

# CABINET 29th July 2021

## Lamberhurst Neighbourhood Development Plan

### Summary

**Lead Member:** Councillor Alan McDermott, Portfolio Holder of Planning and Transportation

**Lead Director:** Lee Colyer, Director of Finance, Policy and Development (s151 Officer)

**Head of Service:** Stephen Baughen, Head of Planning

**Report Author:** Deborah Dixon, Principal Planning Policy Officer

**Classification:** Public document (non-exempt)

**Wards Affected:** Goudhurst & Lamberhurst ward

Approval Timetable	Date
Management Board	27 <sup>th</sup> May 2021
Planning & Transportation CAB	12 <sup>th</sup> July 2021
Cabinet	29 <sup>th</sup> July 2021

### Recommendations

This report makes the following recommendations to Cabinet:

1. That the independent examiner's Report on the Lamberhurst Neighbourhood Development Plan (LNDP) received on 7<sup>th</sup> May 2021 be noted and published.
2. That the LNDP be modified in part, according to the examiner's recommendations, following discussion with Lamberhurst Parish Council.
3. That Cabinet agrees the Decision Statement at **Appendix C** and decides to progress the LNDP as set out at **Appendix D** to referendum. The referendum area is that of the Neighbourhood Area i.e., Lamberhurst Parish.

4. That Cabinet recommends to Council that in the event that the referendum result on the LNDP is positive with more than 50% of the vote, the Council formally makes the LNDP as set out in **Appendix D** so that it has effect as part of the statutory Development Plan for the Neighbourhood Area.

# 1. Introduction and Background

- 1.1 The Lamberhurst Neighbourhood Development Plan (LNDP) has been successful at examination, with the independent examiner recommending that the LNDP should proceed to referendum, subject to a number of recommended modifications.
- 1.2 The borough council as the Local Planning Authority is responsible for deciding what action to take in response to the examiner's recommendations. This report sets out the recommendations and the proposed amendments to be made to the LNDP, which have been made with the involvement of Lamberhurst Parish following receipt and consideration of the examiner's report.
- 1.3 The examiner's recommendations in respect of a neighbourhood development plan (NDP) are different to those made by inspectors when considering local plans. Whilst neither set of recommendations is binding, in the case of an NDP instead of the requirement of meeting the test of 'soundness' a NDP must meet a 'Basic Conditions' test, providing more scope for interpretation. Whereas a borough/district/county council's acceptance of the inspector's recommendations in a local plan are necessary for soundness, in the case of the examiner's recommendations on an NDP, these are open to alternative modification so long as those modifications still result in the NDP meeting the 'Basic Conditions' test.
- 1.4 A brief overview of the neighbourhood planning process is set out in the following section of this report.

## Background to Neighbourhood Planning

- 1.5 Details of the neighbourhood planning process can be accessed on the TWBC webpages  
<https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans>
- 1.6 The production of a neighbourhood development plan (or neighbourhood plan, as they are more commonly known) is the means by which a local community can take responsibility for land use planning in their area, potentially covering matters such as the location of houses, shops and community facilities, the setting of design standards for new development, or the identification and conservation of local heritage assets and green spaces.
- 1.7 Neighbourhood plans, when finally approved (and then referred to as a 'made' neighbourhood plan), become part of the development plan for the borough, which means that they are a key document in the determination of planning

applications in that area (that is, in this instance for the area covered by Lamberhurst Parish).

- 1.8 The legal context for preparation of neighbourhood plans is provided by the Localism Act 2011  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5959/1896534.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5959/1896534.pdf), the Neighbourhood Planning Regulations 2012 (as amended)  
[https://www.legislation.gov.uk/ukxi/2012/637/pdfs/ukxi\\_20120637\\_en.pdf](https://www.legislation.gov.uk/ukxi/2012/637/pdfs/ukxi_20120637_en.pdf), and The Neighbourhood Planning Act 2017 (as amended)  
<https://www.legislation.gov.uk/ukpga/2017/20/part/1/crossheading/neighbourhood-planning/enacted>.
- 1.9 Policies in neighbourhood plans need to be in general conformity with the strategic policies of the local plan, as well as having regard to the National Planning Policy Framework (NPPF) and any other relevant legislation.
- 1.10 The borough council has a statutory duty to assist communities during the preparation of NDPs and to take these plans through a process of examination and referendum. There is one 'made' NDP within the borough (for Hawkhurst Parish) and currently up to nine NDPs are being prepared for a number of parish and town councils.

## **2. Preparation of the Lamberhurst Neighbourhood Development Plan (LNDP)**

- 2.1 The LNDP has been subject to the regulatory stages required under the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012 (as amended). Details of the LNDP progression from designation to its current stage can be found on the TWBC webpages  
<https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/lamberhurst>.
- 2.2 The LNDP has been prepared for a designated Neighbourhood Area, which follows the Lamberhurst parish boundary and has a plan period from 2016 to 2038. The area was designated by the borough council on 18<sup>th</sup> December 2017. Plan preparation by the parish council commenced shortly after this date.
- 2.3 Officers have met with representatives of the parish council on a regular basis throughout the preparation of the LNDP to provide advice and support and have made comments at key stages. The parish council carried out a pre-submission consultation on a draft LNDP (Regulation 14 consultation) between 12<sup>th</sup> July to 6<sup>th</sup> September 2019. At this consultation stage, a detailed response was provided by TWBC officers that included comments about how policies could be improved.
- 2.4 The submitted version of the LNDP was published and consulted on by the borough council from 30<sup>th</sup> October to 11<sup>th</sup> December 2020. Details can be found on the borough council webpages (link in para 2.1 above) as well as on the

Lamberhurst Parish Council website. Link to the LNDP (submission plan)  
[https://tunbridgewells.gov.uk/data/assets/pdf\\_file/0004/375466/01LamberhurstNeighbourhoodDevelopmentPlansubmissiondocument.pdf](https://tunbridgewells.gov.uk/data/assets/pdf_file/0004/375466/01LamberhurstNeighbourhoodDevelopmentPlansubmissiondocument.pdf)

- 2.5 Comments were made by TWBC to this consultation in the form of a Delegated Portfolio Holder Report dated 11<sup>th</sup> December 2020.  
<https://democracy.tunbridgewells.gov.uk/ieDecisionDetails.aspx?ID=1567>
- 2.6 The LNDP includes policies relating to the landscape and environment, community and wellbeing, housing and design, traffic and transport, and business and employment. It does not include policies that propose to allocate sites for built development. The LNDP is supported by a local evidence base.
- 2.7 Mr John Slater MRTPI was appointed as the independent examiner by the borough council with the agreement of the parish council and the examination of the LNDP commenced in January 2021. The examiner was appointed to assess whether the LNDP met certain statutory requirements for NDPs, known as the 'Basic Conditions'.
- 2.8 These state that NDPs should:
- 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 contained in the development plan for the area; and
  - not breach, and is otherwise compatible with, EU obligations
- 2.9 One of the considerations in addressing these matters is whether the Plan policies support sustainable development and the three overarching objectives of the planning system (economic, social and environmental) including ensuring 'a sufficient number and range of homes can be provided to meet the needs of present and future generations' (para 8 of the National Planning Policy Framework, NPPF - 2019). In addition, para 12 of the NPPF states that neighbourhood plans should support the strategic development needs as set out in the Local Plan.
- 2.10 The examiner's final report was received on 7<sup>th</sup> May 2021 and is presented at **Appendix A** to this report. It concluded that the LNDP should proceed to referendum subject to it being amended in line with a number of recommended modifications. These modifications are required to ensure the LNDP meets the basic conditions.
- 2.11 Regulation 18 of the Neighbourhood Planning (General) Regulations 2012 (as amended) requires the local planning authority to outline what action to take in response to the recommendations of an examiner following the formal examination. The Regulations provide that where the council disagrees with the

examiner's report it can make alternative modifications, subject to re-consultation and potentially a further Examination.

- 2.12 The table set out at **Appendix B** to this report presents the modifications identified as being most noteworthy by the examiner, with a commentary to provide a background for each proposed modification.
- 2.13 As recommended by the examiner, representatives from Lamberhurst Parish Council and TWBC planning officers have discussed all of the recommended modifications. The outcome of these discussions is presented in the table in **Appendix B**, in the column headed 'outcome following discussions with the LNDP group'.
- 2.14 The amended LNDP presented in **Appendix D** to this report is the final version of the LNDP, incorporating the modifications, as well as a number of presentational changes. It is this amended LNDP that is the subject of this report along with the formal Decision Statement at **Appendix C**.
- 2.15 Planning and Transportation Cabinet Advisory Board agreed to progress the LNDP on to a local referendum at the meeting held on 12<sup>th</sup> July 2021, and once agreed by Cabinet it is for the Borough Council to arrange for this local referendum to ensure the community has the final say on whether the neighbourhood plan comes into force or not.

## **General Conformity of the Lamberhurst Neighbourhood Development Plan with the strategic policies contained in the development plan for Tunbridge Wells borough**

- 2.16 It is the case that the LNDP has been prepared with reference to the current adopted development plan for the borough. The LNDP needs to be in general conformity with strategic policies contained in the development plan for Tunbridge Wells Borough. At this time, this requirement relates to strategic policies contained in the following planning documents adopted by Tunbridge Wells Borough Council:
- Saved policies in the Tunbridge Wells Borough Council Local Plan 2006;
  - Tunbridge Wells Core Strategy Development Plan Document 2010;
  - Tunbridge Wells Borough Council Site Allocations Local Plan 2016;
  - Kent Minerals and Waste Local Plan 2013 to 2030.
- 2.17 The LNDP also needs to be in general conformity with national planning policy as set out in the National Planning Policy Framework (NPPF) 2019.

- 2.18 In considering the Basic Conditions for the LNDP consideration was made to how the neighbourhood plan is in conformity with the Regulation 18 Draft Local Plan, as well as the current development plan documents.
- 2.19 It is considered that the policies included in the LNDP are in general conformity with the strategic policies contained in the adopted development plan for Tunbridge Wells Borough.
- 2.20 They are also considered to be in general conformity with strategic policies in the emerging Local Plan (the TWBC Pre-Submission Local Plan), which once adopted will form part of the borough's development plan and will supersede the Site Allocations Local Plan 2016; the Core Strategy 2010 and the saved policies of the Local Plan 2006.

### **3. Independent examiner's report to the local planning authority and qualifying body**

- 3.1 The independent examiner has concluded that the LNDP, if amended in line with his recommendations, meets all the statutory requirements including the basic conditions test and that it is appropriate, if successful at referendum, that the LNDP, as amended, be made.
- 3.2 He has therefore recommended to Tunbridge Wells Borough Council that the LNDP, as modified by his recommendations, should proceed, in due course, to referendum. The independent examiner also recommends that the referendum area should be that of the neighbourhood area i.e., Lamberhurst Parish.
- 3.3 Following the issuing of the examiner's report, and reflecting the advice from the independent examiner, representatives from Lamberhurst Parish Council and planning officers from Tunbridge Wells Borough Council have liaised to consider the examiner's proposed changes and the reasons for them, and to incorporate the appropriate changes to ensure that the text and policies of the referendum version of the LNDP accord with the examiner's recommended modifications.
- 3.4 The Table in **Appendix B** lists the more noteworthy modifications, providing in column 2 a background to the proposed modification, and in column 3 the outcome following discussions between the representatives from the parish council and TWBC officers.
- 3.5 The recommended modifications are reflected in the amended final version of the LNDP that will be subject to referendum presented in **Appendix D**. It should be noted that the referendum version of the LNDP will have some minor presentational amendments to ensure it complies with the requirements of the accessibility regulations that came into force for public sector bodies on 23 September 2018 (The Public Sector Bodies (Websites and Mobile Applications))

- 3.6 The Regulations state that a Local Planning Authority must publish what action will be taken in response to the recommendations of an examiner. This is known as the 'Decision Statement' and is presented in **Appendix C**.
- 3.7 Subject to the Cabinet decision on the recommendations in this report, the borough council will arrange for a local referendum to be held to ensure that the local community has the final say on whether the LNDP comes into force or not.
- 3.8 Planning Practice Guidance (PPG) sets out at <https://www.gov.uk/guidance/neighbourhood-planning--2> that a neighbourhood plan comes into force as part of the statutory development plan once it has been approved at referendum (that is, more than 50% of the votes cast being in favour of the draft neighbourhood plan).
- 3.9 It is the case that in these circumstances the neighbourhood plan must be made by the local planning authority (that is the neighbourhood plan is adopted and becomes part of the statutory development plan for that area of the borough covered by the neighbourhood plan). There are narrow circumstances where the local planning authority is not required to make the neighbourhood plan. These are where it considers that the making of the neighbourhood plan would breach, or otherwise be incompatible with, any EU or human rights obligations (see [section 61E\(8\) of the Town and Country Planning Act 1990 Act as amended](#)). Paragraph: 064 Reference ID: 41-064-20170728
- 3.10 It is therefore requested that the Cabinet decision includes the resolution in the circumstances where the referendum result is positive, then the Lamberhurst Neighbourhood Plan can, post-referendum, go directly to be considered at the TWBC Full Council, with a recommendation for it to be 'made'(adopted), therefore removing the other committee meetings (Management Board, Planning and Transportation Cabinet Advisory Board, and Cabinet) meetings from the post-referendum/second half of the process. (Note, this explanation and recommendation was also included in the Planning and Transportation Cabinet Advisory Board decision.)

## 4. Options Considered

- 4.1 **Option 1:** Note the examiner's report dated 7<sup>th</sup> May 2021 and the recommended amendments, agree the Decision Statement and progress the Lamberhurst Neighbourhood Development Plan to referendum.
- 4.2 The examiner in his report congratulates Lamberhurst Parish Council on producing a locally distinctive neighbourhood plan. The LNDP includes a range



of policies that seek to promote and control new development in the parish that is well designed and in harmony with the character and appearance of the area. The LNDP also seeks to safeguard and improve local community facilities, and those features of local culture, built heritage and the natural environment that is considered to make Lamberhurst a special place.

- 4.3 It is considered that it would be a missed opportunity to not progress a plan that provides the opportunity to incorporate local planning policies into the borough's development plan that reflect local needs and aspirations.
- 4.4 **Option 2:** Note the examiner's report dated 7<sup>th</sup> May 2021 and the recommended amendments, but do not agree the Decision Statement and do not progress the Lamberhurst Neighbourhood Development Plan to referendum.
- 4.5 As already noted, the examiner's report is largely positive, and it is considered it would be a missed opportunity to not progress a plan that provides the opportunity to incorporate local planning policies into the borough's development plan that reflect local needs and aspirations.

## 5. Preferred Option and Reason

- 5.1 The preferred option is **Option 1:** note the examiner's report dated 7<sup>th</sup> May 2021 and the recommended amendments, agree the Decision Statement and progress the Lamberhurst Neighbourhood Development Plan to referendum.
- 5.2 This option reflects the outcome of the independent examination, the examiner's report praising the approach taken in the LNDP that he considers to be a locally distinctive plan. The relatively small number of amendments proposed by the examiner have been discussed with the Lamberhurst Parish Council and TWBC officers. The version of the LNDP that will be subject to Referendum (**Appendix D**) reflects subsequent discussions between the parish council and TWBC planning officers.

## 6. Consultation on Options

- 6.1 If agreed by Cabinet, the Decision Statement set out in **Appendix C** be agreed and progress the amended Lamberhurst Neighbourhood Development Plan presented in **Appendix D** to referendum. Option 1 above refers.

## 7. Appendices and Background Documents

Appendices:

- **Appendix A:** Independent Examiner's Report to the Lamberhurst Neighbourhood Development Plan
- **Appendix B:** Table of changes made to the submission version of the Lamberhurst Neighbourhood Development Plan to reflect amendments suggested by the Independent Examiner
- **Appendix C:** Lamberhurst Neighbourhood Development Plan Decision Statement
- **Appendix D:** Version of the Lamberhurst Neighbourhood Development Plan that will be subject to Referendum

Background Papers:

- submission version of the Lamberhurst Neighbourhood Development Plan consulted on 30<sup>th</sup> October to 11<sup>th</sup> December 2020 and subject to independent examination  
[https://tunbridgewells.gov.uk/\\_data/assets/pdf\\_file/0004/375466/01LamberhurstNeighbourhoodDevelopmentPlansubmissiondocument.pdf](https://tunbridgewells.gov.uk/_data/assets/pdf_file/0004/375466/01LamberhurstNeighbourhoodDevelopmentPlansubmissiondocument.pdf)

## 8. Cross Cutting Issues

### A. Legal (including the Human Rights Act)

Accepting the recommendations in this report will fulfil the Council's duties under the Town and Country Planning Act 1990, as amended by the Localism Act 2011, the Housing and Planning Act 2016, and the Neighbourhood Planning Act 2017. The recommendations also comply with the Neighbourhood Planning (General) Regulations 2012 as amended.

Cheryl Parks, Mid Kent Legal Services (Planning) 10<sup>th</sup> June 2021

### B. Finance and Other Resources

There is no associated cost beyond those factored into the budget of Planning Services in organising the independent examination and meeting the independent examiner's invoiced costs. Tunbridge Wells Borough Council can claim **£20,000** from the government (Ministry of Housing, Communities and Local Government) 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. The referendum will be carried out by the borough council.

Jane Fineman, Head of Finance, Procurement and Parking 11<sup>th</sup> June 2021

### C. Staffing

There are no staffing implications.

Anita Lynch, HR Manager 24<sup>th</sup> June 2021

### D. Risk Management

All risks associated with this report are within the Council's current risk appetite and managed in accordance with its risk management strategy.

Stephen Baughen, Head of Planning 24<sup>th</sup> June 2021

### E. Environment and Sustainability

No environmental and sustainability implications are identified. Section 3 of the Basic Conditions Statement submitted with the Draft Lamberhurst Neighbourhood Plan provides information to demonstrate how the Lamberhurst Neighbourhood Plan is in Conformity with

Sustainable Development,  
[https://www.tunbridgewells.gov.uk/\\_data/assets/pdf\\_file/0007/375469/03BasicConditionsStatementLamberhurstNDP.pdf](https://www.tunbridgewells.gov.uk/_data/assets/pdf_file/0007/375469/03BasicConditionsStatementLamberhurstNDP.pdf) and one of the roles of the independent examiner has been to consider whether the plan contributes to the achievement of sustainable development. The LNDP (when 'made') will form part of the borough's development plan, to be read alongside the Local Plan which contains policies to support the climate and biodiversity emergency.

Stephen Baughen, Head of Planning 29<sup>th</sup> June 2021

## **F. Community Safety**

No community safety issues arise as a result of this report

Section 17, Crime and Disorder Act 1998

Terry Hughes, Community Safety Manager 22<sup>nd</sup> June 2021

## **G. Equalities**

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users. Furthermore, the Public Sector Equality Duty applies to parish councils: Lamberhurst Parish Council will be responsible for demonstrating due regard to this in the production of an NDP.

Abigayle Sankey, Corporate Governance Officer 11<sup>th</sup> June 2021

## **H. Data Protection**

Representations made to the Regulation 16 consultation cannot be treated in confidence. Regulation 22 and 35 of the Town and Country Planning (Local Development) (England) Regulations 2012, as amended, require copies of all representations to be made publicly available. The Council will publish names and associated representations on its website but will not publish personal information such as telephone numbers, emails or private addresses. All representations will be forwarded for consideration by the person appointed to carry out an examination of the Plan.

There is no identified risk to individuals' interests under the General Data Protection Regulation.

Article 5, General Data Protection Regulation 2016

Jane Clarke, Head of Policy and Governance 10<sup>th</sup> June 2021

## **I. Health and Safety**

No implications for Health and Safety.

Mike Catling, Corporate Health and Safety Advisor 11<sup>th</sup> June 2021

## **J. Health and Wellbeing**

No implications on any social, economic and environmental factors which impact on people's health and wellbeing.

Rebecca Bowers, Health Improvement Team 11<sup>th</sup> June 2021