

WYESIDE

NEIGHBOURHOOD DEVELOPMENT PLAN

EXAMINATION REPORT

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ABBREVIATIONS used in this report

The following are the abbreviations used in this examination:

The Council –Herefordshire Council
HRA - Habitats Regulation Assessment
NDP- Neighbourhood Development Plan
NPPF - National Planning Policy Framework
NPPG - National Planning Policy Guidance
SAC- Special Area of Conservation
SEA - Strategic Environmental Assessment
WGPC- Wyese Group Parish Council

INTRODUCTION

1. This is an independent examination of a Neighbourhood Plan prepared by the Wyese Group Parish Council (WGPC) in consultation with the local community. The Localism Act 2011 provided local communities with the opportunity to have a stronger say in their future by preparing neighbourhood plans, which contain policies relating to the development and use of land.
2. If the plan is made, following a local referendum, which must receive the support of over 50% of those voting, it will form part of the statutory development plan. It will be an important consideration in the determination of planning applications as these must be determined in accordance with development plan policies unless material considerations indicate otherwise.
3. The Plan incorporates the five rural parishes of Blakemere, Bredwardine, Moccas, Preston-on-Wye and Tyberton.
4. I have been appointed by the Herefordshire Council (the Council) in consultation with the WGPC to carry out this independent examination. I am a Chartered Town Planner with over 30 years experience working at a senior level in local government and as a private consultant. I am a member of the Royal Town Planning Institute
5. I confirm that I am independent of the WGPC and the Council and have no interest in any land, which is affected by the Neighbourhood Development Plan.
6. This report is the outcome of my examination of the submitted version of the Plan.
7. My report will make recommendations based on my findings on whether the Plan should go forward to a referendum. If the Council puts the plan forward to a referendum and it then receives the support of over 50% of those voting, then the Plan will be “made” by the Council as the Local Planning Authority.

THE EXAMINATION

8. The nature of the independent examination is set out in Section 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

9. The examination must assess whether the Plan has satisfied certain procedural requirements, which I refer to below and complies with “basic conditions”

10. The basic conditions¹ are as follows:

- a) The Plan has regard to national policies and advice contained in guidance issued by the Secretary of State,
- b) The making of the plan contributes to sustainable development,
- c) The making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority,
- d) The making of the plan does not breach, and is otherwise compatible with, EU obligations and human rights requirements,
- e) The making of the neighbourhood plan is not likely to have a significant effect on a site designated for its environmental and/or wildlife importance under a European Directive and as defined in the Conservation of Habitats and Species Regulations 2012. This must consider the Plan either alone or in combination with other plans or projects

11. This is the second examination carried out regarding this Plan.

12. The Wyeseide Neighbourhood Plan was subject to an independent examination during the summer of 2017, and the examiner John Mattocks issued recommendations on the 1st September 2017. These were discussed in a special meeting of the Wyeseide Group Parish Council (WGPC) on 20th September 2017, and the recommendations accepted with the exception of two sentences that were considered unworkable, due to local conditions not fully discussed during examination. The WGPC considered the plan as modified by the examiner did not reflect the aspirations of the community.

13. Following a request to re-consider aspects of the Plan the examiner responded on the 29th. September 2017 that it was not possible as technically the examination had closed.

14. WGPC then notified the Council on 5th October 2018 it wished to formally withdraw the Plan with a view to resubmission.

15. The Plan is now re-submitted and under consideration in this second examination.

¹ Paragraph 8 of Schedule 4 B of the Town and Country Planning Act 1990

16. The WGPC had concerns regarding the policy WHO1 “New Housing Development”. This policy in the previous version of the plan and as modified by the examiner allowed housing in certain settlements provided it is contiguous to the centre as defined on maps of the villages. The policy WHO1 also stated *acceptable development “will include single developments for more than 10 dwellings, in each of the villages of Bredwardine and Preston-on-Wye”*. This phrase was included initially in the interests of promoting and delivering affordable housing as part of a mixed scheme with an open market element.

17. On reflection WGPC considered that the housing market history in the area indicated the likelihood of a proposal for more than 10 dwellings coming forward in the area was very low. This scale of development will be the exception, and may not be feasible. WGPC was concerned the wording of the policy and the use of the phrase “will include” indicates developments of more than 10 dwellings is the priority for Bredwardine and Preston-on-Wye at the expense of smaller developments, which are more likely to fulfill the target of 33 houses. The concern was essentially that the reference to single developments of more than 10 dwellings implies that scale of development is a priority and could unduly constrain housing development.

18. Furthermore, WGPC considered the concept of single development schemes of more than 10 dwellings already exists as an aspiration in Policy WH02 – Ensuring an appropriate Range of Tenures, Types and Size of Houses. The policy states: “Housing developments of more than 10 dwellings in Bredwardine and Preston-on-Wye should include an element of affordable housing in accordance with Policy H1 in the Adopted Core Strategy.” Affordable housing provision is further referred to in policy WHO3 – “Affordable Housing” which relates to proposals for affordable housing that exceptionally can override other policy constraints when a need can be established.

19. The WGPC therefore are now proposing this statement is deleted from policy WHO1.

20. In addition, the WGPC had included a sentence in Policy WH01 to protect an orchard and arable land at the behest of a landowner. This sentence stated: *“However, where land on the opposite side of the road from a centre of a village, is a green space (no houses having been built in that location) no housing development will be allowed in that area.”* Unfortunately, on reflection WGPC was concerned that if the sentence were included in Policy WH02 it would block potential development sites. The concern raised by the landowner had been addressed by other means, and it was considered this requirement was no longer needed. The WGPC therefore now wish that this sentence is removed from the Plan.

21. The WGPC state that if these two sentences can be removed from Policy WH01 it will accept all of the other recommendations in their entirety, and proceed to referendum. On this basis, the Plan is now re-submitted and under consideration in this second examination.

22. This examination is concerned with these new issues, referred to above, as they

affect policy WHO1 “New Housing Development” and by implication any other policy. I will also assess any new information that may have come forward since the last examination. It will also consider whether the new version of the Plan satisfactorily incorporates the modifications recommended by the previous examiner.

23. The examiner has to make a recommendation as to whether the Plan should be submitted to a referendum, with or without modifications, and whether the area for the referendum should extend beyond the plan area.

24. As a general rule the examination should be carried out on the basis of written representations unless a hearing is necessary to allow adequate consideration of an issue or to allow a person a fair chance to put a case.

BACKGROUND DOCUMENTS

25. I have considered the following documents as part of this examination:

Wyeside NDP Examination Report of Mr. J Mattocks, BSc, DipTP, MRTPI, FRGS, issued on 1st September 2017.

Documents forwarded by the Council:

Draft Wyeside Neighbourhood Plan 2011-2031, October 2017,
Wyeside NDP 2011-2031: Basic Conditions statement, October 2017,

Wyeside NDP 2011-2031: Consultation Statement, October 2017,
Wyeside NDP 2011-2031: Consultation Addendum 1 –Questionnaire Analysis of Responses, October 2017,

Documents on the Herefordshire Council website relating to “Wyeside Group Neighbourhood Development Plan Documents”

The Wyeside Group Neighbourhood Plan Withdrawal Statement,
Environmental Report, October 2017, Herefordshire Council,
Habitats Regulations Assessment Addendum Report, October 2017, Herefordshire Council,
Progression to Examination Decision Document, 9th March 2018, Herefordshire Council,
Draft Wyeside Neighbourhood Plan 2011-2031, January 2017,

Local and National Policies:

National Planning Policy Framework (NPPF); National Planning Policy Guidance (NPPG),
Herefordshire Local Plan Core Strategy 2011 - 2031

Other Documents

Questions of 30/4/14 raised by examiner to the Council and WGPC, dated 10/5/18 and responses from the Council and WGPC received attached to emails of 30/5/18 and 21/5/18 respectively.

Email of 1/6/18 from examiner to the Council and response of 4/6/18 regarding the withdrawal notice and SEA relating to the previous examination.

Examiner's "Request for Clarification" issued on 4/6/18 and response titled "Clarification of Herefordshire Council's Responses and Plan Changes to Comply with the Examiner's Requests of 4 June 2018".

PROCEDURAL MATTERS

26. It was established at the previous examination that the plan complies with the following procedural matters²:

- The Plan has been prepared and submitted by a qualifying body
- The Plan has been prepared for an area that has been properly designated
- The Plan specifies the period to which it has effect, does not include provisions about excluded development and does not relate to more than one neighbourhood area
- The policies relate to the development and use of land for a designated neighbourhood area.

27. Nothing has changed in the new version to alter these conclusions.

CONSULTATION

28. It is necessary that WGPC submit a Consultation Statement giving details of persons and organisations consulted, details of how they were consulted, a summary of the main concerns and a description of how these issues and concerns were considered and addressed in the draft Plan

29. WGPC submitted a Consultation Statement and an Addendum¹ at the first examination stage and these have been re-submitted. No further consultation details have been submitted by WGPC. The previous examiner concluded that the consultation process had been sufficient to meet the regulations.

30. The Council has confirmed to me that a further formal consultation process under regulation 16³ took place between 24th January and 7th March 2018. The documentation was placed on the Herefordshire Council website with a hard copy in the Hereford Info Centre and electronic copies available in all the county's libraries and info centres. A number of site notices were also placed within the parish to

² Paragraph 8(1) of Schedule 4 B of the Town and Country Planning Act 1990 (as amended)

³ Neighbourhood Planning Regulations 2012

advertise the consultation period, where to obtain the document and how to make comments.

31. Emails were also sent to the consultation bodies to indicate the consultation period and where to make comments.

32. Nine representations were received from technical consultees and none from the public.

33. I am satisfied that the publicity for these changes to the Plan has received adequate publicity. The submitted Plan, the subject of the consultation explains the process and the alterations to the previous version of the Plan with sufficient clarity

BASIC CONDITIONS

34. It is necessary to decide whether the Neighbourhood Development Plan meets the “basic conditions” specified in the Act.⁴ and referred to above in paragraph 10. This element of the examination relates to the contents of the Plan.

35. The WGPC has submitted a “Basic Conditions Statement”, October 2017, to seek to demonstrate conformity.

36. This report sets out my analysis of the modified Plan in relation to all the basic conditions. I have taken into account the representations made following the further regulation 16 stage of publicity carried out between January and March of this year. I have referred to responses when I consider they raise relevant issues.

37. The previous examination concluded that the Plan would conform to basic conditions if recommended modifications were made. I have checked that these have been carried out and where necessary comment on the application of these modifications below. I have commented in detail on policy WHO1-New Housing Development where WGPC do not wish to follow the previous examiner’s recommendations.

EU OBLIGATIONS, HUMAN RIGHTS REQUIREMENTS

38. I note that a further Strategic Environmental Assessment (SEA) was carried out and contained in the submitted “Environmental Report”, October 2017. It assesses whether there were any likely significant environmental effects as a result of the modifications to the policies from that the subject of the previous examination.

39. The SEA on the previous version of the Plan concluded that there were no likely

⁴ Contained Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

significant effects. All the policies in the Plan conformed to the Core Strategy, which has been the subject of an SEA. The modifications to the policies are largely concerned with making them more precise and consistent to conform to basic conditions in accordance with the advice in the NPPF. The significant modifications to policy WHO 1-New Housing Development are discussed in detail below and do not effectively create the potential for extra development than was envisaged in the initial version of the draft Plan.

40.The SEA relating to the modified policies concludes there are no significant environmental effects and many of the policies are criteria based which contain requirements to protect the environment. No comments were received from the statutory consultees English Heritage, Natural England and the Environment Agency. I am satisfied that SEA has properly assessed the implications of the modifications to the Plan.

41.To ensure that the requirements of the Habitats Directive and Regulations are met, it is necessary to consider the latest version of the draft Plan through the Habitats Regulation Assessment (HRA) process to assess any impact on wildlife sites protected under European Directives. If necessary a formal HRA has to be carried out on the Plan. An HRA Addendum Report, October 2107 was submitted for this examination.

42. A screening assessment of the January 2017 draft Plan concluded there were unlikely to be any significant impacts on designated wildlife habitats. The only site within reasonable proximity of the Plan area is the River Wye Special Area of Conservation (SAC). Although three of the parishes making up the Wyese Group border the River Wye SAC, only one village is in close proximity to the river itself. It was concluded that with regard to the River Wye, Policy WE01 and Core Strategy policy SD3 and SD4 together with a Nutrient Management Plan would ensure that there are safeguards in place to protect if from impacts including pollution. This conclusion was based on assumptions and information contained within the Wyese NDP, the Herefordshire Local Plan (Core Strategy) and the HRA for the Local Plan (Core Strategy).

43.It is noted that in many cases the policies would not result in development, i.e. they relate instead to criteria for development. In several cases the policies also included measures to help support the natural environment including biodiversity.

44.The further HRA screening opinion concludes that the modifications made to policies of the plan are minor and would not have a significant effect on the results previously assessed. The modifications relate to points of clarity and minor word changes.

45.I note English Nature had no comments.

46.I consider that the HRA screening opinion reaches a satisfactory conclusion.

47.Regarding further EU obligations, I do not consider the draft Plan and the consultation process have raised any human rights issues. The consultation process appears to have been proportionate and fair.

SUSTAINABLE DEVELOPMENT

48.The “Basic Conditions Statement” submitted with the previous version of the Plan is re-submitted and explains how the Plan contributes to sustainability as described in the NPPF and its three elements relating to economic, social and environmental issues. It demonstrates the Plan supports local economic development of appropriate scale, protects community facilities, supports the health and wellbeing of residents, responds to local housing needs and protects biodiversity and the rural landscape. Furthermore policies promote sustainable local transport, protect heritage assets and promote the local distinctiveness of the area. The examiner did not challenge these conclusions.

49.The relatively minor alterations to the Plan do not effectively increase the scale of development, retain policies enhancing community facilities and retain criteria ensuring environmental safeguards relating to the built and natural environments. I therefore consider the Plan continues to support sustainable development.

CONFORMITY WITH NATIONAL AND LOCAL STRATEGIC POLICIES

50. The “Basic Conditions Statement” submitted with the previous version of the draft Plan provides an analysis of the manner in which the Plan has regard to national policies and that it is in general conformity with local strategic policies. This has been re-submitted for this examination.

51.It includes tables in which the plan is assessed in general terms against the core planning principles in paragraph 17 of the NPPF; against the three dimensions of sustainable development as set out in paragraph 7 of the NPPF and an analysis of individual NP policies in terms of their conformity with the strategic policies of the Herefordshire Local Plan (Core Strategy).

52.The previous examiner made a number of recommendations to make the Plan and its policies clearer and more precise to allow effective implementation and guidance. This is necessary in order to comply with NPPF guidance in paragraph 154 that;

“ Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.”

53.There are also modifications recommended in order that the Plan’s policies avoid confusion and more accurately reflect Core Strategy policies.

54.I am satisfied that the previous examiner’s recommendations have been satisfactorily applied subject to some modifications. I have recommended some changes to the policies WHO1 and WHO2 in order that they are more precise and conform to Core Strategy policies.

55. I am satisfied that, subject to my modifications, the Plan has had regard to national policies and is in basic conformity with strategic policies.

POLICY WHO1 - New Housing Development

56. The policy seeks to encourage limited development in those settlements, identified in policy RA2 of the Core Strategy in order to meet the proportionate housing target for the area of around 33 dwellings. The Plan adds a local dimension to the Core Strategy by allowing development *“that is contiguous with the existing village centre; that is on a site which immediately adjoins the centre as shown on the Policies Maps, or is within or abuts a group of existing buildings which are contiguous with the centre”*.

57. I have concerns that the policy and supporting text as drafted allows a degree of uncertainty around the definition of “contiguous”. The phrase in the policy *“or is within or abuts a group of existing buildings which are contiguous with the centre”* does not clearly state that this should relate to a group of existing buildings, existing before the Plan was made and are contiguous with the existing centre. This could lead to an interpretation that development is acceptable which is contiguous with new development, granted since the Plan was made and is contiguous with the centre.

58. I appreciate the policy contains an overall restriction that development should reflect the “character of the village and relate directly to the existing built form in the immediate vicinity”. However, individual large-scale schemes can more readily be identified as out of character with a village and its built form. In the face of successive smaller incremental development proposals it may be difficult to demonstrate that the individual small-scale development was out of character or did not relate to the built form of a village.

59. During the examination, I forwarded two sets of further questions to the Council and WGPC in an effort to resolve these concerns. I received responses as listed above.

60. I do not accept the WGPC view that on account of the sluggish house building trends in the locality and the current reluctance of landowners to sell land there is sufficient market control to definitely resist significant incremental ribbon development. Also, I cannot accept that the encouragement in the policy for “cluster” development necessarily allows adequate scope to control ribbon development. Reliance on these factors is uncertain and the policy needs to be clearer as to how it limits incremental ribbon development.

61. Adequate clarity and control can be achieved by adding further explanation to the policy which establishes that it does not allow development which only abuts new development granted since the Plan was made and as illustrated on the relevant policies map. WGPC and the Council have indicated their acceptance of this modification in their response titled “Clarification of Herefordshire Council’s

Responses and Plan Changes to Comply with the Examiner's Requests of 4 June 2018".

62. Figure 7 in the Plan provides an example of the manner in which the concept of "contiguous" can be interpreted which is useful. Whilst the figure 7 is only an example it will be relied upon for interpretation of the policy. Following my first request for clarification during the examination, WGPC produced an amended version of figure 7 that shows more clearly acceptable and unacceptable development options. However, in my further questions of 4/6/18 I expressed concerns that it needs to show additional unacceptable development to illustrate more clearly that incremental and ribbon development is unacceptable. This was done satisfactorily in a response to my questions of 4/6/18.

63. I consider that with these modifications to the Plan, together with other policies controlling the location, scale and design of development there are adequate controls to assimilate development into the Plan area and meet the specified housing target.

64. WGPC wish to omit the phrase "*These will include single developments for more than 10 dwellings, in each of the villages of Bredwardine and Preston-on-Wye and the remainder on smaller sites mainly in Moccas*". I agree that the use of the term "will" implies that these larger schemes are preferred and could prohibit smaller schemes coming forward. The phrase is unnecessary and confusing. Following grant of some smaller schemes it could make it difficult to resist a subsequent scheme for 10 or more dwellings which was in excess of the housing targets or out of scale with the village infrastructure.

65. I note the Council's Strategic Planning Team has commented "*it could be made clearer that this policy relates to new housing development in villages, rather than all new housing development*". I do not think this is necessary as it is clear the policy relates to villages and their centres and there are separate policies relating to other locations for housing such as open countryside.

RECOMMENDATION 1

At the end of the first paragraph of the Policy WHO1 insert the following sentence to form part of the policy:

" Housing Development which only abuts new development granted since this Plan was made or updated and not shown on the Plan's policies maps as existing development will not be allowed."

Replace figure 7 in the Plan with the relevant text and three components of figure 7 forwarded by WGPC in the response to my questions titled "Clarification of Herefordshire Council's Responses and Plan Changes to Comply with the Examiner's Requests of 4 June 2018". For the avoidance of doubt this includes all the text and diagrams and map in this response

document from *“A diagram and plan layout - showing a Phase I and II New Housing Development...etc.”* on page 4 of the document to *“out in policies WH03, WH04 and WH05 below.”* on page 5.

POLICY WHO2 - Ensuring an appropriate range of Tenures, Types and Size of Houses

66.The policy only identifies Bredwardine and Preston-on-Wye as capable of accepting development of more than 10 dwellings.

67.Core Strategy policy RA 2 identifies Moccas as a village capable of accepting a reasonable scale of development and the Plan consultation identified that “eight new properties were acceptable by the majority in the village of Moccas”. Whilst it is more likely this scale of development (more than 10 dwellings) could be achieved in the other two settlements under the Core Strategy policy there is a possibility, albeit remote, that a scheme for more than 10 dwellings would be acceptable in Moccas. The Plan does not provide a sufficient rationale as to why Moccas has not been referred to in the policy.

68.I note that WGPC has concerns about development of some sites in Moccas that are sensitive in environmental terms but there are adequate policy controls in this Plan and the Core Strategy to be able to resist proposals if there are valid grounds.

69.The reference to Core Strategy policy H1 is incorrect as the requirement for affordable housing applies to any scheme of over 10 dwellings not just those in Bredwardine and Preston-on-Wye.

70.In order to avoid confusion with the interpretation of policy H1 I recommend therefore that the policy simply cross-refers to the general policy requirement for 10 dwellings.

RECOMMENDATION 2

In the second sentence of Policy WHO2 delete “in Bredwardine and Preston-on-Wye”.

REMAINDER of the PLAN

71.I have checked the remainder of the Plan in relation to the examiner’s recommendations as referred to in his report issued on the 1st September 2017. These have largely been incorporated into this version of the Plan. There are, however, some cases where the examiner’s recommendations have not been followed and I have considered the need for compliance with these, below.

Policy WHDO1 – New Building Design

72. The examiner recommended that in the introductory text to the second part of the policy, delete the words “*If prior approval exists with permitted development*” and replace by “Where prior approval is required under the provisions of the General Permitted Development Order.

73. I note this recommendation has not been followed and I consider that the wording used in the Plan is confusing and not an accurate representation of the “prior approval” process. I recommend this be corrected as recommended previously.

RECOMMENDATION 3

In the second part of policy WHDO1 delete “If prior approval exists with permitted development” and replace by “Where prior approval is required under the provisions of the General Permitted Development Order.

Policy WE03 - Protecting green infrastructure, Heritage Assets and Local Green Space

74. The Council’s Strategic Planning team has commented that the green space designation in Bredwardine is not considered appropriate, as it is an extensive tract of land and does not conform to the NPPF advice in paragraph 77 that green space should be “local in character and not an extensive tract of land”.

75. The green space is described as two orchards that are well used as a haven of tranquility by villagers. The area has strong historical associations with Rev. Robert Kilvert who apparently enjoyed walking in these areas.

76. The previous examiner did not raise issue with the size and considered it appropriate as green space. I support this view on account of the strong local associations and that the size of the space is readily accessible from the village on foot and is located close to the River Wye SAC.

77. I note that in the second response to my questions during the examination WGPC were suggesting a potential further local green space designation in Moccas. I am not able to accept this proposal at this stage as it has not been subject to the procedural public consultation requirements.

Policy WE04 - Renewable Energy

78. The examiner recommended that the supporting text should include a definition of the term ‘historical building’ which is referred to in the policy. I do not consider this has been done satisfactorily as the supporting text only refers to listed buildings. There may be other buildings whilst not listed, merit non-designated heritage asset status in accordance with paragraph 135 of the NPPF and are worthy of protection from significant insertion of items such as solar panels. In this context, the term

“historical building” is imprecise. I consider the policy requires alteration to achieve precision and reflect the NPPF advice on non-designated heritage assets.

79. There is also a minor typing error in the supporting text referred to in my recommendation.

RECOMMENDATION 4

Alter the second bullet point of policy WE04 as follows:

“Solar panels, including ground-based panels, are permitted on the roofs or curtilages of listed buildings if it can be proved there is no harm to the building or its setting. In the case of buildings considered to be non-designated heritage assets a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

SUMMARY

80. I have completed a further examination of the Neighbourhood Development Plan.

81. The WGPC has carried out an appropriate level of consultation.

82. I have taken into account the previous examination completed by Mr. Mattocks, BSc, DipTP, MRTPI, and FRGS, issued on 1st September 2017. I have checked to see whether the revised Plan incorporates the recommended modifications from the previous examination. I have also taken into account further comments received as part of the consultation under Regulation 16 on the Neighbourhood Planning Regulations 2012.

83. I am satisfied the plan meets the basic conditions, subject to recommended modifications.

84. I have recommended modifications to some policies in order to satisfy the basic conditions. In particular, the modifications are concerned to ensure that the Plan provides a clear basis for decision making in accordance with the NPPF and strategic development plan policies.

85. I am satisfied that the Plan meets the procedural requirements of Schedule 4B of the Town and Country Planning Act 1990.

86. I am required to consider whether the referendum area should extend beyond the Neighbourhood Plan area and if it is to be extended and the nature of that extension.

87. There is no evidence to suggest on the basis of the policies proposed that the referendum area should extend beyond the boundaries of the plan area as they are

currently defined.

88.I recommend that the Neighbourhood Plan should proceed to a referendum based on the neighbourhood area authorised by Herefordshire Council.

89.I am therefore pleased to recommend that this Neighbourhood Development Plan as modified by my recommendations should proceed to a referendum.

