

Cabinet

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Neighbourhood Planning – Council Procedure



Report of Corporate Management Team

Ian Thompson, Corporate Director Regeneration and Economic Development

Councillor Neil Foster, Cabinet Portfolio Holder for Economic Regeneration

Purpose of the Report

1. To agree a formal procedure for the way that the Council handles the various aspects of Neighbourhood Planning introduced by the Localism Act.

Background to Neighbourhood Planning

2. Members may recall that the Localism Act was considered at a Cabinet Meeting last year, when the changes to planning brought about by the Act were set out, with Regional Plans abolished, Local Development Frameworks replaced by Local Plans and Neighbourhood Planning introduced.
3. Neighbourhood Planning as introduced by the Act includes three components: Neighbourhood Development Plans (or Neighbourhood Plans), Neighbourhood Development Orders, and Community Right to Build Orders. More detail on each of these follows in the report. To support their implementation the Government has now published the regulations on how they are to be prepared – The Neighbourhood Planning (General) Regulations 2012 (Statutory Instrument 2012, No. 637), which came into effect on 6 April 2012. Although they are to be prepared by the local community, the Council, in its role as local planning authority has a statutory duty to support and enable the process. Nationally the Government invited Local Councils to develop “front runner” neighbourhood plans to kick start the process, and although none were established in the County, some 126 went ahead elsewhere although to date only one, The Upper Eden Valley Neighbourhood Plan (in Cumbria) has been completed, perhaps indicating that this is not a straightforward process. Indeed the Dawlish Neighbourhood Plan in Devon failed at Inquiry as it had not been prepared in accord with the Local Plan in that area.

The components of Neighbourhood Planning

4. The following provides a brief explanation of what the three components of Neighbourhood Planning are then sets out how the Council will meet its statutory duty to support their preparation.
5. ***Neighbourhood Development Plans (or Neighbourhood Plans)*** will form a statutory part of the planning system, carrying weight in planning decision making, with the County Durham Plan and a Neighbourhood Plan being the “Development Plan” for that area. They are to be prepared by Neighbourhood Forums, which in parished areas will be Town or Parish Councils (Local Councils) but in unparished areas the Act makes it clear that they must be formed by an organisation or body “established for the express purpose of promoting or improving the social, economic and environmental well-being of an area”. They have to comprise a minimum membership of 21 – including individuals who live in the area, individuals who work there (whether for businesses carried out there or otherwise) and individuals who are elected members of the County Council (whose area falls within the neighbourhood area concerned). Within the County four of our main towns are unparished: Chester-le-Street, Consett, Crook and Durham City. Should bids to set up forums in these unparished areas be submitted, the Council is expected (as required by the Act) to assess whether the body applying has secured (or taken reasonable steps to attempt to secure) that its membership includes individuals falling in the three groups set out above, whose membership is drawn from different places in the area and different sections of the community, and whose purpose reflects the character of the area. It will be important that the Council carries out this duty of the Act with rigor to ensure that Forums that don’t reflect the intentions of the Act are not designated.
6. One of the key intentions of Neighbourhood Plans is to allow local communities to make their own decisions on how their towns or villages change or develop but they are required to conform with the strategic policies of the County Durham Plan. If, for example, the County Durham Plan determines that a settlement should have a certain level of residential development, the Neighbourhood Plan cannot reduce that amount. They can potentially influence the location of the development and can specify more development if they wish, but not less. Whilst this would appear to undermine the localism agenda it is understood that the Government’s intention is to prevent Neighbourhood Plans becoming a “Nimby” charter.
7. The area that a Neighbourhood Plan can cover is open to local choice, so they can cover the whole or part of a parish, or can extend across parish boundaries. The County Council is the arbiter of the area and forum’s need to formally submit the area they wish the plan to cover to the Council. It is also important to note that plans are not mandatory, so a Local Council does not have to prepare one. Officers from the Council have already engaged with many Local Councils and community groups to brief on the emerging neighbourhood planning agenda and one of the

messages that is being given out is to consider what the issues are for the area. Once that is established the community can decide the best approach to address those issues or they can rely on the County Durham Plan.

8. **Neighbourhood Development Orders (NDO)** are prepared by a forum set up in the same way as for a Neighbourhood Plan. They are a tool that can allow certain types of development in certain locations, without the need to submit a planning application to the Council and can apply to all of a Neighbourhood Plan area, part of it or to a particular site within the neighbourhood. They can also be prepared as an alternative to a Neighbourhood Plan.
9. Their purpose is to simplify the planning system in a specified area, for example, by allowing changes of use that would normally need permission or by allowing certain types of built development that would normally need permission. As this is a new concept it is difficult to brief Members in more detail on specific uses that may be covered by an NDO but there is a formal preparation procedure for their creation, the Council has to approve them, and they are also subject to an examination by an independent person. As such, they will be carefully vetted to ensure that they are used in a responsible way. The establishment of the forum is governed by the same requirements as for Neighbourhood Plan forums set out at paragraph 5 above.
10. **Community Right to Build Orders**, are a mechanism for delivering community Right to Build, and are a specific type of Neighbourhood Development Order. They allow a local “community organisation” to bring forward a small development, which might include proposals for new homes, business premises and/or community facilities, but it must be small scale in comparison to the size of settlement. A community organisation, not just a parish or town council or a neighbourhood forum, is able to develop a Community Right to Build Order, including in parished areas, however, to be eligible, at least half of the community organisation’s members must live in the neighbourhood area to which the Community Right to Build Order will apply. The organisation must also exist for the express purpose of furthering the social, economic, and environmental well-being of individuals living or wanting to live in a particular area. The process for preparing and adopting a Community Right to Build Order is broadly the same as that for a Neighbourhood Development Order.
11. As with an NDOs these Orders are a new concept so there are no examples with which to brief members, but the likely scenario would be that they will relate to a specific small site where the Order permits a specific use so that if a developer proposes a development on that site that accords with that permitted by the Order then a separate planning application will not be needed. Again, the Council is closely involved in the preparation process and they are subject to independent examination so this should ensure that they are delivered in a responsible way. The

Council will also need to be rigorous to ensure that any Community Organisation submitting an Order meets the requirements of the Act.

Proposed County Council approach to meeting its statutory obligation to support Neighbourhood Planning

12. The three elements to neighbourhood planning described above are a formal part of the planning process and the regulations are quite specific, with the Council having particular functions to carry out. As it is a new element to planning we have no procedures in place that set out how we will handle the various stages that we are required to address. As such the following approach is proposed and this is subject to recommendations for Members' consideration at the end of this report.

Defining a Neighbourhood Area and Defining a Neighbourhood Forum

13. The regulations require neighbourhood areas to be defined as the first part of the process and the Council has specific roles to carry out when a body submits an application to us. The regulations also guide how an application for a Neighbourhood Forum should be dealt with. The two processes are very similar so the approach below applies to both, with the slight variations highlighted. In Parished areas the Parish/Town Council qualifies as the Forum so a specific application is not required.
14. ***Is the application acceptable?*** To determine this, officers of the Spatial Policy Team in RED will assess it. If unacceptable, those officers will write to the applicants to set out what the issues are and how they could be addressed.
15. ***Publicising an application:*** If it meets the requirements of the regulations it is then publicised for 6 weeks. To meet our obligations it will be published on the Council's website, we will issue a press release, liaise with the forum applying for the designation to have a notice published in the local parish/town council newsletter (if this is not possible we will publish a public notice in the local free paper), inform the portfolio holders for Economic Regeneration and Neighbourhoods and Local Partnerships and the local Members, and will display the details in the closest Council office or library or other suitable premises.
16. ***Designating a neighbourhood area/neighbourhood forum:*** When the consultation is completed officers from the Spatial Policy Team will assess the responses to see if there are any reasons that the application should not be permitted. If there are issues they will be explained to the applicant via a "decision document" (for Neighbourhood Area Applications) or by a "refusal statement" for Neighbourhood Forum Applications) and these will be publicised in the way outlined at paragraph 15 above. If the proposal is acceptable the Council will proceed to designate the neighbourhood area or the neighbourhood forum as follows: The Head of Planning and Assets in consultation with Portfolio Holders for Economic Regeneration and Neighbourhoods and Local Partnerships and local Members will issue a

letter to the applicants informing them that the application has been successful.

17. **Publicising the designation of a neighbourhood area or a neighbourhood forum:** The Council will publish notice of designation in the same way as outlined at paragraph 15 above. In cases when the Council considers that the area or forum should not be designated the approach is set out at paragraph 16 above following consultation between the Head of Planning and Assets and the Portfolio Holders for Economic Regeneration and Neighbourhoods and Local Partnerships and local Members.
18. It should be noted that to meet our obligations the above process may require public notices to be placed in the press if the proposal cannot be advertised in a parish news letter or the like. Such notices will have cost implications for the Council.

Preparing a Neighbourhood Plan, a Neighbourhood Development Order or a Community Right to Build Order

19. There are a number of stages that have to be carried out in order that a Neighbourhood Plan, an NDO or a Community Right to Build Order is prepared to accord with the regulations. They can only be produced within a designated area and by a designated forum. The process for all three is similar so the following applies to all, with variations highlighted as necessary. The Council has a statutory role in this process and an approach to how it will meet these obligations is set out here:
20. **Publicising the “submission” of a proposal:** In accordance with the regulations, when receiving a proposal from a forum at the Submission stage (i.e. the revised proposal resulting from changes made after the “pre-submission” consultation carried out by the forum) the Council has to publicise the submission. To achieve this, the Council will: place the document on our website, publish a press release, place copies in the nearest local council office or library or other suitable location, liaise with the forum applying for the designation to have a notice published in the local parish/town council newsletter (if this is not possible we will publish a notice in the local free press), and notify the relevant consultation bodies as set out in the regulations. The proposal will have already been through a consultation led by the forum so the Council will also consult those who have already made comments to the forum as well as informing the portfolio holders for Economic Regeneration and Neighbourhoods and Local Partnerships and local Members. The consultation on the “submission” proposal allows interested parties to make representations. In the case of a Community Right to Build Order, the Council will also notify by letter those whose property abuts the area covered by the Order
21. **Appointment of the independent examiner:** Once the consultation of the submission proposal is completed, the proposal will be the subject of an examination by an independent examiner and it is the Council’s role to appoint the examiner. Unlike planning appeals or examinations into Local

Plans, the examiner does not have to be an Inspector from the Planning Inspectorate, but does need to be independent of the Council and the forum. The approach to appointments will vary and develop as the process evolves. It is proposed that the Head of Planning and Assets makes the appointment on behalf of the Council. It should be noted that the Council is expected to fund the examiner's fee and any other costs associated with the examination, so there are potential cost implications for the Council.

22. **The examiner's report:** The report on the proposal will follow the examination. In the case of Neighbourhood Plans it will contain one of three recommendations: proceed to referendum, proceed to referendum subject to certain amendments, or not proceed. It is for the Council to assess the report and decide whether the recommendations should be followed. In the case of an NDO of a Community Right to Build Order the Council has to decide whether to accept the recommendations in the examiner's report.
23. Officers of the Spatial Policy Team on behalf of the Head of Planning and Assets will make these assessments in consultation with the Portfolio Holders for Economic Regeneration and Neighbourhoods and Local Partnerships and also Local Members. The Council then publishes a "decision statement", including its reasons for the decision, and details of where the decision can be inspected and a copy of the report made by the examiner. A copy of the statement is also sent to the forum. The publicity will be carried out by the method described at paragraph 20 above.
24. **The referendum:** Once the examination report and the decision statement by the Council have been completed and publicised, in cases when the proposed content is acceptable, a referendum is carried out with the local community. The national guidance on this part of the neighbourhood planning preparation was published by the Government in August 2012 – The Neighbourhood Planning (Referendum) Regulations (SI: 2012, No. 2031). The Regulations are technical in nature, setting out the details of the referendum process and procedures that the Council would have to follow. It is the responsibility of the Council to organise and fund the referendum, and this has potential cost implications, for example, a referendum for a parish with an electorate of 3-4,000 electors of which 1,000 are postal voters is likely to cost about £8,000-£9,000. If several Plans are brought forward each year the costs to the County Council could move towards £100,000 per annum or more if some of the larger town councils come forward. See also, however, the section below on a Government funding stream.
25. The acceptance of the proposal through the referendum requires a simple majority (over 50%) of those who voted to support the proposal. If the proposal is rejected the forum need to consider how to proceed but if the referendum shows support for the proposal it can proceed to adoption in the case of a Neighbourhood Plan (and become part of the development

plan) or in the case of an NDO or a Community Right to Built Order it can be made.

26. ***Adopting (or Making) the proposal:*** If the proposal is supported through the referendum it can be adopted by the Council. The Council's Constitution states that the adoption of plans or alterations that together form part of the Development Plan (of which the Neighbourhood Plan is a part) is a function for Full Council. As such, the final version of the plan will be presented to Full Council to seek Adoption. In the case of an NDO or a Community Right to Build Order, although not part of the Development Plan, the nature of the Orders warrants the same approach as in effect the Orders supplement the provisions of the Development Plan in their specific areas.
27. Once the proposal has been adopted the Council has to publicise this decision. This publicity will follow the format outlined at paragraph 20 above.

How the Council will and is supporting local councils and local groups wishing to do neighbourhood planning

28. The neighbourhood planning process requires adherence to a specific process as set out above. In order to support local communities who decide to prepare a plan or an order, the County Council is preparing a "Neighbourhood Planning Toolkit" that sets out the procedures and how it can help. This work is ongoing but officers have already engaged with a number of Local Councils, indeed at the time neighbourhood planning was announced two parish councils came forward and were treated as informal pilots: Bishop Middleham & Mainsforth PC, who set up a steering group and carried out public consultation on issues in the parish with support from Council officers and are considering their next steps; and also Sacriston PC, who held a series of meetings but at the moment are not progressing the project.
29. Officers have also been involved in providing and inputting into general workshop and advice sessions to groups of Local Councils and the County Durham Association of Local Councils (CDALC) to brief on neighbourhood planning, but also visiting individual Local Councils to advise. The level of interest has been steady, with Great Aycliffe Town Council and Gainford and Langton PC now having their Neighbourhood Areas approved, applications for Neighbourhood Areas have been received from Sedgfield Town Council, Monk Heselden PC and Midldridge PC, whilst Shotton PC is in the process of applying. In addition, officers have responded to requests from several AAPs the following Local Councils and partnerships to brief on the process: Bishop Auckland TC, Brandon & Byshottle PC, Bowburn Partnership, Parkhill Residents Association, Coxhoe PC, Dipton Partnership, Durham City Residents Groups, Eldon PC, Lanchester PC, Newfield PC, Pitlington PC, Rokeby, Brignall & Eggleston PC, Seaham TC, Stanley TC, Tow Law TC, Trimdon PC, Walldridge PC, West Auckland PC, Witton Gilbert PC and Witton Park Community Association.

30. The neighbourhood planning process has created growing local interest in planning matters and the procedure described above keeps local Members involved throughout, but Members should note that the regulations encourage their involvement in the neighbourhood forums. Officers will carry out briefings as required and will provide all Members with a copy of the Toolkit.

Funding Neighbourhood Planning

31. Members will note that the Council has a statutory duty to support the process and that this has cost implications for the Council through placing potential press notices and the funding of the examination and of the referendum. Given the scale of the County this could have major cost implications – as set out at paragraph 24 above, depending on the success or otherwise of bids to the Government's funding stream.
32. Guidance from the Government on funding for Neighbourhood Planning has been slow to emerge but in December 2012 details were published of £17m available over two years to fund plans. Starting in 2013 Local Planning Authorities will be able to bid for up to £50,000 to help 10 communities get going with their plans (£5,000 each on designation of the neighbourhood area) and from April quarterly bids can be submitted for an annual pot of £100,000 to help kick start up to 20 plans in the area. If successful, the County would then receive a further £25,000 for every plan that gets through successful examination. This clarification is to be welcomed. It will be for the County Council to manage any successful bid funds on behalf of the neighbourhood and importantly this will contribute to the Council's costs for the examination and the referendum. Neighbourhood Forums will also (from 1st May 2013) be able to bid directly for grants through the Locality/Community Rights support service (funded by DCLG) – the Supporting Communities in Neighbourhood Planning programme - with £9.5m available and Forums able to apply for grants of between £500 and £7,000.

Conclusions

33. The introduction of Neighbourhood Planning through the Localism Act gives local communities the opportunity to develop plans and orders with real planning powers. Such an approach is to be welcomed but communities have to work within the framework of the County Durham Plan. As such, the Council, in preparing that Plan, must work to get community support in order that communities can develop their proposals in a framework that they support. Equally, those seeking to create a forum in unparished areas must abide by the requirements of the Localism Act and the Council will need to assess applications carefully to ensure that a forum's membership and constitution reflects the requirements of the Act

34. Neighbourhood Plans are not mandatory and the Council will encourage local communities to consider the best approach for them rather than go straight towards the Neighbourhood Plan as the only option. This is not an attempt to undermine the emerging system but aims to reduce unnecessary costs to Local Councils and also potentially to the County Council which, with an area encompassing over 100 parish councils and four large unparished areas, could be a considerable expense depending on the success or otherwise of funding bids.
35. The nature of the Referendum follows that of a formal election procedure so this has staff resource implications regardless of the success of funding bids.
36. The delivery of Neighbourhood Plans has staff resource implications. The Council will continue to work with partner organisations, including the County Durham Association of Local Councils, the Durham Rural Community Council and Area Action Partnerships and others to maximise joint resources and to share good practise.
37. The overriding conclusion to be drawn is that the Neighbourhood Plans provides a real opportunity for local communities to engage in planning their areas but the concern is how they are to fund it and how the County Council is to fund its obligation under the Localism Act to support the process should funding bids to DCLG or Locality not be successful.

Recommendation

38. Members are asked:
 - 1) To note the contents of this report explaining the components of, and concept of, Neighbourhood Planning and in particular the financial implications for the Council
 - 2) To approve the process set out in paragraphs 13 to 27 of this report as Durham County Council's approach to meeting its obligations to support the preparation of Neighbourhood Plans, Neighbourhood Development Orders and Community Right to Build Orders

Background papers;

Neighbourhood Planning (General) Regulations (SI 2012 No. 637)

Contact: Gavin Scott Tel: 03000 261918

Appendix 1: Implications

Finance –

The Council has a statutory duty to support neighbourhood planning and, as set out in the main report this could be in the region of £100,000 per annum with staff time commitment as an additional resource although this is dependent on the success or otherwise of funding bids to DCLG. Should funding bids not be successful then for the short term, the use of planning reserves could be utilized to meet these costs, although over the longer term an ongoing MTFP revenue pressure will exist for the RED service that will need to be addressed.

Staffing –

With over 100 town and parish councils in the County, four large unparished areas and a duty for the Council as Local Planning Authority to cooperate by supporting Forums to prepare Neighbourhood Plans or Orders, there are potential staff resource implications. The 2012 RED restructure included an Area Planning Team within the Spatial Policy Team, and one of that team's functions is to support neighbourhood planning. The process is wider than just RED involvement and officers from ACE, notably AAP and Parish Liaison officers and electoral staff also have involvement and time commitments.

Risk –

None

Equality and Diversity –

Neighbourhood Plans may be subject to Equalities Impact Assessment. Council officers will be able to advise the forums on this matter.

Accommodation –

None

Crime and Disorder –

None

Human Rights –

As a part of the statutory development plan, Neighbourhood Plans will need to respect Human Rights legislation.

Consultation –

None

Procurement –

None

Disability Discrimination Act –

None

Legal Implications –

The Council is required to adopt procedures to process neighbourhood plans and the Constitution Working Group will be asked to consider the delegations proposed in this report and recommend any necessary changes to the constitution for the approval by Council.