

subReport to: **Executive**
Date: **21st September 2023**
Title: **Totnes Neighbourhood Plan**
Portfolio Area: **Planning – Cllr Thomas**
Wards Affected: **Totnes**
Urgent Decision: **N** Approval and clearance obtained: **N**

Date next steps can be taken: Upon the expiry of the Scrutiny Call-in period (5.00 pm on Monday 2nd October 2023)

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RECOMMENDATIONS:

That the Executive:

- 1. Receives the Examiner’s report for the Totnes Neighbourhood Plan set out at Appendix A.**
- 2. Considers each of the recommendations made by the report and the reasons for them.**
- 3. Agrees that the Totnes Neighbourhood Plan meets the Basic Conditions and is compatible with the Convention Rights, subject to being modified as recommended by the Examiner.**
- 4. Agrees that the Totnes Neighbourhood Plan, as modified as recommended by the Examiner, attached at Appendix B, should proceed to referendum.**
- 5. Does not extend the referendum area beyond the Totnes Neighbourhood Plan Area, as shown on the map at Appendix D.**
- 6. Authorises the Assistant Director Planning to publish the Decision Statement set out at Appendix E.**
- 7. Instructs the Returning Officer to conduct a referendum on the Totnes Parish Neighbourhood Plan.**

1. Executive summary

- 1.1 Neighbourhood Plans are a community right introduced by the Localism Act 2011. They are the responsibility of Parish Councils (or Neighbourhood Forums if established in non-parished areas).
- 1.2 The Totnes Neighbourhood Plan area (the plan area) was designated by the District Council in 2013. It corresponds with the Totnes parish boundary.
- 1.3 In order to comply with the Neighbourhood Planning (General) Regulations 2012, following independent examination of a Neighbourhood Plan and receipt of the examiner's report, the Council must consider the examiner's recommendations. The Council is under no obligation or statutory requirement to make the examiner's recommended modifications or accept the examiner's recommendations. Notwithstanding the examiner's report, the Council must be satisfied that the Neighbourhood Plan meets the basic conditions and is compatible with the European Convention on Human Rights (ECHR) and other European Union Obligations Convention Rights, or would do so if modifications were made to it. The Council, in making its decision, should have regard to the examiner's report and recommendations.
- 1.4 The Localism Act requires that the independent examiner considers whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates. If a recommendation is made to extend the area the independent examiner must make a recommendation as to what the extended area should be.
- 1.5 The Council is required to consider the referendum area, informed by the examiner's conclusions. If the Council decides to extend the referendum area beyond the plan area a map of the area must be published.
- 1.6 Where the Council is satisfied that the Neighbourhood Plan meets the Basic Conditions and recommends the Neighbourhood Plan proceeds to a referendum, under Schedule 4B to the Town and Country Planning Act 1990, the Council must make arrangements for the referendum to take place.
- 1.7 Totnes Town Council has accepted all of the modifications proposed by the examiner and has amended the plan accordingly. The amended plan is attached at Appendix B. Totnes Town Council has written to the Council requesting that the Plan proceeds to a referendum (this letter is attached at Appendix C).
- 1.8 Following a successful referendum a Neighbourhood Plan becomes a significant material consideration in the determination of planning applications, and the Council is required to adopt the Neighbourhood Plan within a defined time period (8 weeks). Once

'made' (adopted) by the local planning authority, the Neighbourhood Plan becomes part of the Development Plan for the plan area and will be used alongside the local plan to determine planning applications.

2. Background

- 2.1 The Totnes Neighbourhood Plan has been prepared by Totnes Town Council in accordance with the relevant legislation and regulations.
- 2.2 The Totnes Neighbourhood Plan Area was designated in March 2013 under the Neighbourhood Planning Regulations 2012. The area covers the administrative boundary of the Parish of Totnes.
- 2.3 Following the necessary community engagement, consultation (six week public consultation at Regulation 14 stage) and background work (including informal SHDC officers' advice), a draft plan was submitted to the Council in accordance with Regulation 15 of the Neighbourhood Planning (General) Regulations 2012.
- 2.4 The Council formally consulted on the draft plan (under Regulation 16) from June to August 2021. The plan then proceeded to examination, which was 'paused' at the request of the Town Council to enable it to undertake consultation on a proposed additional policy C12 relating to the former Dairy Crest site, which it proposed be included in the plan. There was a six week period of consultation in October – November 2021. The examiner held a hearing to consider this issue on 6th September 2022 and as a result, a modification was proposed by the examiner to delete policy C12, see below.
- 2.5 The examiner's final report was produced on 15th May 2023. A copy is attached at Appendix A. It provides an independent examination of the Neighbourhood Plan and its process of preparation. Council officers provided feed-back and fact checking to the examiner on a draft report. Officer comments were taken into consideration and where required points of fact were amended.
- 2.6 The examiner's report (Appendix A) sets out all of the recommended modifications to the plan. It has been necessary for the examiner to make modifications to a number of policies. These include modifications where policies have sought to introduce controls outside of the scope of the planning system, and where existing policy already sets out the scope of control. Where appropriate, modification of the supporting text in the plan is necessary to align with the modified policies. The examiner's comments on the policies are shown in blue text in the report, and the policies as recommended to be modified and any new text to be inserted are shown clearly in red text.

- 2.7 The examiner's report concludes that the Totnes Neighbourhood Plan meets the Basic Conditions and the other statutory requirements and processes, and, subject to the recommended modifications, can proceed to referendum.
- 2.8 The Basic Conditions are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. A neighbourhood plan meets the Basic Conditions if:
- a. Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
 - b. the making of the plan contributes to the achievement of sustainable development;
 - c. the making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority;
 - d. the making of the plan does not breach, and is otherwise compatible with, retained EU obligations, and;
 - e. prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the plan.
- 2.9 Notwithstanding the examiner's report, the Council must be satisfied that the Neighbourhood Plan meets the Basic Conditions and is compatible with the European Convention on Human Rights (ECHR) and other European Union Obligations, or would do so if modifications were made to it.
- 2.10 The European Convention on Human Rights (ECHR) and other European Union Obligations are considered as the Neighbourhood Plan is required to take cognisance of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC. The Council carried out a Strategic Environmental Assessment (SEA) screening exercise in consultation with relevant statutory bodies at Regulation 14 stage. It was the Council's opinion that a full SEA was not required for the plan as its provisions did not undermine environmental, habitats or species considerations. The examiner was satisfied that the conclusion is still appropriate.
- 2.11 Council officers have considered the Neighbourhood Plan and examiner's report with regard to the Basic Conditions, including conformity with the development plan and national policy. Officers accept the examiner's reasoning for the modifications, agree that the Basic Conditions have been satisfied, and confirm that the plan can proceed to referendum. Totnes Town Council considered the examiner's report at a meeting of the full Council on 5th June 2023 and resolved to accept the examiner's proposed modifications in their entirety and to support the plan going forward to referendum. A letter from Totnes Town Council is attached at Appendix C.

- 2.12 The examiner considered the plan area and the area to which the referendum should apply. The examiner was satisfied that the referendum area should be the same as the plan area, should the plan go to referendum. Officers recommend that the referendum area be the same as the plan area. A map showing the Neighbourhood Plan Area is attached at Appendix D.
- 2.13 If the Executive is satisfied that the Neighbourhood Plan meets the Basic Conditions, the European Convention on Human Rights, and other European Union Obligations the Neighbourhood Plan can proceed to referendum under Schedule 4B to the Town and Country Planning Act 1990. If the recommendation to proceed to referendum is agreed, the Council must make the arrangements for the referendum. This includes the publication of a Decision Statement (attached at Appendix E).

3. Outcomes/outputs

- 3.1 If the recommendation to proceed to a referendum is approved, officers recommend that the referendum area be the same as the neighbourhood plan area. The referendum needs to be held within 56 working days of a Decision Statement being published by the Council. Notice of the referendum would need to be advertised 28 days prior to the referendum being held.
- 3.2 Following a successful referendum, the Council is required to adopt the Neighbourhood Plan within a defined time period (8 weeks). Once 'made' (adopted) by the local planning authority, the Neighbourhood Plan becomes part of the Development Plan for the area and will be used alongside the local plan to determine planning applications.
- 3.3 A successful outcome for this Neighbourhood Plan will provide encouragement to the other parishes that are currently working on preparing a Neighbourhood Plan.

4. Options available and consideration of risk

- 4.1 Given the view of council officers and their recommendation that the neighbourhood plan meets the relevant conditions, it is considered that the Neighbourhood Plan should continue through the process as proposed.
- 4.2 If the Executive does not agree, then the options are to propose such modifications as the Executive considers would enable the plan as modified to meet the relevant conditions and therefore still proceed to referendum; or to agree to the plan not being made.
- 4.3 In terms of Risk, this relates to the potential for challenge through a Judicial Review to the Executive's decision that the plan does or

does not meet the Basic Conditions or is compatible with the European Convention on Human Rights.

5. Proposed Way Forward

- 5.1 It is recommended that the Executive approves the Totnes Neighbourhood Plan to proceed to referendum.

6. Implications

Implications	Relevant to proposals Y/N	Details are set out in this report.
Legal/Governance	Y	The decision to proceed to referendum for a Neighbourhood Plan is the responsibility of the council and/or its Executive. The Totnes Neighbourhood Plan has followed the procedure in the Neighbourhood Planning (General) Regulations 2012 and a referendum can be held in accordance with the Neighbourhood Planning (Referendums) Regulations 2012. Following a referendum the Council is required to 'make' the Neighbourhood Plan and must do so within 8 weeks of the date of the referendum.
Financial implications to include reference to value for money	N	There are no financial implications. Neighbourhood Plans are supported through the Government grants program. There is an internal cost recovery system for referendums.
Risk	Y	There is a risk of legal challenge on the Neighbourhood Plan referendum process.
Supporting Corporate Strategy	Y	The Council's role in the Neighbourhood Plan process is a statutory duty. Neighbourhood Plans assist in delivering key themes in the Better Lives for All 2021, including; Adapting & mitigating climate change and increasing biodiversity; Protecting, conserving and enhancing the built and natural environment; Stimulating a thriving economy.
Climate Change - Carbon / Biodiversity Impact	Y	The Totnes Neighbourhood Plan aligns with the Joint Local Plan and contains policies aimed at mitigating the effects of climate change and impacts upon biodiversity.
Comprehensive Impact Assessment Implications		

Equality and Diversity	Y	The Neighbourhood Plan has assessed Equality and Diversity implications as part of its background evidence.
Safeguarding	N	None.
Community Safety, Crime and Disorder	N	No direct implications.
Health, Safety and Wellbeing	Y	Positive outcomes are anticipated from the making of the Neighbourhood Plan.
Other implications	N	None.

Supporting Information

Appendices:

- Appendix A: Totnes Neighbourhood Plan examiner's report
- Appendix B: Totnes Neighbourhood Plan referendum version
- Appendix C: Totnes Town Council letter to SHDC
- Appendix D: Map of Totnes Neighbourhood Plan Area
- Appendix E: Decision Statement

Background Papers:

Background documents to the Totnes Neighbourhood Plan are on line at:-
<https://www.neighbourhoodplanning.swdevon.gov.uk/totnes>