

Report to the Cabinet

Report Reference: C-078-2014/15

Date of meeting: 13 April 2015



**Epping Forest
District Council**

Portfolio: Planning Policy

Subject: Neighbourhood Area Designation Assessment Criteria

**Responsible Officer: Ken Bean (01992 564610)
Amanda Thorn (01992 564543)**

Democratic Services: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

(1) To agree the criteria for the assessment of applications for the designation of neighbourhood areas, including where it is proposed to designate an area with boundaries other than the area sought, for the purposes of preparing a Neighbourhood Plan as set out in Appendix 1;

(2) To agree an amendment to the delegated authority to the Director of Neighbourhoods, in consultation with the Portfolio Holder, to designate areas where there have been no representations, to include the consideration of strategic and cross boundary matters prior to designation of an area for the purposes of preparing a Neighbourhood Plan.

Executive Summary:

In considering applications for the designation of a Neighbourhood Area for the purposes of the preparation of a Neighbourhood Development Plan it is recommended that the Council apply a detailed set of criteria. This will enable that a consistent approach is taken in assessing each application for known and possible cross boundary matters of strategic importance which should be addressed via the Duty to Cooperate.

In drafting the criteria advice from Counsel has been received which confirms that the District Council has a broad discretion in determining whether it is desirable to designate the area which has been applied for.

Reasons for Proposed Decision:

It is necessary to establish detailed criteria to ensure consistent consideration of applications for neighbourhood areas, to ensure that strategic and cross boundary matters that should rightfully be addressed by the District Council under the Duty to Cooperate are identified and assessed prior to designation. Accordingly, the delegated authority previously provided to the Director of Neighbourhoods should now be amended to ensure this further assessment is carried out in all instances.

Other Options for Action:

To not establish clear criteria on the designation of neighbourhood plan areas.

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 creating Neighbourhood Development Plans (NDP). A NDP, once it has been approved in the community via referendum and subsequently 'made' by the Local Planning Authority (LPA), forms part of the statutory development plan and is therefore used in the determination of planning applications. 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 District Council's Local Plan.
2. Under the Town and Country Planning Act 1990 and Planning and Compulsory Purchase Act 2004, Local Planning Authorities have a statutory duty to advise or assist communities in the preparation of Neighbourhood Development Plans (NDP). The Localism Act 2011 (Part 6 chapter 3) sets out the LPA responsibilities. These include designating the area of the Neighbourhood Development Plan and designating a Neighbourhood Forum (where relevant). The Neighbourhood Planning (General) (Amendment) Regulations 2015 which came into force on 9 February 2015 introduce time limits by which LPA's must determine applications for designation of a neighbourhood area.
3. The LPA must make a decision on:
 - (a) the designation of a Neighbourhood Area; and
 - (b) the confirmation that an appropriate (prospective) qualifying body is making the application.
4. The key elements of the process are as follows:
 - The parish council submit an application including a map identifying the area and a statement to the LPA explaining why the area proposed is considered appropriate.
 - LPA receive an application for a Neighbourhood Area and publicise the application for a minimum of 4 weeks where the relevant body is a parish council and the area to which the application relates is the whole of the area of the parish council and not less than 6 weeks in all other cases. Timings start from the date on which the area application is first publicised.
 - LPA must consider the application resulting in a designation, modification or refusal. Where the Neighbourhood Area crosses local authority boundaries, the powers of designation and modification must be exercised by all relevant authorities.
 - LPA publicise its decision to approve or refuse the application.
 - The LPA must publish a map setting out all the current Neighbourhood Areas designated, and indicate those which are designated as business areas
5. The 1990 Act (s61G(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. To date seven applications for the designation of neighbourhood areas have been received from parish councils; five of these have been approved. The five approved have included the whole parish and no matters of a strategic nature were identified. Therefore, in accordance with the regulations, it was considered desirable and appropriate for the whole of the parish areas to be designated for the purposes of preparing a neighbourhood plan.
6. 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 (s61G(4) of TCPA 1990 refers). In making a decision on designation of an area for the purposes of preparing a Neighbourhood Plan, 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, Local Authorities have some flexibility in determining whether it is desirable to designate the whole parish and subsequent case law supports this approach. The Court of Appeal determined that in the case of Daws Hill (*R (Daws Hill Neighbourhood Forum) v Wycombe District Council, (2013)*) that the Council has not acted unlawfully in designating a smaller area than that which had been applied for.

7. The Government's Planning Practice Guidance states that a neighbourhood area can include land allocated in a Local Plan as a strategic site. The guidance advises that "where a proposed neighbourhood area includes such a site, those wishing to produce a neighbourhood plan or Order should discuss with the local planning authority the particular planning context and circumstances that may inform the local planning authority's decision on the area it will designate." Local Plan preparation for Epping Forest District is at a stage where it is not yet known to what extent there will be any strategic land allocations, and in what location if there are any.

8. In considering future applications for designation 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. Further, 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 neighbourhood areas against the same criteria.

Criteria

9. Planning Practice Guidance (PPG) identifies the types of considerations that should be taken into account in coming to a decision on the appropriate boundary for a neighbourhood plan area.

"The following could be considerations when deciding the boundaries of a neighbourhood area:

- o village or settlement boundaries, which could reflect areas of planned expansion*
- o the catchment area for walking to local services such as shops, primary schools, doctors' surgery, parks or other facilities*
- o the area where formal or informal networks of community based groups operate*
- o the physical appearance or characteristics of the neighbourhood, for example buildings may be of a consistent scale or style*
- o whether the area forms all or part of a coherent estate either for businesses or residents*
- o whether the area is wholly or predominantly a business area*
- o whether infrastructure or physical features define a natural boundary, for example a major road or railway line or waterway*
- o the natural setting or features in an area*
- o size of the population (living and working) in the area*

Electoral ward boundaries can be a useful starting point for discussions on the appropriate size of a neighbourhood area; these have an average population of about 5,500 residents".

(PPG ID 41-033-20140306)

10. This guidance provides a framework for decision making and these have been developed into local criteria set out at Appendix 1 for agreement by Cabinet. and would form the basis for the District Council to consider any future applications for neighbourhood area designation. It provides a clear framework against which the District Council will consider whether strategic/cross boundary matters that should rightfully be considered by the district Local Plan are, or are likely to be, present; and whether these should lead the Council to exclude part of a parish from a designation.

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). Detailed guidance is provided by Neighbourhood Planning (General) Regulations 2012, 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:

None.

Background Papers:

None.

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 areas 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:

Assessment date:

Criterion	Response (Yes / No / N/A)	Justification
a. Does the application include the whole of a Parish area? (see 61G(4) T CPA 1990)		(Summarise case presented by Town / Parish Council)
b. If only part of the Parish has been applied for, have appropriate reasons been supplied to justify this approach? (PPG ID 41-032-20140306)		
c. If more than one Parish area is seeking designation as a neighbourhood area, or the area proposed crosses local authority administrative boundaries, have appropriate reasons been supplied to justify this approach? (PPG ID 41-030-20140306 & 41-032-20140306)		
d. Does the Parish immediately adjoin the district boundary? (PPG ID 41-030-20140306)		(Provide description of relationship to adjoining authorities)
i. If yes, are there any known or potential cross boundary/strategic matters covered by the Duty to Cooperate that cannot reasonably be addressed via the Neighbourhood Plan process? (PPG ID 41-036-20140306)		
e. Where the parish does not immediately adjoin the district boundary, are		

<p>there any identified strategic matters for consideration by the Local Plan process, including those that may be covered by the Duty to Cooperate? (PPG ID 41-036-20140306)</p>		
<p>i. If yes, does the presence of any of these issues suggest an amended area would be desirable?</p>		
<p>ii. If it is desirable to designate an alternative area, what is the new area that is proposed? (Reflecting guidance provided by PPG section 41-033-20140306)</p>		
<p><u>CONCLUSION / REASONS FOR DECISION</u></p>		

Due Regard Record

Name of policy or activity:

Determination of Neighbourhood Area designations

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 18/03/2015	<ul style="list-style-type: none"> • The Cabinet report is seeking agreement on the criteria used for considering designation of a neighbourhood area. • 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 Parish and Town Councils to consider such issues during the preparation of the neighbourhood plan, and as such, the neighbourhood plan should be subject to equality analysis separately.