

Report to:	Service Director – Planning and Sustainable Development	
Date:	1st December 2018	
Title:	Luxulyan Neighbourhood Development Plan – Legal Compliance and Examination Stage	
Portfolio Area:	Planning and Economy	
Divisions Affected:	Bugle	
Local Member(s) briefed:	Y	
Relevant Scrutiny Committee: Economic Growth and Development Overview and Scrutiny Committee		
Authors, Roles and Contact Details:	Hayley Jewels, Acting Head of Planning Policy E-mail Hayley.Jewels@cornwall.gov.uk Tel 01872 224725 Emma Ball, Neighbourhood Planning Officer E-mail emma.ball@cornwall.gov.uk Tel:01872 324807	
Approval and clearance obtained:	Y	
For Cabinet and delegated executive decisions only		
Key decision? (≥£500k in value or significant effect on communities in two or more electoral divisions)	N	
Published in advance on Cabinet Work Programme?	Y	
Urgency Procedure(s) used if 'N' to Work Programme?	N	
Date next steps can be taken	5 clear working days after decision	

Recommendations:

The Luxulyan Neighbourhood Development Plan is agreed to be Legally Compliant and should be publicised under Regulation 16 of the Town and Country Planning (General) Regulations 2012 and taken forward to Examination.

1 Executive Summary

- 1.1 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.
- 1.2 The Luxulyan Neighbourhood Development Plan (Luxulyan NDP) was submitted to Cornwall Council, with the endorsement of Luxulyan Parish Council, on 23rd November 2018. The Plan was accompanied by a Basic Conditions Statement, a Consultation Statement, an Equality Impact Assessment, a copy of Cornwall Council's comments on the draft neighbourhood plan and evidence of compliance with European Environmental legislation, as required by the Neighbourhood Planning (General) Regulations 2012.
- 1.3 Under The Localism Act (2011), the Council is required upon, submission of a Neighbourhood Plan, to check that it meets the legal requirements for those plans before it can progress to formal consultation, examination and referendum.
- 1.4 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 to this report 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 Luxulyan NDP is legally compliant.

2 Purpose of Report and key information

- 2.1 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.
- 2.2 The Localism Act 2011 (Part 6 chapter 3) sets out the Local Planning Authority (LPA) responsibilities as:
 1. Designating the area of the Neighbourhood Development Plan (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 bringing the plan into force.
- 2.3 This report deals with stage 3 of the process – checking that a submitted plan meets the legal requirements.
- 2.4 The Plan has been through the statutory stages of area designation and pre-submission draft consultation. The area designation application was

correctly made by Luxulyan Parish Council, and designated as a delegated officer decision on 4 August 2016.

2.5 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 19 February and 10 May 2018. It was publicised and the relevant consultation bodies were contacted, in accordance with Regulation 14 of the Regulations. The Luxulyan NDP Steering Group have summarised the comments received and their responses in the Consultation Statement submitted with the Plan.

2.6 The current required stage is for the LPA to consider the Plan, determine whether it is legally compliant and, if so, notify the Luxulyan Parish Council of its decision and progress the Plan by starting the 6 week consultation period and making 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.

2.7 In respect of these questions:

1. The Luxulyan 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, based on the Steering Group submitting a draft emerging policies statement. Cornwall Council consulted the statutory bodies, Historic England, Natural England and the Environment Agency. The consultation bodies concluded that a Strategic Environment Assessment (SEA) and Habitat Regulations Assessment (HRA) are not required. Cornwall Council issued a screening opinion to that effect on 20th September 2018.

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

2c. The 'Scope of NDP provisions' are that:
The NDP must specify the period for what it is to have effect;

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

The Luxulyan NDP specifies the plan period as 2018 – 2030.

- 2.8 It does not provide for any 'Excluded development' which is defined as:
- a) A 'county matter' (Scheduled 1 of TCPA 1990) i.e. relating to Minerals;
 - b) Any operation or class of operation relating to waste 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; and
 - 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.

- 2.9 The Parish Council has undertaken the correct procedure for pre-submission statutory consultation, and relevant statutory consultees were contacted as part of the pre-submission consultation. Luxulyan Parish Council has also undertaken community consultation throughout the process, as detailed in the Consultation Statement.

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

If the Luxulyan 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.

3. Benefits for Customers/Residents

- 3.1 Neighbourhood Planning was put into place by the Localism Act 2011 to enable communities to have a direct say in how their area is planned by creating a formal planning document that will, on making (adoption), form part of the statutory development plan for the area covered.
- 3.2 The confirmation of Legal Compliance, formal consultation and Examination of the Plan will further our objective to support Localism for our communities. The Luxulyan NDP and its process may also be used as a template which can help other communities in their plan preparation.
- 3.3 Production of neighbourhood plans is a stated objective in the Planning Policy and Partnerships 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.

- 3.4 The Equality Act 2010 places a duty on all public authorities to have regard to the need to eliminate discrimination, to advance equality of opportunity, and to foster good relations between persons who have a “protected characteristic” and those who do not. The protected characteristics are Age, Disability, Gender Re-assignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex, Sexual Orientation and in Cornwall an additional characteristic, Cornish status.
- 3.5 The Cornwall Local Plan has been subject to Comprehensive Impact Assessment (CIA). This concludes that the current and future businesses and residents of, and visitors to, Cornwall will be affected by the land use policies in terms of provision of jobs, homes, infrastructure, access to services and the protection of the environment. The Policies’ objectives are to plan for the needs of the whole community now and in the future, the Plan period is to 2030. In addition, where evidence demonstrates a need, a number of protected characteristic groups are positively planned for with specific provision made for older people and the disabled.
- 3.6 The housing and affordable housing targets aim to ensure appropriate housing is available to meet local needs over the Plan period. Failing to provide sufficient housing will impact most on disadvantaged groups.
- 3.7 A CIA of the Luxulyan NDP was carried out as part of the Legal Compliance Check. An equality impact assessment was carried out and submitted with the Luxulyan NDP as set out in appendix 5. The CIA concluded that the Luxulyan NDP provides a strategy for the development of the Neighbourhood Area, and a range of policies, which will result in positive benefits for the local community. The key positive impacts are promoting sustainable development, protecting the natural environment, providing housing to meet local need and to support rural businesses on farms, and promoting community engagement and involvement in planning.

4. Relevant Previous Decisions

- 4.1 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, designated as a delegated officer decision on 4 August 2016.
- 4.2 This is the second stage of which the Council must make a decision whether the Plan should proceed in accordance with The Neighbourhood Planning (General) Regulations 2012.

5. Consultation and Engagement

- 5.1 The Plan has been through the statutory stages of area designation and pre-submission draft consultation as referenced above.

- 5.2 The NDP Regulations require that the Parish Council carries out a formal consultation process for a period of six weeks prior to the submission of the Neighbourhood Plan to the Council.
- 5.3 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 ran from, 19th February to 10 May 2018. It was publicised and the relevant consultation bodies were contacted in accordance with Regulation 14. The Luxulyan NDP Steering Group have summarised the comments received and their responses in the Consultation Statement submitted with the Plan.
- 5.4 The confirmation of Legal Compliance of the Plan will lead to a further formal stage of consultation, over six weeks, with the community and statutory consultation bodies.

6. Financial Implications of the proposed course of action/decision

- 6.1 There are costs associated with the examination and referendum. The estimated costs for the Luxulyan NDP are £4,000 for examination and £4,150 for the referendum.
- 6.2 Central Government provides a grant to the LPA of £5,000 at submission (limited to first five neighbourhood areas designated in total) and £20,000 once a date is set for a referendum following a successful examination. These grants are currently provided until 31 March 2022 and will be used to fund the associated costs.
- 6.3 During the financial year, if the accumulated costs for the neighbourhood plans exceed the grants received, then the Service will have to identify funding from elsewhere, within their approved budget, to fund any deficit.

7. Legal/Governance Implications of the proposed course of action/decision

- 7.1 The Council has certain steps that it has to take when seeking to progress a neighbourhood development plan. These are detailed in both the report and Legal Compliance Checklist. The relevant legislation comprises:
- Town and Country Planning Act 1990 (as amended);
 - Planning and Compulsory Purchase Act 2004;
 - Localism Act 2011;
 - Neighbourhood Planning (General) Regulations 2012;
 - The Neighbourhood Planning Act 2017.
- 7.2 Legal Compliance allows the Plan to progress to the next stage of consultation, but does not necessarily mean that the Plan will be adopted in the form currently submitted, as this may change in accordance with the recommendations of the appointed examiner. The exact content of the Plan may be subject to potential alteration after the authorisation of the

plan proposals stage and the Council may make representations on its content prior to examination.

8. Risk Implications of the proposed course of action/decision

- 8.1 Failure to progress the Plan proposal would risk customer dissatisfaction, given our commitment to support communities in the production of neighbourhood plans.

9. Comprehensive Impact Assessment Implication

- 9.1 The Plan has to contribute to sustainable development and be compliant with any European obligations and the European Convention on Human Rights as enacted in the Human Rights Act 1998.
- 9.2 A CIA of the Luxulyan NDP was carried out as part of the Legal Compliance Check. An equality impact assessment was carried out and submitted with the Luxulyan NDP. The CIA concluded that the Luxulyan NDP provides a strategy for the development of the Neighbourhood Area, and a range of policies, which will result in positive benefits for the local community. The key positive impacts are promoting sustainable development, protecting the natural environment, providing housing to meet local need and to support rural businesses on farms, and promoting community engagement and involvement in planning.

10. Options available

- 10.1 The Luxulyan 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.
- 10.2 In accordance with regulation 15, a further 6 week 'publication' consultation on the Luxulyan NDP will be carried out by the Council as LPA, to add to the previous community and stakeholder consultation carried out by the NDP Steering Group, so the Plan will be well publicised.
- 10.3 The community has had an opportunity to comment on the Plan and influence its development. Statutory consultees were supportive of the Plan and where they have made suggestions for amendments to strengthen the Plan these have been made where possible. The consultation process has followed the Regulations and there will be opportunity for further comments to be made during the publication: any further comments will be forwarded directly to the Examiner,
- 10.4 If the Luxulyan Parish NDP proposal is found to be legally compliant, the next steps in the process of 'making' the Luxulyan Neighbourhood Development Plan are:

- LPA notify Luxulyan 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 Luxulyan Parish Council;
- Following successful examination, the Local Authority hold a referendum;
- Following successful referendum (simple majority), the Plan is 'made' – i.e. formally adopted by Cornwall Council and will become part of the statutory development plan, as defined by Section 38(3) of the Planning and Compulsory Purchase Act 2004.

11. Supporting Information (Appendices)

APP1. Luxulyan Neighbourhood Development Plan Legal Compliance Checklist

APP2. Luxulyan Neighbourhood Development Plan Submission Draft

APP3. Luxulyan NDP Consultation Statement

APP4. Luxulyan NDP Basic Conditions Statement

APP5. Luxulyan NDP Equality Impact Assessment

APP6. Luxulyan NDP Cornwall Council comments

12. Background Papers

None

13. Approval and clearance

All reports:

Final report sign offs	This report has been cleared by (or mark not required if appropriate)	Date
Governance/Legal (Required for all reports)	Loretta Commons	10.12.18
Finance (Required for all reports)	Geraldine Baker	12.12.18
Equality and Diversity (If required)		
Service Director (Required for all reports)	Hayley Jewels – Acting Head of Planning Policy	12 December 2018
Strategic Director (If required)		