

**Committee:** N/A

**Date:** 18 Feb 2020

**Title:** Post Examination Modification Consultation  
Decision

**Decision  
Maker:** Director of Public Services, Portfolio Holder  
for Planning and the Local Plan

**Report  
Author:** Demetria Macdonald

**Key decision:** No

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## Summary

1. On 24 November 2020 Uttlesford District Council, having considered each of the recommendations made by the Examiner resolved that the Newport Quendon and Rickling Neighbourhood Plan be modified and subject to a seven week consultation. Following the consultation, it would progress to Referendum, subject to no substantive representations being lodged. The Director of Public Services, in consultation with the Planning Portfolio Holder would consider responses to consultation. During the consultation two objections considered substantive were received. Consideration should be given to appoint an Independent Examiner to undertake a focussed examination of the issues relating to these representations.

The Qualifying Body submitted a response (see Appendices 2 and 2a) to the two objections received.

## Recommendations

2. That the Newport Quendon & Rickling Neighbourhood Development Plan having been published to a seven week consultation period in line with Regulation 17A of the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulation 2016 and having received two substantive objections to the modification proposed ([see Appendix 1](#)), the Plan should be subject to a focussed examination prior to progressing to Referendum.
3. An independent examiner be appointed to undertake a focussed (partial) examination and on receipt of the Examiner's Report, a final decision as to whether the Newport Quendon & Rickling Plan will proceed to a referendum.

## Financial Implications

4. There will be added costs for an independent examiner and a focussed examination. Depending on the length of the focussed examination another additional cost may be incurred if the Neighbourhood Plan Referendum is not undertaken at the same time as the local elections scheduled in May. Due to these additional costs the Government Grant of £20,000 on a Neighbourhood Plan progressing to Referendum would not offset any costs incurred. Costs for

the focussed examination will be paid from the Council Neighbourhood Plan – Consultants budget.

## Background Papers

5. The following representations were received during the consultation period:  
Please see attached Appendix A.
1. Avison Young (National Grid)
  2. Natural England
  3. Historic England
  4. Gladman Developments Ltd.
  5. Anglian Water Services Limited
  6. Mr. D Hill c/o Sworders

## Impact

6.

Communication/Consultation	Consultation responses published on Website and decision to proceed with a focussed examination will also be undertaken.
Community Safety	N/A
Equalities	N/A
Health and Safety	N/A
Human Rights/Legal Implications	N/A
Sustainability	N/A
Ward-specific impacts	Only those wards with potential for small scale infill development within and/or adjoining development land.
Workforce/Workplace	N/A

## Situation

### 7.

On 24 November 2020 Uttlesford District Council, having considered each of the recommendations made by the Examiner resolved that the Newport Quendon & Rickling Neighbourhood Plan:

- a) be modified as set out in Appendix 3, subject to a seven-week consultation period in line with Regulation 17A of the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016.
- b) that the Plan is progressed to Referendum covering the area of Newport, Quendon and Rickling Parishes subject to no substantive objections being lodged to the modifications proposed; and
- c) that authority to be delegated to Director of Public Services, in consultation with the Planning Portfolio Holder, to consider responses to consultation on the proposed decision relating to the departures from the Examiner's recommendations, and to determine the final changes to be made to the neighbourhood plan before it proceeds to the referendum.
- d) The Council subsequently published its Regulation 18 Decision Statement in response to the Examiner's Report of 14 November 2019. Since the Council Decision proposed to differ from the Examiner's Recommendations on NQRHA1: Coherence of Villages (bullet point) a seven weeks public consultation (7 December 2020 – 25 January 2021) was undertaken inviting representation on the proposed modification.

8. It was anticipated that if no substantive representations were received then the plan could proceed to referendum. However, if substantive representations were received a decision would need to be taken on the appropriate way forward.

9. A total of six representations were received (See Appendix 1). Of the six representations only two were objections from Gladman Developments Ltd. And Mr. D Hill c/o Sworders. These two objections raise the following issues that are considered substantive:

- i. The proposed modification introduces inflexibility to the Plan and will therefore not meet Basic Conditions.
- ii. The proposed modification introduces wholly different policy position than that recommended by the Examiner.
- iii. The proposed modification introduces inflexibility which considered not consistent with NPPF paragraph 11a.
- iv. The Local Planning Authority can only make modifications to secure that the Plan meets Basic Conditions and does not allow additional modifications where a Plan meets Basic Conditions.
- v. Dispute that the bullet point as amended in accordance with the Examiner's Recommendations would not lead to ambiguity or confusion;

- vi. Policy as recommended by the Examiner is not contrary to Policy S7- The Countryside of the Adopted Local Plan 2005;
  - vii. The legality of the Local Planning Authority changing an examined policy intent through modifications; and
  - viii. Request to refer the issue to an Examiner for a partial examination.
10. These two representations raise the following points which could have legal implications:
- i. Whether the Local Planning Authority (LPA) have a right to modify an examined plan in order to meet the Basic Conditions and the Convention Rights;
  - ii. To what extent can the LPA make modifications.
  - iii. Whether the correction of an error in the examined plan alters the implications of a policy;
  - iv. Whether a further limited independent examination should take place prior to reaching a final decision; and
  - v. The implications of referring the matter to Cabinet for a decision on the Plan that does not include the key modifications and recommendations of the Examiner.
- 10.1 Government guidance in the form of the Planning Practice Guidance - Paragraph: 065 Reference ID: 41-065- 20140306 sets out the basic conditions;

*“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. The basic conditions are:*

- a. 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).*
- 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. This applies only to Orders.*
- 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. This applies only to Orders.*
- d. the making of the order (or neighbourhood plan) contributes to the achievement of sustainable development.*

*e. 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).*

*f. the making of the order (or neighbourhood plan) does not breach, and is otherwise compatible with, EU obligations.*

*g. 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)”*

11. The LPA must meet the legal test of Basic Conditions and the convention rights. These convention rights are set out in the Human Rights Act 1998 (and the most relevant convention right would be a right to a fair hearing). It is therefore imperative that the Council ensures the procedural test of fairness is met whereby the right to reply is offered in order to establish why the recommendations made by the independent Examiner are not being adopted by the Council.
12. The points raised by the objectors are considered to be substantive as they propose alternative ways of dealing with the situation identified in the consultation which on the face of it appears reasonable. They also raise concerns about the Council amending the report without referring back to an independent Examiner. This would probably not meet the test of fairness and potentially breach the Convention rights.
13. The points raised by the objectors are considered reasonable and substantive, and it is recommended that this matter be referred seek to an independent Examiner for a partial examination of the issues raised.
14. The Planning Practice Guidance (Paragraph:093 Reference ID:41-093-20161116) advises that on receipt of representations the local planning authority if it considers appropriate it may refer the issue to an independent examiner and has to issue a decision within 5 weeks of receipt of the examiner’s report.

## Risk Analysis

15.

Risk	Likelihood	Impact	Mitigating actions
4 – Objections likely to be escalated to legal challenges by the objectors and the Qualifying Body	4 – These are untested circumstances particularly where two	4 – The Neighbourhood Plan’s progress to a Referendum	2 - Appoint an independent Examiner to undertake a partial (focussed)

<p>may request the Secretary of State to intervene if a decision to send the plan to referendum within 5 weeks of the end of the period for representations. This will delay or prevent the making and adoption of the Neighbourhood Plan.</p>	<p>objectors are challenging the basis of LPA's authority to the proposed modification as well as on grounds of a procedural test of fairness. For these reasons, the objectors are likely to lodge a legal challenge.</p>	<p>will be delayed or prevented as will being accorded full weight which would offer protection from development under NPPF para 14. The legal costs would only add to an already high examination cost.</p>	<p>examination to consider the issues raised by the objectors prior to issuing a Final Decision within 5 weeks of receiving the Examiner's report.</p>
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1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.