourhood Development Plan for further independent examination or progress the Plan to Referendum.
- 1.3 This report presents the representations received to the Reg 17A consultation and the Council response thereto which would inform a final decision statement.
- 1.4 Modification of a plan, contrary to recommendations of the Examiner is rare and is not a decision to be taken lightly, however it was considered that the modification proposed by the Examiner to completely delete the key draft Housing policy (Policy HD1) which seeks to influence housing delivery was significantly at odds with the intention of the draft Plan and would modify it beyond the understanding of the Plan when it was consulted upon before and after submission to the Borough Council. The consequence of this modification would have been to change the Plan radically and against the wishes of the Parish Council and community.
- 1.5 It was considered and agreed by Cabinet that a set of alternative modifications could be progressed that satisfied both the Parish Council and this Council and that still met the legal Basic Conditions required for Neighbourhood Plans.
- 1.6 The Examiner's Recommendations in respect of the HNDP are different to those made by Inspectors in respect of Local Plans. Whilst neither set of

recommendations are binding, in the case of a Neighbourhood Plan instead of requiring 'soundness' a Plan must meet Basic Conditions, providing more scope for interpretation. Whereas acceptance of the Inspector's recommendations on a Local Plan are necessary for soundness, in the case of Examiner's recommendations these are open to alternative modification so long as those modifications would still result in the plan meeting the Basic Conditions.

- 1.7 Under the revised Neighbourhood Planning Regulations (in force from 1st October 2016), being minded to agree the recommended alternative modifications the revised Plan had to be advertised for a further period of six weeks prior to the decision being made either to submit the Plan for further independent examination or send the Plan to referendum.
 - 1.8 The responses received to the Reg 17A consultation are set out in the report attached as Appendix A along with the responses thereto.
 - 1.9 There is no legal requirement for the Plan as further revised to be put to a second Examination. This is an option for the Borough Council to decide. It is equally possible for the Council to decide that the Plan meets the Basic Conditions and decide to put the Plan to Referendum.
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2. INTRODUCTION AND BACKGROUND

- 2.1 The Council has a statutory duty to assist communities in the preparation of Neighbourhood Development Plans and Orders and to take plans through a process of Examination and Referendum.
- 2.2 The draft Hawkhurst Neighbourhood Plan is the most advanced of the draft plans being prepared in the Borough and has been subject to the regulatory stages required by the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012.
- 2.3 The Hawkhurst NDP plan has been prepared for a designated neighbourhood area, which follows the parish boundary, and has a plan period from 2016 to 2035. The area was designated by this Council in April 2014. Plan preparation by the Parish commenced shortly after.
- 2.4 Officers have met with representations of the Parish Council on a regular basis throughout the preparation process and have made comments at key stages. The Parish Council carried out pre submission consultation on a draft Hawkhurst NDP between April and June 2016.
- 2.5 The submission version of the plan was published and consulted on between August and October 2016. Mrs Rosemary Kidd MRTPI was subsequently appointed as Examiner, with the agreement of the Parish Council and the Examination commenced in October 2016.
- 2.6 The Examiner was appointed to assess whether the draft Plan met certain legal requirements for NDPs, known as the 'Basic Conditions'. These state NDPs should:

- Have regard to national policies and advice contained in guidance issued by the Secretary of State,
 - Contribute to the achievement of sustainable development,
 - Be in general conformity with the strategic policies contained in the development plan for the area,
 - Not breach, and is otherwise compatible with, EU obligations
- 2.7 The Examination was initially suspended to enable further work to be completed and the Examiners final report was received in January 2017. The report concluded that the Plan could proceed to referendum subject to a number of recommended modifications. The Examiner identified a number of modifications which were considered necessary to ensure the Hawkhurst NDP met the basic conditions.
- 2.9 Having considered each of the recommendations made in the Examiner's report and the reasons for them, the Council, with the agreement of Hawkhurst Parish Council, decided to accept the majority of modifications to the draft Plan. However, there was disagreement with the Examiners modification to completely delete draft Policy HD1 which sought to influence housing delivery.
- 2.10 The Neighbourhood Planning (General) Regulations 2012 (as amended) requires in Regulation 18 for the local planning authority to outline what action to take in response to the recommendations of an Examiner following the formal Examination. The Regulations provide that where the Council disagrees with the Examiner's report it can make alternative modifications, subject to re-consultation, and this provision was engaged in this instance as set out below.
- 2.11 The specified basic conditions that a neighbourhood plan must meet include that it should have regard to national policies and advice contained in guidance and should that it should deliver sustainable development. One of the considerations in addressing these matters, is whether the Plan policies will provide "the supply of housing required to meet the needs of present and future generations" (Paragraph 7 of the National Planning Policy Framework (NPPF)). In addition Paragraph 16 of the NPPF states that neighbourhood plans should support the strategic development needs as set out in the local plan.
- 2.12 The Examiner set out her consideration of original Policy HD1 at paragraphs 4.8 to 4.19 of her report. In making the recommendation to delete the policy the Examiner concluded that; the policy would set blanket restrictions on the size of future housing sites, place restriction on the delivery of sites and that as drafted the policy was unclear and ambiguous.
- 2.13 Following receipt of the Examiners report careful consideration was given to the findings and the reasoning for the recommended modifications. Whilst a set of background documents and evidence was available to support the submitted Plan at examination stage there was no opportunity to provide any further justification/evidence when the Examiners draft report was received for fact checking.
- 2.14 Having considered the Examiners report the opportunity was taken to review, with the Parish Council, the intention of Policy HD1 as originally drafted and the

aspirations of the local community which lead to the submission version of the Plan. The Parish representatives confirmed that it was not the intention to unduly restrict housing development but rather to seek to influence the location, form and choice of site having regard to the environment and character of the parish and especially the location within an Area of Outstanding Beauty, a designation which is given specific protective status in national planning policy.

- 2.15 As a result of this review an alternative approach and wording to the policy was prepared and this formed part of a set of revisions which were consulted upon under Reg17A following the decision of Cabinet in June 2017. In a revised form this means that the policy as redrafted is divided into two parts, seeks to encourage development of brownfield sites in preference to greenfield sites, actively supports development of small sites and requires development of larger sites to be exceptionally justified given the AONB location in accordance with national planning policy.(NPPF)
- 2.16 Table 1 in Appendix C to the Cabinet report outlined the alterations made to the draft Plan (under paragraph 12(6) of Schedule 4B to the 1990 Act) in response to each of the Examiner's recommendations and the justification for this. Table 1 also included some further modifications agreed between the Borough Council and the Parish Council. The relevant Regulations state that a Local Planning Authority must publish what action will be taken in response to the recommendations of an Examiner. This is known as the 'Decision Statement'. The relevant statement was published as part of the Reg 17A consultation.
- 2.17 The responses received to the Reg 17A consultation are set out in the report attached as Appendix A along with the responses thereto.
- 2.18 It will be noted that a number of responses were received both from statutory organisations and the general public, along with responses from certain developer interests. The responses made a number of detailed comments about the draft Plan and although some of these made points directly arising from the revisions made to the Plan as agreed by Cabinet many related to matters which had been previously considered by the independent Examiner and found acceptable.
- 2.19 Given the decision to retain policy HD1, albeit in a different form to that considered by the Examiner, it is not surprising that certain of the responses focused on this policy. Some, especially from developer interest parties, continue to comment that the Plan, even as revised, does not meet the legal Basic Conditions test since, in their opinion, policy HD1 is too restrictive and as such is contrary to national policy set out in the NPPF.
- 2.20 Whilst noting such responses it is considered that they misrepresent the revised policy. The policy expresses a preference for brownfield and small sites and in that way reflects national planning policy particularly with regard to development in AONB, which itself states that "major " development in the AONB needs to be justified. The revised Housing policy HD1 has been drafted to accord with national policy regarding major development in the AONB. It does not provide for an embargo on major development but reflects the policy tests and considerations set out in national planning policy. Individual development

proposals and planning applications will continued to be assessed and determined on individual merit having regard to the status of development plan policies but also having regard to all material considerations, including NPPF policy, and which may include the justifications and circumstances advanced in a specific case.

2.21 As regards the relationship of the Neighbourhood Plan to the proposed new Local Plan it should be noted that the local plan process is still at a relatively early stage. National planning policy and guidance provides for circumstances where a Neighbourhood Plan comes forward in advance of a Local Plan. The Neighbourhood Plan will be subject to regular review providing the opportunity for updates and revision, subject to due process, to reflect preparation and progress of the borough Local Plan. It should also be noted that the Neighbourhood Plan does not include allocation of housing sites and so does not does not prejudice the site allocation process undertaken in preparing the new Local Plan.

2.22 Having regard to;

- the consideration already given by Cabinet to the Examiners report, and revisions to the draft Neighbourhood Plan
- the resulting Reg17A consultation and responses received thereto

it is considered that the Neighbourhood Plan as revised meets the legal Basic Conditions test and that it should be put to Referendum.

2.23 Under paragraph 10 of Schedule 4B to the 1990 Act (pursuant to Section 38A of the 2004 Act) in relation to the Neighbourhood Development Plan it is agreed that the Hawkhurst Neighbourhood Plan should proceed to referendum based on the neighbourhood plan area designated by the Borough defined by the Council. Consideration has been given as to whether to extend the area in which the Referendum is to take place. It is considered that there is no reason to extend the Neighbourhood Plan area for the purpose of holding the Referendum. The Referendum area will be the same as the designated Neighbourhood Area covering the entire parish.

3. AVAILABLE OPTIONS

3.1 Note the Representations to the Reg17A consultation but not progress the Hawkhurst Neighbourhood Plan.

This option has been considered in consultation with the Parish Council but is not favoured given the effort made to date to prepare the Plan and the fact that it is possible to make modifications at variance to the Examiners recommendations. Having considered the representations received pursuant to the Reg17A consultation it is considered that the Plan as revised meets the Basic Conditions. For these reasons it is not considered that there is any justified or legal reason to subject the Plan to a further examination.

- 3.2 Note the Representations to the Reg17A consultation, make further revisions and decide to put the Plan as revised to Referendum.
 - 3.3 This option has been considered in consultation with the Parish Council but is not favoured given it is considered that further revisions are not necessary and that the Plan as already revised meets the Basic Conditions.
 - 3.4 Note the Representations to the Reg17A consultation and decide to put the Plan to Referendum.
 - 3.5 This option has been considered in consultation with the Parish Council and is favoured. The Plan has already been revised, re-consulted upon and having considered representations received it is considered it meets the legal Basic Conditions.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Progressing the Neighbourhood Plan to Referendum as described at paragraphs 3.4/3.5 above, is recommended for the reasons given.
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5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 As set out above the draft emerging Neighbourhood Plan was subject to previous public consultation by the Parish Council at pre submission stage between April and June 2016, and subsequently again at submission stage between August and October 2016 by the Borough Council. All representations made at submission stage were considered by the Examiner as part of the Examination process.
- 5.2 Following the decision of Cabinet in June 2017 the Plan as revised has been subject to further consultation under Reg17A. The responses received are set out in the consultation response statement attached as Appendix A.
- 5.3 The outcome of the consultation has been discussed with the Portfolio Holder who is in agreement with the recommendation to proceed to Referendum.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 If agreed by the Head of Planning the decision to put the Plan to Referendum will be published and necessary arrangements made.

7. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Regulation 17A Consultation Response Report.

8. BACKGROUND PAPERS

- Cabinet Report and Appendices dated June 2017:

<http://democracy.tunbridgewells.gov.uk/meetings/documents/s32803/19%20Hawkhurst%20Neighbourhood%20Plan%20-%20Report.pdf>

<http://democracy.tunbridgewells.gov.uk/meetings/documents/s32796/19a%20Hawkhurst%20Neighbourhood%20Plan%20-%20Appendix%20A.pdf>

<http://democracy.tunbridgewells.gov.uk/meetings/documents/s32797/19b%20Hawkhurst%20Neighbourhood%20Plan%20-%20Appendix%20B.pdf>

<http://democracy.tunbridgewells.gov.uk/meetings/documents/s32798/19c%20Hawkhurst%20Neighbourhood%20Plan%20-%20Appendix%20C.pdf>

