

Delegated Portfolio Holder Decision: TWBC Representations to the Regulation 16 consultation on the Pembury Neighbourhood Development Plan

For Councillor Hugo Pound on 30 January 2023

Summary

Lead Member: Councillor Hugo Pound

Lead Director: Lee Colyer

Head of Service: Carlos Hone

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Classification: Public document (non-exempt)

Wards Affected: Pembury

Approval Timetable	Date
Portfolio Holder	30 January 2023
Report Published	31 January 2023
Decision due not before	8 February 2023

Recommendations

Officer recommendations as supported by the Portfolio Holder:

1. That the table of TWBC officer comments presented in **Appendix A** be submitted, on or before the 30 January 2023, as the Borough Council's representations to the Regulation 16 consultation on the Pembury Neighbourhood Development Plan.

1. Introduction and Background

- 1.1 This report refers to the Pembury Neighbourhood Development Plan (PNDP) Regulation 16 draft for consultation, that can be accessed on-line at <https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/pembury> (Pembury Submission Neighbourhood Plan 2022).
- 1.2 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.
- 1.3 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 https://www.legislation.gov.uk/uksi/2012/637/pdfs/uksi_20120637_en.pdf, and The Neighbourhood Planning Act 2017 <https://www.legislation.gov.uk/ukpga/2017/20/part/1/crossheading/neighbourhood-planning/enacted>, as amended.
- 1.4 Policies in neighbourhood plans need to be in general conformity with the strategic policies of the borough council, as well as having regard to the National Planning Policy Framework (NPPF) and any other relevant legislation.

Preparation of a Neighbourhood Plan

- 1.5 The preparation of a neighbourhood plan broadly follows that of a Local Plan. The Pembury Neighbourhood Plan has identified the key issues to be addressed within its neighbourhood plan, and the Vision Statement and Strategic Objectives set out the main aims and objectives that the Plan seeks to deliver through policies in the neighbourhood plan. This process has been informed by consultation with the local community and supported by an evidence base. There has also been regular ongoing support and advice provided by TWBC planning and specialist officers.
- 1.6 The TWBC Environmental Planning officer provided guidance and support for the Pembury Neighbourhood Plan group from January 2022 to ensure the environmental screenings for the neighbourhood plan were carried out correctly, based on the scope of the Neighbourhood Plan (that does not propose to

allocate sites for development). TWBC was able to confirm to Pembury Parish Council in April 2022 that Natural England, Historic England and the Environment Agency agreed that a Strategic Environmental Assessment was not necessary.

- 1.7 A 'pre-submission' version of the neighbourhood plan (the Regulation 14 stage) was prepared and a Regulation 14 public consultation on this document carried out by Pembury Parish Council from 5 June to 18 July 2022.
- 1.8 Full details of the consultations and engagement with the public that were carried out in the preparation of the Pembury Neighbourhood Plan are provided by the Consultation Statement prepared to support the neighbourhood plan https://tunbridgewells.gov.uk/_data/assets/pdf_file/0011/435647/Consultation-Statement-PNDP.pdf
- 1.9 Following consideration of the Regulation 14 consultation responses, taking account of the issues raised and making any appropriate amendments in the light of the responses, a final draft 'submission' version of the plan was prepared and submitted, along with other necessary documentation, to the borough council in November 2022. A formal 8 weeks' consultation is currently being carried out by TWBC, running from 5 December 2022 to 30 January 2023.
- 1.10 Full details of the consultation are available at <https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/pembury>
- 1.11 Neighbourhood plans must meet certain 'basic conditions' before they can come into force. These are tested through the independent examination, before a neighbourhood plan may proceed to referendum.
- 1.12 The Regulations state that a neighbourhood plan will be considered to have met the basic conditions if:
 - having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
 - the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations. (Note: these obligations remain despite UK departure from EU, unless specifically revised or removed by the UK Parliament).

- 1.12 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, Pembury Parish).

2. Representations to be made by TWBC to the Regulation 16 consultation being carried out on the Pembury Neighbourhood Development Plan

- 2.1 It is a requirement of the Neighbourhood Planning Regulations that a neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority.
- 2.2 The representations to be made by TWBC to the Regulation 16 consultation (presented in **Appendix A**) have concentrated on addressing this requirement. However, some comments from specialist officers are also considered appropriate to include with the representations as they provide advice on matters to ensure policies are robust and can achieve what is intended.
- 2.3 These representations from TWBC, once formally approved by the Borough Council through this Delegated Portfolio-holder Decision will then be submitted to the Regulation 16 consultation for the Pembury Neighbourhood Plan.

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

- 2.4 The Pembury Neighbourhood Development Plan 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

The Pembury Neighbourhood Plan also needs to be in general conformity with national planning policy as set out in the National Planning Policy Framework (NPPF) 2021.

- 2.5 **Local Plan 2006:** since its adoption some changes have been made to the Local Plan as a result of the 'saving' of policies in March 2009, the adoption of the Core Strategy in June 2010 and the adoption of the Site Allocations Local Plan in July 2016. As a result, some policies have been removed from the Local Plan as they are no longer valid. An updated list of Local Plan 2006 saved policies can be viewed at https://www.tunbridgewells.gov.uk/_data/assets/pdf_file/0006/343347/Local-Plan-2006-Remaining-Saved-Policies-at-2016.pdf
- 2.6 **Core Strategy 2010:** The Core Strategy provides the overarching principles by which the essential development needs of the Borough for the period 2010 – 2026 are to be delivered. The key decisions about how much development would happen in the Borough and where and when it will take place for this period, are made in the Core Strategy.
- 2.7 The Core Strategy provides:
- A spatial vision of how the borough should develop strategic objectives for development in the borough, setting out the main issues to be addressed
 - A delivery strategy setting out how much development will take place and where, when and by what means it will be delivered
- 2.8 **The Site Allocations Local Plan 2016** sets out the specific sites that the Council believes should be developed in order to meet the levels of growth set out in the adopted Core Strategy.
- 2.9 **The Kent Minerals and Waste Local Plan (KMWLP) 2013-2030** was originally adopted by Kent County Council (KCC) in July 2016 and has been subject to an Early Partial Review of certain waste management capacity requirement and mineral and waste safeguarding policies. The plan was adopted in its modified form in September 2020. A statutory five-year review was completed in 2021, and the updated Kent Minerals and Waste Local Plan plans for a 15-year period between 2023 and 2038, including issues such as climate change and low carbon growth, and setting more ambitious targets for improving biodiversity. There are no strategic policies in this plan that affect the policies proposed by the Pembury Neighbourhood Plan.

Commentary

Adopted Development Plan

- 2.10 **Local Plan 2006:** Saved Policy LBD1 Limits to Built Development is considered to be a strategic policy that is relevant for consideration by TWBC when making representations to the Pembury Neighbourhood Development Plan Regulation 16 consultation. Policy LBD1 states that *'Outside the Limits to Built Development, as defined on the Proposals Map, development will only be permitted where it would be in accordance with all relevant policies contained in this Local Plan and the Kent Structure Plan 1996 and the Kent & Medway Structure Plan 2006 rural settlement and countryside policies'*.

- 2.11 Note: Although Structure Plans have no formal status in the current planning system, Policy LBD1 remains a strategic policy statement within the development plan for Tunbridge Wells Borough for future development and land-use planning.
- 2.12 Note: Site Allocations Local Plan Policy AL/STR 1 Limits to Built Development states that *'the extent of the Limits to Built Development is defined on the saved Local Plan Proposals Map for the villages and defined spatially on the individual settlement Proposals Maps accompanying this Site Allocations Local Plan in relation to Royal Tunbridge Wells and Southborough, Paddock Wood, Cranbrook and Hawkhurst. The saved policies of the Local Plan will continue to be relevant in considering details of the appropriate uses inside, and outside of, these defined areas until such time as they are updated and superseded by the Core Strategy Review (Local Plan)'.*
- 2.13 It is therefore the case that Local Plan (2006) Policy LBD1 remains a saved policy for Pembury parish, being relevant for the borough's villages and rural settlements (not including Cranbrook or Hawkhurst).
- 2.14 **The Core Strategy** policies that are considered to be relevant for consideration by TWBC when making representations to the Pembury Neighbourhood Plan Regulation 16 consultation are:
- Core Policy 1: Delivery of Development
 - Core Policy 3: Transport Infrastructure
 - Core Policy 4: Environment
 - Core Policy 5: Sustainable Design and Construction
 - Core Policy 6: Housing Provision
 - Core Policy 7: Employment Provision
 - Core Policy 8: Retail, Leisure and Community Facilities Provision
 - Core Policy 14: Development in the Villages and Rural Areas.
- 2.15 Core Policy 14 Development in the Villages and Rural Areas (within which the parish of Pembury falls) sets out a strategy for the villages that promotes a sustainable economy while maintaining and enhancing their distinctive character and environment and also that of the surrounding countryside. The main aims and objectives of Core Policy 14 are:
- To generally restrict development to sites within the LBD of the villages
 - To enhance village centres to provide a focus for communities, to resist the loss of local services and encourage the development of community facilities
 - To meet local needs for affordable housing
 - To strengthen the rural economy, including opportunities for re-use of redundant rural buildings for employment uses. Also encouragement of land-based uses and tourism.
 - To conserve and enhance buildings and areas of historic and environmental importance, and to maintain the distinctive landscape character and quality of the countryside

- To encourage the use of non-motorised modes of transport between rural settlements and with rural areas
- 2.16 Core Strategy Core Policy 14 identified that approximately 360 net additional dwellings would be delivered in the villages and rural areas on sites for the period 2006 to 2026, to be allocated and released in the Site Allocations Local Plan.
- 2.17 **The Site Allocations Local Plan** did not include any site allocation policies or other strategic policies relevant for Pembury Parish. Paragraph 8.6 in Chapter 8 Villages and Rural Areas explains that monitoring of housing completions, carried out regularly by the Borough Council, had indicated that the overall target for the villages and rural areas in the Core Strategy of 360 net additional dwellings to 2026 had been met. The Council would continue to actively promote the delivery of local needs housing and the affordable housing delivered would therefore be in addition to the target set for the rural areas. Rural exception housing would only be delivered when a specific local need has been identified.

Emerging Local Plan

- 2.18 A new Local Plan for the borough is currently being prepared. The TWBC Local Plan was submitted to the Secretary of State on 1 November 2021, and an Examination in Public (EiP) took place from March to July 2022. The Inspector's initial findings were received in November 2022, and the Council is required to consider the issues raised and the suggested ways forward.
- 2.19 The Inspector's initial findings deal particularly with the proposals for the two strategic sites, Policy STR1 The Development Strategy, and Policy STR/SS3 The Strategy for Tudeley Village. Specifically concerning Pembury, the initial findings refer to Policy AL/PE4 Land at Downingbury Farm, Maidstone Road that allocates land at Downingbury Farm for 25 dwellings. The allocation also includes an area of safeguarded land for expansion of the Hospice in the Weald.
- 2.20 The inspector advises that there is no justification for the inclusion of criterion (5) of Policy AL/PE4, that requires the two sites to be tied together through a legal agreement, because the two uses are different and could come forward independently from one another. The inspector therefore advises that the TWBC Local Plan should allocate each site separately.
- 2.21 The inspector also advises that part of the land included within Policy AL/PE4 is currently located within the Green Belt, the submitted TWBC Local Plan did not seek to remove it from the Green Belt. In order to be effective, the Borough Council has suggested that a further change would be necessary to the Green Belt boundary around Pembury, the necessary justification provided in Examination Document TWLP/044 (officer note: the Inspector's initial findings letter incorrectly refers to 'TWLP/095'). This will need to be consulted on alongside other recommended changes to the Plan in due course.
- 2.22 The Council's initial response was sent to the Inspector on 22 December 2022 and confirmed that at this time it is not possible to put a timeframe on determining the most appropriate approach to the issues raised by the

Inspector's initial findings which will need to be underpinned by a clear understanding of and the requisite appraisal of options. The Council confirms that it remains committed to have an adopted Local Plan in place as soon as practicable and continues to work towards this end.

- 2.23 By way of background, a Regulation 18 consultation on the Draft TWBC Local Plan was carried out in September/November 2019, and a Regulation 19 consultation on the Pre-Submission TWBC Local Plan was carried out in March/June 2021. It is therefore the case that the preparation of the Pembury Neighbourhood Plan has been undertaken in the benefit of the Local Plan for the borough being in the public domain, the initial consultation (Regulation 14) on the Pembury Neighbourhood Plan being carried out during 5 June to 18 July 2022.
- 2.24 In the Basic Conditions Report (dated November 2022) prepared by Pembury Parish Council to support the submitted Pembury Neighbourhood Plan, Section 4 considers the general conformity of the neighbourhood plan with the strategic policies of the TWBC development plan.
https://tunbridgewells.gov.uk/_data/assets/pdf_file/0003/435648/Basic-Conditions-Statement-PNDP.pdf

Conclusion

- 2.25 During the preparation of the Pembury Neighbourhood Plan, planning and specialist officers have provided guidance and support to the group of individuals preparing the neighbourhood plan. At the Regulation 14 consultation stage, a detailed response was provided by officers that included advice about how policy approaches could be further improved.
- 2.26 The Basic Conditions Report for the Pembury Neighbourhood Plan includes analysis on how the neighbourhood plan is in conformity with the Submission Local Plan as well as the current Development Plan documents.
- 2.27 It is considered that the policies included in the Pembury Neighbourhood Plan are in general conformity with the strategic policies contained in the adopted development plan for Tunbridge Wells Borough. Except where identified in comments made by TWBC officers to the Regulation 16 consultation (Appendix A), it is considered that the policies in the Pembury Neighbourhood Plan are also in general conformity with the emerging Local Plan, which once adopted will form part of the Development Plan and will supersede the Site Allocations Local Plan 2016, the Core Strategy 2010 and the saved policies of the Local Plan 2006. The comments made by TWBC to the Regulation 16 consultation are therefore generally supportive of the policies included in the Pembury Neighbourhood Plan, and some of the comments seek to provide clarity and robustness.

3. The next stage in the preparation of the Pembury Neighbourhood Development Plan following the Regulation 16 consultation

- 3.1 Neighbourhood plans are subject to an Independent Examination. The borough council has appointed an independent examiner (with the agreement of Pembury Parish Council). Normally, the independent examination will be conducted by written representations. However, if necessary, the examiner may invite interested parties to a public hearing to present their comments.
- 3.2 The independent examiner will consider whether the proposed neighbourhood plan meets the basic conditions and other requirements set out by law.
- 3.3 The examiner reports to both the borough council and Pembury Parish Council (the 'qualifying body'). The borough council must formally consider the report. If it accepts the examiner's report (through a Cabinet decision), Democratic Services will arrange for a local referendum to be held to ensure that the community has the final say on whether the neighbourhood plan comes into force or not.
- 3.4 If more than 50% of those voting in the referendum vote 'yes', then the neighbourhood plan will become part of the development plan for Pembury parish (if 'made' at Full Council). It is noted that the Pembury NDP will carry full weight following a successful referendum (prior to it being formally made).

4. Options Considered

- 4.1 Option A): 'not submitting TWBC representations to the Regulation 16 consultation, the 'do nothing scenario'': This option would involve the borough council not continuing to provide the advice and guidance that has been available for the neighbourhood plan group during the preparation of the Pembury Neighbourhood Plan.
- 4.2 There is a legal requirement for local authorities to provide support for those preparing neighbourhood plans. The local planning authority should take a proactive and positive approach, working collaboratively with a neighbourhood planning body particularly sharing evidence and seeking to resolve any issues to ensure the neighbourhood plan has the greatest chance of success at independent examination.
- 4.3 Planning and specialist officers have been available, wherever possible, particularly in relation to helping to understand the TWBC Local Plan context and drafting policies, to provide advice and guidance to the Pembury Neighbourhood Plan group.
- 4.4 Option B): 'submit alternative representations to the Regulation 16 consultation': the representations presented in Appendix 1 that it is proposed to submit to the Regulation 16 consultation on the Pembury Neighbourhood Plan reflect advice and comments from a range of TWBC professional officers in the planning department. This option would require additional liaison and discussion with these officers.

- 4.5 Option C):'to endorse the proposed representations to the Regulation 16 consultation: this option would enable the borough council to continue to provide advice and guidance to the Pembury Neighbourhood Plan group.

5. Preferred Option and Reason

- 5.1 The preferred option, Option C): 'to endorse the proposed representations to the Regulation 16 consultation' as this would enable the borough council to continue to provide advice and guidance to the Pembury Neighbourhood Plan group.
- 5.2 It is considered that the policies contained in the Pembury Neighbourhood Plan are in general conformity with the strategic policies contained in the development plan for Tunbridge Wells Borough.

6. Consultation on Options

- 6.1 N/A

Recommendation from Cabinet Advisory Board

- 6.2 N/A

7. Implementation

- 7.1 The TWBC representations to the Regulation 16 consultation on the Pembury Neighbourhood Plan, set out in **Appendix A**, will be submitted using the on-line response form on the consultation webpages.

8. Appendices and Background Documents

Appendices:

- Appendix A: TWBC Representations to the Regulation 16 consultation on the Pembury Neighbourhood Plan

Exempt appendices (if any): N/A

Background Papers:

- Pembury Neighbourhood Development Plan Regulation 16 for consultation
<https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/pembury>

(Pembury Submission Neighbourhood Plan 2022)

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.

Robin Harris, Mid Kent Legal 24 January 2023

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 30 January 2023

C. Staffing

There are no staffing implications.

Carlos Hone, Head of Planning 30 January 2023

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 30 January 2023

E. Environment and Sustainability

No environmental and sustainability implications are identified. Section 3 of the Basic Conditions Statement submitted with the Submission Pembury Neighbourhood Plan provides information to demonstrate how the Pembury Neighbourhood Plan is in Conformity with Sustainable Development, https://tunbridgewells.gov.uk/_data/assets/pdf_file/0003/435648/Basic-Conditions-Statement-PNDP.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 Pembury Neighbourhood Plan (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 30 January 2023

F. Community Safety

No community safety issues arise as a result of this report

Section 17, Crime and Disorder Act 1998

Carlos Hone, Head of Planning 30 January 2023

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

Carlos Hone, Head of Planning 30 January 2023

H. Data Protection

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

Consultees were notified before making their representations that their comments would be published.

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

Carlos Hone, Head of Planning 30 January 2023

I. Health and Safety

No implications for Health and Safety.

Carlos Hone, Head of Planning 30 January 2023

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 Leader 30 January 2023