

South Milton Neighbourhood Plan 2019- 2034

Submission Version

A Report to South Hams District Council on the Examination of the Proposed Modifications to the made South Milton Neighbourhood Plan

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Contents

	Page
Executive Summary	3
Introduction	4
The Examiner's Role	5
The Examination Process	6
The Consultation Process	7
Regulation 16 Consultation	7
The Basic Conditions	7
Compliance with the Development Plan	8
Compliance with European and Human Rights Legislation	8
The Proposed Modifications	9
Summary	12

Executive Summary

My examination has concluded that the modifications to the South Milton Neighbourhood Plan should be made, subject to the Plan being amended in line with my recommended amendments, which are required to ensure the plan meets the basic conditions. The only required changes are –

- Policy H1 dealing with the housing allocation should refer to the need for a planning obligation rather than a planning condition to ensure compliance with Policy H5.
- Policy H5 should refer to “planning obligation” not “Section 106 Agreement”

The modified plan does not need to be the subject of a new referendum.

Introduction

1. Neighbourhood planning is a process, introduced by the Localism Act 2011, which allows local communities to create the policies which will shape the places where they live and work. The Neighbourhood Plan provides the community with the opportunity to allocate land for particular purposes and to prepare the policies which will be used in the determination of planning applications in their area. Once a neighbourhood plan is made, it will form part of the statutory development plan alongside the adopted Plymouth and South West Devon Joint Local Plan 2014-2034. Decision makers are required to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
2. In September 2019, the South Milton Neighbourhood Plan 2019-2034 was made by South Hams District Council, following a positive vote at a referendum.
3. In January 2022, the Parish Council carried out a new survey of holiday homes in the parish. The results of that survey led to the Parish Council to the conclusion that some modifications are required to the housing policies in the neighbourhood plan, so as to be able to protect new housing from being used as second homes or holiday lets.
4. The Neighbourhood Planning Act 2017 introduced the ability for policies, in a made neighbourhood plan, to be modified. Amendments to the 2012 Neighbourhood Planning Regulations, were introduced to cover such modifications, by the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2017.
5. This report is the outcome of my examination of the proposed modifications to the made South Milton Neighbourhood Plan. Unlike the original plan, the legislation requires me to initially determine whether the changes contained in the modification proposals are so significant as to change the nature of the plan and would therefore need to be subject to a referendum.
6. I came to an early conclusion, based on my consideration of the scope of the proposed modifications, that in the context of the neighbourhood plan as a whole and having made a site visit, the proposed modifications are not so significant or substantial as to change the nature of the plan. I set out this conclusion and my reasons in a document sent to the Parish Council and the District Council, entitled Initial Comments of the Independent Examiner, dated 18th August 2023. The consequence of that conclusion is that, if I conclude that the modifications can be made, either with or without any recommended changes, then the modifications can be made without the need for a referendum.

The Examiner's Role

7. I was initially approached by South Hams District Council, with the agreement of South Milton Parish Council, in September 2022, to conduct this examination. However, following an initial review, I suggested to the District Council that the proposal was not in a position to be submitted for examination. Further work was undertaken and a Regulation 16 consultation was carried out and I was then instructed to examine the plan, in early August 2023, upon the completion of that consultation.
8. In order for me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 45 years' experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant and director of John Slater Planning Ltd. I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I am independent of South Hams District Council and South Milton Parish Council and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.
9. Having reached the conclusion that the changes are not so significant or substantial to change the nature of the plan, I am required to make one of three possible recommendations:
 - That the modifications to the plan should be made by the local planning authority.
 - That the modifications to the plan should be made, if modified in line with any changes which I have specified in this report.
 - That the local planning authority should not make the modifications to the made plan.
10. I am required to give reasons for my recommendations and also provide a summary of my main conclusions.
11. My recommendations must only be necessary to ensure that the modifications to the neighbourhood plan meet the basic conditions, which I will set out in a later section of this report, and also those changes necessary to ensure the plan is compatible with Convention rights, or for the correction of errors.
12. In examining the modifications, the Independent Examiner is also expected to address the following questions:
 - Do the policies as introduced or modified relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
 - Does the Neighbourhood Plan still meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 - namely

that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as “excluded development” and also that it must not cover more than one Neighbourhood Plan area.

12. I am able to confirm that the modified Plan only relates to the development and use of land, covering the area designated by South Hams District Council, for the South Milton Neighbourhood Plan, on 13th February 2015.
13. I can also confirm that it does not change the period over which the plan has effect, namely the period from 2019 up to 2034. I can confirm that the modified plan does not cover any “excluded development”.
14. There are no other neighbourhood plans covering the area covered by the neighbourhood area designation.
15. I am satisfied that South Milton Parish Council as a parish council can act as a qualifying body under the terms of the legislation.

The Examination Process

16. At the start of the examination process, I needed to be satisfied that all the legal requirements, particularly those steps specifically required for modifications to already made plans, have been properly carried out. In this respect, I am now satisfied the Parish Council indicated, in March 2022, at the pre submission consultation stage that, in its view, the proposed modifications would not change the nature of the neighbourhood plan.
17. The submission plan clearly indicates what are the proposed modifications, both in terms of the text which is to be added to the plan document and also the parts that are proposed for deletion. It is also a requirement that the Regulation 15 submission is accompanied by the requisite submission documents; namely a basic condition statement, which in this case is a revised version of the original statement, a consultation statement and a screening opinion as to whether the modifications required assessment under both the SEA Regulations and the Habitat Regulations. Another requirement is that, following the submission, the District Council must carry out a Regulation 16 consultation on the proposed modifications and it must itself issue a statement which sets out its view as to whether the changes are so substantial as to change the nature of the plan. That opinion was issued in July 2023.
18. Upon receipt of the submission documents, I undertook a site visit to South Milton. Whilst I am familiar with this area of the South Ham’s coastline, having examined the adjoining Thurlstone Neighbourhood Plan, the Bigbury on Sea Neighbourhood Plan and Salcombe Neighbourhood Plan, I had never previously had cause to visit the village of South Milton. That visit was made on Thursday 17th August 2023, when I was able to experience the parish during the peak holiday period. I drove through the village itself, but also explored, along the narrow lanes, some of the outer areas of the parish. I was able to take onboard a walk along the beach at South Milton Sands and enjoyed a coffee and cake at The Beach Hut Café.

19. Upon my return to East Devon, I conveyed my conclusion in the document entitled Initial Comments of the Independent Examiner, dated 18th August 2023, that the proposed modifications are not so significant as to change the nature of the plan and hence, if I were to recommend the modifications, they could be made without the need for a referendum.
20. In that document, I also confirmed that I would be carrying out this examination without the need to hold a public hearing.

The Consultation Process

21. Once the Parish Council had decided, at the meeting held on 24th January 2022, to propose the insertion of a new neighbourhood plan policy requiring a principal residency requirement, a consultation document was prepared setting out the background to the changes. The document was the subject of a six-week consultation which ran from 7th March 2022 until 18th April 2022. This generated 25 responses including three from statutory consultees which happened to be neighbouring parish councils. The responses to all consultations are set out in Annex 3 of the Consultation Statement. The proposed responses were endorsed by the Parish Council at its meeting held on 25th April 2022.
22. I am satisfied that the extent of the consultation on the proposed modifications was a proportionate exercise and views of residents and other stakeholders was actively sought.

Regulation 16 Consultation

23. I have had regard, in carrying out this examination, to all the comments made during the period of final consultation which took place over a 6-week period, between 16th June 2023 and 28th July 2023. This consultation was organised by South Hams District Council, prior to the plan being passed to me for its examination. That stage is known as the Regulation 16 Consultation.
24. In total, 15 responses were received; 4 from neighbouring parish councils and 5 comments from local residents – all supported the proposed modifications. Other responses were received from Natural England, Historic England, National Highways, Devon Flood and Coastal Risk Manager, The Coal Authority and South Hams District Council.

The Basic Conditions

25. A Neighbourhood Plan examination process is different to a Local Plan examination, in that the test is not one of “soundness”. The Neighbourhood Plan is tested against what is known as the Basic Conditions which are set down in legislation. It will be against these criteria that my examination must focus.

26. The five questions, which seek to establish that the Neighbourhood Plan meets the basic conditions test, are: -

- Is it appropriate to make the Plan having regard to the national policies and advice contained in the guidance issued by the Secretary of State?
- Will the making of the Plan contribute to the achievement of sustainable development?
- Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?
- Will the making of the Plan breach or be otherwise incompatible with EU obligations or human rights legislation?
- Will the making of the Plan breach the requirements of Regulation 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017?

Compliance with the Development Plan

27. For the purpose of the basic conditions, the relevant strategic policies are found in the Plymouth and South West Devon Joint Local Plan 2014-2034 which was adopted in March 2019.

28. South Milton is not identified as a sustainable village by Policy TTV25. Policy TTV 27 addresses meeting local housing needs in rural areas and does permit under limited circumstances, new homes to meet a proven need for affordable housing for local people. I consider the imposition of a principal residency requirement would support the need to ensure new housing is actually used to meet a local housing need.

29. There are no specific strategic policies dealing with the issue of restrictions on second homes or holiday accommodation.

30. My overall conclusion is that the proposed modifications are still in general conformity with the strategic policies in the adopted local plan.

Compliance with European and Human Rights Legislation

31. The District Council asked its consultants AECOM for advice on whether the proposed modifications generated any implications under the Habitat Regulations i.e. would it affect European protected sites or whether it would have significant environmental effects requiring an SEA. Their advice to South Hams was there were no implications and the District Council has confirmed to me that it shared that view that an assessment under the SEA Regulation or an Appropriate Assessment would not be required based on the proposed modifications to the housing policies. I concur with that conclusion.

32. One possible effect of the new Policy 5 is that it could curtail rights, as set out in the Protocol to the European Convention of Human Rights, under the heading of the Protection of Property. This states that “persons are entitled to the peaceful enjoyment of their possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”.
33. In this case I am very satisfied that the public interest in securing that new homes are available for occupation as their principal residence outweighs the rights of say second home owners to enjoy their property for example as holiday accommodation and as such, I am satisfied that the modifications are consistent with the European Convention and there is no conflict with European legislation.

The Proposed Modifications

34. The main proposed modification is the insertion of a new policy, Policy 5 – entitled “Principal Residency Requirement”. This places a presumption that residential proposals, other than replacement dwellings, will only be permitted if it is subject to a Section 106 Agreement to ensure occupancy as a *principal residence*. This term is defined as the resident’s sole or main residence, where the resident spends the majority of the time when not working away from home. The policy then gives examples of possible ways of showing proof of residence, namely inclusion on the electoral register or registration for local schools or local healthcare. It then goes on to say new housing, apart from a one for one replacement, will not be supported in the absence of such a requirement. The final element of the policy then deals with proposals that increase the number of dwellings on a particular site.
35. South Milton Parish Council produced a document which provides the evidence to support this policy. Secretary of State advice is that neighbourhood plan policy must be supported by evidence.
36. It demonstrates that there has been an increase in the number of second homes in the parish, between a survey undertaken in 2015 and the survey carried out in January 2022. The survey showed that there was an increase of 8 new second homes. This has led to an increase in the proportion of second homes, rising from 29% as shown in the 2011 census to the most up-to-date figures showing that 34% of the housing stock comprises second homes. This is a significant number and it reflects a wider trend that has seen in recent years numbers increase, particularly in coastal areas in the South West. There are many neighbourhood plans that have sought to adopt principal residency requirements, where it has been demonstrated that the number of local homes being lost to second homes affects the ongoing vitality of the community, particularly out of the main holiday season, with empty properties. Similarly, some communities have pointed to evidence that second homes have had an adverse impact on the local housing market making it difficult for local people to be able to find homes in their locality.
37. From my site visit, I was able to satisfy myself that this is a particularly scenic area, which will inevitably be attractive for second homes/holiday lets. With the

percentage of second homes being already high, at over 30% of all properties, I consider that the scale of second homes/ holiday lets justifies placing a restriction on the occupation of new dwellings.

38. There are limits to the reach of this policy, as the principal residency requirements can only be applied in circumstances where new properties are built within the parish. The policy cannot impose any controls over existing properties being used as second homes. The Parish Council has not submitted any evidence that recently built new properties have been occupied as second homes or holiday accommodation.
39. The drafting of the policy refers to the imposition of the principal residency restrictions by way of a Section 106 Agreement. I will be proposing a modest amendment, to refer to “planning obligations”, which also covers unilateral obligations, which impose the same restrictions, but on a unilateral basis. That document imposes the necessary covenants but can only be offered by the person with an interest in the land. This is an alternative to a joint agreement between the local planning authority and the applicant / landowner which would be a Section 106 agreement. They are used, for example, where a planning appeal has been submitted. The term ‘planning obligation’ covers both Section 106 agreements and unilateral undertakings and effectively they have the same effect, but can reduce the legal costs to the applicant compared to if the document is prepared by a district council.
40. The policy is explicit that the route to imposing the restriction is through a Section 106 rather than through a planning condition. The Secretary of State’s policy, as set out in paragraph 55 of the NPPF is that “Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.”
41. I therefore do need to address the issue of whether planning obligations could be a better way of achieving the desired restrictions rather than by way of a planning condition. One of the basic condition tests is whether the plan has had regard to national policy and advice.
42. Having undertaken some research on this matter it is clear that different neighbourhood plans deal with the principal residency requirements in a variety of ways, some allow it to be through a planning obligation or via a planning condition or indeed instances where both routes are explicitly covered.
43. The Parish Council’s proposals set out a clear preference for the use of a Section 106 agreement, or as I currently propose, a planning obligation. The advantages from the Parish Council perspective, of pursuing the restriction by this route, is that there is no timescale in terms of taking enforcement action against non-compliance. In instances where there is a breach of a planning condition, immunity from enforcement action can be sought if the breach has been continuous for 10 years. That would not apply to the breach of covenant imposed by an obligation. There are also differences in terms of appeal provisions as an applicant could appeal against the imposition of a planning condition. I do not necessarily see that

there is any difficulty in identifying a breach, whether it be a condition or a covenant.

44. I am conscious of the neighbouring plans that I examined at Thurlestone and Bigbury on Sea, both referred to the use of planning obligations and not a planning condition. The current version of the Salcombe Neighbourhood Plan noted that that requirement could either be achieved by Section 106 agreement, unilateral obligation or planning condition. I do understand that there is a modification under examination at Salcombe, that would expect a planning obligation rather than planning condition.
45. It is also relevant to my deliberations on this question of the plan departing from national policy, the fact that I have received no adverse comments made opposing the requirement for a planning obligation, rather than a planning condition and I note that there have been no changes in circumstances in advice since the examinations of the neighbouring plans. No comments have been made on this issue by the local planning authority, not unsurprisingly as it has made neighbourhood plans, where every option for imposing this requirement has been advocated.
46. I place particular weight on the fact that any person with an interest in the land has to explicitly agree to the imposition of the proposed covenant restricting occupation – rather than it being imposed as a planning condition by the planning authority upon the grant of planning permission. I therefore believe that the community's aspirations to pursue these matters via a planning obligation should be supported, because it will provide a more robust position to ensure that any new housing is used as someone's main home, rather than being a holiday home/ tourist accommodation.
47. In reaching this conclusion, there are implications for some of the minor consequential policy changes. The third bullet point of the second element of Policy H1 currently states that "*a planning condition* shall be included to ensure the open market and self-build houses are occupied as "sole" or principal residences as set out in Policy H5". However, Policy H5 does not set out a requirement for these matters to be dealt with by planning condition. In order that the respective policies are consistent, I will be proposing an amendment to record that a planning obligation will be expected to be entered into to ensure the residency requirements as set out in the Policy H5 are met.
48. I have no concerns regarding the other consequential amendments proposed to Policy H4, which is a matter of consistency.
49. My overall conclusion is that South Milton Parish Council has justified the requirement for the introduction of a specific principal residency requirement and that it can be sought through a planning obligation, notwithstanding the minor departure from the Secretary of State's policy on the use of obligations v planning conditions. I do not consider this would raise a material conflict with the basic conditions as it is essentially a question of the route to achieve the same objective. Accordingly, I am satisfied that the plan has had regard to national policy and that the modified plan will continue to deliver sustainable development, as the principal

residency requirement will ensure that the limited new housing in this area will be available to meet housing need for this and future generations.

Recommendations

Replace the third element of Policy H1 (2) with: “A planning obligation will be expected to be submitted or completed which will ensure the open market and self-build houses are occupied as “sole” or principal residences as set out in Policy H5”

In Policy H5, replace “Section 106 agreement” with “planning obligation”.

Summary

50. I congratulate South Milton Parish Council for taking the initiative and monitoring the increase in second homes in the parish and responding to community concerns that new homes are required to be actually occupied as somebody's main home. This has been helped by supplying evidence justifying the new policy rather than relying on anecdotal statements and assertions.
51. To conclude, I can confirm that the proposed modifications, if amended in line with my recommendations, meet all the statutory requirements including the basic conditions test and that it is appropriate for South Hams District Council to make the modified South Milton Neighbourhood Plan as proposed, subject to my recommendations.

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