

CABINET

Agenda Item: 6

Wards: Rode and Norton St Philip

Portfolios: Planning Policy and Local Plan

Report Author(s): Cllr Janine Nash – Portfolio Holder for Planning Policy and Local Plan

Meeting Date: 2nd Sept 2019

SUBJECT: Norton St Philip Neighbourhood Plan – Advancement to Referendum

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Report Sign off	Seen by:	Name	Date
	Chief Executive/Deputy Chief Executive(s)	Tracy Aarons	20.8.19
	Legal	Lesley Dolan	20.8.19
	Finance	Duncan Moss	20.8.19
	Group Manager	Julie Reader-Sullivan	20.8.19
	Portfolio Holders	Cllr Janine Nash	20.8.19
	Ward Member(s)	Cllr Barbi Lund	20.8.19

Summary:

Norton St Philip Parish Council have prepared and submitted a Neighbourhood Plan for the village of Norton St Philip (the Plan) and in accordance with the Neighbourhood Planning (General) Regulations 2012, the District Council has arranged an independent examination of the Plan and is now in receipt of the Examiner's Report.

The Report concludes that the Plan, as modified, should proceed to referendum.

The District Council must now decide what action to take in response to each of the recommendations of the Examiner and determine whether or not the Plan should proceed to referendum. It must also determine the extent of the Referendum Area.

Planning Policy Officers are in agreement with the findings and proposed modifications of the Examiner. A landowner has raised concerns that a small part of an extension at The Barton is included in LGSNSP004. A further modification is recommended to remove this from the designation. An interested party has raised concerns that 3 trees are shown north of Shepherds Mead where there are no trees. A further modification is recommended to remove this notation.

The Examiner also concludes that there is no reason to alter or extend the Referendum Area beyond the Neighbourhood Plan Area and, in light of this, it is proposed that the Referendum Area should conform to the designated Neighbourhood Area.

Norton St Philip Parish Council agree that the Plan (as modified) should proceed to referendum.

5 letters from 4 parties interested in the Neighbourhood Plan have been received and are appended to this report (Appendix 3). 2 letters from and on behalf of Lochailort Investment Ltd raise a number of issues and inform the Council that they intend to challenge the neighbourhood plan through Judicial Review. Legal advice has been sought and is summarised below. The advice recommends proceeding to referendum.

Recommendations:	<p>Cabinet is asked to recommend that</p> <ol style="list-style-type: none"> 1) That the Norton St Philip Neighbourhood Plan is modified in accordance with the Examiner’s recommendations and to exclude an extension at The Barton from LGSNSP004 and amend fig 8 of the Character Assessment to remove the notation showing 3 trees north of Shepherds Mead. 2) That the Norton St Philip Neighbourhood Plan as modified should proceed to referendum. 3) That the Referendum Area should correspond to the Designated Neighbourhood Plan Area for Norton St Philip.
Direct and/or indirect impact on service delivery to our customers and communities:	<p>Neighbourhood Planning enables communities to have more influence in planning the development of their area.</p>
Contribution to corporate priorities	<p>The plan will help deliver inclusive growth and enable the local community to participate in place shaping.</p>

Legal Implications:	<p>The Council has a statutory duty to support Neighbourhood Plans pursuant to the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by Section 38A of the Planning and Compulsory Purchase Act (2004) and the Neighbourhood Planning (General) Regulations 2012, as amended. This includes making a decision on a Plan Proposal as outlined in Regulation 18. The Council could be challenged if a Plan is made that does not meet the requirements of the Act and the Regulations and letters have been received expressing an intention to seek judicial review of the Plan (Appendix 3)</p> <p>The Plan, as modified, is considered to meet the Basic Conditions and all relevant legal and procedural requirements. This is supported in the Examiner's Report.</p> <p>Paragraph 12 of Schedule 4B to the Town and Country Planning Act 1990 requires the Council to consider each of the recommendations in the Examiner's report (and the reasons for them) and decide what action to take in response to each recommendation. A schedule of the Examiners recommended modifications is appended to this report (Appendix 2)</p> <p>If the Council are satisfied the Plan (as modified) meets the Basic Conditions and all other statutory requirements, a referendum must be held.</p> <p>If more than half of those voting in the referendum vote in favour of the Plan, the Council must make the Plan i.e. adopt it as part of the Development Plan for the area. .</p>
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<p>Financial Implications:</p>	<p>In the financial year 2019/2020, local planning authorities (LPAs) will be able to claim £20,000 once the date for a referendum has been set. This and other payments are made in recognition of officer time supporting and advising the community in taking forward a neighbourhood plan, along with the actual costs of examination and referendum.</p> <p>The costs for a Referendum in Norton St Philip are estimated to be in the region of £3,200.</p> <p>If a Judicial Review is issued the estimated costs would be as follows;</p> <ul style="list-style-type: none"> • If a claim is issued and MDC concede at that point cost of £5,000 – £10,000 • If MDC defend the claim, permission is given by the High Court to proceed to a full hearing and MDC then withdraw at that stage cost are likely to be £5,000 - £15,000 • If MDC defend the claim at a full hearing in the High Court and lose the case, costs are likely to be £35,000 • If Lochailort lose the claim then MDC would expect to recover legal costs, estimated recovery of £10,000
<p>Climate change implications:</p>	<p>The Plan will promote sustainable development in the village within the envelope of the Development Plan and introduces a policy on climate change, biodiversity and low carbon development.</p>
<p>Impact on service plans:</p>	<p>None</p>
<p>Value for Money:</p>	<p>N/a.</p>
<p>Equalities Implications:</p>	<p>Public participation must inform a Neighbourhood Plan and consultation was undertaken in line with the Regulations.</p>

<p>Risk Assessment and Adverse Impact on Corporate Actions:</p>	<p>Not taking a decision on the advancement of the Neighbourhood Plan Proposal would put the Council at risk of failing to comply with the requirements of the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by Section 38A of the Planning and Compulsory Purchase Act 2004) and the Neighbourhood Planning (General) Regulations 2012 (as amended). Regulations set a deadline of 8 weeks from receipt of the Examiners Report for the Council to make its' decision, unless the Qualifying Body agree otherwise. The 8 weeks period finishes on 13th Sept 2019.</p> <p>Taking a decision to advance the Neighbourhood Plan to referendum puts the Council at risk of receiving a claim for Judicial Review of the Plan as set out in the appended letters (Appendix 3)</p>
<p>Scrutiny Recommendation (if any)</p>	<p>None.</p>

INTRODUCTION

The Council has a statutory duty to support neighbourhood plans pursuant to the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by Section 38A of the Planning and Compulsory Purchase Act 2004 and the Neighbourhood Planning (General) Regulations 2012, as amended. This includes designating Neighbourhood Areas, publicising submitted Plan proposals along with arranging examination and public referendum.

The Council's duties are clearly set out in the Regulations and on receipt of the Examiner's Report, the Council must decide whether or not to take the Plan forward to referendum, as well as:

- what action to take in response to each of the recommendations of the Examiner;
- what modifications to make to the Plan;
- whether to extend the Referendum Area beyond the Neighbourhood Plan Area.

Whilst the Examiner's Report is not binding, it must be noted that a Local Planning Authority can **only** refuse or decline a Neighbourhood Plan Proposal in a very limited set of circumstances, i.e. when it does not meet the requirements of the Regulations and the set of criteria known as the "Basic Conditions" (Appendix 1).

Likewise only modifications which ensure that the Plan meets these Basic Conditions and legal requirements can be made to a Neighbourhood Plan. The Independent Examiner advises whether the Plan meets the requirements of the Regulations and Basic Conditions and, if necessary, what modifications are needed for it to do so.

On receipt on the Examiner's Report, the Council must take the decision whether the Plan meets the legal requirements and Basic Conditions as set out in legislation. If it does so, the Plan must proceed to referendum as soon as possible. The Council must also publish a decision statement detailing this decision and arrange the referendum where applicable.

BACKGROUND

The Norton St Philip Neighbourhood Plan has been prepared and submitted by Norton St Philip Parish Council. The Parish Council engaged the community in its preparation using a range of consultation methods.

Following the Plan's formal submission, it was published for consultation in accordance with the Regulations between 1st March and 12th April 2019.

The Council appointed an independent, experienced and suitably qualified examiner, Ann Skippers, to examine the Norton St Philip Neighbourhood Plan. All of the comments received at the Regulation 16 publication stage were passed on to the Examiner and considered as part of the examination.

The Examiner's Report concludes that the Plan, as modified in accordance with the Examiner's recommendations, should proceed to referendum. A summary of the Examiner's Report and recommended modifications can be found below.

The Examiner's Report, Norton St Philip Neighbourhood Plan and associated submission documents are too large to append in full, but are available on the Council's website:

<http://www.mendip.gov.uk/neighbourhoodplanning>. Copies are available for public inspection in the Council Offices at Cannards Grave Road, Shepton Mallet, BA4 5BT.

EXAMINER'S REPORT

The Examiner considers that the Neighbourhood Plan, subject to a number of modifications, meets the Basic Conditions and other statutory requirements.

The Examiner has recommended a number of modifications to the Plan that are intended to ensure that the Basic Conditions are met and that the Plan is clear, enabling it to provide a practical framework for decision making.

The modifications are set out in Appendix 2 and are for the most part minor changes to add clarity.

The Examiner's overall conclusion is that:

“I am satisfied that the Norton St Philip Neighbourhood Development Plan, subject to the modifications I have recommended, meets the basic conditions and the other statutory requirements outlined...”.

Having considered each of the Examiner's recommendations and the reasons for them, Planning Policy Officers concur with the Examiner's view and recommend modifying the Neighbourhood Plan as advised in order to ensure that it meets legal requirements (including the Basic Conditions) set out in legislation.

Norton St Philip Parish Council (the Qualifying Body) are in agreement that the Plan (as modified) should now proceed to referendum.

Planning Policy Officers also agree with the Examiner that there is no reason to extend the Neighbourhood Plan Area for the purpose of holding the referendum.

FURTHER MODIFICATIONS

A landowner has raised concerns that Local Green Space LGSNSP004 cuts across a kitchen extension at The Barton. Whilst it may sometimes be appropriate to include small buildings within a local green space, this extension should be fully excluded and the plan should be modified to exclude all of the extension at the Barton from LGSNSP004. A map indicating the amendment is included in Appendix 4.

An interested party has raised concerns that the Character Assessment carried out by local volunteers as part of the preparation of the evidence base does not include all trees and soft landscaping, and that in some instances trees are shown which are not present. The Character Assessment makes clear that it sets out to describe the “key visual elements” of the village. It might not therefore be expected to record all

features. However, the representation of trees which are not present could be misleading and these should be removed. The Parish Council agree that the notation showing 3 trees north of Shepherds mead should be removed. A map indicating the amendment is included in Appendix 4.

POTENTIAL FOR JUDICIAL REVIEW

5 letters from 4 parties interested in the Neighbourhood Plan have been received and are appended to this report (Appendix 3). 2 letters from and on behalf of Lochailort Investments Ltd raise a number of issues and inform the Council that they intend to challenge the neighbourhood plan through Judicial Review. Legal advice has been sought and is summarised as follows;

“The challenge to NSP Neighbourhood Plan on the basis that it fails to meet the basic conditions is unwarranted. Such a challenge is baseless and any judicial review challenge based on this will not have any merit. The recommendation of the Examiner remains sound and Members ought to proceed to referendum.

Mindful of the relevant provisions cited above, and what was recommended by the Examining Inspector as set out below, once the Council is satisfied that the basic conditions have been met, it ought to proceed to a referendum”.

The note concludes that;

“In summary, the challenge which seeks to suggest that The Plan fails to meet the basic conditions is unfair and unsustainable. The Examining Inspector in her report stated,

“I am satisfied that the North St Philip Neighbourhood Development Plan subject to the modifications I have recommended, meets the basic conditions and the other statutory requirements outlined earlier in this report. I am therefore pleased to recommend to Mendip District Council that, subject to the modifications proposed in this report, the Norton St Philip Neighbourhood Development Plan can proceed to a referendum.”

This is a sound recommendation and Members should follow it.”

RECOMMENDATION

- 1) That the Norton St Philip Neighbourhood Plan is modified in accordance with the Examiner's recommendations and to exclude an extension at The Barton from LGSNSP004 and amend fig 8 of the Character Assessment to remove the notation showing 3 trees north of Shepherds Mead.
- 2) That the Norton St Philip Neighbourhood Plan as modified should proceed to referendum.
- 3) That the Referendum Area should correspond to the Designated Neighbourhood Plan Area for Norton St Philip.

REASONS FOR RECOMMENDATION

To fulfil the Council's statutory duty in relation to supporting neighbourhood plans and ensure that the Plan meets the Basic Conditions and legal requirements of a neighbourhood plan.

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List of background Papers:

Appendix 1: Summary of the Basic Conditions

Appendix 2: Schedule of Proposed Modifications

Appendix 3: 5 letters received regarding Judicial Review and other concerns

Appendix 4: 2 maps of further modifications

Please note:

The Examiner's Report, Norton St Philip Neighbourhood Plan and associated submission documents are too large to append in full, but are available on the Council's website:

<http://www.mendip.gov.uk/neighbourhoodplanning>

Appendix 1: Summary of the Basic Conditions

Only a draft neighbourhood Plan or Order that meets each of a set of basic conditions can be put to a referendum and be “made”. The basic conditions are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. The basic conditions are:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan;
- the making of the neighbourhood plan contributes to the achievement of sustainable development;
- the making of the neighbourhood plan does not breach, and is otherwise compatible with European Union (EU) obligations
- Prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.

Regulations 32 and 33 of the Neighbourhood Plan (General) Regulations 2012 (as amended) set out 2 additional basic conditions, of which one is applicable

- The making of the neighbourhood plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

Appendix 2: Schedule of Proposed Modifications

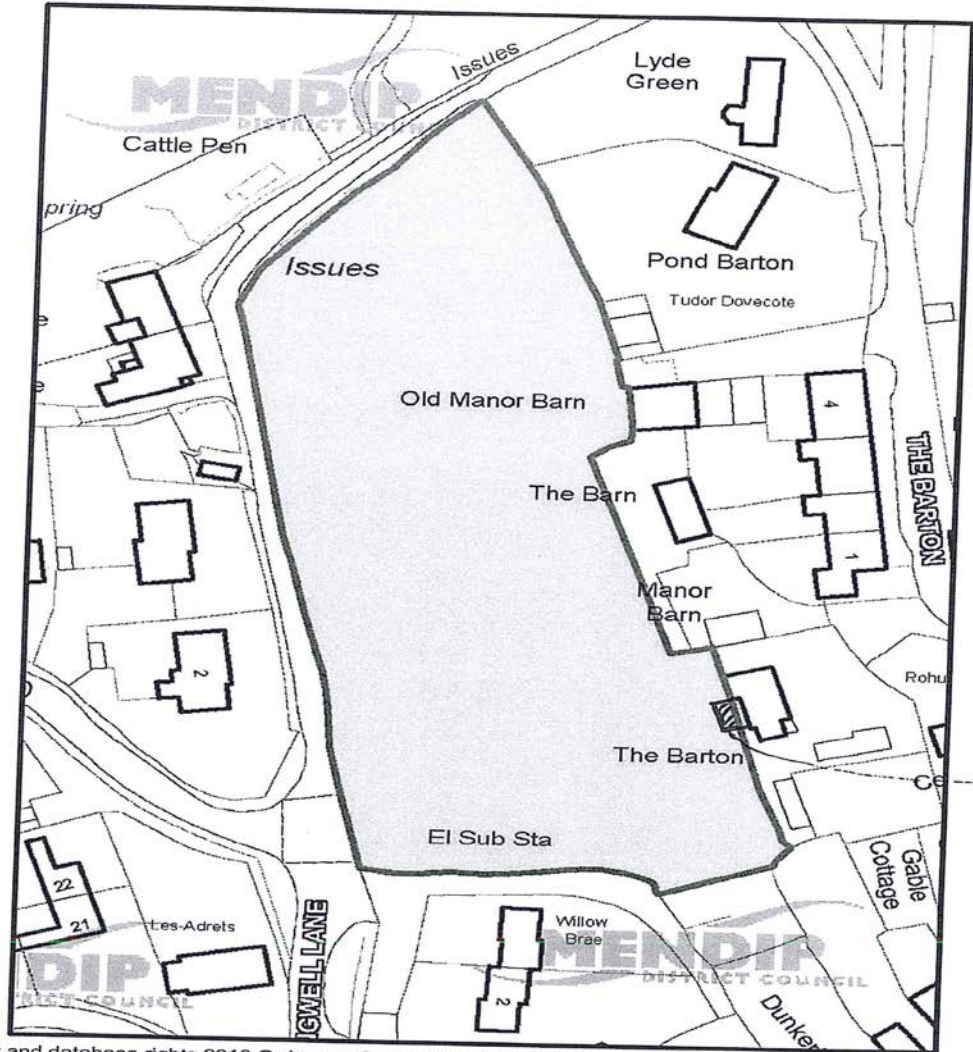
Modification Number	Policy number	Recommendation and changes	Report Page	Plan page	Reason for change
1.	throughout	Include a list of acronyms used throughout the plan	13	NA	To improve clarity
2	Para 1.8	Update the section as required and particularly para 1.8 on page 5	14	5	To reflect natural updating as the plan progresses
3	Policy 1	Change the title of Figure 4 “Development limit” to “defined settlement boundary”	16	15	For consistency throughout the plan
4	Policy 1	Change the title that reads “Fig 4; development boundary as proposed in policy 1” to “Fig 4; settlement boundary as defined by Policy 1”	16	15	For consistency throughout the plan
5	Policy 1	Change the word “the” to “this” in the second sentence of the policy so that it reads “Outside this defined settlement boundary...”	16	15	For clarity and accuracy
6	Policy 3	Change this section title to read “Entry Level Exception Sites”	18	19	.For clarity and accuracy
7	Policy 3	Change the phrase “...where a site would be permitted under normal policies...” to “where a site would normally be permitted...” in criterion b)	18	20	For clarity and accuracy
8.	Policy 3	Change the words “...this plan...” in criterion c) to “...the development plan...”	18	20	For clarity and accuracy
9	Policy 4	Change the reference to “section 10” in paragraph 11.1 on page 22 to “section 14”	19	22	For clarity and accuracy
10	Policy 4	Change both references to “CA” in the policy to “Character Assessment”	19	23	For clarity and accuracy
11	Policy 4	Add the words “...on figures 10 and 13...” before “...in the Norton St Philip Character Assessment...” in bullet point three of the policy	19	23	For clarity and accuracy
12	Policy 4	Change the spelling of “stories” in bullet point 4 of the policy to “storeys”	19	23	For clarity and accuracy

Modification Number	Policy number	Recommendation and changes	Report Page	Plan page	Reason for change
13	Policy 4	Change the ninth bullet point to read “Development should include satisfactory off street parking to Somerset County Council standards or, if superseded, any subsequent standards whilst not reducing existing on street car parking capacity”	19	24	For clarity and accuracy
14	Policy 4	Insert full stop at the end of the policy	19	24	For clarity and accuracy
15	Policy 5	Change the reference to “Figure 2” in the policy to “Figure 5”	22	27	For accuracy
16	Policy 6	Change the word “Any” at the start of the policy to “All”	23	31	For clarity
17	Policy 6	Add the words “wherever possible or suitable replacement facilities are to be provided” after “...are to be retained...” in the second paragraph of the policy.	23	31	To insure the policy provides a practical framework or decision making
18	Appendix 4	Insert a reference to Appendix 4 in paragraph 6.3 of the Plan	23	11	For clarity

Appendix 3 is listed separately

Appendix 4 i) Amendment of boundary of LGSNSP004 to removed part of extension from the local green space (shaded area to be removed)

Ringwell Lane (cont'd)



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Appendix 4 ii) Trees to be removed from Fig 8, Character Assessment

