



**Cabinet**

**Tuesday, 10 September 2024**

**Tollerton Neighbourhood Plan**

## **Report of the Director – Planning and Economic Growth**

### **Cabinet Portfolio Holder for Housing and Planning, Councillor R Upton**

#### **1. Purpose of report**

To consider the Examiner's recommended modifications to the Tollerton Neighbourhood Plan and whether to approve the draft Decision Statement.

#### **2. Recommendation**

It is RECOMMENDED that Cabinet:

- a) accepts all of the Examiner's recommended modifications to the Tollerton Neighbourhood Plan with the exception of Modifications 5, 6 and 20;
- b) approves the Tollerton Neighbourhood Plan Decision Statement and its publication;
- c) agrees that six weeks consultation should be undertaken on the proposed decision not to accept Modifications 5, 6 and 20; and
- d) agrees not to proceed to referendum on the Tollerton Neighbourhood Plan at this time, pending a further report to Cabinet once the consultation has been completed.

#### **3. Reasons for Recommendation**

- 3.1. The Borough Council, as Local Planning Authority, has a statutory duty to assist in the production of Neighbourhood Plans where communities wish to produce them under the Localism Act 2011.
- 3.2. The Tollerton Neighbourhood Plan has been produced by Tollerton Parish Council, in conjunction with the local community. It was submitted to the Borough Council on 14 June 2023 and contains a number of policies which would form part of the statutory Development Plan and be applied to the determination of planning applications (see Appendix 1). The Borough Council is required by the Localism Act to assess whether the Plan and its policies meet certain criteria (the 'Basic Conditions' and other legal requirements). In order to assist in this process, the Borough Council is required to invite

representations on the Plan and appoint an independent Examiner to review whether the Plan meets the Basic Conditions and other legal requirements.

- 3.3. The submitted Plan was publicised and representations were invited from the public and other stakeholders, with the period for representations closing on 9 October 2023. The Plan has been assessed by an independent Examiner and, on 17 January 2024, he published his report which concluded that, subject to the modifications proposed in his report, the Plan should proceed to referendum (see Appendix 2).
- 3.4. The legislation sets out that the Borough Council must consider each of the recommendations made by the Examiner, including the reasons for them, and decide what action to take in response to each one. The Borough Council must also consider whether other modifications not recommended by the Examiner are necessary in order for the Plan to meet the Basic Conditions and legal requirements. Appendix 3 contains the draft Borough Council's Decision Statement in respect of each of the Examiner's recommendations and also whether other modifications are considered necessary.
- 3.5. It is considered that all but three of the Examiner's recommended modifications are necessary to meet the legal requirements and Basic Conditions. Modification 5 and Modification 6 are not considered necessary to meet the Basic Conditions and would repeat existing local and national planning policy. Modification 20 recommended a more concise approach, which has been achieved, but not as suggested by the Examiner, in order to respect the approach of the Neighbourhood Plan.
- 3.6. Modification 5 proposed the introduction of a new policy titled 'The Sustainable Urban Extension'. The Examiner included recommended wording at paragraph 48 of their report which repeats the main elements of the Local Plan Part 1 Policy 25, which deals with the Strategic Allocation East of Gamston/North of Tollerton. It is understood that the Examiner does not want the policies of the TNP to overlap with the policies relating to the Strategic Allocation East of Gamston/North of Tollerton. Whilst other modifications ensure this does not happen, Modification 5 repeats the main elements of Local Plan Policy 25 and does not expand upon or improve the interpretation of the policy. As the role of the examination is to assess accordance with the Basic Conditions, it is not considered necessary or appropriate to make this change. The Examiner's other recommendations within modification 5 (remove reference to the Strategic Allocation set out in the individual policies of the TNP and revisit Map 4) have been adhered to.
- 3.7. Modification 6 proposed the introduction of a new policy titled 'Green Belt'. The examiner included recommended wording at paragraph 49 of their report which repeats the main elements of the Local Plan Part 1 Policy 4 (Nottingham-Derby Green Belt), Local Plan Part 2 Policy 21 (Green Belt) and elements of the National Planning Policy Framework. The Examiner identified that there is nowhere within the TNP that explains the implications of the Green Belt, and considered it important for users of the TNP to be made aware of. However, the Examiner also noted that the origins of the policy lie at a national and local plan level. Given that the Examiner recognised that the policy is sourced from

existing national and local policy, and the Examiner's proposed wording does not improve the interpretation of existing national or local policy, it is considered that the inclusion of a policy on the Green Belt in the TNP would be repetitive and could create a lack of uncertainty over the application of the various Green Belt policies. As the role of the examination is to assess accordance with the Basic Conditions, it is not considered necessary or appropriate to make this change.

- 3.8. The Examiner, at Modification 20, proposed the merging of Policy 8: Local Character, Policy 9: Heritage Assets and Policy 10: Landscape Character into one policy, since 'there is considerable overlap between them, as well as duplication with local plan policies'. The Examiner continues, stating 'I have not attempted to substitute my own detailed wording to replace them. Instead, I confine myself to recommending that a more concise approach be adopted which takes into account the following guidelines'. The Examiner envisaged the merging of the three policies; however, this approach was not considered appropriate given that the TNP categorises Policy 8 and Policy 9 as Heritage policies, and Policy 10 as a Landscape and Biodiversity policy. Instead, it is proposed to merge Policy 8 and Policy 9 into one concise policy, whilst additionally amending Policy 10 to ensure its brevity, adhering to the guidelines set out by the Examiner, whilst also ensuring the two policies remain separate as intended by the TNP. The Examiner's other recommendations within modification 20 (add a new appendix relating to the viewpoints illustrated in Map 4 and add reference to the Grantham Canal in Map 4) have been adhered to.
- 3.9. Communication has been ongoing between the Qualifying Body (Tollerton Parish Council) and the Borough Council regarding the Examiner's report and the proposed modifications. The Parish Council accepts all the proposed modifications set out by the Borough Council and supports the decision to not include Modification 5, Modification 6 and Modification 20.
- 3.10. The decision to propose not to accept Modifications 5, 6 and 20 would, in accordance with relevant statutory requirements, require the Borough Council to invite further representations on this decision and for any representations to be considered before the Plan can proceed to referendum.

#### **4. Supporting Information**

- 4.1. The draft Tollerton Neighbourhood Plan has been produced by Tollerton Parish Council in conjunction with the local community. The Plan contains a number of policies, which are intended to form part of the statutory Development Plan for the Borough and, therefore, to assist the Borough Council in the determination of relevant planning applications. The draft Neighbourhood Plan was submitted to the Borough Council in June 2023.
- 4.2. The Borough Council is required by legislation to assess whether the submitted Plan meets certain prescribed 'Basic Conditions' and other statutory requirements and whether it should proceed to referendum. In order to meet the Basic Conditions, the Neighbourhood Plan must:

- have regard to national policies and advice contained in guidance issued by the Secretary of State;
  - contribute to the achievement of sustainable development;
  - be in general conformity with the strategic policies of the Development Plan for the area;
  - be compatible with and not breach retained European Union obligations; and
  - meet prescribed conditions and comply with prescribed matters.
- 4.3. In order to assist in this process, the Borough Council is required to invite representations on the submitted draft Plan and appoint an independent Examiner to examine the Plan and consider all representations received through the consultation undertaken by the Borough Council. The submitted Plan was publicised and representations were invited from the public and other stakeholders, with the period for representations closing on 9 October 2023. The Independent Examiner appointed was David Kaiserman. He has now completed his examination of the Plan and his report was published on 17 January 2024 (see Appendix 2). The Examiner was required to recommend either that:
- (a) the Plan is submitted to a referendum without changes; or
  - (b) modifications are made and that the modified Neighbourhood Plan is submitted to a referendum; or
  - (c) the Neighbourhood Plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.
- 4.4. The Examiner has concluded that, subject to a number of modifications set out in his report, the Plan meets the Basic Conditions and other statutory requirements and that it should proceed to referendum.
- 4.5. The legislation sets out that the Borough Council must consider each of the Examiner's recommendations, including the reasons for them, and decide what action to take in response to each one. It is considered that all but two of the Examiner's recommendations are appropriate and necessary in order for the Plan to meet the Basic Conditions or other relevant legal requirements.
- 4.6. If the Borough Council takes a decision which differs from that recommended by the Examiner, the Plan cannot proceed to referendum at this stage. Instead, the Borough Council would be required to consult on this course of action and consider any representations received.
- 4.7. The Borough Council is required to publish a 'Decision Statement' which sets out the decisions made in respect of the recommendations contained within the Examiner's report and reasons for those decisions. A draft Decision Statement is provided at Appendix 3. The draft Decision Statement also includes consideration of whether other modifications not recommended by the Examiner are necessary in order to meet the Basic Conditions and legal requirements

- 4.8. In addition, the Borough Council is also required to consider whether the area for the referendum should be extended beyond the designated neighbourhood area (the Parish of Tollerton). It is the Examiner's recommendation that the referendum area should not be extended, based on the conclusion that the Plan, incorporating the recommended modifications, would contain no policies or proposals which are significant enough to have an impact beyond the designated Neighbourhood Plan boundary. It is considered that this recommendation is reasonable and should be accepted. This decision would apply at such time that a referendum for the Plan is held.

## **5. Alternative options considered and reasons for rejection**

If the Borough Council agreed with the Examiner's Report and accepted all of the recommended modifications, the Neighbourhood Plan would be able to go to referendum at this stage. This is not considered appropriate given the concerns about Modification 5, Modification 6 and Modification 20 as set out above.

## **6. Risks and Uncertainties**

- 6.1 To not follow the legislation and regulations correctly could lead the Borough Council open to legal challenge. The circumstances whereby a legal challenge, through a claim for judicial review, can be raised are set out in the Town and Country Planning Act 1990, section 61N.
- 6.2 There is a risk of legal challenge to the Council's decision, and this would be at a cost not budgeted for.

## **7. Implications**

### **7.1. Financial Implications**

There are no direct financial implications resulting from the recommendations of this report. Had it been decided that a referendum could be held at this stage then £20,000 would have been able to be claimed from the Ministry of Housing, Communities, and Local Government. This payment will therefore be delayed until such time as the decision is taken to hold a referendum. Costs incurred to date on examiner fees (approximately £4,000) will be covered by the £20,000 payment as would the costs associated with the referendum.

### **7.2. Legal Implications**

The Neighbourhood Plan, as proposed to be amended, is considered to meet the Basic Conditions which are set out in Schedule 4B of the Town and Country Planning Act 1990 (as amended). This is the view taken by the Examiner, as set out in his report. It is also considered that the Neighbourhood Plan meets all the relevant legal and procedural requirements. To not comply with the legislation and regulations correctly would expose the Borough Council to legal challenge. The circumstances whereby a legal challenge, through a claim for judicial review, can be raised are set out in the Town and Country Planning Act 1990, section 61N.

### 7.3. Equalities Implications

There are considered to be no particular equality implications that need addressing from matters arising from this report.

### 7.4. Section 17 of the Crime and Disorder Act 1998 Implications

There are no direct crime and disorder implications arising from matters covered in this report.

### 7.5. Biodiversity Net Gain Implications

There are no biodiversity net gain implications associated with this report.

## 8. Link to Corporate Priorities

The Environment	The Neighbourhood Plan's environmental objective supports and protects green and open spaces in Tollerton, preserving wildlife and enhancing biodiversity and safeguarding the character and beauty of the countryside.
Quality of Life	The Neighbourhood Plan's vision seeks to sustain Tollerton's rural character and improve the quality of the environment for residents and ensures new development maintains and respects the separation between Tollerton and the Sustainable Urban Extension.
Efficient Services	The Neighbourhood Plan seeks to retain local services and facilities and protect valued community assets.
Sustainable Growth	The Neighbourhood Plan seeks to ensure housing development reflects local needs.

## 9. Recommendation

It is RECOMMENDED that Cabinet:

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- b) approves the Tollerton Neighbourhood Plan Decision Statement and its publication;
- c) agrees that six weeks consultation should be undertaken on the proposed decision not to accept Modifications 5, 6 and 20; and
- d) agrees not to proceed to referendum on the Tollerton Neighbourhood at this time, pending a further report to Cabinet once the consultation has been completed.

<b>For more information contact:</b>	Richard Mapletoft Planning Policy Manager 0115 914 8457 <a href="mailto:rmapletoft@rushcliffe.gov.uk">rmapletoft@rushcliffe.gov.uk</a>
<b>Background papers available for Inspection:</b>	Electronic copies of the documents relating to the submitted Tollerton Neighbourhood Plan and its examination can be found at: <a href="#">Neighbourhood Planning - Rushcliffe Borough Council</a>
<b>List of appendices:</b>	Appendix 1: Submission Draft Tollerton Neighbourhood Plan  Appendix 2: Examiner's Report on Tollerton Neighbourhood Plan 2016-2030  Appendix 3: Tollerton Neighbourhood Plan Decision Statement