

Report to:	<b>Service Director – Planning and Sustainable Development</b>	
Date:	<b>6<sup>th</sup> February 2018</b>	
Title:	<b>Fowey Parish Neighbourhood Development Plan – Legal Compliance and Examination Stage</b>	
Portfolio Area:	<b>Planning and Economy</b>	
Divisions Affected:	<b>Fowey and Tywardreath</b>	
Local Member(s) briefed:	<b>Y</b>	
Relevant Scrutiny Committee: <b>Economic Growth and Development Overview and Scrutiny Committee</b>		
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Approval and clearance obtained:	<b>Y</b>	
<b>For Cabinet and delegated executive decisions only</b>		
Key decision? ( $\geq$ £500k in value or significant effect on communities in two or more electoral divisions)	<b>N</b>	
Published in advance on Cabinet Work Programme?	<b>Y</b>	
Urgency Procedure(s) used if 'N' to Work Programme?	<b>N</b>	
Date next steps can be taken	<b>5 clear working days after decision</b>	

## 1 Recommendations

- 1.1 That the Fowey Parish Neighbourhood Development Plan is agreed to be legally compliant and should be publicised for consultation prior to being taken forward to Examination.

## **2 Executive Summary**

- 2.1 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.
- 2.2 The Fowey Parish Neighbourhood Development Plan (Fowey Parish NDP) was submitted to Cornwall Council, with the endorsement of Fowey Town Council, on 23rd January 2019. The Plan was accompanied by a Basic Conditions Statement, a Consultation Statement, and a number of appendices and evidence of compliance with European Environmental legislation, as required by the Neighbourhood Planning (General) Regulations 2012.
- 2.3 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.
- 2.3 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 Fowey Parish NDP is legally compliant.

## **3 Purpose of Report and key information**

- 3.1 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.
- 3.2 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/s bringing the plan into force.

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

The Plan has been through the statutory stages of area designation and pre-submission draft consultation. The area designation application was

correctly made by Fowey Town Council, and designated as a delegated officer decision on 24<sup>th</sup> February 2015.

3.3 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 was carried out from 1<sup>st</sup> November to 15<sup>th</sup> December 2018. It was publicised and the relevant consultation bodies were contacted, in accordance with Regulation 14 of the Regulations. The Fowey Parish NDP Steering Group have summarised the comments received and their responses in appendix V of the Consultation Statement submitted with the Plan.

3.4 The current required stage is for the LPA to consider the Plan, determine whether it is legally compliant and, if so, notify the Fowey Town 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 Town 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 Town Council has undertaken the correct procedures in relation to consultation and publicity.

3.5 In respect of these questions:

1. The Fowey Town 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 3<sup>rd</sup> 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 Fowey Parish NDP contains policies which relate to the development and use of land within Fowey 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 Fowey Parish NDP specifies the plan period as 2019 – 2030.

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.

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

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

If the Fowey 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.

#### **4 Benefits for Customers/Residents**

- 4.1 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.
- 4.2 The confirmation of Legal Compliance, formal consultation and Examination of the Plan will further our objective to support Localism for our communities. The Fowey Parish NDP and its process may also be used as a template which can help other communities in their plan preparation.
- 4.3 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.

- 4.4 The key positive impacts are promoting sustainable development by supporting proposals to enhance the existing infrastructure including; cycle and footpath network. The natural and historic environment is safeguarded and enhanced, with specific reference to open spaces, the area of outstanding natural beauty and the special character and landscape. The plan supports development proposals to meet local need in the Parish through affordable housing and sets out a principal residence condition on new builds. There were no identified groups that would be affected more than others and it was clear that no groups were excluded from the consultations on the draft plan.
- 4.5 The Human Rights Article requires exceptional justification for applying such a principal residence restriction policy. In the Fowey Plan, evidence has not been presented of the harm that excessive levels of second homes has on the social fabric of the community. The Council feels that a policy for the restriction of new dwellings to occupation as 'principal residence' may be justified if there is a stronger case of the harm caused by second homes, provided that there is an express recognition in the text to demonstrate sensitivity to the human rights issues that could arise when enforcing the restriction.

## **5 Relevant Previous Decisions**

- 5.1 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 24<sup>th</sup> February 2015.
- 5.2 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.

## **6 Consultation and Engagement**

- 6.1 The Plan has been through the statutory stages of area designation and pre-submission draft consultation as referenced above.
- 6.2 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.
- 6.3 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, 1<sup>st</sup> November to 15<sup>th</sup> December 2018. It was publicised and the relevant consultation bodies were contacted in accordance with Regulation 14. The Fowey Parish NDP Steering Group have summarised the comments received and their responses in the Consultation Statement submitted with the Plan.

- 6.4 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.

## **7 Financial Implications of the proposed course of action/decision**

- 7.1 There are costs associated with the examination and referendum. The estimated costs for the Fowey NDP are £5,000 for examination and £4,300 for the referendum.
- 7.2 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 provided until March 2022 and will be used to fund the associated costs. There are sufficient funds within the current budget to cover the cost of the examination and referendum of the neighbourhood plan.
- 7.3 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.

## **8 Legal/Governance Implications of the proposed course of action/decision**

- 8.1 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.
- 8.2 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.

## **9 Risk Implications of the proposed course of action/decision**

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

## 10 **Comprehensive Impact Assessment Implication**

- 10.1 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.
- 10.2 The key positive impacts are promoting sustainable development by supporting proposals to enhance the existing infrastructure including the cycle and footpath network. The natural and historic environment is safeguarded and enhanced, with specific reference to open spaces, the area of outstanding natural beauty and the special character and landscape. The plan supports development proposals to meet local need in the Parish through affordable housing and sets out a principal residence condition on new builds. There were no identified groups that would be affected more than others and it was clear that no groups were excluded from the consultations on the draft plan.
- 10.3 However, the Human Rights Article requires exceptional justification for applying such a principal residence restriction policy. In the Fowey Plan, evidence has not been presented of the harm that excessive levels of second homes has on the social fabric of the community. The Council feels that a policy for the restriction of new dwellings to occupation as 'principal residence' may be justified if there is a stronger case of the harm caused by second homes, provided that there is an express recognition in the text to demonstrate sensitivity to the human rights issues that could arise when enforcing the restriction.
- 10.4 This will be considered when the plan is examined by an independent examiner once the six week statutory six week consultation stage has been completed.

## 11 **Options available**

- 11.1 The Fowey 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.
- 11.2 In accordance with regulation 15, a further 6 week 'publication' consultation on the Fowey Parish 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.
- 11.3 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,

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

- LPA notify Fowey Town 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 Fowey Town 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.

## 12 Supporting Information (Appendices)

APP1. Fowey Parish Neighbourhood Development Plan Legal Compliance Checklist

APP2. Fowey Parish Neighbourhood Development Plan Submission Draft

APP3. Fowey Parish NDP Basic Conditions Statement

APP4. Fowey Parish NDP Consultation Statement

APP5. Fowey Parish NDP Consultation Statement Appendices A – K

APP6. Fowey Parish NDP Consultation Statement Appendices L - V

## 13 Background Papers

None

## 14 Approval and clearance

### All reports:

<b>Final report sign offs</b>	<b>This report has been cleared by (or mark not required if appropriate)</b>	<b>Date</b>
Governance/Legal (Required for <b>all</b> reports)	Loretta Commons	13/02/19
Finance (Required for <b>all</b> reports)	Geraldine Baker	12/02/19
Equality and Diversity (If required)		
Service Director (Required for <b>all</b> reports)	Hayley Jewels – Acting Head of Planning Policy	14/2/19
Strategic Director (If required)		