

SAINT ANNE'S ON THE SEA NEIGHBOURHOOD DEVELOPMENT PLAN

DECISION STATEMENT

(The Neighbourhood Planning (General) Regulations 2012 – Part 5, paragraph 18 (2))

Introduction

Under the Town and Country Planning Act 1990 (as amended), Fylde Borough Council 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.

This statement confirms that following an Independent Examination and Public Hearing, Fylde Borough Council now confirms that subject to the modifications proposed by the Examiner's Report have been accepted; that the Submission version of the Saint Anne's on The Sea Neighbourhood Development Plan has been altered as a result of it, and as such will proceed to a Neighbourhood Planning Referendum.

Background

On the 12 July 2013, Fylde Borough Council approved an application by St. Anne's Town Council to designate the Saint Anne's on The Sea Neighbourhood Area, for the purposes of preparing a Neighbourhood Development Plan, in accordance with Part 2 of the Town and Country Planning (England), Neighbourhood Planning (General) Regulations 2012.

The neighbourhood plan making process was led by St. Anne's Town Council, with an appointed Steering Group to undertake the Plan preparation made up of volunteers advised by planning consultants. The Plan underwent various stages, and following the Submission version of the Saint Anne's on The Sea Neighbourhood Development Plan (the Plan) to Fylde Borough Council, the Plan was publicised and representations were invited over a six week period, to make comment on the proposed Plan and its content. The consultation ended on 24 March 2016.

During this period Fylde Borough Council, in agreement with St. Anne's on the Sea Town Council, formally appointed Mr John Slater BA (Hons), DMS, MRTPI, to examine whether the Plan met with the Basic Conditions and legal requirements and if it should therefore proceed to Referendum.

The Examiner concluded that he was satisfied that the Plan was capable of meeting the legal requirements set out in the Localism Act 2011, including meeting the Basic Conditions, subject to a number of modifications set out in his report, which are set out in Table 1: Examiner Recommended Modifications, of this statement.

Schedule 4B, paragraph 12 of the Town and Country Planning Act 1990, as inserted by the Localism Act 2011, requires that a local planning authority must consider each of the recommendations made in the Examiner's report and decide what action to take in response to each recommendation made, and that if the draft Neighbourhood Development Plan meets the legal requirements and Basic Conditions as set out in the legislation, a Referendum must be held on the making of the Plan by the local planning authority. If the local planning authority is not satisfied that the Plan meets the Basic Conditions and legal requirements then it must refuse the proposal. A referendum must take place and a majority of residents who turn out to vote in favour of the Neighbourhood Development Plan (50% plus one vote) before it can be "made".

The Council has various duties under the Localism Act (the main Act) and the related planning Acts as amended. In relation to an Examiner's report a LPA must consider each of the recommendations made in the report (and the reasons for them) and decide what action to take in response to each recommendation. It is clear from the wording of the Act that this is not simply to follow the Examiner's recommendations on each point and that the LPA can come to a different view. Officers therefore consider that accepting the Examiner's recommendations in full and extending the Saint

Anne's on The Sea settlement boundary to include the land in question would mean that the Plan would not meet the statutory "basic conditions".

It is therefore recommended that Council accept the recommendations and modifications as listed in the draft Decision Statement (Appendix 3), and proceed the Saint Anne's on The Sea Neighbourhood Development Plan to Referendum based on these changes.

Post Adoption SEA and HRA

Following the modifications as a result of the Examiner's report, as outlined in Table 1 of this statement, a further screening opinion was sought under the EC Directive 2001/42/EC and the Environmental Assessment of Plans and Programmes Regulations 2004 (SEA Regulations) with the three statutory bodies (Environment Agency, Historic England and Natural England). Both the Environment Agency and Historic England raised no objections or had any concerns regarding the proposed modified Plan. Natural England, however, raised significant concerns regarding the proposed modification to the settlement boundary as the area of land in question forms part of a Biological Heritage Site and is land that is known to be utilised by pink footed geese related to the Ribble and Alt Estuaries Special Protection Area (SPA). They recommended that due to the importance of this land, any proposal to include additional land within the settlement boundary needed to be assessed further through an update of the Habitat Regulations Assessment (HRA) that has been carried out in regard to the Submission Version of the emerging Local Plan, that this update would need to examine data to determine the importance of the land and, if the land supports significant numbers of SPA/Ramsar birds, the LPA would then need to determine whether this is possible to resolve and ultimately whether the land can be developed.

The Council subsequently commissioned Arcadis (the Council's ecological consultant) to carry out an Addendum to the HRA, and following receipt of this document officers re-consulted Natural England, who considered that it was unacceptable to refer to any issues and uncertainty at planning application stage and that as the land was considered and calculated into the mitigation calculations for the Queensway residential development site then any proposal to extend the settlement boundary would need to be Appropriately Assessed at plan stage and that in any case as the HRA concludes proposals would lead to a likely effect (or where there is uncertainty) the Plan could not progress in its modified form.

In his report, the Examiner considers that this assessment could be carried out prior to the determination of any future planning application. However, prior to proceeding to Referendum, the LPA must be satisfied that the Plan itself meets the Basic Conditions tests set out in the Regulations. Until the potential implications of including this additional land within the settlement boundary are known, it would not be possible to confirm whether or not there would be any adverse impact on the SPA and so proceeding to Referendum without this information could place the Plan at risk of a potential legal challenge.

As a consequence of the above, officers sought further legal advice from counsel, who concurred with officers and Natural England, that the Plan (with the inclusion of this one modification) did not satisfy the "basic conditions" tests, which are the pre-requisites for a lawful NDP, and as such Fylde Council were completely within their rights not to accept this particular recommendation. As the amendment has not been accepted in order to allow the Plan to meet one of the basic conditions tests and for no other reason, further consultation on and examination of the Plan is not required under paragraph 13, Schedule 4B of the Town and Planning Act 1990 (as amended).

Decision and Reasons

The Neighbourhood Planning (General) Regulations 2012 requires the LPA 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.

The Council has various duties under the Localism Act (the main Act) and the related planning Acts as amended. It is clear from the wording of the Act that this is not simply to follow the Examiner's recommendations on each point and that the LPA can come to a different view. Officers therefore consider that accepting the Examiner's recommendations in full and extending the Saint Anne's on The Sea settlement boundary to include the land in question would mean that the Plan would not meet the statutory Basic Conditions.

Furthermore, Fylde Borough Council, concurs with the Examiner's findings and considers that the Referendum Area should be as the approved Neighbourhood Area, as there would appear to be no reason to change or extend it, as it covers the entire parish of Saint Anne's on The Sea.

The list of modifications and actions required are set out in the following table (Table 1). As a consequence of these changes the NDP (Referendum version) has been re-formatted accordingly to take into account amended paragraph numbers and page numbers etc.

Therefore to meet the requirements of the Localism Act 2011 a Referendum which poses the question:

“Do you want Fylde Borough Council to use the Saint Anne's on The Sea Neighbourhood Development Plan to help decide planning applications in the neighbourhood area?” will be held in Saint Anne's on The Sea.

A copy of the Decision Statement will be available via Fylde Borough Council's website and in hard copy at request from the Planning Policy team, Town Hall, Lytham St. Anne's, FY8 1LW.

The proposed date on which the Referendum will take place is Thursday 04 May 2017.

Table 1: EXAMINER RECOMMENDED MODIFICATIONS

| Policy/page Reference Of NDP | Examiner Recommendation | Reason for Change | Action by LPA |
|--|---|--|--|
| Policy GP1: Settlement boundary (p.21 and Proposals Map) | That the land shown as Open Countryside outside the Green Belt be deleted and the land then be included within the Settlement Boundary on the Proposals Map (see attached Map). | At the time of making the decision Fylde Borough Council cannot identify a five year housing supply, in accordance with paragraph 49 of the Framework, policies which affect the supply of housing land, which would include the designation of land as countryside outside the Green Belt, will not be considered up-to-date. The incorporation of the land identified as countryside outside the Green Belt, into the settlement boundary would offer the town the | Not accepted - the LPA disagree with this modification as they do not consider it meets with the basic conditions in that it |

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| | | flexibility to be able to meet its housing needs over the next 15 years, which are unlikely to diminish. | breaches EU obligations. |
| Policy GP2: Demonstrating viability (p.22) | Replace the Submission version of the Policy with that shown in Suggested Changes version and remove the paragraph after subsection c) which states "where the existing use is no longer considered viable" down to "town, district or local centres" and remove the last paragraph of the justification. | Discounting residential use as a last resort is not considered in line with the Secretary of State's advice, particularly as there are limited opportunities for new residential development within the borough. To enable the Plan to meet the basic conditions. | Agree with the Examiner. Text amended accordingly. |

Policy GP2: Demonstrating Viability

Where policies in this plan seek to retain existing uses subject to viability, it must be demonstrated to the satisfaction of the Council that one of the following tests has been met:

- a) The continued use of the site/premises for its existing use is no longer viable in terms of the operation of the existing use, building age and format and that it is not commercially viable to redevelop the land or refurbish the premises for its existing use. In these circumstances, and where appropriate, it will also need to be demonstrated that there is no realistic prospect of a mixed-use development for the existing use and a compatible use; or
- b) The land/premises is/are no longer suitable for the existing use when taking into account access/highway issues (including public transport), site location, business practices, infrastructure, physical constraints, environmental considerations and amenity issues. The compatibility of the existing use with adjacent uses may also be a consideration; or
- c) Appropriate marketing of the land/property indicates that there is no demand for the land/property in its existing use. Details of the current occupation of the buildings, and where this function would be relocated, will also be required.

Marketing

Where an application relies upon a marketing exercise to demonstrate that there is no demand for the land/premises in its current use, the applicant will be expected to submit evidence to demonstrate that the marketing was adequate and that no reasonable offers were refused. This will include evidence demonstrating that:

- I. The marketing has been undertaken by an agent or surveyor at a price which reflects the current market or rental value of the land/premises for its current use and that no reasonable offer has been refused.
- II. The land/premises has been marketed, as set out in iii. below, for an appropriate period of time, which will usually be 12 months, or 6 months for retail premises.
- III. The land/premises has/have been frequently advertised and targeted at the appropriate audience. Consideration will be given to the nature and frequency of advertisements in the local press, regional press, property press or specialist trade papers etc.; whether the land/premises has/have been continuously included on the agent's website and agent's own papers/lists of premises; the location of advertisement boards; whether there have been any mail shots or