

Report to	-	Chief Executive
Date	-	16 January 2024
Report of the	-	Director of Climate Change and Place
Subject	-	Examiner's Report into the Peasmarsh Neighbourhood Development Plan 2021-2028

Recommendation: That: Under the Chief Executive's delegated authority, it is decided that the Peasmarsh Neighbourhood Development Plan incorporating the Examiner's modifications, as set out at Appendix 4, proceed to local Referendum, and that the Referendum Area be the Parish.

Introduction

1. The Examiner, Mr. John Slater, appointed with the agreement of Peasmarsh Council to consider whether the Parish Council's submitted Neighbourhood Development Plan meets the required 'basic conditions', issued his report on 24th November 2023. It is attached as Appendix 2. The analysis and assessments of the policies of the Peasmarsh Neighbourhood Development Plan (PNDP) are contained on pages 16 to 33 of his report.
2. Attention is drawn to the earlier Cabinet report of 28th February 2023, which summarised the submitted Plan and its background.
3. This report focuses on the legal responsibilities of this Council in order to consider the Examiner's recommendations and to decide whether the Plan, with the Examiner's modifications, meets the required 'basic conditions' such that it should proceed to referendum.

The Examination & Examiners Recommendations

4. The Examiner undertook the Examination initially by means of written representations and then conducted a Hearing on matters he wished to explore further. The Examiner produced a written report which concluded as follows:

'I can confirm that my overall conclusions are that the Plan, if amended in line with my recommendations, meets all the statutory requirements including the basic conditions test once the screening of the plan under the Conservation of Habitats and Species Regulations has been carried out by Rother District Council, and that it will then be appropriate, if successful at referendum, that the Plan, as amended, be made.

I am therefore delighted to recommend to Rother District Council, subject to the above caveat, that the Peasmarsh Parish Neighbourhood Plan, as modified by my recommendations, should proceed, in due course, to referendum.'

5. The Habitat Regulations Assessment screening has been completed by the Council with an outcome of there being no likely significant effects of the allocated site, Orchard Way, on the Dungeness Complex of Natura 2000 sites. Therefore, the site can be screened out. This means that Appropriate Assessment of the Neighbourhood Plan is not required.

6. The recommended modifications include:
 - Changing the end date of the Plan to 2028
 - Deleting policies:
 - L4: Protection of Biodiversity
 - L7: Sustainable Public Transport
 - I1: Improving Road Safety and Traffic Impact
 - I3: Surface Water Drainage
 - I4: Power Supply
 - I7: Access to High Quality Secondary Education
 - S1: Development Size
 - Inserting large scale maps into the appendices relating to policy L5: Protection of Local Green Spaces.
 - Amending the habitat protection policy to refer to “wildlife rich habitats”.
 - Allowing the removal of ancient trees and woodland in exceptional circumstances.
 - Expanding the scope of the green infrastructure policy to allow offsite improvements and the funding of offsite improvements.
 - Removing the reference to third-party independent checks on the sewer system.
 - Removing reference to the parish lobbying for improvements on telecommunications infrastructure.
 - Expanding the scope of the developer contribution policy.
 - Expanding the business policy to allow Use Class E uses and Use Class B2 and B8 uses in limited circumstances.
 - Clarifying the scope of the working from home policy.
 - Allowing the construction of well-designed new commercial buildings in the countryside.
 - Tourism development no longer needs to meet a local need.
 - Deleting the requirement for all new housing to be affordable homes.
 - Deleting the proposed housing allocations at Flackley Ash, Woodside and Cornerways.
 - Amending the energy efficiency policy from setting a *requirement* to one that *supports* development that incorporates sustainability elements.

7. The recommended modifications to the PNDP have resulted in the rewording of various policies and supporting text along with some amended mapping throughout the Plan.

8. The Examiner has confirmed that the referendum area does not need to be extended beyond the plan area, therefore it remains as the Parish.

Consideration of the Examiner's report and proposed modifications

9. The Council must now consider each of the Examiner's recommendations. It is not obliged to accept them but should be aware that the purpose of the examination is to provide independent scrutiny by a duly qualified person. The legislative position¹ is that the Local Planning Authority can only make modifications post-examination if it considers them necessary to meet the 'basic conditions', be compatible with convention rights, accord with relevant Regulations or to correct errors. Also, in this event, further consultation and potentially a further examination would be required.
10. For reference, the 'basic conditions' relate to the need to:
 - have regard to national policies and advice;
 - contribute to sustainable development;
 - be in general conformity with the development plan's strategic policies; and
 - not breach or otherwise be incompatible with EU obligations.
11. Overall, it is believed that the Examiner has undertaken a fair and robust examination of the submitted Neighbourhood Plan, properly considering all duly-made representations.
12. It is noted that the Examiner has taken the view that, as modified, the PNDP would meet the basic conditions, particularly general conformity with the Core Strategy and the DaSA.

Parish Council Response and Referendum version of the Neighbourhood Plan

13. Peasmarsh Parish Council has confirmed that it has agreed to accept each of the modifications recommended by the Examiner. It has corresponded with officers who have made the necessary amendments to the Neighbourhood Plan for it to progress to Referendum.
14. A full draft of the Peasmarsh Neighbourhood Development Plan, incorporating all modifications, consequential changes and updating, as agreed with the Parish Council, has been collated and is contained in Appendix 4. A separate Schedule of Changes has also been prepared in Appendix 1.

¹ Paragraph 12(6) of the Schedule 4B of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, and the Planning and Compulsory Purchase Act 2004 (as amended).

Conclusion, Implications and Referendum

15. With reference to representations on the submitted Peasmarsch Neighbourhood Plan, the Examiner has carefully considered whether it meets the necessary 'basic conditions' and concluded that it does, subject to a number of modifications. Planning officers accept these conclusions, as does the Parish Council; hence, it is recommended to endorse the Examiner's recommendations (Appendix 3), including the proposed modifications as agreed by RDC & PPC, and put the modified version of the Neighbourhood Plan, (Appendix 4) forward for Referendum to the residents of Peasmarsch Parish.
16. If there is majority support for the Neighbourhood Plan at Referendum, this Council will be obliged (subject to certain, limited exceptions) to formally make it part of the statutory development plan.
17. A notable implication of making the Neighbourhood Plan is that the Parish Council will then receive 25% rather than the current 15% of Community Infrastructure Levy receipts from future developments in the Parish.
18. As regards the Referendum, it is likely that it will be held in February and assuming a 'yes' majority vote it will progress to Cabinet and Full Council.

Ben Hook
Director of Climate Change and Place