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| Report to | - | Cabinet |
| Date | - | 18 December 2017 |
| Report of the | - | Executive Director of Business Operations |
| Subject | - | Examiner's Report into the Sedlescombe Neighbourhood Development Plan 2016-2028 |

Recommendation to COUNCIL: That the Sedlescombe Neighbourhood Development Plan 2016-2028 incorporating the Examiner's modifications, as set out at Appendix 2, proceed to local Referendum as recommended by the Examiner.

Service Manager: Tim Hickling

Lead Cabinet Member: Councillor G.P. Johnson

Introduction

1. The Examiner, Mr. Edward Cousins, appointed with the agreement of Sedlescombe Parish Council (SPC) to consider whether the Parish Council's submitted Neighbourhood Development Plan meets the required 'basic conditions', has now issued his report. It is attached as Appendix 1. The substantive assessments of the eleven policies of the Neighbourhood Plan (NP) are contained on pages 31-49, while other sections also duly consider other related matters such as the Strategic Environmental Assessment and "process" representations.
2. Members' attention is drawn to the earlier Cabinet report of 16 January 2017, which summarised the submitted NP and its background, as well as containing Rother District Council's (RDC) own representations (Minute CB16/70 refers).
3. This report focuses on the legal responsibilities of RDC, to consider the Examiner's recommendations and to decide whether the NP, with the Examiner's modifications, meets the required 'basic conditions', such that it should proceed to referendum.
4. It is noted that, on this occasion, because of the NP's history, with the withdrawal of an earlier NP following a previous Examiner's report, and areas of contention, Mr. Cousins held an oral hearing, in June 2017, in addition to considering the written representations.

Examiner's recommendations

5. Overall, Mr. Cousins concludes: *"In my judgment the Sedlescombe Neighbourhood Plan, with the suggested modifications incorporated, meets the Basic Conditions, and the various other legal requirements, referred to above. It therefore can proceed to a Referendum". (para. 178, p49).*

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6. A central issue in the production of a NP for Sedlescombe has been the future of land known as Street Farm on Brede Lane. However, while the submitted NP sought to resist any development here, the position has moved on, as the Examiner states at paragraphs 105-110.
7. In the light of the grant of planning permission for 16 houses with associated provisions for the transfer of an area of land for the adjoining primary school to the Education Authority and the transfer to public ownership of the remainder for use as open space, the Examiner duly recommends that the area of housing be incorporated into the new development boundary, while all the remainder be designated as 'Local Green Space'.
8. In all other respects, the Examiner supports the development boundary proposed in the submitted NP.
9. The only site he proposes to remove from the NP is land at Balcombe Green (Policy 9), as he acknowledges that this is neither available nor deliverable in current circumstances.
10. There are some recommended amendments to other policies:
 - a) to clarify the expected housing numbers at land at Sunningdale (Policy 2) and to give some flexibility about the retention of the existing dwelling;
 - b) to refer to the priority habitat affecting the land at Pestalozzi (Policy 3) and land at Sedlescombe Sawmills (Policy 5);
 - c) to highlight that the access provisions for each of the sites close together north of the village, as covered by Policies 4, 7 and 8 should not prejudice access to the others; and
 - d) to clarify that the scale of housing at land at Sedlescombe Sawmills (Policy 5) and land adjacent to St John the Baptist Church (Policy 6) should be the 'minimum' required for cross-subsidy purposes, the latter also being recognised as a grade 2* Listed Building.
11. His recommendation to retain the proposed allocation of land at Church Hill Farm, North of Village Hall (Policy 4) is also notable as, although it is in the submitted NP, SPC wrote to the Examiner after the hearing seeking its removal in the light of the Street Farm planning permission. The argument is that there would be "an over-delivery of housing" with the addition of Street Farm and that the deletion of Policy 4, which would deliver 10-12 houses, would help redress the balance.
12. In response, the Examiner states, quite correctly, that there is no statutory basis for an examiner to remove a site from a submitted NP on the basis of such a request. He therefore advises that if SPC is intent on this approach, it must withdraw the NP. He adds that he would not recommend this.
13. A full draft of the Sedlescombe NP incorporating all of the Examiner's modifications (excluding the forward and Chairman's Introduction) has been collated and is contained at Appendix 2.

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14. The Examiner is also required to determine the Referendum area. He does this in an Addendum to his report, finding that it should be the area of Sedlescombe Parish.

Consideration of the Examiner's report and proposed modifications

15. RDC must now consider each of the Examiner's recommendations. It is not obliged to accept them, but should be aware that the purpose of the examination is to provide independent scrutiny by a duly qualified person. The legislative position¹ is that RDC can only make modifications post-examination if it considers them necessary to meet the 'basic conditions', be compatible with convention rights, accord with relevant regulations or correct errors. Also, in this event, further consultation and potentially a further examination would be required.
16. For reference, the 'basic conditions' relate to the need to:
- have regard to national policies and advice;
 - contribute to sustainable development;
 - be in general conformity with the development plan's strategic policies; and
 - not breach or otherwise be incompatible with EU obligations.
17. Overall, it is believed that Mr. Cousins has undertaken a fair and robust examination of the submitted NP, properly considering all duly-made representations, including those to the plan-making process. He has also given due consideration to the earlier report of previous Examiner, Mr. McGurk. His reasoning in respect of each proposed modification is clear.
18. Of course, planning permission for Street Farm has effectively pre-empted the consideration of that issue through the NP, although it is the case that Cabinet sought to have the housing area there within the development boundary and, further, sought the Local Green Space designation of the rest of the site, which the Examiner has endorsed.
19. Also, of note, the Examiner has endorsed RDC's representation to remove Policy 9 in respect of land at Balcombe Green but retain the development boundary as proposed in the NP. In relation to land at Sunningdale (Policy 2), the amended wording relating to dwelling numbers is not entirely as RDC sought, but it gives appropriate flexibility to allow proper consideration of capacity at the planning application stage. It is accepted on this basis.
20. As regards land at Church Hill Farm, North of Village Hall (Policy 4), it is appreciated that the NP as recommended to be modified would provide for some 50-55 dwellings in the village, somewhat more than the Core Strategy requirement of 35. However, in the context of (a) the National Planning Performance Framework requirement that NPs deliver "at least" the strategic requirement, (b) the additional numbers are relatively small and regarded as still in-line with the Core Strategy's spatial strategy (as expressed in representations), and (c) the Examiner has clearly found that the policy meets the basic conditions. Therefore, it is concluded that there is no sound basis for excluding it.

¹ Paragraph 12(6) of the Schedule 4B of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, and the Planning and Compulsory Purchase Act 2004 (as amended).

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21. In relation to all other substantive policy and process issues raised in representations, officers concur with Mr. Cousins' findings.
22. The Examiner's conclusion that the Referendum area should be the area of Sedlescombe Parish is logical and endorsed.

Sedlescombe Parish Council's response

23. SPC has recently advised that (notwithstanding its earlier concerns), it has unanimously agreed to accept all the modifications recommended by the Independent Examiner and is in support of the modified Sedlescombe NP progressing to Referendum.

Conclusion, Implications and Referendum

24. In light of representations on the submitted Sedlescombe NP, the Examiner, Mr. Cousins, has carefully considered whether it meets the necessary 'conditions' and found that it does, subject to a number of modifications. Cabinet is advised that officers accept his conclusions, as does SPC; hence, it is recommended to endorse the Examiner's recommendations at Appendix 1 and put the modified version of the Sedlescombe Neighbourhood Development Plan 2016-2028, at Appendix 2, forward for Referendum to the residents of Sedlescombe Parish.
25. If there is majority support for the NP at Referendum, RDC will be obliged to formally make it part of the statutory development plan. At that point, its Sedlescombe 'development boundary', its development allocations, as well as the Local Green Space designations at Red Barn Field and Street Farm, will become the primary policy references for the purpose of determining most planning applications in the Parish.
26. Members' attention is drawn to the fact that, a consequence of the NP being made, the development boundary for Sedlescombe as defined in the Rother District Local Plan will be superseded.
27. The other notable implication of making the NP is that SPC will then receive 25%, rather than the current 15%, of Community Infrastructure Levy receipts from future developments in the Parish.
28. As regards the local Referendum, the practicalities will be discussed with SPC and, taking into account the legislative timetable, it is likely to be held in early March 2018.

Dr Anthony Leonard
Executive Director of Business Operations

Risk Assessment Statement

The main risk in relation to a decision to put a NP forward at this stage is that of a successful legal challenge on the grounds of failings in its production and subsequent decision-making. However, the Examiner is an experienced lawyer, whose report addresses the relevant matters; moreover, his recommendations are regarded as fully compliant with the legislative requirements. Furthermore, RDC's own consideration of whether the NP meets the basic conditions and other

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requirements is believed to be in accordance with the legal framework. Therefore, this risk is not considered material.

There is also a risk of the NP not being approved at the local Referendum. The outcomes of referenda are not always predictable, but it is noted that the Parish Council is clearly supportive of the NP coming into force. Also, it is anticipated that the opportunity to have a statutory NP in place for the Parish to manage development going forward, especially given its long gestation, will be recognised by the local community as the critical benefit. Therefore, while there is a risk of non-acceptance which would have both planning policy and financial implications, it is ultimately for the local community to decide. RDC cannot lobby for a particular outcome.

Appendix 1 – Examiner's report – separate document

Appendix 2 – Sedlescombe Neighbourhood Plan as proposed to be modified by the Examiner – separate document