

Report to: **Portfolio Holder for Planning**
Date: **9th March 2017**
Title: **Rame Peninsula Neighbourhood
Development Plan: Plan Proposal Decision –
Post Examination Report and Referendum**
Portfolio Area: **Planning**
Divisions Affected: **Rame Peninsula**
Relevant Scrutiny Committee: **Scrutiny Management**

Key Decision:	N	Approval and clearance obtained:	Y
Urgent Decision:	N	Date next steps can be taken: (e.g. referral on of recommendation or implementation of substantive decision)	Normally 5 days after substantive decision is published
Appropriate pre-decision notification given where an executive Decision?			N

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Recommendation:

1. That the Rame Peninsula Neighbourhood Development Plan is amended according to the Examiner's recommendations, the Plan proposal decision is published and the Plan progresses to Referendum.

1. Executive summary

The Rame Peninsula Neighbourhood Development Plan (NDP) has been successful at examination, with the Examiner recommending that the Plan should proceed to referendum, subject to a number of recommended amendments.

The Local Planning Authority is responsible for deciding what action to take in response to the Examiner's recommendation. This report details

the recommendations and the amendments made to the NDP, which have been made with the involvement of the NDP steering group.

2. Background

The Council has a statutory duty to assist communities in the preparation of Neighbourhood Development Plans and Orders and to take plans through a process of Examination and Referendum.

The Rame Peninsula Neighbourhood Plan has been subject to the regulatory stages required by the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012, as follows:

- NDP Area designation 14th February 2013
- Pre-submission consultation 19th November 2015 until 28th January 2016
- Draft Plan submitted to Cornwall Council 12th July 2016
- Legal compliance agreed by Portfolio Holder Decision on 26th September 2016
- Publication consultation 14th October until 25th November 2016

Cornwall Council, with the agreement of the Millbrook Parish Council Group as Qualifying Body (QB) in conjunction with the parishes of Antony, Maker with Rame, St John and Shevioc (there can only be one QB per NDP area and it was agreed by the Parish Councils that this function would be undertaken by Maker with Rame Parish Council), appointed Ms Deborah McCann as Examiner. Ms McCann carried out the examination by means of written representations (without a site visit).

15 comments were submitted to the Examiner following the publication consultation.

Ms McCann supplied her final report on 8th March 2017. The report concluded that the Rame Peninsula NDP could proceed to referendum, subject to some recommended modifications to make the wording of policies and their application clearer and to ensure that the NDP meets the basic conditions. The recommended modifications are:

Policy Specific Recommendations

- Policy 1 – New Housing – Principal Residency (Area Wide) – the inclusion of criterion 2 in the policy requiring new housing to be used as a holiday letting business (or a primary residence under criterion 1) is confusing. The measure of permanent residency as 300 days per year is also unlikely to deliver the required outcome. The policy should be reworded as per the following:

“Due to the impact upon the local housing market of the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes) new open market housing will only be permitted where there is a condition restricting occupancy as a Principal Residence. Principal residences are defined as those

occupied as the residents' sole or main residence, where the resident spends the majority of their time when not working away from home or living abroad.

The condition placed on new open market homes will require that they are occupied by the owner or their tenants as their primary (principal) residence. Owners of homes with a Principal Residence condition will be required to keep proof that they are meeting the condition, and be willing to provide this proof if/when Cornwall Council requests this information. Proof of Principal Residence is via verifiable evidence including (but not limited to) residents being registered on the local electoral register and being registered for and attending local services (such as healthcare, schools, etc.)."

- Policy 3 – Renewable energy (area wide) – there is insufficient clarity as to how the “unacceptable impact on the character and appearance of the immediate and wider landscape” will be measured. The policy should be reworded as follows:

- *"Proposals for Renewable Energy Schemes, (including Wind and Solar), within the Rame Peninsula NDP area, must be supported by adequate information, including a Landscape Visual Impact Assessment to enable the assessment of the impact of the proposal on the character and appearance of the immediate and wider landscape, and of areas of natural, cultural, historical or architectural interest. Only proposals which are deemed to have an acceptable impact will be supported."*

- Policy 4 – General Development (Infrastructure and Facilities) (Area Wide) –lacks clarity and certainty as it is unclear what is meant by infrastructure or community facilities in this context and thus presents a difficulty as to how applications will be assessed. The policy also refers to offsetting measures without having regard to the NPPF where compensatory measures are only considered after it is demonstrated that options, firstly, to avoid; and, secondly, to mitigate against adverse impacts, cannot be met (and where any harm is outweighed by a proposal's wider economic, social and environmental benefit). In addition, there seems inadequate information regarding detail of the features of special conservation or amenity value referred to. Policy 28 of the Cornwall Local Plan is consistent with the aims and objectives of this policy and overcomes the concerns I have relating to the wording of this policy. In order to meet the Basic Conditions, the policy should be reworded as follows:

"Due to the identified inadequacies of infrastructure in the Rame Peninsula development proposals within the Rame Peninsula NDP area, will only be supported where they are consistent with the requirements of Policy 28 of the Cornwall Local Plan, in that:

- *Developer contributions will be sought to ensure that the necessary physical, social, economic and green infrastructure is in place to deliver development.*
- *Contributions will be used to provide or enhance local infrastructure that is adversely affected by the development of a site but which will not be delivered on that site.*
- *Development will be permitted where it would:*
 1. *Be supported by appropriate infrastructure provided in a timely manner; and*
 2. *Provide on-site mitigation measures or make financial contributions for site specific infrastructure provision*
 3. *Where it can be demonstrated that it is not feasible to do this, the Council will seek to ensure all 'allowable solutions' or 'biodiversity offsetting' payments are invested in projects within the Rame Peninsula Area."*
- Policy 5 – General Development (Visual Impact, Design and Biodiversity) (area wide) – This policy appears to be aiming to be a “catch all” policy and lacks clarity and does not have adequate regard for existing National and Local Policy which controls development within designated areas and therefore does not meet the Basic Conditions as currently worded. In addition, although Biodiversity is referred to in the title of the policy there is no further reference to this important issue in the body of the policy.

Also of concern, regarding the plan overall is that despite Housing being the first objective identified by the plan there is a surprising absence of reference as to where and how affordable housing to address identified local need will be provided particularly given the restrictive nature of policies 14 and 15. The difficulty of delivering affordable housing in the face of the restrictions imposed by Rame NDP policies 1, 14 and 15 has been identified in the Affordable Housing consultation response. However, the plan allows for some flexibility in that the main settlement, Millbrook, does not have a settlement boundary, and this will enable infill and rounding off to occur at Millbrook as well as exception sites here and around other settlements. To be in general conformity with the strategic policies of the Development Plan and have regard to National Policy and Guidance in order to meet the Basic Conditions the plan should have a more explicit reference to housing to meet local housing need/affordable housing. As the modified policy is not confined to dealing with visual impact, design and Biodiversity references from the title should be deleted and the policy should be reworded as follows:

"The Rame Peninsula NDP area has many environmental designations which make it very sensitive to development and any proposal for development will only be supported where it is:

- *Compliant with National and Local Policy;*
- *Compliant with other policies within this plan;*
- *is for the delivery of affordable housing on a rural exception site consistent with Policy 9 of the Cornwall Local Plan;*

- *is sited to minimise its visual impact on the landscape;*
 - *is supported by a Biodiversity action plan;*
 - *is consistent with the character of the particular area in which it is sited;*
 - *is designed so as to reflect locally distinctive character, traditional building styles and local materials;*
 - *conforms with the local settlement patterns."*
- Policy 8 – Antony Village Bypass – Safeguarding of Land (Antony Parish) – Whilst there is support from the community for a bypass, the land in question belongs to a third party who has registered their objection to the policy. In addition, there are no proposals for a bypass for Antony Village in the Cornwall Local Plan and the Council does not support the safeguarding of land for this purpose. No evidence has been submitted with the NDP to indicate that this route has undergone any rigorous assessment as to its suitability, indeed Historic England have raised concerns regarding this issue. The impact of this policy could be considered to sterilise the land in question without any real prospect of a bypass being delivered and as such I find it does not have regard for the NPPF and therefore does not meet the Basic Conditions in this respect. The policy should be deleted or reworded as follows:

"The principle of a bypass for Antony Village is supported subject to other policies within the plan."

- Policy 11 – Commercial Growth area for Millbrook (Millbrook Parish) – This policy seeks to prevent development in a particular location without considering the impact of any individual proposal on that area and without clarity as to what is meant by "encourage the movement of HGV and large vehicles". As currently worded the policy does not have regard to National Policy and therefore does not meet the Basic Conditions. The policy should be reworded as follows:

"Within Millbrook Parish, industrial and/or business development (including small workshops) that are proposed to be located to the west of Hounster Hill (see Figure 5) will be supported, subject to other policies in this plan. Any proposal which increases the movement of HGVs and other large vehicles must be supported by a Transport Assessment and will only be supported where the impact is assessed as acceptable."

- Policy 12 – Southdown & Foss Quay Boatyards – The wording of this policy is imprecise and as a result could be considered not to meet the Basic Conditions in terms of having regard for National Policy, in particular Paragraph 32 of the NPPF relating to residual cumulative impacts of development on transport. It is unclear as to whether the inclusion of the bullet point "Have a materially adverse impact on existing businesses located in the area" is intended to imply protection in terms of amenity and business operation for

neighbouring businesses or to be “anti-competition”, for clarity this bullet point should be deleted and the policy reworded as follows:

“The development of workshops within the existing boatyard and above the mean high water mark on the site of the Southdown or Foss Quay (see Figure 6) for B1 and B2 use is supported in principle however due to the environmental sensitivity of the location any proposal should be supported by an appropriate level of information to enable the impact of the proposals to be fully assessed (including a Transport Statement or Assessment and mitigation measures where necessary).”

The information provided should be appropriate to the scale of the proposal and where necessary include information on the impact upon:

- water supply, sewerage and sewage treatment and water disposal*
 - the village and wider rural environment in terms of visual appearance, noise, effluent or fumes it would emit or traffic it would generate*
 - sites protected by nature conservation and/or landscape designations (SSSI, SAC or SPA) or AONB.”*
- Policy 13 – Millbrook Lake and Green Space - Safeguarded Land (Millbrook Parish) – It is considered that this policy is seeking to designate Millbrook Lake and Green Space as a Local Green Space as described in the National Planning Policy Framework (NPPF) paragraphs 76 and 77. It is considered that the area concerned meets the requirements of the NPPF in being considered a Local Green Space, but for clarity the policy should be reworded as follows:

“Millbrook Lake and its surrounding green area, including the playing fields (see Figure 7), is designated as a Local Green Space and must be protected and enhanced as a public open space and amenity area.”

In addition, the Examiner has considered the approach taken to the settlements of Shevioc Parish and St John Parish (policies 14 and 15). Both are restrictive and allow for infill or small extension in a preferred direction. The Examiner considered both policies in the context of the constraints on development in the areas of the Neighbourhood Plan Area covered by the policies and the impact on the potential to deliver housing to meet local need identified both by Cornwall Council and in the evidence base supporting this plan. She concluded however that the Rame NDP allows for some flexibility in the main settlement, Millbrook and this will enable infill and rounding off to occur at Millbrook as well as exception sites here and around other settlements. On that basis she has concluded that Policy 5, as modified covers the issue of the delivery of affordable housing adequately and therefore does not propose any modification of policies 14 and 15.

The full report is attached at **Appendix 1**.

Her overall recommendation is that the Neighbourhood Plan, as amended following the recommendations, be submitted to a referendum and that the referendum area should be the same as, and not extend beyond, the NDP area.

3. Outcomes/outputs

The next stage of the Regulations requires the Council to:

- Decide what action to take in response to the recommendations of the Examiner
- Publish the decision and their reasons for it
- Publish the Examiner's report

The Neighbourhood Planning (General) Regulations 2012 (as amended) requires in Regulation 18 for the local planning authority to outline what action to take in response to the recommendations of an Examiner made in a report under paragraph 10 of Schedule 4A to the 1990 Act (as applied by Section 38A of the 2004 Act) in relation to a neighbourhood plan.

This report is the Council's decision on how to incorporate the Examiner's recommendations. The power to decide whether the Examiner's amendments are incorporated or not, lies with the Local Planning Authority. However the Examiner's report has been discussed in detail with the NDP Steering Group and the Neighbourhood Plan and the proposed amendments to the Plan in response to the Examiner's report have been developed with the Group's involvement.

Having considered each of the recommendations made in the Examiner's report and the reasons for them, the Council, with the consent of the constituent parishes, has decided to accept the modifications to the draft Plan. Appendix 3 outlines the alterations made to the draft Plan under paragraph 12(6) of Schedule 4B to the 1990 Act (as applied by Section 38A of 2004 Act) in response to each of the Examiner's recommendations and the justification for this. **Appendix 3** details the modifications agreed by the Council with the consent of the Parish Councils.

In summary, the following changes have been made in line with the Examiner's recommendations:

- Policy 1 – New Housing – Principal Residency (Area Wide) – the policy has been revised in line with the Examiner's recommended wording.
- Policy 3 – Renewable energy (area wide) – the policy has been revised in line with the Examiner's recommended wording.
- Policy 4 – General Development (Infrastructure and Facilities) (Area Wide) – the policy has been revised in line with the Examiner's recommended wording.

- Policy 5 – General Development (Visual Impact, Design and Biodiversity) (area wide) – the policy has been revised in line with the Examiner’s recommended wording.
- Policy 8 – Antony Village Bypass – the policy has been revised in line with the Examiner’s recommended wording.
- Policy 11 – Commercial Growth area for Millbrook (Millbrook Parish) – the policy has been revised in line with the Examiner’s recommended wording.
- Policy 12 – Southdown & Foss Quay Boatyards – the policy has been revised in line with the Examiner’s recommended wording.
- Policy 13 – Millbrook Lake and Green Space - Safeguarded Land (Millbrook Parish) – the policy has been revised in line with the Examiner’s recommended wording.

Amendments to Policies will allow them to meet the Basic Conditions and therefore to be retained in the Plan.

Principal Residence:

The Examiner has recommended the retention of the Principal Residence policy (Policy 1) contained in the Plan on the basis that she considers that it is justified by the evidence used to support the Plan. and that it would be compatible with and not in conflict with Human Rights Legislation. The Examiner’s reasoning for this judgement is set out in greater detail in her report, which is attached as **Appendix 1** and in the options section that follows below.

4. Options available and consideration of risk

The amendments to the Plan have addressed issues raised by the Examiner relating to the fit with the Basic Conditions. This also addressed representations considered by the Examiner.

Cornwall Council has a duty to support communities who are preparing neighbourhood plans. The Regulations detail the Council’s responsibilities. Failure to take the Plan forward to referendum would risk customer dissatisfaction and would be a failure of the Council’s duty.

The Examiner considered whether the proposed Principal Residence policy (policy 1) or any other part of the Plan would be contrary to Human Rights or cause any Convention right to be breached. She concluded that it would not.

The Examiner considered the evidence provided in support of this policy and looked in detail at Mr. Justice (now Lord Justice) Hickinbottom’s judgment in R (RLT Environment Ltd) v Cornwall Council in relation to Policy H2 of the St. Ives Neighbourhood Development Plan. Lord Justice Hickenbottom concluded in that case that:

“Policy H2 is in pursuit of legitimate public interests identified in article 8(2), namely the interests of the economic well-being of the country, and for the protection of the rights and freedoms of others.”

She also states that she has considered carefully the potential for unforeseen consequences on the local housing market and the future delivery of affordable housing, as highlighted in the Cornwall Council Affordable Housing response to the policy.

In terms of the evidence supporting the basis for this policy she notes that the level of second/holiday homes is more concentrated around the coastal strip of the Rame Peninsula and states that she has given consideration as to whether there is sufficient justification for a policy that operates across the Neighbourhood Plan area as a whole. Her conclusion is that a policy seeking to cover only part of the area would be unworkable and result in driving the problem from one part of the Rame Peninsula to the other and that on balance that there is sufficient evidence to support an area wide policy.

The inclusion of a requirement to restrict use to a Principal Residence or holiday let was considered confusing and has been recommended for deletion, now taken up by the NDP group in their amendments alongside amendments to redefine the definition of principal dwelling.

Cornwall Council has a duty to support communities who are preparing neighbourhood plans. The Regulations detail the Council’s responsibilities. Failure to take the Plan forward to referendum would risk customer dissatisfaction and would be a failure of the Council’s duty.

5. Proposed Way Forward

The plan proposal decision and Examiner’s report should be published and the NDP should progress to referendum.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>Relevant legislation:</p> <p>Town and Country Planning Act 1990 (as amended) Planning and Compulsory Purchase Act 2004 Localism Act 2011 Neighbourhood Planning (General) Regulations 2012 (as amended) .</p> <p>It is the decision of the Council whether to accept the Examiner’s recommendation and proceed to Referendum. As the modifications and additional modifications are acceptable to the Council and the NDP Steering Group the Council is in a position to proceed to Referendum.</p>
Financial	N	<p>There are costs associated with the referendum. The estimated costs for the Rame Peninsula</p>

		<p>referendum are £9,200.</p> <p>Central Government provided a grant to the LPA of £5,000 at area designation, £5,000 at submission and will provide £20,000 on successful examination. These grants were provided until 31 March 2016, but from April 2016, it has effectively been reduced to the final grant of £20,000 for Cornwall Council as the first two staged payments of £5,000 are only available for the first 5 designations made. The monies collected previously for the Rame Peninsula NDP and the post examination payment will be used to fund the associated costs. This current funding arrangement could be subject to change at the discretion of Central Government.</p> <p>The value of the grant is fixed, irrelevant of the actual examination and referendum costs, so for smaller neighbourhood plans the grant is usually in excess of the costs incurred. This is retained by the Service to cover the cost of the larger towns, where the costs are higher. The current budget is sufficient to accommodate the Rame Peninsula NDP's costs.</p> <p>During the financial year, if the accumulated costs for the neighbourhood plans exceed the grants received, then the Planning and Sustainable Development Service will have to identify funding from elsewhere within their approved budget to fund any deficit.</p>
Risk	Y	<p>Failure to take the Plan forward to referendum would risk customer dissatisfaction and would be a failure of the Council's duty to support neighbourhood plans.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	<p>The Plan covers the Maker with Rame, Antony, Millbrook, St John and Shevioc Parish areas and its aim is to meet the needs of all the community.</p> <p>With regard to the Council's Public Sector Equality Duty the Council has assessed the groups with protected characteristics, i.e. age, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation and there is no evidence that any of the above would</p>

		<p>be discriminated against. With regard to race, there are policies which seek to ensure more housing is occupied by local residents. In general local residents are seen as more likely to fall within the status of 'Cornish'. The Cornish are protected as a national minority under the Council of Europe's Framework Convention for the Protection of National Minorities which was ratified by the Government in 1998.</p> <p>The Plan has to contribute to sustainable development and be compliant with the European Convention on Human Rights as encompassed in the Human Rights Act 1998. This matter has been considered by the Examiner and she has considered this Basic Condition and concludes that the NDP does not breach and is otherwise compatible with EU obligations and human rights requirements. This is a view supported by the Council. The position has also been endorsed by the High Court borne out by the Judgment in the case of the Queen on the application of RLT Built Environment Limited v. Cornwall Council and St Ives Town Council (case No: CO/2241/2016 [2016] EWHC 2817 Admin of 10 November 2016 which relates to a similar policy in the St Ives Area NDP.</p>
Safeguarding	N	No Implications
Information Management	N	No Implications
Community Safety, Crime and Disorder	N	No implications
Health, Safety and Wellbeing	N	No implications
Other implications	N	None identified

Supporting Information

Appendices:

Appendix 1 Examiner's report for the Rame Peninsula NDP:

Appendix 2 Copy of the Rame Peninsula NDP with amendments following examination

Appendix 3 Schedule of Modification Recommendations

Background Papers:

N/A

All reports:

Final report sign offs	This report has been cleared by OR not significant/not required	Date
Legal (if significant/required)	Elizabeth Dunstan Planning Policy and Special Projects Legal Consultant	10.03.2017
Finance Required for all reports	Leah Thomas	13.03.2017
Equality and Diversity		

Cabinet/individual decision reports:

Final report sign offs	This report has been cleared by	Date
Head of Service		
Corporate Director		