

Strategic Planning, Sustainability & Transportation Committee

14 June 2016

Is the final decision on the recommendations in this report to be made at this meeting?

N/A

Examinations of Staplehurst and Headcorn Neighbourhood Plans

Final Decision-Maker	Strategic Planning, Sustainability & Transportation Committee
Lead Head of Service	Rob Jarman, Head of Planning and Development
Lead Officer and Report Author	Cheryl Parks, Project Manager, Local Plan
Classification	Public
Wards affected	Headcorn, Staplehurst

This report makes no recommendations to this Committee and is for information only.

This report relates to the following corporate priorities:

- Keeping Maidstone Borough an attractive place for all -
- Securing a successful economy for Maidstone Borough -

Timetable

Meeting	Date
Strategic Planning, Sustainability & Transportation Committee	14 June 2016

Examinations of Staplehurst and Headcorn Neighbourhood Plans

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report has been written to update the Committee in regard to an issue that has arisen in relation to the examinations of the Staplehurst and Headcorn Neighbourhood Plans and the actions of officers in seeking to address this issue.
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2. INTRODUCTION AND BACKGROUND

- 2.1 Both Staplehurst and Headcorn Neighbourhood Plans have been significantly advanced in recent months and officers have been working closely with the Parish Councils to facilitate progress.
- 2.2 Staplehurst consulted formally on its plan between 23 October and 4 December 2015, and the Borough Council's response to the consultation was agreed by this Committee at its meeting of 10 November 2015.
- 2.3 Headcorn held its consultation slightly later, between 15 January and 26 February 2016 with the Borough Council's response being agreed by this Committee at its meeting of 9 February 2016.
- 2.4 The Borough Council has a procurement agreement to obtain candidate examiners for Neighbourhood Plans through a framework called NPIERS (Neighbourhood Planning Independent Examiner Referral Service) run by the Royal Institute of Chartered Surveyors (RICS). The NPIERS resource has been developed as a key source of independent examiners by the following organisations with support from the Department of Communities and Local Government:
- Royal Institution of Chartered Surveyors (RICS)
 - Planning Officers Society (POS)
 - Royal Town Planning Institute (RTPI)
 - Action with Communities in Rural England (ACRE)
 - Locality.
- 2.5 Using the NPIERS service gives a number of assurances regarding the skills and accreditation of the person referred, as well as certainty around availability and costs. All NPIERS registered examiners should be free from conflict of interest, fully trained and qualified to undertake the examination, a member of a relevant professional body, and in possession of suitable professional indemnity insurance.
- 2.6 NPIERS hold strict criteria for inclusion in the panel and strong governance to ensure the panel remains fit for purpose. Performance is monitored by the governance board for quality assurance purposes. All panel members also work to a fixed fee tariff allowing for Local Planning Authorities to understand the cost implications from the outset.

- 2.7 During the Regulation 16 consultations on both Neighbourhood Plans, candidate examiners were sought, and passed to the relevant Parish Councils for consideration. It remains officers' view that the appointment should be carried out in a collaborative way and that the choice of the Parish should be agreed unless there is a strong justification not to do so.
- 2.8 Both Staplehurst and Headcorn Parish Councils chose to request the services of Ms Clare Wright of Community Spirit Partnership to examine their respective Neighbourhood Plans, and these decisions were supported by the Borough Council given Ms Wright's local knowledge and NPIERS accreditation.
- 2.9 Relevant papers were supplied to Ms Wright to commence the examinations within one week of the close of the consultations (December 2015 for Staplehurst; March 2016 for Headcorn) and assurances sought as to the likely timetable for concluding each examination. The Borough Council was informed in writing that the Staplehurst Plan examination could be concluded within 10 – 15 days of receipt of the required information, and separately that the Headcorn Plan examination could be completed within the month of March.
- 2.10 Whilst undertaking the initial examination for Staplehurst Neighbourhood Plan, the appointed examiner made several requests for additional information to support the Plan, which led to delays with the examination, and clearly frustrated the Parish Council. This also subsequently led to the examination of the Headcorn Neighbourhood Plan running in parallel. On 4 May 2016, after much delay, the examiner issued two written interim reports: for Staplehurst, challenging the methodology applied to the screening carried out in regard to Strategic Environmental Assessment, and the site selection process undertaken; for Headcorn, posing a number of questions regarding the drafting of the Plan and calling for a hearing to further explore the issues raised. The questions sought clarity on how the Headcorn Neighbourhood Plan, as drafted, supports the development needs for the area and the objectively assessed need in the emerging Local Plan; whether the Headcorn Neighbourhood Plan has been prepared in a positive manner; whether it is appropriate for a Neighbourhood Plan to challenge the strategic policies of the emerging Local Plan; what the arguments are for not following the advice of statutory consultee Southern Water; whether a requirement for 20% affordable housing is in conformity with adopted policy; and what guidance exists to inform decisions on 'remoteness' and appropriateness of development.
- 2.11 Both Parish Councils were contacted in regard to the receipt of the interim reports and copies of these were placed on the Borough Council website on the Neighbourhood Plan pages. It was the view of officers that the issues raised in regard to Staplehurst could easily have been overcome by way of additional confirmation and clarification rather than through the issuing of a written report – an assertion subsequently verbally agreed by Ms Wright.
- 2.12 On 20 May 2016, Ms Wright contacted the Borough Council again, but this time to notify officers that she had lost her accreditation in the latest round of performance monitoring by the NPIERS governance board and so

therefore could no longer continue the examinations under the NPIERS framework. A number of potential solutions were proposed by Ms Wright for consideration, including her re-appointment as an examiner independently of the NPIERS framework, but this would not meet the procurement requirements of the Borough Council and so was rejected.

- 2.13 Following receipt of this news, officers contacted both Parish Councils to advise what had happened, and to set out what the Borough Council would be doing to assist in trying to rectify the situation, including the seeking of alternate examiners for consideration.
- 2.14 NPIERS were contacted and asked to urgently provide a revised list of candidate examiners for each Neighbourhood Plan, and given the protracted process to date were requested to expedite the request to ensure a swift resolution for all concerned.
- 2.15 An alternate examiner has been proposed for both Plans by NPIERS, Mr Christopher Lockhart-Mummery QC, but the Borough Council has reservations that, in advising Kent County Council on Local Plan related transport matters, Mr Lockhart-Mummery QC may have a perceived conflict of interest. This position has been shared with both Parish Councils and with NPIERS who are actively seeking further candidate examiners for consideration.
- 2.16 The Borough Council has also discussed its reservations with Mr Lockhart-Mummery QC who, being in the best position to determine whether or not he believes he may have a conflict of interest (perceived or otherwise), has indicated that he did not think that this matter would be relevant to either Neighbourhood Plan under consideration. However, he conceded that if he was wrong, or if there could be any perception of conflict, he should certainly withdraw from the appointment.
- 2.17 A legal view has been sought in relation to this potential/perceived conflict as well as in relation to the status and weight attributable to the interim reports received from Ms Wright. The view of Mid Kent Legal Services in relation to the appointment of Mr Lockhart-Mummery QC is that caution should be applied in relation to the potential or perceived conflict of interest and how it might affect the decision-making processes during the examination of the Neighbourhood Plans and that consideration should be given to not appointing Mr Lockhart-Mummery QC to the role in this instance.
- 2.18 With regard to the weight and status of the previous examiner's written interim reports, it is considered that these interim reports can be relied upon, subject to the reasons for loss of accreditation (yet to be determined/provided), but that the new examiner will probably want to review the whole situation so it cannot be guaranteed at this stage what weight the new examiner will place upon those interim reports; it is not for the Borough Council to dictate or indicate the weight to be attached.
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3. NEXT STEPS

- 3.1 Officers remain in contact with both Parish Councils on this matter and are seeking to appoint a suitable examiner for both Plans quickly, and with the aim of ensuring no further delays. To this end, an alternate provider (Intelligent Plans, a panel of semi-retired former Planning Inspectors) has also been contacted as a fall-back position should NPIERS be unable to provide suitable candidates.
- 3.2 A further update can be provided to the Committee at its July meeting if required.

4. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	A Neighbourhood Development Plan, once made, will be part of the Development Plan for the borough, directly impacting on the Corporate Priorities through the determination of planning applications in the plan area.	Rob Jarman, Head of Planning and Development
Risk Management	There is reputational risk to the Borough Council relating to this report. Whilst officers have endeavoured to work proactively with both Parish Councils there is still a view that some fault lies with the Borough Council, which is not the case. The view externally, in both Parishes but more strongly evident in Headcorn is that the Borough Council is actively delaying Neighbourhood Plans in order to give greater priority to the Local Plan and to push through higher housing numbers for rural settlements. This is refuted in the strongest terms.	Rob Jarman, Head of Planning and Development
Financial	There may be additional related costs. As yet, no request for payment has been made by Ms Wright, and any such invoice must be given very careful consideration before payment,	Paul Riley, Section 151 Officer & Finance Team

	including potentially rejecting the request. A new examination will incur new costs.	
Staffing	There are no staffing implications relating to this report and its recommendations.	Rob Jarman, Head of Planning and Development
Legal	Statute sets out the procedures to be followed with regard to Neighbourhood Planning. The Borough Council is obliged to follow statutory requirements. The information provided in this report underpin and support those procedures.	Kate Jardine, Team Leader (Planning), Mid Kent Legal Services
Equality Impact Needs Assessment	The needs of different groups are considered throughout the development of the plans.	Anna Collier, Policy & Information Manager
Environmental/Sustainable Development	Plans must have regard to sustainability and the natural environment including heritage assets as part of their policies. An assessment for the need for Strategic Environmental Assessment is carried out at an early stage and repeated at key stages of the plans development.	Rob Jarman, Head of Planning and Development
Community Safety	N/A	Rob Jarman, Head of Planning and Development
Human Rights Act	N/A	Rob Jarman, Head of Planning and Development
Procurement	There are no particular procurement requirements or considerations that are not already in place at this stage.	Rob Jarman, Head of Planning and Development & Paul Riley, Section 151 Officer
Asset Management	N/A	Rob Jarman, Head of Planning and Development

5. REPORT APPENDICES

- None

6. BACKGROUND PAPERS

- None