

Neighbourhood Planning Guidance Note 32

Examination of Neighbourhood Development Plans

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This guidance note explains the process that Herefordshire Council will undertake for the examination stage of Neighbourhood Development Plans.

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Examination of Neighbourhood Development Plans

Once you have completed your Neighbourhood Development Plan, an important part will be the independent examination. All Neighbourhood Development Plans need to meet what are known as 'basic conditions' and the purpose of the independent examination is to ascertain whether these conditions have been met.

This guidance note aims to set out Herefordshire Council's responsibilities in the independent examination of Neighbourhood Development Plans. It takes into account the Neighbourhood Planning Regulations 2012, the 1990 Town and Country Planning Act (as amended) and the Localism Act 2011.

The 1990 Act gives local planning authorities a statutory duty to advise and assist parish councils in the preparation of Neighbourhood Development Plans. It also states that they have a duty to make arrangements for independent examination of the plan.

The 'basic conditions'

Before thinking about moving your plan to submission and the examination it will be important to consider whether you feel that the plan has met all of the required 'basic conditions' which the plan will be judged on. Plans will only be successful at the inspection if all of these basic conditions can be demonstrated.

These basic conditions are that the plan must be:

- Appropriate having regard to national policy;
- Contributing to the achievement of sustainable development;
- In general conformity with the strategic policies in the development plan for the local area;
- Compatible with Human Rights requirements; and
- Compatible with EU obligations.

Advice can be obtained from your Neighbourhood Planning Support Officer throughout the preparation of your plan which regards to these conformity issues. For more information refer to Guidance Note 35: Basic Conditions.

Once you consider that all the basic conditions have been successfully met, your plan can begin the more formal stages of the Regulations - submission and independent examination. A basic conditions checklist is available on the website - NDP2, and it is suggested that this is completed and submitted with your plan when you have reached the 'submission' stage.

The examination process

Once your Neighbourhood Development Plan has been submitted to the Neighbourhood Planning team, this starts the first stage of the examination process. Therefore, it is important that the plan you submit is the plan you wish to be examined.

Your submitted plan will be checked to ensure it meets the requirements of the regulations and then will be advertised on the Council webpages and within the parish via site notices for a period of 6 weeks. Comments submitted during this period will be forwarded to the examiner for consideration.

A recommendation whether to move forward to the examination will be made with final approval being given by the Assistant Director.

Appointment of the examiner

The examiner is appointed, and paid for, by Herefordshire Council, but we will consult your parish council before the final decision is made. This is because we need to ensure that the independent examiner meets the following criteria before they are appointed:

- Independent of the parish council;
- Have no interest in any land that may be affected by the draft plan; and
- Have the appropriate qualifications and experience.

The examiner can be employed from a variety of sources, including planning consultants, The Neighbourhood Planning Independent Examiners Referral Service (NPIERS), officers from another local authority or from the Planning Inspectorate.

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Following appointment of an examiner

The Neighbourhood Planning team will send the Neighbourhood Development Plan to the independent examiner, as soon as one is appointed together with any representations received during the submission consultation.

The documents to be sent to the examiner include:

- A map of the Neighbourhood Area, identifying the area to which the plan relates;
- A consultation statement;
- The proposed Neighbourhood Development Plan;
- A note stating how the plan meets the basic conditions of Schedule 4B of the 1990 Act (known as the “basic conditions statement”) including how the plan:
 - a) Complies with national planning policy and guidance;
 - b) Contributes to the achievement of sustainable development;
 - c) Is in general conformity with the strategic policies of the development plan; and
 - d) Meets European legislation and Human Rights obligations; and finally
- Any relevant environmental assessments (where appropriate).

The examination

The Neighbourhood Planning team will make the necessary arrangements for the examination. Generally examinations will be by written representations rather than by public hearing. It is Government’s intention that the examination will not include a public hearing according to Planning Practice Guidance. However, the examiner can call a public hearing on two grounds:

- To examine a key issue in more depth; or

- To ensure a person has a fair chance to put a case forward.

If there is a public hearing, the examiner will decide the format. For example, how questions are to be posed to another individual and the time allowed for questioning. All the questioning will be done by the examiner. The cost of holding a public hearing remains the responsibility of Herefordshire Council.

What is the Independent Examiners Role?

The examiner will only be testing whether the plan meets with the basic conditions and other relevant legal requirements. Therefore, whilst representations will assist them in reaching their view, there will be no analysis of the soundness of your plan or other material considerations. The basic conditions are all that are considered.

Your Support Officer will be able to offer you advice throughout the production of your plan to help ensure that you can demonstrate that all the basic conditions have been met.

The examiner’s report

Once the examination is concluded the examiner will send their report to Herefordshire Council. The report will set out the extent to which your draft plan meets with the basic conditions, and if any modifications are needed to ensure the plan does meet these requirements. The report will give the reasons for each recommendation and contain a summary of its findings.

The examiner then has three options:

- That the plan proceeds to referendum as submitted;
- The plan is modified to meet the basic conditions and then the modified version proceeds to referendum;
- That the plan does not proceed to referendum.

The examiner will also consider the extent of the referendum area. As a rule this will mirror your Neighbourhood Area boundary. However, they may feel that some of the proposals/policies within your plan will have a direct impact on those

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living within the adjacent parish. For example, allocation sites on the boundary of the Neighbourhood Area. If this is the case, the referendum area will be extended to include those areas it is considered will be affected.

It will therefore be important to consider this possibility during the early stages for your plan production. Consultation with your neighbouring parish councils will be vital if proposals are close to your parish boundary.

After the report is received

Once the examiner's report has been received, your Support Officer will arrange for it to be made available on the Neighbourhood Planning webpages.

The examiner's report is not binding, but it is always suggested to carefully consider the recommendations made. Your Support Officer will produce a report known as 'the Decision Statement'. Each of the examiners' recommendations will be considered and any proposed modifications and reasons for them will be outlined. The recommendations within the document will be compiled in conjunction with you and as outlined within the Service Level Agreement, the Decision Statement will be available for approval 4 weeks following the receipt of the examiner's report. The purpose of the Decision Statement is to ensure that all the basic conditions are still met once any modifications have been made. The Decision Statement requires final approval from the Assistant Director to move forward to referendum stage.

Consideration will also be given to any recommendation by the examiner to extend the referendum area, as per the reasons highlighted above. A map will be published to show the extent of the referendum area.

Publication of the Decision Statement

Following the approval of the Decision Statement, it will be placed on the Neighbourhood Planning webpages and a copy will be sent to your Clerk. All those who wished to be informed of the decision and reasons will also be notified of when and where the document will be available. The Service Level Agreement indicates that this

should take place 4 weeks following the receipt of the examiner's report.

Progress to referendum

Once the Decision Statement has been published and your plan has met the basic conditions and is compatible with European legislation and the Human Rights Act 1998 (as amended), the plan will move to referendum. The Service Level Agreement recommends that the referendum will take place within 60 days of the Decision Statement being published, (unless European, National or Local elections have been called). Further information on the referendum is available within Guidance Note 33: Guide to Neighbourhood Development Plan Referendums.

Examination of Neighbourhood Development Plan

Neighbourhood Planning guidance notes available:

Deciding to produce a Neighbourhood Development Plan

1. Which is the right tool for your parish
2. What is a Neighbourhood Development Plan
3. Getting started
4. A guide to procedures
5. Funding

Plan Production

6. Developing a Vision and Objectives
7. Generating options
8. Writing planning policies
9. Environmental Assessment
10. Evidence base and information requirements
11. Implementation and Monitoring
12. Best practice community engagement techniques
13. Statutory consultees
14. Writing a consultation statement
15. Planning and other legislation
16. Web enabling your plan
17. Using OS based mapping
18. Glossary of planning terms

Topics

19. Sustainable Water Management in Herefordshire
20. Guide to settlement boundaries
21. Guide to site assessment and choosing allocation sites
22. Meeting your housing requirements
23. Conservation issues
24. Recreational areas
25. Renewable energy
26. Transport issues
27. Community Infrastructure Levy

Additional Guidance

28. Setting up a steering group
29. Creating a questionnaire
30. Community facilities
31. Conformity with the Local Plan (Core Strategy)
32. Examinations of Neighbourhood Development Plans
33. Guide to Neighbourhood Development Plan Referendums
34. Tourism
35. Basic Conditions
36. Your plan - Contributing to sustainable development