

Agenda Item 14
Report PC19/20-17

Report to	Planning Committee
Date	12 September 2019
By	Director of Planning
Title of Report	Fittleworth Neighbourhood Development Plan Decision Statement
Purpose of Report	To note the Examiner's recommended modifications to the Fittleworth Neighbourhood Development Plan and agree the publication of the 'Decision Statement'.

Recommendation: The Committee is recommended to:

- 1) Note the Examiner's Report and recommended modifications to the Fittleworth Neighbourhood Development Plan to meet the Basic Conditions.**
- 2) Agree to publish the 'Decision Statement' as set out at Appendix 2 of the report.**

1. Introduction and Summary

- 1.1 Fittleworth Parish Council (FPC) submitted the Fittleworth Neighbourhood Development Plan (FNP) to the South Downs National Park Authority (SDNPA) for examination in January 2019. An Independent Examiner was appointed in April 2019 to examine the FNP. The Examination took place between April and June 2019. The Examiner considered 10 written representations and determined that no public hearing was required. The Examiner has now issued his final report and concludes, that subject to a number of modifications, the FNP can proceed to referendum. The SDNPA must issue a 'Decision Statement' setting out how the FNP should be modified in response to the Examiner's Report and agreeing proposed modifications.
- 1.2 The Fittleworth NDP is being considered by Planning Committee as it forms part of the Development Plan for the area.

2. Background

- 2.1 Fittleworth Parish Council (FPC) are to be congratulated on progressing the FPC to the final stage ahead of a community referendum. Getting to this stage is the result of considerable hard work by local volunteers and members of FPC over the past four years. The preparation of the FNP has been particularly challenging as the steering group have had to balance community aspirations to deliver much needed affordable housing whilst conserving and enhancing the special qualities of the National Park. In addition FNP has had to have regard to the international nature conservation designations of the Mens SAC (Special Area of Conservation) and Ebernoe Common SAC, which significantly constrain the allocation of land for development.
- 2.2 The FNP covers the plan period 2018 to 2033 and has been prepared for a designated neighbourhood area which follows the Fittleworth Parish boundary, the designated FNP area

can be found at **Appendix I**.

- 2.3 Fittleworth Parish Council decided to prepare a NDP in November 2014, following wider community consultation including public meetings and articles in the village magazine. Following the initial public engagement, a steering group of 5, including local residents and Parish Councillors was formed to lead on the preparation of the FNP. Throughout the preparation of the FNP there has been extensive public consultation. Details of individual events is set out in the Consultation Statement and activities included:

- Regular articles in the Parish Magazine
- Two public meetings
- Housing needs survey circulated to all homes in Fittleworth

- 2.4 The FNP has progressed through all the appropriate stages of Neighbourhood Plan preparation following the initial community engagement. The FNP has been presented to Planning Committee at all relevant stages of preparation as the FNP proposes a higher level of development than set out in the South Downs Local Plan. Links to all relevant Planning Committee reports are included below and more detailed information on each stage is also on the website at <https://www.southdowns.gov.uk/planning/planning-policy/neighbourhood-planning/neighbourhood-development-plans/fittleworth-neighbourhood-plan/>

Stage	Detail
Designated a Neighbourhood Area	5 March 2015
Pre-submission consultation on the plan (Reg 14)	The SDNPA response to the Pre Submission consultation was agreed by Planning Committee on the 8 March 2018
Submitted to SDNPA and published for consultation (Reg 16)	The SDNPA response to the Submission consultation was agreed by Planning Committee on the 11 April 2019
Independent Examination	Undertaken by Mr John Slater from April to June 2019. The Examiner's report was issued in July 2019.

3. **Recommended modifications to the Fittleworth NDP to meet the Basic Conditions**

- 3.1 The Examiner was appointed to assess whether the FNP meets certain legal requirements for NDPs, known as the 'Basic Conditions'. These state NDPs should:
- i) Have regard to national policies and advice contained in guidance issued by the Secretary of State,
 - ii) Contribute to the achievement of sustainable development,
 - iii) Be in general conformity with the strategic policies contained in the development plan for the area,
 - iv) Not breach, and otherwise be compatible with, EU obligations.
- 3.2 The Examiner has now issued his report, which can be found at **Appendix 3**, and identified a number of modifications which are necessary to ensure the FNP meets the basic conditions. Officers have reviewed the Examiner's report in consultation with the FNP steering group. The following key modifications are highlighted for Members:
- Policy FITT 1 sought to conserve and enhance the landscape character of Fittleworth. The policy included a requirement to safeguard important local views. However, the plan did not specifically identify any important views. The examiner felt this created uncertainty for applicants and decision takers, therefore the reference to safeguarded local views has been removed.

- Policy FITT 6 which allocated land for a new community shop has been deleted as the shop has been granted planning permission and is now built and in operation.
 - Policy FITT 9 allocated sites for residential development. This policy included reference to the allocation of a site within the settlement boundary which would not be allocated by the FNP, but would come forward as windfall development. The policy sought to control aspect of the sites development which was considered inappropriate by the Examiner, this aspect of the policy was deleted.
- 3.3 Many of the Examiner's other modifications are to bring clarity to the wording used and ensure a policy based approach that meets the needs of decision makers in applying the Plan when it is 'made'.
- 3.4 Details of each modification are contained in the Decision Statement which can be found at **Appendix 2**, Table 1.
- 3.5 It should be noted that the FNP allocated land for 18 new homes. This is more than the SDLP provision of approximately 6 dwellings. The examiner commends the Neighbourhood Planning group for taking such a proactive approach to the challenge of providing for sustainable development in a National Park through the Neighbourhood Plan process. The SDLP allows NDPs to propose higher levels of housing than is set out in Policy SD26 providing that they meet local housing need and are in general conformity with the strategic policies of the development plan. A housing needs survey carried out by the FNP group supports the proposal for a higher level of growth than proposed in policy SD26.
- 3.6 In addition two modifications were made in line with Natural England's representation, these are proposed to enhance the current provision for protection of Bat foraging routes.
- 4. Decision Statement**
- 4.1 The Regulation 14 and 16 stages of the neighbourhood plan making process offers those parties affected by the NDP the opportunity to make representations on the plan. This is followed by an examination and the issuing of a report (by an independent Examiner) containing a series of recommendations. The Neighbourhood Planning (General) Regulations 2012 state that a Local Planning Authority must then publish what actions will be taken in response to the recommendations of the Examiner. This is known as the 'Decision Statement'.
- 4.2 The Neighbourhood Plan Regulations impose no obligations for the examiner or the LPA to have to consult on the changes to the Plan which they are minded to accept. Those that do not endorse the plan and any modifications proposed by the Examiner have the chance to vote to reject it at referendum.
- 4.3 However, if the authority propose to make a decision which differs from that recommended by the examiner, it must notify relevant people and invite representations. Any representations must be submitted within 6 weeks of the local planning authority inviting representations. The local planning authority may, if it considers it appropriate to do so, refer the issue to further independent examination. Once the period for representations is over, the local planning authority must issue its final decision within 5 weeks. The submission version of the FNP would then be revised and a Referendum would take place.
- 4.4 It is recommended that Planning Committee accept the Examiner's modifications to the FNP and approve the Decision Statement as attached at **Appendix 2**.
- 5. Planning Committee**
- 5.1 The Fittleworth NDP is being considered by Planning Committee as it forms part of the Development Plan for the area.
- 6. Next steps**
- 6.1 Following the publication of the Decision Statement, the FNP can proceed to referendum which will be organised by Chichester District Council. It is provisionally agreed that the referendum will be held on Thursday 7 November 2019. If over 50% of those voting are in

favour of the FNP, then the Plan can be 'made' (adopted) by the SDNPA and will form part of the statutory Development Plan for parish of Fitteworth.

7. Other Implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	Yes – Agreement to Make the FNP at a subsequent Planning Committee if a referendum is successful.
Does the proposal raise any Resource implications?	<p>Yes – SDNPA have provided a series of grants to FPC to support the cost of preparing the FNP, including costs relating the Strategic Environmental Assessment and Habitats Regulation Assessment. The Examination has cost £4679.10. To date the Plan has cost £11,336.50.</p> <p>The SDNPA has received £5,000 in grants and will be able to claim £20,000 shortly to cover the cost of the Examination and Referendum. It is anticipated that the grant will cover the total cost of supporting the preparation of the FNP.</p> <p>Once a NDP is made, a Town or Parish Council is entitled to 25% of Community Infrastructure Levy (CIL) collected from development within the neighbourhood area, as opposed to the capped 15% share where there is no NDP. The Town Council can choose how it wishes to spend these funds on a wide range of things which support the development of the area.</p>
Has due regard been taken of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010?	Due regard has been taken of the South Downs National Park Authority's equality duty as contained within the Equalities Act 2010. FPC who have the responsibility for preparing the neighbourhood plan have also prepared a Consultation Statement demonstrating how they have consulted the local community and statutory consultees. The Examiner was satisfied that the consultation and publicity undertaken meets regulatory requirements.
Are there any Human Rights implications arising from the proposal?	None
Are there any Crime & Disorder implications arising from the proposal?	None
Are there any Health & Safety implications arising from the proposal?	None
Are there any Sustainability implications based on the 5 principles set out in the SDNPA Sustainability Strategy:	The qualifying body with responsibility for preparing the neighbourhood plan must demonstrate how its plan will contribute to the achievement of sustainable development. This is set out in the Basic Conditions Statement. The examiner who assessed the plan considered that it met the requirements if a number of modifications were made. Please note that the sustainability objectives used by qualifying bodies may not be the same as used by the SDNPA, but they will follow

	<p>similar themes.</p> <p>Strategic Environmental Assessment (SEA)</p> <p>It was concluded that an environmental assessment of the Lewes Neighbourhood Plan was required as the scale of development may have a significant effect. An SEA was also necessary as a Habitats Regulation Assessment was required due to the proximity of two Special Areas of Conservation.</p> <p>The SEA has been updated to reflect the modifications to the policies in the Plan recommended by the Examiner. The revised SEA concludes that none of the changes are considered to have a likely significant effect.</p> <p>Habitats Regulations Assessment (HRA)</p> <p>The FNP has also been subject to a Habitats Regulation Assessment due to the close proximity of the Mens Special Area of Conservation and Ebernoe Common Special Area of Conservation. The HRA has been updated to reflect the modifications proposed by the Examiner.</p>
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8. Risks Associated with the Proposed Decision

Risk	Likelihood	Impact	Mitigation
The Examiner has recommended modifications to ensure the FNP meets the Basic Conditions. If these modifications are not implemented the FNP would be at risk of legal challenge on the basis it does not meet the legal requirements for NDPs.	Low	Medium	The Examiner's recommended modifications are agreed in full.

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Appendices	<ol style="list-style-type: none"> 1. Fittleworth Neighbourhood Area 2. Decision Statement 3. Examiner's report
SDNPA Consultees	Legal Services; Chief Finance Officer; Monitoring Officer; Director of Planning
External Consultees	None
Background Documents	FNP Examiners report Representations made on the FNP Submission version of the FNP Habitats Regulation Assessment Strategic Environmental Assessment FNP Consultation statement FNP Basic Conditions Statement

Agenda Item 14 Report PC19/20-17 Appendix I
Fittleworth Neighbourhood Plan Area



Fittleworth Neighbourhood Development Plan Decision Statement: September 2019

1. Introduction

- 1.1 Under the Town and Country Planning Act 1990 (as amended), the South Downs National Park Authority 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 Local Planning Authority's responsibilities under Neighbourhood Planning.
- 1.2 This statement confirms that the modifications proposed by the examiner's report have been accepted, the draft Fittleworth Neighbourhood Development Plan has been altered as a result of it; and that this plan may now proceed to referendum.

2. Background

- 2.1 The Fittleworth Neighbourhood Development Plan relates to the area that was designated by the South Downs National Park Authority as a neighbourhood area on 5 March 2015. This area corresponds with the Fittleworth Parish Council boundary that lies within the South Downs National Park Local Planning Authority Area.
- 2.2 Following the submission of the Fittleworth Neighbourhood Development Plan to the National Park Authority, the plan was publicised and representations were invited. The publicity period ended on 12 April 2019.
- 2.3 Mr John Slater BA (Hons), DMS, MRTPI was appointed by the South Downs National Park Authority with the consent of Fittleworth Parish Council, to undertake the examination of the Fittleworth Neighbourhood Development Plan and to prepare a report of the independent examination.
- 2.4 The examiner's report concludes that subject to making the modifications recommended by the examiner, the Plan meets the basic conditions set out in the legislation and should proceed to a Neighbourhood Planning referendum.

3. Decision

- 3.1 The Neighbourhood Planning (General) Regulations 2012 requires 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 4A to the 1990 Act (as applied by Section 38A of the 2004 Act) in relation to a neighbourhood development plan.
- 3.2 Having considered each of the recommendations made by the examiner's report, and the reasons for them, South Downs National Park Authority in consultation with Fittleworth Parish Council has decided to accept the modifications to the draft plan. Table 1 below 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. The reasons set out have in some cases been paraphrased from the Examiners report for conciseness. This statement should be read alongside the [Examiner's Report](#).
- 3.3 If the Authority is satisfied that, subject to the modifications being made, the Neighbourhood Plan meets the legal requirements and basic conditions then it can proceed to referendum.

Table 1

Recommended Modification to the FNP	Justification	Decision
Policy FITT 1 – Landscape Character		
<p>In the first paragraph, replace the second sentence with “Applicants will be expected to demonstrate, to the extent which is proportionate to the size and scale of the development and its likely landscape impact, how the proposal has had regard to”</p> <p>Delete criterion c) - Safeguarding important local views such as those from Hesworth Common and from publicly accessible areas and public rights of way; and</p>	<p>This policy places an onerous requirement on all applicants to clearly demonstrate how their proposals relate to “key characteristics, sensitivities and development and management considerations for the landscape character areas.” This is a particularly demanding requirement for minor development, which is unlikely to have any tangible impact on the wider landscape. An amendment to the policy wording to bring it in line with wording of policy SD4 of the South Downs Local Plan</p> <p>The Secretary of State’s requirement is that a neighbourhood plan policy can be used with confidence by a decision maker, when determining a planning application and that is not possible if the viewpoint is not identified</p>	Accept modification
Policy FITT 2 - Biodiversity		
<p><i>In d) replace “there are wholly exceptional reasons” with “the need for and benefits of the development in that location clearly outweigh the loss”</i></p>	<p>The test in respect of criterion d) goes beyond the requirements set out in paragraph 118 of the NPPF (2012), where there is a requirement to</p>	Accept modification

Recommended Modification to the FNP	Justification	Decision
<p>Delete the final sentence and move to the supporting text.</p>	<p>address the balance, namely “the need for and benefits of the development in that location clearly outweigh the loss”. I consider that these words can be usefully added to the policy to bring it into line with Secretary of State advice.</p> <p>The final sentence of the policy, which signposts applicants to explanations as to the importance of bats, does not actually constitute a plan policy and the sentence should be moved to supporting text</p>	
<p>Policy FITT 3 – Water and utilities infrastructure and management</p>		
<p>Replace “demonstrate that there is a surface water management plan that shows the risk of flooding both on and off site is minimised and managed” with “adopt a Sustainable Urban Drainage Scheme, where it is appropriate, or to make adequate provision for dealing with surface water disposal on a domestic property.”</p>	<p>Concern regarding the need for all developments, even a domestic extension, to have to prepare a surface water management plan. An alternative form of wording proposed by the Parish Council will be adopted in the revised wording in my recommendation</p>	<p>Accept modification</p>
<p>Policy FITT 4 – Built Environment</p>		
<p>Replace “maintenance” with “alteration” in the first sentence of the policy</p>	<p>The maintenance of listed buildings may not necessarily need consent, therefore it is proposed to replace the word maintenance with alteration.</p>	<p>Accept modification</p>

Recommended Modification to the FNP	Justification	Decision
<p><i>In the fifth bullet point replace “and is not suburban in character” with “and is in keeping with local boundary treatments”</i></p> <p><i>Delete Criterion 7 and criterion 9</i></p> <p><i>Delete criterion 10</i></p>	<p>The criteria relating to means of enclosure, not being “suburban in character”, will be difficult to define and to prevent fences or walls, say in some rear gardens, where they would not be in character with the surrounding properties. I propose to modify the policy wording as per the suggestion put forward by the Parish Council.</p> <p>Neighbourhood plans should not impose “any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings”. I consider such additional technical requirements are being proposed when the policy refers to “sustainable construction methods”, which will be difficult to actually define at a planning application stage. The criterion requiring</p> <p>“appropriate renewable and low carbon technology” will be a similar case as well as difficult to define what is actually being required.</p> <p>The penultimate criterion relating to sustainable urban drainage systems is</p> <p>already covered by Policy FITT 3 and there is no value in duplicating policy requirements.</p>	
Policy FITT 6 – New Community Shop		

Recommended Modification to the FNP	Justification	Decision
Delete Policy FITT 6	The shop/café and the accompanying children's play area is already in place and are clearly well used. The Parish Council has agreed that this policy now serves no useful purpose and has confirmed that it was no longer appropriate to include the policy in the plan	Accept modification
Policy FITT 7 – Extensions to existing dwellings		
Delete criterion b) Insert at the end of c) (to be renumbered) “approximately” before “30%” followed by “whichever is greater”	<p>This policy seeks to retain small dwellings (as defined as under 100 m²) yet the potential of permitted development rights could undermine that aspiration by allowing extensions that breach that threshold. How would a proposal to extend an existing property which was 95 sq. m be determined if its permitted development allowance would allow a greater increase than 50sq. m or indeed the 30% allowance? I propose to delete the criterion that seeks to retain small dwellings</p> <p>Setting the percentage limit of 30% to be a too arbitrary figure and I proposed to refer to the criteria being “approximately 30%”. I considered that greater clarity should be provided, by inserting “whichever is greater”, which recognises the scope of extensions to be built under the permitted development rights, albeit that these are more limited in the National Park.</p>	Accept modification

Recommended Modification to the FNP	Justification	Decision
Policy FITT 8 – New Housing Development		
<i>In b) replace “Opportunities should be taken where appropriate” with “Measures are to be taken” and after “network” insert “where the residual impact is severe”</i>	<p>The policy presently presumes in favour of developments within the settlement boundary which now includes the two allocation sites. I consider that any location within the settlement boundary will have, by virtue of the size and configuration of the village, have easy access to public transport. I do not</p> <p>consider that it is reasonable for development in the village itself, to have as a matter of course to mitigate <i>any</i> impact on the local transport network, unless the scale of that residual impact is severe, which is the criterion used by the Secretary of State in the paragraph 32 of the NPPF (2012).</p>	Accept modification
<i>In c) replace “people’s” with “local housing”. After “policies” in the second sentence, add “and including measures to ensure that it remains affordable in perpetuity.”</i>	<p>The wording of criterion c) is too vague when it refers to “peoples’ needs”. I consider that any developments could be said to be meeting some person’s needs. I consider the more appropriate criterion would be that the development should be meeting “local housing needs.”</p>	
<i>Delete the final sentence.</i>	<p>The final sentence could be open to misinterpretation where the policy states that it will be applied to “new build and resale on the sites within the plan”. I questioned what the intention of the Parish Council was in terms of the above requirement and it was confirmed</p>	

Recommended Modification to the FNP	Justification	Decision
<p><i>In the final paragraph after “forestry” insert “, replacement dwellings, exception sites, new homes created by the conversion of redundant or disused buildings, which lead to an enhancement of the immediate setting or new houses where the design of the dwelling is of exceptional quality or innovative nature”</i></p>	<p>that the intention was for affordable housing to remain affordable in perpetuity. I will make it explicit that appropriate measures be made to ensure that these homes remain affordable, for future eligible households</p> <p>The final paragraph of the policy, dealing with residential development outside settlement boundaries is actually more restrictive than national or local plan policy, as it does not allow for replacement dwellings, exception sites, new homes created by the conversion of redundant or disused buildings, which lead to the enhancement of the immediate setting or new houses where the design of the dwelling is of exceptional quality or innovative nature. I will expand the range of homes allowed to ensure that it accords with the Secretary of State’s policy.</p>	
<p>Policy FITT 9 – Sites Allocated for Housing Development</p>		
<p><i>In the first paragraph, remove (rejected sites are discussed at Appendix 9) and move to the supporting text.</i></p> <p><i>Remove the final paragraph before b) and move to the supporting text</i></p>	<p>The respective justification for the sites chosen, which is set out in the wording of the policy, is not actually planning policy but the reasons why the sites have been chosen. These sections should be omitted from the policy and be relocated in the supporting text.</p> <p>The National Park Authority has pointed out that whilst the affordable element</p>	<p>Accept modification</p>

Recommended Modification to the FNP	Justification	Decision
<p>Replace a) ii) with “Two affordable dwellings will be secured on site, in perpetuity, at least one of these dwellings should be a rented affordable tenure”.</p> <p>In b) i) replace “40” with “50”</p> <p>In b) delete v) and renumber</p>	<p>of the policy was in line with the LPA’s policy at the time of drafting, the Local</p> <p>Plan policy has evolved as it has gone through the local plan preparation process and that the now adopted South Down’s policy would require two affordable houses to be provided on site, one of which should be an affordable rented tenure. There are implications for the second site where the affordable housing requirement sought by the National Park is now 50%, not 40%. I will again recommend a change.</p> <p>In terms of site b) (CH033) at the corner of Limbourne Lane / The Fleet, I do</p> <p>not consider that is appropriate to include a requirement for the development to ensure “appropriate measures are taken to manage the speed of traffic entering the village on the A283”. This will be a requirement that is outside the control of the landowner or developer, and may require additional regulatory consents such as Traffic Regulation Orders etc.</p> <p>Policy clauses relating to the two elements that deal with bat protection require amendment to bring them into line with the requirements set out by Natural England.</p> <p>The last part of the policy dealt with windfall sites, within the settlement boundary and</p>	

Recommended Modification to the FNP	Justification	Decision
<p><i>In a) vii) and b) viii replace “limiting” and insert “avoiding” and omit “to no greater than 0.5lux”</i></p> <p><i>Remove the remainder of the policy after x)</i></p>	<p>highlights the potential for development at Greatpin Croft.</p> <p>Housing development within the settlement boundary is already covered by Policy FITT 8 and it is unnecessary to include these matters in the policy</p> <p>specifically allocating land for new development</p>	
<p>Policies map page 29</p>		
<p><i>Insert the new “Fittleworth Housing and Settlement Boundary Allocations Plan” instead of the plan below the text of Policy FITT 9, which was prepared by the SDNPA</i></p>	<p>The policies map shown on page 29 does not provide adequate detail to allow decision takers to correctly identify the position of the settlement boundary. Sites allocated by the Neighbourhood Plan should be included inside the settlement boundary</p>	<p>Accept modification</p>