

**North East Derbyshire District Council**

**Cabinet**

**11 April 2018**

**Decision and Referendum on Wingerworth Neighbourhood Plan**

**Report of Councillor M Gordon, Portfolio Holder with Responsibility for  
Environment and Asset Management**

This report is public

**Purpose of the Report**

- To consider the recommended modifications of the Examiner of the Wingerworth Neighbourhood Plan and make a decision on how to proceed.
- The report recommends that the Examiner's report is accepted with no amendments.
- Approval is sought to authorise that following a successful referendum, if more than half of those voting in the referendum vote in favour of the Wingerworth Neighbourhood Plan, then the Neighbourhood Plan is brought into effect ('Made').

**1 Report Details**

**Background**

- 1.1 On 13 January 2015 Wingerworth Parish Council submitted an application to North East Derbyshire District Council for the designation of the Parish as a Neighbourhood Area. This was in line with Neighbourhood Planning (General) Regulations 2012. The designation was confirmed on 19 March 2015 for the preparation of the Wingerworth Neighbourhood Plan.
- 1.2 The Parish Council consulted its residents and businesses and prepared a Draft Neighbourhood Plan (entitled Wingerworth Parish Neighbourhood Plan). Consultation on the Parish's Draft Plan was held between 7 August and 19 September 2016.
- 1.3 The Submission version of the Neighbourhood Plan for Wingerworth was completed and submitted to the District Council in July 2017. North East Derbyshire District Council accepted the Plan was legally compliant and held a 6 week consultation period ending on Monday 16 October 2017, in accordance with regulation 16 of the Neighbourhood Planning Regulations.
- 1.4 The Council as Local Planning Authority submitted formal comments on the Submitted Neighbourhood Plan. In those comments it noted that some policies would be superseded by the currently emerging District Local Plan.

- 1.5 The Plan did not make any specific housing allocations and the way in which the Draft Plan provided for housing accords with the Local Plan. In a similar way the Plan will not change settlement development limits (SDLs), leaving this matter to be dealt with by the Local Plan. Both these approaches were considered acceptable.
- 1.6 One policy sought to protect specific community facilities from loss to the Parish. The evidence for the list was unclear, and in the case of the several public houses, a policy for these was considered unnecessary. Several policies included the wording “in consultation with the Parish Council...” This implied a role in decision-making beyond that set out in planning legislation and better wording was advised.
- 1.7 Following liaison with the Parish an Independent Examiner was appointed in January 2018 to undertake the examination of the Submission version of the Wingerworth Neighbourhood Plan. The Examiner was Mr Terry Heselton.

## **Issues for Consideration**

### **Examiners Report**

- 1.8 The Examiner’s Report into the Plan was received by the District Council on 23 March 2018. In summary the Examiner states:
  - I have examined the Wingerworth Neighbourhood Plan as submitted to North East Derbyshire District Council by Wingerworth Parish Council. The examination has been undertaken by written representations.
  - I conclude that the Neighbourhood Plan meets all of the statutory requirements, including those set out in paragraph 8(1) of Schedule 4B of the Town and Country Planning Act 1990. However a number of modifications are required to ensure that the Plan meets the four ‘Basic Conditions’, as defined in Paragraph 8(2) of the Schedule.
- 1.9 The Examiner therefore recommends that the Wingerworth Neighbourhood Plan should proceed to a referendum subject to the modifications that he recommends in his report. (**Appendix 1**)
- 1.10 In submitting his report the Examiner expressed his thanks to the Councils for the support received in connection with the examination, particularly the manner in which requests for information and clarification were handled. The process of submission and examination invariably raises questions and concerns which require careful consideration and co-operation between examiner, Parish and Council officers.

### **Examiners conclusions over consultation**

- 1.11 It was suggested by one respondent to the Regulation 16 Public consultation that consultation on the Draft Plan was inadequate because of a lack of engagement with the business and development sector (in particular their clients). The Council was also forwarded a legal opinion prepared on behalf of their clients, a local house builder, who feel their interests have been prejudiced through inadequate consultation during the preparation of the Plan, particularly at Regulation 14 stage.
- 1.12 Following due consideration by Planning and Legal officers this opinion was forwarded to the examiner, who decided that it should be deposited on the Council’s

web site, together with a statement from the examiner. In considering this matter the examiner states in his report that it is outside his remit to consider the merits of a potential legal challenge. However, he points out that “it is part of my role to independently consider whether relevant statutory, regulatory and national planning policy requirements have been satisfied, including the requirements for pre-submission consultation and publicity.”

- 1.13 In considering these requirements the examiner then notes that the Wingerworth Neighbourhood Plan does not allocate sites for development and so early or targeted consultation with developers and house builders would not necessarily have been appropriate. Nor does he consider it realistic to expect Parish Councils to identify and contact every business, landowner and prospective developer who may have a potential interest in the Plan.
- 1.14 The examiner notes that it is relatively easy to identify where neighbourhood plans are being prepared and to monitor progress through Local Planning Authority and Parish Council websites. These are appropriate and effective ways of bringing the Plan ‘to the attention of people who live, work or carry on business in the neighbourhood area’. He particularly refers to information available to monitor the progress of neighbourhood plans (including Wingerworth) being prepared within the District which is provided by the Planning Policy Team on the District’s website.
- 1.15 He notes that the Parish Council has taken positive steps to inform and engage with the local community and others during the preparation of the Plan and keep stakeholders informed of progress, including paper and electronic versions of the Parish newsletter and a dedicated page on its website. Although as he states earlier (para 1.13 above) it is not part of his principal role to examine the Plan, he states that he does not consider that the respondents or their clients have been placed at a disadvantage.
- 1.16 He concludes that the consultation process as a whole was appropriate to the size and nature of the local community and that reasonable steps were taken to publicise and invite comments on the Plan. Consequently, in his role as examiner he is satisfied that that the arrangements for the Regulation 14 Consultation, including pro-actively seeking views of relevant consultation bodies, meet the regulatory requirements.

### **Examiners recommendations**

- 1.17 The Examiner’s recommendations include changes to the Plan, including agreement with most of the comments made by the Council. The Neighbourhood Plan was considered against Basic Conditions that it needs to meet, in particular whether individual policies have regard to national policy (including the NPPF), and whether they are in general conformity with the Local Plan, which the examiner considered to be the current (2005) Plan saved policies. Some consideration was also given to the evidence behind the emerging Local Plan, as its policies could still change. The Examiner’s report is at **Appendix 1** and the main recommendations are summarised below:
- 1.18 Housing Provision: The District Council had confirmed that the Neighbourhood Plan accurately reflects identified housing provision and distribution in the emerging Local Plan but the report notes that there is no mechanism in the Neighbourhood Plan to respond to changes to this prior to the Local Plan’s adoption. Also some of the concerns raised by consultees in this respect could be overcome, and greater clarity

could be achieved in Policy W3, by specifically acknowledging that the Plan is leaving decisions regarding the scale and distribution of future development to the emerging Local Plan. Modifications to clarify this are recommended.

- 1.19 Local Housing Needs: The examiner recommends changes to remove the requirement that housing is provided for local housing needs, as this is contrary to national planning policy. Discrimination in favour of only providing housing for local people would also be at odds with Wingerworth's role as a (Level 2) settlement with a good level of sustainability which is expected to accommodate significant planned housing growth in the emerging Local Plan.
- 1.20 Development within Settlement Development Limits: Despite concerns raised by the development sector the examiner is satisfied that it is made clear in the Plan that the intention is to wait for North East Derbyshire District Council (NEDDC) to review settlement limits through the Local Plan process. Until the Local Plan is adopted proposals will continue to be considered on the basis of the existing (2005 Plan) settlement development limit. In agreement with the District Council's consultation response which states that no wording changes are required to the policy the examiner supports this approach. This has the advantage of ensuring a consistent District wide approach to settlement limits, enables planned development to be accounted for and allows for future settlement limits in the emerging Local Plan. This will provide an appropriate mechanism for considering development proposals.
- 1.21 Affordable Housing: The Neighbourhood Plan Affordable Housing policy is to be deleted. Changes to the supporting text are proposed to clarify that proposals for new housing are currently determined by NEDDC on the basis of 'saved' NEDLP affordable housing policies and explain that these are intended to be replaced by new mechanisms and thresholds for securing affordable housing in the emerging Local Plan.
- 1.22 Community Facilities: While supporting the protection of community facilities in general, the examiner agrees with the District Council that it is inappropriate to include four public house premises in the Policy, as this may interfere with their commercial operation, and these are removed from the policy. The examiner recommends identifying the sites listed on a Proposals Map. To recommend one or more of the public houses as an Asset of Community Value is open to the Parish or District Council, but outside the scope of the Neighbourhood Plan.
- 1.23 Protection of Employment sites: The policy for protecting employment sites subject to conditions for allowing other uses is consistent with paragraph 22 of the NPPF. Thus the policy should make clear, in line with the District Council's view, that in order to demonstrate that there is no reasonable prospect of a site being used for an employment purpose, all reasonable steps should have been taken to let or sell the site or premises for employment purposes for a period of at least 6 months.
- 1.24 Policies on Built Heritage: These are not fully in line with national planning policy where the level of protection afforded to heritage assets should be appropriate to their significance. This can be achieved by combining the policies while retaining the intention to support proposals which enhance the longevity and appreciation of designated heritage assets.
- 1.25 Important Views and Vistas: It was the view of respondents that insufficient evidence is put forward for this policy to be either justified or applicable. Further, strong

community support for a particular policy is not necessarily sufficient justification for that policy. However, subject to some reservations, the selection of important views is based on a process of analysis and elimination and is proportionate and sufficiently robust to justify the choices made. Two views proposed to be protected are recommended for removal.

- 1.26 Local Green Spaces: The policy is recommended for deletion. The spaces proposed do not meet the stringent criteria set out in national guidance. Also the proposed areas are already protected through a combination of Green Belt and extant Local Plan designations (which are being carried forward through the emerging Local Plan); consequently it is not necessary to provide an additional layer of protection through the Neighbourhood Plan.
- 1.27 Local Settlement Gaps: The policy establishes support for clear separation between Wingerworth and surrounding communities, which is acceptable. However, the Plan as submitted identifies pre-existing settlement gaps, which may change. This would not allow for decisions about the future scale and location of development to be made through the Local Plan process, contrary to the intention of the Neighbourhood Plan (see 1.18, above). This policy is recommended to be retained but without reference to the emerging Local Plan or specific areas.
- 1.28 Parish Council input to planning decision-making: Policy wording is ambiguous and should be tightened up to clarify that discussions with the Parish Council are intended to take place in order to inform the decision making process and the Parish does not have a decision-making role. In some instances reference to consultation with the Parish Council in policies is superfluous as the Parish Council is a statutory consultee on planning applications.
- 1.29 Elsewhere modifications are recommended to simplify and strengthen the policy wording, to eliminate duplication and remove confusion or ambiguity. Subject to the modifications the policies and Plan are considered to meet the basic conditions.
- 1.30 The Examiner recommends that the Neighbourhood Plan should proceed to Referendum based on the Neighbourhood Area as approved by North East Derbyshire District Council on 19 March 2015.

### **The Council's Decision**

- 1.31 The Neighbourhood Planning (General) Regulations 2012 set out that if the District Council agrees to the recommendations of this report, it has to publish a 'Decision Statement' on the Plan. This must set out the Council's decision on the Neighbourhood Plan and the reasons for making that decision. The District Council has also received confirmation from the Neighbourhood Plan Steering Group that it considers the report is fair and considered. It is normal practice for the date of the Referendum to be specified in the Decision statement. The proposed decision statement, which includes the Examiner's amendments, is contained within **Appendix 2**.
- 1.32 All the changes recommended by the Examiner are agreed by the District Council and listed in a schedule attached to the Decision Notice. The schedule lists the examiner's recommendations and the Council's response, which is agreement in all cases. The amendments to be made in order to produce the Referendum Version Wingerworth Neighbourhood Plan will comply with those examiner's

recommendations, but they have yet to be applied to the Plan. Consequently, as typographic errors may arise, and the referendum date is provisional, the schedule is currently in draft form. The recommended changes to the Plan will be made in line with the schedule by the Parishes agents, who drafted earlier drafts. The final schedule and referendum version Plan will be published prior to the referendum.

### **Referendum Arrangements**

- 1.33 The date for the Referendum is provisionally set for **14 June 2018**. The final version of the Plan and other relevant documents must be on the website at least 28 working days before that date. The Council will also need to ensure that the publication of the 'notice of referendum' takes place at least 25 days (excluding Saturdays, Sundays and Public Holidays) before the referendum. This would require that the notice is published by **9 May 2018**. The detailed requirements in respect of the referendum process are set out in the Neighbourhood Planning (Referendums) Regulations 2012.
- 1.34 The Referendum will follow a similar format to an election. All Local Government electors registered to vote within the Neighbourhood Area will be given the opportunity to vote in the Referendum and will be sent polling cards, setting out their polling method. Electors will be issued with a ballot paper with the question 'Do you want North-East Derbyshire District Council to use the Neighbourhood Plan for Wingerworth to help it decide planning applications in the neighbourhood area?' Residents will be given the opportunity to vote 'yes' or 'no'.
- 1.35 If more than 50% of those voting in the referendum vote 'yes' then the District Council, as Local Planning Authority is required to adopt the plan as part of the development plan for North-East Derbyshire. If the result of the Referendum is "no", then nothing further happens. Wingerworth Parish Council would then have to decide if it wishes to make changes and re-submit an amended Plan.

### **'Making' the Plan**

- 1.36 If more than half of those voting in the referendum vote in favour of the relative Neighbourhood Plan, then the Neighbourhood Plan will immediately be included in the Development Plan for the area and will be given weight when applications for planning permission are determined. Nevertheless, the Plan has to be formally 'made by the District Council'. It is proposed here that Cabinet delegates authority to the Joint Chief Executive in consultation with the Leader and Portfolio Holder for Environmental Health and Planning to formally 'make' the Neighbourhood Plan within eight weeks of a successful referendum, unless there is any legal reason to prevent this.

### **Special Urgency**

- 1.37 In order for the arrangements to be put in place for the holding of the referendum in line with the statutory timetable [as set out in paragraphs 1.33-35 above], it is recommended that the Scrutiny "Call-In" procedure be waived in respect of the decisions arising from this report. The Chair of Growth Scrutiny Committee has agreed that the matter is urgent and it is reasonable in the circumstances for 'Call In' not to apply to the decisions as recommended in this report. In light of this it is recommended that Cabinet consider the matter urgent and agree that the requirement for 'Call In' be waived.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 The Wingerworth Neighbourhood Plan has been subject to examination by an independent examiner. The Examiner's view that subject to modifications the Plan would meet the Basic Conditions and other relevant legal requirements.
- 2.2 The Council must consider each of the recommendations made in the Examiner's report and decide what action to take in response. The Council's Decision Statement (attached at Appendix 2) sets out the Examiner's recommended modifications and a proposed Council decision in respect of each of them. The Council does not propose to amend any of the examiner's recommendations.
- 2.3 It is considered that, subject to the modifications set out in the Decision Notice (Appendix 2) being made, the Draft Neighbourhood Plan will meet the legal requirements and basic conditions as set out in legislation. The modifications do not fundamentally alter the main aims of the Plan and do not compromise the emerging Local Plan, and it is therefore recommended that they are applied to the Referendum version Wingerworth Neighbourhood Plan.
- 2.4 The next step is for the Referendum version Wingerworth Neighbourhood Plan to proceed to referendum. To meet the requirements of the Localism Act 2011, a referendum which poses the question "Do you want North East Derbyshire District Council to use the Neighbourhood Plan for Wingerworth to help it decide planning applications in the neighbourhood area?" will be held in the Parish of Wingerworth on **Thursday, 14 June 2018**.

## **3 Consultation and Equality Impact**

- 3.1 Consultation with residents, businesses and other bodies with an interest in the Parish has been an integral part of the process from before the initial drafting of the Plan. A consultation statement is required of the Parish, which describes the consultations that have taken place. It has been examined both by the District Council, in order to establish that the Plan accords with relevant regulations, and the Examiner. Formal consultation has taken place at two stages; for the Parish's Draft Plan and for the Submitted Plan. The next step will be the referendum of all Parish residents, which is an important part of the legislative framework specifically identified in the Action Plan within the Localism Bill: neighbourhood plans:
- 3.2 There is no requirement for an equality impact assessment of an individual Neighbourhood Plan

## **4 Alternative Options and Reasons for Rejection**

- 4.1 An alternative option would be to reject some of the Examiners amendments or introduce some of the District Council's own amendments. The Inspectors recommendations generally align with the District Council's Planning Officers' views, and do not compromise the emerging Local Plan. Consequently neither of these are necessary in order to produce a Plan that meets the basic conditions.

## **5 Implications**

### **5.1 Finance and Risk Implications**

5.1.1 The arrangements for claiming financial support for neighbourhood planning have not been confirmed for 2018/19. From April 2017, local planning authorities (LPAs) have been able to claim up to £20,000 once they have set a date for a referendum following a successful examination where a neighbourhood plan has not previously been made for that area. A claim for payment will need to be made for the activity that has taken place in during the relevant financial year, i.e. 2018/19, at a time yet to be determined by MHCLG. The costs of the Examination and Referendum will be the responsibility of the Local Planning Authority.

### **5.2 Legal Implications including Data Protection**

5.2.1 As set out in the report at paragraphs 1.11 – 1.16.

### **5.3 Human Resources Implications**

5.3.1 The planning support for current NPs has demanded a significant amount of officer time equivalent to 0.3 FTE for the period of its preparation, this is currently being accommodated within existing staffing arrangements. The Council's Electoral Services Team will also be required to carry out the referendum.

5.3.2 Going forward if there are further requirements to administer neighbourhood plans then it is likely to be necessary to review the resources needed.

## **6 Recommendations**

6.1 That the Examiner's report and recommended modifications to the Plan as set out in the Decision Notice at **Appendix 2** are accepted in their entirety and the Plan, as amended, is taken forward to a referendum within the Parish as outlined in this report.

6.2 That Cabinet delegates authority to the Joint Chief Executive in consultation with the Leader and Portfolio Holder for Environmental Health and Planning that following a successful referendum, if more than half of those voting in the referendum vote in favour of the relative Neighbourhood Plan, then the Neighbourhood Plan is brought into effect ('Made').

6.3 That Cabinet consider the matter urgent as set out in the report, and notes that the Chair of Growth Scrutiny Committee has also agreed that the matter is urgent and it is reasonable in the circumstances for 'Call In' not to apply to the decisions as recommended at para. 1.37 above.



## 7 Decision Information

<p><b>Is the decision a Key Decision?</b>  A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:  <i>BDC: Revenue - £75,000</i> <input type="checkbox"/>  <i>Capital - £150,000</i> <input type="checkbox"/>  <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/>  <i>Capital - £250,000</i> <input type="checkbox"/>  <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	Yes
<p><b>Is the decision subject to Call-In?</b>  (Only Key Decisions are subject to Call-In)</p>	It has been recommended that Call-In be waived and the Chair of Growth Scrutiny Committee has consented to this
<p><b>District Wards Affected</b></p>	Wingerworth and Tupton
<p><b>Links to Corporate Plan priorities or Policy Framework</b></p>	All

## 8 Document Information

Appendix No	Title
1	Report of the Examiner into the Wingerworth Neighbourhood Plan.
2	Decision Notice on the Wingerworth Neighbourhood Plan, including schedule of recommendations and changes.
<p><b>Background Papers</b> (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)</p>	
None	
<b>Report Author</b>	<b>Contact Number</b>
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