

FULL COUNCIL 4 October 2023

Pembury Neighbourhood Development Plan

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

Report Author: Deborah Dixon, Principal Planning Policy
Officer

Classification: Public document (non-exempt)

Wards Affected: Pembury

Approval Timetable	Date
Management Board	18 September 2023
Planning & Transportation CAB	n/a
Cabinet	n/a
Full Council	4 October 2023

Recommendations

This report makes the following recommendations to Full Council:

1. That the Pembury Neighbourhood Development Plan (PNDP) be formally 'made' (adopted) and become part of the statutory Development Plan for Pembury Parish with immediate effect, following a favourable local referendum result;
2. The Pembury Neighbourhood Development Plan post-referendum Decision Statement at **Appendix A** be published; and
3. The Pembury Neighbourhood Development Plan SEA Adoption Statement be drafted and published after the NDP is 'made'.

1. Introduction and Background

- 1.1 The Pembury Neighbourhood Development Plan (PNDP) has been successful at examination, with the independent examiner recommending that the PNDP should proceed to referendum, subject to a number of recommended modifications.
- 1.2 The Report presented to Cabinet on 27 July 2023 set out the independent examiner's recommendations and the proposed modifications to be made to the PNDP, which were made with the involvement of Pembury Parish Council following receipt and consideration of the examiner's report. The following documents referred to in this report can be accessed via Item 17 of this Cabinet meeting at <https://democracy.tunbridgewells.gov.uk/ieListDocuments.aspx?CId=118&MId=5409>
- (pre-Referendum) Decision Statement
 - Table of Examiner's recommended Modifications
 - Draft Referendum version of the PNDP
 - The Examiner's Report
- 1.3 It was agreed by Cabinet to note the examiner's report dated 6 April 2023 and the recommended modifications, the (pre-Referendum) Decision Statement and progress the PNDP to referendum.
- 1.4 The version of the PNDP that was subject to referendum reflects subsequent discussions between the parish council and TWBC planning officers to include the examiner's recommended modifications together with a number of presentational improvements.

Background to the Pembury Neighbourhood Development Plan (PNDP)

- 1.5 Pembury Parish Council, as the Qualifying Body (QB), applied for Pembury Parish to be designated a Neighbourhood Area under Part 2 of the Neighbourhood Planning (General) Regulations 2012. The area was designated on 14 July 2020.

- 1.6 Following consultation on a draft (pre-submission) Plan, the PNDP was submitted to the Borough Council under Regulation 15 of the relevant Regulations and the Borough Council undertook formal consultation of the PNDP and its supporting documents which were publicised, and representations were invited. The period of formal consultation ran from 5 December 2022 to 30 January 2023.
- 1.7 An independent examination followed, conducted by written representations, and the Examiner, John Slater BA (Hons) M.A. DMS MRTPI, published his final report on 6 April 2023, concluding that the PNDP, subject to certain modifications proposed in his report, did meet the basic conditions as set out in legislation and is compatible with Schedule 4B of the Town and Country Planning Act 1990 and could therefore proceed to local referendum.
- 1.8 On 27 July 2023 Cabinet resolved that the Pembury Neighbourhood Development Plan – the Submission Plan (as amended in line with the Examiner’s proposed modifications) - should proceed to local Referendum. This decision and a revised version of the PNDP (the ‘Referendum’ version), agreed by Pembury Parish Council (the QB) was published on the TWBC website. The ‘referendum area’ was determined to be Pembury Parish, to ensure the community has the final say on whether the neighbourhood plan comes into force or not.

2. The Referendum

- 2.1 A referendum was held on 14 September 2023. The referendum question was *‘Do you want Tunbridge Wells Borough Council to use the Neighbourhood Plan for Pembury to help it decide planning applications in the neighbourhood area?’* The designated neighbourhood area followed that of the Pembury parish boundary.
- 2.2 The results of the referendum were:
- Yes = 819 votes (83.6%)
- No = 159 votes (16.2%)
- Unmarked or Void = 2 (0.2 %)
- Number of Votes = 980
- Turnout = 22.3%
- 2.3 It is therefore the case that the outcome of the referendum for the PNDP is a positive one, it being endorsed to use the PNDP to decide planning applications within the Parish of Pembury.
- 2.4 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 referendum neighbourhood plan).

- 2.5 It is the case that in these circumstances the neighbourhood plan must be ‘made’ by the borough council (that is the neighbourhood plan is adopted). There are narrow circumstances where the borough council 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
- 2.6 It is concluded that the Plan, including its preparation, does not breach and would not otherwise be incompatible with any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998). This includes compliance with the basic condition regarding compliance with the Habitat Regulations.
- 2.7 The Cabinet decision of 27 July 2023 included as part of resolution (No. 4) that in the circumstances where the referendum result is positive, that the Pembury Neighbourhood Development Plan can, post-referendum, 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 part of the process.
- 2.8 Following the successful referendum outcome, the Pembury Neighbourhood Development Plan carries full weight in planning decisions in Pembury Parish. As noted at paragraph 3.4 of this report, the Neighbourhood Plan Regulations require that the PNDP be formally ‘made’ by TWBC, which should be within 8 weeks of the successful referendum.
- 2.9 Paragraph 3.5 above sets out that the narrow circumstances where the borough council is not required to make the neighbourhood plan are when 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.
- 2.10 All modifications required by the independent examiner to the submission version of the PNDP were accepted by Pembury Parish Council, and were included in the referendum version of the PNDP.
- 2.11 The Pembury Neighbourhood Development Plan that is being presented to Full Council is the referendum version that was voted upon on 14 September and does not include any subsequent changes.

3. Conclusion

- 3.1 Paragraph 38A(4)(a) of the Planning and Compulsory Purchase Act 2004 requires the borough council to 'make' a Neighbourhood Plan if more than half of those voting in a referendum have voted in favour of the Plan being used to help to decide planning applications in the area. This needs to be achieved within eight weeks of the referendum result.
- 3.2 The Council has also assessed and concluded that the Plan, including its preparation, does not breach and would not otherwise be incompatible with any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998). This includes compliance with the basic condition regarding compliance with the Habitat Regulations.
- 3.3 Therefore, it is proposed that Full Council be recommended to formally 'make' the PNDP with immediate effect.
- 3.4 The principal effect of this is that the PNDP is now part of the statutory 'development plan' for Pembury Parish after a positive referendum pursuant to s38 (3A) of the Planning and Compulsory Purchase Act 2004, <https://www.legislation.gov.uk/ukpga/2004/5/contents>. This means it is now a material consideration in the determination of planning applications in Pembury Parish.
- 3.5 The post-referendum decision to make the PNDP (**Appendix A**) will need to be publicised and notified to those who had asked to be advised. A statement setting out how environmental considerations (the SEA Adoption Statement) have been integrated into the Plan also needs to be published and consultees informed.

4. Appendices and Background Documents

Appendices:

- **Appendix A:** Pembury Neighbourhood Development Plan Decision Statement (post-referendum)

5. 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) 30/08/2023

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 (Department for Levelling Up, Housing and Communities, DLUHC) 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 was carried out by the borough council.

A claim for £20,000 will be made to the DLUHC by TWBC

Jane Fineman, Head of Finance, Procurement and Parking 26/09/2023

C. Staffing

There are no staffing implications.

Nick Dufton, HR Manager 14/09/2023

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 12/09/2023

E. Environment and Sustainability

No environmental and sustainability implications are identified. Section 4 of the Basic Conditions Statement submitted with the Pembury Neighbourhood Development Plan provides information to demonstrate how the Pembury Neighbourhood Development 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 PNDP comes into force as part of the statutory development plan once it has been approved at referendum and forms 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 12/09/2023

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 30/08/2023

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 an NDP.

Abigayle Sankey, Corporate Governance Officer 04/09/2023

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 UK General Data Protection Regulation.

Article 5, General Data Protection Regulation 2016

Andy Sturtivant, Data Protection Officer, 12/09/2023

I. Health and Safety

No implications for Health and Safety.

Mike Catling, Corporate Health and Safety Advisor 30/08/2023

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 08/09/2023