

Cornwall Council

Report to: **Cabinet Member for Planning**
Date: **27th September 2016**
Title: **Gwinear-Gwithian Parish Neighbourhood Development Plan Legal Compliance Report**
Portfolio Area: **Planning**
Divisions Affected: **Gwinear-Gwithian and St. Erth**
Relevant Scrutiny Committee: **Scrutiny Management Committee**

Key Decision: **N** Approval and clearance obtained: **Y**

Urgent Decision: **N** Date next steps can be taken:

Appropriate pre-decision notification given where an executive Decision? **Y**

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Recommendations to Portfolio Holder:

1. The Gwinear-Gwithian Neighbourhood Development Plan is agreed to be Legally Compliant and should be publicised for consultation prior to being taken forward to examination.

1. Executive summary

Under the Town and Country Planning Act 1990 (as amended), the Council has a statutory duty to assist communities in the preparation of neighbourhood development plans and orders and to take plans through a process of examination and referendum.

The Localism Act 2011 (Part 6 chapter 3) sets out the Local Planning Authority (LPA) responsibilities as:

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1. Designating the area of the NDP
2. Advising or assisting communities in the preparation of a neighbourhood plan
3. Checking a submitted plan meets the legal requirements
4. Arranging for the independent examination of the plan
5. Determining whether the neighbourhood plan meets the basic conditions and other legal requirements
6. Subject to the results of the referendum/s bringing the plan into force

This report deals with stage 3 of the process – checking that a submitted plan meets the legal requirements.

Gwinear-Gwithian Neighbourhood Development Plan (NDP) will be the tenth draft neighbourhood plan to be published in Cornwall and was submitted to Cornwall Council, with the endorsement of Gwinear-Gwithian Parish Council, on 26th September 2016. The plan is accompanied by a Basic Conditions Statement and a Consultation Statement and evidence of compliance with European Environmental legislation, as required by the Neighbourhood Planning (General) Regulations 2012. A supplementary evidence base document and additional maps document were also submitted.

The Plan has been checked against the Neighbourhood Planning (General) Regulations 2012 (hereafter referred to as 'the Regulations') and found to be legally compliant. Appendix 1 is a table which details each stage of plan preparation, the relevant regulations and legislation at each stage, how the plan has met the Regulations and whether or not it is compliant. Having carried out the checks, officer opinion is that the Gwinear - Gwithian Parish NDP is legally compliant.

2. Background

The Council has a statutory duty to assist communities in the preparation of neighbourhood development plans and orders and to take plans through a process of examination and referendum.

The Plan has been through the statutory stages of area designation and pre-submission draft consultation. The area designation application was correctly made by the Parish Council, publicised by Cornwall Council and designated by portfolio holder decision on 2nd July 2013.

Several stages of consultation and public engagement have been carried out during plan preparation (as detailed in the Consultation Statement) and the statutory pre-submission consultation was carried out from 18th December 2015 until 1st February 2016, with an extension to 22nd February for some consultees. It was publicised and the relevant

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consultation bodies were contacted in accordance with Regulation 14 of the 2012 regulations. The Gwinear-Gwithian NDP steering group have detailed the comments received and their responses in the Consultation Statement submitted with the Plan.

The current required stage is for the Local Planning Authority (LPA) to consider the Plan, determine whether it is legally compliant and, if so, notify the Parish Council of its decision and progress the Plan by starting the 6 week consultation period and starting to make arrangements for the examination

The LPA must consider:

1. whether the Parish Council is authorised to act
2. whether the proposal and accompanying documents
 - a. comply with the rules for submission to the LPA
 - b. meet the 'definition of an NDP' and
 - c. meet the 'scope of NDP provisions', and
3. whether the Parish Council has undertaken the correct procedures in relation to consultation and publicity

1. The Parish Council is the qualifying body authorised to progress a neighbourhood plan. They have made the correct application for the designation of their neighbourhood area and are authorised to act.

2a. The plan proposal and accompanying documents comply with the rules for submission, in that they include a map identifying the area, a consultation statement, a basic conditions statement and information to enable appropriate environmental assessments. In this regard a screening opinion was sought from Cornwall Council at an early stage of plan drafting. Cornwall Council consulted the statutory bodies, English Heritage, Natural England and the Environment Agency. The consultation bodies concluded that Strategic Environmental Assessment (SEA) and Habitats Regulation Assessment (HRA) would not be required and Cornwall Council issued a screening opinion to that effect, which is included as Appendix 3 of the Basic Conditions Statement.

2b. The 'definition of an NDP' is: "A plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan" The Gwinear-Gwithian Neighbourhood Development Plan contains policies which relate to the development and use of land within Gwinear-Gwithian Parish and therefore meets the definition.

2c. The 'Scope of NDP provisions' are:

- The NDP must specify the period for which it is to have effect

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- It cannot include provision about development that is 'excluded development'
- It cannot relate to more than one neighbourhood area or repeat an existing planning permission

The Gwinear-Gwithian NDP specifies the plan period on the front cover of NDP as 2016 – 2030.

It does not provide for any 'Excluded development' which is defined as

a) A 'county matter' (schedule 1 of 1990 ACT) i.e. relating to minerals.

b) Any operation or class of operation relating to waste development Development that falls within Annex 1 to Council Directive 85/337/EEC i.e. Oil refineries, power stations, radioactive waste disposal, iron and steel smelting, asbestos operations, chemical installations, motorways, airports, ports and toxic and dangerous waste disposal.

c) Development consisting wholly or partly of a national infrastructure project.

It relates only to one neighbourhood area and does not repeat an existing planning permission.

3. The Parish Council has undertaken the correct procedure for pre-submission statutory consultation and has also undertaken community consultation throughout the process, as detailed in the Consultation Statement.

The Gwinear-Gwithian Parish NDP is therefore considered to comply with the criteria and legislation for a neighbourhood plan and should be taken forward.

3. Outcomes/outputs

If the Gwinear-Gwithian Parish NDP is endorsed as compliant, Cornwall Council can commence the regulatory stages required to progress the plan through examination and referendum and 'make' the plan so that it forms part of the adopted policy framework for planning decision making in Cornwall.

This will further our objective to support Localism for our communities. The Gwinear-Gwithian Parish NDP and its process may also be used as a template which can help other communities in their plan preparation.

Production of neighbourhood plans is a stated objective in the Policy and Delivery Team Plan. It supports the objectives of the Cornwall Local Plan, which relies on neighbourhood plans to provide the policy framework for delivery of development, particularly in rural areas.

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4. Options available and consideration of risk

The Gwinear-Gwithian Parish NDP has been assessed against 'the Regulations' and is found to be legally compliant; the Council, therefore has a duty to support and progress the Plan.

In accordance with regulation 15 a further 6 week 'publication' period for consultation on the Gwinear-Gwithian Parish NDP will be carried out by the LPA, to add to the previous community and stakeholder consultation carried out by the NDP steering group, so the Plan will be well publicised.

Previous consultation showed support from the community for the themes and policies in the Plan and the Plan was developed from these community views. Statutory consultees were generally supportive of the Plan and where they have made suggestions for amendments to strengthen the Plan these have been made where possible. Officers of Cornwall Council have made comments at pre-submission stage and these are reported in the Consultation Statement. The consultation process has followed the Regulations and there will be opportunity for further comments to be made during the publication period: any further comments will be forwarded directly to the examiner.

Cornwall Council will also have an opportunity to make comments on the Plan. If any comments are to be made, these will be brought to Planning PAC for ratification.

5. Proposed Way Forward

If the Gwinear-Gwithian Parish NDP proposal is found to be legally compliant, the next steps in the process of 'making' the Gwinear-Gwithian Neighbourhood Development Plan are:

- LPA notify the Parish Council of their decision on the Plan's legal compliance.
- The LPA publicise the NDP proposal
- The LPA appoint an examiner, with the consent of the Parish Council
- Following successful examination the Local Authority hold a referendum
- Following successful referendum (simple majority) the Plan is 'made' -i.e. adopted by Cornwall Council as part of the Planning Policy Framework and becomes part of the statutory development plan.

6. Implications

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Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>See main body of report which sets out the relevant legislation, i.e. Town and Country Planning Act 1990 (as amended) Planning and Compulsory Purchase Act 2004 Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012.</p> <p>At this stage the Council considers whether or the draft Plan meets the statutory requirements and that a basic condition statement has been submitted but it is not required to consider whether the draft Plan meets the basic conditions. It is only after independent examination and receipt of the examiner's report that the Council comes to its formal view as to whether the draft Plan meets the basic conditions.</p>
Financial	Y	<p>There are costs associated with the examination and referendum. The estimated costs for the Gwinear-Gwithian examination are £4,000 and circa £5,377 for the referendum.</p> <p>Financial support from Central Government has been reviewed and updated for the financial year 2016/17. LPA's are able to claim, from Central Government, a grant of £20,000 once a date is set for a referendum following a successful examination. These grants are currently provided until 31 March 2017 and will be used to fund the associated costs.</p> <p>The value of the grant is fixed, irrelevant of the actual examination and referendum costs, so for smaller neighbourhood plans the grant is usually in excess of the costs incurred. This is retained by the Service to cover the cost of the larger towns, where the costs are higher. The current budget is sufficient to accommodate the Gwinear-Gwithian costs.</p> <p>During the financial year, if the accumulated costs for the neighbourhood plans exceed the grants received, then the Planning Service will have to</p>

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		identify funding from elsewhere within their approved budget to fund any deficit.
Risk	Y	Failure to progress the plan proposal would risk customer dissatisfaction, given our commitment to support communities in the production of neighbourhood plans.
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	The plan aims to deliver sustainable development and to provide for the needs of the local community as a whole.
Safeguarding	N	None
Information Management	N	None
Community Safety, Crime and Disorder	Y	Policies require proposals to consider the need to design out crime, disorder and anti-social behaviour to ensure ongoing community safety and cohesion
Health, Safety and Wellbeing	Y	Positive impact through the provision of housing, employment opportunities and infrastructure to meet local needs.
Other implications		None

Supporting Information

Appendices:

Appendix 1 Gwinear–Gwithian Parish Neighbourhood Development Plan

Legal Compliance Checklist

Appendix 2 - Gwinear–Gwithian Parish Neighbourhood Development Plan

Appendix 3 - Gwinear–Gwithian Parish Neighbourhood Development Plan
Basic Conditions Statement and Consultation Statement

Background Papers:

None

All reports:

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Final report sign offs	This report has been cleared by OR not significant/not required	Date
Legal (if significant/required)	Jane Astbury	17.10.16
Finance Required for all reports	Leah Thomas	10.10.2016
Equality and Diversity		

Cabinet/individual decision reports:

Final report sign offs	This report has been cleared by	Date
Head of Service	Phil Mason	24.10.16
Corporate Director	Paul Masters	26.10.16