

North East Derbyshire District Council

Cabinet

13 January 2016

Neighbourhood Planning Protocol - Update

**Report No MG/10/15-16/HF of Councillor M Gordon, Portfolio Holder with
Responsibility for Environment**

This report is public

Purpose of the Report

- To update members on the implications of the Neighbourhood Planning (General) (Amendment) Regulations 2015 on the agreed Neighbourhood Planning Protocol.
- To seek approval of the updated Neighbourhood Planning Protocol.

1 Report Details

Background

- 1.1 Members will recall that Cabinet approved the Neighbourhood Planning Protocol at its meeting on 2 February, 2015. The Protocol outlines the level of support Parish and Town Councils can expect from the District Council based on the requirements of the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012.
- 1.2 At the time of the preparation of the Protocol, the Coalition Government was consulting on the introduction of revised timescales for the Designation of Neighbourhood Areas in order to speed up this early stage of the process. This was known to the Council and the Protocol was specifically prepared to follow the revised timescales being consulted on, in order to 'future-proof' the Protocol.
- 1.3 Despite this, following the consultation exercise the Coalition Government amended its proposals from that being consulted upon to reduce even further the timescales for the Designation of Neighbourhood Areas in most cases.
- 1.4 These amended proposals were carried forward and introduced through the making of the Neighbourhood Planning (General) (Amendment) Regulations 2015, which came into force on the 9th February 2015.
- 1.5 As a result, the Neighbourhood Planning Protocol needs to be updated to follow the requirements of the new Regulations.

Issues for Consideration

- 1.6 The Neighbourhood Planning (General) (Amendment) Regulations 2015 introduced two changes:
- 1) changes to the timetable for determining applications for the Designation of a Neighbourhood Area; and
 - 2) changes to clarify that a Sustainability Appraisal Report should be a submission document if the Neighbourhood Plan is likely to have significant environmental effects
- 1.7 Regarding the first change, the 2012 Regulations stated that the timetable for determining applications for the Designation of a Neighbourhood Area was “as soon as possible”, with at least a 6 week consultation period on the application.
- 1.8 The 2015 Regulations introduced the following more sophisticated provisions:
- a) where the application to Designate a Neighbourhood Area falls in two or more LPA areas - a 20 week period for determining applications;
 - b) where the application to Designate a Neighbourhood Area is the whole Parish/Town Council area - a 8 week period for determining applications;
 - c) all other cases - a 13 week period for determining applications.
- Within this, in case b) at least a 4 week consultation period on the application, and in cases a) and c) at least a 6 week consultation period on the application.
- 1.9 Regarding the second change, the 2012 Regulations did not explicitly say whether Neighbourhood Plans needed to be subject to the Sustainability Appraisal process. The 2015 Regulations now make this more explicit. However, in practice a judgement is required once the scope of a Neighbourhood Plan has been established, e.g. whether it intends to allocate land for development, under the Sustainability Appraisal Regulations and this is not changed.
- 1.10 The main implication of these changes for the Council is that it reduces the time within which the Governance Team must determine an application to designate a Neighbourhood Area. The Governance Team is aware of the changes to legislation and the implications for the protocol.

2 Conclusions and Reasons for Recommendation

- 2.1 Based on the changes set out above, the Neighbourhood Planning Protocol has been updated by shortening the period for the Designation of Neighbourhood Areas from 10 weeks to 8 weeks, unless the application relates to more than one Parish/Town area, in which case the whole stage will take no longer than 13 weeks if both areas are within the District, or 20 weeks if one of the areas is outside the District.
- 2.2 The revised Protocol is set out at **Appendix 1** and the proposed updates are shown in track changes for information.

3 Consultation and Equality Impact

- 3.1 The Governance Manager and the Election Team Manager were consulted on the implications of the revised protocol.
- 3.2 The Cabinet Member with responsibility for Environment was consulted during the preparation of the report.
- 3.3 An Equality Impact Assessment will be required in advance of publishing a Neighbourhood Plan.

4 Alternative Options and Reasons for Rejection

- 4.1 The proposals relate to amendments to the timescales set out in the adopted Neighbourhood Planning Protocol to bring it in line with the Neighbourhood Planning (General) (Amendment) Regulations 2015. There is no realistic alternative.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 Failure to meet the statutory timeframes within which the designation of Neighbourhood Areas must be determined could make the Council liable for breach of statutory duty. The Governance Team is aware of the changes to legislation and the implications for the protocol and anticipates that the timescales can be met, assuming that the level of applications from town or parish councils remains relatively low.
- 5.1.2 There are no financial implications arising from this report.

5.2 Legal Implications including Data Protection

- 5.2.1 The District Council has a statutory duty to support and enable the processes of preparing Neighbourhood Development Plans (or Neighbourhood Plans), Neighbourhood Development Orders and Community Right to Build Orders in its role as local planning authority.

5.3 Human Resources Implications

- 5.3.1 Work to support Parish and Town Councils in the preparation of Neighbourhood Development Plans (or Neighbourhood Plans), Neighbourhood Development Orders and Community Right to Build Orders has the potential to divert resources away from the preparation of the District Council's own Local Plan. On the basis of current expressions of interest it is expected that the additional work can be accommodated within by the current staff resource. However, if further Parish and Town Councils decide to pursue neighbourhood plans; or if the level of officer input required exceeds that set out in the protocol it may be necessary to secure additional resources.
- 5.3.2 The main implication of these changes for the Council is that it reduces the time within which the Governance Team must determine an application to designate a

Neighbourhood Area. The Governance Team is aware of the changes to legislation and the implications for the protocol.

6 Recommendations

6.1 That Cabinet:

- 1) Notes the detailed issues set out in the report;
- 2) Approves the updates to the Neighbourhood Planning Protocol Service Level Agreement (attached as Appendix 1 to this report);

7 Decision Information

Is the decision a Key Decision? (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
District Wards Affected	All
Links to Corporate Plan priorities or Policy Framework	The District Council's Local Plan will set out the vision, key principles and policies that will underpin the sustainable development of each district. It will cover a wide range of economic, environmental and social issues. As such it links to all Corporate Plan priorities.

8 Document Information

Appendix No	Title
Appendix 1	Neighbourhood Planning Protocol Service Level Agreement
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
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North East Derbyshire District Council

and

xxx Parish / Town Council

Localism Act 2011

Neighbourhood Planning Protocol

Service Level Agreement

Approved by North East Derbyshire District Council (Cabinet) 2nd February 2015

Updated [xx/xx/16](#)

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SUMMARY OF KEY STAGES

INTRODUCTORY MEETING

The Parish / Town Council meet the Council to establish whether a Neighbourhood Plan is the most appropriate route to deliver the objectives of their local communities and whether there are alternative options. Alternative options such as better integration with Local Plan preparation and Regeneration Frameworks could be considered. For further information see Appendix A.

DESIGNATION OF NEIGHBOURHOOD AREA

The Parish / Town Council works with the Council to agree an appropriate neighbourhood area.

PREPARATION OF NEIGHBOURHOOD PLAN

The Parish / Town Council works with the Council and other stakeholders to prepare a neighbourhood plan that is in general conformity with the National Planning Policy Framework and the emerging Local Plan for North East Derbyshire District.

PRE-SUBMISSION CONSULTATION ON DRAFT NEIGHBOURHOOD PLAN

The Parish / Town Council consults the District Council and other stakeholders on the draft plan and makes any appropriate amendments as a result.

SUBMISSION OF DRAFT NEIGHBOURHOOD PLAN & ASSESSMENT

The Parish / Town Council will submit the draft plan to the Council for a view on conformity and any other issues as appropriate.

SIX WEEK PUBLICITY OF SUBMISSION DRAFT PLAN

This is the final opportunity for representations to be made for consideration by the independent examiner.

APPOINTMENT OF EXAMINER

The District Council will agree the appointment of an examiner with the Parish / Town Council.

EXAMINATION

The District Council will organise and pay for the independent examination.

CONSIDERATION OF EXAMINER'S REPORT

The Parish / Town Council will make any necessary modifications to the plan and the District Council considers whether to move the plan to Referendum if the Plan meets basic conditions.

REFERENDUM

The Council will organise and pay for a Referendum to take place and if there is a 50% + 1 yes vote the plan will be 'made' by the District Council and form part of the statutory Development Plan for North East Derbyshire District.

1. Purpose

This agreement has been prepared to help ensure a clear understanding of the responsibilities for each authority is reached at the outset of any Neighbourhood Planning collaborative work.

Ensuring a clear understanding is achieved will enable both parties to plan appropriately the degree of resources required to ensure the prepared Neighbourhood Plan is given the best chance to be successful at the Neighbourhood Plan Examination.

As a result, North East Derbyshire District Council has considered how it can facilitate the aspirations of local communities to prepare their own Neighbourhood Plans.

This Service Level Agreement confirms:

- how North East Derbyshire District Council will undertake its statutory duties within the Neighbourhood Planning (General) Regulations 2012 [as amended](#);
- the level of support that North East Derbyshire District Council will provide to Parish and Town Councils to help them deliver their aspirations regarding the preparation of their own Neighbourhood Plans;
- the responsibilities of Parish and Town Councils ('the qualifying body') regarding the preparation of their own Neighbourhood Plans.

2. North East Derbyshire District Council responsibilities

Under the provisions of the Localism Act 2011 North East Derbyshire District Council is responsible for:

Statutory requirements

- the designation of a neighbourhood area;
- the designation of a neighbourhood forum;
- the publication of a submitted Neighbourhood Development Plan for consultation (Regulation 16 consultation);
- the arrangements for and cost of an independent examination;
- the arrangements for and cost of a Referendum ;
- the formal assessment of the agreed Neighbourhood Development Plan against EU Regulations;
- issue screening opinion (Strategic Environmental Assessment, Human Rights) in advance of Regulation 14 consultation;
- making the confirmed Neighbourhood Development Plan part of the Development Plan for North East Derbyshire District.

Support

- to help the Parish / Town Council establish the most appropriate route to achieve its aspirations;
- the provision of assistance to Parish / Town Council during the preparation of the Neighbourhood Development as set out in Appendix B: Level of District Council support for Neighbourhood Planning.

3. The xxx Parish / Town Council responsibilities

Under the provisions of the Localism Act 2011 xxx Parish / Town Council is responsible for the preparation and writing of the Neighbourhood Plan.

This will involve preparing a Neighbourhood Plan on behalf of and in extensive consultation with its local community that is:

- In conformity with the emerging Local Plan for North East Derbyshire District;
- In conformity with national planning policies (National Planning Policy Framework);
- In conformity with European Union environmental regulations (strategic environmental assessment (SEA), Habitats Regulations);
- In conformity with equality and human rights legislation (Equalities Act 2010, Human Rights Act 1998).

For non-planning aspects xxx Parish / Town Council will endeavour to work with the District Council to ensure that:

- Projects are deliverable;
- Where possible, projects are linked to other plans / strategies as appropriate.

To deliver this principal task, xxx Parish / Town Council is required to also undertake the following tasks:

Meetings

- Establish a Steering Group (or similar) to guide the preparation of the Neighbourhood Plan;
- Ensure the Steering Group reports on a regular basis to the xxx Parish / Town Council for the endorsement of decisions;
- Ensure xxx Parish / Town Council remains compliant with the requirements for designation as set out in the Localism Act and Regulations;
- Ensure best use of North East Derbyshire District Council officer time by only inviting the North East Derbyshire District Council representative to attend and advise the Steering Group in accordance with the level of support outlined in Appendix A;
- Wherever possible, an agenda and supporting papers should be sent to the North East Derbyshire District Council representative 5 days in advance of a meeting.

Minutes of Meetings

- Minutes of all Steering Group meetings should be forwarded to the North East Derbyshire District Council representative for information to assist with support and for the early identification of issues.

Project Plan

- Undertake to work towards the submission of a Neighbourhood Plan with a clear work programme and timetable for delivery;
- Send copies of project plans to the North East Derbyshire District Council representative at regular intervals to assist with general support and resource planning.

Working arrangements

- Work with the District Council during the preparation of the Neighbourhood Plan to enable the District Council to carry out the “duty to support” and to help ensure a successful examination.

Communication

- Inform the District Council on emerging policies and proposals prior to the Pre-Submission draft Plan (as required by Regulation 14) consultation;
- Provide the District Council with the Pre-Submission draft Neighbourhood Plan (as required by Regulation 14), the Submission Plan and supporting documents in electronic format;
- Provide results of primary source data which could be helpful to the District Council;
- Provide regular reports to the District Council on progress and issues as appropriate.

Delivery

- If supported through the referendum the District Council, xxx Parish / Town Council and other relevant organisations will be responsible for delivery of the Neighbourhood Plan as appropriate.

4. The signed agreement

This agreement is between:

- a) North East Derbyshire District Council, and;
- b) xxx Parish / Town Council

Signed:

.....

xxx, appropriate officer of North East Derbyshire District Council

date

.....

xxx, Chair of xxx Parish / Town Council

date

This agreement takes place with immediate effect and will be updated as appropriate.

Appendix A – Is a Neighbourhood Development Plan appropriate?

Communities should not regard a Neighbourhood Development Plan approach as the only option or planning tool open to them, there are many other forms of community planning and ways of delivering development locally that may be more appropriate.

The following points should be carefully considered before embarking on Neighbourhood Planning:

- **Are you clear on why you need a Neighbourhood Plan?** For example, can the outcomes sought be delivered through other planning mechanisms such as a Parish / Town or Community Plan, a Neighbourhood Development Order, a planning application or other routes?
- **Have you considered the length of time the process may take?** It could take at least 2 years from start to finish, and probably longer.
- **Have you considered the time and financial resource implications needed to produce a Neighbourhood Development Plan?** Communities and Local Government (CLG) stated that the average cost of a Neighbourhood Development Plan is between £17,000 and £63,000 and after ten years the cost of reviewing a Plan is around 70% of the initial cost.
- **Are there the skills and enthusiasm within the community to undertake a Neighbourhood Plan, and are you confident this enthusiasm can be maintained through the process?**
- **Are you prepared to engage with land owners and developers and to have constructive conversations with people who may hold opposing views from your own?**

There are a number of alternatives to Neighbourhood Development Plan that a community can undertake in their area and may be more appropriate. These include:

- **Parish / Town or Community Plans**, which provide an opportunity for the community to work together to decide on what they want to improve or achieve, in their area, at present or in the future. The final document is generally sets out how the community intend to make improvements to the local area, for example community led initiatives such as street cleaning, refuse and recycling collection or traffic calming measures.
- **Village & Urban Community Design Statements**, which is a document that describes the qualities and characteristics that the community value in their area. It sets out clear and simple guidance for the design of all future development in a village.

The **advantages** of these alternative methods are they are potentially cheaper, quicker than Neighbourhood Plans, and do not have to go through examination or be subject to a referendum.

The **disadvantages** of these alternative methods are that they cannot make specific land use proposals, have limited input from developers and the Council, can raise expectations unrealistically; and do not have the material weight of a Neighbourhood Plan.

Appendix B – Level of District Council support for Neighbourhood Planning

Stage of the process		District Council duty / support	Proposed action	Departmental responsibility
1)	Application for designation of a neighbourhood area (Regulation 5)	<p><u>Support</u> Provide support on whether a Neighbourhood Plan is the most appropriate route for the community to achieve its aspirations.</p> <p>Alternatives for consideration to include better engagement in the Local Plan making process and Regeneration Frameworks</p> <p><u>Duty</u> Determine whether the application includes the required documentation.</p>	<p>One two-hour meeting to discuss, assess and provide advice to the Parish or Town Council.</p> <p>One week from receipt of the application (in cases when not acceptable the District Council will also respond to resubmissions within three weeks).</p>	<p>Planning Policy Team</p> <p>Economic Development Team</p> <p>Governance Team</p>
2)	Publicising an area application (Regulations 6 and 6A)	<p><u>Duty</u> Publicise the receipt of the application in order to bring it to the attention of people who live, work or carry on business in the area to which the application relates.</p> <p><u>Duty</u> Publicise how interested parties can make representations about the application.</p> <p><i>Note – the period for representations must be at least six</i></p>	<p>Three Two weeks from determining the application includes the required documentation.</p> <p>(included within timescale above)</p>	<p>Governance Team</p>

		<p><i>four weeks (unless application relates to more than one Parish / Town area, then the period for representations must be at least six weeks).</i></p> <p><u>Duty</u> Consider whether or not to designate a neighbourhood area.</p>	<p>Three One week from the closing date of the period for representations.</p>	
3)	Publicising a designation or refusal of a neighbourhood area (Regulation 7)	<p><u>Duty</u> Publicise the designation or refusal in order to bring it to the attention of people who live, work or carry on business in the area to which the designation relates.</p>	<p>Three One week from the closing date of the period for representations.</p>	Governance Team
<p>Note: The combined timeframe for Stages 1-3 is required by the Neighbourhood Planning (General) (Amendment) Regulations 2015 to be no longer than 8 weeks in most cases and as a result this is illustrated above. However, where the application relates to more than one Parish / Town area, then the Regulations require the combined timeframe for Stages 1-3 to take no longer than 13 weeks if both areas are within the District or no longer than 20 weeks if one of the areas is outside the District.</p>				
4)	Plan proposals (Regulation 15)	<p><u>Support</u> Provide support on how to commence preparation of a Neighbourhood Plan.</p>	<p>One two-hour meeting to direct the Parish or Town Council to:</p> <ul style="list-style-type: none"> • population and other statistical information; • advice on possible requirements for Sustainability Appraisal / Environmental Assessment and Habitat Regulations Assessment; • the evidence used by the District Council in preparing its new Local Plan; • advice on consultation methods 	Planning Policy Team

		<p><u>Support</u> Provide comments on emerging draft Neighbourhood Plan.</p> <p><u>Support</u> Provide comments on pre-submission Neighbourhood Plan.</p> <p><u>Duty</u> Determine whether the submitted Neighbourhood Plan includes the required supporting documentation and complies with all the relevant statutory requirements.</p>	<p>and questionnaire format. (plus seven hours support for preparation and action implementation)</p> <p>One two-hour meeting within four weeks of receipt of a draft Neighbourhood Plan (plus seven hours support for preparation and action implementation).</p> <p>One two-hour meeting within four weeks of receipt of a pre-submission Neighbourhood Plan (plus seven hours support for preparation and action implementation).</p> <p>Three weeks from submission of the Neighbourhood Plan.</p>	
5)	Publicising a plan proposal (Regulation 16)	<p><u>Duty</u> Publicise the receipt of the proposed Neighbourhood Plan in order to bring it to the attention of people who live, work or carry on business in the area to which the Neighbourhood Plan relates.</p>	Three weeks from determining the Neighbourhood Plan includes the required documentation.	Planning Policy Team

		<p><u>Duty</u> Publicise how interested parties can make representations about the proposed Neighbourhood Plan.</p> <p><i>Note – the period for representations must be at least six weeks.</i></p>	(included within timescale above)	
6)	Submission of the plan proposal to examination (Regulation 17)	<p><u>Duty</u> Appoint a person to examine the Neighbourhood Plan.</p> <p><u>Duty</u> Send the Neighbourhood Plan and its supporting documentation, including copies of received representations, to the appointed examiner.</p> <p><u>Duty</u> Make the necessary arrangements for them to examine the Neighbourhood Plan, potentially including a Hearing.</p>	<p>Within six weeks of close of consultation on proposed Neighbourhood Plan (Stage 5 Regulation 16)</p> <p>(included within timescale above)</p> <p>(included within timescale above)</p> <p><i>Note – if an appropriate examiner is not available a timescale will be agreed between both parties.</i></p>	Planning Policy Team
7)	Publication of the examiner's report and plan proposal decisions (Regulations 18)	<p><u>Duty</u> Consider the examiner's report and prepare a Decision Statement that sets out its decision and the reasons for this decision.</p> <p><i>Note – decisions may include 1) to decline to consider; 2) to refuse; 3) what action to take in response to the examiner's report, such as send the plan to referendum; 4) what modifications, if any, are needed; 5) whether to extend the referendum area; or 6) if the LPA is not satisfied with the</i></p>	<p>Four weeks from receiving examiner's report.</p> <p><i>Note – in cases when there are issues with the examiner's report that prevent or delay a referendum the Council will discuss timescales for taking the plan</i></p>	Planning Policy Team

		<p><i>Neighbourhood Plan.</i></p> <p><u>Duty</u> Publicise the Decision Statement (and in some instances the examiner’s report) in order to bring it to the attention of people who live, work or carry on business in the area to which the Neighbourhood Plan relates.</p> <p><u>Duty</u> Note the need to arrange the Neighbourhood Plan referendum if appropriate.</p>	<p><i>forward on an individual basis.</i></p> <p>(included within timescale above)</p> <p>(included within timescale above but will involve notification to the Elections Team)</p>	
8)	Referendum (see the Neighbourhood Planning (Referendums) Regulations 2012)	<p><u>Duty</u> Organise, hold and publicise the results of the Neighbourhood Plan referendum.</p> <p><i>Note – if more than half of those voting have voted in favour of the Neighbourhood Plan, the District Council must make the plan and bring it into force as part of the Development Plan for that area. If the referendum result is against the Neighbourhood Plan, the plan would not come into force and the process would need to begin again to proceed.</i></p> <p><u>Duty</u> Note the referendum decision.</p> <p><u>Duty</u> Prepare a Decision Statement that sets out whether the</p>	<p>To be arranged to take place within twelve weeks of the decision statement.</p> <p><i>Note – in cases when there is an impending election in the area the Council will investigate whether the referendum can be carried out in tandem with that election.</i></p> <p>(included within timescale above but will involve notification to the Planning Policy Team)</p>	Elections Team

		District Council will make or refuse to make the Neighbourhood Plan.	Three weeks from decision of the Neighbourhood Plan referendum.	
9)	Decision on a plan proposal (Regulation 19)	<u>Duty</u> Publicise the Decision Statement in order to bring it to the attention of people who live, work or carry on business in the area to which the Neighbourhood Plan relates.	Four weeks from decision of the Neighbourhood Plan referendum.	Planning Policy Team
10)	Publicising a neighbourhood development plan (Regulation 20)	<u>Duty</u> Publicise the made Neighbourhood Plan in order to bring it to the attention of people who live, work or carry on business in the area to which the Neighbourhood Plan relates.	Three weeks from the decision of the Council to make (adopt) the Neighbourhood Plan.	Planning Policy Team