

## **ST ALBANS CITY AND DISTRICT COUNCIL**

<b><u>REPORT TO :</u></b>	Cabinet
<b><u>DATE :</u></b>	18 October 2018
<b><u>REPORT TITLE :</u></b>	Harpenden Neighbourhood Plan Referendum
<b><u>WARDS :</u></b>	Harpenden North, Harpenden East, Harpenden South, Harpenden West, Redbourn and surrounding wards
<b><u>PORTFOLIO HOLDER:</u></b>	Cllr M Maynard
<b><u>CONTACT OFFICER :</u></b>	Tracy Harvey – Head of Planning and Building Control

### **1. Purpose Of Report**

- 1.1 The Harpenden Neighbourhood Plan (HNP) was submitted to the Council and, following a statutory six week publicity period, was the subject of an independent examination. The report of the Examiner has now been received and it recommends that the Neighbourhood Plan, subject to relatively minor modifications, should progress to referendum.
- 1.2 The Council now has to consider the recommendations of the Examiner and decide how to proceed.

### **2. Recommendations**

- 2.1 That Cabinet accepts the Examiner's recommendations that the Harpenden Neighbourhood Plan (HNP), (with the recommended modifications), should proceed to referendum.
- 2.2 That arrangements be made for a referendum in accordance with the statutory timescales, or to a timetable agreed with Harpenden Town Council (HTC) and Harpenden Rural Parish Council (HRPC).

### **3. Background Information**

- 3.1 Neighbourhood Plans (NPs) enable local communities to shape and direct sustainable development in their local area. These are Plans produced by a parish council or a neighbourhood forum.
- 3.2 As community-led initiatives, the role of the Council is not to create Neighbourhood Plans, but to assist communities in developing them for themselves. Neighbourhood planning work is already underway in many parts of the District and the Council is committed to continue supporting it. The Harpenden Neighbourhood Plan is the first to reach the Examination report stage.

- 3.3 On 17 March 2016 Cabinet approved the designation of the Neighbourhood Plan Area for Harpenden Town and Harpenden Rural Parish. The Neighbourhood Plan Area covers the current parish boundaries.
- 3.4 For Neighbourhood Plans, statutory requirements include passing an Independent Examination, and a decision by the Local Planning Authority to put the Plan to referendum. If a Neighbourhood Plan meets the statutory requirements and is supported through a referendum it must be formally 'made' (brought into force). It then forms part of the statutory Development Plan. It becomes, together with the adopted Local Plan (and for certain applications the HCC Minerals and Waste Plans), the starting point for determining relevant planning applications in that area.
- 3.5 A Neighbourhood Plan must meet a number of legal and procedural requirements. It must also satisfy the 'Basic Conditions' (as prescribed in Schedule 4B, paragraph 8 of the TCPA 1990) (as amended). These Basic Conditions require Neighbourhood Plans to:
- Have appropriate regard to national policy and advice contained in guidance issued by the Secretary of State;
  - Contribute to the achievement of sustainable development;
  - Be in general conformity with the strategic policies in the Development Plan for the local area;
  - Be compatible with and not breach EU obligations;
  - Meet prescribed conditions and comply with prescribed matters.

#### 4. **Analysis and Findings**

- 4.1 In accordance with the Regulations, the Council undertook the formal publicity stage on the Neighbourhood Plan in May/June 2018. Relevant consultees and other interested parties were given the opportunity to submit comments. A total of 12 responses were received. The responses were passed to the Examiner for his consideration.
- 4.2 The Council appointed Dr Andrew Freeman as the independent Examiner of the Harpenden Neighbourhood Plan. The appointment was undertaken with the agreement of the qualifying body (HTC and HRPC).
- 4.3 On reviewing the content of the Neighbourhood Plan and the representations received during the publicity stage, Dr Freeman decided to conduct the Examination by written representations. This meant that there was no requirement for a hearing session (written representations is a common format where a Neighbourhood Plan is relatively straightforward).

- 4.4 The Examiner's final report was received on 06 Sept 2018. It contains Dr Freeman's findings on legal and procedural matters and his assessment of the Neighbourhood Plan against the Basic Conditions. A link to a copy of the Examiner's Report is provided at Appendix 1.
- 4.5 The Examiner's Report concludes that, subject to relatively minor modifications, the Harpenden Neighbourhood Plan satisfies the Basic Conditions and legal requirements and should proceed to referendum.
- 4.6 A number of modifications are proposed to the HNP, however, they are relatively minor and do not significantly alter the overall scope or nature of the Plan. Modifications require a number of policies and text to be modified to ensure the Plan meets the basic conditions and other legal requirements. There are 24 modifications and particular issues raised through modifications relate to:
- Overall Vision and Spatial Strategy
  - Employment and Retail
  - Environment and Sustainable Design
  - Housing
  - Social Infrastructure and Community Facilities
  - Transport and Movement
- 4.7 The Inspector recommends the proposed modifications are incorporated into the Plan, to enable it to meet the Basic Conditions and other legal requirements. A schedule of the Examiner's modifications and the Council's suggested response to them is provided in Appendix 2. In all cases the suggested Council response is to "Make modifications as set out in the recommendation".
- 4.8 This stage in the Neighbourhood Plan process is the final point at which the Council (as Local Planning Authority) can influence the Plan / Plan process. It is the role of the Council to consider whether the Plan should proceed to referendum if that is recommended by the Examiner.

### **Next Steps**

- 4.9 Cabinet is required to issue a Decision Statement setting out the reasons for making that decision. This is required by Section 17A of the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016 and paragraph 023 of the National Planning Practice Guidance. The Regulations set out the role of the Council (in this case Cabinet). This is to apply the modifications proposed by the Examiner in such a way as to bring the Plan in line with the Basic Conditions and legislative requirements. Where the Examiner recommends that the Plan proceeds to Referendum (as in this case) it is normally a straightforward process involving translating the Examiners clear instructions into amended text in the Plan. Appendix 2 sets out the Examiner's modifications and the Council's response.

- 4.10 The decision will be published on the Council's website and copies will be sent to HTC and HRPC and those who have asked to be notified of the decision.
- 4.11 The Neighbourhood Planning (Referendums) (Amendment) Regulations 2016 amended the timescale set in the original Regulations. This now requires that a referendum is held within 56 working days of the Decision Statement being published, unless agreed otherwise with the Town/Parish Council. Discussions are underway with the qualifying body and it is currently anticipated that the referendum will be held in late January 2019.
- 4.12 Residents will be given the opportunity to vote 'yes' or 'no'. If more than 50% of those voting in the referendum vote 'yes', then the Council will be required to 'make' the Plan within six weeks. The Harpenden Neighbourhood Plan would then form part of the statutory Development Plan for the area. If there is a majority 'no' vote or a tied vote, then the Neighbourhood Plan would not come into force.

## 5. **Conclusion**

- 5.1 Neighbourhood Plans (NPs) enable local communities to shape and direct sustainable development in their local area. The Harpenden Neighbourhood Plan is the first to reach the Examination report stage.
- 5.2 The Harpenden Neighbourhood Plan (HNP) was submitted to the Council and, following a statutory six week publicity period, was the subject of an independent examination. The report of the Examiner has now been received and it recommends that the Neighbourhood Plan, subject to relatively minor modifications, should progress to referendum.
- 5.3 The Council now has to consider the recommendations of the Examiner and decide how to proceed.

## 6. **Implications**

This table provides a short statement of the impact of the recommendations in this report and/or a reference to the relevant paragraph/s in the report.

<b>Will this report affect any of the following?</b>	<b>Yes/No</b>	<b>Impact/Reference</b>
Vision and Priorities	N	
Policy	Y	Sets out policies for planning decisions in the Harpenden Neighbourhood Area, in conjunction with the Local Plan
Financial	Y	In 2018/19 potentially £20k can be claimed from Ministry of Housing Communities and Local Government once the council has

		made the decision to proceed to referendum (to pay for the referendum) which is the same as the Electoral Services Manager's estimate for holding the Referendum.
Impact on the community	Y	Development brought forward by members of the community in the area will need to take account of the new policies
Legal and Property	Y	Planning applications on Council land in the neighbourhood area will need to take account of the new policies
HR/Workforce	N	
Risk Assessment	N	
Environmental Sustainability	Y	The plan has been subject to sustainability appraisal screening
Health and Wellbeing	N	

## 7. **Further Information/Appendices**

7.1 Appendix 1 – Link to a copy of the Examiner's Report

7.2 Appendix 2 - A schedule of the Examiner's modifications and the Council's proposed response to them

## 8. **Background Papers - Local Government (Access to Information) Act 1985**

	<b><u>Bibliography</u></b>	<b><u>Custodian</u></b>	<b><u>File Location</u></b>
	Town and Country Planning Act 1990	W Frost	<a href="#">link to website</a>
	The Neighbourhood Planning (General) Regulations 2012	W Frost	<a href="#">link to website</a>
	Harpenden Neighbourhood Plan (submission version)	W Frost	<a href="#">link to website</a>

**Appendix 1 - A copy of the Examiner's Report can be found at:**

[http://www.stalbans.gov.uk/Images/Report%20on%20the%20Harpenden%20Neighbourhood%20Plan%202018%20-%202033\\_tcm15-64835.pdf](http://www.stalbans.gov.uk/Images/Report%20on%20the%20Harpenden%20Neighbourhood%20Plan%202018%20-%202033_tcm15-64835.pdf)

## Appendix 2 - A schedule of the Examiner's modifications and the Council's response to them

Proposed modification number (PM)	Page no./ other reference	Examiner's Proposed Modifications	Reason	SADC Proposed Action
PM1	Page 19	In the final paragraph of Policy SS1, substitute "Figure 4.2" for "Figure 4.1".	Policy SS1 indicates that development proposals in Harpenden Town Centre must have regard to its special characteristics. However, there is an inaccurate reference to the figure that defines the extent of the town centre. This would be corrected under proposed modification <b>PM1</b>	Make modifications as set out in the recommendation.
PM2	Page 21	In Policy SS2, under the heading "Significant development proposals in the South East" (first bullet point), delete "key routes such as".	Policy SS2 includes requirements that will apply to significant development proposals in the South East Infrastructure Zone. For example, impacts on "key routes such as Southdown Road..." will need to be mitigated. However, there is no definitive indication of what constitutes a key route. Clarity would be added under proposed modification <b>PM2</b>	Make modifications as set out in the recommendation.
PM3	Page 31	In the first sentence of Paragraph 5.12, insert "be supported by a limited amount of" before "on site parking". In the second sentence, delete "and increase parking".	Policy ER6 deals with Supporting Local Centres. The explanatory text indicates that increased parking at convenience shops in local centres will be supported. This provision is out of step with the thrust of the Transport and Movement Objectives in the Plan and to the aims of local centres. Rather than increased parking, the text should refer to a limited amount of on-site parking, as in proposed modification <b>PM3</b>	Make modifications as set out in the recommendation.
PM4	Page 31	Substitute the following for the text of Policy ER8: "Applicants of major development proposals including either retail or employment use must submit evidence which demonstrates: - that sufficient infrastructure is in place to meet an increase in demand arising from the development;	Policy ER8 in this section of the Plan has the title "Adaptable, Innovative and Up to Date Retail and Employment Centres". It calls for the utilisation of latest technologies. However, this expression lacks clarity. Reference should be made to adaptability to future occupiers; also, the aspects of technology that should be utilised. Clarification of the term "major retail	Make modifications as set out in the recommendation.

		<p>- how facilities are adaptable to future occupiers, including where relevant the ability to subdivide offices; and</p> <p>- the utilisation of latest technologies wherever possible, with regard to deliveries, lighting, security and noise emissions.”</p>	<p>and employment proposals” is also needed. Appropriate changes are set out in proposed modification <b>PM4</b></p>	
PM5	Pages 33 and 34	<p>In Policy ESD1, substitute “visually attractive” for “visually appealing”.</p> <p>In the first sentence of the second paragraph, substitute the following for the words after “must be”: “prepared and submitted in support of the planning application.”</p> <p>For requirement v, substitute the following: “Protection against the loss of or significant harm to ecological or landscape value or, in the event of loss or significant harm, the provision of appropriate mitigation to address the loss or harm. If the Local Planning Authority deems that appropriate mitigation cannot be achieved, compensatory measures may be acceptable in addition to (not instead of) the maximum achievable mitigation.”</p> <p>Substitute the following for requirement x: “How the water efficiency standard for housing, as set out in Policy ESD19, has been applied.”</p>	<p>Policy ESD1 sets out 12 considerations that, in the case of major developments, are to be addressed in a design brief. However, there are a number of uncertainties:</p> <ul style="list-style-type: none"> <li>• What is meant in the call for developments to be “visually appealing”?</li> <li>• Who would produce the design brief and how would it be approved?</li> <li>• What is the “water efficiency standard”?</li> </ul> <p>In addition, in relation to ecology and landscape matters, greater regard to the provisions of the NPPF (Section 11) is needed. The necessary changes are set out in proposed modification <b>PM5</b>.</p>	<p>Make modifications as set out in the recommendation.</p>
PM6	Page 35	<p>In Policy ESD2 iv, after the first reference to “undesigned heritage asset”, add the words “identified in a planning guidance document prepared by St Albans City and District Council...”</p>	<p>In Policy ESD2 (Local Character and Heritage), there is reference to undesigned heritage assets of various types. However, there is no indication as to where details are to be found. This matter would be clarified through proposed modification <b>PM6</b></p>	<p>Make modifications as set out in the recommendation.</p>
PM7	Page 38	<p>In Policy ESD8, in the two references to “rivers”, substitute “river corridors”.</p>	<p>Policy ESD8 concerns Green and Open Spaces and Areas of Ecological and Landscape Value. Amongst other things, the policy states that development should not result in the loss of or significant harm to rivers. However, the evidence from the Environment Agency<sup>5</sup> indicates that the reference should be to river corridors. This</p>	<p>Make modifications as set out in the recommendation.</p>



			appropriate evidence would be recognised through proposed modification <b>PM7</b>	
PM8	Page 40	Substitute the following for the second paragraph of Policy ESD9: “Development proposals affecting key views must be supported by evidence that illustrates how the positive aspects of key views to and from these locations, including attractive green spaces and important townscape features such as landmark and gateway buildings, will be protected.”	Policy ESD9 (Key Views) calls for evidence detailing the protection or enhancement that would be afforded to key views. In this regard, the requirement is unclear. Clarification would be added under proposed modification <b>PM8</b> .	Make modifications as set out in the recommendation.
PM9	Page 42	Substitute the following for the first paragraph of Policy ESD13: “The protection and enhancement of urban and rural biodiversity will be supported. Sites should be rigorously assessed for species present on site and proposals should not cause harm to the habitats of protected species without appropriate mitigation. “Efforts to enhance biodiversity, such as through the creation of new habitats, the enhancement of existing sites and the development and implementation of ecological management plans will be supported, particularly where these can be conveniently and viably provided as an alternative to a feature that has less biodiversity value. Green roofs and walls will be encouraged where appropriate.” Delete the second sentence of Paragraph 6.21.	In respect of Biodiversity (Policy ESD13), Paragraph 6.21 contains the following requirements: “Sites should be rigorously assessed for species present on-site and design features that enhance biodiversity should be prioritised, particularly where these can be conveniently and cheaply provided as an alternative to a feature that has less biodiversity value”. These are essentially policy requirements and should be included within the policy itself. Proposed modification <b>PM9</b> refers.	Make modifications as set out in the recommendation.
PM10	Page 43	In Policy ESD15, delete the sentence “Development should aim to be carbon neutral.”	As indicated in Government guidance, local standards on a building’s sustainability will need to be based on robust and credible evidence and pay careful attention to viability. In this regard, and given that appropriate requirements are set out in Policy ESD16, the reference to carbon neutrality should be omitted from Policy ESD15 as set out in	Make modifications as set out in the recommendation.

			proposed modification <b>PM10</b>	
PM11	Page 43	Add the following at the end of Policy ESD16: “(Energy Efficiency and Historic Buildings - Application of Part L of the Building Regulations to historic and traditionally constructed buildings’ or a successor document).”	Policy ESD16 recognises that a different approach on carbon dioxide emissions is needed in the case of heritage assets. Reference is made to guidance by Historic England. However, this reference is vague and uncertain. It is necessary to clarify the point as in proposed modification <b>PM11</b> .	Make modifications as set out in the recommendation.
PM12	Page 48	Substitute the follow for the first paragraph of Policy H2:  “The redevelopment of existing residential properties that are robustly demonstrated to be no longer fit for purpose will be supported. The Neighbourhood Plan defines a property as no longer fit for purpose if is in a state of disrepair, including if it is unsafe, subject to compliance with other Development Plan policies. In addition, properties that make inefficient use of their site and are of a lower density than nearby properties may be suitable for renewal to a density that reflects or is higher than surrounding densities, subject to heritage and other relevant considerations.”	Policy H2 is concerned with Housing Renewal. A reading of the policy could be taken as support for wholesale replacement of the existing stock. This is not the Town Council’s intention. An amendment to the text, as under proposed modification <b>PM12</b> , is needed to rectify the matter	Make modifications as set out in the recommendation.
PM13	Page 57	In the first sentence of Policy SI1, delete the word “accessible”. After “Harpenden”, insert “that are accessible to local people”.	To meet the Basic Conditions, Policy SI1 (School Development) uses the expression “accessible school places”. However, the meaning of this term is unclear. Appropriate clarification would be provided under proposed modification <b>PM13</b> .	Make modifications as set out in the recommendation.
PM14	Page 57	In Policy SI2, after the words “re-provided elsewhere” insert “in the Neighbourhood Plan Area”.	Policy SI2 on Protection of Community Uses addresses circumstances where re-provision of facilities or buildings would be required. However, as presently worded, the policy does not state that the re-provision would have to be within the designated neighbourhood area. This would be corrected under proposed modification <b>PM14</b>	Make modifications as set out in the recommendation.
PM15	Page 57	In Policy SI3, delete the words “providing that	Policy SI3 (Venues for Community Use) refers	Make modifications as set

		they comply with the latest design guidance set by the relevant regulatory authority”.	to “design guidance set by the relevant regulatory authority”. However, this requirement is not sufficiently clear and should be deleted. Proposed modification <b>PM15</b> refers.	out in the recommendation.
PM16	Page 58	Add the following at the end of Policy SI3: “Proposals that make no facilities available for community use will not be supported unless it is clearly proven that doing so could result in harm to the function of the school.”	Policy SI3 contains another anomaly. Applications concerning the creation of new schools must be accompanied by details of how, and to what extent, certain facilities will be made available; but the policy provides no sanctions in the event that no facilities would be forthcoming. Proposed modification <b>PM16</b> would ensure that proposals would not be supported in such circumstances.	Make modifications as set out in the recommendation.
PM17	Page 59	At the end of Policy SI7, and in place of “preferred by the health authorities”, insert “unless relevant health authorities express a preference for contribution to another facility within the Neighbourhood Plan Area.”	Policy SI7 (Accessible GP Practices) requires developers to include “on-site provision if preferred by the health authorities”. I appreciate that health authorities may have important views on such matters. Nevertheless, decisions have to be made on planning grounds. Amendment of the policy needs to be made as under proposed modification <b>PM17</b>	Make modifications as set out in the recommendation.
PM18	Page 61	Add, at the end of Policy SI11: “and a commitment to work with relevant parties to secure those upgrade works.”  Add a new paragraph after Paragraph 8.16:  “In relation to wastewater infrastructure, the Local Planning Authority will seek to ensure that there is adequate wastewater infrastructure to serve all new developments. Developers are encouraged to contact Thames Water as early as possible to discuss their development proposals and intended delivery programme to assist with identifying any potential water and wastewater network reinforcement requirements. Where there is a	Policy SI11 addresses the matter of Utilities Infrastructure with the principal aim of ensuring that capacity is not adversely impacted. Key provisions are contained within the policy. However, as set out in the evidence of Thames Water, there are other matters that should be addressed by applicants particularly in relation to water infrastructure. These would be addressed under proposed modification <b>PM18</b>	Make modifications as set out in the recommendation.

		capacity constraint the Local Planning Authority will, where appropriate, apply phasing conditions to any approval to ensure that any necessary wastewater infrastructure upgrades are delivered ahead of the occupation of the relevant phase of development.”		
PM19	Page 30	In Policy ER5, after both references to 90%, add “(by length)”.	Within the policy ER5 there are two references to the requirement for 90% of shopfronts to remain in A-Class uses. However, it is not clear whether this is 90% by number or by the length of the frontage. Clarity would be added under proposed modification <b>PM19</b> .	Make modifications as set out in the recommendation.
PM20	Page 49	At the end of Paragraph 7.13, add: “or, in the event harm would be evident, that the public benefit of the development clearly outweighs the level of harm.”	With regard to Policy H5 – Higher Density Development, proposals are expected to be no taller than three stories in height unless in exceptional circumstances. The following text, Paragraph 7.13, indicates where exceptional circumstances will exist; but there is no reference to circumstances where harm would be outweighed by public benefit. This would be added under proposed modification <b>PM20</b>	Make modifications as set out in the recommendation.
PM21	Page 63	In the reference to public transport in TMO1, delete “community”.	Amongst other things, Transport and Movement Objective 1 (TMO1) promotes community public transport. However, <i>all</i> forms of public transport should be encouraged, not just community transport such as the Hopper Bus. “Community” would be deleted under proposed modification <b>PM21</b> .	Make modifications as set out in the recommendation.
PM22	Page 64	For the text of Policy T2, substitute the following: “Proposals that may result in a material increase in traffic on the A1081, B653 (Lower Luton Road), B652 (Station Road) or Redbourn Road (as demonstrated by a Transport Assessment) will be required to make provision for, and contribute to, appropriate highways improvement measures to ease traffic congestion on those roads,	Policy T2 (Proposals Affecting the A1081, B653 and B652), as currently worded, requires a demonstration that additional congestion or increased parking stress can be avoided. However, Paragraph 32 of the NPPF states that, “Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe”. In proposed modification <b>PM22</b> , a	Make modifications as set out in the recommendation.

		including in relation to traffic flow and on-street parking pressure. Where creation or alteration of a junction on one of these roads is proposed, evidence must be provided that demonstrates how the proposed junction would minimise disruption to traffic flow.”	revised form of wording for the policy that would ensure appropriate regard for this national policy	
PM23	Page 65	In Policy T5, towards the end of the first sentence, delete the words “and supported by”.	Under Policy T5 (Road Layouts), new road layouts will be supported in circumstances that include support by local people. The views of local people will no doubt be an important consideration. Nevertheless, decisions have to be made on sound planning grounds. As set out in proposed modification <b>PM23</b> , reference to the required support of local people should be deleted	Make modifications as set out in the recommendation.
PM24	Page 66	Substitute the following for the text of Policy T8: “In order to improve traffic flow and reduce congestion, proposals for significant residential development must provide appropriate road layout changes incorporating bus stops on main routes, where appropriate, that do not impede traffic flow, having regard to guidance from Hertfordshire County Council.”	Policy T8 (Bus Stop Layouts) addresses the provision of bus stops where significant residential development is to take place. The policy requires provision off the main highway, in a layby. However, the evidence of the highway authority <sup>11</sup> indicates that other factors may be relevant. Proposed modification <b>PM24</b> recognises the appropriateness of greater flexibility.	Make modifications as set out in the recommendation.