

Report of Head of Planning and Local Development

NEIGHBOURHOOD PLANNING PROCESS

1 Purpose of report

To seek a number of delegations to ensure the smooth operation of some detailed aspects of the neighbourhood planning process.

2 Executive summary

Neighbourhood Planning was introduced by the Localism Act 2011. The report sets out the responsibilities that fall to the council and seeks approval for a scheme of delegation to process a number of matters of detail in an efficient and effective manner.

3 Appendices

None

4 Proposed action:

The committee is invited to **RECOMMEND** to Council that:

4.1 The following matters of detail related to Neighbourhood Planning are delegated to the Head of Planning and Local Development:

- a) The determination of Neighbourhood Areas applications unless there are objections and the Neighbourhood Area is not the same as the parish boundary in a parished area, when it should be determined at Development Committee.
- b) The determination of Neighbourhood Forum applications.
- c) The carrying out of the legal check.
- d) The decision to proceed to referendum where the decision accords with the examiner's, if the decision differs from that of the examiner it should be made at Development Committee.
- e) The setting of the referendum date in consultation with the Head of Resources.

4.2 The 'Scheme of Delegation to Officers' is amended accordingly.

5 Background

- 5.1 Neighbourhood planning was introduced by the Localism Act 2011. There are two main mechanisms for neighbourhood planning – Neighbourhood Plans and Neighbourhood Development Orders.
- 5.2 A **Neighbourhood Plan** is a way of enabling local communities to influence the planning of the area they live and work in. If a plan is prepared and agreed by the community in a referendum it will become part of the development plan for the area and be used in the determination of planning applications.
- 5.3 A **Neighbourhood Development Order** can grant planning permission for certain types of development without the need to submit a planning application to the borough council.
- 5.4 The Regulations for Neighbourhood Planning came into force on 6 April 2012. The Localism Act, together with these regulations, places various duties and responsibilities upon the borough council.
- 5.5 It is recognised that not all areas will want to undertake neighbourhood planning and, therefore, there is not a statutory duty to prepare Neighbourhood Plans or Orders, but there is a right to do so.
- 5.6 The Development Committee of 17 April 2012 considered the responsibilities placed upon the council and recommended delegations in respect of Neighbourhood Area and Neighbourhood Forum applications, and the legal check.
- 5.7 The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016 came in to force on 1 October 2016. These seek to make the process more efficient and include tighter timescales for the borough council to meet. This report therefore seeks approval for an updated scheme of delegation to address these changes.

6 Discussion

- 6.1 The process of neighbourhood planning must be instigated and led by the community. If a community decides to prepare a Neighbourhood Plan or Order then the Localism Act and the Neighbourhood Planning Regulations place various duties and responsibilities upon the borough council. The responsibilities of the borough council can be summarised as:
- Determining applications to designate a Neighbourhood Area.
 - Determining applications to designate a Neighbourhood Forum.
 - Checking that the plan complies with all legal requirements.
 - Publicising the plan and receiving representations.
 - Organising and paying for the examination including appointing an examiner.

- Organising and paying for the referendum.
- Providing technical advice and support to qualifying bodies.

Designation of a Neighbourhood Area

- 6.2 The body preparing the plan must submit an application to the borough council to determine the area that the plan will relate to. The body must submit: a map which identifies the area; a statement explaining why the area is appropriate and a statement that the organisation or body making the application is a 'relevant body' for the purpose of the Localism Act.
- 6.3 The new Regulations set out that, where it is a parish council applying for the whole of the parish to be designated, where a parish is enlarging an existing neighbourhood area to encompass the whole of the parish or in all other cases where the application has not been determined within the statutory 8 week period the Local Planning Authority (LPA) must designate the area with no discretion to amend. The implication of this for Parish Councils is that the current requirement of 4 weeks publicity and the need to make the decision within eight weeks would no longer apply with the LPA having to approve the application once they consider the application to be valid and complete.
- 6.4 It is proposed that the designation of Neighbourhood Areas is delegated to the Head of Planning and Local Development unless there are objections and the Neighbourhood Area is not the same as the parish boundary in a parished area, when it should be considered at Development Committee.

Designation of a Neighbourhood Forum

- 6.5 In areas where there are parish councils, the parish councils are the relevant body for preparing plans. In non-parished areas – such as the town of Wellingborough community groups can form a neighbourhood forum to prepare plans. The body will need to submit an application to the borough council which must include: the name of the proposed forum; a copy of the written constitution; the name and a map of the neighbourhood area; the contact details of at least one member to be made public and a statement which explains how the forum meets the conditions of the Localism Act.
- 6.6 Forum applications must now be determined within 13 weeks (20 weeks where cross boundary). Therefore it is proposed that the designation of a Neighbourhood Forum is delegated to the Head of Planning and Local Development.

Legal requirements check

- 6.7 When the body submits the plan to the borough council, the council is required to check that the plan and all accompanying documents comply with legal requirements. These require the plan to be in accordance with national policies and the strategic policies in the development plan and that they do not breach any EU obligations.
- 6.8 It is proposed that the carrying out of the legal check is delegated to the Head of Planning and Local Development.

Publicising the plan and receiving representations

6.9 As soon as possible after receiving the plan the borough council is required to publicise details of the plan on our website. The plan must then be made available for a minimum of 6 weeks for consultation. Any representations will be sent to the borough council.

Examination

6.10 The borough council is responsible for organising and paying for the examination. The council must appoint an independent person to carry out the examination with the agreement of the body preparing the plan.

6.11 The person appointed to undertake the examination is responsible for how the examination will be carried out. It is expected that this will normally be through consideration of written responses, but the examiner could hold hearings if they felt this was necessary. The examiner will consider whether the plan meets the basic conditions set out in the Act and if this is the case recommend the plan proceeds to a referendum.

6.12 The borough council now has to make a decision as to whether or not they believe the draft neighbourhood plan (or Order) meets the legal tests (basic conditions) and whether or not a referendum should be held within five weeks of receiving the examiner's report. Exceptions to this are where the LPA propose to make a decision which differs from that of the examiner (see 6.13 below) or where additional time has been agreed between the borough council and the Qualifying Body.

6.13 Where the borough council's proposed decision differs from that of an examiner additional consultation must be undertaken on this for a period of six weeks with the final decision being issued within five weeks of the end of said consultation period. Those that must be consulted include the neighbourhood planning group and anyone who made representations during the Regulation 16 consultation as well as the Environment Agency, Natural England and Historic England (statutory consultees). The borough council also has the discretion to widen the consultation to additional parties.

6.14 It is therefore proposed that the decision to proceed to referendum is delegated to the Head of Planning and Local Development, where the decision accords with the examiner's, and to Development Committee if the decision differs from that of the examiner.

Referendum

6.15 The referendum gives the community the final say on whether a plan should come into force in their area. The borough council must make all the necessary arrangements and pay for the referendum. Separate Regulations apply to referendums and are the subject of review. These Regulations specify the question to be asked. The referendum can be combined with another election if that is taking place within a specified period.

- 6.16 If a majority vote in favour of the plan in the referendum then the borough council must bring it in to force and it will become part of the formal development plan for the area.

Setting the referendum date

- 6.17 LPAs must hold the referendum within 56 working days of the date that a decision to hold one has been made (84 working days when relating to a Business Neighbourhood Area, the neighbourhood area falls within more than one LPA or where the LPA are not the “principle authority” responsible for arranging the referendum). There are three exceptions to this provision. The first is where the referendum can be combined with another poll that is due to be held within three months of the end of the 56/84 working day period. The second exception is where there are unresolved legal challenges to the LPA’s decision to hold a referendum and finally where the LPA and the Qualifying Body agree a different timetable.
- 6.18 It is therefore proposed that the setting of the referendum date is delated to the Head of Resources.

Making the Neighbourhood Plan

- 6.19 The borough council now have to ‘Make’ (bring into legal force) the plan within 8 weeks of the result of the referendum unless there are unresolved legal challenges.
- 6.20 It is therefore proposed that the making of the plan is confirmed at Full Council, however as this has to be within 8 weeks of the referendum, there may not always be time to go to Development Committee first. In these circumstances the Head of Planning and Local Development will consult with the Chair and Vice Chair of Development Committee.

7 Legal powers

Localism Act 2011 (Part 6, Chapter 3, Sections 116-121 and Schedule 9 and 10)

The Neighbourhood Planning (General) Regulations 2012

The Neighbourhood Planning (General) (Amendment) Regulations 2015

The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016

8 Financial and value for money implications

The cost of the current neighbourhood plan work has been covered by the funding provided by the Department of Communities and Local Government (DCLG).

9 Risk analysis

Nature of risk	Consequences if realised	Likelihood of occurrence	Control measures
Not making appropriate changes to the Constitution.	Decisions made could be legally challenged.	Medium	Make appropriate amendments to the Constitution.

10 Implications for resources

There are employee resource implications in planning policy and regeneration, legal, housing and democratic services to deal with neighbourhood plans. These are being addressed within each of these areas

11 Implications for stronger and safer communities

Neighbourhood planning is intended to improve community cohesion.

12 Implications for equalities

As part of the process of preparing neighbourhood plans they need to ensure they are not discriminatory.

13 Author and contact officer

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14 Consultees

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Bridget Gamble, Head of Resources
Liz Elliot, Head of Finances
Victoria Phillipson, Principal Planning Policy and Regeneration Manager
Sue Lyons, District Law
Tracey Cave, Service Accountant

15 Background papers

None