

Report to:	Service Director – Planning and Sustainable Development	
Date:	22 January 2020	
Title:	St Endellion Neighbourhood Development Plan 2019 - 2030 – Legal Compliance and Examination Stage	
Portfolio Area:	Culture, Economy and Planning	
Divisions Affected:	St Minver and St Endellion	
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? (≥£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	Upon Publication	

Recommendation:

That the St Endellion 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**

- 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 St Endellion Neighbourhood Development Plan (St Endellion NDP) was submitted to Cornwall Council, with the endorsement of St Endellion Parish Council, on 10th December 2019 and additional information was provided on 14th January 2020, to enable the legal compliance check to be completed. The Plan was accompanied by a Basic Conditions Statement, a Consultation Statement, a green space assessment document, a number of appendices for the consultation statement and St Endellion NDP document including a townscape assessment, 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 St Endellion 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/s bringing the plan into force.

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

- 2.3 The Plan has been through the statutory stages of area designation and pre-submission draft consultation. The area designation application was correctly made by St Endellion Parish Council and designated as a delegated officer decision on 2nd September 2013.
- 2.4 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 15th May to 26th June 2019. It was publicised and the relevant consultation bodies were contacted, in accordance with Regulation 14 of the Regulations. The St Endellion NDP Steering Group have summarised the comments received and their responses in the Consultation Statement submitted with the Plan.
- 2.5 The current required stage is for the LPA to consider the Plan, determine whether it is legally compliant and, if so, notify the St Endellion Parish Council of its decision and progress the Plan by starting the 6 week consultation period and making arrangements for the examination.
- 2.6 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 St Endellion 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, a green space assessment and a number of appendices for the consultation statement and St Endellion NDP document, including a townscapes assessment 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. Natural England raised some queries about areas of land within the development boundaries at Port Gaverne and Port Isaac, but, following minor amendments to those development boundaries, are now satisfied.

Based on the scale and location of development proposals in the draft plan, Cornwall Council is of the opinion that the plan is unlikely to have significant effects on the environment. 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 7th March 2019.

Advice from the consultation bodies, particularly Natural England who were concerned about possible impact on the AONB, obliged the NDP steering group to alter and draw the development boundary very tightly, excluding some gardens in Port Isaac and a small area of land between two buildings in Port Gaverne, for example. Whilst Cornwall Council appreciate the need to preserve the AONB and its setting, the drawing of a development boundary to exclude small scale infill and to create an arbitrary line across gardens, not following a recognisable physical feature, is not wholly in line with our guidance.

Due to a legal judgement which has implications for the way Habitat Regulations Assessment screening is carried out for NDP'S, a new basic condition came into force on 28th December 2018 where the NDP does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017(3). The assessment concluded that there will be no impact on the European Sites.

- 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 St Endellion NDP contains policies which relate to the

development and use of land within St Endellion Parish and therefore meets the definition.

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

The NDP must specify the period for which 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 St Endellion 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.

2.8 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. St Endellion Parish Council has also undertaken community consultation throughout the process, as detailed in the Consultation Statement.

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

2.10 If the St Endellion 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 St Endellion 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.

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 2nd September 2013.
- 4.2 This is the second stage, which now requires the Council to make a decision as to whether or not 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 15th May to 26th June 2019. It was publicised and the relevant consultation bodies were contacted in accordance with Regulation 14 of the Regulations. The St Endellion NDP Steering Group have summarised the comments received and their

subsequent responses given 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 St Endellion NDP are £4,000 for examination and £3,500 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 provided until the end of the financial year 2021/22 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 The overall impacts are considered to be positive, with development proposals, including replacement dwellings, supported within the settlement boundaries of Port Issac, St Endellion, Port Gaverne and Trelights. The plan supports proposals for the development of Rural Exception Sites and new dwellings to support farming enterprises. P proposals for new developments will provide a housing mix, size and layout to satisfy the changing needs of occupants in the parish and to meet housing need.
- 9.3 The plan has an emphasis on the environment; setting out character areas within the settlements, design principles, renewable energy, non-designated heritage assets, safeguarding and enhancement of landscape and Seascapes, conserving and enhancing biodiversity and the natural environment, the designation of local green space, safeguarding of community facilities and the improvement and maintenance of footpaths. There are also policies supporting the rural economy and existing stock of tourism accommodation within the parish.
- 9.4 The plan includes a principal residency condition, to be attached to development proposals for all new build and replacement dwellings. The Human Rights Article requires exceptional justification for applying such a principal residence restriction policy. This decision will be made by an independent examiner, appointed to carry out the examination of the plan once the Regulation 16, six-week statutory consultation stage has been completed.

10. Options available

- 10.1 The St Endellion NDP has been assessed against 'the Regulations' and is found to be legally compliant and the Council therefore has a duty to support and progress the Plan.

- 10.2 In accordance with regulation 15 of the Regulations, a further 6 week 'publication' consultation on the St Endellion 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 implemented where possible. The consultation process has followed the Regulations and there will be an opportunity for further comments to be made during the publication; any further comments will be forwarded directly to the Examiner.
- 10.4 If the St Endellion NDP proposal is found to be legally compliant, the next steps in the process of 'making' the St Endellion Neighbourhood Development Plan are:
- LPA notify St Endellion 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 St Endellion 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)

- 11.1 Appendix 1 - St Endellion Neighbourhood Development Plan Legal Compliance Checklist
- 11.2 Appendix 2 - St Endellion Neighbourhood Development Plan Submission Draft
- 11.3 Appendix 3 -St Endellion NDP Consultation Statement
- 11.4 Appendix 4 - St Endellion NDP Basic Conditions Statement
- 11.5 Appendix 5 - St Endellion NDP Green Space Assessment
- 11.6 Appendix 6 - St Endellion NDP Appendix A Lifetime Home Principles

11.7 Appendix 7 - St Endellion NDP Appendix B Townscape Assessment

11.8 Appendix 8 - St Endellion NDP Appendix C Non-Designated Heritage Assets

11.9 Appendix 9 - St Endellion NDP Consultation Statement Appendix Regulation 14

12. Background Papers

12.1 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)	Lyndsey Miller	28/01/2020
Finance (Required for all reports)	Geraldine Baker	25/01/2020
Equality and Diversity (If required)		
Service Director (Required for all reports)	Hayley Jewels	04/02/2020
Strategic Director (If required)		