

HERSTMONCEUX PARISH COUNCIL NEIGHBOURHOOD PLAN: EXAMINERS REPORT AND REFERNDUM

Summary

The purpose of this report is to agree the next stages in the progression of the Herstmonceux Parish Council Neighbourhood Plan (HPCNP). The Plan has recently been subject to independent examination and the report sets out the Examiner's conclusions regarding the Submission Plan, including the modifications recommended to ensure that the Plan meets the basic conditions outlined in the relevant neighbourhood planning legislation.¹ It is recommended that, subject to the modifications being made, the Submission Plan proceeds to a local referendum.

Portfolio Holder: Cllr Ann Newton Planning and Development

Recommendation

- A. To note the Examiner's Report attached at Appendix A of this report and agree the Examiner's recommended modifications to make the Herstmonceux Neighbourhood Plan compliant with the basic conditions outlined in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended).
- B. Agree the Decision Statement for the Herstmonceux Parish Council Neighbourhood Plan at Appendix C
- B. To agree that the Herstmonceux Neighbourhood Plan proceeds to referendum in line with the Neighbourhood Planning (Referendums) Regulations 2012 (as amended).

Reason

To enable the Herstmonceux Parish Council Neighbourhood Plan (HPCNP) to be approved and proceed to referendum.

Introduction

1. The Localism Act 2011 introduced a mechanism for local communities to produce a neighbourhood plan enabling them to have a greater say in the future of their areas. Wealden District Council (WDC) actively supports neighbourhood planning and several parish councils within the District are in

¹ The Neighbourhood planning (General) Regulations 2012 (as amended)

the process of preparing a neighbourhood plan. Once adopted by WDC the neighbourhood plan will form part of the Development Plan for the area they cover and will be used in the determination of relevant planning applications.

2. The production of a neighbourhood plan must follow a regulatory process and the Town and Country Planning Act 1990 as amended by the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012 set out this process and the key stages in the preparation of such plans.
3. The Herstmonceux Parish Council Neighbourhood Plan has now completed the examination stage, which is where the plan is examined by an Independent Examiner to assess whether the plan meets the basic conditions set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1998 as applied to neighbourhood planning by s38A of the Planning and Compulsory Purchase Act 2004. The Herstmonceux Parish Council Neighbourhood Plan is the first neighbourhood plan in Wealden District to reach this stage.
4. The Independent Examiner has issued a report which is shown at Appendix A which recommends for the plan to proceed to the referendum stage should the Council agree with the recommendations made.

Examination of the Herstmonceux Neighbourhood Plan

5. Following extensive work and community involvement by the Parish Council's Neighbourhood Plan Steering Group, Herstmonceux Parish Council formally submitted the Herstmonceux Parish Council Neighbourhood Plan and supporting documents to Wealden District Council, which were formally accepted on 21st October 2017. Wealden District Council subsequently published the Submission Herstmonceux Parish Council Neighbourhood Plan and supporting documents for six weeks formal public consultation between 25th September 2017 and 6th November 2017.
6. Eight representations were received which were forwarded to an Independent Examiner who was appointed by Wealden District Council, in agreement with HPC, to examine the plan.
7. The Examiner, John Slater BA (Hons), DMS, MRTPI, assessed whether the HPCNP met certain legal requirements known as 'the basic conditions'. In order to meet the basic conditions, the Plan must:
 - (a) have regard to national policies and advice contained in guidance issued by the Secretary of State,
 - (b) contributes to the achievement of sustainable development,
 - (c) be in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
 - (d) not breach, and be otherwise compatible with, EU obligations or human rights legislation including the SEA Directive of 2001/42/EC
 - (e) comply with prescribed conditions and matters in relation to the Order

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8. On 6th February 2018, the Examiner provided his report to WDC, which concluded that, subject to modifications, the Herstmonceux Parish Council Neighbourhood Plan met the basic conditions and other statutory requirements. The Examiner also recommended that, subject to the modifications proposed, the Herstmonceux Parish Council Neighbourhood Plan should proceed to referendum. A schedule of the modifications is set out in Appendix B. The modifications primarily relate to removal of text from policies to supporting text or the non statutory community aspirations and action plan section. Minor changes to policy wording have also been made for clarity together with the inclusion of maps for each employment site identified in Policy 3. A new policy has been created for Herstmonceux Castle Grounds and Gardens.
9. Modifications were made to the following policies;
 - (a) Policy 1 Spatial Planning Principles for the parish. Minor changes have been made to the policy wording.
 - (b) Policy 2: Local Green Space. Herstmonceux Castle Grounds and Gardens has been removed from this policy and a new policy has been created for this space. The map for the football pitch at Lime Cross has been amended.
 - (c) Policy 3: Resisting the loss of employment locations. Individual maps for each employment location have been added to Appendix B of the plan to provide clarity for the policy, minor changes have been made to the wording of the policy and parts have been moved to supporting text.
 - (d) Policy 4: Retail development in the parish. Part of the policy has been moved to supporting text and minor changes have been made to the wording of the policy.
 - (e) Policy 5: Sports, Leisure and Recreation Facilities in Herstmonceux Parish. A minor change to the policy wording has been made and a small section of the policy has been moved to supporting text.
 - (f) Policy 8: Rights of Way in Herstmonceux parish. Sections of the policy have been moved to the non statutory community aspirations and action plan section and supporting text.
 - (g) Policy 11: The design of development in the parish. Minor changes to policy wording has been made.
 - (h) Policy 12: Windfall sites. A minor change to the policy wording has been made.
 - (i) Policy 14: Herstmonceux Community Land Trust. This policy has been moved to the non statutory community aspirations and action plan section.
 - (j) Policy 15: Infrastructure Investment. This policy has been moved to the non statutory community aspirations and action plan section.
10. As part of his role, the Examiner also considered whether the Referendum Area should be extended beyond the Herstmonceux Neighbourhood Area (which corresponds with the parish boundary). The Examiner considered the Neighbourhood Area to be appropriate and recommended that the Herstmonceux Parish Council Neighbourhood Plan should proceed to

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referendum based on the Herstmonceux Neighbourhood Area as previously approved by WDC on 6th February 2013

Consideration of the Examiner's Report

11. Each of the recommendations made in the Examiner's report have been considered, the reasons for them and what implications the modifications will have on the neighbourhood plan. The Decision Statement set out in Appendix B sets out the Council's view on each of the modifications proposed and concludes that the modifications meet the basic conditions set out in paragraph 7 above and that no further modifications are required to be made to the plan to ensure it:
 - Meets the basic conditions;
 - Complies with the Human Rights Act (1998); and
 - Complies with the definition of a Plan or Order and the provisions that can be made by a Plan or Order.
12. Officers have reviewed the Examiner's report and discussed the outcomes with Herstmonceux Parish Council. An updated version of the Plan, incorporating the modifications, will be published in due course as part of the referendum information.
13. The Neighbourhood Planning (General) Regulations 2012 (as amended) state that a local planning authority must publish what action will be taken in response to the recommendations of the Examiner. This is known as a 'Decision Statement'. This statement outlines how a neighbourhood plan will be modified in response to the Examiner's report and the reasoning for such changes. The Decision Statement for the Herstmonceux Parish Council Neighbourhood Plan (attached as Appendix C to this report) confirms that the modifications proposed by the Examiner's report have been accepted. The statement also confirms that the Herstmonceux Parish Council Neighbourhood Plan, as revised, meets the basic conditions and that the Plan can now proceed to referendum.
14. Following this decision, Wealden District Council will publish the following information on its website, and by other means as appropriate:
 - oThe decision made on the Plan or Order and the reasons for that decision (The Decision Statement);
 - oDetails of where and when the Decision Statement can be inspected; and
 - oThe Independent Examiner's report.
15. A written notice of the decision will also be sent to the Town or Parish Council and any person who asked to be notified of the decision.

Impact on EU Obligations/ Strategic Environmental Impact Assessment

16. The Council screened the need of the Herstmonceux Parish Council Neighbourhood Plan to be accompanied by Strategic Environmental Assessment and Habitats Regulations Assessment in May 2016. In June 2016 WDC confirmed that the plan would not require a Strategic Environmental Assessment. However it was recommended that a Sustainability Appraisal was undertaken to ensure the draft plan took into account matters relating to sustainability. This Sustainability Appraisal was produced as part of the documents submitted to the Council in August 2017.
17. In August 2017 the Council undertook a Habitats Regulations Assessment which concluded that the Herstmonceux Parish Council Neighbourhood Plan did not result in a likely significant effect and would not require an Appropriate Assessment. Additional wording was added to policies within the draft plan to ensure that development supported within the Plan meets the requirements of the Habitats Regulations.
18. The Examiner has confirmed in his report that he is satisfied that the HPCNP meets the requirements of the European legislation and the modifications have been subject to a further assessment under the Habitat Regulations (Appendix D). It is considered that the recommended modifications to the HPCNP would not change the previous conclusion that the Plan would not result in a likely significant effect.

The Referendum

19. Subject to the modifications being made, as outlined in the Regulation 18 Decision Statement, it is recommended for the Herstmonceux Parish Council Neighbourhood Plan to proceed to referendum. The referendum enables the local community to vote on whether they support the Plan or not. If there is a positive vote (at least 50% plus 1 of the votes cast) and is compatible with EU law, the Plan will then be adopted ('made'). At this time the plan will become part of the statutory development plan in the neighbourhood area.
20. Not less than 28 days before the date of the referendum the Council must publish an information statement and specified documents, including the revised Herstmonceux Parish Council Neighbourhood Plan. These documents will be made available on the Council's website and for inspection at the Council's offices in Hailsham prior to and during the Referendum as required. The documents will also be available to view at;
 - Herstmonceux Parish Council Office, 4 The Old Forge, Gardner Street, Herstmonceux, BN27 4LG (by arrangement)

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- Herstmonceux Village Information Centre 2/3 The Old Forge, Gardner Street, Herstmonceux, BN27 4LG. (Monday - Friday 10am to 12.30pm, Sat 10am to 12 midday)
- Herstmonceux Village Hall, Hailsham Road, Herstmonceux, BN27 4JX (available in the foyer during open sessions)

Conclusions

21. The Examiner has recommended that the Herstmonceux Parish Council Neighbourhood Plan proceed to referendum, subject to a series of proposed modifications which are required to ensure the Plan meets the basic conditions. Wealden District Council as local planning authority is responsible for deciding what action to take in response to the Examiner's recommendations and could make a decision which differs from that recommended by the Examiner. If the Council were to take a different view to the Examiner it would be necessary to set out the reasons, notify prescribed persons and invite representations.
22. If the modifications are not implemented, it is considered that the Herstmonceux Parish Council Neighbourhood Plan would be at greater risk of legal challenge on the basis it does not meet the legal requirements for Neighbourhood Plans. In light of the Examiner's report it is considered that not taking the plan forward to referendum would be contrary to the Council's statutory duty to support neighbourhood plans.
23. The modifications proposed in the Examiner's report have also been accepted by Herstmonceux Parish Council and it is considered that the HPCNP, as revised, meets the basic conditions. It is therefore recommended for the Plan to now proceed to referendum.
24. Subject to a positive vote at referendum (more than 50% of the votes plus 1 cast are in favour of the Plan), the Plan will be 'made' (adopted) by the council.

Implications

Financial Implications and Risk Management

25. Currently the Ministry of Housing, Communities and Local Government provides funding for Local Planning Authorities's which comprises of a payment of £20,000 per plan. The payment is made on successful completion of the neighbourhood planning examination and the setting of a referendum date. This funding is to help the Council to recoup the costs for the examination and other further steps required for the neighbourhood plan to come into legal force, including the referendum. The referendum will incur appropriate costs in line with the Council's duties and procedures.

Legal Implications

26. Subject to a positive vote at referendum, the HPCNP will form part of the statutory development plan for the District and therefore the implementation of the policies contained within it will impact on planning decisions made in the District, specifically in relation to the Herstmonceux Parish Neighbourhood Area. This report identifies the processes which have to be complied with to adopt the plan.
27. The Examiner's report confirms that the Examiner is satisfied that the HPCNP has regard to the European Convention on Human Rights and complies with the Human Rights Act 1998 and that there is no substantive evidence to the contrary.

Human Resource Implications

28. LPA's have a statutory duty to support the production of Neighbourhood Plans within their administrative area. This support is resourced within the Planning Policy Team and Electoral Services team (in connection with the referendum stage of the process).

Other Implications	Applies?	Other Implications	Applies?
Human Rights	Yes	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	Yes	Access to Information	Yes
Sustainability	Yes	Exempt from publication	No
Risk Management	No		

Director:	Nigel Hannam - Director of Planning Policy and Economic Development
Proper Officer:	Marina Briggins Shaw – Head of Planning Policy and Economic Development
Report Contact Officer:	Emma Garner - Senior Planning Officer
Telephone Number:	01892 602565
e-mail address:	emma.garner@wealden.gov.uk
Appendices:	Appendix A – Final Report from Examiner John Slater dated 6 th February 2018 Appendix B – Schedule of modifications to the Herstmonceux Parish Neighbourhood Plan Appendix C – Decision Statement Appendix D – Habitat Regulation Assessment of Modifications
Background Papers	None