

SUBJECT	The Environmental Assessment of Plans and Programmes Regulations 2004 – delegated powers
REPORT OF	Councillor Peter Martin - Planning and Economic Development Portfolio Holder
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WARD/S AFFECTED	All

1. Purpose of Report

To seek delegated authority to determine the need for environmental assessment of plans, specifically neighbourhood plans.

RECOMMENDATIONS:

- That the statutory requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 in relation to neighbourhood planning are delegated to the Head of Planning and Economic Development.**

2. Executive Summary

The Council has a duty to undertake environmental assessments for neighbourhood plans within their area. The technical nature of the determination and short timeframes required mean decisions are unlikely to neatly fit with Cabinet meetings timetables. The environmental assessment process is related to neighbourhood planning but doesn't form part of the neighbourhood planning legislation and is thus not covered by the existing delegated powers for the neighbourhood planning process. Neighbourhood planning remains a Council specific function with neighbourhood plans needing to be processed and approved (made) by each respective sovereign council.

3. Reasons for Recommendations

The Council is required to undertake environmental assessment of neighbourhood plans. The timing of neighbourhood plan production is in the hands of the neighbourhood plan groups and as such whilst the district councils have a duty to assist and to make decisions within timeframes as set within the regulations it is difficult to programme the need for an environmental determination decision into a Cabinet meeting timetables. Most other aspects of neighbourhood planning as defined in the Localism Act have been delegated already. Therefore it is logical and practicable to include environmental assessment of plans in the scheme of delegation.

4. Content of Report

4.1. The Environmental Assessment of Plans and Programmes Regulations are the UK government's interpretation of European law. The legislation is similar to the

requirement to undertake an Environmental Impact Assessment of a planning application. Whilst the regulations have been in force since 2004 and apply equally to local plan documents decisions related to the progression of the local plan are delegated to the Joint Committee and the environmental assessment of the local plan is usually tied in with the overall evidence base of the local plan including the Sustainability Appraisal (SA) of the plan and the Habitats Regulations Assessment (HRA) of the implications of the proposed local plan on the designated European sites e.g. Special Areas of Conservation (SAC) such as Burnham Beeches. Therefore this report concentrates on the role of environmental assessment in the neighbourhood plan process, and a similar report is being made to SBDC Cabinet on 17 October 2018 for consistency in delivering a shared service.

- 4.2. Across Chiltern and South Bucks there has so far been one neighbourhood plan made (note under the legislation neighbourhood plans are 'Made' rather than adopted by the local planning authority and if they pass a referendum and are made become a part of the development plan.) Officers are currently progressing the Chalfont St Giles Neighbourhood Plan through the formal process and there are a further 8 designated neighbourhood areas (one in Chiltern District and seven in South Bucks District) where we can expect a neighbourhood plan to be developed in the future.
- 4.3. Delegated powers - Neighbourhood planning remains a Council specific function with each sovereign council needing to determine and 'make' neighbourhood plans submitted in their own respective area. As members will be aware most of the procedural stages of the neighbourhood plan process and other neighbourhood related planning functions are delegated to officers with or without the need to consult with local ward members and or the relevant portfolio holder. However these delegations relate solely to the neighbourhood planning related parts of the Localism Act 2011 and the associated regulations. (See minute 31 SBDC Cabinet 13th October 2015 and Minute 27 CDC Cabinet September 2014). Although the Environmental Assessment of Plans and Programmes Regulations 2004 (the 2004 regulations) were in effect at the time the neighbourhood plan schemes of delegation were considered the specific requirement for neighbourhood plan groups to include an environmental assessment was only added by an amendment to the Neighbourhood Plan Regulations made in January 2015. This makes it a requirement for the neighbourhood plan group submitting a neighbourhood plan to include an environmental statement made under the 2004 regulations. Those 2004 regulations in turn make it a requirement for the responsible authority, the district council in this case, to undertake the environmental determination and to carry out the formal procedures associated with the determination process.
- 4.4. As part of the progression of the Chalfont St Giles Neighbourhood Plan, the first neighbourhood plan to be progressed since the change in the regulations, it was identified that there was no formal delegation for the requirements of the 2004 regulations. Under the 2004 regulations once a neighbourhood plan is proposed

the district council should consider whether the plan is likely to have a significant environmental effect. Before making the determination that the plan will or will not have an environmental effect the council has to consult the statutory consultation bodies. These are Historic England, Natural England and the Environment Agency. Once the council has made a determination that the plan would not have an environmental impact it has to produce a statement setting out its reasons for the determination. It then has to send a copy of the statement to the consultation bodies and make it publically available. If however, it is considered the plan would have an environmental impact the council has to prepare an environmental report which sets out the likely significant effects of the plan and consult the consultation bodies and people likely to be affected by the adoption of the plan. The consultation to be for a reasonable period to allow people to respond.

- 4.5. Under the Neighbourhood Plan Regulations, as amended, the neighbourhood plan group are required to submit with their neighbourhood plan at examination stage either a copy of the district council's statement that the plan would not have a significant environmental impact or a copy of the environmental report which sets out how the plan would have a significant impact on the environment. This report or statement will form part of the examination of the plan to ensure the neighbourhood plan complies with the European regulations. In turn before the council 'make' (adopt) the neighbourhood plan they have a duty to ensure the correct documents were submitted with the neighbourhood plan and that European laws have not been broken.
- 4.6. Reason for seeking delegated powers – Firstly the assessment of a plan is largely a technical exercise, it is a Council duty for the assessment to be made, but there is no political steer required. The Council view on the impact of the plan on the environment has to be shared with the expert consultation bodies that will use their particular expertise and either agree with the opinion or disagree and state why in their response. As such there appears to be little risk to the council of making an incorrect decision. Secondly although neighbourhood plan groups are often working with officers of the two district councils, on their emerging neighbourhood plans, officers cannot determine when the neighbourhood plans will come forward or when they would have enough information on the content of the proposed plan to be able to make a determination under the 2004 regulations. In addition, there is a need to consult with the consultation bodies and give them the opportunity to respond, this would make the timing of any determination, consultation and actual cabinet decision timing difficult to plan for and most likely any determination would be unlikely to neatly fit within the Cabinet calendar of meetings. As such if not delegated any determination under the 2004 regulations may require a special meeting of the Cabinet to be called to make the formal council decision.
- 4.7. Given the above reasoning the recommendation to Cabinet is that the process of undertaking an environmental assessment of the impact of a neighbourhood plan on the environment, under the 2004 regulations, should be delegated to the Head

of Planning and Economic Development. Ultimately following the environmental determination, involving the statutory bodies, the neighbourhood plan is examined by an independent examiner, has to pass a referendum and finally has to be 'made' by the local planning authority as such it is considered sufficient safeguards remain to allow delegation of one stage in the bigger neighbourhood plan process.

5. Consultation

Not Applicable

6. Options (if any)

No delegation – if powers are not delegated all environmental assessment determinations of neighbourhood plans would need to be determined by the Cabinet. This requirement will relate to all neighbourhood plans being proposed, any revisions to existing neighbourhood plans and could also be required should a neighbourhood plan examiner recommend modifications a neighbourhood plan prior to referendum which would alter its environmental impact. Due to the need to meet certain timeframes in the neighbourhood planning process this could mean the need for special Cabinets to be called to deal with the issue within the timeframe. Given the technical nature of the determination and the timeframes involved this is not seen as a practicable option.

Delegation to Portfolio holders – delegation could be made to the relevant portfolio holder who would more likely be able to make a quick decision within a tight timeframe. However the determination is a technical decision based on the content of the proposed neighbourhood plan and as such it is not thought necessary to seek portfolio holder agreement.

Delegation to Officers – as set out in the report this it's a technical determination required in a set timeframe – the councils have to consult expert statutory bodies on the outcome of their determination meaning there remains a statutory overview of the councils decision. Delegation to officers would allow the Council to meet their statutory duties to assist the neighbourhood planning process and the need to seek agreement of the consultation bodies would avoid any risk to the council of potentially allowing a plan to proceed that could have an environmental impact.

7. Corporate Implications

Reports must include specific comments addressing the following implications:

- 7.1 Financial – there should be no financial impacts other than officer time to make the necessary determinations and or produce an environmental impact assessment report.
- 7.2 Legal – it is a legal requirement for the responsible authority to determine if a plan or programme would have a significant environmental effect.
- 7.3 Environmental Issues – the SEA process is designed to protect the environment by limiting plans that could harm the environment; Partnership; neighbourhood planning and in particular the need to undertake an environmental assessment of

the neighbourhood plan working with the parish council is an example of partnership working at a local level; Sustainability - having an up-to-date Development Plan in place, of which neighbourhood plans form part at a local community level, can help to improve sustainability.

8. Links to Council Policy Objectives

We will work towards safer and healthier local communities 3. Promote cohesive communities - Engage with Parish and Town Councils and local neighbourhoods We will strive to conserve the environment and promote sustainability. The environmental assessment of a neighbourhood plan is part of the process for making a neighbourhood plan. The neighbourhood plan will help establish a safer and healthy community, bring the community together conserve the environment and the plan will promote sustainability.

9. Next Steps

Assuming delegated powers are granted to officers, in the future when draft neighbourhood plans are submitted, to either council, officers will work with the neighbourhood plan group to assess the environmental implications of the proposed plan and will undertake the necessary formal procedures to enable the neighbourhood plan to proceed.

<p>Background Papers:</p>	<p>The Environmental Assessment of Plans and Programmes regulations 2004 - http://www.legislation.gov.uk/uksi/2004/1633/contents/made The Neighbourhood Planning(General) (Amendment) Regulations 2015 - http://www.legislation.gov.uk/uksi/2015/20/contents/made</p>
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