

CABINET

21 JULY 2023

REPORT OF THE HOUSING & PLANNING PORTFOLIO HOLDER

A.4 ELMSTEAD NEIGHBOURHOOD PLAN AND NEIGHBOURHOOD DEVELOPMENT ORDER – PROPOSAL FOR PUBLIC CONSULTATION

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek the Cabinet's agreement for Officers to carry out a six-week public consultation on Elmstead Parish Council's new Neighbourhood Plan and Neighbourhood Development Order, as part of the statutory plan-making process.

EXECUTIVE SUMMARY

Key Points:

- Elmstead Parish Council has submitted the final version of its Neighbourhood Plan and Neighbourhood Development Order (NDO) to Tendring District Council. The Neighbourhood Plan and NDO have been prepared by the Parish Council having regard to technical evidence, feedback from community engagement activities and the ongoing advice of Tendring District Council Officers.
- As part of the statutory plan-making process, the Neighbourhood Plan and NDO must be published for at least six-weeks formal consultation and thereafter undergo an independent examination and a local referendum before it can be formally adopted by the District Council.

On adoption, the Neighbourhood Plan (with any changes required as a result of the consultation and examination process) will form part of the 'Development Plan' alongside the Tendring District Local Plan and will be a material consideration in the determination of planning applications.

- As well as submitting a Neighbourhood Plan, the Parish Council is also submitting a Neighbourhood Development Orders (NDOs) which will have the power to grant planning permission for specific development in a particular area. The Parish Council are using their NDO to gain outline planning permission to demolish the village hall and replace it with up to 9 apartments.
- The documents submitted by Elmstead Market Parish Council include the Neighbourhood Plan and NDO itself, a Consultation Statement, a 'Basic Condition Statement' and a number of other supporting documents including a Habitat Regulation Assessment (HRA) and a Strategic Environmental Assessment (SEA).

The decisions involved in the process of making a Neighbourhood Development Plan and NDO are largely technical or administrative in nature, however certain decisions for example the decision to hold a referendum or ultimately the decision to 'make' the Neighbourhood Plan and bring into force could be key decisions and as such should include member involvement.

RECOMMENDATION

That Cabinet:

- a) notes the contents of the submitted documentation at Appendix 1 (The Elmstead Neighbourhood Development Plan), Appendix 2 (Consultation Statement), Appendix 3 (Basic Condition Statement) and Appendix 4 (Neighbourhood Development Order); and**
- b) authorises the Director (Planning) to carry out six-week public consultation on the Plan, NDO and other related documents in accordance with Regulations 16 and 21 of the Neighbourhood Planning Regulations 2012 in due course.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Neighbourhood Plans will support the current Corporate Plan 2020-24 (aligned with the core themes of Tendring4Growth and Community Leadership) through delivery of interventions aimed at:

- Delivering High Quality Services
- Community Leadership Through Partnerships
- Building Sustainable Communities for the Future
- Strong Finances and Governance
- A Growing and Inclusive Economy

Neighbourhood Plans should supplement and support the policies and proposals in the District Local Plan whilst enabling the communities to achieve their own objectives and aspirations.

RESOURCES AND RISK

The Elmstead Neighbourhood Plan and Neighbourhood Development Order (NDO) have been prepared by Elmstead Parish Council with assistance from a planning consultancy. The responsibilities for resourcing this project have, to date, sat principally with the Parish Council as the 'qualifying body'. However, the District Council has statutory duties in regard to the preparation of

the Local Plan and Neighbourhood Plans and these will be discharged by the Planning Team and any additional expenses funded through the Local Plan budget.

A Neighbourhood Plan, once formally adopted, carries the same legal status as a District Local Plan (and other documents that form part of the statutory 'Development Plan') and therefore becomes a material consideration in the determination of planning applications. Applications for planning permission would therefore be determined in accordance with the development plan (including any Neighbourhood Plan), unless material considerations indicate otherwise.

Neighbourhood Development Orders (NDOs) grant planning permission for specific development in a particular area. This could include things like specified changes of use, certain kinds of alteration or the reinstatement of historical features. An NDO could be used to grant outline planning permission for specified uses on allocated sites, such as housing, commercial uses or recreational uses.

Nationally there has been limited use of NDOs. However, they have real potential, especially when carried out in parallel to the preparation of a neighbourhood plan.

Once the consultation on the Neighbourhood Plan and NDO is complete, these will need to be examined, similar to a Local Plan. When that is complete a referendum of all those living in the Parish area will need to be undertaken. If more than half of the electorate vote in favour of the Plan and NDO they will both be 'made' or adopted by the District Council. The Plan will form part of the Development Plan for the District and the NDO will grant outline planning consent for the proposed development.

It is important that Neighbourhood Plans support and supplement the policies and proposals in the District Local Plan. To ensure this, Officers have worked constructively with the Parish Council in an advisory capacity in the preparation of its Neighbourhood Plan and the NDO.

LEGAL

The ability for a Town or Parish Council to produce a Neighbourhood Plan is contained within the Localism Act 2011. The Town and Country Planning Act 1990 ("the Act") and the Neighbourhood Planning (General) Regulations 2012 (as amended) provide the statutory process as to how a Neighbourhood Development Plan will be developed and implemented. The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016, contain statutory timescales by which decisions relating to Neighbourhood Planning have to be made.

Neighbourhood Plans give communities the opportunity to set planning policies as Neighbourhood Development Plans which will form part of the development plan of a local authority once implemented and will sit alongside the Local Plan. The District Council's responsibility as Local Planning Authority is largely technical in nature, for example advising on conformity with the Development Plan and checking that Plans have followed correct procedures. Once made, a Local

Planning Authority must consider a Neighbourhood Development Plan when deciding applications for planning permission, along with any other material consideration.

Decisions in relation to the making of Neighbourhood Development Plans are an executive function, that is because Neighbourhood Development Plans are not Development Plan Documents as defined in regulation 5 of the Town and Country Planning (Local Planning) England Regulations 2012 and as such do not come within the list of plans and strategies listed in Column 1 of the table to Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, which would require Council approval or adoption.

Elmstead Parish Council is at Regulation 15 stage in the preparation of its Neighbourhood Plan. This regulation states:

15.— (1) Where a qualifying body submits a plan proposal to the local planning authority, it must include—

- (a) a map or statement which identifies the area to which the proposed neighbourhood development plan relates.*
- (b) a consultation statement.*
- (c) the proposed neighbourhood development plan; and*
- (d) a statement explaining how the proposed neighbourhood development plan meets the requirements of paragraph 8 of Schedule 4B to the 1990 Act.*

(2) In this regulation “consultation statement” means a document which—

- (a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan.*
- (b) explains how they were consulted.*
- (c) summarises the main issues and concerns raised by the persons consulted; and*
- (d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.*

And then Regulation 16 states:

16. As soon as possible after receiving a plan proposal which includes each of the documents referred to in regulation 15(1), a local planning authority must—

(a) publicise the following on their website and in such other manner as they consider is likely to bring the proposal to the attention of people who live, work or carry on business in the neighbourhood area—

- (i) details of the plan proposal.*
 - (ii) details of where and when the plan proposal may be inspected.*
 - (iii) details of how to make representations.*
 - (iv) a statement that any representations may include a request to be notified of the local planning authority’s decision under regulation 19 in relation to the neighbourhood development plan; and*
 - (v) the date by which those representations must be received, being not less than 6 weeks from the date on which the plan proposal is first publicised; and*
- (b) notify any consultation body which is referred to in the consultation statement submitted in accordance with regulation 15, that the plan proposal has been received.*

For the Neighbourhood Development Orders paragraph 52 of the National Planning Policy Framework (NPPF) states:

“Communities can use Neighbourhood Development Orders and Community Right to Build Orders to grant planning permission. These require the support of the local community through a referendum. Local planning authorities should take a proactive and positive approach to such proposals, working collaboratively with community organisations to resolve any issues before draft orders are submitted for examination”.

Government guidance on preparing NDOs and Community Right to Build Orders (CRtBOs) is contained in National Planning Practice Guidance.

Rather like neighbourhood plans, NDOs and CRtBOs must be subjected to an independent examination, and then be approved by the community in a referendum, before they can come into force.

Before an order can be prepared, a neighbourhood area must have been designated. Parish/Town Councils or neighbourhood forums may submit neighbourhood areas for designation. Community organisations have the ability to submit neighbourhood areas for designation, if they are capable of becoming a neighbourhood forum.

OTHER IMPLICATIONS

Area or Ward affected: Elmstead Parish area and the ward of Alresford and Elmstead.

Consultation/Public Engagement: Regulations require that a six week public consultation is carried out for both the Neighbourhood Plan and the NDO. Officers consider this to be an acceptable approach.

PART 3 – SUPPORTING INFORMATION

Elmstead Neighbourhood Plan and Neighbourhood Development Order Submission Documentation

Elmstead Parish Council is at an advanced stage of Neighbourhood Plan and Neighbourhood Development Order (NDO) preparation. The Parish Council has completed the preparation stage of plan making for both the Plan and the NDO and has submitted them along with background evidence documentation to the District Council so that they can be formally consult upon. This stage is akin to the ‘submission draft’ stage of Local Plan preparation.

A large number of documents have been submitted to the Council; these are:

- Elmstead Neighbourhood Plan add NDO Covering Submission Letter
- Elmstead Submission Neighbourhood Plan
- Landscape Setting Report
- NDO Submission Order FINAL
- Elmstead NDO Visibility splay Model
- Elmstead Preliminary Ecological Assessment.
- Regulation 21 Consultees
- Transport Statement
- Policy Map ELM1 Settlement Boundary
- Policy Map ELM10 Important Views
- Policy Map ELM11 Village Core and Centre
- Policy Map ELM12 Active Travel Network.
- Policy Map ELM13 Key Locations Plan
- Policy Map ELM15 Green Ring
- Policy Map ELM16 Nature Recovery
- Policy Map ELM3 Gaps Between Settlements
- Policy Map Inset 1
- Policy Map (Area Map)
- Elmstead Market landscape appraisal of proposed green landscape buffer and gaps between settlements
- Elmstead Housing Needs Assessment Final Version
- Elmstead Neighbourhood Plan Strategic Environmental Assessment and Habitats Regulation Assessment Screening Report
- Green Spaces report – updated.
- Local Gap and Corridors of Significance Elmstead
- Elmstead Neighbourhood Plan Basic Conditions Statement
- Elmstead Neighbourhood Plan Consultation Statement
- Appendixes A – I which contain many background documents including previous consultation responses, details of local residents' surveys and a statement detailing how the comments on the previous iteration of the Plan and NDO change the new versions.

For the purposes of the Neighbourhood Plan, it is only the Plan itself, the Consultation Statement and the Basic condition statement that require consultation. For the Neighbourhood Development Order, it is the NDO document itself and its background documents that require consultation.

The Neighbourhood Plan

The Neighbourhood Plan (Appendix 1) has previously been the subject of public consultation hosted by the Parish Council. At that stage (Regulation 14) the District Council made comments on the emerging Plan.

The District Council had a number of comments at that stage around ensuring compatibility with the adopted Local Plan, in particular how Policies in the draft plan would relate to and not prejudice the Garden Community and emerging Development Plan Document.

Following the previous public consultation the Plan has been amended. Officers are satisfied that the amendments have addressed the District Council's previous comments.

Within the Plan there is a succinct vision for the area when it states:

Elmstead will have grown successfully as a community through the completions of approved housing developments and sustainable infill within the existing fabric of the village settlement. The village core provides a centre bringing the old and new communities together. Although change in the wider parish has been significant, it has provided the opportunity for access to new community facilities and services and improved connectivity of the wider green infrastructure network from the village into the countryside.

This vision is supported by four key objectives, these are:

1. To manage incremental growth of the village through sensitive infill and to protect the surrounding countryside from harmful development.
2. To conserve the special heritage character of the village and its landscape setting
3. To protect and improve the ecological value and connectivity of the green infrastructure assets of the village and wider parish.
4. To sustain community facilities and services that are essential to community life.

The Plan then contains eighteen planning Policies, these are:

POLICY ELM1: SETTLEMENT DEVELOPMENT BOUNDARIES – This policy defines the Settlement Development Boundary (SDB) for Elmstead village and a new SDB for Landswood Park.

POLICY ELM2: PROTECTING THE SETTING OF ELMSTEAD MARKET – This policy reflects the landscape buffer between Elmstead and the Garden Community

POLICY ELM3: GAPS BETWEEN SETTLEMENTS – This policy promotes a landscape buffer between the village of Elmstead and Landswood and defines a number of 'Corridors of Significance'

POLICY ELM4: THE FORMER ELMSTEAD COMMUNITY CENTRE – This policy supports the delivery of the NDO.

POLICY ELM5: AFFORDABLE HOUSING – This policy defines the tenure split for affordable homes.

POLICY ELM6: FIRST HOMES – this policy defines the provision for first homes in the Parish.

POLICY ELM7: HOUSING MIX – This policy defines the bedroom mix for new dwellings in the Parish.

POLICY ELM8: ZERO CARBON BUILDINGS – This policy provides for energy efficient buildings to a high standard in the Parish.

POLICY ELM9: DESIGN CODES – This policy supports good design in the Parish.

POLICY ELM10: IMPORTANT VIEWS – This policy identifies important views in the Parish and seeks their protection.

POLICY ELM11: THE VILLAGE CORE – This policy defines the kinds of uses to be supported within the village core.

POLICY ELM12: MOVEMENT AND CONNECTIVITY – This policy promotes an active travel network throughout the village and aims to protect it.

POLICY ELM13: MANAGING TRAFFIC – This policy promotes public realm improvements and supports traffic reduction in the Parish.

POLICY ELM14: LOCAL GREEN SPACES – This policy designates a number of protected green spaces.

POLICY ELM15: GREEN RING – This policy promotes a ‘green ring’ around the village which will support active travel modes such as cycling and walking.

POLICY ELM16: NATURE RECOVERY – This policy supports the production of a biodiversity network.

POLICY ELM17: HEALTH AND WELLBEING SERVICE PROVISION – This policy supports the local healthcare provision and requires that all new development assist in this.

POLICY ELM18: LOCAL COMMUNITY USES – This policy identifies a number of community facilities and promotes new facilities.

The Consultation Statement

This document (Appendix 2) provides details of who has been consulted at the previous stage, what they said and how the Plan has changed in response to those comments.

The Basic Condition Statement

Only a draft Neighbourhood Plan or NDO that meets each of a set of ‘basic conditions’ can be put to a referendum and be made. The basic conditions are set out in paragraph 8(2) of Schedule 4B to

the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. The basic conditions are:

- a. having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order (or neighbourhood plan).
- b. having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order. This applies only to NDOs.
- c. having special regard to the desirability of preserving or enhancing the character or appearance of any Conservation Area, it is appropriate to make the order. This applies only to Orders.
- d. the making of the order (or neighbourhood plan) contributes to the achievement of sustainable development.
- e. the making of the order (or neighbourhood plan) is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).

When considering whether a policy is in general conformity a qualifying body, independent examiner, or local planning authority, should consider the following:

- whether the neighbourhood plan policy or development proposal supports and upholds the general principle that strategic policy in the Local Plan is concerned with
- the degree, if any, of conflict between the draft neighbourhood plan policy or development proposal and the strategic policy
- whether the draft neighbourhood plan policy or development proposal provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy
- the rationale for the approach taken in the draft neighbourhood plan or Order and the evidence to justify that approach (NPPG - Paragraph: 074 Reference ID: 41-074-20140306 Revision date: 06 03 2014).

The development plan for Tendring District Council is currently made up of:

- Tendring District Local Plan 2013-2033 and Beyond: North Essex Authorities' Shared Strategic Section 1;
- Tendring District Local Plan 2013-2033 and Beyond: Section 2;
- Essex Minerals Local Plan; and
- Essex and Southend-on-Sea Waste Local Plan.

The most relevant of these Local Plan documents - Sections 1 and 2 of the Tendring District Local Plan - were only very recently adopted in 2021 and 2022 respectively. Elmstead Parish Council's Neighbourhood Plan has been prepared paying close and considered regard to the strategic policies of these documents.

- f. the making of the order (or neighbourhood plan) does not breach, and is otherwise compatible with, EU obligations.

g. prescribed conditions are met in relation to the Order (or plan) and prescribed matters have been complied with in connection with the proposal for the order (or neighbourhood plan).

The Basic Condition Statement is located at Appendix 3.

Other Consultation Material

As well as the above, Officers also intend on consulting on the associated Habitats Regulations Assessment and Strategic Environmental Assessment.

The Neighbourhood Development Order

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Nationally there has been limited use of NDOs. However, they have real potential, especially when carried out in parallel to the preparation of a neighbourhood plan.

The Proposal

The Neighbourhood Development Order (Appendix 4) proposes the demolition of the former Elmstead Community Centre on land located on the eastern side of School Road, Elmstead Market, Colchester CO7 7ET and the construction of an affordable housing scheme.

The proposals are for; provision of a mix of 1- and 2-bedroom affordable apartments, up to nine in total, with an internal floor area of up to 650 m² in total; access off School Lane to serve the dwellings and a shared parking area; maintaining access to the recreation ground; provision of car parking spaces to serve the development.

Planning Conditions

As with a regular planning application, a number a controlling condition have been recommended. These include:

1. Provision of community facilities
2. Time limit
3. Reserved matters
4. Construction Method
5. Scheme of foul and surface water drainage
6. Landscape
7. Ecology

8. Highways and access
9. Car and cycle parking
10. Layout, scale, design and external appearance
11. EV charging
12. 20% renewables

Layout

The site is flat and rectangular on an east west axis with a southerly aspect. It measures approximately 28m x 26m with an area of 0.075 hectares (fig. 4). The former Community Centre building is a single storey brick structure (view 5) on the northern part of the site with a footprint of around 350m².

The title boundary cuts diagonally across a shared parking area and extends along School Road up to Market Field School, projecting out onto the School Road pavement in front of the entrance. (view 6).

Historic mapping shows the building was previously a Primary School with a playing field to the south, which is now the Market Field School, and allotment gardens to the east of the playing field, which are now the recreation ground.

Pedestrian and vehicles access is off School Road with a shared vehicle access (view 7) and parking area wrapping around the southern and eastern sides of the building.

Boundary conditions:

The western boundary has a frontage onto School Road (view 8) with a dropped kerb for vehicle access to the shared parking area and recreation ground. The main entrance to the building is via a setback lobby on School Road with railings along the kerb line (view 5).

The northern boundary to the Budgens store is defined by a low railing and wall adjoining an open space behind the rear of the store (view 9).

The eastern boundary is a fence line with vegetation to the Budgens car park to the rear of the store and the gated access to the recreation ground with the school building being a dominant feature (view 10).

The southern boundary within the parking area has no defining features and looks onto the boundary to the Market Field School which is defined by a railing with low bushes (view 11).

There are two pass gates into the recreation ground from the parking area, one for pedestrians and the other for maintenance access (view 12).

Transport and access:

A Transport Statement September 2022 (appendix A) prepared by TPC for the draft NDO scheme concluded that:

- The site is well located in terms of its accessibility to the major highway network, local amenities, and public transport services by bus.
- The car parking provision considers the local parking standards and likely car ownership of the affordable housing provision, and the site layout will provide an acceptable means of access with the preferred pedestrian visibility splays and driver visibility splays conforming to the required standards and guidance.
- Refuse collection and servicing can be achieved from School Road where an appropriately sized and designed bin store will be provided at the site frontage which will not require large vehicles to enter the site car park/access. There are no loading restrictions in place in this section of School Road.
- The traffic and parking impact on the local highway network will be negligible. Accordingly, we believe there are no sustainable reasons for refusal of this proposal on highway or traffic grounds.

Flood & drainage:

The site is within Flood Zone 1 making it acceptable for residential development and there are no known surface water issues. Provision will need to be made for on-site surface water management and a SUDS strategy will be provided as part of the Order.

Ecology:

A Preliminary Ecological Assessment prepared by ACJ Ecology that included a site visit and extended Phase 1 Habitat Survey was carried out in September 2022 and concluded that:

Habitats:

Natural England has not designated the site as a site of importance for nature conservation at the national, regional or county level. This is because the site and the on-site habitats are widespread throughout the UK. The habitats are of limited ecological value and only site value.

Protected species: The habitats for protected species were evaluated for their likelihood of providing shelter, roosting, foraging, basking and nesting. The likelihood of protected species is negligible, and no additional surveys are needed.

The removal of suitable habitat must be undertaken outside the bird breeding season. If work during the breeding season is unavoidable, an inspection will need to be carried out by a suitably experienced ecologist immediately before the start of site clearance to identify whether nests are present. If active nests are found, an exclusion zone will have to be around the nest(s), and work must not continue until the young have fledged.

Biodiversity enhancement should include the native species mix to improve the diversity and adapt to climate change.

Arboriculture:

Proposals will be submitted for protecting the existing tree on site in accordance with a scheme which complies with BS 5837:2012 prior to development (including site works and demolition) in accordance with condition 3.2.6.

Geotechnical:

The site is previously developed brownfield land, and its historic use, topography and previous adjacent uses suggest there are no issues with contamination or development abnormal relating to ground conditions.

Utilities:

The site currently has utility connections to serve the development.

Archaeology:

No issues. Refer to the Archaeology Statement in Section 5.

Heritage:

No issues. Refer to the Heritage Statement in Section 6

Other Documentation

The NDO is supported by a consultation Statement and a Basic condition Statement in line with the Neighbourhood Plan itself.

The Consultation

The regulations require that a consultation is held for no less than six weeks for both the Neighbourhood Plan and NDO. Officers consider that a six-week period would give interested parties enough time to make their representations on the Plan and Order.

Conclusion

Members are respectfully asked to agree recommendations (a) and (b) above and allow Officers to submit the Elmstead Neighbourhood Plan and NDO to public consultation.

APPENDICES

Appendix 1 – Elmstead Market Regulation 16 Neighbourhood Plan

Appendix 2 – Elmstead Market Consultation Statement

Appendix 3 – Elmstead Market Basic Condition Statement

Appendix 4 – Elmstead Market NDO

BACKGROUND PAPERS

None