

# Pembury Neighbourhood Development Plan, Cabinet 27 July 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:** Pembury

Approval Timetable	Date
Management Board	19 June 2023
Planning & Transportation CAB	10 July 2023
Cabinet	27 July 2023

## Recommendations

This report makes the following recommendations to Cabinet:

1. That the independent examiner's Report on the Pembury Neighbourhood Development Plan (PNDP) at **Appendix A** be noted and published.
2. That the PNDP be modified in part as set out in **Appendix B**.
3. That Cabinet agrees to progress the PNDP as set out in **Appendix C** to referendum, and agrees the publication of the Decision Statement at **Appendix D**.
4. That Cabinet recommends that if the referendum result on the PNDP is positive, the Council formally makes the PNDP as set out in **Appendix C** which will be subsequently considered at the next Full Council meeting post-referendum<sup>1</sup>.

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<sup>1</sup> Subject to report lead in times.



# 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 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 PNDP, which have been made with the involvement and input of Pembury 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

Pembury 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](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](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.

## **2. 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 six 'made' NDPs within the borough (for Hawkhurst Parish, Horsmonden Parish, Lamberhurst Parish, Goudhurst Parish, Benenden Parish, and Brenchley & Matfield Parish) and currently six NDPs being prepared or reviewed for parish and town councils including Pembury. Preparation of the Pembury Neighbourhood Development Plan (PNDP)**

- 2.1 The PNDP 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 PNDP progression from designation to its current stage can be found on the TWBC webpages

<https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/pembury>

- 2.2 The PNDP has been prepared for a designated Neighbourhood Area, which follows the Pembury parish boundary and will have a plan period from 2020 to 2038. The neighbourhood area was designated by the borough council on 7 July 2020. 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 PNDP to provide advice and support and have made comments at key stages. The parish council carried out a pre-submission consultation on a draft PNDP (Regulation 14 consultation) between 5 June to 18 July 2022. 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 PNDP was published and consulted on by the borough council from 5 December 2022 to 30 January 2023. Details can be found on the borough council webpages <https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/pembury> as well as on the Pembury Parish Council website.
- 2.5 The PNDP (submission plan) which was consulted upon can be found here - <https://talkingpointtunbridgewells.uk.engagementhq.com/20055/widgets/58430/documents/34360>
- 2.6 Comments were made by TWBC to this consultation in the form of a Delegated Portfolio Holder Report dated 31 January 2023, found here [Issue details - TWBC Representations to the Reg 16 Consultation on the Pembury Neighbourhood Development Plan - Tunbridge Wells Borough Council](#)
- 2.7 The PNDP includes policies relating to housing; character, heritage and design; employment in Pembury; environment and green space; transport and movement; and community facilities. The PNDP does not propose to allocate sites for development. The PNDP 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 February 2023. The examiner was appointed to assess whether the PNDP 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’ dated 23 February 2023, 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 initial comments of the Examiner accordingly, and following receipt of these, the Examiner issued his final report on 6 April 2023, which is attached at **Appendix A**.
- 2.12 The PNDP 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 PNDP 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 to the proposed changes. As recommended by the examiner, the PNDP group has considered the changes, and discussed with TWBC officers, as necessary. All modifications have been accepted by the PNDP group.
- 2.13 The amended PNDP, incorporating all the modifications, as well as a number of presentational changes, as shown at **Appendix C**, will be the version subject to referendum. This will be known as the Referendum PNDP.
- 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.

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

- 2.15 It is the case that the PNDP has been prepared with reference to the current adopted development plan for the borough. The PNDP 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.
- 2.16 The PNDP also needs to be in general conformity with national planning policy as set out in the National Planning Policy Framework (NPPF) 2021 – the PNDP was prepared against this version of the NPPF 2021.
- 2.17 Paragraph 37 of the Examiner’s Final Report addresses the progress of the emerging TWBC Local Plan. The Examiner confirms that the only findings in the Local Plan Inspector’s Initial Findings Letter [https://forms.tunbridgewells.gov.uk/data/assets/pdf\\_file/0007/434392/ID-012-Inspectors-Initial-Findings.pdf](https://forms.tunbridgewells.gov.uk/data/assets/pdf_file/0007/434392/ID-012-Inspectors-Initial-Findings.pdf) which specifically applies to the parish of Pembury relate to the de coupling of the extension to the hospice site and the adjacent residential allocation, at Downingbury Farm (ref TWBC Submission Local Plan site allocation Policy AL/PE4). The Examiner has confirmed that these findings do not affect the examination of the PNDP.
- 2.18 The examiner’s overall conclusion is that the PNDP, 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 PNDP, at **Appendix C**, includes the changes required by the independent examiner as set out in the final report at **Appendix A**.

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

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

#### Commentary on Independent Examiner's Report for the PNDP:

- 3.4 The Examiner's Report, attached at **Appendix A**, sets out the findings of the independent examination of the PNDP, 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.
- 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 local referendum.
- 3.7 The Examiner has congratulated Pembury Parish Council on producing a locally distinctive neighbourhood plan, that he considers will sit comfortably alongside the new Tunbridge Wells Borough Local Plan when it is finally adopted and 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 including the major developments which will be taking place to the south of the village. He notes that it is a professionally produced neighbourhood plan with clear maps, that it makes good use of photographs, and concludes that it is a very clear and understandable document.

#### Next Steps

- 3.8 The recommended modifications are reflected in the amended final version of the PNDP that will be subject to referendum, presented in **Appendix C**.



- 3.9 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 D**.
- 3.10 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 PNDP comes into force or not.
- 3.11 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.
- 3.12 The principal effect of this is that the PNDP 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.
- 3.13 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
- 3.14 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 Pembury 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 6 April 2023 and the recommended amendments, agree, and publish the Decision Statement and progress the Pembury Neighbourhood Development Plan to referendum.

- 4.1 The Examiner has congratulated Pembury Parish Council on producing a locally distinctive neighbourhood plan, that he considers will sit comfortably alongside the new Tunbridge Wells Borough Local Plan when it is finally adopted and 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 including the major developments which will be taking place to the south of the village.

**Option 2:** Note the examiner's report dated 6 April 2023 and the recommended amendments, but do not agree or publish the Decision Statement and do not progress the Pembury 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 6 April 2023 and the recommended amendments, agree, and publish the Decision Statement, and progress the Pembury 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 PNDP and which clearly sets out to achieve sustainable development. The relatively small number of amendments proposed by the examiner have been considered and accepted by the Pembury Parish Council. The version of the PNDP that will be subject to referendum at **Appendix C** reflects this.

## 6. Consultation on Options

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

## Recommendation from Cabinet Advisory Board

6.2 The Planning and Transportation Cabinet Advisory Board were consulted on 10 July 2023 where Recommendations 1 - 4 listed above under the heading 'Recommendations' were agreed.

## 7. Implementation

- 7.1 If the report recommendations are agreed by Cabinet, the Pembury Neighbourhood Development Plan will then proceed to referendum scheduled for 14 September 2023. If successful at referendum, the Pembury Neighbourhood Plan becomes part of the Development Plan for Pembury parish and will be a material consideration in future planning decisions in the parish. The PNDP is scheduled to then be taken to Full Council on 4 October 2023 to be formally 'made' by the Council.

## 8. Appendices and Background Documents

### Appendices:

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

### Background Papers:

Submission version of the Pembury Neighbourhood Development Plan consulted on between 5 December 2022 to 5pm on 30 January 2023, and subject to independent examination

<https://talkingpointtunbridgewells.uk.engagementhq.com/20055/widgets/58430/documents/34360>

## 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) 25/05/2023

### 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 & 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 will be carried out by the borough council.

Jane Fineman, Head of Finance, Procurement and Parking 02/06/2023

### C. Staffing

There are no staffing implications.

Anita Lynch, HR Manager 31/05/2023

### 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 14/06/2023

### E. Environment and Sustainability

No environmental and sustainability implications are identified. Section 4 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](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 PNDP (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 14/06/2023

## **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 23/05/2023

## **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 26/05/2023

## **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 22/05/2023

## **I. Health and Safety**

No implications for Health and Safety.

Mike Catling, Corporate Health and Safety Advisor 23/05/2023

## **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 31/05/2023