

CABINET

21 OCTOBER 2024

REPORT OF THE PORTFOLIO HOLDER RESPONSIBLE FOR HOUSING AND PLANNING

A.5 – MAKING (ADOPTION) OF THE ELMSTEAD NEIGHBOURHOOD PLAN

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For Cabinet to agree to ‘make’ (adopt) the Elmstead Neighbourhood Plan as part of the Council’s statutory development plan and for it to therefore become a material consideration in planning decisions alongside the Tendring District Local Plan. This follows a local referendum in which a clear majority of residents that turned out were in favour of the plan.

EXECUTIVE SUMMARY

Key Points:

- Elmstead Neighbourhood Plan has been through formal and informal consultation processes.
- The Plan was the subject of an independent Examination where a number of modifications were suggested.
- The modifications were agreed allowing the Plan to proceed to referendum.
- The public voted in favour of adopting the Neighbourhood Plan to help in the determining of planning applications.

Elmstead Parish Council has prepared a ‘Neighbourhood Plan’ for its area that has passed through all the necessary stages of the plan-making process set out in the Town and Country Planning Act 1990 (“the Act”) and the Neighbourhood Planning (General) Regulations 2012 (as amended) including public consultation, independent examination and a referendum.

In an official referendum held on Thursday 12th September 2024 and administered by Tendring District Council, residents of the Parish of Elmstead were asked “Do you want Tendring District Council to use the Neighbourhood Plan for the Parish of Elmstead to help it decide planning applications in the neighbourhood area?” With an overall turnout of 21.4%, 389 residents voted ‘YES’ and 31 residents voted ‘NO’ – a vote of 92.6% in favour of the plan.

If the majority of those who vote in a referendum are in favour of the Neighbourhood Plan, it must be ‘made’ (adopted) by the Local Planning Authority within 8 weeks of the referendum.

An Order must be made by the local authority before it has effect. Decisions in relation to the making of Neighbourhood Plans are an executive function and it therefore falls to the Cabinet to confirm the making or adoption of the Neighbourhood Plan. It will then become part of the 'Development Plan' and will be a material consideration, alongside the District Council's Local Plan, in the determination of planning applications and in making other planning decisions.

RECOMMENDATION(S)

That Cabinet notes the result of the referendum held on Thursday 12th September 2024 and duly agrees that the Elmstead Neighbourhood Plan (attached as Appendix 1) be 'made' and that the necessary publicity and notifications are administered in accordance with Section 20 of the Neighbourhood Planning Regulations Town and Country Planning (Local Planning) (England) Regulations 2012.

REASON(S) FOR THE RECOMMENDATION(S)

To comply with the Neighbourhood Planning Regulations Town and Country Planning (Local Planning) (England) Regulations 2012 – ensuring that the Council, as Local Planning Authority, has made (adopted) the Neighbourhood Plan within 8 weeks of the successful referendum held on 12 September 2024.

ALTERNATIVE OPTIONS CONSIDERED

None – as the Council is compelled to agree to the making of the Neighbourhood Plan following the local referendum.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Neighbourhood Plan will support the Corporate Plan 2024-28 (aligned with the core themes of Tendring4Growth and Community Leadership) in the following areas:

- Pride in our area and services to residents
- Raising aspirations and creating opportunities
- Championing our local environment
- Working with partners to improve quality of life
- Promoting our heritage offer, attracting visitors and encouraging them to stay longer
- Listening to and delivering for our residents and businesses

OUTCOME OF CONSULTATION AND ENGAGEMENT (including with the relevant Overview and Scrutiny Committee and other stakeholders where the item concerns proposals relating to

the Budget and Policy Framework)

The Elmstead Neighbourhood Plan has been subject to all the necessary consultation stages required under the Town and Country Planning Act 1990 (“the Act”) and the Neighbourhood Planning (General) Regulations 2012 (as amended). The referendum on the final version of the Neighbourhood Plan resulted in a majority vote in favour of the Neighbourhood Plan being adopted by Tendring District Council.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Is the recommendation a Key Decision (see the criteria stated here)	NO	If Yes, indicate which by which criteria it is a Key Decision	<input type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000 expenditure/income <input type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	2 August 2024

The ability for a town or parish council to produce a Neighbourhood Development 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, introduced new statutory timescales by which decisions relating to Neighbourhood Planning have to be made.

Neighbourhood Plans give communities the opportunity to set planning policies 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.

X **The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:**

No additional comments.

FINANCE AND OTHER RESOURCE IMPLICATIONS

Neighbourhood Plans are usually prepared by their respective Parish or Town Council. The responsibilities for resourcing this project lies principally with the Parish Council as the 'qualifying body'. However, this Council has statutory duties in regards to the preparation of the Local Plan and Neighbourhood Plans and these have been discharged by the Planning Team and any additional expenses funded through the Local Plan Budget, with the assistance of government funding which has been secured to support the process.

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

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 their Neighbourhood Plans.

Although Tendring District Council does not currently apply Community Infrastructure Levy (CIL) at present, if CIL is introduced in the future alongside the review of the Tendring Local Plan, Town and Parish Councils can receive 25% of CIL income secured from developments in their area (15% would apply in locations where there is no Neighbourhood Plan). Decisions around the future introduction of CIL are a separate matter that will be considered in due course alongside the Local Plan review.

X **The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:**

No additional comments.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The production of the Neighbourhood Plan has been funded mainly by the Parish Council with TDC providing support and assistance at key stages of the process.
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<p>B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and</p>	<p>Decisions in respect of the Neighbourhood Plan have been made in accordance with the Council’s constitution at all key stages. Going forward, the Neighbourhood Plan will be a material consideration in planning decisions in the Elmstead area alongside the policies in the District Local Plan.</p>
<p>C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.</p>	<p>The Elmstead Neighbourhood Plan will be the third made in Tendring following Alresford and Ardleigh and the Council has learned, and will continue to learn, from previous experience of navigating the process and providing the best advice.</p>

MILESTONES AND DELIVERY

On agreement of the Cabinet, the Elmstead Neighbourhood Plan will be ‘made’ and its policies will become a material consideration in planning decisions alongside the policies in the District Local Plan.

ASSOCIATED RISKS AND MITIGATION

The making of the Neighbourhood Plan is a decision that could be subjected to a legal challenge by third parties – for which an application for Judicial Review would need to be made within six weeks of the decision. Any legal challenge would have to relate to law and procedure as opposed to the policy content of the Neighbourhood Plan. Officers have worked closely with the Parish Council at all stages of the process to carefully ensure the correct procedures have been followed.

EQUALITY IMPLICATIONS

The Neighbourhood Plan will sit alongside the District Local Plan as part of the overall ‘development plan’ against which planning decisions are taken. The policies in the development plan aim to address matters of equality and deprivation and equality considerations are taken into account in making planning decisions.

SOCIAL VALUE CONSIDERATIONS

Alongside the policies in the District Local Plan, the policies in the Elmstead Neighbourhood Plans seek to achieve sustainable development that, amongst other things, seeks to address the needs of society and quality of life considerations.

IMPLICATIONS FOR THE COUNCIL’S AIM TO BE NET ZERO BY 2030

Alongside the policies in the District Local Plan, the policies in the Elmstead Neighbourhood Plans seek to achieve sustainable development that, amongst other things, seeks to address the fight against climate change and measures aimed at reducing carbon emissions.

OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of

the following and any significant issues are set out below.	
Crime and Disorder	Alongside the policies in the District Local Plan, the policies in the Elmstead Neighbourhood Plan seek to achieve sustainable development that, amongst other things, is designed to minimise the opportunities for crime and disorder.
Health Inequalities	Alongside the policies in the District Local Plan, the policies in the Elmstead Neighbourhood Plan seek to achieve sustainable development that, amongst other things, creates the conditions for good health and wellbeing – including the promotion of green infrastructure and quality development.
Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)	No implications
Area or Ward affected	Elmstead

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Background

The Neighbourhood Area of Elmstead was designated on 30th November 2020 for the purpose of preparing a Neighbourhood Plan. The Neighbourhood Area follows the boundary of Elmstead Parish. The Elmstead NDP has been prepared by Elmstead Parish Council. Following submission of the Neighbourhood Plan to Tendring District Council, a consultation under Regulation 16 took place between the 18th September and 30th October 2023.

As well as the Neighbourhood Plan, the Parish Council had also prepared a Neighbourhood Development Order. This NDO sought outline planning permission for the demolition of the community centre and the erection of nine apartment's on that site. At the same time as the Regulation 16 consultation was running for the Plan, a Regulation 21 consultation ran for the NDO.

The Neighbourhood Plan promotes 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.

Examination and Public Hearing

On the 22nd September 2023 Mr John Slater BA(hons) DMSMRTPI FRGS was appointed by Tendring District Council, with the consent of the Parish Council, to undertake the examination of both the Elmstead NDP and accompanying Neighbourhood development Order (NDO) and to prepare a report of the independent examination. The examination commenced on 9th November 2023.

On the 27th November 2023, the Examiner issued a note of interim findings. This was followed by a follow-up from the Examiner on the 2nd January 2024, in which he required a public hearing. The Examiner’s Notice of Public Hearing detailed a number of specific issues for both the NDP and NDO which needed further consideration in a public setting. These included:

- Settlement boundaries at Lanswood Park
- Policy wording for land in the green buffer to the west of the village
- Questions around the quantum of development on the NDO site
- Questions around the conditions attached to the NDO

Other matters arising from the Public Hearing included the Council’s approach to Habitats Regulations Assessment (HRA) and the newly published National Planning Policy Framework (NPPF).

After the close of the hearing the Council held a focused consultation on these HRA and NPPF matters. Responses were forwarded to the Examiner on the 8th April 2024,

The Examiner required amendments to the NDO in line with what was discussed at the Public Hearing. However, it was agreed that these amendments were so significant to not be included within the existing NDO and that the NDO should be withdrawn and resubmitted. Confirmation of the withdrawal was submitted to the Council on the 20th May and the Examiner produced his final report on the same day.

Following the additional consultation, the Examiner concluded the examination of the Plan. The Examiner's report concludes that subject to making the minor modifications recommended by the Examiner, the Plan meets the basic conditions set out in the legislation and should proceed to a Neighbourhood Planning referendum.

Having considered each of the recommendations made within the Examiner's report and the reasons for them, Tendring District Council (in accordance with the 1990 Act Schedule 4B paragraph 12) has decided to make the modifications to the draft plan referred to below (and fully detailed within the Examiner's final report) to ensure that the draft plan meets the basic conditions set out in legislation.

The Examiner has recommended a wide variety of modifications to the Plan. These include consequential changes and items of a minor nature. Only the key modifications are therefore listed below. The key modifications include:

- The amendment of the settlement boundary at the southeast corner of Lanswood.
- Removing reference to technical requirements related to space heating demands and remove all reference to post occupancy evaluation conditions, whole lifecycle carbon emission assessment and energy and climate statements.
- Removing key views 19-23.
- Amending requirements in the Village Core to ensure that they only relate to the construction of new buildings and requires that development does not result in the loss of existing open space unless it relates to community uses.
- Requires contributions under the Managed Traffic policy to those that meet Regulation 122 tests and are triggered by development that leads to a *significant* increase in traffic on Clacton Rd
- Remove policies covering the protection of the green and blue infrastructure network in the areas inside the Garden Community.
- Contributions to health and well-being facilities to have to be triggered by a request from the North East Essex Clinical Commissioning Group.

The above changes have been agreed by the Parish and District Councils and the amended Plan can be found at Appendix 1.

The local referendum was held on Thursday 12th September 2024. In the referendum which was administered by Tendring District Council, residents of the Parish of Elmstead were asked "Do you want Tendring District Council to use the Neighbourhood Plan for the Parish of Elmstead to help it decide planning applications in the neighbourhood area?" With an overall turnout of 21.4%, 389 residents voted 'YES' and 31 residents voted 'NO' – a vote of 92.6% in favour of the plan.

PREVIOUS RELEVANT DECISIONS

17 November 2020 – Decision by the Corporate Director of Economy and Place: that the

application from Elmstead Parish Council to designate the whole of the Elmstead Parish as a Neighbourhood Plan Area (NDPA) be approved.

21 July 2023 - Cabinet – Minute 25: authorises the Director (Planning) to carry out a six week consultation on the Elmstead Neighbourhood Plan, the NDO and other related documents in accordance with Regulations 16 and 21 of the Neighbourhood Planning Regulations 2012

1 May 2024 - Decision of the Director of Planning in consultation with the Portfolio Holder responsible for Planning and Housing: Confirmation that the Neighbourhood Plan would meet the requirements of Regulations 9(2)(b) and 12(5) of the Environmental Assessment of Plans and Programmes Regulations 2004.

12 July 2024 - Decision of the Director of Planning in consultation with the Portfolio Holder responsible for Planning and Housing: For the Elmstead Neighbourhood Plan to proceed to referendum.

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None.

APPENDICES

Appendix 1 – Elmstead Neighbourhood Plan

REPORT CONTACT OFFICER(S)

Name	Gary Guiver
Job Title	Director of Planning
Email	gguiver@tendringdc.gov.uk