



Cabinet

Tuesday, 12 October 2021

Hickling Parish Neighbourhood Plan

Report of the Director – Development and Economic Growth

Cabinet Portfolio Holder for Business and Growth, Councillor A Edyvean

1. Purpose of report

To consider the Examiner's recommended modifications to the Hickling Parish 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 Hickling Parish Neighbourhood Plan with the exception of Modifications 09 and 10;
- b) approves the Hickling Parish Neighbourhood Plan Decision Statement and its publication;
- c) agrees that six weeks consultation should be undertaken on the proposed decision not to accept Modifications 09 and 10; and
- d) agrees not to proceed to referendum on the Hickling Parish Neighbourhood at this time.

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 Hickling Parish Neighbourhood Plan has been produced by Hickling Parish Council, in conjunction with the local community. It was submitted to the Borough Council on 11 February 2021 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 3 May 2021. The Plan has been assessed by an independent Examiner and, on 10 July 2021, 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 two of the Examiner's recommended modifications are necessary to meet the legal requirements and Basic Conditions. Modification 09 and Modification 10 are not considered necessary to meet the Basic Conditions and would make the policy less clear than the version included in the Submission draft of the Plan.
- 3.6. Modification 09 proposes revised wording to Policy H11 (The Wharf). The wording contained in the Submission draft plan is clear that any residential development on the site should not extend beyond the identified Limits to Development. The policy wording amendment proposed by the Examiner allows for "an inclusion of an additional small area of land beyond the defined Limits to Development, but only where it can clearly be demonstrated that this is required to facilitate the successful relocation of the business". The Examiner states in his report that his intention is to allow for necessary flexibility in the policy to allow for further negotiation between the site owner and the Parish Council. Although it may give the policy flexibility, it is considered that the proposed change is ambiguous and would introduce more uncertainty to the policy which would hamper effective decision making. Specific concern is the Examiner's use of the term "small" in respect of the area of land outside of the Limits to Development. This term is not defined or described in any more detail, which would make effective decision making in respect of a potential future planning application problematic. It is also unclear what type of circumstances would justify requiring the successful relocation of the business. It is assumed that this means financial viability and the requirement to release additional land to raise finance for a relocation but this is not clearly set out. Critically, paragraph 66 of the Examiner's report states that "my view of this policy does not raise any issues as far as the basic conditions are concerned". As the role of the examination is to assess accordancy with the Basic Conditions, it is not considered necessary or appropriate to make this change.
- 3.7. Modification 10 is a consequential amendment to Policy 10 (Housing Provision) allowing for the policy to accept development in relation to the Wharf site outside of the Limits to Development. The Examiner's recommendation is not accepted for the same reasons as set out above.

- 3.8. The Qualifying Body (Hickling Parish Council) has written to the Borough Council requesting that the recommendation in respect of The Wharf (Policy H11) is rejected and the original wording for the policy contained in the Submission draft plan is retained. The Parish Council is of the view that as the Examiner has stated in his report this change is not needed to meet the Basic Conditions then the change is unnecessary. It is considered, for the reasons already set out above, that the Parish Council's view is reasonable.
- 3.9. The decision to propose not to accept Modifications 09 and 10 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 Hickling Parish Neighbourhood Plan has been produced by Hickling 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 February 2021.
- 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 3 May 2021. The Independent Examiner appointed was David Kaiserman. He has now completed his examination of the Plan and his report was published on 10 July 2021 (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 Hickling). 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 09 and Modification 10 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.

8. Link to Corporate Priorities

Quality of Life	The Neighbourhood Plan's vision seeks to sustain Hickling's rural character and improve the quality of the environment for residents and ensures new development respects the heritage of the village.
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 and acknowledges the village as a working community with farming roots, with a strong focus on good design of new development.

The Environment	The Neighbourhood Plan's environmental objective supports and protects green and open spaces in Hickling, preserving wildlife and enhancing biodiversity and safeguarding the character and beauty of the countryside.
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9. Recommendation

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For more information contact:	Richard Mapletoft Planning Policy Manager 0115 914 8457 rmapletoft@rushcliffe.gov.uk
Background papers available for Inspection:	Electronic copies of the documents relating to the submitted Hickling Parish Neighbourhood Plan and its examination can be found at: http://www.rushcliffe.gov.uk/planningpolicy/neighbourhoodplanning/
List of appendices:	Appendix 1: Submission Draft Hickling Parish Neighbourhood Plan Appendix 2: Examiner's Report on Hickling Parish Neighbourhood Plan 2017 – 2028 Appendix 3: Hickling Parish Neighbourhood Plan Decision Statement