

Report to: **Executive**

Date: **30th November 2023**

Title: **South Milton Neighbourhood Plan Modification**

Portfolio Area: **Planning – Cllr Thomas Deputy Leader of the Council**

Wards Affected: **Salcombe and Thurlestone**

Urgent Decision: **N** Approval and clearance obtained: **N**

Date next steps can be taken: Upon the expiry of the Scrutiny Call-in period (5.00 pm on Monday 11th December 2023)

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RECOMMENDATIONS

That the Executive:

- 1. Receives the Examiner’s report for the South Milton Neighbourhood Plan Modification set out at Appendix A.**
- 2. Considers each of the recommendations made by the report and the reasons for them.**
- 3. Agrees that the South Milton Neighbourhood Plan as proposed to be modified meets the Basic Conditions and is compatible with the Convention Rights, subject to the amendments recommended by the Examiner.**
- 4. Approves the ‘making’ (adoption) of the South Milton Neighbourhood Plan modifications as recommended to be amended by the Examiner, (as set out in the full plan attached at Appendix B).**
- 5. Authorises the Assistant Director Planning to publish the Decision Statement set out at Appendix C.**

Executive summary

- 1.1 Neighbourhood Plans are a community right introduced by the Localism Act 2011. They are the responsibility of Parish Councils (or Neighbourhood Forums if established in non-parished areas).
- 1.2 The South Milton Neighbourhood Plan area (the plan area) was designated by the District Council in 2014. It corresponds with the South Milton parish boundary.
- 1.3 The South Milton Neighbourhood Plan (SMNP) was 'made' (adopted) by the Council in September 2019. South Milton Parish Council has proposed a modification to the SMNP to add a principal residence requirement, with consequential minor changes to the wording of two other policies.
- 1.4 The proposed modifications have been subject to consultation and independent examination. The independent examiner has recommended some further amendments (see Appendix A) including an amended plan (see Appendix B), which the Parish Council has accepted. The examiner has also considered whether in the context of the neighbourhood plan as a whole, the proposed modifications are so significant or substantial as to change the nature of the plan, so a referendum would be required. The examiner is recommending that the modifications can be made without the need for a referendum.
- 1.5 The Parish Council has resolved to accept the examiner's recommended amendments (see Appendix D). Once 'made' (adopted) by the local planning authority, the additional and modified policies will become part of the Development Plan for the plan area alongside the Plymouth and South West Devon Joint Local Plan.

2. Background

- 2.1 The SMNP modification has been prepared by South Milton Parish Council in accordance with the relevant legislation and regulations.
- 2.2 The SMNP Area was designated in 2014 under the Neighbourhood Planning Regulations 2012. The area covers the administrative boundary of the Parish of South Milton. Following two periods of consultation under Reg.14 and Reg.16 and examination the SMNP was 'made' on the 19th September 2019 (Minute E.39/19 refers).
- 2.3 Based on comments made to the Parish Council, there was a general sentiment in the parish that the building of additional second homes and/or holiday lets would adversely affect the economic and social wellbeing of the community. Early in 2022 SMPC undertook a survey of holiday homes in the parish. This showed that the percentage of the housing stock in the parish comprising second homes had increased from 29% in the 2011

Census to 34% in the parish survey undertaken in January 2022. The results of the survey led the parish council to decide that it would be appropriate to modify the housing policies in the neighbourhood plan, so as to be able to prevent new housing from being used as second homes or holiday lets.

- 2.4 It was proposed to add a new policy to the plan – *Policy H5 Principal Residency Requirement*. This policy would place a presumption that new residential development, other than replacement dwellings, will only be permitted if subject to a Section 106 Agreement to ensure occupancy as a principal residence. Whilst supporting the addition of this new policy in principle, the examiner has proposed to amend its wording to refer to ‘planning obligations’, which also cover unilateral obligations, which impose the same restrictions, but on a unilateral basis. The term ‘planning obligation’ covers both S106 Agreements and unilateral obligations.
- 2.5 To ensure consistency of wording in the consequential proposed changes to the policy wording of associated policies, the examiner:
- Proposes that the third bullet point of clause 2 of Policy H1 changes from ‘*a planning condition shall be included to ensure...*’ to ‘*A planning obligation will be expected to be submitted or completed which will ensure the open market and self-build houses are occupied as ‘sole’ or principal residences as set out in Policy H5*’.
 - Supports the amendments proposed to Policy H4 – the additional bullet point ‘*It complies with Policy H5*’ at the end of the first list, and the deletion of the sentence ‘*For open market and self-build housing, the local planning authority adds a condition requiring the houses to be occupied as a sole or principal residence*’ from the first bullet point in the second list, as a matter of consistency.
 - Proposes the consequential modification to Policy H5 clause 3 – to replace ‘*Section 106 agreement*’ with ‘*planning obligation*’.
- 2.6 Following the necessary community engagement, consultation (six-week public consultation at Reg.14 stage in March to April 2022) the modification proposal was submitted to the Council in accordance with Reg.15. The Council formally consulted on the proposed modification (under Reg.16) from 16th June to 28th July 2023. The plan then proceeded to examination which was conducted during August.
- 2.7 The examiner’s final report was produced on 30th August 2023 (see Appendix A). It provides an independent examination of the proposed modification of the SMNP and its process of preparation. Council officers provided feed-back and fact checking to the examiner on the draft report.

- 2.8 The examiner's report sets out the examiner's recommended amendments. The two amendments are required to ensure the plan meets the Basic Conditions. The examiner's recommendations are set out at the end of para. 49 on page 12 of the report.
- 2.9 The examiner's report concludes that the proposed modifications to the SMNP, if amended in line with his recommendations, meet all of the statutory requirements including the Basic Conditions and that, subject to his recommended amendments, it is appropriate for the Council to 'make' the modified SMNP as proposed.
- 2.10 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. A neighbourhood plan meets the Basic Conditions if:
- a. Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
 - b. the making of the plan contributes to the achievement of sustainable development;
 - c. the making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority;
 - d. the making of the plan does not breach, and is otherwise compatible with, retained EU obligations, and;
 - e. prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the plan.
- 2.11 Notwithstanding the examiner's report, the Council must be satisfied that the SMNP as proposed to be modified meets the Basic Conditions and is compatible with the European Convention on Human Rights (ECHR) and other European Union Obligations, or would do so if modifications were made to it.
- 2.12 The European Convention on Human Rights (ECHR) and other European Union Obligations are considered as the Neighbourhood Plan is required to take cognisance of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC. A Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) screening exercise was undertaken. This concluded that a full SEA was not required for the plan modification as its provisions did not undermine environmental, habitats or species considerations. The examiner was satisfied with that conclusion.
- 2.13 Council officers have considered the proposed modifications to the SMNP and the examiner's report with regard to the Basic Conditions, including conformity with the development plan and national policy. Officers accept the examiner's reasoning for his

proposed amendments, agree that the Basic Conditions have been satisfied, and confirm that the plan can proceed to be 'made' (adopted). South Milton Parish Council has considered the examiner's report and resolved to accept the examiner's proposed amendments in their entirety and to support the plan as modified going forward to adoption (see Appendix D).

- 2.14 As a modification to an existing neighbourhood plan, there are additional considerations that need to be applied by virtue of Schedule 2A of the Planning and Compulsory Purchase Act 2004. Section 10 states that the examiner must first determine whether the modifications are so significant or substantial as to change the nature of the plan. Such a determination would have the effect of triggering the need for a referendum, if the modified plan passes examination. The examiner concluded that the modifications will not change the nature of the plan and that, therefore, a referendum will not be required.
- 2.15 If the Executive is satisfied that the SMNP meets the Basic Conditions, the European Convention on Human Rights, and other European Union Obligations the plan as proposed to be modified can proceed to adoption.

3. Outcomes/outputs

- 3.1 If the recommendation to 'make' (adopt) the SMNP as proposed to be modified is agreed, the Council must, as soon as possible, publish the Decision Statement (see Appendix C), details of where and when the Decision Statement may be inspected, and the examiner's report.
- 3.2 Once 'made' by the local planning authority, the modified neighbourhood plan becomes part of the Development Plan for the area and will be used alongside the local plan to determine planning applications.
- 3.3 A successful outcome for this neighbourhood plan will provide encouragement to the other parishes that are currently working on preparing or modifying a neighbourhood plan.

4. Options available and consideration of risk

- 4.1 Given the view of Council officers and their recommendation that the neighbourhood plan meets the relevant conditions, it is considered that the Neighbourhood Plan should continue through the process as proposed.
- 4.2 If the Executive does not agree, then the options are to propose such modifications as the Executive considers would enable the plan as modified to meet the relevant conditions and therefore still proceed to adoption; or to agree to the modifications to the plan not being 'made'.

4.3 In terms of risk, this relates to the potential for challenge through a Judicial Review to the Executive's decision that the plan does or does not meet the Basic Conditions or is compatible with the European Convention on Human Rights.

5. Proposed Way Forward

5.1 It is recommended that the Executive agrees to 'make' (adopt) the South Milton Neighbourhood Plan modification as recommended to be amended by the examiner.

6. Implications

Implications	Relevant to proposals Y/N	Details are set out in this report.
Legal/Governance	Y	The decision to proceed to 'make' (adopt) a Neighbourhood Plan is the responsibility of the Council and/or its Executive. The South Milton Neighbourhood Plan proposed modification has followed the procedure in the Neighbourhood Planning (General) Regulations 2012 and can now be 'made' subject to the examiner's recommended amendments.
Financial implications to include reference to value for money	N	There are no financial implications. Neighbourhood Plans are supported through the Government grants program.
Risk	Y	There is a risk of legal challenge on the Neighbourhood Plan process.
Supporting Corporate Strategy	Y	The Council's role in the Neighbourhood Plan process is a statutory duty. Neighbourhood Plans assist in delivering key themes in the Better Lives for All 2021, including; Adapting & mitigating climate change and increasing biodiversity; Protecting, conserving and enhancing the built and natural environment; Stimulating a thriving economy.
Climate Change - Carbon / Biodiversity Impact	Y	The South Milton Neighbourhood Plan aligns with the Joint Local Plan and contains policies aimed at mitigating the effects of climate change and impacts upon biodiversity.

Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	The Neighbourhood Plan has assessed Equality and Diversity implications as part of its background evidence.
Safeguarding	N	None.
Community Safety, Crime and Disorder	N	No direct implications.
Health, Safety and Wellbeing	Y	Positive outcomes are anticipated from the making of the Neighbourhood Plan's proposed modification.
Other implications	N	None.

Supporting Information

Appendices:

Appendix A: South Milton Neighbourhood Plan proposed modifications Examiner's report.

Appendix B: The full South Milton Neighbourhood Plan as proposed to be modified.

Appendix C: Decision Statement.

Appendix D: Minutes of South Milton Parish Council meeting on 25th September 2023 (Min. 289 a1 refers).

Background Papers:

None