

PAPER NO. 2

REPORT TO THE EXECUTIVE MEETING OF 8 MAY 2017

Meeting: Executive
Date: 8th May 2017
Subject: Lubenham Neighbourhood Plan
Report of: Matthew Bills Neighbourhood and Green Spaces Officer
Portfolio Holder: Cllr Brodrick
Status:
Relevant Ward(s): Lubenham Ward

1 Purpose of the Report

- 1.1 The purpose of this report is to enable the Executive to consider the recommendations of the Examiner into the Lubenham Neighbourhood Plan and support the recommendation that the Plan proceed to public referendum. Lubenham Parish Council, as a 'Frontrunner' was able to claim £20,000.00 to assist in producing the Neighbourhood Plan.

2 **Recommendations:**

- 2.1 **That the Executive accepts the Independent Examiner's recommended changes to the Lubenham Neighbourhood Plan in full as set out in the schedule at Appendix A and notes the recommendation that the amended Lubenham Neighbourhood Plan should proceed to a referendum of voters within the Parish of Lubenham to establish whether the Plan should form part of the Development Plan for the Harborough District.**
- 2.2 **That the Executive approves the holding of a referendum relating to the Lubenham Neighbourhood Plan on 20th July 2017 that will include all of the registered electors in Lubenham Parish.**

3 Summary of Reasons for the Recommendations

- 3.1 The Examiner's report into the Lubenham Neighbourhood Plan was received on 13th March 2017. The Examiner considered the Plan along with the representations received when the Plan was published by the Council. The report recommends to the Council that, subject to the modifications proposed (see Appendix A), the Plan should proceed to a referendum.

- 3.2 The Neighbourhood Planning (General) Regulations 2012, (Regulation 18) sets out the matters that the District Council should consider at this stage in the Neighbourhood Plan making process. The District Council must consider each of the recommendations made by the Examiner in their report, including the reasons for them, and decide what action to take in response to each recommendation (see Appendix A).
- 3.3 It is considered that the recommended modifications should be incorporated into the plan and noted by the Executive in order to ensure that the plan is robust, sound, meets the Basic Conditions and comprises a user-friendly and efficient document. Liaison with Lubenham Parish Council confirms that they are happy to accept these recommendations. On this basis, the Plan should then proceed to a referendum in Lubenham Parish to determine if local people support it.
- 3.4 The Neighbourhood Plan has been prepared by Lubenham Neighbourhood Plan Group and Lubenham Parish Council.
- 3.5 The evidence provided to the Examiner indicates that an inclusive and comprehensive approach was made during the preparation of the Plan and this ensured that the input and opinions of a wide variety of stakeholders across the parish contributed to the preparation of the Plan. Comments were pro-actively sought and those received were duly considered by the Examiner. There is a written record of the ways that consultation has benefitted the Lubenham Neighbourhood Plan. The Examiner was accordingly satisfied that the consultation process has *'complied with Section 15(2) of part 5 of the 2012 Neighbourhood Planning Regulations and that the proposed neighbourhood development plan meets the requirements of paragraph 8 of Schedule 4B to the 1990 Act, in accordance with 15(1) of part 5 of the 2012 Neighbourhood Planning Regulations'*.
- 3.6 In proceeding to a referendum with a plan that meets the prescribed Basic Conditions, the whole community will be afforded the opportunity to vote on the future development of the village and wider parish of Lubenham.

4. Key Facts

- 4.1 The Council is committed to supporting the neighbourhood planning process across the Harborough District. Helping communities wishing to carry out neighbourhood plans is identified in the Corporate Plan 2017 as a way to deliver the priority 'to develop places in which to live and be happy'.
- 4.2 The Lubenham Neighbourhood Plan ('the Plan') has been produced by the Lubenham Neighbourhood Plan Group, led by the Parish Council as the Qualifying Body, in conjunction with the local community. The Plan provides for housing levels within the minimum requirement set out in the Harborough District Core Strategy, 2011 whilst also taking account of the emerging Harborough District Local Plan. The Plan seeks to:
- Protect and retain the rural character, community spirit, culture and heritage

- of the Parish and keep it separate from Market Harborough.
- Protect Lubenham open spaces, natural environment, biodiversity and access to the countryside.
- Minimise the impact on the Parish of negative influences including high volumes of traffic, speeding traffic, parking, flooding and over-development.
- Maintain existing and where possible enhance local facilities, infrastructure and services especially access to these from outlying parts of the settlement.
- Ensure that development retains a mix of housing and employment opportunities to suit the needs of a range of people by age, gender, ethnicity, disability, religion and sexual orientation and that all development is of the highest standards.

4.3 The Lubenham Neighbourhood Plan also recognises that the proposed North West Harborough SDA (much of which is in Lubenham Parish) will have a significant impact on the area. It recognises the need to safeguard the individual character of the Lubenham settlement by:

- maintaining a separation area to the east of the village;
- ensuring that measures are in place to mitigate the impact of the additional traffic generated by such a large development of housing and business close to the existing settlements; and
- ensure that educational establishments are adequately supported to provide for the needs of the enlarged community.

4.4 The Lubenham Neighbourhood Plan specifically considers a number of Lubenham specific objectives that are derived from the key themes identified by the community as being of special importance to them. These include objectives to:

- Protect and enhance the unique culture, rural character and heritage of Lubenham and ensure that it remains distinct and separate from Market Harborough and the SDA.
- Ensuring a minimum level of new housing within Lubenham village compatible with 'selected rural village' status principally on the west and north-west sides of the village and that provides adequate infrastructure and contributes to community facilities and open space.
- Mitigate against growing traffic, transport and parking impacts.
- Ensure the environment, landscape and biodiversity is protected and enhanced by new development.
- Ensure appropriate business can thrive in the Parish providing services and employment.
- Support development in Gartree and Bramfield that will enhance access to community facilities.

- Maintain and enhance the attractiveness of Greenacres as a site for the Gypsy and Traveller community.
 - Ensure the development and use of the showground does not adversely affect local residents.
 - Encourage the provision of improved broadband speeds in the parish. Ensure new development is of a high standard and achieves high levels of sustainability particularly in relation to the effects of climate change.
- 4.5 The Examination Version of the Lubenham Neighbourhood Plan was submitted to the Council on 22nd February 2016. Following initial verification checks, a six week period of public consultation on the Plan was held running from 25th April to 6th June 2016. A total of 11 responses were received, each making multiple representations on most aspects of the Plan.
- 4.6 The Council, with the agreement of Lubenham Parish Council, appointed Martin S Lee as the Independent Examiner in June 2016. All the representations received on the Examination Version of the Plan were forwarded to the Examiner for consideration. The Examiner was satisfied that all the responses could be assessed without the need for a public hearing.
- 4.7 The examination took place between 19th September 2016 and 13th March 2017. The role of the Examiner is to consider whether a neighbourhood plan meets the Basic Conditions. In order to do this the Plan must:
- Have regard to national policies and advice contained in guidance issued by the Secretary of State;
 - Contribute to the achievement of sustainable development;
 - Be in general conformity with the strategic policies of the development plan for the area; and
 - Be compatible with European Union obligations and, not breach, nor be in anyway incompatible with the European Convention on Human Rights.
- 4.8 The Examiner's Report into the Plan was sent to the Council on 13th March 2017 and was made available to the public on the Council's website shortly after. A full copy is included in Appendix B of this report. The report recommends to the Council that, subject to the modifications proposed the Plan should proceed to a Referendum.
- 4.9 A schedule of the Examiner's recommendations is set out at Appendix A. The main changes recommended by the Examiner (in order to meet the 'Basic Conditions') are to make the Plan appropriate for use in determining planning applications and to ensure clarity in the text of the Plan.
- 4.10 The Examiner has recommended two policy deletions from the Plan. These being:

Delete Policy LNP04: Character, Culture & Heritage: Habitats & Biodiversity:

Reason: the policy would be more effective if applied as an additional caveat to Policy LNP03 covering all residential development (regardless of scale) and is therefore recommended for deletion along with its associated supporting text.

Delete Policy LNP24: Energy and Water Efficiency:

Reason: places overly onerous requirements upon applicants/developers which are neither supported by the NPPF, NPPG and Core Strategy policies referred to in the NDP or the Basic Conditions Statement and are not only covered by other regulatory bodies under other primary regulation (such as the Local Highway Authority and the Local Building Regulation Authority) but also in small part already dealt with by other policies elsewhere within the NDP. The policy is vaguely worded, leaving open-ended and undetermined the actual level of requirement for any development. I do not consider any amendment to the wording of the policy could remedy its shortcomings.

4.11 The essence of what the remaining policies are trying to achieve has been retained. The main changes are for the following reasons:

- *remove unnecessary and confusing repetition,*
- *enhance clarity,*
- *provide additional robustness,*
- *provide necessary flexibility,*
- *increase effectiveness of the policy for development management purposes.*

4.12 The Examiner's report acknowledges the amount of work that has gone into preparing the Plan, and that; *'The Parish Council have with the assistance of local residents, professional consultants and the District Council undertaken progressive and extensive consultation exercises, conducted a Housing Need Survey and prepared both the draft and submission versions of the Neighbourhood Plan'*. The Examiner further comments that; *'Consultation and community engagement is a fundamental requirement of the Neighbourhood Planning Regulations, the process of plan-making being almost as important as the plan itself. Such engagement with the community during the plan-making process has raised awareness and encouraged the community in the Parish to understand/question both the proposed policies as well as the Plan's scope/limitations'*.

4.13 The Examiner makes the following statement with regard to the modifications in the Plan:

"It was established in R. (Maynard) v Chiltern District Council¹ that it is wrong to consider each policy within a neighbourhood development plan examination, in the context of compliance with the strategic policies of the development plan and the NDPPF, in relation to Basic Conditions a) and e), but rather it is the Plan as whole that needs to be considered in the context of such policy guidance, in terms of "general conformity". Similarly, in Woodcock², paragraph

8(2)(e) of Schedule 4B of the 1990 Act only required the LPA to consider whether the draft Neighbourhood Plan, as a whole, is in general conformity with the adopted Development Plan. It is not appropriate to consider whether there is a tension between one policy of the Neighbourhood Plan and one element of the Local Plan or Core Strategy. I have used this approach in assessing whether the Plan meets the Basic Conditions”.

4.14 The Examiner makes comment on the amendments that are proposed in his report stating:

“I consider that it is still prudent from an implementation perspective, to briefly review each of the policies to ensure that they are genuine land use planning policies and that they will serve the Parish in future for development management purposes, should the Plan be made”.

4.15 Lubenham Parish Council and Neighbourhood Plan Group have given the Report due consideration following a meeting on 13th May 2017 and resolved that it is in agreement with the recommended modifications of the Examiner to the Neighbourhood Plan..

4.16 Given that proposed modifications of the Examiner do not fundamentally alter the main aims of the Plan, officers recommend acceptance of all the independent Examiner’s recommendations, for the reasons expressed by the Examiner.

4.17 The Examiner is also tasked with considering whether the Referendum Area should be extended beyond the designated Neighbourhood Area (the Parish boundary). The Examiner concludes that a Referendum based on the Lubenham Neighbourhood Area is appropriate. Officers agree with this recommendation.

4.18 The Neighbourhood Planning (General) Regulations 2012 set out that if the Council agrees to the recommendations of this report, it must publish a ‘Decision Statement’ on the Plan. This must set out the District Council’s decision on the Lubenham Neighbourhood Plan and the reasons for making that decision. It is normal practice for the date of the Referendum to also be specified. The suggested changes will then be made to the Plan ready for publication as one of the specified documents that must be in place in order to allow the Referendum to proceed.

4.19 The date for the referendum is provisionally set for 20th July 2017. Therefore, the final version of the Plan and the Information Statement must be on Harborough District Council’s website on 12th June 2017 at the latest, i.e. at least **28 working days** before the provisional date set for the Referendum. The Council will also need to ensure that the publication of ‘notice of referendum’ takes place on 15th June 2017 i.e. at least **25 working days** before the provisional date set for the referendum. The detailed requirements in respect of the Referendum process are set out in the [Neighbourhood Planning \(Referendums\) Regulations 2012](#).

- 4.20 The referendum will follow a similar format to an election. All those registered to vote within the Neighbourhood Area will be given the opportunity to be involved in the Referendum. Local residents will receive a ballot paper with the question;

Do you want Harborough District Council to use the neighbourhood plan for Lubenham to help it decide planning applications in the neighbourhood area?’

Residents will be given the opportunity to vote ‘yes’ or ‘no’. If more than 50% of those voting in the referendum vote ‘yes’ then the Local Planning Authority is required to ‘make’ the plan (adopt the Plan, with the Plan becoming the Development Plan for Lubenham alongside the Core Strategy). Under the approved Neighbourhood Planning Scheme of Delegation ‘making’ the Plan will be done by officers of the Harborough District Council as soon as possible after a favourable Referendum result. If the result of the Referendum is “no”, then nothing further happens. The Parish Council will then have to decide how it wishes to proceed.

5. Legal Issues

- 5.1 The Neighbourhood Plan, as proposed to be amended, is considered to meet the Basic Conditions which were set out in law following the Localism Act (see Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990) and this has been confirmed in the Examiner’s Report. The Plan is also considered to meet all the relevant legal and procedural requirements.
- 5.2 Should the District Council decide to accept the recommendations of this report; a **Decision Statement** will be prepared and published on the Harborough District Council website in accordance with the regulations. Necessary preparations for a referendum in accordance with the referendum regulations will then proceed.

6. Resource Issues

- 6.1 When the Referendum date is set Harborough District Council will be able to claim a further £20,000.00 in direct financial support from the Department of Communities and Local Government (DCLG) in relation to supporting the costs of Examination and Referendum. This grant will be claimed in the next window for claiming Neighbourhood Planning Grants (June 2017).
- 6.2 This direct financial support is to ensure that local planning authorities receive sufficient funding to enable them to meet their legislative duties in respect of neighbourhood planning. These duties include provision of advice and assistance; holding the examination; and making arrangements for the referendum.
- 6.3 The cost of organising and running the referendum is funded through the grant described in paragraph 8.1 above.

7. Equality Implications

- 7.1 In preparing the Plan, the Lubenham Neighbourhood Plan Group has taken time to involve and inform as wide a range of individuals, households, businesses and interest/community groups as possible through a variety of means. This is set out in the Consultation Statement accompanying the Plan, which is referred to in the Examiners report.
- 7.2 Furthermore, in the report of the Examiner concludes that the Plan is compatible with EU obligations and does not breach the European Convention on Human Rights obligations as set out on page 23 and 24 of the Examiners report (see Appendix B).

8. Risk Management Implications

- 8.1 The following risks have been identified:
- 8.1.1 Not following the legislation and regulations correctly could leave the Council open to legal challenge. The circumstances where a legal challenge, through a claim for judicial review, can be raised are set out in the Town and Country Planning Act 1990, section 61N.
- 8.1.2 The preparation of the Lubenham Neighbourhood Plan has, to date, been supported by the Strategic Planning team in terms of providing advice, assistance given to the Steering Group, attendance at meetings of the Steering Group and Parish Council and ensuring the correct procedural steps are followed. The Elections Team will now be involved in ensuring a Referendum is held as soon as possible and as set out in the Regulations.

9. Consultation

- 9.1 In reaching this stage, the consultation requirements set out in the legislation and the regulations have been complied with as follows:
- Consultation on the Neighbourhood Plan Area 1/9/2012 to 30/10/2012;
 - Pre-Submission Consultation (reg. 14) 15/10/2015 to 27/11/2015; and
 - Submission Consultation (reg. 16) 25/4/2016 to 6/6/2016.
- 9.2 The Neighbourhood Planning (General) Regulations (2012) require the Council's '**decision. Statement**', in relation to the Examiner's recommendations, to be published on the Harborough District Council website along with the Examiner's report.

10. Options Considered

10.1 To reject some or all of the Examiner's recommendations. This option is not considered appropriate as the proposed modifications will make the Plan more robust and enable it to meet the prescribed Basic Conditions.

10.2 To decide not to proceed to referendum on the Neighbourhood Plan. Given that the Plan has successfully passed through the examination process, there is no reason why the Plan, including modifications, should not proceed to Referendum. In the light of this, this option is not considered appropriate.

11. Background Papers

[Lubenham Submission version Neighbourhood Plan](#)

Information Issued Under Sensitive Issue

Procedure: Y/N Ward Members Notified: Y

Appendices:

Appendix: Examiners

Recommendation

Appendix B: Examiners Report