

Report to:	Service Director – Planning and Sustainable Development	
Date:	13 May 2019	
Title:	Luxulyan Neighbourhood Development Plan: Plan Proposal Decision – Post Examination Report Modifications and Referendum	
Portfolio Area:	Culture, Planning and Economy	
Divisions Affected:	Bugle	
Local Member(s) briefed:	Y	
Relevant Scrutiny Committee: Economic Growth and Development		
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Approval and clearance obtained:	Y	
For Cabinet and delegated executive decisions only		
Key decision?	N	
Published in advance on Cabinet Work Programme?	Y	
Urgency Procedure(s) used if 'N' to Work Programme?	N	
Date next steps can be taken	Upon publication	

Recommendation:

That the Luxulyan Neighbourhood Development Plan is modified according to the Examiner's recommendations, the Plan proposal decision is published and the Plan progresses to Referendum.

1. Executive Summary

The Luxulyan Neighbourhood Development Plan (the NDP) has been successful at Examination, with the Examiner recommending that the Plan should proceed to Referendum, subject to a number of recommended modifications.

The NDP has been modified in line with the Examiner's recommendations and the Council can now proceed to Referendum on the making of the NDP.

2. Purpose of Report and key information

The Council as Local Planning Authority (LPA) is responsible for deciding what action to take in response to the Examiner's recommendation. This report details the recommendations and the modifications made to the NDP, which have been made with the involvement of the NDP Steering Group (the Group).

Cornwall Council, with the agreement of Luxulyan Parish Council, appointed Mrs Liz Beth as Examiner. The Examination commenced on 13th February 2019, by means of written representations and by an initial assessment of the Neighbourhood Plan and accompanying documents. A site visit was carried out to the Neighbourhood Plan area.

Mrs Beth supplied the final examination report on 8th May 2019. The report concluded that the Luxulyan NDP could proceed to Referendum, subject to some recommended modifications to make the wording of policies and their application clearer and to ensure that the NDP meets the basic conditions. The main recommendations concern:

- The Consultation Statement has been updated to include a table setting out the changes to the draft pre-submission plan following the consultation.
- Evidence base documents have been added to section 10 in the NDP document with a web link and the heading title renamed.
- Section 7.1 to be amended and Table 1 replaced with Housing figures from the Housing Statement Guidance 2017 for Luxulyan so the correct and updated figures are shown.
- Amendment to the first sentence of Policy LH1 to have due regard to government guidance in the National Planning Policy Framework and National Planning Policy Guidance and references to the documents removed from the end of each policy as the document is continually updated by central Government.
- The last sentence of paragraph 8.6 to be amended and reworded so it is clearer.
- Additional sentence to be added to 8.7 as planning policy cannot be used to restrict Permitted Development rights, although the text setting out the expectation that they will be restricted can form part of the text supporting the policy.
- Policy LH2 Rural Exceptions Housing for Local People criteria amended as there is evidence of demand for homes of 3 bedrooms or less. The policy has allowed for exceptions in 'exceptional circumstances'; effectively when evidence and material considerations justify them.

- The second paragraph of Policy LH2 Rural Exceptions Housing for Local People to be deleted as an additional sentence has been added to the text supporting the policy setting out the expectation of Permitted Development rights.
- Policy LH4 Policy for Older People to be revised by allowing older people to build new homes and therefore stay in the Parish while adding to the stock of affordable homes. As they are affordable, they will be made available for local people who meet the local occupancy requirements.
- Policy LLNE1 Local Landscape Character is revised in order that the Basic Conditions are complied with and to make the policy clearer for decision makers.

The full schedule of modification recommendations is included in a table in Appendix 2 Schedule of Modification Recommendations.

Luxulyan Parish Council agrees with Cornwall Council that all the modifications should be made to the Neighbourhood Plan and supporting documents.

Mrs Beth's overall Recommendation is that the Neighbourhood Plan, as amended following the recommendations set out in the examination report, be submitted to a Referendum and that the referendum area should be the same as, and not extend beyond, the NDP area. The full Examination report is attached as Appendix 1.

3. Benefits for Customers/Residents

The Neighbourhood Plan is an opportunity for the local community to influence placemaking and planning decisions in their local area. The Cornwall Local Plan supports the production of neighbourhood plans and the spatial strategy requires development proposals to 'assist the creation of resilient and cohesive communities' and as part of this 'Support[ing] the delivery of made Neighbourhood Plans and other community based initiatives that help to make communities more resilient.' (Cornwall Local Plan, Policy 2 – Spatial Strategy.)

Residents of the Neighbourhood Plan Area, Luxulyan Parish, have had the opportunity to be involved in the research for and writing of the NDP and through the consultation and engagement associated with the NDP's development have been able to contribute their ideas and views.

For applicants, agents and developers wishing to submit proposals in the area, the NDP adds extra detail to the strategic policies for the area, so that applicants will have information about community expectations when preparing an application and can tailor their proposal accordingly.

A Comprehensive Impact Assessment of the Luxulyan NDP was carried out as part of the Legal Compliance Check and has been updated following the examination of the Plan. An equality impact assessment was carried out and submitted with the Luxulyan NDP. The CIA concluded that the Luxulyan NDP provides a strategy for the development of the Neighbourhood Area, and a range of policies, which will result in positive benefits for the local community. The key positive impacts are promoting sustainable development, protecting the natural environment, providing housing to meet local need and to support rural

businesses on farms, and promoting community engagement and involvement in planning.

4. Relevant Previous Decisions

The preparation and making of a Neighbourhood Development Plan is governed by Schedule 4B to the Town and Country Planning Act 1990 as amended and The Neighbourhood Planning (General) Regulations 2012 as amended (2012 Regulations) as follows

NDP Area Designation – Portfolio Holder Decision 4th August 2016

The first regulatory stage of the NDPs – the Parish Council submit an application and a map to notify of their intention to produce a neighbourhood plan.

Legal Compliance: Portfolio Holder Decision 24th December 2018

After the Parish Council submit their plan, the LPA carries out a legal compliance check and publishes the plan for Regulation 16 'publication' consultation

All previous reports and versions of the Plan are available on the Cornwall Council website on a page dedicated to [Luxulyan Neighbourhood Development Plan](#)

5. Consultation and Engagement

The first statutory round of consultation occurs at area designation stage. Luxulyan Parish Council submitted an application and map to designate their Neighbourhood Area. Cornwall Council consulted residents and other interested stakeholders on the designation between 22nd June and 3rd August 2016. Copies of the application letter and statement that explains how the Parish Council and Neighbourhood Area met the conditions of Section 61G(2) of the Town and Country Planning Act 1990 (the 1990 Act), were made available to view at Luxulyan Village shop and Post Office during the six week consultation period. The Cornwall Council then formally designated the Neighbourhood Area.

After this notification that a Parish Council is preparing a NDP and until the point that the NDP is submitted to Cornwall Council the responsibility for consultation and engagement on the NDP falls to the qualifying body, which is Luxulyan Parish Council. This process is tested for compliance at the independent examination and the Qualifying Body is required to submit a Consultation Statement, which evidences that the Regulations have been complied with.

The Consultation Statement contains:

- (a) details of the persons and bodies who were consulted about the proposed Neighbourhood Development Plan;
- (b) explains how they were consulted, which included the distribution of surveys for each household and a separate survey targeting young people. Open days and exhibition events were held to provide residents with an opportunity to speak to the steering group and statutory organisations were also consulted during the development of the plan.

(c) summarises the main issues and concerns raised by the persons consulted; and

(d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed Neighbourhood Development Plan.

The next statutory consultation stage is the pre-submission consultation on the draft Plan, (which was carried out by the Parish Council, in compliance with Regulation 14 of the 2012 Regulations) the representations on which have to be received not less than 6 weeks from the date on which the plan proposal is first publicised at this stage. The statutory pre-submission consultation was held from 19th February until 10th May 2018 where the 'Consultation Bodies', as set out in Schedule 1 of the Regulations are consulted. Any comments submitted during this consultation must be summarised and included in the Consultation Statement, with a note of what action was taken in response.

Once the Plan is submitted and judged to be legally compliant, Cornwall Council publicises the draft NDP in the next round of statutory consultation, (in accordance with Regulation 16 of the 2012 Regulations) the representations on which have to be received not less than 6 weeks from the date on which the plan proposal is first publicised at this stage. The statutory consultation by Cornwall Council was held from 20th December 2018 until 7th February 2019

The Plan proposal included a copy of a map and a statement which identifies the area to which the proposed Neighbourhood Development Plan relates; a Consultation Statement; the proposed Neighbourhood Development Plan, a statement explaining how the proposed Neighbourhood Development Plan meets the requirements of paragraph 8 of Schedule 4B to the 1990 Act (the Basic Conditions Statement) and a Equality Impact Assessment. The Landscape Character Assessment is part of the Evidence base and was available to download from the parish council's website and was not formally submitted to Cornwall Council with the main documents set out above. Copies of the documents were available to view on the website, or through the Planning Register (planning application number PA18/00022/NDP) and hard copies were available from the Village Shop, Kings Arms Pub, Luxulyan Village Hall and Gunwen Methodist Chapel during the consultation period. The Council sent the Plan proposal and representations to the Independent Examiner on 13th February 2019 and on 8th May 2019 the Independent Examiner issued a report to the Council and the Luxulyan Parish Council.

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

There are costs associated with the examination and referendum. The final cost for the Luxulyan Parish NDP Examination is £3,898.50 and the estimated cost for the Referendum is £2,500.

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 date is set for a referendum following a successful examination. These grants are

currently provided until 31 March 2022 and will be used to fund the associated costs.

The value of the grant is fixed, irrelevant of the actual examination and referendum costs, so for smaller neighbourhood plans the grant is usually in excess of the costs occurred. This is retained by the Service to cover the cost of the larger towns, where the costs are higher. The current budget is sufficient to accommodate the Luxulyan Neighbourhood Development Plan costs.

During the financial year, if the accumulated costs for the neighbourhood plans exceed the grants received, then the Planning 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

The next stage of the Regulations requires the Council to:

- Decide what action to take in response to the recommendations of the Examiner
- Publish the decision and their reason for it
- Publish the Examiner's report

The Neighbourhood Planning (General) Regulations 2012 (as amended) requires in Regulation 18 for the Local Planning Authority to outline what action to take in response to the recommendations of an Examiner, made in a report under paragraph 10 of Schedule 4B to the 1990 Act (as applied by Section 38A of the 2004 Act) in relation to the Neighbourhood Plan.

This report is the Council's decision on how to incorporate the Examiner's recommendations. The power to decide whether the Examiner's modifications are incorporated, or not, lies with the Local Planning Authority. However, the Examiner's report has been discussed in detail with the NDP Steering Group and the Neighbourhood Plan and the proposed modifications to the Plan in response to the Examiner's report have been developed with the Group's involvement.

Having considered each of the recommendations made in the Examiner's report and the reasons for them, the Council, with the consent of Luxulyan Parish Council, has decided to accept the modifications to the draft Plan. Appendix 2 outlines the alterations made to the draft Plan under paragraph 12(6) of Schedule 4B to the 1990 Act (as applied by Section 38A of 2004 Act) in response to each of the Examiner's recommendations.

Amendments to these Policies will allow them to meet the Basic Conditions and therefore be retained in the Plan. The Council is satisfied that the Plan, as modified, meets the Basic Conditions set out in paragraph 8(2) of Schedule 4B of the Town And Country Planning Act 1990 and is compatible with the European Convention on Human Rights obligations.

The Plan has been screened for Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) and the Screening Opinion was that SEA and HRA were not required. A Comprehensive Impact Assessment (CIA) was undertaken at the Legal Compliance Check stage.

The Examiner confirmed in her report that she was satisfied that the NDP was compliant with European and Human Rights Legislation.

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

Failure to take the Plan forward to referendum would risk customer dissatisfaction and would be a failure of the Council's duty to support communities in the production of neighbourhood plans.

9. Comprehensive Impact Assessment Implications

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.

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.

The Cornwall Local Plan has been subject to a Comprehensive Impact Assessment. 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 the disabled.

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.

A CIA of the Luxulyan NDP was carried out as part of the Legal Compliance Check and has been updated following the examination of the Plan. An equality impact assessment was carried out and submitted with the Luxulyan NDP. The CIA concluded that the Luxulyan NDP provides a strategy for the development of the Neighbourhood Area, and a range of policies, which will result in positive benefits for the local community. The key positive impacts are promoting sustainable development, protecting the natural environment, providing housing to meet local need and to support rural businesses on farms and promoting community engagement and involvement in planning.

10. Options available

Cornwall Council has a duty to support communities who are preparing neighbourhood plans. The 2012 Regulations detail the Council’s responsibilities. The NDP has been independently examined and found to meet the Basic Conditions, subject to the recommended Modifications. The Examiner has recommended that the NDP should proceed to Referendum.

The Council is required to make a decision as to what action it proposes to take in response to each recommendation as detailed in the Examiner’s Report, by 13th June 2019; this being the date as prescribed in Regulation 17A of the 2012 Regulations. It is not clear as to what the outcome will be if that date is missed, but it is clear that the Council’s reputation would be damaged.

Failure to take the NDP forward to referendum would risk customer dissatisfaction and would be a failure of the Council’s duty, as set out above.

11. Supporting Information (Appendices)

Appendix 1: Luxulyan NDP Examination Report

Appendix 2: Luxulyan NDP Recommended Modifications Table

Appendix 3: Luxulyan Neighbourhood Development Plan modified after examination

Appendix 4: Luxulyan NDP Consultation Statement modified after examination

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 all reports)	Ben Curnow	24/05/19
Finance (Required for all reports)	Geraldine Baker	20/05/2019
Equality and Diversity (If required)	N/A	
Service Director (Required for all reports)	Hayley Jewels – Acting Head of Planning Policy	24/05/2019
Strategic Director (If required)		