

IN THE MATTER OF
THE WAREHAM NEIGHBOURHOOD PLAN

ADVICE

Introduction

1. We are asked to advise the Wareham Town Council (“**the Town Council**”) on certain matters in relation to the emerging Wareham Neighbourhood Plan (“**the WNP**”). We have previously provided advice on the WNP in October 2018, which sets out much of the factual background.¹
2. In particular, we are now asked the following questions:
 - a) Should the Town Council continue with the examination of the WNP, or withdraw the WNP and resubmit a revised version incorporating the proposed changes?
 - b) If the WNP is withdrawn, can the revised WNP be submitted straight for a regulation 16 consultation or would a regulation 14 consultation be required again?
 - c) What additional information is needed to support this revised WNP?
 - d) Is the revised WNP with supporting evidence likely to meet the basic conditions?
 - e) Under the existing technical support packages are the Town Council able to call on AECOM to provide this additional evidence required?

Analysis

a) Should the Town Council continue with the examination of the WNP, or withdraw the WNP and resubmit a revised version incorporating the proposed changes?

3. The Town Council submitted the WNP submission draft to Purbeck District Council (now part of Dorset Council (“**the Council**”)) in October 2018. Since that time there

¹ Relevant factual updates since then are set out in this advice.

have been two developments which have resulted in the Town Council wishing to make amendments to the WNP.

4. The first development concerns the Habitats Regulations Assessment (“**the HRA**”). The HRA was submitted to the Examiner in February 2019. Since then it has been discovered that it will not be possible to provide a SANG² to mitigate the allocated sites H5 and H6 in the WNP, as originally envisaged.³ A Statement of Common Ground with Natural England (“**the SoCG**”), dated 2 August 2019, has now been reached. Natural England has now agreed that if the housing proposed at sites H5 and H6 is limited to 50 dwellings or less, they would be content with a financial contribution rather than a SANG.
5. The second development is that the Council is promoting further redevelopment of the former Middle School site GS2, which would result in a capacity of 90 dwellings on site GS2 compared to the previously envisaged 35 dwellings. The effect of this is that the housing requirement in the WNP of 300 dwellings could be met without the need to amend the boundaries of the Green Belt and allocate site H4 in the Green Belt.
6. This has led to the Town Council intending to make the following amendments to the WNP:
 - a reduction in the size of the allocations at sites H5 and H6;
 - a reference to the SoCG with Natural England in relation to the financial mitigation for sites H5 and H6;
 - the removal of the allocation of site H4 in the Green Belt;
 - an increase in the numbers of dwellings expected on the Middle School site GS2; and
 - the inclusion of an additional brownfield site at Bonnets Lane for extra-care housing following relocation of the existing care home currently on the site.

² Suitable Alternative Natural Greenspace.

³ This is due to not being able to reach agreement with the relevant land promoter.

7. Our advice is that in light of these developments and intended amendments, the Town Council should withdraw the current version of the WNP and rely on a revised version which includes these amendments; rather than continue with the examination of the current WNP. This is so for the following reasons:

7.1. Once a neighbourhood plan has been submitted to the local authority or the examiner, there is no power for the “qualifying body”⁴ to make modifications to the neighbourhood plan.

7.2. Rather, it is only the local authority that has the power to make such modifications (which are modifications which may have been recommended by the examiner). The scope of modifications that can be made by the local authority are limited to those which are:

“(a) modifications that the authority consider need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),

(b) modifications that the authority consider need to be made to secure that the draft order is compatible with the Convention rights,

(c) modifications that the authority consider need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,

(d) modifications specifying a period under section 61L(2)(b) or (5), and

(e) modifications for the purpose of correcting errors.”⁵

7.3. It is arguable that the modifications relating to the HRA issue may fall within “(a) modifications that the authority consider need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2)”, namely the basic condition that the WNP “does not breach, and is otherwise

⁴ This is the wording used in section 61E of the Town and Country Planning Act 1990 (“the 1990 Act”) to describe the neighbourhood plan body; i.e. the Town Council in this case.

⁵ See paragraphs 12(6) of Schedule 4B of the 1990 Act.

compatible with, EU obligations.”⁶ Albeit this is not a clear-cut argument, and as such there is potential for such an approach to be subject to legal challenge.

7.4. However, the amendments to the WNP as a result of the Council’s promotion of the former Middle School site GS2 are unlikely to fall within this limited scope of permitted modifications. The amendments, which would include removal of a previously allocated site in the Green Belt and allocation of a new brownfield site, are related to a change in spatial strategy, rather than related to compliance with the basic conditions. On this basis, the Council would not be able to make these amendments to the current WNP at this stage in the process.

7.5. Further, the Examiner himself has already raised serious concerns about the ability to make the proposed amendments and expressed a preference for the WNP to be withdrawn and resubmitted.⁷ We note that the Examiner has also informally indicated that he was he to assess the WNP as originally submitted, without the proposed amendments, this would also not result in a positive outcome.⁸ Thus there is a strong likelihood that if the current examination were pursued, the Examiner would not give a positive recommendation, which would be very disadvantageous for the future of the WNP. Therefore, purely from a practical and tactical perspective, it would also be prudent to withdraw and resubmit an amended WNP.

8. Accordingly, our advice is that the Town Council should withdraw the current version of the WNP and rely on a revised version which includes the proposed amendments.

b) If the WNP is withdrawn, can the revised WNP be submitted straight for a regulation 16 consultation or would a regulation 14 consultation be required again?

9. Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 (“**the 2012 Regs**”) provides that prior to submission of a neighbourhood plan to the local

⁶ See paragraph 8(2) of Schedule 4B of the 1990 Act.

⁷ See the letter from the Inspector dated 10 September 2019.

⁸ See the email from the Examiner set out in the Chronology in our Instructions.

authority, the qualifying body must publicise the plan, including details of how to make representations, and consult with consultation bodies.

10. Regulation 16 of the 2012 Regs provides that once a neighbourhood plan has been submitted to the local authority, the local authority must publicise the plan, including details of how to make representations, and notify consultation bodies.
11. Our advice is if the WNP is withdrawn and amended, then the amended WNP should go through regulation 14 consultation again. As set out above, there is only limited scope for modification of a neighbourhood plan once it has been submitted to the local authority; it follows that therefore that there is a limited extent to which any representations made at the regulation 16 stage can be taken into account or dealt with in a neighbourhood plan. This is not the case for a neighbourhood plan prior to submission to the local authority; and thus the scope to which representations can be taken into account and dealt with is wider following a regulation 14 consultation.
12. On this basis, there would be a real risk of illegality and a legal challenge if the amended WNP was submitted to the Council without any regulation 14 consultation, on the basis of unfairness and inadequate consultation.
13. Accordingly, our advice is if the WNP is withdrawn and amended, then the amended WNP should go through regulation 14 consultation again.
14. We understand that both withdrawing the WNP and re-consulting pursuant to regulation 14 will be a frustrating course of action for the Town Council. However, we consider that overall this is the best course of action. The alternative of pursuing with the WNP through examination would likely result in an unfavourable report from the Examiner; and even if the modifications were made and there was a favourable response from the Examiner and the Council, there would be a real risk of a legal challenge. This would likely result in more delay and expense. For this reason, we consider that the best route is to withdraw the WNP and then re-consult and re-submit the amendment WNP.

c) What additional information is needed to support this revised WNP?

15. An update to the environmental reports for the original Strategic Environmental Assessment (“**the SEA**”) and HRA will need to be provided. In principle, we consider that it would be open to the Town Council to produce addendums to these original reports, addressing only the environmental effects of the changes; rather than entire new reports. However, this does depend on the level of further environmental information which will need to be put forward in addition to that already contained in the original reports.⁹

16. We are not aware of the level of further information which will need to be put forward.¹⁰ However, as a general approach, we consider that if the additional information is minor then an addendum can be used, however if there will be substantial new environmental information put forwards then it would be prudent to produce a new environmental report. Advice could also be obtained from the Council as to the most appropriate option in this case.

17. Further, when the new regulation 14 consultation is carried out, we consider that it would be prudent to also put forward a document explaining clearly, transparently and simply to the public and consultees which parts of the WNP have been amended compared to the WNP version previously consulted upon and why. A similar document can also be put forward with the revised WNP when it is submitted to the LPA.

d) Is the revised WNP with supporting evidence likely to meet the basic conditions?

18. For a neighbourhood plan to pass successfully through examination it must satisfy the “basic conditions”, which are as follows:

“(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,

⁹ In this regard we note that the court in *Berkeley v Secretary of State for the Environment* held that “a disparate collection of documents” could not be treated as an environmental statement as they would not be clear and accessible to the public.

¹⁰ Advice from the HRA consultant should be obtained on this point.

(b) 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,

(c) 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,

(d) the making of the order contributes to the achievement of sustainable development,

(e) the making of the order 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),

(f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and

(g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.”

19. In relation to this question, we have not been asked to consider any particular policy in the WNP, but rather to make a general assessment of the WNP as a whole (if those instructing us would like us to focus on a particular policy in more detail, then please do let us know). The following three general points can be made about the compliance of the proposed revised WNP with the basic conditions:

19.1. First, the basic conditions for a neighbourhood plan are less demanding than the requirements for a local plan. Thus, the Examiner will not be as stringent when examining the WNP, as an Inspector would be with when examining a local plan.

19.2. Second, in our previous advice (dated October 2018) we advised on compliance with the basic conditions in relation to a previous iteration of the WNP (prior to it having been submitted to the Council and to the Examiner). In particular, the area of most concern for us was the allocation of a Green Belt site subject to the future strategic decision of the Council to amend the Green Belt boundary. However, it is a positive that this would no longer be an issue

that needs to be dealt with given that the proposed amendments mean that the Green Belt boundary does not need to be amended.

19.3. Third, in light of the SoCG with Natural England, assuming this complete common ground remains, it is likely that the Examiner will find that the approach in the WNP to the HRA issue is compliant.

20. Accordingly, by way of a general assessment of the WNP as a whole, we consider that there are good prospects of the revised WNP being found to satisfy the basic conditions.

e) Under the existing technical support packages are the Town Council able to call on AECOM to provide this additional evidence required?

21. The Town Council has been receiving advice and services on the WNP from AECOM.¹¹ In principle, we consider that there would be a good argument that a qualifying body would continue to be eligible for technical support in relation to a revised neighbourhood plan, which is still part of the same ongoing neighbourhood plan process.

22. However, we cannot answer this question in this case without seeing the criteria and terms of agreement under which AECOM and Locality have provided this technical support to the Town Council. If this is provided, we would be happy to advise further.

Conclusion

23. In conclusion, we have advised as follows:

23.1. The Town Council should withdraw the current version of the WNP and rely on a revised version which includes the proposed amendments.

23.2. If the WNP is withdrawn and amended, then the amended WNP should go through regulation 14 consultation again.

23.3. We understand that will be a frustrating course of action for the Town Council. However, we consider that overall this is the best course of action given that

¹¹ We assume this is through AECOM's contract with the Department for Communities and Local Government.

the alternative of pursuing with the WNP through examination would likely result in either an unfavourable report from the Examiner or a real risk of a legal challenge; which would result in more delay and expense.

23.4. An update to the SEA and HRA will need to be provided with the revised WNP, which could take the form of either an addendum to the original reports or an entire new report. It would also be prudent to produce a document explaining clearly, transparently and simply which parts of the WNP have been amended compared to the WNP version previously consulted upon and why.

23.5. In general terms, when considering the WNP as a whole, we consider that there are good prospects of the revised WNP being found to satisfy the basic conditions.

23.6. We would need to see the criteria and terms of agreement under which AECOM and Locality have provided technical support to the Town Council, in order to advise whether this can continue to be provided.

24. If there are any further issues please contact us.

3 December 2019.

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