

## NFNPA/PC 270/18

### NEW FOREST NATIONAL PARK AUTHORITY

### PLANNING COMMITTEE MEETING – 17 JULY 2018

## DRAFT HYTHE AND DIBDEN NEIGHBOURHOOD PLAN - NFNPA CONSULTATION RESPONSE

**Report by:** David Illsley, Policy Manager

#### **Summary:**

The parish of Hythe & Dibden was designated as a 'Neighbourhood Area' by the National Park Authority and New Forest District Council in December 2015. This represented the first step in the production of a Neighbourhood Plan, with circa 25% of the parish lying within the National Park. Following an initial public consultation in 2016, Hythe & Dibden Parish Council have now published their draft Neighbourhood Plan for a period of public consultation running until August 2018. This report: (i) provides the background to the draft Neighbourhood Plan; and (ii) recommends a number of areas for the Authority to make representations. The *Localism Act 2011* (and subsequent regulations) requires the Authority to support the production of Neighbourhood Plans and the proposed responses are intended to be constructive in assisting the Parish Council in revising the Neighbourhood Plan before submission and examination.

#### **Recommendation:**

**Members endorse the proposed responses highlighted in this report for submission to Hythe & Dibden Parish Council and delegate to officers to continue to liaise with the Parish Council prior to the submission of the revised Neighbourhood Plan.**

#### **1. Introduction**

- 1.1 Neighbourhood Plans were introduced by the *Localism Act 2011* to give communities direct power to develop a shared vision for their neighbourhood and shape the development of their local area. Neighbourhood Plans are planning documents that, once adopted, form part of the statutory 'development plan' for the area. As the New Forest is a parished area, Neighbourhood Plans can be prepared by parish or town councils if they chose to do so. The National Park Authority can support communities in preparing Neighbourhood Plans by giving constructive advice and assistance.
- 1.2 Neighbourhood planning is not a legal requirement, but a right which communities can chose to use. Neighbourhood Plans can be developed before or at the same time as the local authority is producing its Local Plan. In July 2015 Hythe & Dibden Parish Council applied to the National Park Authority and New Forest District Council for the whole of the parish to be designated as a 'Neighbourhood Area'. This designation was confirmed in December 2015 and represented the first stage in the neighbourhood planning process.
- 1.3 Work on the emerging Hythe & Dibden Neighbourhood Plan is being overseen by a steering group made up of parish councillors and community representatives. A Project Development Officer is also employed by the Parish Council to help deliver the work. The Parish Council undertook an initial public consultation in late 2016 to inform the preparation of the Neighbourhood Plan and further details can be found on their website at <https://www.hytheanddibden.gov.uk/neighbourhoodplan-second-consultation/>

## **2. The role of the National Park Authority in the neighbourhood planning process**

- 2.1 The National Park Authority has a role to play in providing support to local communities in the development of their Neighbourhood Plan. As confirmed by the Government's National Planning Practice Guidance (NPPG) resource, planning authorities should provide constructive comments on the emerging Neighbourhood Plan prior to submission and discuss the contents of any supporting documents.
- 2.2 The Authority's Policy Manager has met with representatives of the Steering Group and the Project Development Officer on three occasions to discuss the emerging Neighbourhood Plan. Detailed written comments have also been provided on matters including the Landscape Character Assessment for the National Park; and the previous viability studies into the re-opening of the Waterside railway for passenger services. The Authority (and New Forest District Council) has also provided a screening opinion confirming that a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) are required for the Hythe & Dibden Neighbourhood Plan.
- 2.3 In the latter parts of the neighbourhood planning process the Authority is required to publicise the draft Plan; invite representations for a 6-week period; and arrange the examination and local referendum. As the parish of Hythe & Dibden includes land in both the National Park and New Forest District, we have been working closely with colleagues at New Forest District Council in supporting the emerging Neighbourhood Plan.

## **3. The consultation draft Hythe & Dibden Neighbourhood Plan (June 2018)**

- 3.1 In June 2018 the Parish Council published their draft Neighbourhood Plan for a period of pre-submission consultation running until August 2018. The Authority, like others, now has the opportunity to make representations on the draft Plan. The proposed responses below are framed by the 'basic conditions' that the Neighbourhood Plan must meet to be put to a referendum and be made. The basic conditions are set out in Schedule 4B to the Town & Country Planning Act 1990 and include testing whether the Neighbourhood Plan:
  - has regard to national policies and advice;
  - contributes to the achievement of sustainable development; and
  - is in general conformity with the strategic policies contained in the development plan.
- 3.2 The Parish Council are required to demonstrate how the draft Neighbourhood Plan meets the basic conditions. This is typically done through a 'Basic Conditions Statement' and guidance is available to aid the preparation of such a statement. However, to date one has not been published for the Hythe & Dibden Neighbourhood Plan. The Authority has a role in supporting the Parish Council in addressing the basic conditions and this report sets out the Authority's proposed responses to the draft Neighbourhood Plan. The aim is to highlight to the Parish Council potential issues now to avoid problems at examination.
  - (i) *Having regard to national policy and advice*
- 3.3 Neighbourhood Plans must not constrain the delivery of important national policy objectives. The National Planning Policy Framework (NPPF, 2012) outlines the Government's planning policies for England and how these are to be applied. The NPPF sets out the policy approach for National Parks and includes a cross reference to the *English National Parks & the Broads: UK Government Vision and Circular*. The NPPF confirms that National Parks, "...have the highest status of protection in relation to landscape and scenic beauty..." (paragraph 115) and that National Parks are areas where development should be restricted (paragraph 14, footnote 9). The Circular confirms that in National Parks, "...the expectation is that new housing will be focused on meeting affordable housing requirement." (paragraph 78).

- 3.4 Section 62(2) of the Environment Act 1995 confirms that relevant authorities must have regard to the two statutory National Park purposes in exercising any functions in relation to land in a National Park. This legal ‘duty of regard’ recognises that the delivery of the National Park purposes rests with a wide range of bodies, not just the respective National Park Authorities. Both Natural England and DEFRA have published guidance on this legal duty, stating that, “*Relevant authorities are expected to be able to demonstrate that they have fulfilled these duties. Where their decisions may affect National Park they should be able to clearly show how they have considered the purposes of these areas in their decision making.*”<sup>1</sup> This can be done by relevant authorities making publicly available their assessment of the impact on the National Park from their proposals. However, to date no such assessment has been published by the Parish Council.
- 3.5 The national policy objectives relevant to the Neighbourhood Plan include the protection afforded to National Parks, alongside objectives around meeting identified needs. A quarter of the designated Hythe & Dibden Neighbourhood Area is located within the National Park and this is an asset for the local community. The draft Neighbourhood Plan includes a number of proposals that raise significant concerns, including:
- Proposals to allocate two greenfield sites in the National Park (amounting to just under 2 hectares of land) for new housing, play areas and landscape enhancement.
  - Proposals to change the use of land in the National Park to accessible natural greenspace, bounded by the alignment of a proposed link road that would cut through designated Ancient Woodland and a Site of Importance for Nature Conservation.
  - The allocation of greenfield land in the National Park for a burial site.
  - Proposals for a Park & Ride site – with over 160 spaces and a new platform access - on greenfield land within the National Park.
- 3.6 Given the extent of these proposals within the National Park, the Authority would expect to see details of how the landscape protection afforded to the New Forest in primary legislation, national policy and advice has been factored into the Neighbourhood Plan-making process. No such details have been provided and therefore it is recommended that the Authority advises the Parish Council that this must be addressed if the Neighbourhood Plan is to progress and meet this basic condition test.

#### Proposed Response

In the Authority’s view the draft Neighbourhood Plan has not demonstrated how the protection afforded to National Parks in national policy and advice has informed the Plan. We do not consider that the basic condition test to have regard to national policy has been met based on the information currently available.

National policy and advice pertinent to the Hythe & Dibden Neighbourhood Plan includes: (i) the statutory National Park purposes as set out in the *National Parks & Access to the Countryside Act 1949*; (ii) the level of landscape protection afforded to the National Park in paragraph 115 of the NPPF; and (iii) national policy on the protection of ancient woodland in paragraph 118 of the NPPF. A number of the proposals in the draft Neighbourhood Plan conflict with these national policies, as well as the Neighbourhood Plan’s own objective to protect, conserve and enhance the nationally protected landscape of the New Forest (objective 3.2) and draft Policy ENV2.

<sup>1</sup> Paragraph 9, *Duties on relevant authorities to have regard to the purposes of National Parks, Areas of Outstanding Natural Beauty (AONBs) and the Norfolk and Suffolk Broads Guidance note*, DEFRA, 2005

This issue must be addressed prior to the submission of the Neighbourhood Plan to the National Park Authority and New Forest District Council. The Parish Council should prepared a 'Basic Conditions Statement' setting out the national policy and advice considered in preparing the Neighbourhood Plan. In addition (and in accordance with guidance from Natural England and DEFRA), a statement should be prepared illustrating how the National Park purposes have influenced the preparation of the Neighbourhood Plan and how the Parish Council's 'duty of regard' has been fulfilled. The objectives of the New Forest National Park Landscape Character Assessment (2015) – shared with the Parish Council earlier this year – should also be considered.

Based on the limited information currently available, the Authority does not support the proposed greenfield housing allocations in the National Park or the Park & Ride site. It is unclear how the housing will meet local needs arising from within the National Park – which the Circular confirms should be the focus for new housing development in National Parks - and the proposed Park & Ride facility fails to demonstrate how the conflicts with the National Park purposes can be reconciled. The proposed housing and transport infrastructure allocations directly conflict with draft policy ENV2 which seeks to protect, conserve and enhance the National Park landscape and woodland.

(ii) *General conformity with the strategic policies in the development plan*

3.7 The legal framework for Neighbourhood Plans also requires them to be in general conformity with the strategic policies in the development plan for the area. The NPPG provides further clarification on what is meant by 'general conformity' and 'strategic policies'. The main part of the development plan for the National Park area of Hythe & Dibden is the Authority's adopted *Core Strategy & Development Management Policies DPD* (2010). The Core Strategy policies are prefixed as either 'CP' – the more strategic Core Policies; or 'DP' – the Development Management Policies, which aids those preparing Neighbourhood Plans in identifying strategic policies. The NPPG states that planning authorities should set out clearly their strategic policies and provide details to those preparing the Neighbourhood Plan to help them ensure the conformity of the Neighbourhood Plan with the overall strategic aims of the development plan. Annex 1 sets out the current strategic policies in the Authority's Core Strategy and it is proposed to send this to the Parish Council alongside the Authority's consultation response. Strategic policies of particular relevance include:

- CP9 (Defined Villages) – the four 'Defined Villages' of Ashurst, Brockenhurst, Lyndhurst and Sway will be the focus for new housing, employment and community facilities.
- CP11 (Affordable Housing) – outside the 'Defined Villages', small-scale affordable housing developments may be permitted as 'exceptions' on sites in or adjoining villages to meet identified needs of local people.
- CP18 (Transport Infrastructure) – further development of the strategic transport network will only be supported where alternative solutions have been explored and are no feasible or appropriate.

3.8 When deciding whether a Neighbourhood Plan policy is in general conformity with the overall strategic aims of the development plan, consideration should be given to the degree of conflict between the Neighbourhood Plan policy and the strategic development plan policy. At examination, consideration will also be given to the rationale for the approach taken in the Neighbourhood Plan and the evidence to justify that approach.

- 3.9 The proposals in the draft Neighbourhood Plan for housing allocations in the National Park conflict with the relevant policies listed above. As the sites identified do not accord with the Core Strategy’s spatial approach of focusing development towards the defined villages, Policy CP11 states they should be coming forward as rural exception sites for affordable housing for local people. However, the draft Neighbourhood Plan states that, “...for all new residential development in the Parish of 5 or more dwellings, at least 50% of the units shall be suitable for newly forming local households...” (draft policy H2). The wording “newly forming local households” is not widely recognised in national policy and it is unclear how this relates to affordable housing provision (as defined in the NPPF).

Proposed Response

The Authority does not consider that the basic condition test requiring the Neighbourhood Plan to be in general conformity with the strategic objectives and policies in the development plan for the National Park has been met. The relevant strategic policies – set out in Annex 1 – include policies on the spatial focus for new housing and the provision of affordable housing for local people in new development. The proposed allocation of sites in the National Park for open market housing conflicts with development plan policies and evidence has not been provided to justify this departure. There are also a number of potential conflicts with the strategic policies in the Authority’s Submission draft Local Plan (January 2018), which is likely to form part of the statutory development plan for the National Park in 2019.

A number of the proposals in the draft Neighbourhood Plan (including the housing to the north of Claypits Lane and the reference to the alignment of the Sizer Way Phase 3 road) could conflict with the development plan policies protecting ancient woodland and Sites of Importance for Nature Conservation (SINCs).

It is recommended that a review is undertaken of the strategic development plan objectives and policies that already cover the parish and that the Neighbourhood Plan is then amended to ensure greater consistency with the relevant objectives and policies. To assist the Parish Council in this, Annex 1 sets out the strategic policies in the Authority’s adopted Core Strategy and the nine Strategic Objectives are contained within Chapter 3 of the adopted Core Strategy (2010).

*(iii) Evidence Base and Deliverability*

- 3.10 Neighbourhood Plans are expected to be accompanied by a proportionate evidence base that supports and justifies the policy choices being made. The draft Hythe & Dibden Neighbourhood Plan includes proposed land allocations for housing, open space and transport infrastructure within the National Park; and policies on affordable housing provision, but no evidence to support the policy approaches has been published. The NPPG states that Neighbourhood Plans can allocate sites for development, but qualifying bodies (in this case the Parish Council), “...should carry out an appraisal of options and an assessment of individual sites against clearly identified criteria...” No evidence has been published setting out the assessments undertaken or the weight afforded to the New Forest’s National Park status in these assessments.
- 3.11 Secondly, in September 2017 the National Park Authority and New Forest District Council both confirmed in writing to the Parish Council that a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) are required for the Neighbourhood Plan. This conclusion was based on the fact that the Neighbourhood Plan is seeking to

allocate sites for development and include further policies that support development. This conclusion was endorsed by the Environment Agency, Historic England and Natural England in their capacity as statutory consultees. These draft assessments have not been published alongside the draft Neighbourhood Plan.

- 3.12 There are also significant concerns regarding the deliverability of the proposals contained within the draft Neighbourhood Plan. A range of bodies would usually be consulted on a draft Plan, including statutory bodies, landowners and the development industry to demonstrate that the proposed allocations are deliverable. However, to date the Authority has not seen evidence to demonstrate that Network Rail support the proposals for Park & Ride facilities for example; or that the respective landowners have confirmed that the proposals for public open space and allotments can be viably delivered through the development of 24 dwellings in the National Park.

#### Proposed Response

The Authority would expect to see a proportionate evidence base published alongside the draft Neighbourhood Plan to support the proposed policy approaches and allocations. This would be expected to cover areas including: (i) the criteria used to assess potential housing land allocations; (ii) the viability evidence relied on to support the proposed allocations; (iii) a Sustainability Appraisal and Strategic Environmental Assessment to assess the impacts of the draft Plan on the delivery of sustainable development and on the environment; and (iv) a Habitats Regulation Assessment, given the range of protected habitats located within and immediately adjacent to the designated Neighbourhood Area. The evidence base should be available to allow consultees to review the draft Plan and will be assessed as part of a future examination.

Both the National Park Authority and New Forest District Council have an extensive range of evidence base studies available as part of our respective Local Plan review processes. To date the preparation of the draft Neighbourhood Plan does not appear to have made best use of the extensive evidence available. We would therefore encourage the Parish Council to review the relevant studies and make use of them to ensure the draft Neighbourhood Plan policies can be fully justified at examination.

The Authority also has significant concerns that the deliverability of several policies in the draft Neighbourhood Plan has not been demonstrated. For example, evidence is sought to demonstrate: (i) that Network Rail and Hampshire County Council endorse the proposals for a Park & Ride site (we have shared with the Parish Council the findings of the previous GRIP2 and GRIP3 viability studies for the Waterside rail line and HCC's interim Waterside Transport Statement); (ii) that Hampshire County Council support the proposals for the Sizer Way Phase 3 link road through the National Park; (iii) that the approach to housing developments of five dwellings or more is viable; and (iv) that the relevant landowners are able to deliver new public open space provision, allotments and landscape enhancements as part of developments of up to 12 dwellings.

#### *(iv) Other Comments – Dibden Bay Buffer Zone and Policy Wording*

- 3.13 The draft Neighbourhood Plan includes an aim to “create a multifunctional buffer zone to positively manage the interface with surrounding land” in the event of major port development on the Dibden Bay reclaim. This is an innovative approach and recognises that although the Neighbourhood Plan cannot include policy coverage for the Dibden Bay

site itself (it is likely this would be considered through the Nationally Significant Infrastructure Project regime), it can provide coverage for the land adjacent to the site.

- 3.14 The draft objectives and policies under Aim 9 promote the establishment of a buffer zone around the operational port land where the primary function would be to act as multi-functional green infrastructure to help mitigate the impacts of development. The aim, objectives and policies relating to the proposed buffer zone are accompanied by action points (BZ-AP2 and BZ-AP3) which seek to establish constructive dialogue with the landowners, local planning authorities and other relevant bodies in the development of detailed proposals for the buffer zone. These proposals have merit and are supported.
- 3.15 Finally, as a successful Neighbourhood Plan will ultimately form part of the statutory development plan for the parish, the policies in the Plan should be clear and unambiguous. The NPPG confirms that Neighbourhood Plan policies should be drafted with sufficient clarity that a decision maker can apply them consistently and with confidence when determining planning applications. A number of the policies in the draft Plan are rather vague and go beyond the remit of the planning system. There is a significant amount of guidance on Neighbourhood Planning available from organisations such as Planning Aid and Locality that could assist in the process.

#### Proposed Response

The Authority commends the approach taken in the draft Neighbourhood Plan to the proposed creation of a buffer zone around the operational port land at Dibden Bay whose primary function would be to act as multi-functional green infrastructure (Aim 9 and associated objectives, policies and action points).

Relevant bodies are legally required to have regard to the statutory Park purposes in exercising any function that could affect land within a National Park. Government guidance confirms that this can include activities taking place outside a National Park but which impact on them. The draft proposals for a buffer zone are broadly consistent with this legal 'duty of regard' and the Authority would be willing to work with others in the development of a long term strategy and detailed plans for the Buffer Zone.

The Authority encourages the Parish Council to consider the wealth of information available for local communities preparing Neighbourhood Plans from bodies such as Planning Aid – see <https://www.ourneighbourhoodplanning.org.uk/> - and Locality – see <https://neighbourhoodplanning.org/>. Both of these websites include advice on meeting the basic conditions and guidance on the drafting of Neighbourhood Plan policies.

#### **4. The next stages**

- 4.1 The Authority acknowledges the desire of the Parish Council and local community in Hythe & Dibden to develop a Neighbourhood Plan to shape the future of their area. Following this pre-submission consultation (Regulation 14 stage), it is understood that the Parish Council intends to submit the Neighbourhood Plan to the National Park Authority and New Forest District Council in September 2018. Given this ambitious timetable, it is important the Authority provides clear advice to the Parish Council at this stage.
- 4.2 The NPPG confirms that if a local planning authority considers that a draft Neighbourhood Plan may fall short of meeting one or more of the basic conditions, they should discuss their concerns with the qualifying body in order that these can be considered before the

draft Neighbourhood Plan is formally submitted and examined. There are aspects of the draft Hythe & Dibden Neighbourhood Plan which are to be commended but, as highlighted in this report, there are many areas where the Authority has significant concerns. Members are therefore asked to endorse the proposed responses to help guide the work of the Parish Council in revising the draft Neighbourhood Plan and to ensure the basic conditions are met. As has been the case for the last 12 – 18 months, Authority officers remain willing to assist the Parish Council in the preparation of their Neighbourhood Plan.

## **RECOMMENDATION**

**Members endorse the proposed responses highlighted in this report for submission to Hythe & Dibden Parish Council and delegate to officers to continue to liaise with the Parish Council prior to the submission of the revised Neighbourhood Plan.**

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- Papers:** **NFNPA/PC 270/18** – cover paper  
**Appendix 1** – List of strategic policies in the Authority's adopted Core Strategy (2010)
- Equality Impact Assessment:** No impacts have been identified.



## Annex 1: List of strategic policies in the *New Forest National Park Core Strategy and Development Management Policies DPD (2010)*

Policy Number	Title	Summary
CP1	<i>Nature Conservation Sites of International Importance</i>	Establishes the planning policy protection for sites of international importance (SPA, SAC and Ramsar sites).
CP2	<i>The Natural Environment</i>	Establishes the planning policy protection for sites of national, regional and local importance in the natural environment.
CP3	<i>Green Infrastructure</i>	Policy support for proposals which create, maintain and enhance the network of green infrastructure.
CP4	<i>Climate Change</i>	Establishes the planning policy approach to mitigate and adapt to the impacts of climate change.
CP5	<i>Renewable Energy</i>	Support for renewable energy proposals which do not have significant impacts on the special qualities of the National Park.
CP6	<i>Pollution</i>	Establishes the planning policy approach to controlling and reducing the impacts of noise and other forms of pollution.
CP7	<i>The Built Environment</i>	Proposals should protect, maintain or enhance nationally, regionally and locally important sites and features.
CP8	<i>Local Distinctiveness</i>	Development which erodes the National Park's local character will not be permitted.
CP9	<i>Defined Villages</i>	Appropriate development proposals – including employment, housing & retail – will be supported within the Defined Villages.
CP10	<i>Local Community Facilities</i>	Support for the retention of existing community facilities and the development of new facilities where appropriate.
CP11	<i>Affordable Housing</i>	Establishes a target of 50% affordable housing on sites within the Defined Villages, with rural exception sites elsewhere.
CP12	<i>New Residential Development</i>	Sets a target for 220 net new dwellings in the National Park over the Plan-period.
CP13	<i>Gypsies, Travellers and Travelling Showpeople</i>	Criteria-based policy to assess proposals for gypsies, travellers and travelling showpeople.
CP14	<i>Business and Employment Development</i>	Establishes the planning policy approach to new employment development in the National Park.
CP15	<i>Existing Employment Sites</i>	Seeks the retention of existing employment sites throughout the Park to contribute to the sustainability of communities.
CP16	<i>Tourism Development</i>	Support for tourism development which provides opportunities to understand and enjoy the special qualities of the Park.
CP17	<i>The Land Based Economy</i>	Support for land-based businesses that help maintain the overall character and cultural identity of the National Park.
CP18	<i>Transport Infrastructure</i>	Sets out the circumstances in which further development of the strategic transport network will be supported.
CP19	<i>Access</i>	Establishes the planning policy approach to promote safer access and more sustainable forms of transport in the Park.