

Report to:	Service Director – Planning and Sustainable Development	
Date:	22 April 2020	
Title:	Budock Parish Neighbourhood Development Plan - 2019 to 2030 - Legal Compliance and Examination Stage	
Portfolio Area:	Culture, Economy and Planning	
Divisions Affected:	Constantine, Mawnan and Budock	
Local Member(s) briefed:	N/A	
Relevant Scrutiny Committee: Economic Growth and Development Overview and Scrutiny Committee		
Authors, Roles and Contact Details:	Emma Ball, Neighbourhood Planning Officer Email: emma.ball@cornwall.gov.uk Tel: 01872 324807 Hayley Jewels, Head of Development Management E-mail Hayley.jewels@cornwall.gov.uk Tel:01872 224725	
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/A	
Date next steps can be taken	Upon Publication	

Recommendations:

That the Budock Parish 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 (amended) and taken forward to Examination, subject to Central Government's advice on the coronavirus (Covid-19) pandemic and the updated guidance on Neighbourhood Planning.

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 Budock Parish Neighbourhood Development Plan (Budock NDP) was submitted to Cornwall Council, with the endorsement of Budock Parish Council, on 15 April 2020. The Plan was accompanied by a Basic Conditions Statement, a Consultation Statement 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 Budock 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. This will be carried out, taking into consideration the current advice from Central Government on the Covid-19 crisis and the updated guidance on Neighbourhood Planning.
- 2.2 The Ministry of Housing, Communities and Local Government have introduced changes to neighbourhood planning in response to the Covid-19 pandemic. The guidance has implications for neighbourhood planning on the referendum process, decision-making, oral representations for examinations and public consultation, set out in the National Planning Practice Guidance (NPPG) Paragraph: 107, Reference ID: 41-107-20200407, Revision date: 07 04 2020.

2.3 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.

2.4 The Plan has been through the statutory stages of area designation and pre-submission draft consultation. The area designation application was correctly made by Budock Parish Council, publicised by Cornwall Council and designated by Portfolio Holder decision on 3 May 2017.

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 21 October until 2 December 2019. It was publicised, and the relevant consultation bodies were contacted, in accordance with Regulation 14 of the Regulations. The Budock 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 Budock Parish Council of its decision and progress the Plan by starting the 6-week consultation period, subject to Covid-19 restrictions, 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 Budock 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, an evidence base document 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 NDP could not be screened out for impacts on the Fal and Helford Special Area of Conservation.

Due to a legal judgement which has implications in the way Habitat Regulations Assessment screening is carried out for NDPs, a new basic condition came into force on 28 December 2018 for where the NDP does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017(3). A competent authority may undertake an appropriate assessment to consider impacts and any mitigation measures and inform their decision about whether or not to approve the plan. The assessment concluded that there will be no impact on the European Sites.

An Appropriate Assessment was therefore carried out and concludes that, due to strategic mitigation measures in the Cornwall Local Plan to deal with recreational impacts, it can be concluded that there will be no adverse impacts on the features of these European sites arising from the NDP. Natural England has confirmed that they are satisfied with this conclusion.

Based on the scale and location of development proposed in the draft plan and the strategic and local policy framework, Cornwall Council is of the opinion that the Budock Parish NDP is unlikely to have significant effects on the environment and that a Strategic Environmental Assessment is therefore not required. This view has been confirmed by the consultation bodies. Cornwall Council issued a screening opinion to that effect on 30 April 2019.

- 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 Budock NDP contains policies which relate to the development and use of land within Budock Parish and therefore meet 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 Budock NDP specifies the plan period as being 2019 – 2030.

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

- a) A 'county matter' (Schedule 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. Budock Parish Council has also undertaken community consultation throughout the process, as detailed in the Consultation Statement.

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

Cornwall Council has provided comments on the emerging drafts of the NDP and Budock Parish Council has amended wording in response to this feedback. Further comments may be made in response to Regulation 16 consultation and any queries from the Examiner.

- 2.9 If the Budock NDP is endorsed as compliant, Cornwall Council can commence the regulatory stages required to progress the Plan through examination, in accordance with the current advice from Central Government on the Covid-19 crisis and the updated guidance on Neighbourhood Planning. The referendum and 'making' of the Plan stages of the process will be delayed under Regulations linked to the Coronavirus Act 2020, meaning that no elections or referendums can take place until 6 May 2021. These provisions will be kept under review and may be amended or revoked in response to changing circumstances.

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 Budock 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, publicised by Cornwall Council and designated by Portfolio Holder decision on 3 May 2017.
- 4.2 This is the second stage at which the Council must make a decision on 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 (pre-submission) 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 period ran from 21 October until 2 December 2019. It was publicised and the relevant consultation bodies were contacted, in accordance with Regulation 14. The Budock 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. The LPA will review the Covid-19 restrictions which are in place when the decision on legal compliance is issued and make a judgement as to how 'publication' consultation can be carried out, under the restrictions operating at that time.

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 Budock NDP are £4,000 for examination and £4,000 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 referendum date has been set following a successful examination. The Ministry for Housing, Communities, and Local Government announced in March 2020, that under the Neighbourhood Planning new Burdens funding, the grant for £20,000 for the referendum can be claimed once a decision statement has been issued detailing the local authorities' intention to send the plan to referendum due to the Covid-19 crisis and the updated guidance on neighbourhood planning. These grants are currently provided until the end of the financial year 2021/22 and will be used to fund the associated costs.
- 6.3 The value of the grant is fixed, irrelevant of the actual examination and referendum costs, and so for smaller neighbourhood plans the grant is usually in excess of the costs incurred. This is retained by the Planning and Sustainable Development Service to cover the cost of working with the larger

towns, where the costs are higher. The current budget is sufficient to accommodate the Budock NDP costs.

- 6.4 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 the 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 (amended);
- The Neighbourhood Planning Act 2017.
- The Coronavirus Bill 2020.

- 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 Implications

- 9.1 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.

- 9.2 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.
- 9.3 The Cornwall Local Plan has been subject to a Comprehensive Impact Assessment (CIA). 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 being made for older people and the disabled.
- 9.4 The housing and affordable housing targets aim to ensure that appropriate housing is available to meet local needs over the Plan period. Failing to provide sufficient housing will impact most on disadvantaged groups.
- 9.5 The overall impacts of the neighbourhood plan are considered to be positive, with development proposals for housing within the development boundary and affordable housing on rural exceptions sites to meet the local housing need, identified and protection of green gaps between the settlements in the parish and development proposals for change of use and new builds to support new business. The plan will help to maintain the local character and distinctiveness of the area by protecting woodland, trees, Cornish hedges and hedgerows and by setting out character areas and support development proposals for renewable energy measures for wind and energy, including community-led initiatives to help reduce carbon emissions.

10. Options available

- 10.1 The Budock 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 Budock 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. This consultation may be adapted and extended, in order to comply with Covid 19 restrictions.

- 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 included 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 made in the meantime will be forwarded directly to the Examiner.
- 10.4 If the Budock NDP proposal is found to be legally compliant, the next steps in the process of 'making' the Budock Neighbourhood Plan are:
- The LPA notify Budock 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 Budock Parish Council;
 - Following successful examination, the Local Authority hold a referendum after 6 May 2021 or if circumstances change due to the Covid-19 crisis;
 - 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 APP1. Budock Parish Neighbourhood Development Plan Legal Compliance Checklist
- 11.2 APP2. Budock Parish Neighbourhood Development Plan Submission draft
- 11.3 APP3. Budock Parish Neighbourhood Development Plan Consultation Statement
- 11.4 APP4. Budock Parish Neighbourhood Development Plan Basic Conditions Statement

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	04/05/2020
Finance (Required for all reports)	Geraldine Baker	24/04/2020
Equality and Diversity (If required)		
Service Director (Required for all reports)	Hayley Jewels	13/05/2020
Strategic Director (If required)	N/A	