

Report to: Ian Fitzpatrick, Deputy Chief Executive & Director for Planning & Regeneration

Date: 27th November 2019

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

Report of: Tondra Thom, Planning Policy Lead

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

Purpose of report: To consider, in the absence of a full council meeting in the Purdah Period, that the Deputy Chief Executive and Director of Planning and Regeneration formally adopts, on behalf of Lewes District Council, the Newhaven Neighbourhood Plan as part of the statutory development plan following a successful referendum on 10th October 2019.

Officer recommendation(s): To formally adopt ('make') the Newhaven Neighbourhood Plan as part of the statutory development plan for the district under the Urgency Provisions set out at Part 4 of the Constitution.

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

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1 Introduction

- 1.1 The Cabinet considered, on 28th October 2019, the report of the Deputy Chief Executive and Director of Regeneration and Planning regarding the potential adoption of the Newhaven Neighbourhood Plan (NNP) following a successful referendum on the 10th October 2019. The recommendation from Cabinet is that the NNP be formally adopted as part of the statutory development plan.
- 1.2 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. The date the NNP must be 'made' by is the 5th December 2019.
- 1.3 Due to the Purdah Period, which runs from 6th November to 12th December and

the purdah rules, it is deemed not appropriate for Full Council to be voting on a planning policy matter, the scheduled meeting for the Full Council's adoption ('making') of the NNP was consequently cancelled.

2 Proposal

- 2.1 Having undergone a successful referendum the NNP must now be made by the 5th December to comply with the Localism Act and the Neighbourhood Planning (General) Regulations 2012 (as amended). The South Downs National Park Authority 'made' the NNP at Planning Committee on 14th November 2019.
- 2.2 As confirmed within the Cabinet Report of 28th October 2019 the NNP 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. The Council can, as Competent Authority, therefore approve this plan in compliance with the Habitat Regulations 2017.
- 2.3 It is therefore proposed that Ian Fitzpatrick, the Deputy Chief Executive and Director for Planning and Regeneration, with agreement from Cllr Joe Miller the Chair of Scrutiny, takes the decision on behalf of the Council to 'make' the NNP.

3 Constitutional Basis

- 3.1 The Council's Budget and Policy Framework Procedure Rules (part 4 of the constitution) provide for certain circumstances where decisions can be made by officers outside the Budget or Policy Framework. Rule 4 permits an officer to take a decision contrary to the Policy Framework if the decision is a matter of urgency. For completeness Rule 4 is provided below.

3.2 4 Urgent Decisions Outside the Budget or Policy Framework

(a) The Cabinet, a committee of the Cabinet, an individual member of the Cabinet or officers, or joint arrangements discharging executive functions may take a decision which is contrary to the Council's policy framework or contrary to or not wholly in accordance with the budget approved by full Council if the decision is a matter of urgency. However, the decision may only be taken:

(i) if it is not practical to convene a quorate meeting of the Full Council; and

(ii) if the Chair of the Scrutiny Committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of Full Council and the Chair of the Scrutiny Committee's consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the Chair of the Scrutiny Committee the consent of the Chair of the Council, and in the absence of both, the Vice-Chair, will be sufficient.

(b) Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

3.3 The key reasons for urgency are that:

- Regulations¹ require the Local Planning authority to make (i.e. approve) a Neighbourhood Plan within eight weeks of the positive referendum result. This deadline expires on 5 December.
- It is not appropriate for Full Council to be voting on a planning policy matter during the election period because of the purdah rules on council publicity.
- There is a significant risk that even if a meeting of Full Council were convened, it might not be quorate, as many members may have prior commitments relating to electioneering.
- Officer resource needed to prepare for and administer a Full Council meeting is not available during the election period. Removing them from election duties could undermine the election process.

3.4 With agreement from Cllr Joe Miller, the Chair of Scrutiny, that the decision is a matter of urgency and for the key reasons listed above it is considered that the constitutional basis is in place for the decision to 'make' the NPP to be taken by Ian Fitzpatrick, the Deputy Chief Executive and Director of Planning and Regeneration on behalf of the Council.

4 Outcome expected

4.1 The NPP will be formally 'made' and continue to form part of the statutory development plan. In addition Newhaven Town Council will, from this date, benefit from 25% of all Community Infrastructure Levy (CIL) funding from development approved within the Newhaven Neighbourhood Plan Area.

5 Financial appraisal

5.1 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.

5.2 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.

6 Legal implications

6.1 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

¹ Regulation 18A, The Neighbourhood Planning (General) Regulations 2012 (as amended)

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.

6.2 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...

(b) if paragraph (a) applies, must make the plan as soon as reasonably practicable after the referendum is held and, in any event, by such date as may be prescribed²

(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).

7 Risk management implications

7.1 The following risk will arise if the recommendation is 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 the Neighbourhood Plan then the Council will be in breach of its statutory duty to assist in the preparation of Neighbourhood Plans under the Town and County Planning Act 1990 and in breach of the and the Planning and Compulsory Purchase Act 2004 which requires the plan to be made within 8 weeks of a successful referendum. As the legislation concerning the recommendation is quite explicit there is no way of mitigating this risk.

7.2 No new risks will arise if the recommendation is implemented.

8 Equality analysis

8.1 Equality analysis was submitted with the Cabinet Report. There are no new implications

9 Sustainability and/or carbon reduction implications

9.1 The Newhaven Neighbourhood Plan is supported by a Sustainability Appraisal incorporating a Strategic Environmental Assessment, ensuring the Plan is

² The Planning and Compulsory Purchase Act defines the 'prescribed date' to be within 8 weeks of the day after a successful referendum

economically, socially and environmentally sustainable, and that it meets European sustainability and environmental obligations.

10 Appendices

- Appendix 1 – Cabinet Referral to Full Council

11 Background papers

11.1 The Background Paper used in compiling this report is as follows:

- Cabinet Report - Adoption of the Newhaven Neighbourhood Plan
<https://democracy.lewes-eastbourne.gov.uk/documents/s12746/Newhaven%20Neighbourhood%20Plan.pdf>