

Bolsover District Council

Executive

1st December 2014

Proposed Neighbourhood Planning Protocol – including level of District Council support

Report of Cllr D Kelly, Portfolio Holder for Environment

Purpose of the Report

- To outline the requirements of the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012 and their potential resource implications for Bolsover District Council.
- To propose a Neighbourhood Planning Protocol outlining the level of support Parish and Town Councils can expect from the District Council with respect to the various aspects of neighbourhood planning introduced by the Localism Act.
- To propose the Council's decision making approach to its responsibilities under the Neighbourhood Planning (General) Regulations 2012.

1 Report Details

Background

- 1.1 Neighbourhood planning as introduced by the Localism Act 2011 includes three components: Neighbourhood Development Plans (or Neighbourhood Plans), Neighbourhood Development Orders and Community Right to Build Orders.
- 1.2 In principle, neighbourhood planning aims to give communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area.
- 1.3 Alongside this, the statutory requirements introduced by the Government to oversee neighbourhood planning place a number of duties on the District Council to support and enable the processes of preparing Neighbourhood Plans, Neighbourhood Development Orders and Community Right to Build Orders in its role as local planning authority.
- 1.4 More detail on these three components and the duties of the District Council are set out below.

Neighbourhood Plans

- 1.5 As a result of the Localism Act 2011, Neighbourhood Plans will upon adoption form part of the statutory ‘Development Plan’ for that planning area alongside the District Councils’ own adopted Local Plan. However, unlike Local Plans, Neighbourhood Plans would in Bolsover District be prepared by Parish or Town Councils.
- 1.6 One of the key intentions of Neighbourhood Plans is to allow local communities to make their own decisions on how their towns or villages change or develop but they are required to conform with the policies of the District Council’s Local Plan. If, for example, the Local Plan determines that a settlement should have a certain level of residential development, the Neighbourhood Plan cannot reduce that amount. They can potentially influence the location of the development and can specify more development if they wish, but not less. Whilst this would appear to undermine the localism agenda it is understood that the Government’s intention is to prevent Neighbourhood Plans becoming a “Nimby” charter.
- 1.7 The area that a Neighbourhood Plan can cover is open to local choice, so they can cover the whole or part of a parish or town administrative area, or can extend across parish boundaries. The Parish or Town Council need to formally submit the area they wish the Neighbourhood Plan to cover to the District Council and the District Council decides the appropriateness of the area proposed.
- 1.8 It is also important to note that Neighbourhood Plans are not mandatory, so the District’s Parish and Town Councils do not have to prepare one for their area. Indeed, as the District Council is preparing its own new Local Plan, Parish and Town Councils may find it more efficient and advantageous to work closely with the District Council, rather than potentially duplicating work.
- 1.9 In practice, this duplication could involve Parish or Town Council’s needing to commission their own evidence to support their Neighbourhood Plan proposals, rather than waiting to benefit from District Council commissioned evidence once it has been published.
- 1.10 This option to work closely with the District Council will also be most relevant during the early stages of the preparation of the new Local Plan, given that any emerging Neighbourhood Plan will need to reflect the emerging Local Plan spatial strategy. Based on the District Council’s published Local Development Scheme, this will be outlined initially in late 2015 and with more certainty in late 2016. In advance of this, it will be difficult to agree the relationship between the emerging Neighbourhood Plan and the District Council’s Local Plan as is required in advance of preparing a Neighbourhood Plan.
- 1.11 Despite this, should a Parish or Town Council seek to progress a Neighbourhood Plan, the Neighbourhood Planning (General) Regulations 2012 establishes the following duties for the District Council:

Stage of the process		District Council duty
1)	Application for designation	Determine whether the application includes the

	of a neighbourhood area (Regulation 5)	required documentation.
2)	Publicising an area application (Regulation 6)	<p>Publicise the receipt of the application in order to bring it to the attention of people who live, work or carry on business in the area to which the application relates.</p> <p>Publicise how interested parties can make representations about the application.</p> <p><i>Note – the period for representations must be at least six weeks.</i></p> <p>Consider whether or not to designate a neighbourhood area.</p>
3)	Publicising a designation or refusal of a neighbourhood area (Regulation 7)	Publicise the designation or refusal in order to bring it to the attention of people who live, work or carry on business in the area to which the designation relates.
4)	Plan proposals (Regulation 15)	Determine whether the submitted Neighbourhood Plan includes the required supporting documentation and complies with all the relevant statutory requirements.
5)	Publicising a plan proposal (Regulation 16)	<p>Publicise the receipt of the proposed Neighbourhood Plan in order to bring it to the attention of people who live, work or carry on business in the area to which the Neighbourhood Plan relates.</p> <p>Publicise how interested parties can make representations about the proposed Neighbourhood Plan.</p> <p><i>Note – the period for representations must be at least six weeks.</i></p>
6)	Submission of the plan proposal to examination (Regulation 17)	<p>Appoint a person to examine the Neighbourhood Plan.</p> <p>Send the Neighbourhood Plan and its supporting documentation, including copies of received representations, to the appointed examiner.</p> <p>Make the necessary arrangements for them to examine the Neighbourhood Plan, potentially including a Hearing.</p>
7)	Publication of the	Consider the examiner's report and prepare a

	examiner's report and plan proposal decisions (Regulations 18)	<p>Decision Statement that sets out its decision and the reasons for this decision. <i>Note – decisions may include 1) to decline to consider; 2) to refuse; 3) what action to take in response to the examiner's report, such as send the plan to referendum; 4) what modifications, if any, are needed; 5) whether to extend the referendum area; or 6) if the LPA is not satisfied with the Neighbourhood Plan.</i></p> <p>Publicise the Decision Statement (and in some instances the examiner's report) in order to bring it to the attention of people who live, work or carry on business in the area to which the Neighbourhood Plan relates.</p> <p>Arrange the Neighbourhood Plan referendum if appropriate.</p>
8)	Referendum (see the Neighbourhood Planning (Referendums) Regulations 2012)	<p>Organise, hold and publicise the results of the Neighbourhood Plan referendum.</p> <p><i>Note – if more than half of those voting have voted in favour of the Neighbourhood Plan, the District Council must make the plan and bring it into force as part of the Development Plan for that area. If the referendum result is against the Neighbourhood Plan, the plan would not come into force and the process would need to restart to proceed.</i></p> <p>Note the referendum decision and prepare a Decision Statement that sets out whether the District Council will make or refuse to make the Neighbourhood Plan.</p>
9)	Decision on a plan proposal (Regulation 19)	Publicise the Decision Statement in order to bring it to the attention of people who live, work or carry on business in the area to which the Neighbourhood Plan relates.
10)	Publicising a neighbourhood development plan (Regulation 20)	Publicise the made Neighbourhood Plan in order to bring it to the attention of people who live, work or carry on business in the area to which the Neighbourhood Plan relates.

1.12 Whilst the above sets out the statutory duties for the District Council during the process of preparing Neighbourhood Plans, the key task of writing the Neighbourhood Plan and gathering the evidence to underpin its proposals is the responsibility of the Parish or Town Council. However, in view of the significantly lower level of resources at a Parish or Town Councils disposal, to support the

making of Neighbourhood Plans the Government has issued further advice in the Planning Practice Guidance on the role and functions of planning authorities in relation to neighbourhood planning (paragraphs 21 & 22 - reference ID: 41-021-20140306). These state that a local planning authority must:

- take decisions at key stages in the neighbourhood planning process;
- provide advice or assistance to a parish council, neighbourhood forum or community organisation that is producing a neighbourhood plan or Order;
- be proactive in providing information to communities about neighbourhood planning;
- fulfil its duties and take decisions as soon as possible, particularly regarding applications for area and forum designation;
- set out a clear and transparent decision making timetable and share this with those wishing to prepare a neighbourhood plan or Order;
- constructively engage with the community throughout the process.

1.13 This guidance reflects the statutory duties but adds the expectation that District Councils will “provide advice or assistance” and “constructively engage” during the writing of the Neighbourhood Plan. However, the degree of engagement is not specified and the District Council needs to decide on how much support it can provide taking account of available resources.

1.14 In view of this Government guidance, it is likely that Parish or Town Councils will approach the District Council for help should they begin working or considering working on a Neighbourhood Plan. It is important that the District Council is prepared for such approaches and has clear systems / protocols in place to enable the effective discharge of functions and to accommodate the additional work. Initial expressions of interest in Neighbourhood Plans have already been made by Shirebrook Town Council and Clowne Parish Council.

Neighbourhood Development Orders

1.15 Neighbourhood Development Orders are a second new planning tool that Parish and Town Councils may choose to use. The role of Neighbourhood Development Orders is to allow certain types of development in certain locations, without the need to submit a planning application to the Council. This could be used, for example, to allow changes of use that would normally need planning permission or by allowing certain types of built development that would normally need planning permission.

1.16 Neighbourhood Development Orders can apply to all or part of a Neighbourhood Plan area, although they are largely intended to apply to a particular site within the neighbourhood. However, they can also be prepared as an alternative to a Neighbourhood Plan.

1.17 The process for preparing Neighbourhood Development Orders largely reflects that for Neighbourhood Plans and the District Council’s role and duties are largely as those set out above, i.e. having to publicise received Orders, to organise the examination, to organise the referendum. However, unlike the more informal role of providing support and advice during the preparation of Neighbourhood Plans, the local planning authority has a statutory duty to “give such advice or assistance” as

they consider appropriate for the purpose of facilitating Neighbourhood Development Orders.

Community Right to Build Orders

- 1.18 Community Right to Build Orders are a specific type of Neighbourhood Development Order that Parish and Town Councils may choose to use. The role of Community Right to Build Orders is to allow a local “community organisation” to bring forward a small development, which might include proposals for new homes, business premises and / or community facilities, but it must be small scale in comparison to the size of settlement. However, the organisation must also exist for the express purpose of furthering the social, economic, and environmental well-being of individuals living or wanting to live in a particular area. There are also restrictions over how buildings or other assets developed through Community Right to Build Orders can be disposed of.
- 1.19 As a specific type of Neighbourhood Development Order, the process for preparing and adopting a Community Right to Build Order is broadly the same as that for a Neighbourhood Development Order.

2 Conclusions and Reasons for Recommendation

Level of District Council support to be provided

- 2.1 The duties and requirements of the Neighbourhood Planning (General) Regulations 2012 set out above will be carried out as follows:

Stage a)	Designation of a neighbourhood area	Governance Team
Stage b)	Support on preparation of a Neighbourhood Plan, Neighbourhood Development Order and Community Right to Build Order	Planning Policy Team
Stage c)	Holding a Referendum	Election Team

- 2.2 The outlined duties and requirements will place additional demands upon the District Council’s Governance, Planning Policy and Election Teams in the event that a Parish or Town Council wishes to take on neighbourhood planning for its area.
- 2.3 To manage these demands, it is proposed that the District Council sets out what timescales it will work to and also how much advice and assistance it will provide to Parish and Town Councils during the process, to both meet the Government’s expectations but also safeguard the delivery of its own work priorities. It is considered that this is best achieved through the preparation of a Neighbourhood Planning Protocol Service Level Agreement that would be entered into by the District Council and the relevant Parish / Town Council.
- 2.4 In relation to timescales, the Regulations currently require the District Council to undertake the notification and consultation stages throughout the whole process as soon as possible.

- 2.5 However, due to the wide range of timescales being taken by different local planning authorities, the Government has recently consulted on its proposal to specifically set a statutory time limit of 10 weeks (70 days) within which a local planning authority must make a decision on whether to designate a neighbourhood area that has been applied for by a parish or town council or prospective neighbourhood forum. The outcome of this consultation is yet to be announced but it is clear that the Government wish to see a speedier designation of neighbourhood areas in particular. As a result, it is suggested that the timescales proposed for compliance with the first stage of designating a neighbourhood area should not take more than 10 weeks. This should allow the Governance Team to respond to any requests and programme the additional work around existing commitments whilst readying itself for any future statutory requirement to meet this deadline.
- 2.6 As stated above, the Regulations and the Government's Planning Practice Guidance do not specify how much support a District Council should provide during the preparation of a Neighbourhood Plan, Neighbourhood Development Order and Community Right to Build Order.
- 2.7 Given this component of the work will be taken on by the District Council's Planning Policy Team, consideration has been given to the impact of requests for support upon the Council's own plan making work. In summary, supporting Parish and Town Councils with the preparation of their Neighbourhood Plans will draw upon the resources available to prepare the Local Plan for Bolsover District, so potentially causing slippage in the published timetable for getting the Local Plan adopted. This impact would be increased significantly if more than one Parish or Town Council sought to prepare a Neighbourhood Plan at the same time.
- 2.8 As stated above in paragraph 1.9, this may prove to be counter-productive to the Parish or Town Council given the preparation of the Neighbourhood Plan needs to reflect the District Council's emerging Local Plan.
- 2.9 Therefore, based on the resources available to the Planning Policy Team, it is suggested that one meeting is offered at the following key stages during the preparation of a Neighbourhood Plan:
- Commencement of Plan – this meeting would frame the support available and direct the Parish or Town Council to sources of information that will be of use and the requirements for Neighbourhood Plans, as well as establishing the timescale for the Plan's preparation;
 - Emerging Plan – this meeting would review the progress made and recommend areas for further work to ready the Neighbourhood Plan for submission;
 - Pre-submission Plan – this meeting would review the readiness of the Neighbourhood Plan for submission and recommend any final work needed in advance of formal submission.
- 2.10 It is estimated that each of these meetings would involve roughly a two hour meeting with seven hours support for preparation and action implementation. This proposed level of District Council support for Neighbourhood Planning is set out in a Neighbourhood Planning Protocol Service Level Agreement (attached as Appendix A to this report).

- 2.11 However, despite efforts to minimise the impact on the timetable for preparing the District Councils' Local Plans, the level of support suggested will still have an impact. As a result, it is intended that the impact will be monitored and where necessary the agreed level of District Council support for Neighbourhood Planning will be revised accordingly where possible.

District Council decision making approach

- 2.12 Based on the Council's Constitution, responsibility for the decisions related to the Designation of Neighbourhood Area and Neighbourhood Plan proposals presently lies with the Council's Executive.
- 2.13 In view of the timescales for the process in advance of designating a Neighbourhood Area as outlined in paragraph 2.5, it is considered that delegating these decisions to the Assistant Director of Governance and Monitoring Officer in consultation with the relevant Portfolio Cabinet Members would enable the Council to respond to requests within the 10 week period without needing to call a special meeting of the Executive.
- 2.14 In relation to decisions on Neighbourhood Plan proposals, e.g. to determine how the issues raised in the Examiner's report should be considered and whether the submitted Neighbourhood Plan should be approved or not, it is considered that delegating these decisions to the Assistant Director of Planning and Environmental Health in consultation with the relevant Portfolio Cabinet Members would enable the Council to respond to these stages of the process more quickly without needing to call a special meeting of the Executive.
- 2.15 In both cases, it is noted that Portfolio Cabinet Members could request the decision is made by the Executive at a scheduled or special meeting, instead of delegating it to officers, if that was considered appropriate.

3 Consultation and Equality Impact

- 3.1 Other Officers involved in the preparation of this report were: Assistant Director of Governance and Monitoring Officer, Governance Manager, Election Team Managers (BDC & NEDDC) and Principal Policy Planner (BDC).
- 3.2 Members consulted during the preparation of the report: Cllr Kelly (Cabinet Member for the Environment), Cllr Watts (Cabinet Member for Policy and Resources), Cllr McGregor (Chair of Planning Committee) and Cllr Munks (Vice-Chair of Planning Committee).
- 3.3 An Equality Impact Assessment will be required in advance of publishing a Neighbourhood Plan.

4 Alternative Options and Reasons for Rejection

- 4.1 Due to the Localism Act and the Neighbourhood Planning (General) Regulations 2012, the District Council is required to support and enable the processes of preparing Neighbourhood Development Plans (or Neighbourhood Plans), Neighbourhood Development Orders and Community Right to Build Orders in its

role as a local planning authority. The only alternative options would be to provide more or less support. The option of providing more support has been rejected due to the additional demands that it would make on the District Council's resources and the consequences for the preparation of its own Local Plan. The option of providing less support has also been rejected due to it not meeting the spirit and potentially the letter of the Government's Planning Practice Guidance.

4.2 The alternative option relating to the District Council's decision making approach would be to not delegate decisions to officers and require all decisions to be made by the Executive. This option has been rejected due to the potential for the Council to fail to meet the Government's planned 10 week target for the designation of Neighbourhood Areas and also for the potential delays in its statutory duties for supporting the preparation of Neighbourhood Plans.

5 Implications

Finance and Risk Implications

5.1 Work to support Parish and Town Councils in the preparation of Neighbourhood Development Plans (or Neighbourhood Plans), Neighbourhood Development Orders and Community Right to Build Orders should not include financial support.

5.2 To support the vital role of local authorities in the neighbourhood planning process, the Minister for Planning Brandon Lewis announced on 31 October 2014 an extension of funding of up to £30,000 per scheme for local planning authorities into next year (2015/16) only. Funding for future years is at present uncertain and will depend on the priority given to neighbourhood planning following the General Election. Payments will be made under section 31 of the Local Government Act 2003 retrospectively in following three stages:

- The first payment of £5,000 will be made following designation of a neighbourhood area recognising the officer time supporting and advising the community in taking forward a neighbourhood plan. For authorities designating several neighbourhood areas, each local planning authority can claim up to a maximum of £100,000 for area designations (i.e. 20 areas), in 2015/16.
- The second payment of £5,000 will be made when the local planning authority publicises the neighbourhood plan or order prior to examination. This will contribute towards the costs of the examination as well as other staff costs incurred at this stage. There is no cap on the number of claims that can be made in 2015/16.
- The third payment of £20,000 will be made on successful completion of the neighbourhood plan or order examination. This is to cover costs for that examination and any other further steps that may be needed for the neighbourhood plan to come into legal force, including referendum. There is no cap on the number of claims that can be made in 2015/16.

5.3 As a result, the District Council would be eligible to claim funding from central government for the additional demand upon its resources upon successful completion of certain key stages.

- 5.4 For information, the Department for Communities and Local Government (DCLG) have made funding available for Parish and Town Councils to support their work on preparing Neighbourhood Plans. However, this funding has been fully allocated and the awarded grants are required to be spent by December 2014. Due to the popularity of the grants, DCLG has made available a new bridging grant pot to cover further expenditure needed from November 2014 - March 2015. However, eligibility criteria exist and groups who are awaiting a local authority decision on their area designation are not eligible.
- 5.5 On the 31st October 2014, DCLG also announced their continuing commitment to neighbourhood planning and announced that funding of £22.5 million will be made available over 2015 to 2018 to provide community groups with expert advice, grant funding and technical assistance to get neighbourhood plans and orders from their inception to their coming into force following a local referendum.

Legal Implications including Data Protection

- 5.6 The District Council has a statutory duty to support and enable the processes of preparing Neighbourhood Development Plans (or Neighbourhood Plans), Neighbourhood Development Orders and Community Right to Build Orders in its role as local planning authority.

Human Resources Implications

- 5.7 Work to support Parish and Town Councils in the preparation of Neighbourhood Development Plans (or Neighbourhood Plans), Neighbourhood Development Orders and Community Right to Build Orders has the potential to divert resources away from the preparation of the District Council's own Local Plan. On the basis of current expressions of interest it is expected that the additional work can be accommodated within by the current staff resource. However, if further Parish and Town Councils decide to pursue neighbourhood plans; or if the level of officer input required exceeds that set out in the protocol it may be necessary to secure additional resources.
- 5.8 In relation to the Elections and Governance Teams, these are both very small teams which have previously been streamlined to cope with existing work levels. This work would be on top of what was planned and the effect will be monitored. As members are aware, May 2015 presents a challenging set of elections for the Elections team to administer with assistance from the Governance Team.

6 Recommendations

- 6.1 That Executive:

- 1) Notes the detailed issues set out in the report;
- 2) Agrees the proposed level of District Council support for neighbourhood planning as set out in the Neighbourhood Planning Protocol Service Level Agreement (attached as Appendix A to this report);

- 3) Agrees that decisions related to the Designation of a Neighbourhood Area be delegated to the Assistant Director of Governance and Monitoring Officer in consultation with the relevant Portfolio Cabinet Members;
- 4) Agrees that decisions related to Neighbourhood Plan proposals be delegated to the Assistant Director of Planning and Environmental Health in consultation with the relevant Portfolio Cabinet Members.

7 Decision Information

Is the decision a Key Decision? (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	Not at this stage, but will lead to one when an option is finalised
District Wards Affected	All
Links to Corporate Plan priorities or Policy Framework	The District Council's Local Plan will set out the vision, key principles and policies that will underpin the sustainable development of each district. It will cover a wide range of economic, environmental and social issues. As such it links to all Corporate Plan priorities.

8 Document Information

Appendix No	Title
Appendix A	Neighbourhood Planning Protocol Service Level Agreement
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Localism Act 2011 The Neighbourhood Planning (General) Regulations 2012 Letter of the Governments' Chief Planning Officer, 3 rd November 2014	
Report Author	Contact Number
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