

Environment and Communities Committee Report

Date of Meeting:	7 July 2021
Report Title:	Delegation of Neighbourhood Planning Decisions
Report of:	Frank Jordan; Executive Director of Place
Report Reference No:	EC/05/21-22
Ward(s) Affected:	All

1. Executive Summary

- 1.1.** This report seeks approval to delegate decisions within the neighbourhood planning process to the Head of Planning, in consultation with the Chair of the Environment and Communities Committee.
- 1.2.** Within the process of preparing a neighbourhood plan, regulations require that the Local Planning Authority (LPA) must make formal decisions for a plan to progress through the process. The required decisions are mainly procedural in nature to provide assurance that neighbourhood plans are progressing in accordance with the regulations.
- 1.3.** Cheshire East Council's Corporate Plan sets out three aims. These are to be an open and enabling organisation, a Council that empowers and cares about people, and to create thriving and sustainable places. This decision relates to the creation of thriving and sustainable places and will help to ensure that new development is appropriately controlled, to protect and support our borough.

2. Recommendations

- 2.1.** That the Committee delegates the following decisions, related to the neighbourhood plan process, to the Head of Planning in consultation with the Chair of the Environment and Communities Committee:
 - 2.1.1.** Decisions to designate a neighbourhood area
 - 2.1.2.** Decisions to designate a neighbourhood forum

- 2.1.3.** Decisions to consider whether plan proposals meet the requirements of Schedule 4B, paragraph 6(2) of the Town and Country Planning Act 1990.
- 2.1.4.** Decisions on Examiners Recommendations (including in regard to modification proposals)
- 2.1.5.** Decisions on plan proposals (including in regard to modification plan proposals)
- 2.1.6.** Decisions on proposals to correct errors or make minor non-material amendments to made neighbourhood plans

3. Reasons for Recommendations

- 3.1.** Neighbourhood Plans are produced by local communities and once complete, form part of the statutory development plan for the LPA. This means the policies in neighbourhood plans must be given due weight when determining planning applications. The Council has a duty to support groups preparing plans, to carry out independent examination and referendums on plans. It therefore has a number of decisions to discharge within the process toward adoption of a neighbourhood plan. This process is outlined in more detail at section 5.
- 3.2.** Much of the decision making involved in neighbourhood plans is prescriptive with limited discretion to be exercised. For example, during examination, neighbourhood plans are tested against the legal requirements and an examiner will exercise their judgement to determine if a plan has met these requirements or not. They may delete policies or recommend modifications that would ensure the plan is compliant. After this exercise is carried out in the examination, and a plan is found to meet the requirements, the Council must then consider the examiner's recommendations and decide whether or not to proceed to the next stage of the process (submitting the plan to referendum).
- 3.3.** Prior to the Councils adoption of a committee system the decisions listed at 2.1.1 to 2.1.3 were delegated to the Neighbourhood Planning Manager; items 2.1.4 to 2.1.6 were taken by the Portfolio Holder for Planning.
- 3.4.** In taking these decisions the Council has limited discretion to decide whether to progress a neighbourhood plan to the next stage of the process and may only refuse to do so on prescribed matters, such as the existence of a procedural error in the preparation of the plan (for example something in relation to a Strategic Environmental Assessment).
- 3.5.** Alongside the limited discretion in decision making, many of the decisions in the neighbourhood planning process have a time limit attributed to them in the relevant legislation. For example, a decision to proceed to

referendum is required to be taken within five weeks of receipt of the examiner's report.

- 3.6.** The Environment and Communities Committee meets every two months and therefore there is a high probability that the timeframes of committee meetings will not align to the required timeframes of procedural decisions. On that basis the Council may fail to discharge its legal requirements within the allotted time scales.
- 3.7.** Further, each neighbourhood plan is subject to a series of formal decisions throughout its process. There are currently 36 made neighbourhood plans across the borough with a further eight at various stages of production. Made neighbourhood plans may be reviewed and updated through a formal process so whilst the 36 made plans may appear to be complete, inevitably a number of these will be reviewed and generate further procedural decision making. Therefore, there is likely to be a variable volume of decision making generated by neighbourhood plans that will populate limited space for other agenda items.

4. Other Options Considered

- 4.1.** The Council could choose not to delegate these decisions and hear each one at committee. However, this would likely delay the neighbourhood planning process for communities and render the Council at risk of failing to discharge its legal requirements in relation to neighbourhood planning.

5. Background

- 5.1.** Neighbourhood plans are prepared by local communities, independent of the Local Planning Authority (LPA) and once complete they form part of the Development Plan and must be given full weight in the decision making process for determining planning applications within the relevant neighbourhood area. Although prepared by a third party, the LPA has a duty to support and assist groups, providing advice and guidance throughout the process.
- 5.2.** The process of preparing a neighbourhood plan is set out primarily in the Neighbourhood Planning Regulations 2012, as amended by a variety of updates and additional regulations. The process begins with the formation of a neighbourhood planning steering group, usually as a subcommittee of a parish or town council. Once the steering group is formed, a neighbourhood area must be defined within which the future policies of the plan will apply. If a proposed area is the same as the administrative boundary of the parish concerned, the designation is automatic. If the proposal is for an alternative boundary, an application to the LPA is required and the LPA must consult on the proposal, then make a decision accordingly.

- 5.3.** Once the community has drafted a neighbourhood plan, it must consult and meet the requirements of Regulation 14 of the Neighbourhood Planning Regulations 2012. Following this consultation, the steering group may submit the plan to the LPA.
- 5.4.** Once submitted, the LPA is responsible for holding a further six-week consultation on the plan and submitting the plan to independent examination. A formal decision must be taken to submit the plan to examination.
- 5.5.** The examiners role is to test the plan against the key legislation and ensure it meets the requirements of the 'Basic Conditions' as set out in the Town and Country Planning Act 1990.
- 5.6.** The examiner may propose limited modifications to the plan to enable it to meet the basic conditions. The examiner may also propose to delete parts of the plan that do not meet the requirements.
- 5.7.** Once the examination is complete, a report will be issued to the LPA recommending whether the neighbourhood plan has satisfied the requirements or not. If the plan is found to meet the basic conditions a recommendation will be made that the plan proceeds to referendum. The LPA must consider the examiner's report and make a formal decision to determine the next course of action (i.e. whether to accept the examiners recommendations and proceed to referendum or not) within five weeks of receiving the examiner's report.
- 5.8.** If the plan is found to meet the basic conditions, the LPA has limited discretion to challenge this conclusion. An alternative conclusion may rest on a procedural error in the plan making process or the planning judgement of the Council. Procedural errors can be corrected through appropriate processes and a planning judgement may be subject to challenge through normal processes (judicial review).
- 5.9.** Assuming a plan proceeds to referendum, and is successful at referendum, the LPA must then take a formal decision to 'make' (adopt) the plan, within eight weeks of the referendum date. 'Making' the plan brings the policies into full effect and confirms that the neighbourhood plan forms part of the development plan for the LPA.
- 5.10.** Made neighbourhood plans may be reviewed and updated through a 'modification' process. A modification plan follows the same process as the original neighbourhood plan, with an examiner determining whether the plan must be subject to referendum. Again, the LPA must decide to submit the plan to the examiner, decide to proceed to referendum (if required) and decide to make the modification plan once the process is complete.

5.11. The process outlined above includes a series of procedural decisions by the Council that are largely prescriptive and offer limited discretion in the decision making itself. Therefore, several procedural decisions are recommended to be delegated from the Environment and Communities Committee to the Head of Planning in consultation with the Chair of the Environment and Communities.

5.12. The decisions are listed at section 2 and the following explains what each decision is for:

5.12.1. Decision to designate a neighbourhood area.

5.12.1.1. At the early stages of the process, a neighbourhood plan group must apply to designate a neighbourhood area. This is the geographical boundary for the plan and defines the area within which the policies of the plan will apply. Designation is automatic where a group applies for an existing, unaltered, parished area. However, if an area is unparished, the area applied for is different to the parished area a consultation exercise is carried out followed by a formal decision on the boundary.

5.12.2. Decision to designate a neighbourhood forum

5.12.2.1. In areas that do not have a parish council a 'neighbourhood forum' can be established as the formal body to prepare a neighbourhood plan. A decision to designate a neighbourhood forum includes a decision on an associated neighbourhood area.

5.12.3. Decisions to consider whether plan proposals meet the requirements of Schedule 4B, paragraph 6(2) of the Town and Country Planning Act 1990.

5.12.3.1. Once a community has prepared a neighbourhood plan it must be submitted to the Local Planning Authority who must determine (amongst other matters) if the correct procedure has been followed and the correct documents have been submitted and the materials submitted are sufficient to proceed to consultation and examination. The requirements at this stage are set out in the legislation cited.

5.12.4. Decision on Examiners Recommendations (including regarding Modification Proposals).

5.12.4.1. Following an examination of a neighbourhood plan, an examiner may recommend that a plan proceeds to referendum or has failed the relevant tests and therefore must be redrafted. The Council must make a formal decision on how to proceed, based on the examiner's recommendations.

5.12.4.2. Made neighbourhood plans may be modified and must follow a similar process to that of new neighbourhood plans, including

(where applicable) submission to an examination. In this instance the Council must also make a formal decision based on the examiner's recommendations.

5.12.5. Decision on a plan proposal (including regarding modification plan proposals).

5.12.5.1. Once a neighbourhood plan has been subject to referendum, if it is successful, the Council must 'make' or adopt the plan to conclude the process. The Council may only refuse to make the plan where a procedural error has occurred.

5.12.5.2. Modification plans must also be made. They may be subject to referendum or not, but a requirement exists to make the updated and modified plan.

6. Consultation and Engagement

6.1. The consultation requirements associated with each stage of the neighbourhood plan process will not be affected by this decision.

7. Implications

7.1. Legal

7.1.1. The Secretary of State has made the Neighbourhood Planning (General) Regulations 2012 under powers conferred by the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004, and these Regulations ("the Regulations"), which came into force on 6 April 2012.

7.1.2. The Regulations establish a series of obligations on the Local Planning Authority to discharge decision making, within specified time limits.

7.2. Finance

7.2.1. There are no financial costs arising from this decision.

7.2.2. Staffing costs associated with this decision are covered from within existing Planning budgets.

7.3. Policy

7.3.1. The decision requested is procedural in nature and has no direct policy implications however will assist communities to complete the neighbourhood plan process in a more efficient and timely way.

7.4. Equality

7.4.1. The decision requested is procedural and has no equality implications.

7.5. Human Resources

- 7.5.1. There are no implications for human resources, the matters relevant to this decision will be addressed by existing staff in the Strategic Planning team.

7.6. Risk Management

- 7.6.1. The subject matter of the report does not give rise for any particular risk management measures.

7.7. Rural Communities

- 7.7.1. The decision requested is procedural and has no implications for rural communities however rural communities are able to prepare plans that introduce policies specific to their needs.

7.8. Children and Young People/Cared for Children

- 7.8.1. The decision requested is procedural and has no direct implications for children or young people, however communities are able to prepare plans that introduce policies that benefit children and young people in multiple ways, for example through the protection of green recreation space or through the prioritisation of contributions to facilitates the children and young and people may use (bus services, library services, recreation and more).

7.9. Public Health

- 7.9.1. The decision requested is procedural and has no direct implication for public health, however neighbourhood plans can introduce policies that benefit public health such as requirements to retain playing pitches and improve recreation facilities. Where appropriate neighbourhood plans may also allocate land for new health services are introduce policies that would enable health service provision.

7.10. Climate Change

- 7.10.1. The decision requested is procedural and has no direct implication for climate change in itself, however neighbourhood plans can introduce policies that will help mitigate the impacts of climate change and may improve low/zero carbon energy provision, for example through allocation of land for green energy uses such as solar farms, wind energy or water-based turbines. Neighbourhood plans may also introduce policies that improve biodiversity and natural habitats through landscaping requirements and can support (limited) higher levels of energy efficiency than required in existing building regulations.

Access to Information

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Appendices:	N/A
Background Papers:	N/A