

BABERGH DISTRICT COUNCIL / MID SUFFOLK DISTRICT COUNCIL

TO: BDC Council MSDC Council	REPORT NUMBER: MC/21/15
FROM: Cabinet Members for Planning	DATE OF MEETING: 21 September 2021 23 September 2021
OFFICER: Tom Barker - Assistant Director for Planning	KEY DECISION REF NO. N/A

REVISIONS TO INTERNAL NEIGHBOURHOOD PLANNING PROCEDURES

1. PURPOSE OF REPORT

- 1.1 This report seeks a revision to the procedures that currently govern the way Neighbourhood Plans (NPs) are dealt with following receipt of the independent examiner's report. The opportunity is also taken to review where delegated authority lays for decision making during the earlier NP preparation stages.
- 1.2 If the recommendations set out below are implemented, they would deliver tangible benefits, including reducing administrative workload and ensuring that the Councils are better able to meet their statutory obligations under Sections 17A and 18A of the Neighbourhood Planning (General) Regulations 2012 (as amended).

2. OPTONS CONSIDERED

- 2.1 The alternative would be to continue with the existing procedures. These require all post-examination NPs to be taken through the Cabinet reporting process before they can be advanced to a local referendum, and, for the default position to be that all NPs that receive majority 'yes' votes at referendum to be taken to a Full Council meeting before they can be formally adopted. For the reasons set out further below, both options are no longer considered practical or necessary.

3. RECOMMENDATIONS

- 3.1 To change the procedure for automatically taking a post-examination Neighbourhood Plan to Cabinet seeking approval to proceed to Referendum. The proposal would automatically allow a Plan to proceed to referendum where the parish and district council have agreed to implement any required modifications. Where there are other considerations, a report will still be presented to Cabinet. The revised procedures would allow prompt publication of a decision notice, reduced administrative work, and ensure closer compliance with the relevant regulations.
- 3.2 To change the procedure that requires taking a post-Referendum Neighbourhood Plan with a majority 'yes' vote to Council seeking formal adoption. The new proposal, which would be to obtain Chief Executive approval endorsed by the Cabinet Members for Planning, would enable a Neighbourhood Plan agreed at Referendum to be formally adopted quickly, efficiently, and within the eight-week statutory time limit

4. KEY INFORMATION

4.1 The Neighbourhood Planning Regulations, which were first introduced in 2012, have been updated on several occasions. While the most recent update focuses on modifying already adopted plans, it is important to recognise that as the Regulations have been amended, and the wider body of public knowledge and awareness of NPs has grown, so have the expectations of individual groups to see their Plans progressed in a timely manner.

Neighbourhood Planning Regulation 17A [Decision on Examiner's recommendations]

4.2 Regulation 17A sets out the prescribed date by which the local planning authority must decide what action to take in response to each recommendation made by the [examiners] report. That date is either:

- 17A(5)(a) where the local planning authority and the qualifying body [i.e., the parish council] agree a date, OR
- 17A(5)(c) in all other cases, the date which is the last day of the period of 5 weeks beginning with the day immediately following that on which the local planning authority receives the [examiners] report.

4.3 Having analysed data for all 25 NPs that have been through the Cabinet or Executive Committee process to date, this shows that the duration between receipt of an Examiner's Report and this being considered at a formal meeting is increasing:

Period (# of NPs)	Jun 2016 - Dec 2019 (6 NPs)	Mar 2019 - Jan 2020 (8 NPs)	Jun 2020 - Jul 2021 (11 NPs)*
Average time	5.2 weeks	5.8 weeks	9 weeks

** Note: The June 2020 - July 2021 figure also includes an allowance for 3 NPs where the duration has been shortened by 30 days because the nominal Cabinet meeting fell in an election period, i.e., instead of being reported to a Cabinet meeting in May, the NPs went to the June meeting.*

4.4 This perceived delay needs to be balanced against the fact that, in almost every case, both parish and district councils have agreed to implement the examiner's recommendations in full. On some occasions, these modifications have already been made before the Plan gets to Cabinet. In other words, reality has been overtaking procedural need.

4.5 The recommendation set out in paragraph 3.1 therefore seeks to recognise what is happening and to automate this process as much as possible, while still retaining appropriate checks and balances should one or other party disagree with the examiner's recommendations. It is further suggested that a sign-off template; similar to that used for other 'Action Out of Meeting' decisions, is used which, with relevant e-mail correspondence, will provide a permanent record of the agreement by both parish and district council to make all the required modifications.

Neighbourhood Planning Regulation 18A [Prescribed date for making a neighbourhood development plan]

- 4.6 Regulation 18A requires a local planning authority to 'make' (adopt) a neighbourhood plan within 8-weeks of it receiving a majority yes vote at a local referendum. As already mentioned in paragraph 4.2 above, 16 plans have been adopted to date and at least eight others have potential to be at a local referendum before this year is out.
- 4.7 No specific analysis has been undertaken of the gap between the referendum result being declared and the Plan being formally adopted. However, it should be noted that all Plans adopted to date have been 'made' within the required time period.
- 4.8 Where purdah periods etc. have meant that either Council has been in danger of not complying with Regulation 18A, the 'Action Out of Meeting' process has been used to ensure that the adoption requirement is met. The recommendation set out in paragraph 3.2 proposes that this becomes the default mechanism. This change would also deliver benefits in terms of making better use of both Council and Officer time.

Delegated Authority

- 4.9 While the main purpose of this report is to seek a change in the delegated procedures that govern the way NPs are dealt with following receipt of the independent examiner's report it is an appropriate opportunity to also draw the Councils' attention to the wider issue of operational procedures linked to the regulatory processes that govern neighbourhood planning.
- 4.10 In April 2016, and at their respective meetings, Babergh Council and Mid Suffolk Council agreed to a set of procedures which set out where delegated authority lay for decision making at key stages. Those procedures have served both Councils well but, when drafted, nobody could have foreseen the significant uptake in neighbourhood planning. At that time, approximately 12 parishes had started the process. Today, and across both districts, around 40 plans are in progress, with 16 others having already been adopted. With many groups also working to similar timeframes, both unintentionally and through necessity, the delegation procedures have not always been followed and a more fluid arrangement now exists whereby the Portfolio Holders / Head of Service are involved where they have to be, but otherwise the practical day-to-day decisions are now made by or on behalf of the Corporate Manager for Strategic Planning.
- 4.11 Table 1 (appended to this report) replicates what was presented in 2016, but now includes a new column that sets out the current working practice.

5. LINKS TO CORPORATE PLAN

- 5.1 Ensuring that well-prepared neighbourhood plans can be advanced in a timely manner will continue to help build local confidence in the plan-making process and allow both Councils to fulfil their wider corporate priorities in terms of housing delivery, business growth and community capacity building.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no specific financial implications arising from this report.

7. LEGAL IMPLICATIONS

7.1 The Localism Act, 2011 confers specific functions to local authorities in relation to neighbourhood planning, including a duty to provide support to groups preparing a Plan. As with any decision made by a public body there is a risk of legal challenge to the policies and proposals contained within a NP and/or a judicial review of the Councils' decision to forward a Plan to a local referendum and in its decision to adopt that Plan if the former requires it. These processes are managed by ensuring that the Regulations are followed and decision-making processes are clear and transparent.

8. RISK MANAGEMENT

8.1 This report is most closely linked with Significant Business Risk No. 9 - We may not be able to help communities to become more sustainable. The key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
NP are not progressed in a timely manner	Unlikely - 2	Bad - 3	Continuing to engage effectively with groups, especially during the early plan drafting stages.
Legal challenges to the content of a NP and/or Judicial Review of District Council decisions.	Unlikely - 2	Bad - 3	Ensuring relevant Regulations are followed and that decision making processes remain clear and transparent.

9. CONSULTATIONS

9.1 The Portfolio Holders for Planning are regularly briefed on the wider NP picture, are aware of the resource needed to ensure that processes continue to run smoothly, and have been involved in discussions on how working practices could be improved.

10. EQUALITY ANALYSIS

10.1 There are no equality or diversity implications arising from the content of this report.

11. ENVIRONMENTAL IMPLICATIONS

11.1 There are no environmental implications arising from the content of this report.

12. APPENDICES

Report to:	Location
Babergh Council 26 April 2016	https://baberghmidsuffolk.moderngov.co.uk/documents/s2072/26-0416-Neighbourhood%20Planning.pdf
Mid Suffolk Council 28 April 2016	https://baberghmidsuffolk.moderngov.co.uk/documents/s1009/C-25-16%20Neighbourhood%20Planning.pdf

Table 1: Operating Framework at Key Decision Stages for Neighbourhood Plans: Agreed Practice (2016) - v - Current Practice

Stage	Activity	Action Required	Agreed Practice (2016)	Current Practice
One	Designation of Neighbourhood Plan Area	Deciding the area which the NDP will cover, following consultation. (This will usually be the whole parish.)	Head of Service <i>(NB - this was agreed by the Executive and Strategy Committees in July 2013)</i>	Neighbourhood Plan Officer (NPO). <i>[The regulations now state that LPAs cannot refuse single parish applications. Multi-parish area applications must still be consulted on in the first instance.]</i>
Two	Preparation of draft NDP or Order	Provision of informal guidance and comments on emerging proposals to the Town or Parish Council.	Head of Service	NPO in consultation with the Corporate Manager. <i>[Informal guidance is now primarily dealt with at the officer level, with input from other teams, Senior Officers and the Corporate Manager for Strategic Planning as required.]</i>
	Strategic Environmental Assessment (SEA) Determination or EIA Screening	Technical determination on whether the plan is likely to have significant environmental effects.	Head of Service	Determination made by SEA / HRA Consultants. Process managed by NPO in consultation with Corporate Manager. <i>[The SEA / HRA Screening of NDPs' is now contracted out to our preferred consultancy services. This screening is offered as a 'benefit in kind' to our NP Groups and is cost neutral, being retrospectively funded by the grant payment we receive following the decision to advance a NDP to a referendum.]</i>

Three	Formal response to [Reg 14] Pre-submission consultation	Provision of comments on the content of the draft NDP or Order to ensure the District Council's planning strategy and any other interests are clearly and firmly put forward, and any outstanding issues addressed as far as possible.	Head of Service in consultation with the relevant Portfolio Holder	NPO in consultation with the Corporate Manager. <i>[As with Stage Two, responses are now primarily prepared at the officer level, with input from other Teams and Senior Officers as required.]</i>
Four	Submission [at Reg 15] of the draft NDP or Order	Decision on whether the NDP or order is complete and legally compliant. If so, deciding extent & timing of consultation in light of statutory requirements, resources available, and other consultations in progress at the time.	Head of Service	NPO in consultation with Corporate Manager <i>[It is now not uncommon for either Council to have several Plans out for public consultation at the same time.]</i>
	Formal representations [at Reg 16] on submitted NDP or Order	This is a key stage at which any outstanding concerns can be put forward for consideration at the examination.	Head of Service, in consultation with the relevant Portfolio Holder	NPO in consultation with Corporate Manager / Head of Service. <i>[Improved dialogue and the use of professional consultants by individual groups has all but eliminated the need to make further / detailed representations at this stage. Where issue(s) remain, a formal responses is discussed and agreed with the Corporate Manager and as required, the Head of Service.]</i>
Five	Appointment of an Independent Examiner	Selecting a 'suitably qualified and experienced' person to conduct the examination, and agreeing choice with Town/Parish Council.	Head of Service in consultation with the Town or Parish Council	NPO in consultation with the Town or Parish Council <i>[Both Councils have built up valuable working relationship with</i>

				<i>a small pool of Independent Examiners. They have become the 'go to' persons for both the Council and NP Groups – an arrangement that continues to work well for all parties involved.]</i>
Six	Consideration of Examiners Report and Decision on whether the NDP or Order should proceed to Referendum	A decision as to whether (in light of the Examiner's recommendations) the NDP should proceed, with or without modifications, to Referendum or a different decision should be made in the light of new evidence.	Executive or Strategy Committee	See recommendation set out in paragraph 3.1 of this report.
Seven	Bringing the NDP or Order into force	If the NDP or Order passes the Referendum the District Council must 'make' (adopt) the plan or order.	Full Council (formal ratification)	See recommendation set out in paragraph 3.2 of this report.

[Ends]