

**Report to Cabinet****Report reference:****C--2018/19****Date of meeting:****7 February 2019**

**Epping Forest  
District Council**

**Portfolio:** Planning

**Subject:** Outcome of the Chigwell Neighbourhood Plan Examination

**Responsible Officer:** Alison Blom-Cooper (01992 564066)

**Democratic Services Officer:** Adrian Hendry (01992 564246)

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**Recommendations/Decisions Required:**

- (1) To note the Examiner's recommendation that the Chigwell Neighbourhood Plan does not meet the basic conditions;
- (2) To agree that the plan proposal should be refused and should not proceed to referendum;
- (3) To note that this decision will be publicised as soon as possible; and
- (4) To note that the Council will assist the Parish in the process of producing a revised proposal should it seek to do so.

**Executive Summary:**

The Examiner of the Chigwell Neighbourhood Plan has concluded that as a whole, the plan does not meet the basic conditions required of a Neighbourhood Plan and therefore cannot recommend that the plan should proceed to referendum. Having considered each of the Examiner's recommendations and reasons for them, Officers agree with the Examiner's conclusions. Whilst the Council could make modifications to the plan to put it forward for referendum these would be critical to the plan purpose and are therefore considered to be the purview of the Parish Council. Therefore, the Council should now refuse the plan proposal. It should be noted that the Council will continue to advise and assist the Parish Council of Chigwell in producing a revised plan should it seek to do so.

**Reasons for Proposed Decision:**

To comply with relevant regulations and in so doing make clear the Council's position. The Council considers that the plan does not meet the basic conditions. The magnitude of change to key policies in the plan to enable it to meet the basic conditions is such that the Council considers the Parish Council should reconsider and re-consult on the proposals should it wish to do so.

**Other Options for Action:**

Under the regulations the Council is able to make changes to the plan proposal, consult on these and put it forward for referendum or send it back for examination. It could therefore, with the Parish's agreement, strike out the policies that are of concern to the Examiner and make the additional changes. However, given that the Council on the whole agrees with the

conclusions of the Examiner, this is not a recommended course of action; it is considered that a revision of the plan by the Parish Council would be needed followed by all the relevant regulatory stages.

**Report:**

1. Chigwell Parish Council submitted the Regulation 16 Publication version of the Neighbourhood Plan to Epping Forest District Council on 7 March 2018. The consultation period ran from 15 May to 26 June 2016. The submission plan is published as a background paper to this report.

2. Epping Forest District Council used the National Planning Independent Examiner Referral Service (NPIERS) service to request an examiner for the neighbourhood plan examiner in April 2018. With the agreement of Chigwell Parish Council, John Slater was subsequently appointed by the Council in July 2018, to examine the Chigwell Neighbourhood Plan.

3. The examination of a neighbourhood plan is very different from that of the District's Local Plan and whilst it involves the examination of some procedural matters it turns on whether the plan meets the basic conditions set out in Paragraph 8 (2) of Schedule 4B of the Town and Country Planning Act 1990 as amended. The plan meets the basic conditions if:

- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan,
- (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 land,
- (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 plan,
- (d) the making of the plan contributes to the achievement of sustainable development,
- (e) the making of the 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),
- (f) the making of the plan does not breach, and is otherwise compatible with, EU obligations, and
- (g) prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the plan.

4. Epping Forest District Council made representations to the plan and identified a number of outstanding issues including insufficient evidence to support the proposed policies and allocations, the financial viability of proposed developments and the need for a mitigation Strategy to cover the potential impact on the Epping Forest Special Area of Conservation.

5. At the request of the examiner notice was given on 3 August 2018 for a non statutory exploratory meeting to be held by the Examiner. This took place on 5 September 2018 at the Chigwell Parish Council offices to examine issues of a procedural and compliance nature and to initially assess whether the Neighbourhood Plan meets the legislative requirements. The meeting was open to the public but only representatives of Chigwell Parish Council and the

District Council were invited to speak. Following the meeting the Examiner issued a note entitled 'Notes following Exploratory Meeting' dated 28 September 2018 and published on Epping Forest District Council's website.

6. The Examiner issued his 'Report to Epping Forest District Council of the Examination of the Chigwell Neighbourhood Plan' on 5 November 2018. This is published as a background paper to this report and is available on the Council's website. The District Council must now consider each of the Examiner's recommendations and decide what action is to be taken in response to each. It must also come to a formal view about whether the plan meets the basic conditions. If the District Council is not satisfied that the plan meets the basic conditions then it must refuse the plan proposal and publicise its decision. Within the scope of the legislation the Council could propose modifications to make the plan meet the basic conditions.

7. The Examiner found that the plan did not meet the basic conditions as "The plan's approach to green belt issues is not in conformity with the development plan's adopted green belt policy nor is it consistent with the approach advocated by the Secretary of State in the National Planning Policy Framework for Protecting Green Belt Land and a significant number of the policies would undermine the objective of keeping green belt land permanently open."

8. The Examiner also concluded that "the plan will have an adverse effect, in combination with other plans, on the Epping Forest SAC, as acknowledged by all parties and in reaching that conclusion I am unable to take the account of any mitigation measures, set out in the emerging local plan. Accordingly, Schedule 2 of the Neighbourhood Planning Regulations 2012 is engaged and the plan cannot be made." He concluded that the Neighbourhood Plan does not meet all the statutory requirements and should not proceed to referendum. He made a number of recommendations - many of these were proposed amendments to the plan for the purposes of aiding the Parish Council should they seek to amend and resubmit the plan.

9. Officers agree with the conclusions of the Examiner, and the scale of the changes to the plan required for it to meet the basic conditions are such that they should be made by the Parish Council and consulted upon further.

10. Officers therefore recommend that the Chigwell Neighbourhood Plan should not proceed to referendum and the Council should publicise this decision as soon as possible. The Parish Council can of course take account of the Examiner's recommendations in producing a new draft plan and put this forward for consultation and examination.

### **Resource Implications:**

The fact that the Examiner could not recommend that the plan should go forward to referendum stage means that the District Council cannot make a claim for financial support on this last stage of the plan.

### **Legal and Governance Implications:**

Local planning authorities are required to consider the Examiner's recommendations and decide what action is to be taken in response to each. It must also come to a formal view about whether the plan meets the basic conditions. If the District Council is not satisfied that the plan meets the basic conditions then it must refuse the plan proposal and publicise its decision or make amendments and publicise these. Refer Town and Country Planning Act 1990 Schedule 4B Paragraph 12 and 61J and 61L as amended. As a consequence of the recommendation made in this report, the submission version of the Chigwell Neighbourhood Plan and supporting documents cannot be used as a material consideration in decision making.

**Safer, Cleaner and Greener Implications:**

No implications likely.

**Consultation Undertaken:**

None on the decision - this is a technical aspect of neighbourhood plan making.

**Background Papers:**

Chigwell Neighbourhood Plan 2018-2033 Submission Plan, Chigwell Parish Council ([http://www.efdclocalplan.org/wp-content/uploads/2018/05/Chigwell-NP\\_Final-Submission-Plan\\_March-2018.pdf](http://www.efdclocalplan.org/wp-content/uploads/2018/05/Chigwell-NP_Final-Submission-Plan_March-2018.pdf))

Notes of Exploratory Meeting, September 2018 ([http://www.efdclocalplan.org/wp-content/uploads/2018/10/Notes-of-Exploratory-Meeting-002\\_EXAM\\_CNP.pdf](http://www.efdclocalplan.org/wp-content/uploads/2018/10/Notes-of-Exploratory-Meeting-002_EXAM_CNP.pdf))

A Report to Epping Forest District Council on the Examination of the Chigwell Neighbourhood Plan, John Slater BA (Hons, DMS, MRTPI) November 2018 ([http://www.efdclocalplan.org/wp-content/uploads/2018/12/Report-of-the-Examiner-into-the-Chigwell-Neighbourhood-Plan-004\\_EXAM\\_CNP.pdf](http://www.efdclocalplan.org/wp-content/uploads/2018/12/Report-of-the-Examiner-into-the-Chigwell-Neighbourhood-Plan-004_EXAM_CNP.pdf))

**Risk Management:**

The risk in taking alternative action lies in the inclusion of unsatisfactory policy within the Local Development Plan should an amended plan go through a successful referendum.