

## **Report to the Cabinet**

**Report reference: C-004-2015/16**  
**Date of Meeting: 11 June 2015**



**Portfolio: Planning Policy**

**Subject: North Weald Bassett Neighbourhood Area Designation**

**Responsible Officer: Ken Bean (01992 564610)**

**Democratic Services: Gary Woodhall (01992 564470)**

---

### **Recommendations/Decisions Required:**

**(1) To agree that the application from North Weald Bassett Parish Council for the designation of the whole Parish for the purposes of preparing a Neighbourhood Plan should exclude an area to the west of the M11 for the following reasons:**

- (a) a number of strategic cross boundary matters have been identified which include, but are not limited to, Green Belt review, cross district boundary agreement of housing and job growth figures, and planning and delivery of key strategic infrastructure;**
- (b) the matters identified in (a) above are not within the remit of a Neighbourhood Plan to address;**
- (c) a comprehensive assessment of all of the possible sites around Harlow (in Epping Forest, Harlow and East Hertfordshire District Council areas) must be carried out to ensure that the most suitable site(s) (if any at all) are allocated for development in local plans for those three Districts; and**
- (d) the proposed area to be excluded from the Neighbourhood Area designation is defined by existing physical and administrative boundaries, and does not cover an area of high existing population.**

### **Executive Summary:**

An application for the designation of a Neighbourhood Area for the purposes of the preparation of a Neighbourhood Plan was received from North Weald Bassett Parish Council on 8 September 2014. At the Parish Council's request, to allow additional time to consider EFDC officers' recommendation, the consideration and determination of the Parish Council's application was deferred at the Cabinet meeting held on 9 March 2015.

The location of North Weald Bassett Parish, immediately adjacent to Harlow's administrative boundary, and the possibility of strategic cross-boundary growth via the Local Plans of Epping Forest, Harlow and East Hertfordshire District Councils, has caused EFDC officers to question the desirability of designating the whole of the Parish as a Neighbourhood Area for neighbourhood planning purposes, at this stage in the preparation of the District Local Plan.

In considering the alternatives available, EDPC officers have sought legal advice from Counsel

specialising in planning law. Having considered that legal advice, officers confirm that the District Council has a broad discretion in determining whether, in the particular circumstances relevant to this application, it is desirable to designate the entire area identified in the application. As a result, officers consider that the north western part of the Parish, bounded by the M11 to the east, the administrative boundary with Harlow to the north, the Parish boundary to the west and the London Road (B1393) and Rye Hill Road to the south, should be excluded from the Neighbourhood Area designation (see attached map at appendix 2).

### **Reasons for Proposed Decision:**

In summary, the reasons for recommending that the Council designate an area smaller than the entire North Weald Bassett Parish are that, having regard to the location of the Parish on the District boundary with Harlow, there are a number of strategic and cross-boundary issues that must properly be considered under the Council's Duty to Cooperate. It is not within the remit of the neighbourhood planning process to address and deliver matters including, but not limited to, Green Belt review, cross-boundary agreement of housing and job growth figures, and the planning and delivery of key strategic infrastructure.

### **Other Options for Action:**

- (i) To designate the whole of North Weald Bassett Parish area as a Neighbourhood Area.
- (ii) To designate the whole of North Weald Bassett Parish area as a Neighbourhood Area, alongside a memorandum of understanding (or similar) setting out the matters which can be addressed and desired sequencing of plan preparation.
- (iii) To designate alternative areas of the Parish, as per part g. of Appendix 1.

As a result of the legal advice received from Counsel, officers do not consider that option 2 (above) would be lawfully available to the Council.

### **Report:**

1. Neighbourhood planning was introduced as part of the Localism Act 2011. It enables town/parish councils and neighbourhood forums to actively participate in plan making by preparing Neighbourhood Development Plan (NDP). Once a NDP has been independently examined, approved by way of a local referendum and subsequently 'made' by the local planning authority (LPA), it will form part of the statutory development plan. As such, planning decisions must be taken in accordance with the NDP as part of the development plan. NDPs can include housing and employment land allocations, policies and design statements; they can be as simple or as complicated as the town/parish council choose. Crucially, the NDP must be in general conformity with national planning policy as well as the strategic policies of the LPA's Local Plan.

2. To date, in Epping Forest District seven applications for the designation of neighbourhood areas have been received from parish councils and the Council has designated six of these, all of which have included the whole parish identified in each application. The seventh application is the subject of this report. In each of the areas that have been designated to date no matters of a strategic nature have been identified and, in accordance with the regulations, it was considered desirable and appropriate for the whole of the parish areas to be designated as neighbourhood areas.

3. In a parished area a LPA is required to have regard to the desirability of designating the whole of the area of a parish or town council as a neighbourhood area (s. 61G(4) of TCPA 1990 refers). The LPA should take into account the parish or town council's statement explaining why

the area applied for is considered appropriate to be designated as such. Whilst the LPA should aim to designate the area applied for, it can refuse to do so if it considers the area is not appropriate. Where it does so, the LPA must give reasons. Therefore, LPAs have some flexibility in determining whether it is desirable to designate the whole parish and subsequent case law supports this approach. In *R (Daws Hill Neighbourhood Forum) v Wycombe District Council, (2013)* the Court of Appeal confirmed that the LPA has a broad discretion as to the area which it considers appropriate to designate as a neighbourhood area and that, on the facts of the case, the LPA had not acted unlawfully by designating a smaller area than that which had been applied for. The key matter in that case was that the areas excluded from the designation contained two strategic development sites, (as allocated in the Core Strategy), and that the LPA did not consider it was desirable for these areas to be included as part of the Neighbourhood Area.

4. Local Plan preparation for Epping Forest District is at a stage where it is not yet known whether and to what extent it will be necessary to include any strategic land allocations within the emerging Local Plan and, in the event that it is appropriate to include one or more strategic land allocations, their location.

5. North Weald Bassett Parish Council made an application for designation of a Neighbourhood Area on 8 September 2014. It was recognised that this application and any such subsequent application which includes land immediately adjacent to the administrative boundary of Harlow, is likely to raise issues of cross boundary/strategic concern. Therefore, legal advice has been sought from Counsel specialising in planning law as to the desirability and legality of a range of alternatives regarding the determination of the Parish Council's application for designation as a Neighbourhood Area. Those alternatives are:

- (i) to designate the area as applied for (i.e. the whole Parish);
- (ii) to designate the area as applied for, and draft a Memorandum of Understanding (or similar) between the Parish Council and District Council, setting out the strategic matters and areas that would be outwith the remit of the Neighbourhood Plan, and suggested sequencing to take forward the Neighbourhood Plan; or
- (iii) to designate a smaller area of the parish.

6. It is clear that the 1990 Act (s. 61G(5)) confers on the Council a broad discretion as to whether it is appropriate to designate the entire parish, or any part thereof, as a neighbourhood area. In respect of the first and third alternatives, (above), it is for the Council to determine whether it is desirable to take such action, and that a clear process would likely make such decisions lawful. Officers considered in detail the second option as a potential solution to consideration of complex and strategic issues in the broader Harlow area, and were particularly keen to pursue this alternative should it be confirmed as a lawful option. However, following advice received, it was determined this action would not be lawful as the Regulations make no allowance for conditional designation of neighbourhood plan areas.

7. In considering the application for designation before the District Council by North Weald Bassett Parish Council, and any others that may be made by parishes that include cross boundary or strategic matters, it is important to set out a clear structure for how such applications will be considered. At the meeting held on 13 April (2015 report C-078-2014/15 refers) the Cabinet agreed to apply a detailed set of criteria when determining the designation of a Neighbourhood Area. As the Local Plan process evolves and strategic site allocations are identified throughout the District, it will be necessary to consider all subsequent applications for then designation of neighbourhood areas against the same criteria.

8. Application of the detailed criteria enables a consistent approach to be taken when

considering applications for neighbourhood areas. This ensures that, prior to designation, any known and potential strategic and cross boundary matters that should rightfully be addressed by the District Council under the Duty to Cooperate are identified and assessed.

#### Application by North Weald Bassett Parish Council

9. The Parish Council's application received on 8 September 2014, was advertised subsequently with the period allowed for representations between 22 September and 31 October 2014. A single representation was received from Boyer Planning, on behalf of the promoters of land at Latton Priory, to the north-west of North Weald Bassett Parish and on the boundary with Harlow District Council. This representation did not raise an objection to the designation of the Parish as a neighbourhood area but opined that there may be some logic to using the M11 as a dividing line in the Parish suggesting that only the eastern portion of the Parish should be designated. In the event that the District Council were inclined to designate the whole of the Parish, Boyer Planning have established that they would be willing to contribute information as it relates to Latton Priory to aid the preparation of a Neighbourhood Plan.

10. Further to the period for representations ending, and as a result of the representation received from Boyer Planning, EFDC officers canvassed the views of Harlow District Council officers. In response Harlow officers stated "*In order to secure the proper strategic planning of the area I consider that it would be premature to include sites on the edge of Harlow, but in Epping, within the area of the NWB Neighbourhood Plan. This should only be considered once agreement has been reached between the respective LPA's on the housing numbers across the area. Even then growth around Harlow should be considered in the context of perhaps a joint Area Action Plan.*"

11. The established criteria referred to above have been applied in respect of this proposed Neighbourhood Area designation and the resulting analysis is set out at Appendix 1. In this case it is clear there are a number strategic and cross boundary issues that must be analysed, discussed and agreed at the district level. It is not within the remit of the neighbourhood planning process to deal with matters including the overall establishment of housing and job growth figures, strategic transport matters and green belt boundary review. Furthermore, the Duty to Cooperate requires that EFDC continues to work closely with neighbouring authorities and other key regulatory and infrastructure provision organisations, and at this level such matters are beyond the remit of the neighbourhood planning function.

12. North Weald Bassett Parish Council wrote to EFDC on 19 April 2015 requesting further information regarding the legal advice received in respect of the option considered of establishing a memorandum of understanding; in particular clarification as to why EFDC consider the creation of such an agreement to be unlawful. EDFC's response of 23 April 2015 reiterated that the District Council has yet to publish its consultation draft Preferred Option Local Plan and, as such, no decision has been taken on the allocation of sites to deliver proposals for development. The letter also made reference to the Court of Appeal's decision in the Daws Hill case and referred to in paragraph 3 above. This decision confirmed that the discretion conferred on the Council is broad and should be based on the specific factual and policy position that exists relevant to the neighbourhood area application at the time of determination. In respect of the memorandum of understanding option EFDC's letter explained, with reference to the salient sections of the 2004 Act (as amended), that the statutory provisions establishing neighbourhood planning do not include any power to enter into a memorandum of understanding and, consequently, any attempt to exercise such a purported power is likely to be ultra vires.

13. The Parish Council wrote again on 28 April 2015, also referring to the decision of the Court of Appeal in the Daws Hill case, highlighting what the Parish Council considered to be a fundamental difference between the current situation in the Parish and the Daws Hill case where the two relevant sites had already been designated / categorised as strategic sites and progress

was well under way in terms of their development. The letter goes on to express the Parish Council's view that EFDC's basis for excluding part of the Parish from the Neighbourhood Plan area, "is not a sound and valid reason by virtue of the current status of its Local Plan process and that strategic sites have not been agreed and intends to challenge this decision for the benefit of its residents." The letter then advises that the Parish Council is taking legal advice on the matter. The Council's response sent on 12 May advised that the Parish Council's further representations would be taken into account in drafting this report.

14. In considering the most appropriate area to be designated, careful regard has also been had to the Government's Planning Policy Guidance and legal advice. Consequently, in accordance with section 61G(4) of the 1990 Act, it is not considered desirable to designate the whole of North Weald Bassett Parish area as a neighbourhood area. There are no clear parameters for how an amended designation should be formulated, but it would appear reasonable to ensure that any such revised designation is created on the basis of known factors. To this end, and for reasons set out in detail in Appendix 1, it is suggested that the area at the north western extent of North Weald Bassett Parish, bounded by the M11 motorway in the east, the District administrative boundary in the north, the parish boundary in the west and the London Road (B1393) and Rye Hill Road to the south, is excluded from the neighbourhood area.

15. Should the District Council as part of its Local Plan make any allocations in the area excluded from the neighbourhood plan area, the Council would involve the Parish in the process and any subsequent masterplanning or Action Area Plan.

#### **Resource Implications:**

Neighbourhood planning is supported by the Planning Policy team from within existing resources. Government funding is available at particular stages, and this is sought at the appropriate times.

#### **Legal and Governance Implications:**

The Localism Act 2011 introduced neighbourhood planning and brought about changes to the Town and Country Planning Act 1990 (as amended). Relevant subordinate legislation is provided by Neighbourhood Planning (General) Regulations 2012 and detailed policy and guidance is provided within the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG).

#### **Safer, Cleaner and Greener Implications:**

The SCG Scrutiny Panel is required to keep under review the application of Strategic Environmental Assessment (SEA) as it applies to the preparation of the new Local Plan. The SEA is one of the key mechanisms by which alternative sites and policy options will be tested to determine which is the most appropriate to deliver the vision and objectives of the Local Plan.

#### **Consultation Undertaken:**

Representations were invited on the application for designation between 22 September and 31 October 2014. One representation was received, as set out in the body of this Report.

#### **Background Papers:**

North Weald Bassett Parish Council application for designation of Neighbourhood Area – 08/09/2014

Representation received from Boyer Planning – 31/10/2014

Letter received from North Weald Bassett Parish Council – 07/01/2015

Report to Cabinet C-075-2014/15 – 09/03/2015

Report to Cabinet C-078-2015/16 – 13/04/2015

Letter received from North Weald Bassett Parish Council – 19/04/2015

Response sent by EFDC to North Weald Bassett Parish Council – 23/04/2015

Further Letter received from North Weald Bassett Parish Council – 28/04/2015

Response sent by EFDC to North Weald Bassett Parish Council – 12/05/2015

**Risk Management:**

There are a number of potential risks associated with this decision, which could include the Council's decision on the designation of the neighbourhood area being challenged. Accordingly, Counsel's advice has been sought to ensure that a lawful approach is being taken.

**CABINET REPORT: APPENDIX 1**  
**DESIGNATION OF NEIGHBOURHOOD AREAS**

Area application received: **NORTH WEALD BASSETT PARISH COUNCIL**  
Assessment date: **10 FEBRUARY 2015**

Criterion	Response (Yes / No / N/A)	Justification
a. Does the application include the whole of a Parish area?	Yes	Application letter dated 8 September 2014 identifies the Parish Council consider the area is appropriate for the following reasons: <ol style="list-style-type: none"> <li>1. The area defined is covered by North Weald Bassett Parish Council in it entirety.</li> <li>2. The area is recognised by the local community, EFDC and ECC as being the Parish of North Weald Bassett.</li> </ol> <p>The letter gives no explanation in planning terms as to why the area is considered appropriate.</p>
b. If only part of the Parish has been applied for, have appropriate reasons been supplied to justify this approach?	N/A	
c. If more than one Parish area is seeking designation as a neighbourhood area, have appropriate reasons been supplied to justify this approach?	N/A	
d. Does the Parish immediately adjoin the district boundary?	Yes	North Weald Bassett Parish immediately adjoins Harlow District Council area on its northern boundary.
i. If yes, are there any known or potential matters covered by the Duty to Cooperate that cannot lawfully or reasonably be addressed via the Neighbourhood Plan process?	Yes	The potential growth of Harlow, into land within Epping Forest District, has been mooted for more than decade. As a result of continuing changes to the national planning system, progress in terms of land allocations via Local Plans and an agreed method of delivery, have been delayed. The Duty to Cooperate requires Local Planning Authorities to establish matters of cross boundary significance, and to reach consensus on how these matters should be addressed. A number of such matters have been identified between Harlow and Epping Forest District Councils. These include, but are not limited to, establishment of housing and employment need figures, apportionment of growth

		<p>needs across the SHMA/Functional Economic Area, and identification and delivery of key strategic infrastructure. It is clear there are a number of key strategic matters that need to be addressed in taking forward the possible growth of Harlow, notwithstanding that at this stage, Epping Forest District Council has not yet determined whether such growth is the most appropriate to meet the needs of the district as a whole.</p> <p>Further, there are a number of known development interests on the borders of Harlow, all of which are being actively promoted for inclusion in the Local Plan. As above, Epping Forest District Council has not yet determined which, if any, of these sites may be appropriate for allocation in the Local Plan. However, the matters which must be addressed in order to reach reasonable conclusions are complex and wide ranging. It is not considered it would be reasonable for the Parish Council to undertake this function. The consideration of such matters also includes areas that are not part of the remit of a neighbourhood development plan, for example a Green Belt Review.</p> <p>The potential allocation at Latton Priory is an area where the issues of Green Belt Review, landscape sensitivity, transport infrastructure and links to Harlow are of particular concern. A cross boundary approach, including (at least) Epping Forest, Harlow and East Hertfordshire District Councils, is required to ensure a comprehensive assessment of all the possible sites around Harlow is carried out.</p> <p>If a stage is reached in which the area at Latton Priory is allocated for development purposes, there may then be an opportunity for the neighbourhood area to be altered. In the meantime, the District Council must continue to work closely with neighbouring district authorities under the Duty to Cooperate, and in due course will seek to actively engage with the parish council on any emerging proposals.</p>
<p>e. Where the parish does not immediately adjoin the district boundary, are there any identified strategic matters for consideration by the Local Plan process, including those that may be covered by the Duty to Cooperate?</p>	<p>N/A</p>	<p>North Weald Bassett parish immediately adjoins the district boundary, question d. above refers.</p>
<p>f. Considering d. and e. above, does the</p>	<p>Yes</p>	<p>It is not considered desirable to designate the whole of North Weald Bassett Parish as a</p>

<p>presence of any identified issues indicate an amended area would be desirable?</p>		<p>neighbourhood area for reasons set out in d. above.</p> <p>It would be more appropriate if the area immediately adjoining the district boundary, encompassing potential development sites bordering Harlow were not subject to a neighbourhood area designation.</p>
<p>g. If it is desirable to designate an alternative area, what is the new area that is proposed? (Reflecting guidance provided by NPPG section 41-033-20140306)</p>	<p>Yes</p>	<p>There are several alternatives available in considering the most appropriate and desirable area to be designated as a neighbourhood area. The law is clear that it is for the District Council to make such a determination, but that this must be fully justified. Planning Practice Guidance identifies that ward boundaries may provide an appropriate starting point. North Weald Bassett parish comprises three wards – Hastingwood, North Weald Village, and Thornwood.</p> <p>Exclusion of Hastingwood ward would enable comprehensive consideration of all of the area that immediately borders Harlow. However, a long held principle in considering possible development in this area is that the M11 provides a strong and defensible boundary, beyond which the growth of Harlow should not encroach. Further, Hastingwood and Foster Street would be excluded from any neighbourhood plan, and it is in these areas that the majority of the resident population and built development is found across Hastingwood ward. There are few residential properties in the area to the west of the M11 motorway. Given the absence of possible strategic development in the area to the east of the motorway, it would not seem appropriate to exclude the entirety of the area.</p> <p>A further submission from North Weald Bassett Parish Council, whilst making no mention of the aspirations for any potential neighbourhood plan, nor providing any justification in planning terms, does set out that the Parish Council does not consider it is logical to use the M11 solely as a boundary for any neighbourhood area. This is considered illogical by the Parish Council, because using the M11 as a boundary line would separate parts of wards. It would therefore appear that a compromise between the two positions would be reasonable, with the area in the north western corner of the parish (bounded by the M11 to the east, the district boundary to the north, the parish boundary to the west, and the ward boundary to the south – plan attached) being excluded from the neighbourhood area.</p>

## **CONCLUSION**

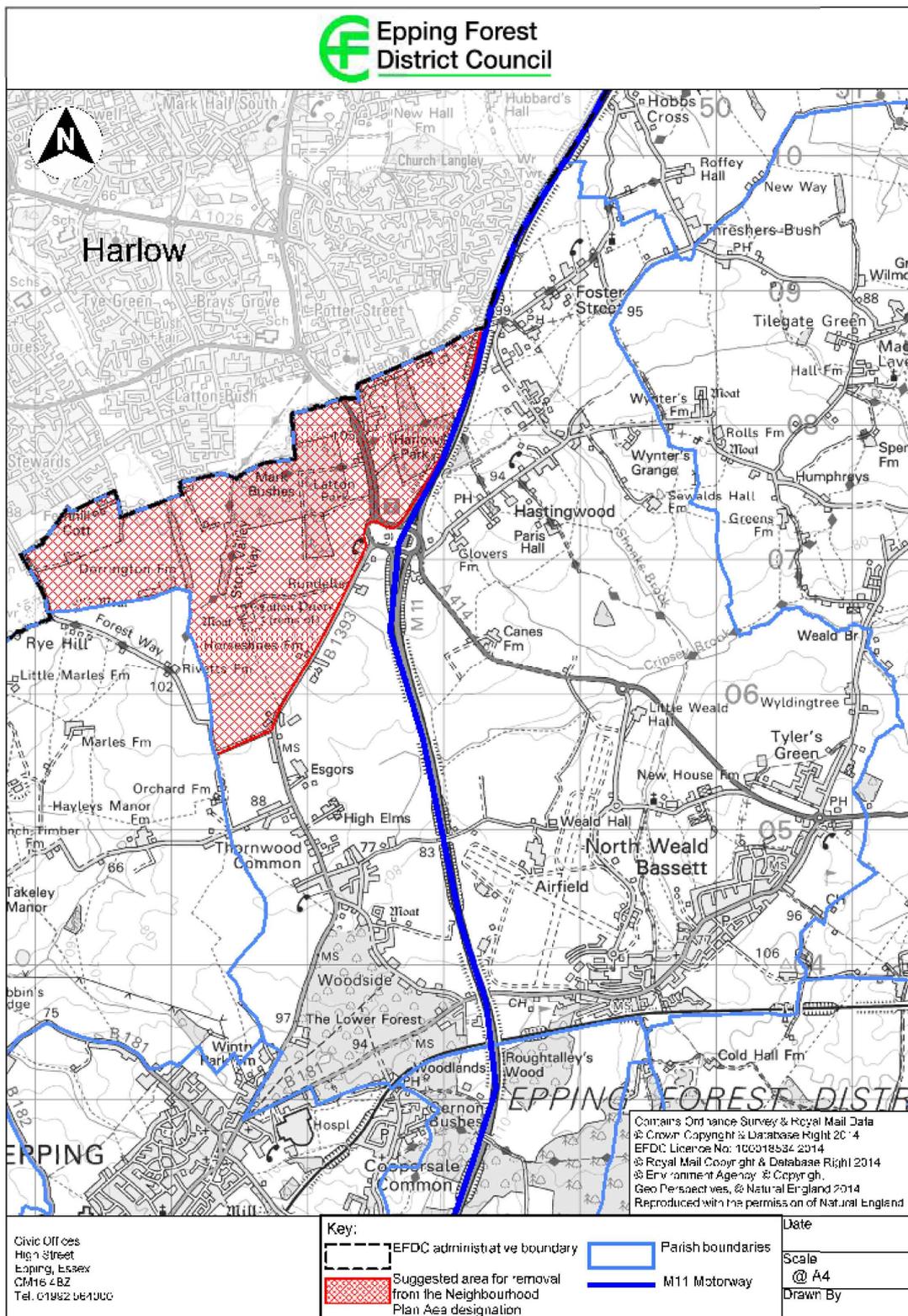
In accordance with s. 61(G) of the Town and Country Planning Act 1990 (as amended) it is not considered desirable to designate the whole of North Weald Bassett Parish Council as a neighbourhood area.

## **REASONS FOR DECISION**

1. A number of strategic cross boundary matters have been identified which include, but are not limited to, Green Belt review, cross District boundary agreement of housing and job growth figures, and planning and delivery of key strategic infrastructure;
2. The matters identified in 1. (above) are not within the remit of a Neighbourhood Development Plan to address;
3. A comprehensive assessment of all of the possible sites around Harlow (in Epping Forest, Harlow and East Hertfordshire District Council areas) must be carried out to ensure that the most suitable site(s) (if any at all) are allocated for development.
4. The area proposed for exclusion is defined by existing physical and administrative boundaries, and does not cover an area of high existing population.

A revised boundary is proposed as shown on the attached plan at appendix 2 of this report..

## CABINET REPORT: APPENDIX 2



Contains Ordnance Survey & Royal Mail Data  
 © Crown Copyright & Database Right 2014  
 EFDC Licence No: 100018534 2014  
 © Royal Mail Copyright & Database Right 2014  
 © Environment Agency & Copyright  
 Geo Perspectives, © Natural England 2014  
 Reproduced with the permission of Natural England

Civic Offices  
 High Street  
 Epping, Essex  
 CM16 4BZ  
 Tel: 01962 661000

Key:	
	EFDC administrative boundary
	Suggested area for removal from the Neighbourhood Plan Area designation
	Parish boundaries
	M11 Motorway

Date  
 Scale  
 @ A4  
 Drawn By

## Due Regard Record

Name of policy or activity:

Determination of Neighbourhood Area designation for North Weald Bassett

**What this record is for:** By law the Council must, in the course of its service delivery and decision making, think about and see if it can eliminate unlawful discrimination, advance equality of opportunity, and foster good relations. This active consideration is known as, 'paying due regard', and it must be recorded as evidence. We pay due regard by undertaking equality analysis and using what we learn through this analysis in our service delivery and decision making. The purpose of this form is as a log of evidence of due regard.

**When do I use this record?** Every time you complete equality analysis on a policy or activity this record must be updated. Due regard must be paid, and therefore equality analysis undertaken, at 'formative stages' of policies and activities including proposed changes to or withdrawal of services. This record must be included as an appendix to any report to decision making bodies. Agenda Planning Groups will not accept any report which does not include evidence of due regard being paid via completion of an Equality Analysis Report.

**How do I use this record:** When you next undertake equality analysis open a Due Regard Record. Use it to record a summary of your analysis, including the reason for the analysis, the evidence considered, what the evidence told you about the protected groups, and the key findings from the analysis. This will be key information from Steps 1-7 of the Equality Analysis process set out in the Toolkit, and your Equality Analysis Report. This Due Regard Record is Step 8 of that process.

Date / Name	Summary of equality analysis
Ken Bean / Amanda Thorn  18/02/2015	<ul style="list-style-type: none"> <li>• The Cabinet report is seeking the designation of a neighbourhood area covering part of the Parish of North Weald Bassett</li> <li>• Once commenced, the Neighbourhood Plan may have various equality implications for a number of different groups, both in terms of the level of engagement that is undertaken during its preparation and the impact that any policies may have on different sections of the local community. However it is the duty of the Parish Council to consider such issues during the preparation of the neighbourhood plan, and as such, the neighbourhood plan should be subject to equality analysis separately.</li> <li>• For reasons set out in the Cabinet Report, it is not considered</li> </ul>

	<p>desirable to designate the whole of the Parish for Neighbourhood Plan purposes. In summary these reasons relate the District Council's proper assessment of matters to be addressed under the Duty to Cooperation in respect of the preparation of the Council's District Local Plan.</p> <ul style="list-style-type: none"><li>• The area proposed to be excluded from the Neighbourhood Area is defined on the basis of administrative boundaries and existing physical features, and is done so to deliver effective and appropriate spatial planning for the area. No equality issues are identified.</li></ul>
--	--