

## **MAIDSTONE BOROUGH COUNCIL**

### **RECORD OF DECISION OF THE CABINET**

Decision Made: 13 June 2012

#### **NEIGHBOURHOOD PLANNING IN MAIDSTONE BOROUGH**

##### **Issue for Decision**

Report to consider how the council should fulfill its role to support neighbourhood planning

##### **Decision Made**

1. That the decision making arrangements, including delegations to officers, as set out below be agreed:-

<b>Stage</b>	<b>Decision method</b>	<b>Decision taker</b>
Designation of the neighbourhood area (Regulations 6/7)	Internal consultation with ward members/ adjoining ward members. Officer evaluation of the proposed neighbourhood area using the criteria set out elsewhere in this report and taking account of the representations received.	If officer view is to approve, and there is no contrary Member view, decision delegated to officers. If officer and/or Member view is to refuse, refer decision to Cabinet Member for Planning and Transport*.
Designation of neighbourhood forum (if no Parish Council) (Regs 8/9/10)	Internal consultation with ward members/ adjoining ward members Officer evaluation of the proposed neighbourhood forum using the criteria set out elsewhere in this report and taking account of the representations received.	If officer view is to approve, and there is no contrary Member view, decision delegated to officers. If officer and/or Member view is to refuse, refer decision to Cabinet Member*.
MBC consulted on draft neighbourhood plan/neighbourhood development order/community right to build order (Reg 14/21)	Internal consultation with ward members/ adjoining ward members/Cabinet Member  [NB parish/forum is responsible for consulting neighbouring authorities, including adjoining parishes and KCC, on its plan/order]	Cabinet Member Report* to consider and agree MBC comments on draft plan/order
Decision to approve/reject/modify	Cabinet Report	Cabinet*

<b>Stage</b>	<b>Decision method</b>	<b>Decision taker</b>
the plan/order post Examiners Report (Reg 18/25)		
Decision to adopt plan/order post Referendum (Reg 19/20/26/27)	Cabinet Report	Cabinet then Full Council

2. That the decision making criteria for the designation of a neighbourhood area as set out below be agreed:-
  - a) Does the proposed plan area follow existing, established administrative or planning boundaries?
  - b) Does it exclude areas which in planning terms it would be more appropriate to include (for example where planning designation or development location straddles a parish boundary)
  - c) Does it overlap with another approved neighbourhood area (this is not permitted)
  
3. That the additional criterion for the designation of a neighbourhood forum, as set out below, be agreed:-
  - a) that the forum has secured, or taken reasonable steps to secure, that its membership is broadly representative of the local neighbourhood.
  
4. That the arrangements to support neighbourhood planning, as set out in paragraphs 0 to 0 of the report of the Director of Change, Planning and the Environment, be agreed.
  
5. That £40k be allocated from the 2011/12 New Homes Bonus allocation for direct funding support for groups undertaking neighbourhood planning and that the Head of Planning, in conjunction with the Cabinet Member for Planning, Transport and Development, draw up the criteria for the allocation of the £40k by the end of June 2012.
  
6. The £60k be allocated from the Housing & Planning Delivery Grant to cover the Council's costs arising from the obligations in the neighbourhood planning Regulations and its duty to support neighbourhood planning.

## **Reasons for Decision**

### Introduction

The Localism Act received Royal Assent on 15th November 2011 followed by publication of the Neighbourhood Planning (General) Regulations 2012 which came into force on 6th April 2012. The Regulations set out the statutory processes to be followed when preparing a Neighbourhood Development Plan and Neighbourhood Development/Community Right to Build Orders.

The provisions give local groups the power (but not a duty) to undertake a specific, local level of spatial development planning. The Government intends neighbourhood planning to enable more community involvement in the planning process, to help people to shape their local areas and to have greater ownership of planning decisions.

Local Planning Authorities have a duty to give advice or assistance to groups undertaking neighbourhood planning, although this need not extend to financial assistance. The recently issued National Planning Policy Framework (NPPF) also directs that Local Planning Authorities should facilitate neighbourhood planning (paragraph 69).

### Outputs

**Neighbourhood Development Plans** (shortened to Neighbourhood Plans) are planning policy documents which will set out the policies for development and the use of land for a defined local area. Crucially a neighbourhood plan will become part of the Local Planning Authority's Development Plan when it is adopted. It will have statutory weight in the Council's decisions on planning applications; planning legislation requires that planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

A neighbourhood plan must also be in conformity with the strategic policies of the local planning authority's Local Plan. For this borough, the strategic policies will be set out in the Core Strategy when it is adopted.

There may be the misapprehension, for some, that a neighbourhood plan can be used to prevent development. In fact they are designed to be 'pro-growth'. The NPPF confirms that neighbourhood plans (or Orders) "should not promote less development than set out in the Local Plan or undermine its strategic policies" (paragraph 184). Neighbourhood plans could influence the type, design, location and mix of new development.

Neighbourhood plans must take into account the NPPF and any other national planning guidance. Neighbourhood plans must also be compatible with EU obligations (for example Strategic Environmental Assessment) and Human Rights legislation. They should also be founded on appropriate, proportionate and up to date evidence.

At the time of writing, Harrietsham, Coxheath, Broomfield & Kingswood, Lenham, Marden and Nettlestead parish councils have indicated that they intend to prepare neighbourhood plans for their areas. The first three of these have made formal applications to the council to designate their parishes as 'neighbourhood areas'.

**Neighbourhood Development Order:** By which permission is granted for a specific development or use within a defined area without the need for a planning application.

**Community Right to Build Orders:** This is a specific type of neighbourhood development order which enables a local group to deliver a specific development, such as new homes or new community amenities that the majority of the local community (50% of voters) is in favour of.

## Process

The stages in preparing a neighbourhood plan/neighbourhood development order/community right to build order are detailed in the table in Appendix 1. In summary, the Neighbourhood Planning (General) Regulations 2012 place the following specific responsibilities on MBC as the local planning authority;

- a) Determination of requests to designate neighbourhood areas (the area a neighbourhood plan will cover) and neighbourhood forums (where there is no Parish Council)
- b) Organisation of publicity for and consultation on the plan/order at specific stages
- c) Consultee on the draft plan/order
- d) Organisation and cost of the independent Examination
- e) Organisation and cost of the referendum
- f) Adoption of the neighbourhood plan/order

The table in Appendix 1 sets out the lead organisation at each stage and, where MBC action is needed, departmental responsibilities are defined. Provisions for how referendums will be carried out are to be issued by the government later in the year in separate regulations linked to existing local government referendum regulations.

At certain points in the preparation process Council decisions will be required. The table below sets out recommendations for a framework for decision making at each of these key stages.

<b>Stage</b>	<b>Decision method</b>	<b>Decision taker</b>
Designation of the neighbourhood area (Regulations 6/7)	Internal consultation with ward members/ adjoining ward members. Officer evaluation of the proposed neighbourhood area using the criteria set out elsewhere in this report and taking account of the representations received.	If officer view is to approve, and there is no contrary Member view, decision delegated to officers. If officer and/or Member view is to refuse, refer decision to Cabinet Member for Planning and Transport*.
Designation of neighbourhood forum (if no Parish Council) (Regs 8/9/10)	Internal consultation with ward members/ adjoining ward members Officer evaluation of the proposed neighbourhood forum using the criteria set out elsewhere in this report and taking account of the representations received.	If officer view is to approve, and there is no contrary Member view, decision delegated to officers. If officer and/or Member view is to refuse, refer decision to Cabinet Member*.
MBC consulted on draft neighbourhood plan/neighbourhood development	Internal consultation with ward members/ adjoining ward members/Cabinet Member	Cabinet Member Report* to consider and agree MBC comments on draft plan/order

Stage	Decision method	Decision taker
order/community right to build order (Reg 14/21)	[NB parish/forum is responsible for consulting neighbouring authorities, including adjoining parishes and KCC, on its plan/order]	
Decision to approve/reject/modify the plan/order post Examiners Report (Reg 18/25)	Cabinet Report	Cabinet*
Decision to adopt plan/order post Referendum (Reg 19/20/26/27)	Cabinet Report	Cabinet then Full Council

\* subject to normal call in and scrutiny procedures

### Key Issues

**Area coverage of neighbourhood plans:** A first step is for the neighbourhood group to decide the geographical area it wants the plan to cover and then to request MBC's approval of that area. To ensure the area is a reasonable one in planning terms, it is recommended that the following inform MBC's decision:

- d) Does the proposed plan area follow existing, established administrative or planning boundaries?
- e) Does it exclude areas which in planning terms it would be more appropriate to include (for example where planning designation or development location straddles a parish boundary)
- f) Does it overlap with another approved neighbourhood area (this is not permitted)

An area can be designated as a business neighbourhood area if it is considered to be wholly or predominantly commercial in nature.

For some parishes it may make sense in both planning and resource terms to prepare plans for combined parish areas or neighbourhood forums and groups would be advised to actively consider this approach. Cost savings could be made through the joint organisation of evidential studies, consultation events and external advice. Joint working could also expand the groups' capacity through the sharing of specialist skills.

For non-parished, urban parts of the borough, the identification of the plan area may be less straightforward, although it could follow ward boundaries. The definition of the plan area could also be driven by the expected main purpose of the plan, for example the regeneration of a housing area.

**Decision to prepare a Neighbourhood Plan:** In embarking on a neighbourhood plan, groups are advised to get an early understanding of their community's priorities. Such work helps to identify the issues and scope of the neighbourhood plan or, alternatively, could indicate that objectives could or should be met by alternative means for example

through a different type of planning document, such as a village design statement, or through a specific project such as working to bring forward an exception housing site.

Relevant to the decision to prepare a neighbourhood plan is the scale of growth that is anticipated for the neighbourhood. The draft Core Strategy identifies locations to the north west and south east of Maidstone and the 5 Rural Service Centres (RSCs) of Harrietsham, Lenham, Marden, Headcorn and Staplehurst as locations for future housing growth. Beyond those areas, the scale of future development will be limited. For these latter areas in particular, the neighbourhood group would be advised to critically assess at an early stage whether the local planning issues merit a dedicated plan, recognising that specific land allocations and development management type policies for the borough will be forthcoming in the Development Management Local Plan.

Alternatively, if the community's objectives for their area are significantly different to that being set out in the Core Strategy, activity might be better focused on making representations on the Core Strategy to try to secure changes to the strategic plan.

**Neighbourhood Forums:** A neighbourhood forum needs to be established where there is no parish council. There are specified conditions that a neighbourhood forum must meet:

- b) Minimum of 21 individuals each of whom lives, works or is an elected representative for the area
- c) The forum is set up for the express purpose of promoting or improving the social, economic and environmental wellbeing of the area
- d) The forum must
  - o be open to individuals who live, work or are elected representatives in the area
  - o have a written constitution
  - o comply with other conditions which might be prescribed
  - o be incorporated (i.e. be formed into legal entity) and have a 5 year life

It should also preferably have the support of ward members.

The borough council must approve the creation of a neighbourhood forum. In addition to the specified conditions above, it is recommended that the following additional criterion inform MBC's decision:

- e) that the forum has secured, or taken reasonable steps to secure, that its membership is broadly representative of the local neighbourhood.

The forum will be asked to submit a statement with its application to demonstrate how it complies with this measure. The factors which should inform the Council's assessment are:

- Whether the forum has managed to secure membership in each of the categories at a) above

- Whether the membership is drawn from different places in the neighbourhood
- Whether the membership is drawn from a range of age groups.

A forum set up to prepare a neighbourhood plan or development order is unlikely to have the administrative structures and resources of a parish council, unless it evolves from an established group such as a residents' association. The group may not have the experience of, planning matters that a parish council has. As a consequence interest in, and capacity for, neighbourhood planning will take longer to materialise in the urban parts of the borough and groups are likely to seek and require more external guidance. There may be an expectation from these groups of greater support from MBC's officers and Members.

There can only be one forum per neighbourhood area. The 6 week consultation period on a forum application allows for objections to it to be raised.

**Content of a Neighbourhood Plan:** There is no explicit guidance about what a neighbourhood plan should include. It is the Government's intention that the content of plans should be locally-driven. In reality it is expected that there will be a range of types of plan from those that are quite 'directional' in nature, providing an overarching strategy and vision for their areas to those which include specific proposals for sites or the use of land and/or set out detailed development management type policies. Some plans may aim to take a comprehensive approach and to encompass all these elements. Others may want to deal with very select issues, perhaps those of greatest community priority, and rely on the borough council's planning documents to address all other matters.

MBC's response when it is formally consulted on a draft neighbourhood plan should in particular consider the plan's consistency with existing and emerging policy (see Conformity section below), the sufficiency of the evidence which supports the proposals in the plan and the applicability of the plan's policies in development management decisions.

An outcome of the new system is that planning policy coverage will be patchy and slightly more complex with different suites of policies applying to development management decisions according to the coverage of neighbourhood plans.

**Conformity:** The NPPF directs that "neighbourhood plans must be in general conformity with the strategic policies of the Local Plan" (paragraph 184). LPAs should "set out clearly their strategic policies for the area and ensure an up to date Local Plan is in place as soon as possible".

The strategic planning policies for the borough will be set out in the Core Strategy. There is therefore some risk for groups starting plans now that a relevant part of the Core Strategy may change as they are progressing their plans for example as a result of the Core Strategy Inspector's recommendations. Groups wanting to prepare plans in advance of the Core Strategy would be advised to build in some flexibility to their emerging plans to mitigate this risk. The Council will also need to identify

whether any of the policies in the adopted Maidstone Borough-wide Local Plan and Development Plan Documents are strategic. A neighbourhood plan prepared without cognisance of the Core Strategy would risk having a very short shelf-life which would be a waste of the resources used to prepare it.

Whether a particular neighbourhood plan is in **general** conformity with the strategic policies will be a matter of judgment initially for MBC in advising the neighbourhood group and ultimately for the plan's Examiner. Conformity is habitually judged as 'upholding the general principle of' the objective or policy.

Once adopted, policies in a neighbourhood plan will take precedence over existing non-strategic policies in the Maidstone borough-wide Local Plan where there is a conflict (NPPF paragraph 185).

**Neighbourhood Development Orders:** To date the local interest in neighbourhood planning has been focused on neighbourhood plans rather than development orders or, indeed, community right to build orders. Interest in development orders may be more likely from, for example, a group of businesses on an industrial estate seeking to reduce the need for planning applications. The factors that will inform MBC's consideration of such orders would be the same as those for a planning application for the uses being set out in the order.

**Community Right to Build Orders:** The regulations prescribe detailed conditions which an organisation, which is not a parish council, must meet if it wants to establish as a community right to build organisation. A Community Right to Build Order gives the community the power to deliver a small scale development of particular community interest, such as housing or community facilities, without the need to secure planning permission. Development which would require Environmental Impact Assessment could not be progressed through this route.

### Role of MBC

In terms of national support for the process, the Government has awarded funding to four national organisations; The Princes Foundation for the Built Environment, Locality, Planning Aid and the Campaign for the Protection of Rural England (in partnership with NALC) for them to assist communities undertaking neighbourhood planning. Local groups can apply to these organisations for assistance.

The Council has a duty to facilitate neighbourhood planning in addition to the requirements that the Regulations place on the Council as set out in Appendix 1. The types of support which the Council could offer are set out below:

- a) **Supply of data:** evidence and information held by the Council could be made available in response to requests from neighbourhood groups. Examples include the evidence collected to support the Core Strategy, recognising that this is available on the Council's website, and mapping information, subject to Ordnance Survey licensing.



**Advantages:** this would help to avoid duplication of effort and/or contradictory evidence being collected for a specific area.

**Disadvantages:** Officer time in collating and interpreting data if requests are complex.

- b) **Technical planning advice:** A neighbourhood plan is tested through a 'light touch' examination. A clearer idea of what this will mean in practice will emerge as the first neighbourhood plans from across the country reach this stage but it is known that it will include consideration of the plan's general conformity with higher tier policies and consistency with national guidance. The Council, as the Local Planning Authority, is in a good position to offer technical advice to the neighbourhood group on these aspects before the plan reaches examination. This advice could extend to the specific wording of policies in view of the Council's role in applying adopted policies in development management decisions.

**Advantages:** Focused and timely technical advice could help to reduce risks of the examination process.

**Disadvantages:** Officer time in providing advice. The scale and timing of demand is difficult to predict and input may be sought when in-house capacity is not available.

- c) **Dedicated officer:** The Council could fund a temporary post to offer neighbourhood planning support to local groups.

**Advantages:** such 'hands on' support may be very valuable to local groups, particularly in non-parished areas, as best practice in neighbourhood planning develops and evolves.

**Disadvantages:** An officer's time is likely to be stretched and he/she may not be able to offer equal assistance to all groups. Also there is a risk of duplicating some of the support available from the 4 national organisations.

- d) **Direct funding to groups:** Neighbourhood groups could request funding towards specific items to help the preparation of a plan or order.

**Advantages:** Such a funding pot could help to pump prime neighbourhood planning locally and may be particularly beneficial for groups in non-parished areas and in those rural parts of the borough where growth is planned.

**Disadvantages:** Funding of this type may not, of itself, secure the quality of the plans that will result and could be quickly exhausted, to the disadvantage of groups coming forward later.

- e) **Specialist advice:** Neighbourhood plans must comply with EU requirements, including Strategic Environmental Assessments (SEA) and Habitat Regulations Assessments. These processes require a scoping exercise to be undertaken on the content of the proposed plan and, if potential effects are identified, a full assessment of the plan will be required. It is currently unclear whether the responsibility for SEA will rest with the council or with the neighbourhood group. In any event, the process can be a technical one for which specialist advice

may be required. Further, as neighbourhood planning practice is at an early stage, questions of compliance and approach are expected to arise, in particular in relation to conformity with the emerging Core Strategy. For this reason, it could be prudent for the Council to obtain legal advice on specific matters.

**Advantages:** Specialist SEA and legal advice would help ensure the best guidance is given to neighbourhood groups and increase the likelihood of 'sound' plans as a result.

**Disadvantages:** MBC would commission and receive this advice in order to better advise parishes and forums. To that extent, some may not regard it as 'direct' support to the groups undertaking neighbourhood planning.

Based on the consideration above, it is recommended that support could be given to local groups by funding being available to support the preparation of plans. Groups should be directed to use the money for specified items to help ensure the soundness of the plans produced, for example by funding evidential studies to achieve growth. Any funding would be linked to achieving the stages identified in Appendix 1.

It is further recommended that in terms of MBC officer time, support be focused on the supply of data and technical planning advice. Officers will deal with reasonable requests for data and will direct groups to other sources of information held by organisations outside the Council. Requests which are unduly complex or seek the detailed interpretation of data will not be supported if they will take an undue amount of officer time, particularly as MBC monies would be available for groups to undertake their own statistical studies. In terms of mapping, it is recommended that limited paper copies are provided alongside electronic copies so that groups can print further copies at will. Groups will be required to abide by Ordnance Survey obligations.

In terms of technical planning advice, the input from planning officers needs to be controlled to avoid a continuous dialogue with groups that could not be resourced. It is recommended that the giving of advice be focused at the point the group has produced the draft plan, but before the Regulation 14 consultation on it, to enable to advice given to inform the consultation version of the plan.

In conclusion, it is recommended that a budget of £40k be identified for direct funding support for groups undertaking neighbourhood planning and that this should be allocated from the 2011/12 New Homes Bonus.

It is also recommended that a budget of £60k is identified from Housing & Planning Delivery Grant to cover the Council's costs arising from the obligations in the neighbourhood planning Regulations and its duty to support neighbourhood planning as summarised below:

- a) Costs of publicity for and consultation on the plan/order at specific stages. The strong preference will be for the required publicity to be undertaken locally with the co-operation of the neighbourhood group through posters, leaflets and other local means, rather than by the means of a newspaper advert.

- b) Cost of the independent Examination. Costs include Examiner fees plus hearing days if these are required.
- c) Cost of the referendum. Exact requirements will emerge in subsequent Regulations. Efficiencies could be sought by combining examinations and referendums for a number of plans together where timing allows.
- d) the commissioning of legal and specialist advice as required.
- e) The appointment, as required, of planning expertise to give technical planning advice to neighbourhood groups (as set out at paragraph 0 b) when there is no in-house capacity to do so.

£60k is an estimate of the budget required for 2012/13 based on the level of interest in neighbourhood planning to date. It assumes that no plans will reach Examination or Referendum stage in that period which will incur additional costs on the Council. It also currently assumes that administration and other duties set out in Appendix 1 will be absorbed within the existing structure. This process will be kept under review and a report will be presented to the Cabinet Member in December 2012.

The approach set out in this report will be translated into a briefing note and circulated to parish councils, interested local groups and made available on the website.

### **Alternatives considered and why rejected**

The alternative ways the Council could decide to support neighbourhood planning are set out in the body of the report.

### **Background Papers**

None

Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Change and Scrutiny by: <b>22 June 2012</b>
---