

Calderdale MBC

**Wards Affected:
Park**

Cabinet



Park Ward Neighbourhood Plan – Examiner’s Report

Report of Director of Regeneration and Strategy

1. Purpose of Report

- 1.1 Park Ward Neighbourhood Forum has prepared a Neighbourhood Development Plan for the Park Ward Neighbourhood Plan Area. This report requests that Cabinet agree the Examiner’s recommendations and other minor, non-material modifications to enable the Neighbourhood Plan to proceed to Referendum. The Park Ward Neighbourhood Plan Examiner’s Report is attached at Appendix 2 to this report. Appendix 3 sets out a Decision Statement which includes the Council’s proposed response to the Examiner’s recommended modifications.

2. Need for a decision

- 2.1 Following receipt of the Examiner’s Report, legislation requires that the Council consider each of the modifications recommended, the reasons for them, and decide what action to take. The Council is also required to consider whether to extend the area to which the referendum is to take place. These decisions are outside officers’ delegation.

3. Recommendation

- 3.1 Cabinet is asked to:

- i. Agree the Examiner’s modifications and other minor non-material modifications (set out in Appendix 3, Tables 1 and 2) to the Park Ward Neighbourhood Plan and that subject to those modifications the Neighbourhood Plan meets the Basic Conditions and other legislative requirements.

Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

- ii. Agree that the Park Ward Neighbourhood Plan as amended proceeds to a local referendum based on the boundary of the designated Park Ward Neighbourhood Area as recommend by the Examiner.

Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

- iii. To approve the Decision Statement attached at Appendix 3 to be published on the Council’s website.

Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

4. Background

- 4.1 The Localism Act 2011 introduced new powers for community groups to prepare neighbourhood plans for their local areas. The Council has a statutory duty to assist communities in the preparation of Neighbourhood Plans and to take plans through a process of Examination and Referendum. The local authority is required to take decisions at key stages in the process within time limits that apply, as set out in the Neighbourhood Planning (General) Regulations 2012 as amended in 2015 and 2016 (“the Regulations”) and within recent government guidance in relation to the Covid-19 pandemic.
- 4.2 The Park Ward Neighbourhood Plan has been prepared by Park Ward Neighbourhood Forum with on-going engagement with the local community and Calderdale Council. Prior to Examination it has been through the following stages of preparation:
- Designation as a Neighbourhood Area Forum (2nd October 2014)
 - Re-Designation as a Neighbourhood Area Forum (27th April 2016)
 - Consultation on Pre-Submission Version (26th March 2019 to 7th May 2019)
 - Submission to Calderdale Council (4th February 2022)
 - Submission Consultation (10th February 2022 to 24th March 2022)
 - Examination – Examination commenced 12th July 2022
 - Examiner’s Report Received 6th October 2022
- 4.3 Following the close of Submission consultation and with the consent of the Neighbourhood Forum, Mr Tony Burton CBE MPhil (Town Planning) FRIBA FRSA was appointed to undertake an Independent Examination of the Neighbourhood Plan. The purpose of the Examination is to consider whether the Plan complies with various legislative requirements and meets a set of “Basic Conditions” set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. The Basic Conditions are:
- i. To have regard to national policies and advice contained in guidance issued by the Secretary of State;
 - ii. To contribute to the achievement of sustainable development;
 - iii. To be in general conformity with the strategic policies contained in the development plan for the area;
 - iv. To not breach, and be otherwise compatible with, EU and European convention on Human Rights obligations; and

- v. To be in conformity with the Conservation of Habitats and Species Regulations 2017(3).
- 4.4 The Examiner can make one of three overall recommendations on the Neighbourhood Plan namely that it can proceed to referendum (i) with modifications; (ii) without modification; or (iii) that the Plan cannot be modified in a way that allows it to meet the Basic Conditions or legal requirements and should not proceed to referendum.
- 4.5 Modifications can only be those that the Examiner considers are needed to:
 - i. make the plan conform to the Basic Conditions
 - ii. make the plan compatible with the Convention rights
 - iii. make the plan comply with definition of a neighbourhood plan and the provisions that can be made by a neighbourhood plan or
 - iv. to correct errors.
- 4.6 If a recommendation to go to a referendum is made, the Examiner must also recommend whether the area for the referendum should go beyond the Neighbourhood Area, and if so what the extended area should be.
- 4.7 The Regulations presume that Neighbourhood Plans will be examined by way of written evidence only, with a requirement for a hearing only in cases where the Examiner feels the only way to properly assess a particular issue is via a discussion with all parties. The Examiner decided that examination by written representations was appropriate in this case and provided his final report on 6th October 2022.

Examiner's Recommendations

- 4.8 Overall, the Examiner's Report concluded that he was "satisfied *the Park Ward Neighbourhood Plan meets the Basic Conditions and other requirements subject to the modifications recommended in this report and that it can proceed to a referendum. I have received no information to suggest other than that I recommend the referendum area matches that of the Neighbourhood Area*".
- 4.9 Positively the Examiner also identifies that: "*producing the Park Ward Neighbourhood Plan has clearly involved significant effort over many years led by the Steering Group. The process began in 2014 and is informed by significant community involvement*".
- 4.10 Appendix 2 sets out the Examiner's proposed modifications to the Neighbourhood Plan.

Other Recommendations

- 4.11 CMBC Officers and the Park Ward Neighbourhood Forum have also agreed to make minor non-material modifications where appropriate to paragraphs 6.30 to 6.32 in regard to the Queens Road Neighbourhood Centre, in order to reflect the most up to date position in regard to the use and condition of the building.

Next Steps

4.12 The next stage of the relevant legislation requires the Council to:

- Consider each of the recommendations (Appendix 3 Table 1) made by the Examiner's Report (and the reasons for them), along with the other minor non material modifications (Appendix 3 Table 2) and
- Decide what action to take in response to each recommendation.

4.13 If the LPA is satisfied that the Neighbourhood Plan meets the Basic Conditions, is compatible with the Convention rights, and complies with the definition of an NP and the provisions that can be made by a NP or can do so if modified (whether or not recommended by the Examiner), then a referendum must be held.

4.14 The Council must publish its decision and its reasons for it in a 'Decision Statement'. The Decision Statement must be published within 5 weeks beginning with the day following receipt of the Examiner's Report unless an alternative timescale is agreed with the Neighbourhood Forum. In this instance, Park Ward Neighbourhood Forum has agreed to an alternative timescale in order to allow Cabinet to discuss the recommendations to proceed to referendum and agree to publish the decision statement.

4.15 The Examiner's recommendations on the Neighbourhood Plan are not binding on the Council, who may choose to make a decision which differs from the Examiner's. However, any significant changes from the Examiner's recommendations would require a further period of public consultation, along with a statement from the Council setting out why it has taken this decision.

4.16 A decision to refuse the Neighbourhood Plan proposal could only be made on the following grounds:

- the LPA is not satisfied that the Neighbourhood Plan meets the Basic Conditions;
- the LPA does not believe that with modification Neighbourhood Plan can meet the Basic Conditions;
- the LPA considers that the Neighbourhood Plan constitutes a repeat proposal; or
- the LPA does not believe the qualifying body is authorised or
- that the proposal does not comply with that authorisation.

4.17 The Examiner's Report concludes that the Neighbourhood Plan meets the Basic Conditions required by legislation, and that subject to the modifications proposed in his report, the Neighbourhood Plan should proceed to a referendum to be held within the Neighbourhood Area. Officers have considered all of the recommendations and the Examiner's reasons for them and have set out the Council's response as part of the Decision Statement in Appendix 3.

- 4.18 It is recommended that all of the Examiner's recommended modifications be made as set out in Appendix 3, Table 1. The Officer recommendation is that subject to those modifications the Plan meets the Basic Conditions, is compatible with the Convention Rights and complies with the provisions that can be made by a Neighbourhood Plan. Subject to the Cabinet's agreement of the Decision Statement, the Neighbourhood Plan will be amended accordingly, and the Neighbourhood Plan will proceed to local referendum.
- 4.19 It is also recommended that the minor non material modifications set out in Appendix 3, Table 2 are made accordingly.

Referendum

- 4.20 The Council must organise a referendum on any Neighbourhood Plan that meets the legislative requirements. This ensures that the community has the final say on whether a Neighbourhood Plan comes into force.
- 4.21 The Examiner's Report confirms that the referendum area should be the same as the Neighbourhood Area designated by the Council. The Neighbourhood Planning (Referendum) Regulations 2012 as amended require the Local Planning Authority to hold the referendum within 56 days (excluding weekends and bank holidays) of the date that a decision to hold one has been made. Assuming Cabinet endorse the recommendations in this report, it is anticipated that the referendum will be held within the 56-day period set out in the amended Regulations. The date for the referendum is proposed as the 9th February. Further details will be publicised should cabinet agree to proceed towards a referendum.
- 4.22 If over 50% of those voting in the referendum vote in favour of the Neighbourhood Plan, then under the legislation the Council must bring it into force within 8 weeks of the result of referendum (unless there are unresolved legal challenges). If the referendum results in a "yes" vote a further report will be brought to Cabinet with regard to the formal adoption of the Neighbourhood Plan as part of the statutory Development Plan.

Decision making

- 4.23 As the Plan is now at an advanced stage, its policies where relevant have legal weight in decision making with regards to any planning applications to be determined within the Park Ward Neighbourhood Area. This is reflected in The Neighbourhood Planning Act 2017 which recognises that, when determining an application, a LPA must have regard to "a post examination draft neighbourhood development plan as far as material to the application". If a LPA make a decision to allow a draft neighbourhood plan with modifications to proceed to referendum, then the modifications recommended must also be taken into account.
- 4.24 In light of the Covid-19 pandemic the government published updated guidance on the weight of the Neighbourhood Plan policies. This recent government guidance states that 'where the local planning authority has issued a decision statement (as set out under Regulation 18 of the Neighbourhood Planning (General) Regulations 2012) detailing its intention to send a neighbourhood

plan to referendum, that plan can be given 'significant weight' in decision-making, so far as the plan is material to the application'.

5. Options considered

5.1 The following alternative options have been identified and rejected for the reasons as set out below:

- i. That Cabinet provide modified recommendations to those made by the Examiner and, if considered to be significant, agree that these will be subject to further consultation along with a statement explain why the decision differs from the Examiner's.

This option is not considered appropriate as the proposed modifications make the Neighbourhood Plan more robust and enable it to meet the Basic Conditions.

- ii. That Cabinet reject the Examiner's recommendations and refuse the Neighbourhood Plan proposal. This decision can only be justified on the grounds listed under paragraph 4.16 above;

This option can only be justified if the Examiner recommends that the Plan should not proceed to a referendum, or the Council is not satisfied that the plan has met the procedural and legal requirements. This option is not considered appropriate.

5.2 Officers request that Members endorse the recommendations in paragraph 3.1 of this report and agree with the Examiner's Recommendations and approve the Decision Statement attached at Appendix 3 to enable the Park Ward Neighbourhood Plan to proceed to Referendum.

6. Financial implications

6.1 The responsibility and therefore the costs of the Examination and Referendum stages of the Neighbourhood Plan production lie with Calderdale Council. Table 1 below sets out a breakdown of the non-staffing costs of producing the Park Ward Neighbourhood Plan to date and also sets out the approximate costs associated with the Referendum.

Stage	Cost
Designation consultation	£400
Submission consultation	£750
Examination	£5,000
Referendum	Circa £7,000 (TBC)
Total	£13,150

Table 1: Breakdown of costs associated with preparing Park Ward Neighbourhood Plan

6.2 There is also a significant level of officer costs required throughout the process to provide the required support to each of the Neighbourhood Planning Bodies. A significant level of officer input at an appropriate level is needed throughout the process to ensure legal conformity, appropriate plan content, technical

advice, including provision of mapping and assistance with Strategic Environmental Assessment (SEA) and Habitat Regulation Assessment (HRA).

- 6.3 Financial support from Central Government is available for Local Planning Authorities (LPAs) involved with Neighbourhood Plans. LPAs can claim £5,000 for the designation of neighbourhood areas and £5,000 for approving a Neighbourhood Forum. A maximum of 5 neighbourhood areas and 5 neighbourhood forums can be claimed for any one Local Authority. Local Planning Authorities can also claim £20,000 from when they issue a decision statement detailing their intention to send the plan to referendum (as set out under Regulation 18 of the Neighbourhood Planning (General) Regulations 2012).

7. Legal Implications

- 7.1 The Legal implications are set out within the body of this report. The decision to proceed to referendum is, like all decisions of a public authority, open to challenge by Judicial Review. The risk of any legal challenge to the Neighbourhood Plan being successful has been minimised by the thorough and robust way in which it has been prepared and tested.

8. Human Resources and Organisation Development Implications

- 8.1 None

9. Consultation

- 9.1 As mentioned earlier in the report, the Park Ward Neighbourhood Plan has been through several stages of consultation. These are: consultation on designation as a Neighbourhood Area and Forum (2014), consultation on the Pre-Submission version of the Plan 26th March 2019 to 7th May 2019, consultation on a Submission version (10th February 2022 to 24th March 2022). A Consultation Statement accompanied the submission version of the Neighbourhood Plan and sets out all the consultation undertaken.

10. Environment, Health and Economic Implications

- 10.1 The purpose of Neighbourhood Plans is for parish and town councils or neighbourhood forums to put in place strategy and policies for the future development of their areas. Plans can contain a vision, aims and planning policies and proposals for improving a wide range of social, economic and environmental issues. Park Ward's Neighbourhood Plan Vision is:

Park Ward will be known as an outgoing community based on strong cultural traditions but welcoming and engaging with everyone. It will be recognised as a vital part of Halifax, offering excellent shopping and leisure facilities, employment and training for residents and visitors alike. It will have an environment to be proud of, both business-friendly and family-friendly

11. Equality and Diversity

11.1 The Examiner has confirmed the Park Ward Neighbourhood Plan meets the Basic Conditions (subject to modifications). One of these conditions is that it must be compatible with human rights requirements. Council Officers agree that the plan, with modifications, meets the Basic Conditions.

12. Summary and Recommendations

12.1 The recommendation is to agree the following matters:

- i. Agree the Examiner's modifications and other minor non-material modifications (set out in Appendix 3, Tables 1 and 2) to the Park Ward Neighbourhood Plan and that subject to those modifications the Neighbourhood Plan meets the Basic Conditions and other legislative requirements.

Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

- ii. Agree that the Park Ward Neighbourhood Plan as amended proceeds to a local referendum based on the boundary of the designated Park Ward Neighbourhood Area as recommend by the Examiner.

Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

- iii. To approve the Decision Statement attached at Appendix 3 to be published on the Council's website.

Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

For further information on this report, contact:

Paul Copeland	Planning Strategy Manager
Telephone:	01422 392195 / 07736 175373
E-mail:	paul.copeland@calderdale.gov.uk

The documents used in the preparation of this report are:

1. Park Ward Neighbourhood Plan – Submission Version
2. Examiners Report
3. Draft Decision Statement

The documents are available for inspection at:

Calderdale Council Neighbourhood Plans Web page www.calderdale.gov.uk

