

Report to:	<b>Service Director – Planning and Sustainable Development</b>	
Date:	<b>13 July 2020</b>	
Title:	<b>Tywardreath and Par Parish Neighbourhood Development Plan - 2020 to 2030 - Legal Compliance and Examination Stage</b>	
Portfolio Area:	<b>Culture, Economy and Planning</b>	
Divisions Affected:	<b>Fowey and Tywardreath; Par and St Blazey Gate; St Blazey</b>	
Local Member(s) briefed:	<b>N/A</b>	
Relevant Scrutiny Committee: <b>Economic Growth and Development Overview and Scrutiny Committee</b>		
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Approval and clearance obtained:	<b>Y</b>	
<b>For Cabinet and delegated executive decisions only</b>		
Key decision? (≥£500k in value or significant effect on communities in two or more electoral divisions)	<b>N</b>	
Published in advance on Cabinet Work Programme?	<b>Y</b>	
Urgency Procedure(s) used if 'N' to Work Programme?	<b>N/A</b>	
Date next steps can be taken	<b>Upon Publication</b>	

**Recommendations:**

That the Tywardreath and Par Parish Neighbourhood Development Plan is agreed to be Legally Compliant and should be publicised under Regulation 16 of the Town and Country Planning (General) Regulations 2012 (amended) and taken forward to Examination, subject to Central Government's advice on the

coronavirus (Covid-19) pandemic and the updated guidance on Neighbourhood Planning.

## **1. Executive Summary**

- 1.1 The Council has a statutory duty to assist communities in the preparation of neighbourhood development plans and orders and to take plans through a process of examination and referendum.
- 1.2 The Tywardreath and Par Parish Neighbourhood Development Plan (the NDP) was submitted to Cornwall Council, with the endorsement of Tywardreath and Par Parish Council, on 8 July 2020. The Plan was accompanied by a Basic Conditions Statement, a Consultation Statement and evidence of compliance with European Environmental legislation, as required by the Neighbourhood Planning (General) Regulations 2012.
- 1.3 Under The Localism Act (2011), the Council is required, upon submission of a Neighbourhood Plan, to check that it meets the legal requirements for those plans before it can progress to formal consultation, examination and referendum.
- 1.4 The Plan has been checked against the Neighbourhood Planning (General) Regulations 2012 (hereafter referred to as 'the Regulations') and is considered to be to be legally compliant. Appendix 1 to this report is a table which details each stage of plan preparation, the relevant regulations and legislation at each stage, how the Plan has met the Regulations and whether or not it is compliant. Having carried out the checks, officer opinion is that the NDP is legally compliant.

## **2. Purpose of Report and key information**

- 2.1 Under the Town and Country Planning Act 1990 (as amended), the Council has a statutory duty to assist communities in the preparation of neighbourhood development plans and orders and to take plans through a process of examination and referendum. This will be carried out, taking into consideration and adapting procedures to the current advice from Central Government on the Covid-19 crisis and the updated guidance on Neighbourhood Planning.
- 2.2 The Ministry of Housing, Communities and Local Government have introduced changes to neighbourhood planning in response to the Covid-19 pandemic. The guidance has implications for neighbourhood planning on the referendum

process, decision-making, oral representations for examinations and public consultation, set out in the National Planning Practice Guidance (NPPG) Paragraph: 107, Reference ID: 41-107-20200407, Revision date: 13 05 2020.

- 2.3 The Localism Act 2011 (Part 6 chapter 3) sets out the Local Planning Authority (LPA) responsibilities as:
1. Designating the area of the Neighbourhood Development Plan (NDP);
  2. Advising or assisting communities in the preparation of a neighbourhood plan;
  3. Checking a submitted plan meets the legal requirements;
  4. Arranging for the independent examination of the plan;
  5. Determining whether the neighbourhood plan meets the basic conditions and other legal requirements;
  6. Subject to the results of the referendum/s bringing the plan into force.

This report deals with stage 3 of the process – checking that a submitted plan meets the legal requirements.

- 2.4 The Plan has been through the statutory stages of area designation and pre-submission draft consultation. The area designation application was correctly made by Tywardreath and Par Parish Council, publicised by Cornwall Council and designated by Portfolio Holder decision on 10 June 2015.
- 2.5 Several stages of consultation and public engagement have been carried out during plan preparation (as detailed in the Consultation Statement) and the statutory pre-submission consultation was carried out from 23 March to 1 June 20120. It was publicised, and the relevant consultation bodies were contacted, in accordance with Regulation 14 of the Regulations. The Tywardreath and Par NDP Steering Group have summarised the comments received and their responses in the Consultation Statement submitted with the Plan.
- 2.6 The current required stage is for the LPA to consider the Plan, determine whether it is legally compliant and, if so, notify the Tywardreath and Par Parish Council of its decision and progress the Plan by starting the 6-week consultation period, subject to Covid-19 restrictions, and making arrangements for the examination.

The LPA must consider:

1. whether the Parish Council is authorised to act;
2. whether the proposal and accompanying documents;

- a. comply with the rules for submission to the LPA;
  - b. meet the 'definition of an NDP;' and
  - c. meet the 'scope of NDP provisions;' and
3. whether the Parish Council has undertaken the correct procedures in relation to consultation and publicity.

2.7 In respect of these questions:

1. The Tywardreath and Par Parish Council is the qualifying body authorised to progress a neighbourhood plan. They have made the correct application for the designation of their neighbourhood area and are authorised to act.

2a. The plan proposal and accompanying documents comply with the rules for submission, in that they include a map identifying the area, a consultation statement, a basic conditions statement, an evidence base document and information to enable appropriate environmental assessments, including Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA.). In this regard a screening opinion was sought from Cornwall Council, based on the Steering Group submitting a draft emerging policies statement. Cornwall Council consulted the statutory bodies, Historic England, Natural England and the Environment Agency. The NDP was screened out for significant impacts on the environment; SEA is therefore not required.

Due to a legal judgement which has implications for the way Habitat Regulations Assessment screening is carried out, in that mitigation cannot be taken into account at screening stage, a new basic condition came into force on 28<sup>th</sup> December 2018, which requires an NDP to demonstrate that it does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017(3). This clarified that NDPs can be subject to Appropriate Assessment.

The NDP was screened out for impacts on European sites; HRA is therefore not required. Natural England has confirmed that they are satisfied with this conclusion.

The screening decision is included in the submission documents.

2b. The 'definition of an NDP' is: "A plan which sets out policies (however expressed) in relation to the development use and of land in the whole or any part of a particular neighbourhood area specified in the plan." The NDP contains policies which relate to the development and use of land within Tywardreath and Par Parish and therefore meets the definition.

2c. The 'Scope of NDP provisions' are that:

- The NDP must specify the period for which it is to have effect;
- It cannot include provision about development that is 'excluded development;' and
- It cannot relate to more than one neighbourhood area or repeat an existing planning permission.

The NDP specifies the plan period as 2020 - 2030

It does not provide for any 'Excluded development' which is defined as:

- a) A 'county matter' (Schedule 1 of TCPA 1990) i.e. relating to Minerals;
- b) Any operation or class of operation relating to waste development that falls within Annex 1 to Council Directive 85/337/EEC i.e. Oil refineries, power stations, radioactive waste disposal, iron and steel smelting, asbestos operations, chemical installations, motorways, airports, ports and toxic and dangerous waste disposal; and
- c) Development consisting wholly or partly of a national infrastructure project.

It relates only to one neighbourhood area and does not repeat an existing planning permission.

- 2.8 The steering group has undertaken the correct procedure for pre-submission statutory consultation, and relevant statutory consultees were contacted as part of the pre-submission consultation. Tywardreath and Par Steering Group has also undertaken extensive community consultation throughout the process, as detailed in the Consultation Statement. The consultation was adapted and extended to compensate for Covid- 19 restrictions.

The NDP is therefore considered to comply with the criteria and legislation for a neighbourhood plan and should be taken forward.

- 2.9 If the NDP is endorsed as compliant, Cornwall Council can commence the regulatory stages required to progress the Plan through examination, in accordance with the current advice from Central Government on the Covid-19 crisis and the updated guidance on Neighbourhood Planning. The referendum and 'making' of the Plan stages of the process will be delayed under Regulations linked to the Coronavirus Act 2020, meaning that no elections or referendums can take place until 6 May 2021. These provisions are being kept

under review by MHCLG and may be amended or revoked in response to changing circumstances, in which case Cornwall Council will respond appropriately.

### **3. Benefits for Customers/Residents**

- 3.1 Neighbourhood Planning was put into place by the Localism Act 2011 to enable communities to have a direct say in how their area is planned by creating a formal planning document that will, on making (adoption), form part of the statutory development plan for the area covered.
- 3.2 The confirmation of Legal Compliance, formal consultation and Examination of the Plan will further our objective to support Localism for our communities. The NDP and its process may also be used as a template which can help other communities in their plan preparation.
- 3.3 Production of neighbourhood plans is a stated objective in the Planning Policy and Partnerships Team Plan. It supports the objectives of the Cornwall Local Plan, which relies on Neighbourhood Plans to provide the policy framework for delivery of development, particularly in rural areas.

### **4. Relevant Previous Decisions**

- 4.1 The Plan has been through the statutory stages of area designation and pre-submission draft consultation. The area designation application was correctly made by the Parish Council, publicised by Cornwall Council and designated by Portfolio Holder decision on 10 June 2015.
- 4.2 This is the second stage at which the Council must make a decision whether the Plan should proceed in accordance with The Neighbourhood Planning (General) Regulations 2012.

### **5. Consultation and Engagement**

- 5.1 The Plan has been through the statutory stages of area designation and pre-submission draft consultation as referenced above.
- 5.2 The NDP Regulations require that the Parish Council carries out a formal consultation (pre-submission) process for a period of (minimum) six weeks prior to the submission of the Neighbourhood Plan to the Council.
- 5.3 Several stages of consultation and public engagement have been carried out during plan preparation (as detailed in the Consultation Statement) and the

statutory pre-submission consultation ran from 23 March to 1 June 2020. It was publicised, and the relevant consultation bodies were contacted in accordance with Regulation 14. The NDP Steering Group have summarised the comments received and their responses in the Consultation Statement submitted with the Plan.

- 5.4 The confirmation of Legal Compliance of the Plan will lead to a further formal stage of consultation, for a minimum of six weeks, with the community and statutory consultation bodies. Cornwall Council may also make comments on the draft plan during the consultation, which will be forwarded to the Examiner. The LPA will review the Covid-19 restrictions which are in place when the decision on legal compliance is issued and make a judgement as to how 'publication' consultation can be carried out, under the restrictions operating at that time, making adaptations to meet those restrictions but also to ensure equality of opportunity to view and comment on the plan.

## **6. Financial Implications of the proposed course of action/ decision**

- 6.1 There are costs associated with the examination and referendum. The estimated costs for the NDP are £5,000 for examination and £6,200 for the referendum.
- 6.2 Central Government provides a grant to the LPA of £5,000 at submission (limited to first five neighbourhood areas designated in total) and £20,000 once a referendum date has been set following a successful examination. The Ministry for Housing, Communities, and Local Government announced in March 2020, that under the Neighbourhood Planning new Burdens funding, the grant for £20,000 for the referendum can be claimed once a decision statement has been issued detailing the local authorities' intention to send the plan to referendum due to the Covid-19 crisis and the updated guidance on neighbourhood planning. These grants are currently provided until the end of the financial year 2021/22 and will be used to fund the associated costs.
- 6.3 The value of the grant is fixed, irrelevant of the actual examination and referendum costs, and so for smaller neighbourhood plans the grant is usually in excess of the costs incurred. This is retained by the Planning and Sustainable Development Service to cover the cost of working with the larger towns, where the costs are higher. The current budget is sufficient to accommodate the Tywardreath and Par Parish NDP costs.

- 6.4 During the financial year, if the accumulated costs for the neighbourhood plans exceed the grants received, then the Service will have to identify funding from elsewhere, within their approved budget, to fund any deficit.

## **7. Legal/Governance Implications of the proposed course of action/decision**

- 7.1 The Council has certain steps that it has to take when seeking to progress a neighbourhood development plan. These are detailed in both the report and Legal Compliance Checklist. The relevant legislation comprises:

- Town and Country Planning Act 1990 (as amended);
- Planning and Compulsory Purchase Act 2004;
- Localism Act 2011;
- Neighbourhood Planning (General) Regulations 2012 (amended);
- The Neighbourhood Planning Act 2017.
- The Coronavirus Act 2020.

- 7.2 Legal Compliance allows the Plan to progress to the next stage of consultation but does not necessarily mean that the Plan will be adopted in the form currently submitted, as this may change in accordance with the recommendations of the appointed examiner. The exact content of the Plan may be subject to potential alteration after the authorisation of the plan proposals stage and the Council may make representations on its content prior to examination.

## **8. Risk Implications of the proposed course of action/decision**

- 8.1 Failure to progress the Plan proposal would risk customer dissatisfaction, given our commitment to support communities in the production of neighbourhood plans.

## **9. Comprehensive Impact Assessment Implications**

- 9.1 The Equality Act 2010 places a duty on all public authorities to have regard to the need to eliminate discrimination, to advance equality of opportunity, and to foster good relations between persons who have a “protected characteristic” and those who do not. The protected characteristics are Age, Disability, Gender Re-assignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex, Sexual Orientation and in Cornwall an additional characteristic, Cornish Status.
- 9.2 The NDP has been developed to be in general conformity with the Cornwall Local Plan, which was subject to Examination in Public and found to be sound.



The Cornwall Local Plan provides for the objectively assessed need for housing to meet the needs of all the community, against which the conformity of the NDP has been tested.

- 9.3 The Cornwall Local Plan has been subject to Comprehensive Impact Assessment (CIA). This concluded that the current and future businesses and residents of, and visitors to, Cornwall will be affected by the land use policies in terms of provision of jobs, homes, infrastructure, access to services and the protection of the environment. The policies' objectives are to plan for the needs of the whole community now and in the future; the Plan period is to 2030. In addition, where evidence demonstrates a need, a number of protected characteristic groups are positively planned for with specific provision made for older people and disabled people.
- 9.4 The housing and affordable housing targets aim to ensure appropriate housing is available to meet local needs over the Plan period. Failing to provide sufficient housing will impact most on disadvantaged groups.
- 9.5 Additionally the Tywardreath and Par NDP group have carried out a Sustainability Check to test the impacts of their NDP on social, environmental and economic objectives and this evidence can feed into the Comprehensive Impact Assessment. The overall impacts of the neighbourhood plan are considered to be positive. The NDP is especially cognisant of wellbeing and accessibility which has positive outcomes for all members of the community, but can be considered especially relevant to those with the protected characteristics of age and disability. The sustainability check led to amendments to some policies, where opportunities for increasing positive outcomes were identified.

## **10. Options available**

- 10.1 The NDP has been assessed against 'the Regulations' and is considered to be legally compliant; the Council, therefore has a duty to support and progress the Plan.
- 10.2 In accordance with regulation 16, a further 'publication' consultation on the NDP will be carried out by the Council as LPA, for a minimum of 6 weeks, to add to the previous community and stakeholder consultation carried out by the NDP Steering Group, so the Plan will be well publicised. This consultation may be adapted and extended, in order to comply with Covid- 19 restrictions.

- 10.3 The community has had an opportunity to comment on the Plan and influence its development. Statutory consultees were supportive of the Plan and where they have made suggestions for amendments to strengthen the Plan these have been made where possible. The consultation process has followed the Regulations and there will be opportunity for further comments to be made during the publication: any further comments will be forwarded directly to the Examiner.
- 10.4 If the NDP proposal is found to be legally compliant, the next steps in the process of 'making' the Tywardreath and Par Parish Neighbourhood Plan are:
- LPA notify Tywardreath and Par Parish Council of their decision on the Plan's legal compliance;
  - The LPA publicise the NDP proposal;
  - The LPA appoint an examiner, with the consent of Tywardreath and Par Parish Council;
  - Following successful examination, the Local Authority hold a referendum. Currently this must be held after 6 May 2021 due to the Covid-19 crisis;
  - Following successful referendum (simple majority), the Plan is 'made' - i.e. formally adopted by Cornwall Council and will become part of the statutory development plan, as defined by Section 38(3) of the Planning and Compulsory Purchase Act 2004.

## **11. Supporting Information (Appendices)**

- 11.1 APP1. Tywardreath and Par Parish Neighbourhood Development Plan Legal Compliance Checklist
- 11.2 APP2. Tywardreath and Par Parish Neighbourhood Development Plan Submission draft
- 11.3 APP3. Tywardreath and Par Parish Neighbourhood Development Plan Consultation Statement
- 11.4 APP4. Tywardreath and Par Parish Neighbourhood Development Plan Basic Conditions Statement

## **12. Background Papers**

None

### 13. Approval and clearance

#### All reports:

Final report sign offs	This report has been cleared by (or mark not required if appropriate)	Date
Governance/Legal (Required for <b>all</b> reports)	Ben Curnow	22/07/2020
Finance (Required for <b>all</b> reports)	Tracy Stepney	14/07/2020
Equality and Diversity (If required)		
Service Director (Required for <b>all</b> reports)	Hayley Jewels – Head of Development Management	23/07/2020
Strategic Director (If required)	N/A	