

**BABERGH DISTRICT COUNCIL
MID SUFFOLK DISTRICT COUNCIL**

From: Head of Planning for Growth	Report Number: S8
To: BDC COUNCIL MSDC COUNCIL	Date of Meetings: 26 April 2016 28 April 2016

NEIGHBOURHOOD PLANNING

1. Purpose of Report

- 1.1 The purpose of this report is to set out the steps and possible actions that might be taken following the receipt of an Examiners Report into a neighbourhood development plan or order, including the procedures for conducting a Referendum.
- 1.2 The report also sets out an operating framework, outlining where the District Council is required to make key decisions, and confirms the appropriate authority to officers in order that a timely and proportionate response can be provided to neighbourhood planning groups.

2. Recommendations

- 2.1 That, Council delegates to the respective Executive/Strategy Committee matters relating to the consideration of an Examiner's Report, including the responsibility to make a decision on whether a neighbourhood development plan or order should proceed to referendum.
- 2.2 That, Council notes the processes and procedures involved in the making of a neighbourhood development plan or order and agrees the delegation of authority to officers as set out in Appendix Two.

3. Financial Implications

- 3.1 The District Council is required to provide support to neighbourhood planning groups and assist them with the preparation of their plans. It must also meet the costs associated with the independent examination of the plan and the subsequent referendum. Consequently resource implications arise in terms of staff time, in addition to direct financial costs that are associated with the final plan making stages. Based upon the experience of other local planning authorities an examination may cost in the region of £3,000 to £3,500 and the subsequent referendum £3,500 to £4,000.
- 3.2 In recognition of these additional resource implications the Department of Communities and Local Government (DCLG) has been providing financial support to local authorities via an Extra Burdens Grant. The payments are phased and made in retrospect. In previous financial years up to £30,000 was made available for each neighbourhood development plan that was successfully 'made' (adopted) but these arrangements have subsequently been changed.

- 3.3 From 2016/17 local authorities are only able to claim £5,000 for each of the first five neighbourhood areas that have been designated in its area. This includes neighbourhood areas that have already been designated. A ceiling of £25,000 has therefore been imposed which has already been reached in both District Council areas. The amount payable upon the successful making of a plan has also been reduced from £25,000 to £20,000 but there is no ceiling upon the number of plans that might be eligible. Furthermore a claim for payment can now be made once a referendum date has been set following a successful examination. This differs from the previous arrangements and means the District Council is no longer exposed to meeting the costs of an unsuccessful referendum.
- 3.4 There are currently five area designations in Babergh and eight in Mid Suffolk. To date Babergh has received £20,000 in grant payments with a further £15,000 expected in line with the previous grant regime; Mid Suffolk has received £40,000 with no further payments due at this time. These sums are currently held in reserve to assist Town and Parish Councils with the completion of an independent 'health check' to ensure their plans are fit for purpose (a maximum of £1,000 per group is made available), and to meet the District Council, costs associated with the independent examination and referendum. Based upon current predictions the amounts held in reserve are sufficient to cover the direct costs that might be incurred by each District Council, however should this position change additional resources would be required from the Transformation Fund.
- 3.5 In addition to the staff time and resources that are used on supporting the neighbourhood planning groups a considerable amount of work is undertaken by the groups themselves, mostly on an unpaid and voluntary basis. While the groups are eligible to apply for grant assistance from central government sources (this has increased from £8,000 to £9,000 from 1 April 2016) any additional expenditure has to be met by the Town or Parish Council. Research undertaken by DCLG in 2015 suggests that the average cost of producing a plan for a Town or Parish Council was £13,758 with amounts ranging from £4,220 to £27,681. A significant amount of investment is therefore required from the local community if it wishes to prepare a plan.
- 3.6 Financial assistance is also available to support the preparation of neighbourhood development orders and community right to build orders.

4. Legal Implications

- 4.1 The Localism Act, 2011 confers specific functions to local authorities in relation to neighbourhood planning including a duty to provide support to groups preparing a plan. As with any decision made by a public body there is a risk of legal challenge to the policies and proposals contained within a neighbourhood development plan and/or judicial review of the District Council's decision to proceed with a referendum. This is managed by ensuring that the Regulations are followed and that the decision-making process is clear and transparent.

5. Risk Management

5.1 The key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
A neighbourhood development plan or order fails to satisfy the Basic Conditions or meet other legal requirements.	Unlikely	Bad	In order to minimise this risk the neighbourhood planning groups have been provided with a 'critical friend' to advise them on the various stages and at the pre-submission stage they are strongly encouraged to undertake an independent 'health check'.
Legal challenge to the content of the neighbourhood development plan or order and/or judicial review of the District Council's decisions.	Unlikely	Bad	Ensuring that the relevant Regulations are followed and that the decision-making processes are clear and transparent.

6. Consultations

6.1 Portfolio Holders have been briefed on the processes and procedures involved in the preparation and making of neighbourhood development plans.

7. Equality Analysis

7.1 There are no equality and diversity implications arising directly from the content of this report.

8. Shared Service / Partnership Implications

8.1 This report relates to matters affecting Babergh and Mid Suffolk.

9. Implications for the Joint Strategic Plan

9.1 The successful making (adoption) of a neighbourhood development plan or order would enable the District Council to fulfil its corporate priorities, namely:

- Housing delivery – More of the right type of homes, of the right tenure in the right place,
- Business growth and increased productivity – Encourage development of employment sites and other business growth, of the right type in the right places and encourage investment in skills and innovation in order to increase productivity, and
- Community capacity building and engagement – All communities are thriving, growing, healthy, active and self-sufficient.

10. Key Information

10.1 The Localism Act, 2011 made changes to the planning system and provided Town and Parish Councils (or neighbourhood forums where there is no Town or Parish Council) with an opportunity to shape the future of their area via a number of mechanisms. In summary, Town and Parish Councils may prepare:

- **neighbourhood development plans** to establish planning policies for the development and use of land in a neighbourhood, subject to being in line with national planning policies, the local plan and other legal requirements. Such plans cannot however be used to block development or propose less development than is envisaged by the District Councils strategic planning policies for the area.
- **neighbourhood development orders** to grant planning permission for a particular type of development in a neighbourhood area as specified in the Order.
- **community right to build orders** to bring forward small developments for a specific site. These orders can be made by a community organisation which is expressly established to further the well-being of people living and working in an area or a Town or Parish Council.

10.2 The processes for preparing a Neighbourhood Development Plan, Neighbourhood Development Order, or a Community Right to Build Order are contained within The Neighbourhood Planning (General) Regulations, 2012 (as amended). This report focuses primarily upon the preparation of neighbourhood development plans however it extends to include the making of orders as the steps involved are very similar. In this way a comprehensive decision-making framework can be established for the future.

Overview of the District Council's Roles and Responsibilities

10.3 National Planning Practice Guidance (2014) states that a local planning authority should:

- be proactive in providing information to communities about neighbourhood planning,
- fulfil its duties and take decisions as soon as possible, particularly regarding applications for area and forum designation,
- set out in a clear and transparent decision making timetable and share this with those wishing to prepare a neighbourhood plan or order, and
- constructively engage with the community throughout the process.

10.4 In line with the provisions of the Localism Act, 2011 the District Council has a legal duty to provide support to Town and Parish Councils that are preparing a neighbourhood development plan or order and its roles fall into three distinct categories. These are to:

- advise and assist a Town or Parish Council preparing a neighbourhood development plan or order;
- ensure that the plan or order is capable of fulfilling the 'Basic Conditions' defined by planning legislation; and
- provide a quasi-judicial decision-making and administrative function.

- 10.5 In order to satisfy the 'Basic Conditions' a plan or order must:
- have regard to national policies and advice contained in guidance issued by the Secretary of State;
 - be in general conformity with the strategic policies contained in the Development Plan for the area;
 - contribute to the achievement of sustainable development; and
 - not breach, and be otherwise compatible with, EU obligations and human rights requirements.

10.6 During the production of a neighbourhood development plan or order the District Council may be acting in a number of different capacities. The overall objective however is to ensure that the Town or Parish Council is able to fulfil the Basic Conditions and other legal requirements with the view to achieving a successful outcome. The acceptability, or otherwise, of a neighbourhood development plan or order is subject to independent examination by an Examiner appointed by the District Council.

The Examination

10.7 The independent examination is usually conducted via a written exchange of comments in response to specific questions. There could be several rounds of questions depending upon how the Examiner chooses to work and the nature of the answers subsequently provided. If there is a particular issue that cannot be resolved via a written exchange a hearing might need to be held.

10.8 The Examiner will consider the plan or order and prepare a report setting out his or her findings. The Examiner is able to make one of three possible recommendations. These are that:

- the plan or order should proceed to referendum as submitted, or
- the plan or order should be modified to meet the Basic Conditions and the modified version should proceed to referendum, or
- the plan or order should not proceed to referendum as it fails to meet the Basic Conditions or legislative requirements and cannot be modified to do so.

10.9 The Examiner may also make a recommendation as to whether the area for the referendum should go beyond the area designated, and if so what the extended area should be.

10.10 It is at this point that the District Council has some discretion to exercise within the statutory framework. When the report is received it must consider each of the examiners recommendations and the reasons for them and decide what action to take in response to each one. The District Council must also come to a formal view about whether the plan or order meets the Basic Conditions and meets other legal requirements. It cannot however make a different decision to that recommended by the Examiner about the referendum area.

10.11 Once the District Council has satisfied itself that the plan or order meets the Basic Conditions and other legal requirements it may:

- Act upon the Examiner's Report and progress the neighbourhood development plan or order to the referendum stage. This can only occur where the Examiner considers the Basic Conditions have been met without the need for modifications or it can meet the Basic Conditions subject to modifications,
- Propose to take a decision substantially different from the Examiner's recommendation which is wholly or partly as a result of new evidence or a different view taken by officers about a particular fact. Should this occur the District Council must notify all those identified in the consultation statement produced by the Town or Parish Council and invite representations on an alternative decision. Where necessary, and as a result of any representations received, the Examination may need to be reopened.
- Decide not to progress the neighbourhood development plan or order in the light of the Examiner's Report. This is only permissible where the Examiner has indicated that the plan or order should not proceed to referendum because it fails to meet the Basic Conditions or legal requirements.

10.12 Any neighbourhood development plan or order which passes the referendum will form part of the statutory Development Plan for the area. Full Council is responsible for approving the policy framework for the area and has reserved this function for decision. Due to the infrequency of Council Meetings it is proposed that Full Council should delegate decision-making activities relating to the consideration of an Examiner's Report to the respective Executive or Strategy Committee. The Head of Service would prepare a report for the Committee setting out the relevant route to be followed in the light of the Examiner's findings, provide an assessment of the plan, and make a recommendation. It would be for the Executive or Strategy Committee to resolve whether the selected route should be followed and additional time allowed (if necessary) to provide for any modifications to be made.

It is therefore recommended that Full Council delegates to the respective Executive/Strategy Committee matters relating to the consideration of an Examiner's Report, including the responsibility to make a decision on whether a neighbourhood development plan should proceed to referendum.

10.13 Where the recommendation is to act upon the Examiner's report arrangements would be made to conduct a referendum in accordance with the Neighbourhood Planning (Referendum) Regulations, 2012 (as amended). In this event the committee report would be supplemented by a draft Decision Statement. This statement would set out any modifications that are considered to be necessary by the Examiner or the District Council to enable the neighbourhood development plan to meet the Basic Conditions and other legal requirements.

10.14 Where the recommendation is to take a decision which is different from the Examiner's recommendation, wholly or partly as a result of new evidence, or because officers have taken a different view about a particular fact, a dialogue would take place with the relevant Town or Parish Council on the alternative decision proposed with the view to formulating appropriate modifications as required. Further consultation would then be carried out with all the parties identified in the neighbourhood planning group's statement of consultation and representations invited.

10.15 Depending upon the outcome of this additional consultation a decision would need to be taken on whether to take the plan forward to referendum, as modified, or to reopen the examination. It should however be noted that these arrangements may

be subject to change as a result of proposals contained with the Housing and Planning Bill and any subsequent Regulations.

- 10.16 In the event that the recommendation is to decide not to progress the neighbourhood development plan because it fails to meet the Basic Conditions or other legislative requirements it should be noted that a repeat plan cannot be submitted for a further two years from the date of the decision.

The Referendum

- 10.17 The referendum process is governed by the Neighbourhood Planning (Referendum) Regulations, 2012 (as amended). The Regulations set out that not less than 28 working days before the date of the Referendum the District Council must publish on its website and make available an information statement and specified documents. These documents include the draft neighbourhood development plan and the Examiners' Report.
- 10.18 The Regulations stipulate that the documents should be made available for inspection during the referendum period at the District Council's offices and at least one other location open to the public. The Town or Parish Council will be expected to compile an updated version of the neighbourhood development plan incorporating any modifications where necessary and promote the referendum. It should be noted that the Regulations set out restrictions on the publication of promotional material, advertisements and expenses.
- 10.19 The Regulations require the publication of a notice of the poll before the referendum date detailing the times and locations of polling stations and a description of those entitled to vote. They also specify that provision must be made for postal ballot papers and official poll cards to be issued. A person is entitled to vote in the referendum if they meet the eligibility criteria to vote in a local election for the area and if they live in the referendum area. The Regulations set out the format of the Referendum question which is:

'Do you want ### District Council to use the neighbourhood plan for ### to help it decide planning applications in the neighbourhood area?'

- 10.20 If the majority of those who vote in a referendum are in favour of the neighbourhood development plan then the plan must be brought into legal force and 'made' (adopted) by the District Council. There are limited exceptions to this and the District Council can decline to make the plan if it considers it would breach EU obligations or convention rights. If there is a majority 'No' vote or a tied vote then the neighbourhood plan will not come into force.
- 10.21 Assuming the referendum is successful (i.e. more than 50% of the votes cast are in favour of the plan) the plan becomes part of the Development Plan for the area and the District Council is unable to exercise any discretion. The outcome will however require formal ratification by Full Council and a short report would be presented to enable the endorsement of the neighbourhood development plan at the appropriate time.

Operating Framework and Key Decisions

- 10.22 There are seven key stages involved with the preparation of a neighbourhood development plan which are described in further detail below and illustrated by the diagram produced in **Appendix One**.
- 10.23 Matters relating to planning policy are already delegated to the Head of Planning for Growth but in order to set out a clear and transparent decision-making framework it is important that precise arrangements are in place, with appropriate Councillor involvement at the relevant stage. These arrangements are summarised along with those detailed above in the attached table. See **Appendix Two**.

It is accordingly recommended that the following arrangements, in addition to those already set out in the preceding sections of this report, be noted.

- 10.24 **Stage 1: The designation of a Neighbourhood Area.** - In most cases the area will be the whole parish. Full Council has already delegated authority for these particular decisions to the Head of Service subject to the application being unopposed. Paper N34, dated July 2013 refers. While no change is proposed to these arrangements, the technical consultation on the implementation of the Housing and Planning Bill suggests there could be implications which will require further consideration but it is not envisaged there will be a significant impact.
- 10.25 **Stage 2: The preparation and production of a neighbourhood development plan.** - This responsibility rests with the Town or Parish Council. There is however, a duty imposed by the Localism Act 2011 to provide informal guidance and support to the neighbourhood planning groups to ensure that the interests of the District as a whole, particularly the local plan strategy, is considered by those drawing up the plan. As this will usually be undertaken very informally it does not prejudice the opportunity to make formal representations at a later stage.
- 10.26 As part of the preparation stage the neighbourhood planning group is also required to seek a Strategic Environmental Assessment (SEA) Determination. This requires the District Council to provide a Screening Opinion on the content of the pre-submission draft plan and consultation with the Environment Agency, Historic England and Natural England. This is a technical decision and it is recommended that this is appropriately undertaken by the Head of Service.
- 10.27 **Stage 3: Pre-submission publicity and consultation.** - Once a draft plan has been produced, the Town or Parish Council is required to undertake a period of consultation on the content of its pre-submission draft plan. At this point there is an opportunity for officers (and other stakeholders) to formally comment. This stage enables officers to ensure that national planning policies and the local plan strategy and any other interests are clearly explained so they may be addressed before the plan is formally submitted for consultation. Such messages may not always be welcomed by the Town or Parish Council and it is suggested that Portfolio Holder input and oversight should be sought before a response is provided by the Head of Service. It should be noted that reference to Committee is unlikely to be possible within the six weeks provided for comment by the Regulations, however it is important that views are expressed at this pivotal stage to ensure the plan is on track.

- 10.28 **Stage 4: Formal Consultation.** - Once the neighbourhood development plan has been formally submitted to the District Council checks are required to ensure that it is legally compliant and all the relevant documents have been provided. This is a technical/administrative exercise and if the plan is valid, the District Council must publish and formally consult stakeholders on the submitted plan as soon as possible after it has been submitted. The exact timing of this will however need to have regard to significant public holidays and the availability of resources if other consultations are underway. The extent of publicity required the identification of stakeholders, and the timing of the consultation is best determined by the Head of Service.
- 10.29 Following publication of a submitted plan, there is a time limited opportunity for the District Council (and any other interested party) to make any comments they wish to bring to the attention of the Examiner. This is a critical opportunity for the District Council to ensure that the local plan strategy and any other interests are clearly and firmly put forward, in order to ensure these are considered at the subsequent examination. As with the pre-submission comments stage (Stage 3) such messages may not always be welcomed by the Town or Parish Council or may be otherwise sensitive, thus warranting Portfolio Holder input and oversight before a response is provided by the Head of Service. It should be noted that reference to Committee is unlikely to be possible within the six weeks provided for comment by the Regulations, however it is important that views are expressed as they will subsequently be considered by the Examiner in conjunction with any other representations.
- 10.30 **Stage 5: The Examination.** - In addition to providing comments on the content of the submitted Plan, the District Council is required to appoint an independent examiner. This involves identifying, selecting and commissioning a 'suitably qualified and experienced' person, who is independent of the parties/interests involved, to examine the plan. The choice of examiner must be agreed with the Town or Parish Council. In practice the District Council is likely to use the Neighbourhood Plan Independent Referral Service (a national service run by a consortium of the relevant professional bodies and community organisations) to identify suitable candidates. It is considered this is appropriately undertaken by the Head of Service.
- 10.31 **Stage 6: The Referendum.** - Once the examination is complete the Examiner will publish a report which in simple terms may indicate that the plan is acceptable, acceptable with modifications, or unacceptable. It is at this point that a decision will be required from the District Council as to whether the plan, or the plan with modifications, should proceed to referendum. The suggested arrangements at this point have already been set out in the preceding sections of this report.
- 10.32 **Stage 7: Making the Plan.** - If the plan passes the referendum (i.e. more than 50% of votes are in favour of the plan) the District Council must to 'make' (adopt) the plan and bring it into force in line with the arrangements set out in the preceding sections of this report.

Conclusion

10.33 Managing the neighbourhood development plan or order process involves a sequence of actions and decisions by the District Council. It also requires the District Council to perform a number of roles which variously involve acting as an administrator, an advisor, and a decision-maker, ensuring legal requirements are fulfilled.

10.34 These decisions have varying levels of technical content, scope for controversy, and time limitations. The operating and decision-making framework therefore provides a proportionate response allowing for Councillor involvement in those decisions which are critical to the District Council's interests.

11. Appendices

Title	Location
Appendix 1 – Neighbourhood Development Plans: The Key Stages	Attached
Appendix 2 – Operating Framework and Key Decisions	Attached

12. Background Documents

12.1 None

Authorship

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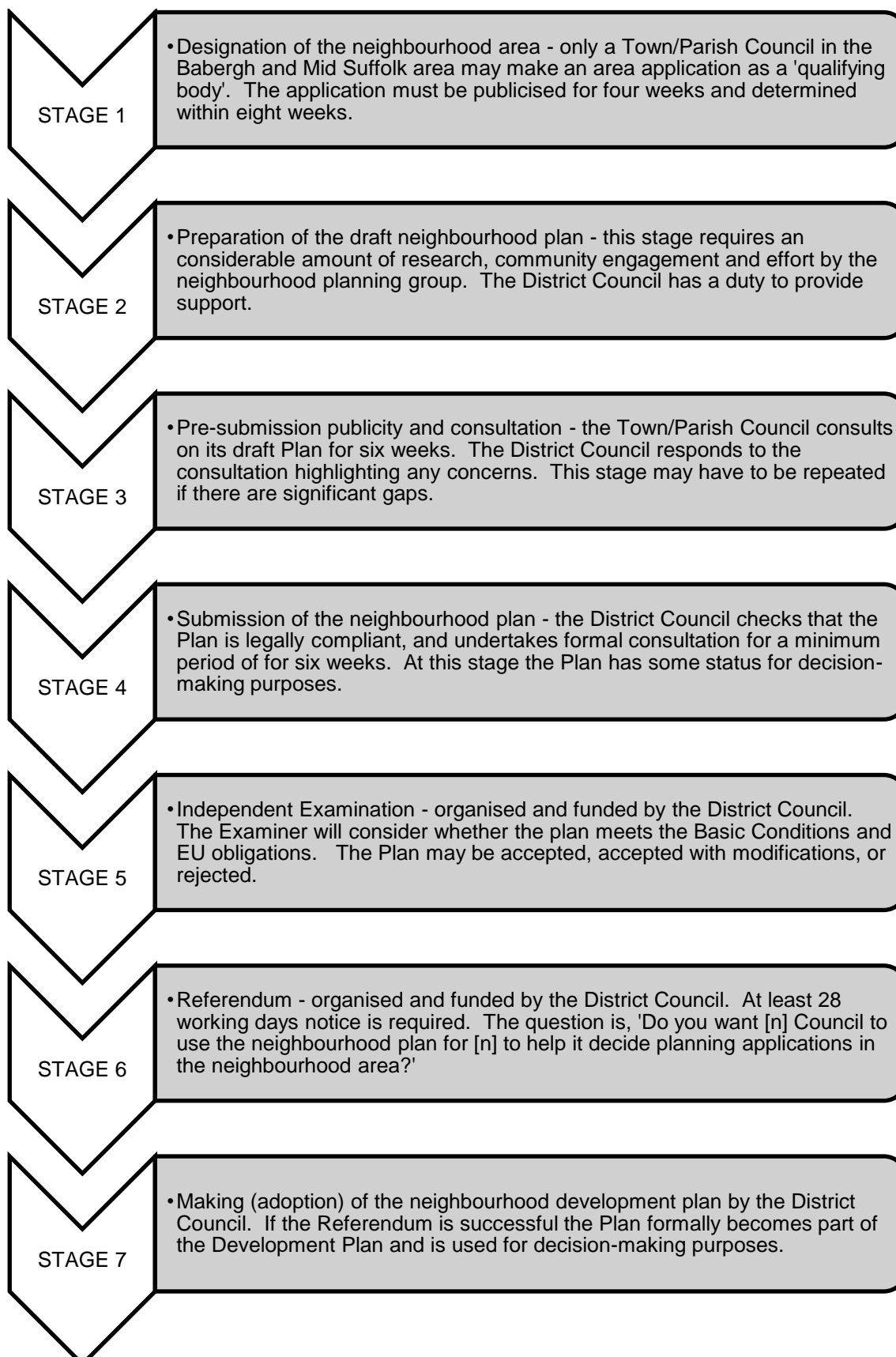
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Appendix One

NEIGHBOURHOOD DEVELOPMENT PLANS: THE KEY STAGES



Appendix Two

OPERATING FRAMEWORK AND KEY DECISIONS

Stage	Activity	Action Required	Authority
One	Designation of the Neighbourhood Area	Deciding the area which the neighbourhood plan will cover, following consultation. (This will usually be the whole parish.)	Head of Service <i>(NB - this was agreed by the Executive and Strategy Committees in July 2013)</i>
Two	Preparation of the draft Neighbourhood Development Plan or Order	Provision of informal guidance and comments on emerging proposals to the Town or Parish Council.	Head of Service
	Strategic Environmental Assessment (SEA) determination or EIA Screening	Technical determination on whether the plan is likely to have significant environmental effects.	Head of Service
Three	Formal response to pre-submission consultation	Provision of comments on the content of the draft neighbourhood development plan or order to ensure the District Council's s planning strategy and any other interests are clearly and firmly put forward, and any outstanding issues are addressed as far as possible.	Head of Service in consultation with the relevant Portfolio Holder
Four	Submission of the draft Neighbourhood Development Plan or Order	Decision on whether the plan or order is complete and legally compliant. If so, deciding the extent and timing of consultation in the light of statutory requirements, the resources available, and any other consultations in progress at the time.	Head of Service

	Formal representations on submitted neighbourhood development plan or order	This is a key stage at which any outstanding concerns can be put forward for consideration at the examination.	Head of Service, in consultation with the relevant Portfolio Holder
Five	Appointment of an Independent Examiner	Selecting a 'suitably qualified and experienced' person to conduct the examination, and agreeing the choice with the Town or Parish Council.	Head of Service in consultation with the Town or Parish Council
Six	Consideration of the Examiners Report and Decision on whether the Plan or Order should proceed to Referendum	A decision as to whether (in the light of the Examiner's recommendations) the plan or order should proceed, with or without modifications, to Referendum or a different decision should be made in the light of new evidence.	Executive or Strategy Committee
Seven	Bringing the Plan or Order into force	If the plan or order passes the Referendum the District Council must 'make' (adopt) the plan or order.	Full Council (formal ratification)