

# DECISION ITEM



REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	COUNCIL	2 MARCH 2017	9
<b>SAINT ANNE'S ON THE SEA NEIGHBOURHOOD DEVELOPMENT PLAN – EXAMINER'S REPORT AND PROGRESSION TO REFERENDUM</b>			

## PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

Following the Independent Examination of the Saint Anne's on The Sea Neighbourhood Development Plan (the Plan), including a Public Hearing held on the 7 June 2016, the Independent Examiner, Mr John Slater BA (Hons), DMS, MRTPI, issued his examination report. The Examiner's report concludes that subject to recommended modifications, the Plan meets with the "Basic Conditions" set out in legislation and should proceed to a Neighbourhood Planning Referendum.

Following on from the receipt of the Examiner's report, the Local Planning Authority (LPA) must consider each recommendation and decide what action to take in response to each recommendation. If satisfied that, subject to the modifications made, the draft Plan meets the legal requirements and "Basic Conditions", a Referendum must be held on 'making' the Plan by the LPA. Following a successful Independent Examination and public Referendum, the Saint Anne's on The Sea Neighbourhood Development Plan would form part of the statutory Development Plan, alongside the current saved Local Plan policies.

### RECOMMENDATIONS

1. That Full Council accept the modifications as set out in the draft Decision Statement (Appendix 3); publish the Decision Statement and proceed the Saint Anne's on The Sea Neighbourhood Development Plan to Referendum.

### SUMMARY OF PREVIOUS DECISIONS

#### **Development Management Committee – 12 October 2016 – Saint Anne's on The Sea Neighbourhood Development Plan – Examiner's Report and Progression to Referendum**

Development Management Committee agreed to accept the Independent Examiner's modifications and recommend to Full Council to agree to the draft Decision Statement and proceed the St. Anne's on the Sea Neighbourhood Development Plan to Referendum.

#### **Development Management Committee – 29 July 2015 – Consultation on pre-submission draft June 2015**

Development Management Committee agreed to submit comments as part of the formal consultation response to the Town Council as part of the Regulation 14 consultation process.

#### **Development Management Committee 19 December 2012 – Delegated Powers for Neighbourhood Area Applications**

Development Management Committee resolved the following powers to be delegated to the Director

of Strategic Development:

Power to designate an area as a Neighbourhood Area under section 61G(1) of the Town and Country Planning Act 1990 where the relevant body that has applied for the designation is a parish council, the designation is in accordance with that application and the area to be designated consists of the whole of the area of that Council.

#### CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services <b>(Value for Money)</b>	√
Delivering the services that customers expect of an excellent council <b>(Clean and Green)</b>	√
Working with all partners <b>(Vibrant Economy)</b>	√
To make sure Fylde continues to be one of the most desirable places to live <b>(A Great Place to Live)</b>	√
Promoting Fylde as a great destination to visit <b>(A Great Place to Visit)</b>	√

## REPORT

### INTRODUCTION

1. Under the Town and Country Planning Act 1990 (as amended), Fylde Borough Council as the LPA 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. The Localism Act 2011 (Part 6 Chapter 3) sets out the LPA's responsibilities under Neighbourhood Planning.

### BACKGROUND

2. On the 12 July 2013, St. Annes Town Council requested that, in accordance with section 5(1) of the Neighbourhood Planning (General) Regulations 2012 (the Regulations), their Parish boundary be designated as a Neighbourhood Area, for which a Neighbourhood Development Plan be prepared.
3. Fylde Borough Council confirmed that for the purposes of section 5 (1) of the Regulations the Town Council is the "relevant body" for their area and in accordance with Section 6 of the Regulations, Fylde Borough Council placed on their website this application, including a parish boundary map, details of where representations could be sent, and by what date, for a six week period from 25 April 2013 to 06 June 2013. The application was also advertised in the local newspaper and also on the Town Council's website. The Neighbourhood Area application was then approved on the 12 July 2013.
4. Following on from this approval, a Steering Group comprising of volunteers and advised by planning consultants, were appointed and led by St. Anne's Town Council in preparing a Neighbourhood Development Plan.
5. The Town Council submitted their Submission version Plan to Fylde Borough Council under Regulation 16 for a six week consultation period. During this process, an Independent Examiner, Mr John Slater BS (Hons), DMS, MRTPI was formally appointed by Fylde Borough Council (in consultation with St. Annes Town Council) on 24 March 2016. During his initial stages of the examination, the Examiner took the exceptional decision to examine the Plan at a Public Hearing in order to hear oral evidence on matters he wished to explore further and to give all parties a fair chance to put a case forward.

6. Following on from the Public Hearing, which took place on the 7 June 2016, the Examiner submitted his final report (Appendix 1) on the 10 August 2016 and concluded that subject to the suggested modifications the Plan was capable of meeting the legal requirements set out in the Localism Act 2011, including meeting with the Basic Conditions, and should proceed to Referendum.
7. The Basic Conditions are as follows:
  - Having regard to national policies and advice contained in the guidance issued by the Secretary of State is it appropriate to make the Plan?
  - Will the making of the Plan contribute to the achievement of sustainable development?
  - Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?
  - Does the making of the Plan breach or is otherwise incompatible with EU obligations or Human Rights legislation?
  - Will the making of the Plan have a significant effect upon a European site or a European offshore marine site, either alone or in combination with other plans and projects?
8. Schedule 4B, paragraph 12 of the Town and Country Planning Act 1990, as inserted by the Localism Act 2011, requires a LPA to consider each of the recommendations made in the Examiner's report and decide what action to take in response to each recommendation. If the LPA is satisfied that, subject to the modifications made, the draft Neighbourhood Development Plan meets the legal requirements and "Basic Conditions" as set out in legislation, a Referendum must be held on the making of the Plan by the LPA.
9. Once a LPA has considered each of the Examiner's recommendations and determined its response it can:
  - a) make modifications that it considers need to be made to secure that the draft order meets the basic conditions, as set out in paragraph 7,
  - b) make modifications that it considers need to be made to secure that the draft Plan is compatible with the Convention rights,
  - c) Extend the area to which the Referendum is to take place,
  - d) make modifications for the purpose of correcting errors.If the LPA is not satisfied that the Plan meets the Basic Conditions and legal requirements then it must refuse the proposal.
10. A Referendum must take place within 56 working days of the Decision Statement being agreed and published, with an additional 65 working days if the poll can be combined with another poll. A majority of residents who turn out to vote, must vote in favour of the Neighbourhood Development Plan (50% plus one vote) before it can be 'made'. After a successful Referendum the LPA within eight weeks must bring the Plan into legal force.
11. The Neighbourhood Planning (General) Regulations 2012 requires the LPA to outline what action it will take in response to the recommendations made by the Examiner under paragraph 10 of Schedule 4A of the 1990 Act (as applied by Section 38A of the 2004 Act) in relation to a Neighbourhood Development Plan, which is provided in both Appendix 2 and Appendix 3 of this report.
12. The majority of suggested recommended modifications are in line with the Submitted Version of the Fylde Local Plan to 2032, with just one exception. The Examiner has recommended that the settlement boundary of St. Annes be amended to incorporate land currently identified as

countryside outside of the Green Belt, to the west of Heyhouses Lane, St Annes. The Examiner considers that the inclusion of this land would offer the parish of Saint Anne's on The Sea the flexibility to be able to meet its housing needs over the next 15 years. The land in question however, is a designated Biological Heritage Site (see Appendix 5 for the proposed amended settlement boundary and Appendix 6 for the relevant part of the Policies Map of the Fylde local Plan to 2032 Submission Version).

13. Therefore, following the submission of the Examiners report, Fylde Borough Council carried out further consultation with the three statutory consultees, the Environment Agency, Historic England and Natural England in order to help it formulate a screening opinion on the Plan as proposed to be modified by the Examiner. Both the Environment Agency and Historic England raised no objections or had any concerns regarding the proposed modified Plan. Natural England, however, raised significant concerns regarding the proposed modification to the settlement boundary as the area of land in question forms part of a Biological Heritage Site and is land that is known to be utilised by pink footed geese related to the Ribble and Alt Estuaries Special Protection Area (SPA). They recommended that due to the importance of this land, any proposal to include additional land within the settlement boundary needed to be assessed further through an update of the Habitat Regulations Assessment (HRA) that has been carried out in regard to the Submission Version of the emerging Local Plan, that this update would need to examine data to determine the importance of the land and, if the land supports significant numbers of SPA/Ramsar birds, the LPA would then need to determine whether this is possible to resolve and ultimately whether the land can be developed.
14. The Council subsequently commissioned Arcadis (the Council's ecological consultant) to carry out an Addendum to the HRA, and following receipt of this document officers re-consulted Natural England, who considered that it was unacceptable to refer to any issues and uncertainty at planning application stage and that as the land was considered and calculated into the mitigation calculations for the Queensway residential development site then any proposal to extend the settlement boundary would need to be Appropriately Assessed at plan stage and that in any case as the HRA concludes proposals would lead to a likely effect (or where there is uncertainty) the Plan could not progress in its modified form.
15. In his report, the Examiner considers that this assessment could be carried out prior to the determination of any future planning application. However, prior to proceeding to Referendum, the LPA must be satisfied that the Plan itself meets the Basic Conditions tests set out in the Regulations. Until the potential implications of including this additional land within the settlement boundary are known, it would not be possible to confirm whether or not there would be any adverse impact on the SPA and so proceeding to Referendum without this information could place the Plan at risk of a potential legal challenge.
16. As a consequence of the above, officers sought further legal advice from counsel, who concurred with officers and Natural England, that the Plan (with the inclusion of this one modification) did not satisfy the "basic conditions" tests, which are the pre-requisites for a lawful NDP, and as such Fylde Council were completely within their rights not to accept this particular recommendation. As the amendment has not been accepted in order to allow the Plan to meet one of the basic conditions tests and for no other reason, further consultation on and examination of the Plan is not required under paragraph 13, Schedule 4B of the Town and Planning Act 1990 (as amended).

## **CONCLUSION**

17. The Council has various duties under the Localism Act (the main Act) and the related planning Acts as amended. It is clear from the wording of the Act that this is not simply to follow the Examiner's recommendations on each point and that the LPA can come to a different view. Officers therefore consider that accepting the Examiner's recommendations in full and

extending the Saint Anne's on The Sea settlement boundary to include the land in question would mean that the Plan would not meet the statutory Basic Conditions.

18. It is therefore recommended that Council accept the recommendations and modifications as listed in the draft Decision Statement (Appendix 3) (which, for clarity, does not include the extension of the settlement boundary of St Annes as recommended by the Examiner), and publish the Decision Statement and proceed the Saint Anne's on The Sea Neighbourhood Development Plan to Referendum based on these changes.

IMPLICATIONS	
Finance	There is provision for the cost of the development of Neighbourhood Plans within the Council's approved revenue budget, funded by specific government grants for this purpose. However this may not cover the full cost of all emerging neighbourhood plans. As is usually the case additional costs will be met, where possible, from existing approved budgets. However should this not be possible a subsequent funded budget increase to the Council's current approved budget may be necessary.
Legal	The Local Planning Authority is required to accord with the Regulations at relevant stages of the process. There will be a potential need for legal input at relevant stages, which will have time resource issues. There is a potential for judicial review if the Council do not agree with all the modifications suggested by the Examiner.
Community Safety	None arising directly from the report.
Human Rights and Equalities	None arising directly from the report.
Sustainability and Environmental Impact	The Neighbourhood Development Plan should promote the principles of sustainable development. The submitted Neighbourhood Development Plan is also supported by a Sustainability Report.
Health & Safety and Risk Management	None arising directly from the report.

LEAD AUTHOR	TEL	DATE	DOC ID
Sara Jones	01253 658420	17/02/2017	

LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Independent Examiners Report (including Addendum)	August 2016	<a href="http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/st-annes-sea-town-council-neighbourhood-plan/">http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/st-annes-sea-town-council-neighbourhood-plan/</a>
Statement of Consultation (July 2016)	July 2016	<a href="http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/st-annes-sea-town-council-neighbourhood-plan/">http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/st-annes-sea-town-council-neighbourhood-plan/</a>
Amended Saint Anne's on The Sea NDP and associated Maps	February 2017	<a href="http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/st-annes-sea-town-council-neighbourhood-plan/">http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/st-annes-sea-town-council-neighbourhood-plan/</a>
Amended Blackpool Airport Boundary (following Public Hearing)	February 2017	<a href="http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/st-annes-sea-town-council-neighbourhood-plan/">http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/st-annes-sea-town-council-neighbourhood-plan/</a>
Amended Schedule of Local Green Spaces (following Public Hearing)	February 2017	<a href="http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/st-annes-sea-town-council-neighbourhood-plan/">http://www.fylde.gov.uk/council/planning-policy--local-plan-/neighbourhood-planning/st-annes-sea-town-council-neighbourhood-plan/</a>

#### Attached documents

1. Appendix 1: Examiners Report
2. Appendix 2: Schedule of Recommended Modifications
3. Appendix 3: Decision Statement
4. Appendix 4: HRA Addendum to Screening Opinion
5. Appendix 5: Proposed Amended Settlement Boundary
6. Appendix 6: Section relating to Submitted Local Plan Policies Map