

**Report to:** Cabinet

**Date:** 28 October 2019

**Title:** Adoption ('making') of the Newhaven Neighbourhood Plan

**Report of:** Ian Fitzpatrick, Deputy Chief Executive and Director of Regeneration and Planning

**Cabinet member:** Councillor Emily O'Brien, Cabinet Member for Planning

**Ward(s):** All, but with particular impact on:  
Newhaven North, Newhaven South

**Purpose of report:** To consider whether the Newhaven Neighbourhood Plan should be adopted by the District Council as part of the statutory development plan following a successful referendum on October 10<sup>th</sup> 2019.

**Decision type:** Budget and policy framework

**Officer recommendation(s):** To recommend to Full Council that the Newhaven Neighbourhood Plan is formally adopted as part of the statutory development plan for the district

**Reasons for recommendations:** To ensure the Newhaven Neighbourhood Plan is 'made' within the timeframe set out by the Neighbourhood Planning (General) Regulations 2012

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## **1 Introduction**

- 1.1 The Localism Act 2011 allows local communities to shape their areas by enabling town and parish councils to prepare neighbourhood development plans. A detailed legislative framework for undertaking neighbourhood planning is set out in the Neighbourhood Planning (General) Regulations 2012 (as amended). Neighbourhood planning has been enthusiastically taken up by the many of the towns and parishes in the district (within and outside the SDNP), with 12 plans at various stages of preparation, ranging from 'made' plans to those in the earliest stage of preparation.
- 1.2 A neighbourhood plan, once adopted, forms part of the statutory development plan and sits alongside the Local Plan prepared by the Local Planning Authority (part of Newhaven parish lies within the South Downs National Park ). Planning

applications submitted within an area covered by an adopted neighbourhood plan must be determined in accordance with both the neighbourhood plan and the Local Plan.

1.3 Newhaven Town Council, with support and advice from the District Council, has produced a neighbourhood plan which has subsequently undergone a successful examination and went to referendum on Thursday 10<sup>th</sup> October 2019.

1.4 This report considers whether the Newhaven Neighbourhood Plan should be adopted by the District Council as part of the statutory development plan.

## **2 Proposal**

2.1 The Newhaven Neighbourhood Plan has undergone a successful examination. To comply with the Localism Act and provisions of the Neighbourhood Planning (General) Regulations 2012 (as amended), the local planning authority is required to 'make' a neighbourhood development plan within 8 weeks of the day after a successful referendum (unless otherwise agreed in writing with the Parish Council and South Downs National Park Authority).

2.2 Part of Newhaven parish lies within the South Downs National Park, however majority of the parish population is located outside the Park and so, in-line with an agreed approach that Lewes District Council and the South Downs National Park Authority have in place for such cases, Lewes District Council assumed the responsibility as the lead planning authority for the Newhaven Neighbourhood Plan.

2.3 An application was received from Newhaven Town Council to designate the entire parish as a neighbourhood area, however following an upheld<sup>1</sup> objection by Newhaven Port and Properties, Newhaven Port was omitted before the neighbourhood area was designated by Lewes District Council and the South Downs National Park Authority on 8<sup>th</sup> July 2013.

2.4 Statutory consultation, outlined below, has taken place on pre-submission draft of the Plan, which was amended in response to statutory and non-statutory representations before being submitted for examination June 2019.

2.5 The examiner determined that the neighbourhood plan met the basic conditions<sup>2</sup> (against which a neighbourhood plan is examined), subject to modifications, and recommended that the plan proceed to a referendum. This outcome was set out in the Examiner's Report (see paragraph 8.1) received in June 2019 and published by both authorities soon after (under Regulation 18).

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<sup>1</sup> The development of the port's area is of strategic importance and impacts on a larger area than the immediate neighbourhood of the parish of Newhaven. There are larger communities of interest.

<sup>2</sup> The basic conditions that a neighbourhood plan must meet are: appropriate regard to national policy; general conformity with strategic policies of the development plan for the local area; contribute to the achievement of sustainable development; and compatible with EU obligations.

- 2.6 The Newhaven Neighbourhood Plan was amended in line with the examiner's recommended modifications. The actions taken in response to the recommendations of the examiner are detailed in a Decision Statement along with the modifications recommended by the Examiner. This was published (Regulation 19) in July 2019 confirming that both authorities were satisfied that the plan met the basic conditions and could proceed to a referendum.
- 2.7 A referendum was held in Newhaven on Thursday 10<sup>th</sup> October 2019, posing the following question to eligible voters:
- “Do you want Lewes District Council and the South Downs National Park Authority to use the Neighbourhood Plan for Newhaven to help it decide planning applications in the neighbourhood area?”**
- 2.8 In accordance with the Neighbourhood Planning Regulations, following the outcome of the referendum with a majority 'yes' vote, it will be for Lewes District Council and the South Downs National Park Authority to 'make' the neighbourhood plan so that it formally becomes part of the development plan for Lewes District and the South Downs National Park.
- 2.9 For the avoidance of doubt and to make absolutely clear with respect to compliance with the Habitat Regulations (that transpose EU obligations into UK law), Lewes District Council is the competent authority in this respect and can only approve a plan or project if it is confident that there will be no likely significant adverse effects on the integrity of an EU protected site.
- 2.10 It is hereby confirmed unequivocally that the Newhaven Neighbourhood Plan has been determined not to have a likely significant adverse effect on any EU designated habitats, either within Lewes District or beyond, either alone or in combination with other plans or projects. This statement is made in light of the conclusions of a full and detailed, robust Habitat Regulations Assessment (HRA) that has been endorsed by the statutory consultee, Natural England. It is further clarified that the HRA was substantially updated following the 'Wealden Judgement' regarding the Joint Core Strategy and responds to all the criticisms outlined in that judgement and the endorsement from Natural England follows a full update of their own internal guidance on responding to the judgement. More information can be found on the Council's Habitat Regulations webpage at: [www.lewes-eastbourne.gov.uk/planning-policy/habitats-regulations](http://www.lewes-eastbourne.gov.uk/planning-policy/habitats-regulations)

### **3 Outcome expected and performance management**

- 3.1 Newhaven Neighbourhood Plan was successful at referendum on October 10<sup>th</sup> with a majority 'yes' vote. 14.74% of the registered electors voted, with 1105 'yes' votes and 192 'no' votes. Subsequently, if supported at Full Council, the Plan will be 'made' and will form part of the development plan for Lewes District and the South Downs National Park.
- 3.2 The Neighbourhood Plan can be reviewed after 5 years, or earlier if the policies become out of date due to strategic Local Plan policies being reviewed and updated.

- 3.3 The Newhaven Neighbourhood Plan policies can be given full weight now the Plan has passed referendum. In addition, until the Newhaven Neighbourhood Plan has been successfully made, the Local Plan policies that are specific to this designated area will also continue to be used to assess development proposals in the Newhaven area.

## **4 Consultation**

- 4.1 The Newhaven Neighbourhood Plan has undergone two regulated public consultations under the Neighbourhood Planning (General) Regulations 2012 (as amended) . Regulation 14 undertaken by the Qualifying Body in 2017 and Regulation 16 undertaken by the Local Planning Authority in 2019.
- 4.2 The Town Council carried out the statutory consultation (Regulation 14) on the draft plan between March and July in 2017. A number of amendments were then made to the plan in order to respond to feedback received from the consultation.
- 4.3 The Town Council submitted the revised plan (Regulation 15), along with other statutory submission documents, to Lewes District Council and the South Downs National Park Authority in January 2019. A further statutory consultation (Regulation 16) took place by the District Council between February and March 2019 where comments were invited on the submission documents.
- 4.4 Following the Regulation 16 consultation period, Lewes District Council and the South Downs National Park Authority (with the approval of Newhaven Town Council) appointed a suitably qualified and experienced independent examiner, Mr Tony Burton, to conduct the examination of the Newhaven Neighbourhood Plan which took place between May and June 2019.

## **5 Business case and alternative option(s) considered**

- 5.1 Not relevant for this report

## **6 Financial appraisal**

- 6.1 Formally adopting the Newhaven Neighbourhood Plan will allow the Town Council to benefit from a higher proportion of revenues arising from CIL chargeable development that takes place in the parish. This will rise from a capped 15% of levy revenue to an uncapped 25% when the neighbourhood plan is made. This will result in the transfer of an increased proportion of CIL levy revenue from LDC to Newhaven Town Council from applications approved after the Newhaven Neighbourhood Plan is 'made'; to spend on infrastructure required to support the development of the area.
- 6.2 There will be a financial implication in adopting the Neighbourhood Plan. In terms of the apportionment of CIL income, there will be no financial implications for the General Fund base budget.

## **7 Legal implications**

- 7.1 The legislation governing the decision to adopt a Neighbourhood Plan proposal

is contained within S. 38 Planning and Compulsory Purchase Act 2004 and Part 5 of the Neighbourhood Planning (General) Regulations 2012 (as amended). As well as setting out the steps to be taken in connection with the earlier stages of the process, it also sets out what steps the local planning authority must take to publicise their decision on a proposal, and for publicising any neighbourhood development plan made by Full Council.

Section 38A of the Planning and Compulsory Purchase Act 2004 (as amended), states:

*(4) A local planning authority to whom a proposal for the making of a neighbourhood development plan has been made –*

*(a) must make a neighbourhood development plan to which the proposal relates if in each applicable referendum under that Schedule (as so applied) more than half of those voting have voted in favour of the plan...*

*(6) The authority are not to be subject to the duty under subsection (4)(a) if they consider that the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).*

## **8 Risk management implications**

8.1 The following risks will arise if the recommendations are not implemented:

- (a) As the Newhaven Neighbourhood Plan was successful at referendum (gaining a majority vote in favour of its adoption), if the council fail to MAKE to the document then the Council will be in breach of its statutory duty under the Town and County Planning Act 1990 if it does not bring it into force (i.e. 'make' it). As the legislation concerning the recommendation is quite explicit there is no way of mitigating this risk.

No new risks will arise if the recommendations are implemented.

## **9 Equality analysis**

9.1 Equality analysis has been submitted.

## **10 Sustainability implications**

10.1 The Newhaven Neighbourhood Plan is supported by a Sustainability Appraisal incorporating a Strategic Environmental Assessment, ensuring the Plan is economically, socially and environmentally sustainable, and that it meets European sustainability and environmental obligations.

## **11 Background papers**

11.1 The background papers used in compiling this report were as follows:

- Newhaven Neighbourhood Plan
- Sustainability Appraisal incorporating the Strategic Environmental Assessment
- Examiners Report
- Summary of Representations
- Decision Statement

Each paper is located in the Newhaven section of the Neighbourhood Planning page:

<https://www.lewes-eastbourne.gov.uk/planning-policy/neighbourhood-planning/>