

Horsmonden Neighbourhood Development Plan, Cabinet 09 February 2023

Summary

Lead Member: Councillor Hugo Pound, Portfolio Holder of Planning and Transportation

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

Head of Service: Carlos Hone, Head of Planning Services

Report Author: Deborah Dixon, Principal Planning Officer

Classification: Public document (non-exempt)

Wards Affected: Brenchley and Horsmonden

Approval Timetable	Date
Management Board	11 January 2023
Planning & Transportation CAB	23 January 2023
Cabinet	09 February 2023

Recommendations

This report makes the following recommendations to Cabinet:

1. That the independent examiner's Report on the Horsmonden Neighbourhood Development Plan (HNDP) received on 28 November 2022 at **Appendix A** be noted and published.
2. That the HNDP be modified in part as set out in **Appendix B**, according to the examiner's recommendations, following discussion with Horsmonden Parish Council, and furthermore include changes to Policy 4.4 of the HNDP as explained at paras 2.20 – 2.22 in the report below
3. That Cabinet agrees the publication of the Decision Statement at **Appendix C** and decides to progress the HNDP as set out at **Appendix D** to referendum, to ensure the community has the final say on whether the neighbourhood plan comes into force or not. The referendum area is that of the Neighbourhood Area i.e., Horsmonden Parish.

4. The plan forms part of the statutory development plan for the Neighbourhood Area (Horsmonden Parish) immediately following a positive referendum outcome on the HNDP, with more than 50% of the vote, and does not have to wait until it is made. Accordingly, Cabinet recommends to Council that in the event that the referendum result on the HNDP is positive, the Council formally makes the HNDP as set out in **Appendix D** which will be subsequently considered at the next Full Council post-referendum¹.
5. The referendum will be held on 08 June 2023², and if passed will then go through to **Full Council** on 05 July 2023³. TWBC Planning is in contact with the TWBC Elections team to start arrangements for the referendum.

¹ Subject to report lead in times.

² Date of referendum to be confirmed

³ Based on a referendum date of 08 June 2023

1. Introduction and Background

- 1.1 The Horsmonden Neighbourhood Development Plan (HNDP) has been successful at examination, with the independent examiner recommending that the HNDP 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 HNDP, which have been made with the involvement and input of Horsmonden Parish Council 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 a 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 a 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 area to which they geographically apply (which in the case of this neighbourhood plan is

Horsmonden parish), which means that they are a key document in the determination of planning applications in that area. It is noted that Neighbourhood Plans carry full weight in the planning decision process when they have been successful at referendum, prior to them being formally approved (made) by the Council. This follows amendments in 2017 to the Planning and Compulsory Purchase Act 2004

<https://www.legislation.gov.uk/ukpga/2004/5/contents>, section 38(3A) being inserted by the Neighbourhood Planning Act 2017.

- 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, the Neighbourhood Planning Regulations 2012 (as amended)
https://www.legislation.gov.uk/uksi/2012/637/pdfs/uksi_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 have 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 are five 'made' NDPs within the borough (for Hawkhurst Parish, Lamberhurst Parish, Goudhurst Parish, Benenden Parish, and Brenchley & Matfield Parish) and currently five NDPs being prepared for parish and town councils including Horsmonden.

2. Preparation of the Horsmonden Neighbourhood Development Plan (HNDP)

- 2.1 The HNDP 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 HNDP progression from designation to its current stage can be found on the TWBC webpages
<https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/horsmonden>
- 2.2 The HNDP has been prepared for a designated Neighbourhood Area, which follows the Horsmonden parish boundary and will have a plan period from 2022 to 2038. The neighbourhood area was designated by the borough council on 24 November 2017. Plan preparation by the parish council commenced shortly after this date.

- 2.3 TWBC officers have met with representatives of the parish council on a regular basis throughout the preparation of the HNBP to provide advice and support and have made comments at key stages. The parish council carried out a pre-submission consultation on a draft HNBP (Regulation 14 consultation) between 13 September to 24 October 2021. 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 HNBP was published and consulted on by the borough council from 4 July to 29 August 2022. Details can be found on the borough council webpages <https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/horsmonden> as well as on the Horsmonden Parish Council website.
- 2.5 The HNBP (submission plan) which was consulted upon can be found here - https://tunbridgewells.gov.uk/_data/assets/pdf_file/0019/424531/1.-Horsmonden-Submission-Neighbourhood-Plan-June-2022.pdf
- 2.6 Comments were made by TWBC to this consultation in the form of a Delegated Portfolio Holder Report dated 7 September 2022, found here <https://democracy.tunbridgewells.gov.uk/ieDecisionDetails.aspx?ID=2687>
- 2.7 The HNBP includes policies relating to the landscape and environment, design and built environment, housing, business and the local economy, and transport and infrastructure. The HNBP is supported by a local evidence base.
- 2.8 Mr John Slater MRTPI was appointed as the independent examiner by the borough council with the agreement of the parish council and the examination commenced in September 2022. The examiner was appointed to assess whether the HNBP met certain statutory requirements for NDPs, known as the 'Basic Conditions'.
- 2.9 The Basic Conditions 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;
 - not breach, and is otherwise compatible with, EU obligations (including Human Rights Act); and
 - not breach requirements of the Conservation of Habitats and Species Regulations.
- 2.10 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 – 2019/2021). In addition, para 13 of the NPPF states that neighbourhood plans should support the strategic development needs as set out in the Local Plan.

- 2.11 Following site visits, the Examiner prepared a document entitled 'Initial Comments of the Independent Examiner' (Clarification Notes), dated 17 October 2022, seeking clarification on a number of matters, which was sent to both the Parish Council and Tunbridge Wells Borough Council. The Parish Council and Tunbridge Wells Borough Council responded to the Clarification Notes accordingly, and following receipt of these, the Examiner issued his final report on 28 November 2022, which is attached at Appendix A.
- 2.12 The HNBP has been successful at examination, with the independent examiner recommending that the Plan should proceed to referendum, subject to a number of recommended modifications. These modifications are required to ensure the HNBP meets the basic conditions. The summary table presented in Appendix B sets out the proposed changes identified by the examiner, with a commentary that provides a background for the proposed changes.
- 2.13 The amended HNBP, incorporating all the modifications as shown at Appendix D, will be the version subject to referendum. This will be known as the Referendum HNBP. [Officer Note: a few final contextual/presentational changes are still being made to ensure that the HNBP meets the accessible document requirements].
- 2.14 Regulation 18 of the Neighbourhood Planning (General) Regulations 2012 (as amended) requires that the local planning authority outlines 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.
- 2.15 The table set out at Appendix B to this report presents the modifications identified as being necessary by the examiner, with a commentary to provide a background for each proposed modification. As recommended by the examiner, the HNBP group has considered the changes, and discussed with TWBC officers, as necessary. All modifications were accepted by the HNBP group.
- 2.16 Additionally, and referred to in paragraphs 51 and 52 of the Examiner's final report, the Borough Council as part of their comments to the Regulation 16 consultation, raised some issues which are not directly related to the policies in the plan. The examiner has advised that he is required only to deal with the matters set out in legislation which are predominantly basic conditions issues.

The examiner does, however, acknowledge that the points being raised are not unimportant and offer the opportunity to improve the final version of the plan.

- 2.17 It is the case, therefore, that Borough Council planning officers have worked with Horsmonden Parish Council/ HNDP Steering Group to address these issues as part of the preparation of the referendum version of the HNDP.
- 2.18 One of the independent examiner's recommendations (see table in Appendix B to this report, first row) was to remove references to 400 metre/800 metre distances as a measurement of whether a location is within a walkable distance of village services and facilities. The examiner advised that a less prescriptive approach would be preferable.
- 2.19 Policy 4.4 New Village Hall in the submission version of the HNDP read '*Development proposals for a new village hall will be supported provided it is a 400 metres (approximately 5 minutes walk) from the village centre and has adequate safe pedestrian access*'. The Examiner has required in the Examiner's Report that the following changes are made to this [policy to read '*Development proposals for a new village hall will be supported provided it is a within 400 metres (approximately 5 minutes walk) from the village centre and has adequate safe pedestrian access*'. However, as noted above, the Examiner's Report also requested more generally removing reference to the 400m and 800m distance from the supporting text in terms of walkability.
- 2.20 Following the release of the Examiner's Report at a meeting with TWBC officers and Horsmonden PC, the Parish Council queried whether they could further amend Policy 4.4 to read '*Development proposals for a new village hall will be supported provided it is a walkable distance from the village centre and has adequate safe pedestrian access*', removing the reference to the 400m distance.
- 2.21 The Examiner, based on the fact that the examination report has been formally issued and published, has advised that it would not be appropriate for him to change his recommendations (he can only issue addendums to correct grammatical and similar errors rather than change recommendations). However the Examiner has therefore advised that it would not be inappropriate for the Borough Council to recommend the change when it considers how to respond to the Examiner's recommendations through its Decision Statement and advises that he supports such a change.
- 2.22 It is therefore the case that Policy 4.4 in the referendum version of the HNDP will read '*Development proposals for a new village hall will be supported provided it is a walkable distance from the village centre and has adequate safe pedestrian access*'.
- 2.23 The final version (Referendum version) of the HNDP, incorporating the modifications, as well as a number of presentational changes is the subject of this report, and is attached at Appendix D. [Officer note: there remains some minor presentational amendments to be completed prior to cabinet].

- 2.24 Furthermore, the inspector has recommended that several other policies are deleted, either due to lack of evidence to support the policy approach or that the proposed policy did not provide any additional guidance from that already existing. These policies are 2.5 School Access Crossing; 2.6 Public Parking; and 7.11 Flooding.

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

- 2.25 It is the case that the HNDP has been prepared with reference to the current adopted development plan for the borough. The HNDP 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.
- 2.26 The HNDP also needs to be in general conformity with national planning policy as set out in the National Planning Policy Framework (NPPF) 2021 – the HNDP was prepared against this version of the NPPF 2021.
- 2.27 Paragraph 37 of the Examiner’s final report confirms that the status of the TWBC Submission Local Plan is a draft plan, and although it has commenced through examination, the policies within it can still change as a result of the publication of the Inspector’s recommendations and future consultations on the proposed modifications. The Examiner has confirmed that *‘as a document, it is material to my consideration of the neighbourhood plan and it is clear that the Parish Council has worked closely with the Borough planners and have taken on board the proposals in the emerging plan as it represents a clear direction of travel and is based on up to date research and evidence. However, for the consideration of the basic conditions, the legislation required that the neighbourhood plan should be in general conformity with the strategic policies in the adopted local plan(s)’*.
- 2.28 The examiner’s overall conclusion is that the HNDP, apart from where noted in the Final Report commentary on individual policies that changes are required, meets the basic conditions and remains fundamentally unchanged in its role and

purpose. The referendum version of the HNDP, at Appendix D, includes the changes required by the independent examiner as set out in the final report at Appendix A (as well as the additional change to Policy 4.4 set out at para 2.22 above)

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

- 3.1 The independent examiner has concluded that the HNDP, 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 HNDP, as amended, be made.
- 3.2 He has therefore recommended to Tunbridge Wells Borough Council that the HNDP, 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., Horsmonden Parish.
- 3.3 The table in Appendix B lists the modifications.

Commentary on Independent Examiner's Report for the HNDP:

- 3.4 The Examiner's Report, attached at Appendix A, sets out the findings of the independent examination of the HNDP, determining whether or not the Plan meets the basic conditions and other statutory requirements, and recommending whether the Plan should proceed to referendum, and what the referendum area should be.
- 3.5 A summary of the recommended modifications put forward by the Examiner is presented at Appendix B. The majority of the recommended modifications relate to matters of clarity and precision and are designed to ensure that the Plan fully accords with national policy. Several policies are recommended to be deleted, either due to lack of evidence to support the policy approach or that the proposed policy did not provide any additional guidance from that already existing.
- 3.6 Having considered all policies in the Plan, and made recommended modifications based on these, the Examiner found the Plan to meet the basic conditions, and therefore able to proceed to the referendum. The Examiner has congratulated Horsmonden Parish Council on producing a locally distinctive neighbourhood plan, concluding that the plan will sit comfortably alongside the emerging Tunbridge Wells Borough Local Plan, and that it has allowed the local community to be able to shape the development that will take place in the parish over the next few years.

Next Steps

- 3.7 The recommended modifications are reflected in the amended final version of the HNBP that will be subject to referendum, presented in Appendix D.
- 3.8 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' which is presented in Appendix C.
- 3.9 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 HNBP comes into force or not.
- 3.10 Planning legislation at s38 (3A) of the Planning and Compulsory Purchase Act 2004, <https://www.legislation.gov.uk/ukpga/2004/5/contents>, supported by Planning Practice Guidance (PPG) sets out at <https://www.gov.uk/guidance/neighbourhood-planning--2> requires 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). At this stage it carries full weight in the planning decision - making process.
- 3.11 The principal effect of this is that the HNBP will become part of the statutory 'development plan' for the area after a positive referendum. The local planning authority (that is TWBC) must formally make the neighbourhood plan within 8 weeks of the positive referendum outcome.
- 3.12 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
- 3.13 It is therefore requested that the Cabinet decision includes as part of resolution 4 that in the circumstances where the referendum result is positive, then the Horsmonden Neighbourhood Development Plan can, post-referendum, go firstly to Management Board then directly to be considered at the TWBC Full Council, with a recommendation for it to be 'made' (adopted), therefore removing the other committee meetings (Planning and Transportation Cabinet Advisory Board, and Cabinet) from the post-referendum/second half of the process.

4. Options Considered

Option 1: Note the examiner's report dated 28 November 2022 and the recommended amendments (including the change to Policy 4.4), agree the Decision Statement and progress the Horsmonden Neighbourhood Development Plan to referendum.

- 4.1 The Examiner has congratulated Horsmonden Parish Council on producing this locally distinctive neighbourhood plan. The Examiner concludes that the plan will sit comfortably alongside the emerging Tunbridge Wells Borough Local Plan and that it has allowed the local community to be able to shape the development that will take place in the parish over the next few years. It is clear that a huge amount of hard work has gone into this plan by volunteers on behalf of the local community and the Examiner is pleased to recognise their sterling work.

Option 2: Note the examiner's report dated 28 November 2022 and the recommended amendments (including the change to Policy 4.4), but do not agree the Decision Statement and do not progress the Horsmonden Neighbourhood Development Plan to referendum.

- 4.2 As already noted, the examiner's report is largely positive, and it is considered that the plan remains fundamentally unchanged in its role and purpose.

5. Preferred Option and Reason

- 5.1 The preferred option is **Option 1:** note the examiner's report dated 28 November 2022 and the recommended amendments (including the change to Policy 4.4), agree the Decision Statement, and progress the Horsmonden 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 HNDP and which clearly sets out to achieve sustainable development (and subsequent discussions relating to Policy 4.4). The relatively small number of amendments proposed by the examiner have been considered and accepted by the Horsmonden Parish Council. The version of the HNDP that will be subject to Referendum at Appendix D reflects this.

6. Consultation on Options

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

Recommendation from Cabinet Advisory Board

- 6.2 The Planning and Transportation Cabinet Advisory Board were consulted on 23 January 2023 and [Officer note: add whether P&T CAB agreed or disagreed to support this Cabinet recommendation].

7. Implementation

- 7.1 If the report recommendations are agreed by Cabinet, the Horsmonden Neighbourhood Development Plan will then proceed to Referendum scheduled for 08 June 2023 (tbc). If successful at referendum, the Horsmonden Neighbourhood Plan becomes part of the Development Plan for Horsmonden parish and will be a material consideration in future planning decisions in the parish. The HNDP will then be taken to Full Council on 05 July 2023 to be formally 'made' by the Council.

8. Appendices and Background Documents

Appendices:

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

Background Papers:

Submission version of the Horsmonden Neighbourhood Development Plan consulted on 4 July 20 29 August 2022, and subject to independent examination

https://tunbridgewells.gov.uk/_data/assets/pdf_file/0019/424531/1.-Horsmonden-Submission-Neighbourhood-Plan-June-2022.pdf

9. 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) 05/01/23

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 (Department for Levelling Up, Housing & Communities) 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 12/01/23

C. Staffing

There are no staffing implications.

Anita Lynch, HR Manager 11/01/23

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.

Carlos Hone, Head of Planning 06/01/23

E. Environment and Sustainability

No environmental and sustainability implications are identified. Section 4 of the Basic Conditions Statement submitted with the Submission Horsmonden Neighbourhood Plan

provides information to demonstrate how the Horsmonden Neighbourhood Plan is in Conformity with Sustainable Development, https://tunbridgewells.gov.uk/_data/assets/pdf_file/0007/424537/4.-Basic-Conditions-Report.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 HNBP (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.

Carlos Hone, Head of Planning 06/01/23

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 05/01/23

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: Horsmonden Parish Council will be responsible for demonstrating due regard to this in the production of an NDP.

Abigayle Sankey, Corporate Governance Officer 06/01/23

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 05/01/23

I. Health and Safety

No implications for Health and Safety.

Mike Catling, Corporate Health and Safety Advisor 05/01/23

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 11/01/23