

**CHILTERN DISTRICT COUNCIL
CABINET 23rd SEPTEMBER 2014**

Background Papers, if any, are specified at the end of the Report

NEIGHBOURHOOD PLANNING – REVISION TO SCHEME OF DELEGATION

Contact Officer: David Waker (01494 732267)

RECOMMENDATION

- 1. That Cabinet approve the revised delegations to officers as described in the officers report and as set out in full in Appendix 2**
- 2. Notes the suggested responses to the Government Consultation on speeding up the neighbourhood planning process and that subject to any comments made at Cabinet the response to the Government be delegated to the Head of Sustainable Development.**

Relationship to Council Objectives

Objective : we will work towards safer and healthier local communities.

- 3. Engage with Parish and Town Councils and local neighbourhoods.*

Implications

- (i) A key decision*
- (ii) This report does not affect the Policy and Budgetary Framework.*

Financial Implications

None specifically in relation to this report.

Risk Implications

There are not considered to be any risks associated directly with this report. However failure to have agreed powers of delegation in place for all aspects of the neighbourhood planning system could lead the Council open to legal challenges if it makes a decision without full authority being in place and risk neighbourhood planning processes being delayed if Cabinet or Council decisions are needed.

Equalities Implications

There are no equalities implications of this report.

Sustainability Implications

None as a result of this report

Report

1 The purpose of this report is as follows:

1. To consider the need for additional delegated powers to cover the circumstances where the Council does not agree with a neighbourhood plan examiner's report recommendation(s)
2. To clarify the existing powers of delegation in relation to consulting members on the recommendations contained in the examiner's report and the subsequent officer recommended response.
3. To request delegated authority in relation to the Council's duty to consider the appropriate referendum area for a neighbourhood plan referendum.
4. To approve one comprehensive set of neighbourhood planning delegated powers.
5. To highlight the proposed changes to neighbourhood planning powers being proposed by Government in their current review of planning and related controls.

Please note that for ease of reference and to relate to the Councils current experience with neighbourhood plans, throughout this report the text refers to neighbourhood plans. However the proposed delegated powers would apply equally to neighbourhood development orders should the Council receive such proposals in the future.

Background

- 2 Neighbourhood planning was introduced by the Localism Act¹. This Act in turn made a number of changes to the relevant planning acts to allow for the neighbourhood planning process and to allow neighbourhood plans to become part of the Development Plan.
- 3 To date the Council has received (and approved) two applications to declare a neighbourhood area from Chalfont St Peter Parish Council and from Chalfont St Giles Parish Council. The Chalfont St Peter Neighbourhood Plan has been through several stages and has now been through its examination stage. The Examiner's report has been received and initially considered under delegated authority.

¹ Localism Act 2011 15th November 2011.

- 4 In August 2012 the Cabinet received a report on the Neighbourhood Planning and Neighbourhood Development Order processes, their implications and requesting delegated powers for most stages. The intentions of the scheme of delegation were to speed up the process and to separate technical officer and minor decisions from the more strategic and significant decisions which should be taken by Cabinet and / or Council. The report also covered the forms of publicity that the Council considered should be undertaken at each stage of the neighbourhood planning process and it was agreed to carry out more than the minimum requirements (minute 32 3rd August 2012).
- 5 The 2012 Cabinet report stated that the regulations in relation to the referendum process were not then in place and a further report would be required in due course.
- 6 Following the progression of the Chalfont St Peter Neighbourhood Plan, through the plan process and use of the agreed delegated powers it was recognised that in practice the requirement to consult local ward members and the portfolio holder for planning on the validity of a neighbourhood plan application was unnecessary and that this could be a technical officer decision as no consideration of the merits was involved. As a result in May 2014 Cabinet approved an amendment to this element of the delegation (Minute 116 refers). For ease of reference the currently approved delegated powers are set out in Appendix 1 of this report.

Circumstances where there may be Disagreement with Examiners Report Recommendation(s)

- 7 As set out above the 2012 report seeking delegated authority was written before the Council had considered an actual neighbourhood plan and taken it through the process. The progression of the Chalfont St Peter Neighbourhood Plan has already necessitated a revision to the delegated powers as set out in paragraph 6 of this report. The Chalfont St Peter Neighbourhood Plan has now reached the point where the Council needs to consider the Examiner's report. The Council has a duty to consider each of the Examiner's recommendations and decide what action to take in response to each recommendation². This element is already the subject of a delegation to the Head of Sustainable Development, however the statutory reference has been corrected in the revised version of the delegations.
- 8 Although not considered in the 2012 report, the Council are now in a situation where they propose to disagree with one of the Chalfont St Peter Neighbourhood Plan Examiner's recommendations. The Legislation states that if the local planning authority proposes to make

² Paragraph 12(2) Schedule 4B Town and Country Planning Act 1990 as inserted by Schedule 10 Localism Act 2011

a different decision to that recommended by the examiner because they take a different view then the authority must notify relevant people of the proposed decision and invite representations.

- 9 The current delegated powers do not explicitly cover this eventuality, but do not exclude it (e.g. It delegates the 'Decisions' which could be a decision to agree or disagree). Delegation exists to make decisions on examiner's reports that make no change or only minor changes to plans or orders and to approve minor modifications. The disputed recommendation in the case of the Chalfont St Peter Neighbourhood Plan Examiner recommendation is considered to be minor as disagreement would not result in any change to the submitted plan and so falls under the scheme of delegation. However there could be other related circumstances where the existing scheme of delegation would be too restrictive. It is therefore recommended that the delegated powers are amended to include delegation to the Head of Sustainable Development to disagree with an examiner's recommendation where the resultant change to the plan would be minor. Any significant changes or disagreements which could involve major changes to the plan would require a Cabinet decision.
- 10 The Localism Act states that if the local planning authority feels it is appropriate to do so they can refer the decision to disagree with the examiner to independent examination. Logically this would require a new examiner as the Council would clearly disagree with the first examiner. It is thought that this may be a rare occurrence and would only be relevant where there was a significant change being disputed or where other material considerations were brought forward as part of the consultation. Also the appointment of a new examiner would add to the costs of the neighbourhood plan process and to delays in proceeding with the plan. Where significant matters are in dispute or new material evidence is produced a report would be made to the Cabinet.

Clarification of Delegation to Consult Local Members on Examiner's Report and Officer Recommendations.

- 11 The current delegation states that, subject to consultation with the relevant ward members and the Cabinet Member with responsibility for planning, decisions on examiner's reports that recommend no change or only minor changes to plans or orders are delegated to the Head of Sustainable Development. The current wording leaves the consultation open to interpretation. It is unclear whether this means consult members on the content of the examiner's report or the actual recommendations of the officer following consideration of members' views on the examiner's report and the officer's recommendations on the examiner's findings.
- 12 In the current Chalfont St Peter Neighbourhood Plan, officers consulted the relevant members on the content of the Examiner's report and

asked if they agreed with his recommendations. Their feedback was incorporated into the officer's report. However, it was considered necessary that to ensure compliance with the delegated authority to also consult members on the resultant officer recommendations in addition. This is clarified in the recommendations so that, in future, members' views are only sought once on the examiner's report.

Council Decision on Appropriate Area for Referendum

- 13 The officer's report in August 2012 implied a further report to Cabinet would be made once the referendum regulations were in place. In fact these regulations were published in August 2012³. The regulations set out the procedures required to organise a referendum and even set the question to be asked for a neighbourhood plan or a local development order referendum. The referendum regulations are procedural and similar to the requirements for any other poll or election. It is therefore not proposed to go over these regulations in this report. As the organisation of a referendum is similar to the organisation of an election this element would be organised by the Democratic Services Team and not be a planning function. As such the responsible officer for this element would be the Council's Chief Executive.
- 14 In relation to a referendum the Council has to consider the area in which the neighbourhood plan referendum should take place. The referendum area should as a minimum cover the neighbourhood plan area to which the neighbourhood plan relates.⁴ If the authority decides to extend the area for the referendum it must produce a map of that area. It should be noted that the examiner has to consider the appropriate area for a referendum and make a recommendation to the Council. In addition the Cabinet Member for Sustainable Development will be consulted. It is proposed that the decision on determining the referendum area is delegated to the Head of Sustainable Development taking into account the examiner's and relevant member's views.

Neighbourhood Planning Delegated Powers: Other Changes

- 15 For ease of reference the delegated powers already agreed are proposed to be replaced with one comprehensive set that includes the additional delegations and clarifications referred to in this report. This neighbourhood planning delegation scheme can then be easily amended as necessary in the future as experience requires and the statutory framework develops.
- 16 At the time of writing the 2012 report the Cabinet Leader was also the cabinet member with responsibility for planning hence the approved

³ The Neighbourhood Planning (Referendums) Regulations 2012

⁴ Paragraph 12(7), (8) and (9) Schedule 4B Town and Country Planning Act 1990 as inserted by Schedule 10 Localism Act 2011.

delegated powers refer to the cabinet member with responsibility for planning. Since the creation of a shared head of service for the planning function and the change in functions of Cabinet members the relevant cabinet member title is the Member for Sustainable Development. The delegation also refers to the fact that decisions on whether an examiner's recommendation is minor etc is set out in Schedule 9 paragraph 2 of the Localism Act. There is no such reference in the Act and therefore this element needs to be deleted from the delegation. To add clarity the opportunity has also been taken to link the various delegations to the relevant sections of the Localism Act.

- 17 The current delegations refer to the Council, on the recommendation of the Cabinet, "adopting" a neighbourhood development plan. This is not strictly correct as such plans are "made" rather than "adopted". If in a referendum more than half of those voting have voted in favour of the plan the Council is under a statutory duty (section 38A(4) of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act 2011) to make the plan as soon as possible after the referendum has been held, unless the plan would be in breach of European legislation or the Convention on Human Rights. Consequently, although there is technically still a decision to be taken, the Council may not have any discretion whether or not to make the plan.
- 18 Finally, the delegations are recommended to be extended to cover circumstances where a neighbourhood area is proposed to be modified.
- 19 Therefore, assuming the recommended changes to the delegated powers set out above in the report are approved, the proposed scheme of delegation for the neighbourhood planning process is as set out in Appendix 2.

Government Consultation on Proposed Changes to Neighbourhood Planning Regulations

- 20 As part of the Government's drive to speed up the planning process they are currently consulting on further changes to the planning system⁵. Part of this consultation covers neighbourhood planning. Responses to the consultation have to be received by the 26th September 2014.
- 21 The consultation seeks views on proposals to introduce time limits within which local planning authorities must take decisions on certain applications for a neighbourhood area to be designated. It also seeks views on changes to the pre-submission consultation and publicity process for neighbourhood plans and neighbourhood development

⁵ Technical consultation on planning - Department for Communities and Local Government July 2014.

orders, and the documents that must accompany a neighbourhood plan when submitted to a local planning authority.

- 22 The consultation proposes introducing a time limit of 10 weeks (70 days) between the submission of an application to declare a neighbourhood area and the decision of the Council on whether to designate the area. For reference the Chalfont St Peter decision took 73 days and the Chalfont St Giles decision took 58 days. The decision on whether to accept an application to designate a neighbourhood area is already delegated under the currently approved neighbourhood planning delegations. It should be borne in mind that part of the designation process involves the Council advertising the application to designate a neighbourhood area for 6 weeks and considering the responses received. Given this time period it is considered the 70 day timeframe if introduced would be tight but achievable. It is therefore not considered unacceptable to meet the 70 day decision timeframe should the Government make the change.
- 23 The consultation document suggests that the Government may in the future make the designation of a neighbourhood area automatic if the local authority does not make a decision in a set time. It is also suggested that they might impose other time limits within the neighbourhood planning process. If the Government imposes further time limited stages in the neighbourhood planning decision making process the Council may need to re-consider its existing delegations.
- 24 Currently before a neighbourhood plan is submitted, the originators have to publish the plan for a 6 week consultation period. This is on top of any other publicity, public meetings/forums or other events that may have occurred to promote the neighbourhood plan. The Government consider that this formal 6 week period is un-necessary on top of the other forms of publicity and that as the neighbourhood plan promoters would have to submit a formal consultation statement the 6 week formal period is not required.
- 25 This proposal is a concern, although the neighbourhood plan promoter would still be required to undertake consultation. There is a risk that without a formal consultation stage the publicity may miss certain groups. While a formal stage does not necessarily mean non-interested people will become more involved it does give them the opportunity. A reliance on the neighbourhood plan promoter's publicity could for example, in a big parish area unintentionally exclude rural areas if the publicity/events were focussed in the main settlement. Therefore it is considered that this change should be opposed.
- 26 The document also considers devolving the responsibility for publicity for the neighbourhood plan to the parish or town council once it has been submitted to the local planning authority. However the document concludes that as this is a new area for the parishes and would add to their costs, that the planning authority has more experience and is

better placed to undertake the publicity and therefore the document proposes no change. The officers agree with these conclusions.

- 27 The consultation suggests that there should be a requirement for any neighbourhood plan promoter to consult with any landowner whose land may be affected by a specific site allocation. This seems sensible, although for some sites finding a landowner can prove difficult. Without this requirement sites could be allocated in a neighbourhood plan without the landowner knowing their land is affected. This proposal is supported.
- 28 Neighbourhood plan examiners have to assess whether a neighbourhood plan proposal complies with the statutory provisions. These include a set of criteria defined in the regulations and collectively entitled the basic conditions. The consultation document suggests adding another basic condition. This condition would relate to the levels of publicity and consultation undertaken on the neighbourhood plan. This is to ensure that the appropriate levels of publicity have been undertaken. Regardless of the examiner's decision the local planning authority also has to consider if any submitted neighbourhood plan meets the basic conditions. Subject to the concern about the removal of the 6 week pre-submission consultation discussed above it is not considered that this additional basic condition would cause any concerns.
- 29 The consultation then discusses the requirement that neighbourhood plans are compatible with European guidance particularly the need for Strategic Environmental Assessment (SEA). The aim of an SEA is to assess the implications of a plan or policies to see if they have impact on the environment. Currently the plan only requires a full SEA if it is likely to have a significant impact on the environment otherwise the plan promoters should produce a statement of reasons why a full SEA is not required. According to the Government this statement is not always being produced leaving the examiner to guess if this requirement has been assessed.
- 30 Therefore the consultation proposes adding to the requirements of documents to be submitted when a neighbourhood plan is submitted for examination to include either a statement of reasons why the proposed plan is unlikely to have significant environmental effects (a screening opinion), or an environmental report or an explanation of why the proposed plan does not require screening or environmental assessment. Given that this requirement clarifies what already should be occurring and would make the examiner's and ultimately the Council's decisions easier this change should be supported.
- 31 Finally the consultation asks what further steps the Government could take to encourage more local groups to take up neighbourhood plans. Being within parished areas (such as Chiltern District) the decision to promote a neighbourhood plan currently rests with the parishes

(including town councils) it is not considered any change is required. To allow local groups to set up neighbourhood forums (such as currently in unparished areas) could allow more communities to initiate neighbourhood plans but this would risk the process becoming more fragmented and potentially tying up more local planning authority resources to administer so this suggested is not supported. It is considered the current system, subject to the changes outlined above, should not be further changed.

- 32 It is clear from the above that the Government intends to make changes to the neighbourhood planning process to make plan making easier and to encourage more neighbourhood plans. It is recommended that any response to this part of the Government's consultation on speeding up the planning process is delegated to the Head of Sustainable Development to finalise, the response to include any feedback from this meeting. Given the Government's desire to amend the current neighbourhood planning regulations it is likely that the council will have to re-visit its neighbourhood plan scheme of delegation once the Government's revisions are known.

Conclusions

- 33 The neighbourhood planning process is a relatively new process with which this Council has had limited practical experience. The experience of dealing with an actual neighbourhood plan has necessitated changes to be proposed to the existing powers of delegation. It is logical to incorporate all the delegated powers into one scheme of delegation. The Government's desire to speed up the process may in turn require additional changes to the scheme of delegation. The recommendations of the report reflect this position.

Background Papers:

Technical consultation on planning Department for Communities and Local Government July 2014

<https://www.gov.uk/government/consultations/technical-consultation-on-planning>

Neighbourhood Plan and Neighbourhood Development Orders Current Delegated powers.

1. That at each stage in the neighbourhood Planning Process where publicity must be undertaken, this goes beyond the minimum requirement of publishing the application, the order or the plan on the District Council's website and should extend to:

- Publishing the matter on the Applicant's website and / Or Parish newsletter (if there is one);
- Posting a notice on the Parish Notice Board or, in the absence of such a board, in a prominent position in the parish stating where the application, order or plan can be inspected;
- The District Council issuing a press release stating where the application, order or plan can be inspected; and,
- Informing the local Ward Member(s)

2. That the following decisions in the neighbourhood planning process should be delegated to the Head of Sustainable Development, after consultation with the relevant local Member(s) and Cabinet Portfolio Holder with responsibility for Planning:

2.2.1 Decisions on whether to accept and designate a Neighbourhood Area

~~2.2.2 Decisions on the validity and acceptance of applications for a Neighbourhood Development Plan or a Neighbourhood Development Order; see below*~~

2.2.3 Consultation responses to Neighbourhood Development Plans and Orders, before their formal submission as applications to the Council

2.2.4 Decisions on whether to decline to accept repeat proposals for Neighbourhood Development Plans or Neighbourhood Development Orders;

2.2.5 Decisions on who to appoint as an examiner;

2.2.6 Decisions on examiners' reports that recommend no change or only minor changes to plans or orders pursuant to Schedule 10, Paragraph 2 of the Localism Act 2011;

Classification: OFFICIAL

2.2.7 Decisions on whether to modify Neighbourhood Development Plans and Orders where the proposed modifications are only minor.

In relation to 2.2.6 and 2.2.7 above, decisions on whether an examiner's recommendation is minor and whether a proposed modification to an order or plan is minor pursuant to Schedule 9 Paragraph 2 of the Localism Act 2011.

*Decisions on the validity and acceptance of applications for a Neighbourhood Plan or Neighbourhood Development Order are delegated to the Head of Sustainable Development. The Head of Sustainable development being required to inform relevant local ward member(s) within the relevant Neighbourhood Area and the Cabinet Member for Sustainable development of decisions taken and where determined that a Plan or Development Order is not found valid to provide reasons for the decision.

3. That for the avoidance of doubt the adoption of a Neighbourhood Development Plan be subject to the approval of Full Council at the recommendation of the Cabinet.

Classification: OFFICIAL

Recommended Revised Neighbourhood Plan and Neighbourhood Development Orders Scheme of Delegation

Please note new words added to the delegations have been shown as underlined in the scheme of delegation below. For clarity deleted words from the previously approved delegations wording have not been shown. The underlining will not form part of any approved scheme of delegation.

1. That the following actions in the neighbourhood planning process should be delegated to the Head of Sustainable Development, after consultation with the relevant local Member(s) and Cabinet Member for Sustainable Development:
 - a) Decisions on whether to accept and designate or modify a neighbourhood area under s61G of the Town and Country Planning Act 1990, as inserted by Schedule 9 of the Localism Act 2011;
 - b) Consultation responses to neighbourhood development plans and neighbourhood development orders, before their formal submission as proposals to the Council;
 - c) Decisions on whether to decline to accept repeat proposals for neighbourhood development plans or neighbourhood development orders under paragraph 5(1) of Schedule 4B of the Town and Country Planning Act 1990, as inserted by Schedule 10 of the Localism Act 2011;
 - d) Decisions on who to appoint as an examiner under paragraph 7(4) or 13(2) of Schedule 4B of the Town and Country Planning Act 1990, as inserted by Schedule 10 of the Localism Act 2011;
 - e) Decisions on recommendations in examiners' reports that propose no change or only minor changes to plans or orders pursuant to paragraph 12 of Schedule 4B of the Town and Country Planning Act 1990, as inserted by Schedule 10 of the Localism Act 2011;
 - f) Decisions on whether to modify neighbourhood development plans and orders where the proposed modifications are only minor, whether or not recommended by the examiner.
2. Decisions on the validity and acceptance of applications for a neighbourhood plan or neighbourhood development order are delegated to the Head of Sustainable Development. The Head of Sustainable development being required to inform relevant local ward member(s) within the relevant Neighbourhood Area and the Cabinet Member for Sustainable development of decisions taken and where determined that a plan or development order is not found valid to provide reasons for the decision.

3. Decisions where the Council propose to disagree with an examiner's recommendation and the reasons for such a decision are delegated to the Head of Sustainable Development in consultation with the Cabinet Member for Sustainable Development, where the implications for the plan are minor. Authority is also delegated to the Head of Sustainable Development to undertake the necessary publicity and consultation to invite views on the Council's proposed decision(s).
4. Decisions to determine the referendum area are delegated to the Head of Sustainable Development taking into account the examiner's recommendation and the views of the Cabinet Member for Sustainable Development.
5. That the organisation of a Neighbourhood Plan and / or Neighbourhood Development Order referendum(s) be delegated to the Councils Chief Executive.
6. That the decision whether or not to make a neighbourhood development plan or order shall be subject to the approval of Full Council at the recommendation of the Cabinet.