

STROUD DISTRICT COUNCIL
ENVIRONMENT COMMITTEE

AGENDA
ITEM NO

16 FEBRUARY 2017

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Report Title	KINGSWOOD NEIGHBOURHOOD PLAN: PROGRESS TO REFERENDUM
Purpose of Report	To inform councillors of progress regarding the Kingswood Neighbourhood Plan (KNDP)
Decision(s)	The Committee RESOLVES: <ol style="list-style-type: none"> 1. to accept all recommended modifications of the Examiner’s Report (Appendix A); 2. that the Kingswood Neighbourhood Development Plan, as modified, meets the basic conditions, is compatible with the Convention rights, complies with the definition of a neighbourhood development plan (NDP) and the provisions that can be made by a NDP; 3. to take all appropriate actions to progress the Kingswood Neighbourhood Development Plan to referendum on the 4th of May 2017.
Consultation and Feedback	The KNDP has been through two statutory consultations, Kingswood Parish council undertook a pre-submission consultation (Regulation 14) from 12 th October to 22 nd November 2015 and the Council undertook a post-submission consultation (Regulation 16) from 20 th April to 08 th June 2016. Both consultations lasted no less than the six weeks required by the regulations. Kingswood Parish Council considered the comments received during the Regulation 14 consultation and made changes to the plan. The comments received during the Council’s Regulation 16 consultation were provided to the examiner of the plan who considered them during the examination.
Financial Implications and Risk Assessment	The Government issued guidance in October 2014 indicating that funding of £12m was available to local planning authorities to help them meet the cost of their responsibilities around Neighbourhood Planning. A total of £20,000 can be claimed for each NP area. This single payment will be made once a date is set for a referendum, following a successful examination. If Committee resolves to accept the examiner’s report and progress the plan to referendum, potential funding of £20,000 would be available. Any costs incurred in excess of this will have to be borne by the council. David Stanley – Accountancy Manager Tel: 01453 754100 Email: david.stanley@stroud.gov.uk

Legal Implications	<p>The report and recommendations outline the current legal position with regard to the next stage in the process. The Council's discretion with regard to proceeding to a referendum or otherwise is strictly limited by statute and in this case the requirements for proceeding to a referendum appear to have been met subject to the proposed modifications being included in the NDP.</p> <p>Alan Carr, Solicitor Tel: 01453754357 Email: alan.carr@stroud.gov.uk</p>
Report Author	<p>Mark Russell, Planning Strategy Manager Tel: 01453 754305 Email: mark.russell@stroud.gov.uk</p>
Options	<p>Option 1 - Make modifications to the KNDP in accordance with the examiner's recommendations</p> <p>This is the option promoted by this report. It consists of accepting the recommendations made in the neighbourhood plan examination report, determining that the KNDP meets basic conditions and all legal requirements and should therefore, proceed to a referendum.</p> <p>This approach is considered to be the best option for progressing the plan prepared by the community without any unnecessary delay in the decision making process.</p> <p>Option 2 – Make a decision that differs from the examiner's recommendation</p> <p>If the Council were to propose a decision that differs from the examiner's recommendation, the Council is required to:</p> <ol style="list-style-type: none"> 1. notify all those identified on the consultation statement of the parish council and invite representations, during a period of six weeks, 2. refer the issue to a further independent examination if appropriate. <p>Option 3 - Refuse the Plan</p> <p>The Council can decide that it is not satisfied with the plan proposal with respect to meeting basic conditions, compatibility with Convention rights, definition and provisions of the NDP even if modified. Without robust grounds, which are not considered to be present in this case, refusing to take the plan to a referendum could leave the Council vulnerable to a legal challenge.</p>
Performance Management Follow Up	<p>If a referendum is held and there is a vote in favour (50% plus 1) KNDP will be referred to Council to be "made" (i.e. brought into force). Once made, the KNDP will form part of the development plan for the</p>

	District and will be used to determine planning applications within the Kingswood Neighbourhood Area.
Background Papers/ Appendices	<p>Background Papers</p> <ul style="list-style-type: none"> • Kingswood Neighbourhood Plan and submission documents • The basic conditions that neighbourhood Plans must meet and other basic conditions <p>Appendices</p> <p>Appendix A – Examiner's Report</p>

BACKGROUND

1. Neighbourhood planning was introduced through the Localism Act 2011. New powers allowed qualifying bodies (parish or town councils) to produce NDPs. NDPs allow communities to set planning policies for their area.
2. Once adopted, NDPs join the adopted Local Plan in the Council's Development Plan. They must be considered when planning decisions are made, along with the Local Plan and national planning policy.
3. Producing a NDP allows parish and town councils to increase the amount of Community Infrastructure Levy (CIL) funds they receive from developments within their area from 15% to 25%.
4. NDPs must be examined by a suitably qualified independent person, appointed by the Council and agreed by the qualifying body (Town/Parish Council). Neighbourhood plans must also pass a referendum of local voters by a simple majority. If a plan passes referendum, the Council must make (adopt) it, unless it breaches EU obligations or human rights legislation.

KINGSWOOD NEIGHBOURHOOD DEVELOPMENT PLAN

5. The Kingswood Neighbourhood Area was designated by resolution of the Council's Environment Committee on 19th June 2014.
6. The KNDP was led by a steering group subordinate to Kingswood Parish Council ('the qualifying body').
7. A submission version of the KNDP was accepted by the Council on 14th April 2016, under regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the regulations'). As prescribed by 'the regulations', the Council consulted on the plan for six weeks and arranged for the plan to be examined.

EXAMINATION

8. The Council appointed Mr Timothy Jones, Barrister, FCI Arb as independent examiner of the KNDP.
9. A public hearing was held on 8th September 2016 at the Kingswood Village Hall. The examination concludes once the Examiner's Report is received by the Council. The Examiner's Report contains a recommendation of whether the KNDP, with or without modifications, should proceed to a referendum.
10. The examiner's findings, including recommendations and the reasons for them, are set out in the Examiner's Report (Appendix A). The examiner only makes recommendations necessary to make the Plan meet the basic conditions and other legal requirements.
11. A summary of the recommended modifications is set out below:

Policy/Section	Summary of recommendation and reasons
Various sections	Modify spelling and grammar and update text for clarity and to correct errors.
Sections 1-3	Deletions to correct and update text.
Section 4: SL1, Map 2, SL2 and supporting paragraphs	Modify policy wording to refer to Map 2 for clarity and to Local Plan for consistency. Deletion and correction of errors.
Sections 5 and 6: BE1	Modify policy to be in accordance with the presumption in favour of sustainable development.
Section 7: Supporting paragraphs	Deletion of text for clarity. Changes to reflect the correct legal position.
Section 8: E4, Map 5	Modify policy wording to refer to new Map 5 and to include this for clarity.
Sections 9 and 10: Supporting paragraph	Modify paragraph for clarity.
Section 11: T1A, T3B, T6A	Remove justifications from policy and add amended text to supporting text, for clarity. Modify policy wording to reflect correct legal position. Deletion of policy wording departing from local highway authority's parking standards as not justified and contrary to achieving sustainable development.

CONSIDERATION

12. Following the completion of the examination, the Council is required to consider each of the examiner's recommendations and the reasons for them and decide what action to take in response to each. Officers have reviewed the Examiner's Report and agree with all the recommendations and the reasons for them.

13. The Council is required to consider whether the draft KNDP meets the basic conditions, is compatible with the Convention rights and complies with the definition of an NDP and the provisions that can be made by a NDP or can do so as modified.
14. Officer's have carefully considered the KNDP and the Examiner's report and consider that:
 - 1- The KNDP, as modified by the Examiner's recommendations, has had regard to national policies and advice contained in guidance issued by the Secretary of State. The KNDP has been assessed against the National Planning Policy Framework and national Planning Practice Guidance and modifications proposed to comply with national policy.
 - 2- The KNDP, as modified by the Examiner's recommendations, contributes to the achievement of sustainable development. The KNDP has been subject to sustainability assessment that identifies the plan will have an overall positive effect.
 - 3- The KNDP, as modified by the Examiner's recommendations, is in general conformity with the strategic policies contained in the development plan as a whole for the area. The KNDP has been assessed against the adopted Stroud District Local Plan and modifications proposed to ensure the KNDP does not become out-of-date in the context of a review of strategic policies in the Local Plan.
 - 4- The KNDP, as modified by the Examiner's recommendations, would not breach, and be otherwise incompatible with EU obligations. The Examiner's assessment has involved considering the following Directives: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); and the Water Framework Directive (2000/60/EC). In addition, no issue arises in respect of equality under general principles of EU law or any EU equality directive. The Council issued a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Determination in January 2016, which confirmed to Kingswood Parish Council that a SEA and a full HRA were not required on the KNDP.
 - 5- The KNDP, as modified by the Examiner's recommendations, would not give rise to significant environmental effects on European sites and European offshore marine sites. The Council issued a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Determination in January 2016, which confirmed to Kingswood Parish Council that a SEA and a full HRA were not required on the KNDP.
 - 6- The KNDP, as modified by the Examiner's recommendations, is in all respects fully compatible with Convention rights contained in the Human Rights Act 1988. Section 5 of the Basic Conditions Statement submitted in support of the KNDP outlined the Qualifying Body's considerations as regards to the European Convention on Human Rights (ECHR), including the extensive consultation set out in the Consultation Statement to ensure representations from all groups. The Examiner considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. Nothing in his examination of the Draft NDP indicated any breach of a Convention right.

There has been full and adequate opportunity for all interested parties to take part in the preparation of the Plan and to make their comments known.

- 7- The KNDP, as modified by the Examiner's recommendations, complies with the definition of an NDP and the provisions that can be made by a NDP. The KNDP sets out policies in relation to the development and use of land in the whole of the neighbourhood area; it specifies the period for which it is to have effect; it does not include provision about development that is 'excluded development' and does not relate to more than one neighbourhood area.
15. Subject to consideration at the meeting, members are asked to authorise officers to make the modifications specified in the Examiner's Report and progress the modified version of the plan to a referendum.
16. The neighbourhood area matches the civic boundary of Kingswood Parish; officers recommend that the referendum area should remain that of the Kingswood Neighbourhood Area, as designated by the Council on 19th June 2014. However, the Council cannot make a decision that differs from the examiners' recommendations about the referendum area.

NEXT STEPS

17. The Council must publish a statement setting out its decision and the reason for making it. Officers will need to modify the plan and produce a final version for the referendum.
18. The Council must hold a referendum within 56 working days from the date that the decision to take the plan forward to a referendum is published. In consultation with the Council's returning officer and elections department, 4th May 2017 has been identified as the suitable date for holding a referendum.
19. If the plan passes referendum, the Council is required to make (adopt) it unless it breaches EU or Human Rights legislation. The Council's scheme of delegation does not delegate this decision to officers or the Environment Committee, so the decision to make the plan will be made by full Council. This decision is expected to take place in May 2017. The plan cannot be modified at that stage.