

Report to:	Service Director – Planning and Sustainable Development	
Date:	18th June 2019	
Title:	Chacewater Neighbourhood Development Plan: Plan Proposal Decision – Post Examination Report and Alternative Modifications and Referendum	
Portfolio Area:	Planning and Economy	
Divisions Affected:	Chacewater, Kenwyn and Baldhu	
Local Member(s) briefed:	Y	
Relevant Scrutiny Committee: Economic Growth and Development		
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Approval and clearance obtained:	Y	
For Cabinet and delegated executive decisions only		
Key decision?	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	Upon Publication	

Recommendation:

That the Chacewater Neighbourhood Development Plan is modified, in part according to the Examiner's recommendations, but also with additional modifications recommended by the Council and is published, subject to a six week consultation period in line with Regulation 17A of the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulation 2016 and no substantive objections having been lodged to the modifications proposed, prior to the Plan progressing to Referendum.

1. Executive Summary

The Chacewater Neighbourhood Development Plan (the NDP) has been successful at Examination, with the Examiner recommending that the Plan should proceed to referendum, subject to a number of recommended modifications.

The NDP has been modified, in part with the Examiner's recommendations but also with alternative modifications recommended by the Council. If it is published, subject to a six week consultation period in line with Regulation 17A of the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulation 2016 and no substantive objections having been lodged to the modifications proposed, it can then proceed to referendum.

2. Purpose of Report and key information

The Council as Local Planning Authority (LPA) is responsible for deciding what action to take in response to the Examiner's recommendation. This report details the recommendations and the modifications made to the NDP, which have been made with the involvement of the NDP Steering Group (the Group).

The alternative modification of a plan, contrary to recommendations of the Examiner is rare and is not a decision to be taken lightly. However, it is considered that the modifications proposed by the Examiner in relation to the Policies RE1: Community Led Renewable Energy, which would involve deleting a bullet point setting our Policy RE2: Wind Turbine Development would directly contradict the intention of the Plan when it was consulted upon after submission to Cornwall Council. The consequences on the modifications would be to change the Plan radically, against the wishes of the Steering Group and the Community.

The Examiner's recommendation is to delete policy RE2: Wind Turbine Development as proposals for wind turbines can only be considered where specific sites have been identified in a Neighbourhood Plan. An alternative modification has been recommended to identify areas suitable for wind energy development and address impacts of the scheme, in accordance with guidance in the Cornwall Renewable Energy SPD, as set out in the modified policy.

The second bullet point under policy RE1: Community Led Renewable Energy was deleted as it relates to the ownership. An alternative modification will be recommended, so development proposals will be supported where they are fully or partly owned through an appropriate community energy enterprise who can deliver the project on behalf of residents, businesses and or community associations.

It was recommended by the Examiner that under Objective 2: Historic Environment (Heritage) policies should be combined, as they overlapped. As the retention of Historic Buildings is important to the parish, an alternative modification has been agreed, to add a sentence to the supporting text, as the demolition of historic buildings does not always require planning permission.

Under the revised Neighbourhood Planning Regulations 2016, if the Service Director is minded to recommend to the Portfolio Holder for Planning that these alternative modifications are made to the Plan, it must then be advertised for a period of six weeks prior to the decision being published.

Cornwall Council, with the agreement of Chacewater Parish Council, appointed Mrs Deborah McCann as Examiner. The Examination commenced on 14th February 2019, by means of written representations and by an initial assessment of the Neighbourhood Plan and accompanying documents. A site visit was carried out to the Neighbourhood Plan area.

Mrs McCann supplied the final examination report on 8th May 2019. The report concluded that the NDP could proceed to Referendum, subject to some recommended modifications to make the wording of policies and their application clearer and to ensure that the NDP meets the basic conditions. The main recommendations concern:

- Policy BIO1: Safeguard and Enhance the Natural Environment will be modified as it lacks clarity and would be difficult to apply in the determination of a planning application.
- Policy BIO2: Effective Management and Protection of Trees will be modified to provide clarity and to ensure the policy relates to protected trees.
- Policy BIO3: Wildlife Areas, Green Spaces and Public Rights of Way (PRoW) will be modified would be difficult to apply in the determination of a planning application.
- Policy BIO6: Encourage better Environmental practices will be deleted as the run off of contaminated water is controlled by the Environment Agency.
- Under Historic Environment, policies HE1, HE2, HE3, HE4, HE5, HE6 and HE7 will be combined and modified as there is an overlap between them.
- Policy LGOS1: Protecting and Enhancing the Landscape will be modified as the policy is overly restrictive.
- Policy LGOS2: Managing and Protecting Existing Green and Open Spaces will be modified as planning policy cannot include requirements for the ongoing management of land.
- Policy LGOS3: Development Assessments will be modified as information on site assessment should normally be included in a Design and Access Statement
- Policy LGOS4: Protect and /or Develop our Public Realm will be modified as the policy is overly restrictive and lacks clarity
- Policy QD1: Design Considerations should be modified and combined with QD3: Build Considerations as the policies overlap.
- Policy QD2: Design and Access Statement should be deleted as the type of development which requires Design and Access Standards is set out in Planning Guidance and is not a land use policy
- Policy QD6: Crime Prevention will be modified as the policy seeks to include matters which fall outside the remit of planning policy
- Policy QD9: Adverse Effect repeats the intention of policy HE1 and should be deleted

- Policy RE1: Community Led Renewable Energy will be modified and the second bullet point relating to the ownership will be deleted as the policies must relate to land use.
- Policy RE2: Wind Turbine Development should be deleted as development proposals for wind turbines can only be considered where specific sites have been identified in a Neighbourhood Plan.
- Policy RE3: Roof Mounted Solar will be modified as the purpose of permitted development is to remove the need to apply for planning permissions for certain types of development.
- Policy RE4: Ground Mounted Solar Arrays will be modified for clarity purposes
- Policy RE5: Micro Hydro will be modified as Neighbourhood Plans can only include policies which relate to the Neighbourhood Plan Area
- Policy RE6: Low Carbon Heat will be modified as it is overly restrictive and elements of the policy will not be appropriate for all development proposals
- Policy HN1: Settlement Boundaries should be combined with HN2: Land Use and modified as the policies currently worded is not in general conformity with the Policy 3 of the Cornwall Local Plan
- Policy HN3: Size and Scale will be modified as the requirements for any residential housing development to be limited to 10 units is overly restrictive
- Policy HN5: Exception Sites will be modified as the policy exceeds the requirements of Policy 9 of the Cornwall Local Plan and the National Planning Policy Framework
- Policy EJ1 Employment will be modified as it would be difficult to apply in the determination of a planning application as planning policy cannot require that employment is well paid.
- Policy EJ2: Live/Work will be modified as it is currently not a policy
- Policy EJ3: Retail will be modified as in some circumstances the change of use from retail to residential use is permitted development
- Policy GA1: Connectivity with Public Transport will be modified as it may not be possible or appropriate for any development.
- Policy GA2: Pedestrian and Cycle Access will be modified as it may not be possible in all circumstances to link with existing footpath and byway networks.
- Policy GA3: Provision of Adequate Parking will be modified as it lacks clarity
- Policy CHW3: Facilities to meet the needs of all sectors of the Community will be modified for clarity as the policy is a mix of policy and community aspiration
- Policy CHW4: Promoting Safe & Healthy Living Environment will be modified for clarity
- Policy CHW5 Waste Reduction and Waste Management will be modified to ensure new developments provide adequate facility for recycling

The full schedule of recommended modifications and alternative modifications is included in a table in Appendix 2 Schedule of Modification Recommendations.

Based on the draft document, the Examiner's overall recommendation is that the Neighbourhood Plan, as amended following the recommendations, should be

submitted to a referendum and that the referendum area should be the same as, and not extend beyond, the NDP area.

The Neighbourhood Planning (General) Regulations 2012 (as amended) requires in Regulation 18 for the local planning authority to outline what action to take in response to the recommendations of an Examiner made in a report under paragraph 10 of Schedule 4A to the 1990 Act (as applied by Section 38A of the 2004 Act) in relation to the Neighbourhood Plan. The Regulations provide that where the Council disagrees with the Examiner's report it should re-consult and this provision is engaged in this instance

Having considered each of the recommendations made in the Examiner's report and the reasons for them, the Council, with the consent of Chacewater Parish Council, has decided to accept the majority of modifications to the draft Plan. However, there is fundamental disagreement with modifications relating to Policy RE1: Community Led Renewable Energy and Policy RE2: Wind Turbine Development. Cornwall Council have worked with the NDP Steering Group to agree the alternative modifications to the Plan. The identification of sites for wind turbines in Neighbourhood Plans is supported by Cornwall Council and contributes to the Climate Change Action Plan.

For this reason, alternative modifications are proposed with headings in bold print set out in a table in Appendix 2. The table sets out the recommended Examiner modifications and alternative modifications made to the draft Plan, under paragraph 12(6) of Schedule 4B to the 1990 Act (as applied by Section 38A of 2004 Act), in response to each of the Examiner's recommendations and the justification for this. The alternative modifications have been agreed by the Council, with the consent of the Parish Council.

3. Benefits for Customers/Residents

The Neighbourhood Plan is an opportunity for the local community to influence placemaking and planning decisions in their local area. The Cornwall Local Plan supports the production of neighbourhood plans and the spatial strategy requires development proposals to 'assist the creation of resilient and cohesive communities' and as part of this 'Support[ing] the delivery of made Neighbourhood Plans and other community based initiatives that help to make communities more resilient.' (Cornwall Local Plan, Policy 2 – Spatial Strategy.)

Residents of the Neighbourhood Plan Area, Chacewater Parish, have had the opportunity to be involved in the research for and writing of the NDP and through the consultation and engagement associated with the NDP's development have been able to contribute their ideas and views.

For applicants, agents and developers wishing to submit proposals in the area, the NDP adds extra detail to the strategic policies for the area, so that applicants will have information about community expectations when preparing an application and can tailor their proposal accordingly.

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.

A CIA of the Chacewater NDP was carried out as part of the Legal Compliance Check. It concluded that the Chacewater 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 historic and natural environment, promoting community and wind energy, providing employment and housing to meet local need and promoting community engagement and involvement in planning.

4. Relevant Previous Decisions

The preparation and making of a Neighbourhood Development Plan is governed by Schedule 4B to the Town and Country Planning Act 1990 as amended and The Neighbourhood Planning (General) Regulations 2012 as amended (2012 Regulations) as follows

NDP Area Designation – Portfolio Holder Decision 28th March 2017

The first regulatory stage of the NDPs – the Parish Council submit an application and a map to notify of their intention to produce a neighbourhood plan.

Legal Compliance: Portfolio Holder Decision 14th December 2018

After the Parish Council submit their plan, the LPA carries out a legal compliance check and publishes the plan for Regulation 16 'publication' consultation

All previous reports and versions of the Plan are available on the Cornwall Council website on a page dedicated to [Chacewater Parish Neighbourhood Development Plan](#)

5. Consultation and Engagement

The first statutory round of consultation occurs at area designation stage. Chacewater Parish Council submitted an application and map to designate their Neighbourhood Area. Under the amended Neighbourhood Planning Regulations 2016, Neighbourhood Area designations are not required to be consulted on by the Cornwall Council before a decision is made, if the Neighbourhood area covers the whole of the Parish Boundary. Copies of the application letter and statement that explains how the Parish Council and Neighbourhood Area met the conditions of Section 61G(2) of the Town and Country Planning Act 1990 (the 1990 Act), are available to view on the Cornwall Council website. The Cornwall Council then formally designated the Neighbourhood Area.

After this notification that a Parish Council is preparing a NDP and until the point that the NDP is submitted to Cornwall Council the responsibility for consultation and engagement on the NDP falls to the qualifying body, which is Chacewater Parish Council. This process is tested for compliance at the independent

examination and the Qualifying Body is required to submit a Consultation Statement, which evidences that the Regulations have been complied with.

The Consultation Statement contains:

(a) details of the persons and bodies who were consulted about the proposed Neighbourhood Development Plan;

(b) explains how they were consulted, which included the distribution of surveys for each household and a separate survey targeting young people. Open days and exhibition events were held to provide residents with an opportunity to speak to the steering group and statutory organisations were also consulted during the development of the plan.

(c) summarises the main issues and concerns raised by the persons consulted; and

(d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed Neighbourhood Development Plan.

The next statutory consultation stage is the pre-submission consultation on the draft Plan, (which was carried out by the Parish Council, in compliance with Regulation 14 of the 2012 Regulations) the representations on which have to be received not less than 6 weeks from the date on which the plan proposal is first publicised at this stage. The statutory pre-submission consultation was held from 15th September until 27th October 2018, where the 'Consultation Bodies,' as set out in Schedule 1 of the Regulations, were consulted. Any comments submitted during this consultation must be summarised and included in the Consultation Statement, with a note of what action was taken in response.

Once the Plan is submitted and judged to be legally compliant, Cornwall Council publicises the draft NDP in the next round of statutory consultation, (in accordance with Regulation 16 of the 2012 Regulations) the representations on which have to be received not less than 6 weeks from the date on which the plan proposal is first publicised at this stage. The statutory consultation by Cornwall Council was held from 20th December 2018 until 7th February 2019 for a seven week period, as the consultation covered the Christmas holiday period.

The Plan proposal included a copy of a map and a statement which identified the area to which the proposed Neighbourhood Development Plan relates; a Consultation Statement; the proposed Neighbourhood Development Plan, a Local List 2018 document, a local Landscape Character Assessment and a statement explaining how the proposed Neighbourhood Development Plan meets the requirements of paragraph 8 of Schedule 4B to the 1990 Act (the Basic Conditions Statement). Copies of the documents were available to view on the website, or through the Planning Register (planning application number PA18/00021/NDP) and hard copies were available from a number of locations including; Chacewater Village Hall, Chacewater Bowling Club, Chacewater Health Centre, Blackwater Village Hall and Twelveheads Methodist Church during the consultation. The Council sent the Plan proposal and representations to the Independent Examiner on 14th February 2019 and on 8th May 2019 the

Independent Examiner issued a report to the Council and the Chacewater Parish Council.

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

There are costs associated with the examination and referendum. The final cost for the Chacewater Parish NDP Examination is £4,500 and the estimated cost for the Referendum is approximately £3,800.

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.

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 occurred. 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 Chacewater Neighbourhood Development Plan costs.

During the financial year, if the accumulated costs for the neighbourhood plans exceed the grants received, then the Planning 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

The next stage of the Regulations requires the Council to:

- Decide what action to take in response to the recommendations of the Examiner
- Publish the decision and their reason for it
- Publish the Examiner's report

The Neighbourhood Planning (General) Regulations 2012 (as amended) requires in Regulation 18 for the Local Planning Authority to outline what action to take in response to the recommendations of an Examiner, made in a report under paragraph 10 of Schedule 4B to the 1990 Act (as applied by Section 38A of the 2004 Act) in relation to the Neighbourhood Plan.

This report is the Council's decision on how to incorporate the Examiner's recommendations. The power to decide whether the Examiner's modifications are incorporated, or not, lies with the Local Planning Authority. However, the Examiner's report has been discussed in detail with the NDP Steering Group. The Neighbourhood Plan and the proposed recommended modifications to the Plan, in response to the Examiner's report, have been developed with the Group's involvement.

In line with the Examiner's recommendations, the Steering Group has indicated that it would be content to accept the changes proposed by the Examiner, with

the exception of the following changes, which are discussed in more detail below.

- Policy RE1: Community Led Renewable Energy the second bullet point will be modified so that development proposals for community energy is either fully or partly owned by residents, businesses and community associations through an appropriate community energy enterprise.
- Policy RE2: Wind Turbine Development recommendation is to delete the policy as proposals for wind turbines can only be considered where specific sites have been identified in a Neighbourhood Plan. An alternative modification has been recommended to identify areas suitable for wind energy development and address impacts of the scheme in accordance with guidance in the Cornwall Renewable Energy SPD as set out in the modified policy.
- Objective 2 Historic Environment (Heritage) a sentence will be added to the supporting policy text stating that the parish support the retention of buildings that contribute to the areas historic character. The Examiner recommended that the policies under Historic Environment be combined as the policies overlapped and because the demolition of historic buildings does not always require planning permission.

Having considered each of the recommendations made in the Examiner's report and the reasons for them, the Council, with the consent of Chacewater Parish Council, has decided to accept the modifications to the draft Plan. Appendix 2 outlines the alterations made to the draft Plan under paragraph 12(6) of Schedule 4B to the 1990 Act (as applied by Section 38A of 2004 Act) in response to each of the Examiner's recommendations.

Amendments to these Policies will allow them to meet the Basic Conditions and therefore be retained in the Plan. The Council is satisfied that the Plan, as modified, meets the Basic Conditions set out in paragraph 8(2) of Schedule 4B of the Town And Country Planning Act 1990 and is compatible with the European Convention on Human Rights obligations.

The Plan has been screened for Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) and the Screening Opinion was that SEA and HRA were not required. A Comprehensive Impact Assessment (CIA) was undertaken at the Legal Compliance Check stage.

The Examiner confirmed in her report that she was satisfied that the NDP was compliant with European and Human Rights Legislation.

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

Failure to take the Plan forward to referendum would risk customer dissatisfaction and would be a failure of the Council's duty to support communities in the production of neighbourhood plans.

9. Comprehensive Impact Assessment Implications

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, which is Cornish Status.

The NDP has been developed to be in general conformity with the Cornwall Local Plan, which was subject to Examination in Public and found to be sound. The Cornwall Local Plan provides for the objectively assessed need for housing to meet the needs of all the community, against which the conformity of the NDP has been tested.

The Cornwall Local Plan has been subject to Comprehensive Impact Assessment. This concluded 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.

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.

A CIA of the Chacewater NDP was carried out as part of the Legal Compliance Check. It concluded that the Chacewater 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, promoting community and wind energy, protecting the historic and natural environment, providing employment and housing to meet local need and promoting community engagement and involvement in planning.

10. Options available

Cornwall Council has a duty to support communities who are preparing neighbourhood plans. The 2012 Regulations detail the Council's responsibilities. The NDP has been independently examined and found to meet the Basic Conditions subject to the recommended Modifications. The Examiner has recommended that the NDP should proceed to Referendum.

The Council is required to make a decision as to what action it proposes to take in response to each recommendation, as detailed in the Examiner's Report, by 13th June 2019; this being the date as prescribed in Regulation 17A of the 2012 Regulations. It is not clear as to what the outcome will be if that date is missed but it is clear that the Council's reputation would be damaged. This date has now

passed, but this is because we have worked with the community to agree alternative amendments.

However, the Neighbourhood Planning (General) Regulations 2012 (as amended) require, in Regulation 18, the local planning authority to outline what action it intends to take in response to the recommendations of an Examiner made in a report under paragraph 10 of Schedule 4A to the 1990 Act (as applied by Section 38A of the 2004 Act) in relation to the Neighbourhood Plan.

The Regulations provide that where the Council disagrees with the Examiner's report, it should look to re-consult and this provision is engaged in this instance. The Council met with the NDP Steering group on 24th May 2019, to agree alternative amendments to the Neighbourhood Plan.

As the recommended modifications (subject to amendment) and alternative modifications are acceptable to the Council and the NDP Steering group, the Council is in a position to proceed to Referendum once any representations as a result of a further 6 week consultation are considered.

Failure to take the NDP forward to referendum would risk customer dissatisfaction and would be a failure of the Council's duty, as set out above.

11. Supporting Information (Appendices)

Appendix 1: Chacewater NDP Examination Report

Appendix 2: Chacewater NDP Recommended and Alternative Modifications Table

Appendix 3: Chacewater Neighbourhood Development Plan modified after examination

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)	Ben Curnow	27/06/2019
Finance (Required for all reports)	Geraldine Baker	26/06/2019
Equality and Diversity (If required)	N/A	
Service Director (Required for all reports)	Hayley Jewels	28/06/2019
Strategic Director (If required)		

