

# Strategic Planning, Sustainability and Transportation Committee

**11 April 2017**

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

**Yes**

## Headcorn Neighbourhood Plan – Examiner’s Report

<b>Final Decision-Maker</b>	Strategic Planning, Sustainability and Transportation Committee
<b>Lead Head of Service</b>	Rob Jarman, Head of Planning and Development
<b>Lead Officer and Report Author</b>	Cheryl Parks, Project Manager, Local Plan
<b>Classification</b>	Public
<b>Wards affected</b>	Headcorn, Staplehurst, Sutton Valence & Langley, Leeds, Harrietsham & Lenham

### **This report makes the following recommendations to this Committee:**

1. That the Committee notes the findings of the Examiner of the Headcorn Neighbourhood Plan
2. That the Committee agrees not to move the Plan to referendum

### **This report relates to the following corporate priorities:**

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

Made Neighbourhood Plans form part of the Development Plan for Maidstone, and will be used in the determining of planning applications in the Neighbourhood Plan area.

### **Timetable**

<b>Meeting</b>	<b>Date</b>
Strategic Planning, Sustainability and Transportation Committee	11 <sup>th</sup> April 2017

# Headcorn Neighbourhood Plan – Examiner’s Report

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out the findings of the independent examination of the Headcorn Neighbourhood Development Plan (NDP).
  - 1.2 Following the agreement of this Committee on 18 April 2016 to a revised protocol for Neighbourhood Planning processes, the decision on whether to move a NDP to referendum rests with this Committee. The report makes a recommendation to the Committee in this regard.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 Headcorn Parish Council has been working on its NDP for some time. An application for formal designation of a Neighbourhood Area (Regulation 5<sup>1</sup>) was made on 3 December 2012, and was subsequently agreed, following consultation, on 8 April 2013.
- 2.2 The Parish Council worked through the preparatory stages of plan making, including consultation at the pre-submission stage, before formally submitting their plan to the Council in mid-November 2015. Officers engaged with the Steering Group and Parish Council on a number of occasions to provide advice and expressed concerns regarding the draft NDP and the risks in regard to the proposals. These concerns were later reflected in MBC’s response to the consultation (see para 2.4 below)
- 2.3 In accordance with the Regulations and the agreed Maidstone Borough Council (MBC) protocol, officers facilitated a full 6-week public consultation on the NDP between 15 January and 26 February 2016. Over 170 comments were made by 151 individual representors, including the response of MBC as agreed by this Committee on 9 February 2016, making it the largest response to a Neighbourhood Plan consultation seen in Maidstone to date.
- 2.4 The agreed MBC consultation response set out a number of instances of failure to conform with the strategic policies of the adopted Local Plan and Development Plan Documents (DPD’s) as well as citing a clear lack of conformity with national policy requirements. These concerns had been previously shared with the Parish Council in meetings to discuss the emerging plan, prior to its submission to the Council.
- 2.5 As set out in the agreed protocol, the process of appointing the Examiner for a NDP commences at the point the plan is formally submitted to the Council. While the consultation was on-going, officers agreed the appointment of an examiner through the NPIERS service following discussion with representatives from the Parish Council. The Examiner was

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<sup>1</sup> The Neighbourhood Planning (General) Regulations 2012

selected given her local knowledge obtained through work with North Loose Residents Association, Design South East and others.

- 2.6 As this Committee will be aware, the appointed Examiner lost her accreditation during the examination process, and this issue was the subject of a previous Committee Report<sup>2</sup>. A subsequent attempt was made to appoint through NPIERS, but it was agreed by both MBC officers and Councillors that the proposed candidate (who was the preferred choice of the Parish Council) would have a conflict of interest. A further selection of candidate examiners was subsequently requested from NPIERS.
- 2.7 A new Examiner, Mr Jeremy Edge, was agreed by both MBC and the Parish Council, and was appointed. Officers provided him with the same suite of documents that had been provided previously to the initial Examiner. He commenced his examination of the NDP.
- 2.8 Following extensive consideration of the NDP, and the comments of representors, Mr Edge felt that it would be necessary to convene an examination hearing, to enable debate and discussion on a number of points, and to allow him to 'bottom out' a number of issues about which he had concerns and where there was a difference of opinion among representors. This Committee was updated in regard to the hearing at its meeting on 8 November 2016.
- 2.9 Unfortunately the delivery of Mr Edge's report was delayed, despite the best efforts of officers, who remained in contact with Mr Edge, to ensure his report was delivered as soon as possible in the New Year.
- 2.10 On 16 February 2017 a Fact Check version of the Examiner's Report was received, and was shared with the Parish Council to afford them an opportunity to seek any factual corrections. A number of minor corrections were submitted by MBC officers along with the responses of the Parish Council, and the subsequent Final Examiner's Report was received on 19 March 2017 and is included at Appendix 1.
- 2.11 The tests for a NDP are set out in legislation<sup>3</sup>. In order for a plan to meet the Basic Conditions it must:
- have appropriate regard to national policy;
  - contribute towards the achievement of sustainable development;
  - be in general conformity with the strategic policies of the development plan for the local area;
  - be compatible with human rights requirements; and
  - be compatible with EU obligations.
- 2.12 During the examination hearing the Parish Council agreed that a number of the policies within the NDP would need to be revised to ensure conformity

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<sup>2</sup> SPS&T Committee, Tuesday 14 June 2016

<sup>3</sup> Paragraph 8 of Schedule 4B to the Town & Country Planning Act 1990 (as amended) [excluding 2b, c, 3 to 5 as required by 38C (5) of the Planning and Compulsory Purchase Act 2004 (as amended)]

with both national and local policy positions. Mr Edge did not give any warranty that the 'negotiated' changes would be sufficient to overcome his concerns about the drafted NDP and whether it would meet Basic Conditions.

- 2.13 In his report Mr Edge set out a number of failings of the submitted NDP. He noted that the approach to growth between the two parties (MBC and HPC) was not aligned, and that Headcorn Parish Council favoured a more 'organic' approach centred on their argument that Headcorn as a settlement is relatively inaccessible. Mr Edge pointed out that this position is at odds with the Rural Service Centre designation of Headcorn in the emerging Local Plan, and also the consideration of Headcorn in the adopted Local Plan as a sustainable settlement suitable for growth.
- 2.14 Mr Edge also challenged the methodology used by Headcorn to assess future housing needs given that it had not followed the same method as the borough-wide Strategic Housing Market Assessment. The Parish Council's interpretation of the Borough Council's evidence (prepared to support the new Local Plan) was adjudged to be skewed. Although elements were used as a starting point for policy development, the Parish Council had undertaken its own local analysis and used local aspirations to justify specific policy restrictions.
- 2.15 The NDP proposed a cap on the number of dwellings to be built, but Mr Edge concluded that the cap seemed arbitrary, and would be contrary to paragraph 47 of the NPPF. The proposed annual restrictions on numbers of dwellings were also deemed to be unduly restrictive and not in keeping with national policy and the Government's desire to boost housing supply.
- 2.16 On the matter of affordable housing, the NDP proposed a limit of 20% on development of more than 9 dwellings. Such a policy position would be in direct conflict with the borough-wide adopted position of 40%<sup>4</sup> and with emerging policy in the new Local Plan. There would also be an issue in regard to the threshold of 9 dwellings given the Written Ministerial Statement of 28 November 2014 (upheld by the Court of Appeal 13 May 2016) and Planning Practice Guidance updates of 16 November 2016 requiring provision on sites of 'more than ten' dwellings.
- 2.17 Citing the history of sewer flooding and waste water management issues in Headcorn, a restriction on development was proposed in the NDP until this matter had been addressed. Southern Water had objected on these grounds at Regulation 16 consultation, and made further comment at the examination hearing. In his report Mr Edge considered that such a condition would be disproportionate, and stressed it would not be appropriate to expect new development to resolve existing issues.
- 2.18 Dealing with employment matters, the NDP proposed restrictions on the unit sizes that may come forward at Barradale Farm, a site allocated in the emerging Local Plan. Mr Edge again concluded that such a restriction was not justified.

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<sup>4</sup> MBC Affordable Housing DPD (2006)

- 2.19 A final concern of Mr Edge was the apparent lack of any assessment of compliance with the European Convention on Human Rights, or the Human Rights Act 1998 in either the NDP or in any of the supporting documentation including the Basic Conditions Statement.
- 2.20 In drawing together his conclusions, Mr Edge noted that the NDP as drafted contained a number of failings. He was however keen to recognise the level of participation and local interest in the preparation of the NDP, and the depth of the consultation undertaken by the Parish Council. He also thanked the participants of the hearing for their positive engagement and flexibility during what was a very long and detailed hearing session.
- 2.21 Overall, the conclusion reached by Mr Edge was that he was not satisfied that the NDP met the Basic Conditions tests as required by the Regulations in relation to:
- having appropriate regard for national policy;
  - adequately contributing towards the achievement of sustainable development; and
  - being in general conformity with the strategic policies of the development plan for the local area.
- 2.22 Mr Edge also concluded that he was not satisfied that appropriate regard had been demonstrated to confirm that the draft Plan is compatible with the Human Rights Act 1998.
- 2.23 As a result of his conclusions Mr Edge has recommended, in accordance with legislation<sup>5</sup> that the NDP should not proceed to a local referendum. This will mean that the Council is unable to recoup any of the costs associated with the examination since the only opportunity to do so under the Government funding system occurs once a date has been set for a referendum.
- 2.24 When advised that this report was to be presented at this meeting, email correspondence was received from the Headcorn Parish Clerk requesting a meeting with officers prior to the consideration of the Committee, or should this not be possible, that this report be delayed. It is the view of officers that there is nothing to gain by delaying the report given the conclusions of the Examiner and the legal advice received. A meeting has been offered by officers to discuss the redrafting of a NDP for Headcorn.

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### **3. AVAILABLE OPTIONS**

- 3.1 Advice from Mid Kent Legal Services (MKLS) was sought on the content and conclusions of the Examiner's report. MKLS officers agree that since the Examiner has found the Neighbourhood Plan not to meet the Basic Conditions as required by the Regulations it should not be taken forward to a referendum.

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<sup>5</sup> Schedule 4B to the Town and Country Planning Act 1990, paragraph 10

3.2 Accordingly, there is only one realistic option available to this Committee. This is to note the findings of the appointed Examiner in regard to the Headcorn NDP, and follow his recommendation that the NDP does not proceed to a local referendum.

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#### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

4.1 The recommendation of officers is to proceed with the option set out at paragraph 3.2 above. Choosing alternate action would risk financial implications related to legal challenges resulting from disregarding the detailed recommendations of the appointed Examiner.

4.2 For these reasons the recommendations set out at the start of this report are made.

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#### **5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

5.1 The NDP has been subject to two formal stages of consultation as well as a number of informal stages during its preparation. The examination also took the unusual step of convening a hearing to allow for further exploration of key issues among representors.

5.2 This Committee has been kept regularly apprised of the progress of the NDP including agreeing the formal consultation response, being updated on issues with the examination, and being provided details of the hearing.

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#### **6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

6.1 If the Committee agrees the recommendations set out in this report no further action is needed, other than to advise the Parish Council of the decision. The Parish Council has the option to redraft the NDP and to re-consult at the Regulation 14 stage<sup>6</sup> and onward through the plan making process.

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#### **7. CROSS-CUTTING ISSUES AND IMPLICATIONS**

<b>Issue</b>	<b>Implications</b>	<b>Sign-off</b>
<b>Impact on Corporate Priorities</b>	The NDP was not written in such a way as to be in general conformity with strategic policies of the adopted Local	Rob Jarman, Head of Planning & Development

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<sup>6</sup> The Neighbourhood Planning (General) Regulations 2012

	Plan, or with the NPPF. In this regard it did not align with the objectives of the Council's Strategic Plan or the Corporate Priorities.	
<b>Risk Management</b>	<p>There are risks in not following the recommendations of the Examiner. The reputation of the Council could suffer if it chose to go ahead with a referendum, and the Council's decision would be open to legal challenge from representors.</p> <p>A legal challenge to any decision of this Committee could be mounted by the Parish Council but this risk is minimised by obtaining Legal advice.</p>	Rob Jarman, Head of Planning & Development
<b>Financial</b>	<p>The costs for a Neighbourhood Plan are not insignificant. All costs for the formal consultation, examination and any referendum fall to the Local Planning Authority. Ordinarily funds can subsequently be recouped through grant applications once a referendum is set, but if no referendum will be arranged as a result of the Examiner's findings, all associated costs will have to be met by the Council. The Examiner's costs for the Headcorn Neighbourhood Plan amount to £10,605. There is sufficient funding to cover the costs of the Headcorn Examination, but this level of expenditure seriously impacts the budget for Neighbourhood Planning and less funding is available to facilitate future plans. Care will be needed to ensure this situation is monitored going forward.</p>	Mark Green, Section 151 Officer & Finance Team
<b>Staffing</b>	Resourcing Neighbourhood Planning sits in the Spatial Policy team. There are no issues in regard to staffing arising from the Examination or	Rob Jarman, Head of Planning & Development

	this report.	
<b>Legal</b>	All stages of the plan making process, including the examination have been in accordance with regulatory requirements. Legal advice regarding the recommendations of the Examiner's report was obtained.	Russell Fitzpatrick, MKLS Planning Team
<b>Equality Impact Needs Assessment</b>	The lack of an Equalities Impact Assessment to support the NDP was highlighted by the Examiner. The consultation undertaken by MBC after submission of the NDP was fully inclusive and sought the views of the wider local community.	Anna Collier, Policy & Information Manager
<b>Environmental/Sustainable Development</b>	Arguments over what constitutes sustainability predicated the formulation of the NDP and its policies, and underpinned the Examiner's consideration of key issues.  The submitted NDP was screened to assess the need for a Strategic Environmental Assessment. It was concluded that it was not a requirement, and this was agreed by the statutory consultees (Historic England; Natural England; Environment Agency.)	Rob Jarman, Head of Planning & Development
<b>Community Safety</b>	There are no implications arising from this report.	Rob Jarman, Head of Planning & Development
<b>Human Rights Act</b>	A fundamental concern of the Examiner was the lack of assessment by the Parish Council of the impacts of the Plan and whether it could demonstrate it was not in breach of either the Act or the European Convention on Human Rights. The issue is briefly explored in the report, and the Examiner's concerns are set out in his report (at Appendix 1). If the Committee were to proceed against the	Rob Jarman, Head of Planning & Development

	recommendation of the Examiner there could be implications in regard to the provisions of the Act.	
<b>Procurement</b>	The Examiner was procured under an agreed procurement waiver. There are no implications for procurement in regard to the Examiner's report.	Rob Jarman, Head of Planning & Development & Mark Green, Section 151 Officer
<b>Asset Management</b>	There are no implications arising from this report.	Rob Jarman, Head of Planning & Development

## **8. REPORT APPENDICES**

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

Appendix 1: Headcorn Neighbourhood Plan 2011 – 2031. A Report to Maidstone Borough Council of the Examination into the Headcorn Neighbourhood Plan.

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## **9. BACKGROUND PAPERS**

There are none.