

Report to	-	Executive Director
Date	-	13 May 2019
Report of the	-	Head of Service – Strategy and Planning
Subject	-	Examiner's Report into the Rye Neighbourhood Plan 2016-2028

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**Recommendation: That: Under the Executive Director's delegated authority, it be decided that the Rye Neighbourhood Plan incorporating the Examiner's modifications, as set out at Appendix 2, proceed to local Referendum, and that the Referendum Area be the Parish.**

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## **Introduction**

1. The Examiner, Mr. John Slater, appointed with the agreement of Rye Town Council, to consider whether the Town Council's submitted Neighbourhood Development Plan meets the required 'basic conditions', issued his Report of 16 April 2019. It is attached as Appendix 1. The analysis and assessments of the policies of the Rye Neighbourhood Plan (RNP) are contained on pages 9 to 28 of his Report.
2. Attention is drawn to the earlier Cabinet report of 19 December 2018, which summarises the submitted Plan and its background, as well as this Council's own representations.
3. This report focuses on the legal responsibilities of this Council, to consider the Examiner's recommendations and to decide whether the Plan, with the Examiner's modifications, meets the required 'basic conditions', such that it should proceed to referendum.

## **The Examination & Examiners recommendations**

4. The Examiner undertook the Examination by means of a Written Representations meaning that no hearings were held as part of the process. The Examiner produced a Written Report which concluded as follows:-

*'I consider that this is a locally distinct neighbourhood plan, which seeks to deliver on the expressed priorities of the residents of Rye and will deliver on its vision and protect its high quality townscape and landscape setting. The plan will provide a sound basis for dealing with planning applications in the town in the coming years.*

*To conclude, I can confirm that my overall conclusions are that the Plan, if amended in line with my recommendations, meets all the statutory requirements including the basic conditions test and that it is appropriate, if successful at referendum, that the Plan, as amended, be made.*

***I am therefore delighted to recommend to Rother District Council that the Rye Neighbourhood Plan, as modified by my recommendations, should now proceed to referendum.'***

5. In terms of the recommended modifications the more noteworthy include:
- All allocation policies refer to a minimum level of development and incorporate consistent wording relating to flood risk assessments and removing the requirement for allocation sites to submit ecological impact assessments.
  - Reference to comprehensive development be changed so that phased development should not prejudice the development of adjoining sites.
  - That the extent of Winchelsea Road (west) allocation be extended to reflect the land currently in commercial use.
  - That access arrangements for the Freda Gardham School site should serve both the petrol station/convenience store and the residential development to the rear.
  - That the extent of the former Lower School site is reduced, and is shown on a revised plan omitting it from the allocation (land protected by a Tree Preservation Order).
  - Clarifying that, in terms of flood risk policy, the allocation sites do not need to pass the sequential test when a planning application is submitted.
  - Requiring that the petrol station on allocated site E3 incorporates measures to prevent the pollution of groundwater.
  - Deleting the policy imposing higher car parking standards.
  - Amending the community facilities policies to identify specific early year facilities and removing sports facilities that are already protected as open space.
  - Amending the development boundary of the town to include Rye Primary School and to reflect the enlargement of Site Allocation H6, whilst also requiring the insertion of a map showing the extent of the strategic gap.
  - Removing reference to the designations as local green space, as the policy has not been supported by appropriate evidence. The extent of the green space at Gibbet Marsh be enlarged, if required, to include land adjacent to the river and the railway line which needs to be shown on a revised map.
  - Removing the requirement for the submission of an energy statement but replacing the policy with one that supports low carbon and renewable energy.
6. In relation to the Examiner's report, discussions have taken place between RDC and Rye Town Council (the Qualifying Body) which results in mapping changes as follows :
- H8 - Lower School Site: allocation to remain as described with the TPO area marked on the allocated area. The allocation would remain as "at least 50 units"
  - E1 - Strategic Gap. The Examiner requires that the extended Strategic Gap as set out in the DaSA be added to the NP policies map. This is

accepted as the best way to show the proposed change but with suitable references in the text and to the plan which underscore the existing strategic gap in the 2006 Local Plan and the proposed extended area in the DaSA (which presently subject to EiP).

- E2 - Green Infrastructure - to describe the identified spaces as “Green Space”, with relevant mapping amendments. Reflect the green space of Gibbet Marsh car park as an area including the combined overflow car park and river corridor. The statutory allotments to be shown in brown on the same plan.
7. The recommended modifications to the RNP have resulted in the rewording of various policies and text along with some amended mapping throughout the Plan.
  8. The Examiner has confirmed that the referendum area does not need to be extended beyond the plan area Vis-a-vis the Parish.

### **Consideration of the Examiner’s report and proposed modifications**

9. The Council must now consider each of the Examiner’s recommendations. It is not obliged to accept them, but should be aware that the purpose of the examination is to provide independent scrutiny by a duly qualified person. The legislative position<sup>1</sup> is that the Local Planning Authority can only make modifications post-examination if it considers them necessary to meet the ‘basic conditions’, be compatible with Convention rights, accord with relevant Regulations or to correct errors. Also, in this event, further consultation and potentially a further examination would be required.
10. For reference, the ‘basic conditions’ relate to the need to:
  - have regard to national policies and advice
  - contribute to sustainable development
  - be in general conformity with the development plan’s strategic policies
  - not breach or otherwise be incompatible with EU obligations
11. Overall, it is believed that the Examiner has undertaken a fair and robust examination of the submitted Neighbourhood Plan, properly considering all duly-made representations.
12. It is noted that the Examiner has taken the view that, as modified, the RNP would meet basic conditions, particularly general conformity with the Core Strategy.

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<sup>1</sup> Paragraph 12(6) of the Schedule 4B of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, and the Planning and Compulsory Purchase Act 2004 (as amended).

## **Town Council Response and Referendum version of the Neighbourhood Plan**

13. Rye Town Council has advised that it has agreed to accept all of the modifications recommended by the Independent Examiner. It has also worked closely with officers to make the necessary consequential amendments to the Neighbourhood Plan for it to progress to Referendum.
14. A full draft of the Rye Neighbourhood Plan, incorporating all of the Examiner's modifications, consequential changes, and updating, as agreed with the Town Council, has been collated and is contained in Appendix 2. A separate Schedule of changes has also been prepared set out at Appendix 3.

## **Conclusion, Implications and Referendum**

15. In light of representations on the submitted RNP Development Plan, the Examiner, has carefully considered whether it meets the necessary 'basic conditions' and concluded that it does, subject to a number of modifications. Planning officers accept these conclusions, as does the Town Council; hence, it is recommended to endorse the Examiner's recommendations (Appendix 1), including the proposed modifications as agreed by RDC & RTC (Appendix 3) and put the modified version of the Neighbourhood Plan, (Appendix 2), forward for Referendum to the residents of Rye Parish.
16. If there is a majority support for the Neighbourhood Plan at Referendum, this Council will be obliged (subject to certain, limited exceptions) to formally make it part of the statutory development plan. At that point, the 'development boundary' for Rye and the development allocations, will become the primary policy references for the purpose of determining most planning applications in the Parish.
17. Attention is drawn to the fact that, a consequence of the Neighbourhood Plan being made, the development boundaries for Rye together with the associated development allocations, as defined in the Rother District Local Plan 2006, will be superseded.
18. The other notable implication of making the Neighbourhood Plan is that the Town Council will then receive 25%, rather than the current 15%, of Community Infrastructure Levy receipts from future developments in the Parish.
19. As regards the local Referendum, it is envisaged that it will be held around late June and assuming a favourable majority vote it will progress to Cabinet and Full Council in early July.

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