

Newbold Verdon Neighbourhood Development Plan

Examiner's High-Level Findings

Context

This Note sets out my high-level assessment of the way in which the submitted Plan meets the basic conditions.

It also sets out two options for the Parish Council to consider based on my findings.

Work undertaken so far

I have read the submitted documents and the representations made to the Plan.

I have also visited the neighbourhood area.

High Level Findings - General

In most respects the Plan provides a clear vision for the neighbourhood area. It is thorough and comprehensive. It is underpinned by an appropriate evidence base. In particular it positively addresses the development of new housing in the neighbourhood area, it assesses a variety of potential sites and includes a preferred housing allocation in the Plan.

The quality of the other submission documents, the appendices and the Strategic Environmental Assessment (SEA) is also very good.

The presentation of the Plan is good. The difference between the policies and the supporting text is very clear. The maps are effective.

High Level Findings – The Basic Conditions and Environmental Assessment

The examiner's responsibilities are prescribed in legislation.

Only a draft neighbourhood Plan or Order that meets each of a set of basic conditions can be put to a referendum and be made. The basic conditions are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. They are captured in the Neighbourhood Planning Regulations.

The basic conditions are:

- having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order (or neighbourhood plan);
- having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order. This applies only to Orders;
- having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order. This applies only to Orders. the making of the order (or neighbourhood plan) contributes to the achievement of sustainable development;

- the making of the order (or neighbourhood plan) is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
- the making of the order (or neighbourhood plan) does not breach, and is otherwise compatible with, EU obligations; and
- prescribed conditions are met in relation to the Order (or plan) and prescribed matters have been complied with in connection with the proposal for the order (or neighbourhood plan).

At this point I have not completed a full examination of the Plan against the basic conditions. In this context this Note concentrates on the basic condition which relates to the extent to which the submitted Plan meets the basic condition in respect of EU obligations. It does so for two reasons. The first is that it is a self-contained basic condition. The second is that it is not within the remit of the independent examiner to recommend modifications to the Plan and/or its supporting documents in order to ensure that the Plan meets the basic conditions.

In drawing the conclusions set out in this note I have taken account of the submitted SEA and the Borough Council's representation which sets out an audit trail on the way in which environmental assessment has been addressed in the Plan making process.

Legislation and Guidance

The relevant basic condition requires me to consider whether the submitted Newbold Verdon NDP breaches or is otherwise incompatible with, EU obligations. In doing so I have considered the following elements of legislation together with the UK statutory instruments implementing them:

- the Strategic Environmental Assessment Directive (2001/42/EC);
- the Environmental Impact Assessment Directive (2011/92/EU);
- the Habitats Directive (92/43/EEC);
- the Wild Birds Directive (2009/147/EC);
- the Waste Framework Directive (2008/98/EC);
- the Air Quality Directive (2008/50/EC);
- the Water Framework Directive (2000/60/EC); and
- the General Data Protection Regulation (2016/679/EU).

Within this wider schedule of directives that may be of particular relevance to the submitted neighbourhood plan the most relevant directive is Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (often referred to as the Strategic Environmental Assessment (SEA) Directive). It seeks to provide a high level of protection of the environment by integrating environmental considerations into the process of preparing plans and programmes. It has direct relevance to the neighbourhood plan process.

Within this Directive Articles 5 and 8 provide guidance respectively on how the preparation of the environmental report and how it should be taken into account before the plan or programme is adopted. These articles are set out below:

Article 5

Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I (of the Directive)

Article 8

The environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

The 2001 Directive is a rather matter-of-fact document. Guidance for its use in the UK was published in 2005 by the Office of the Deputy Prime Minister ('A Practical Guide to the Strategic Environmental Assessment Directive'). It continues to set out government guidance on this important matter.

Its paragraph 5.3 comments about expectations that SEA work should be iterative and have a direct effect on the resulting Plan as follows:

'The SEA process, including preparation of the Environmental Report, is most effective when started as early as possible, ideally at the same time as the preparation of the plan or programme. SEA will often involve an iterative process of collecting information, defining alternatives, identifying environmental effects, developing mitigation measures and revising proposals in the light of predicted environmental effects. It will be important to identify an end-point where further iterations are unlikely to bring further significant improvements in predicting the environmental effects of the plan or programme.'

Thereafter the Guide sets out the key stages which should be followed (Stages A-D for plan-making purposes).

Examiner's Findings

The various documents that have been produced to demonstrate the way in which the EU obligations basic condition has been met are appropriate and well-considered in their own right.

The initial screening work resulted in a degree of disagreement about whether SEA was or was not needed. This is not unusual. In addition, it arose as part of the necessary consultation process with the three consultation bodies.

The eventually Strategic Environmental Assessment was prepared to industry standards. In addition, it took account of all the relevant information available at that time and assessed reasonable alternatives.

Nevertheless, the events which have underpinned the development of the Plan in general, and the preparation of the SEA in particular, have been out of sequence. In summary format I highlight the following matters:

- consultation on the pre-submission Plan (May/July 2018) took place before the necessary screening had taken place (June/July 2018);
- the SEA Determination Notice (August 2018) post-dates the preparation of the pre-submission Plan and its consultation process;
- the attempts by the Parish Council to remedy these earlier matters were partial in their extent. I recognise that the focused consultation on the SEA in November and December 2019 sought to address some of the earlier procedural matters that had arisen in the Plan-making process. Nevertheless, there was insufficient time for interested parties to make their comments and for any such comments to be considered and, where appropriate, incorporated into the wider process. In any event measures of whatever type would have been unable to remedy the fundamental sequencing issues set out in the two preceding bullet points and which had taken place at the very beginning of the process; and
- the submitted SEA (September 2019) was prepared late within the overall process and immediately prior to submission.

Given all the details in the summary above I cannot conclude that the preparation of the Plan has been supported and influenced by the SEA work. In addition, there is no compelling evidence that Stages A-D have been followed in a logical and structured fashion.

The examination process provides no ability for the independent examiner to recommend modifications to this part of the process. Any submitted neighbourhood plan either complies with the basic condition on EU regulations or it does not do so.

As such in my judgement the submitted Plan does not meet the basic condition with regards to EU obligations.

Options

In these circumstances the Parish Council has two options as follows:

Option 1

The Parish Council withdraws the Plan.

In this scenario the examination ends and no examination report is produced.

In the event that the Parish Council decides to proceed with this option it will then be able to come to a separate local decision on whether or not it wishes to continue with any further work on preparing a neighbourhood development plan.

If it wished to continue with such work it would need to revert to the pre-submission Plan phase of the Plan.

Option 2

The Parish Council decides to allow the examination to continue.

In this scenario an examination report would be produced in due course. My recommendation to the Borough Council would be that the Plan should not proceed to referendum as it does not meet the basic conditions.

At this point the Borough Council would then need to consider my recommendation and come to its own view about the extent to which the Plan met the basic conditions.

The Next Steps

I would be grateful if the Parish Council would consider the two options and advise me of its decision.

I would suggest that the Parish Council liaises with the Borough Council in reaching its decision.

I will suspend any further work on the examination until the Parish Council advises me of its decision.

Andrew Ashcroft

Independent Examiner

Newbold Verdon NDP

6 April 2020