



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

to
COUNCIL
31 MARCH 2022

GREAT TOTHAM NEIGHBOURHOOD PLAN - DECISION ON EXAMINER'S REPORT

1. PURPOSE OF THE REPORT

- 1.1 To inform Members of and seek their approval for the recommended modifications made in the Examiner's Report (at **APPENDIX 1**) for the Great Totham Neighbourhood Plan; and to seek Member's approval for the Neighbourhood Plan to proceed to Referendum.

2. RECOMMENDATIONS

- (i) that the Examiner's modifications be agreed and that subject to these modifications the Neighbourhood Plan is determined to meet the Basic Conditions and other legislative requirements;
- (ii) that the draft Decision Statement attached at **APPENDIX 2** be approved to be published on the Council's website; and
- (iii) that the Great Totham Neighbourhood Plan be agreed as modified (at **APPENDIX 3**) enabling it to proceed to a local Referendum based on the boundary of Great Totham Neighbourhood Area as recommended by the Examiner.

3. NEIGHBOURHOOD PLAN INTRODUCTION

- 3.1 Neighbourhood planning is part of the Government's initiative to empower local communities to take forward planning proposals at a local level¹. Neighbourhood Plans, once made, form part of the Development Plan. Following an update to Neighbourhood Planning guidance in response to the Covid-19 pandemic, a Neighbourhood Plan will now carry significant weight in decision making when it is approved to proceed to Referendum.
- 3.2 Neighbourhood planning is led by a town or parish council or neighbourhood forum, in this case the preparation of the Neighbourhood Plan has been undertaken by Great Totham Parish Council.
- 3.3 The production of a Neighbourhood Plan must follow a regulatory process summarised below:

¹ Section 116 of the Localism Act

Key Stage	Action	Date
1. Neighbourhood Area designation	Great Totham Neighbourhood Plan Area designation requested by Great Totham Parish Council and approved by Maldon District Council. This sets the area the Neighbourhood Plan will apply to.	7 November 2016
2. Pre-Submission Consultation	Regulation 14 consultation organised by the Parish Council (minimum six weeks).	3 Dec 2020- 31 Jan 2021
3. Submission	Great Totham Parish Council (LUPC) submitted the Neighbourhood Plan to Maldon District Council (MDC)	20 May 2021
4. Publication	Regulation 16 consultation organised by MDC (6 weeks)	24 September – 5 November 2021
5. Examination	Independent Examiner reviews the Plan against the statutory Basic Conditions. The Examiner either recommends that a Neighbourhood plan does not proceed to Referendum, or can proceed Referendum, with or without modifications, and recommends the extent of the area the Referendum applies to.	4 Jan-15 March 2022
6. Plan Proposal Decision	Maldon District Council considers the Examiner's report, including the recommended modifications, and if satisfied with the Plan proposal, agrees for it to proceed to Referendum.	31 March 2022
7. Referendum	Organised and funded by Maldon District Council. Where 50% or more of those voting are in favour of the Neighbourhood Plan, it comes into force, and must be 'made' by the Council and it forms part of the statutory Development Plan.	Date To Be Confirmed 2022

4. EXAMINATION

- 4.1 Following the Regulation 16 consultation, an Independent Examiner was appointed by Maldon District Council, with consent of the Parish Council, to carry out the examination of the Neighbourhood Plan. The Examiner, Andrew Ashcroft BA (Hons) MA, DMS, MRTPI, examined the Plan by written representations, and undertook an unaccompanied site visit of the Neighbourhood Plan area.
- 4.2 The role of the Examiner is to assess whether the Neighbourhood Plan meets certain legal requirements:
- the policies relate to the development and use of land for a designated neighbourhood plan area; and
 - the Plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one neighbourhood area²; and

² Requirements under Section 38B of the Planning and Compulsory Purchase Act 2004

- the Plan has been prepared for an area that has been designated³ and has been developed and submitted for examination by a qualifying body, in this case by Great Totham Parish Council.
- 4.3 The Examiner must consider whether the submitted Plan meets the Basic Conditions⁴. To comply with the basic conditions, the Plan must:
- have regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan;
 - The making of the neighbourhood plan contributes to the achievement of sustainable development;
 - The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area;
 - The making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union obligations and the European Convention on Human Rights (ECHR);
 - consider the additional condition set out under Regulation 32 of the Neighbourhood Planning (General) Regulations: the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site either alone or in combination with other plans or projects.
- 4.4 The Basic Conditions that refer to EU obligations have not been updated. The European Union (Withdrawal) Act 2018 converts much of EU law into domestic law. The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 make changes to the statutory instruments that transpose the Habitats and Wild Bird Directives into UK law, so that they continue to work following the UK's exit from the EU. The intention is to ensure habitat and species protection and standards as set out under these Directives are implemented in the same way or an equivalent way when the UK exits the EU. There is no change to national policy. Current references to "European site", "European Marine Site", "Special Area of Conservation" and "Special Protection Area" are retained in legislation. The ECHR is an international treaty the UK signed in 1950. EU Exit will have no direct impact on the UK's obligations under the ECHR.
- 4.5 The Examiner has now issued his report and recommends a number of modifications which are necessary to ensure that the Great Totham Neighbourhood Plan meets the basic conditions. A copy of the Examiner's report is attached at **APPENDIX 1**.
- 4.6 The Examiner's conclusion is that, subject to the modifications recommended in the report, the Great Totham Neighbourhood Plan meets the basic conditions and other statutory requirements outlined in the report. The Examiner recommends that, subject to the modifications proposed in the report, the Great Totham Neighbourhood Plan can proceed to Referendum.

³ Designated under Section 61G of the Localism Act

⁴ Basic conditions are set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990

5. THE LOCAL PLANNING AUTHORITY'S ROLE

- 5.1 The Local Planning Authority (LPA) is responsible for determining whether the plan meets the basic conditions, with or without modifications, and for whether the Neighbourhood Plan should proceed to Referendum. It must also decide on whether the Referendum area should be extended beyond the Neighbourhood Area.
- 5.2 Once the Council has received the Examiner's report it must decide what action to take. Regulation 18 of the Neighbourhood Plan (General) Regulations 2012 (as amended) states that the LPA must decide:
- (a) to decline to consider a plan proposal;
 - (b) to refuse a plan proposal;
 - (c) what action to take in response to the recommendation of an examiner made in a report;
 - (d) what modifications, if any, they are to make to the draft plan;
 - (e) whether to extend the area to which the Referendum (or Referendums are) to take place; or
 - (f) that they are not satisfied with the plan proposal.
- 5.3 There are no grounds to decline to consider the Neighbourhood Plan under part (a) as this relates to repeat proposals; or to refuse to consider the Plan under part (b) as the legislative requirements have been met.
- 5.4 In relation to part (c), the Examiner has made a series of recommendations; the local authority needs to consider what action to take in relation to these. This is discussed in section 6 of this report. If the authority proposes to make a decision which differs from that recommended by the Examiner then a six week period must be given for people to make representations. If the local authority considers it appropriate, then the issue can be referred to further examination.
- 5.5 The local authority must also consider, under part (d) whether there are any other modifications which are required to ensure the basic conditions are met; to ensure the Neighbourhood Plan is compatible with the Convention rights, to ensure the requirements of legislation are met, and to correct errors. Minor modifications, for example to correct errors in the Plan's text are permissible, as they do not impact on the Plan itself. However, if the Council makes other modifications, for example by changing policy, those modifications will be subject to a six-week consultation period, and the Council's decision could be open to legal challenge. Officers are not recommending that further modifications are made to the Plan.
- 5.6 The local authority must consider whether to extend the area to which the Referendum is held under part (e). this is discussed in section 7 of this report.
- 5.7 If the local authority is not satisfied that the plan meets the basic conditions, is not compatible with Convention rights or requirements of legislation are not met then they must refuse the Neighbourhood Plan under part (f). This is not the case with this Neighbourhood Plan.
- 5.8 The Neighbourhood Plan (General) Regulations 2012 state that a LPA must publish the actions which will be taken in response to the recommendations of the Examiner. This is known as a 'Decision Statement'.

6. CONSIDERATION OF THE EXAMINER'S REPORT AND PROPOSED MODIFICATIONS

- 6.1 The Examiner has recommended modifications to ensure that the Plan meets the basic conditions and have the clarity required by national guidance and ensure that the policies do what they are intended to do. The Examiner's modifications and Officers' recommendations for each of these are set out Table 1 in the draft Decision Statement attached at **APPENDIX 2**.
- 6.2 Having considered each of the recommendations made in the Examiner's Report and the reasons for them, Officers agree that the Examiner has undertaken a fair examination of the submitted Neighbourhood Plan, properly considering all duly made representations. Officers recommend that the Council accept all of the Examiner's modifications to the draft Plan.
- 6.3 Great Totham Neighbourhood Parish Council has advised that will be reviewing the modifications recommended by the Examiner at its Parish Council meeting on 21 March. The outcome of this meeting will be reported to the Council.
- 6.4 Officers have considered whether any other modifications are required to ensure that the Neighbourhood Plan meets the required conditions. It is not considered that any additional modifications are required.
- 6.5 Officers consider that, subject to the Examiner's modifications being made to the Plan, the Great Totham Neighbourhood Plan meets the basic conditions set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended), is compatible with the Convention Rights and meets the requirements of paragraph 8(1) of Schedule 4B to the Town and Country Planning Act (as amended).

7. REFERENDUM

- 7.1 It is recommended that Members agree that the modifications to the Plan are made and that the modified Neighbourhood Plan proceeds to Referendum. The Neighbourhood Plan incorporating the Examiner's modifications is attached at **APPENDIX 3**. The Neighbourhood Plan (**APPENDIX 3**) incorporates the Village Design Statement.
- 7.2 It is recommended that Members agree the Decision Statement and that this is published as soon as possible and publicised in a manner to meet publicity requirements in the Regulations.
- 7.3 In relation to the Referendum area, the Examiner concluded that there is no reason to alter, or extend the Plan area, for the purpose of holding a Referendum. Officers agree with this recommendation and therefore recommend to Council that the area for the Referendum should be the Great Totham Neighbourhood Area as approved by Maldon District Council on 7 November 2016 (shown in **APPENDIX 3**). The Neighbourhood Area covers most of the parish, excluding that area covered by the Local Development Plan (LDP) North Heybridge Garden Suburb allocation.
- 7.4 Once the Council has published the Decision Statement detailing its intention to send a Neighbourhood Plan to Referendum, the plan can be given *significant weight* in decision-making. Therefore, once the Decision Statement has been published, the Council's Development Management team will be able to use the Great Totham Neighbourhood Plan, in determining planning applications within the Great Totham Neighbourhood Area.

- 7.5 Subject to the decision of Council recommended in this Report, arrangements will be made for the Referendum to be held in Great Totham Parish in 2022.
- 7.6 Following the Referendum, if more than 50% of those voting, vote 'yes' then the Neighbourhood Plan comes into force and must be 'made' within eight weeks of the Referendum.

8. CONCLUSION

- 8.1 The Great Totham Neighbourhood Plan has been examined by an Independent Examiner. The Examiner has found that subject to modification, the plan meets the relevant legal, procedural and planning tests and can proceed to Referendum.
- 8.2 The Council has a statutory duty to decide whether to progress the plan to Referendum, with or without modifications, or to refuse the plan. The Council must publish a decision statement setting out the reasons for that decision as soon as possible after making it. The Council must consider each of the Examiner's recommendations, and the reasons for them, and decide what action to take in response.
- 8.3 It is recommended that the Examiner's recommendations are implemented, and that the modified Plan proceeds to Referendum.
- 8.4 Once a Decision Statement is approved and published, a Neighbourhood Plan is given significant weight in decision-making, for determining planning applications within its Neighbourhood Area.
- 8.5 If Council decides that the Neighbourhood Plan can proceed to Referendum, the Referendum will be arranged. A Neighbourhood Plan comes into force once it has been approved at Referendum. It has the same legal status as the Local Development Plan and will be used by Development Management to help determine applications for planning permission that are located within the parish boundary.

9. IMPACT ON STRATEGIC THEMES

- 9.1 The Neighbourhood Plan supports the three themes of Prosperity, Place and Community through its policies that support business, protect the natural and built environment and protect community facilities in the neighbourhood area.

10. IMPLICATIONS

- (i) **Impact on Customers** – The Neighbourhood Plan provides additional localised planning policies for future development in Great Totham. It will help to protect the residential amenity of existing and future residents in Great Totham.
- (ii) **Impact on Equalities** – There are no negative impacts identified.
- (iii) **Impact on Risk** – The decision on the Examiner's Report and whether or not the Plan proceeds to Referendum create certainty over the status of the Neighbourhood Plan.

- (iv) **Impact on Resources (financial)** – The Council is required to pay for the Examination and the Referendum. Normally, a Council can apply for a LPA grant once the Referendum date has been set. Under the Covid Regulations 2020, once a Council has approved and published the Decision Statement, the Council can apply for the grant, at the next available application window.
- (v) **Impact on Resources (human)** – The Referendum is a statutory requirement that will be actioned by the Elections Team.
- (vi) **Impact on the Environment** – The Neighbourhood Plan once made becomes part of the statutory Development Plan for the district. It provides locally specific policies to assess planning applications against. It should have positive impacts on the environment.
- (vii) **Impact on Strengthening Communities** – The Neighbourhood Plan has been prepared through community engagement and refined through public consultation. The Plan, as modified, provides a local layer of planning policy to support the community's aspirations for the neighbourhood area.

Background Papers:

- Information on the Great Totham Neighbourhood Plan Area designation, Reg14 and 16 consultations and the Examination can be found on the MDC website at: https://www.maldon.gov.uk/info/7050/planning_policy/8112/community_led_planning_and_neighbourhood_plans/3

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