

**14 December 2020**

<b>Report of</b>	<b>Assistant Director of Place and Client Services</b>	<b>Author</b>	<b>Bethany Jones</b>
<b>Title</b>	<b>Tiptree Neighbourhood Plan Examination</b>		<b>☎ 282541</b>
<b>Wards affected</b>	Tiptree		

## **1. Executive Summary**

- 1.1 Neighbourhood planning has remained high on the national government's agenda since regulations were introduced in 2012. Revisions to the Neighbourhood Planning Regulations in January 2018, the revised NPPF (February 2019) and changes to the National Planning Practice Guidance in May 2019 continue to demonstrate the importance of Neighbourhood Plans for housing provision and local planning matters.
- 1.2 Neighbourhood Planning remains active across the Borough, with the Tiptree Neighbourhood Plan having steadily progressed since area designation in 2014. The Tiptree Neighbourhood Plan was submitted to the Council in March 2020 and the second round of formal consultation (Regulation 16) was held for a seven week period from 20 June to 11 August 2020.
- 1.3 A Neighbourhood Plan examination is different to a Local Plan examination and is examined against the Basic Conditions listed in the Town and Country Planning Act 1990 (as amended). A neighbourhood plan does not need to meet the tests of soundness as outlined in the National Planning Policy Framework (NPPF).
- 1.4 Following the Regulation 16 consultation, John Parmiter FRICS, MRTPI was appointed to examine the Tiptree Neighbourhood Plan. In the Examiner's Report issued 9 October 2020, the Examiner recommended that the Tiptree Neighbourhood Plan could not proceed to referendum.
- 1.5 This recommendation was not anticipated by either CBC or Tiptree Parish Council, since there was no contact from the Examiner seeking clarification on any matters or indicating that he had such fundamental concerns. Despite the best efforts of CBC officers and the Parish Council, the Examiner's Report is considered to contain a number of inconsistencies and it appears unclear how certain conclusions were reached.
- 1.6 As a result, it is considered necessary to publish a joint Examination Response Statement prepared by CBC officers and Tiptree Parish Council to place on record these inconsistencies and the view of the LPA and QB. This statement would be published alongside the Examiner's Report and the Decision Statement, required by Regulation 18 of the Neighbourhood Planning (General) Regulations 2012.

## **2. Recommended Decision**

- 2.1 To note the findings and overall recommendation of the Tiptree Neighbourhood Plan Examiners Report to not proceed to referendum.
- 2.2 To endorse the Tiptree Neighbourhood Plan Joint Examination Response December 2020.
- 2.3 To agree to publish the Tiptree Neighbourhood Plan Joint Examination Response alongside the Examiners Report and Regulation 18 Decision Statement.

## **3. Reason for Recommended Decision**

- 3.1 The Examiner's Report and the Local Planning Authority Decision Statement must be published in accordance with Regulations 18 and 19 of the Neighbourhood Planning (General) Regulations 2012. It is considered appropriate to publish a Joint Examination Response alongside this to establish from the outset the inconsistencies within the Examiner's Report. This will also assist with future revisions to the Plan.

## **4. Alternative Options**

- 4.1 Councillors could decide to disagree with the Examiner's recommendation not to proceed to referendum. This is not considered to be in the best interest of the Tiptree Neighbourhood Plan as there is a threat of legal challenge if the Examiner's recommendation is not followed. This would result in a significant amount of resources and money being spent through legal proceedings, would result in further delays to the progress of the neighbourhood plan and may not result in any change to the outcome. It would also require significant work immediately to justify the approach, it would necessitate further work to the Plan, and modifications all of which will need re-examination in any event and may not result in any different outcome.
- 4.2 It is Officers view that it is in the best interest of the Tiptree community to return to the Regulation 14 consultation stage, in as timely a manner as possible while addressing the concerns noted in the Examiner's report, with continued support from Officers in the Council's Planning Policy team.
- 4.3 Members could decide to amend the Joint Response or not to publish it alongside the Examiners Report and Decision Statement.

## **5. Background Information**

- 5.1 Since the Neighbourhood Planning Regulations came into force in 2012, the commitment from national government and the appetite of local communities to neighbourhood planning has not diminished. At a national level the most intensive activity has been in the south of England to date.
- 5.2 The Neighbourhood Planning Regulations 2012 provides the backbone of the legislative framework for Neighbourhood Plans. The revised NPPF published in February 2019 introduces guidance in respect of the significance of neighbourhood plans in the context of the presumption in favour of sustainable development and housing delivery. Where the presumption in favour of sustainable development applies the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits. Developers will frequently try to challenge local authorities 5 year housing supply position to trigger the presumption in favour of sustainable development. For neighbourhood plans made within 2 years or less of the decision being made, the bar for this challenge is now set higher, only requiring the local authority to demonstrate a 3 year supply of deliverable housing sites. Updates to the national Planning Practice Guidance (PPG) in May 2019 recognise the importance of neighbourhood planning, with one of the updates being that an emerging neighbourhood plan 'is likely' to be a material consideration in many cases, as opposed to 'may be' in the previous version.
- 5.3 This further supported by the recent update to the PPG during the Covid-19 pandemic with the introduction of paragraph 107 on 7 April 2020, which states 'Decision-making: where the local planning authority has issued a decision statement (as set out under Regulation 18 of the Neighbourhood Planning (General) Regulations 2012) detailing its intention to send a neighbourhood plan to referendum, that plan can be given significant weight in decision-making, so far as the plan is material to the application'. This clearly demonstrates the emphasis and importance that Government places on Neighbourhood Planning, seeking to ensure that progress continues and that Neighbourhood Plans are given due consideration in the decision making process notwithstanding that referendums may not take place during this pandemic, until 6 May 2021 (in line with the Local Government and Police and Crime commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020).
- 5.4 The Examination of a Neighbourhood Plan is different to that of a Local Plan. The Examiner for a neighbourhood plan, remains independent, as with a Local Plan; however, in the case of a Neighbourhood Plan the Examiner is appointed by the Local Planning Authority (LPA) and Qualifying Body (QB).
- 5.5 The role of an Independent Examiner, when considering the content of a neighbourhood plan is limited to testing whether a draft neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended). The role is not to test the soundness of a neighbourhood development plan, or to examine other material considerations.
- 5.6 Paragraph 8 of Schedule 4B (2) to the Town & Country Planning Act 1990 (as amended), states that a Neighbourhood Plan must meet the following "basic conditions";
- it must have appropriate regard for national policy;
  - it must contribute towards the achievement of sustainable development;
  - it must be in general conformity with the strategic policies of the development plan for the local area;
  - it must be compatible with human rights requirements and

- it must be compatible with EU obligations.

5.7 In accordance with Schedule 4B, section 10 of the Town & Country Planning Act 1990 (as amended), the examiner must make a report on the draft plan containing recommendations and make one of the following three recommendations:

- that the draft order is submitted to a referendum, or
- that modifications specified in the report are made to the draft order and that the draft order as modified is submitted to a referendum, or
- that the proposal for the order is refused.

5.8 Within Colchester Borough there has been considerable neighbourhood planning activity with 5 'made' (adopted) Neighbourhood Plans (NP) across the borough which form part of the Development Framework. A further 5 neighbourhood plans are at various stages within the plan making process.

#### Tiptree Neighbourhood Plan

5.9 The Tiptree Neighbourhood Plan Area was designated in October 2014. Considerable consultation and evidence base work has been undertaken by the Steering Group for a number of years. A formal consultation on the draft neighbourhood plan took place in June/July 2019 (Regulation 14). Following consideration of all representations made to the formal consultation, the Tiptree NP was submitted to CBC in March 2020. The neighbourhood plan allocates sites for 625 dwellings and will make an important contribution to the borough's housing supply.

5.10 Following submission of the Plan, the Council publicised the Tiptree Neighbourhood Plan and submission documents for a seven week consultation which ran from 20 June to 10 August 2020. This followed an initial publication consultation which commenced on 20 April 2020 and was later withdrawn to allow for reconsideration of how best to respond to the restrictions brought by the Covid pandemic whilst continuing to progress the Plan expediently. This second formal consultation is known as the Regulation 16 Consultation.

5.11 The Tiptree Neighbourhood Plan will provide the planning policy framework for Tiptree until 2033. The purpose of the plan is to guide development within the parish and address as far as possible the challenges and opportunities that face the community. The Plan is divided into topics/themes with policies covering: Homes and Housing, Traffic and Movement, Tiptree Village Centre, Commercial Activity, Community Infrastructure, Site Allocations, Countryside and Green Spaces, Historic Environment and Non Policy actions.

5.12 As required by the Neighbourhood Planning Regulations, CBC confirmed that in the Planning Officers view the Basic Conditions had been met and the Plan was therefore able to proceed to Examination. CBC and the QB (Tiptree Parish Council) appointed John Parmiter FRICS MRTPI as the independent examiner to examine the Tiptree Neighbourhood Plan in July 2020. The Examiner was selected through the Neighbourhood Planning Independent Examiner Referral Service (NIPERS). NIPERS provides access to expert, impartial examiners and is designed to support communities through the neighbourhood plan examination process. The resource has been designed by a number of leading professional bodies including the Royal Town Planning Institute (RTPI), Royal Institute of Chartered Surveyors (RICS), Planning Officers Society (POS) and Locality. This service has been used by CBC to appoint other Examiners for the 'made' neighbourhood plans across the Borough and all examiners have been on the

NIPERS list of registered Examiners. Previous experience has always resulted in positive working relationships.

#### Tiptree Neighbourhood Plan Examination

- 5.13 The Neighbourhood Plan was submitted to the Examiner in August 2020. There was no correspondence between the Examiner and the Council or Qualifying Body during the Tiptree NP Examination other than the Council providing an update on the emerging Local Plan Section 1 Examination and two appeal decisions issued in Tiptree since submission of the NP (Barbrook Lane and Land South of Maldon Road). No engagement regarding specific detail of the Tiptree Neighbourhood Plan occurred in this Examination whatsoever.
- 5.14 In September, prior to publication of his report, the Council and QB were sent a draft for fact-checking. This was when it became apparent that the NP would not be able to proceed to referendum. CBC and TPC provided an extensive response to the fact checking report which led to the Examiner revising some of his conclusions but not the overall recommendation. The examiner issued his final report on 9 October 2020.
- 5.15 The Examiner has recommended that the Tiptree Neighbourhood Plan cannot proceed to referendum. This is summarised in paragraph 5.2 of the Examiner's Report: *"Overall, I find the dominating reliance on community objectives within the SEA process, without proportionate and robust evidence to support the spatial strategy, to be flawed. Therefore, coupled with the inclusion of a route across land in an adjoining parish, I **conclude** that the plan does not meet the Basic Conditions or the legal requirements".*
- 5.16 As the Plan cannot proceed to referendum, the Tiptree Neighbourhood Plan will need to return to the Regulation 14 stage in the plan making process.
- 5.17 TPC and CBC remain concerned that the Examiner's Report can appear inconsistent in places and it is unclear how his overall conclusions relate to comments elsewhere in the report. As a result of this, it is considered necessary to place on record alongside the Examiner's Report, a joint response which identifies these inconsistencies from the outset. A joint response has been prepared by CBC officers and TPC (Appendix B). In summary, the main issues identified in the Examiner's Report are:
- Availability and reference to evidence for the spatial strategy;
  - The Strategic Environmental Assessment (SEA) and considerations of alternatives; and
  - The apparent conflict between the Tiptree Neighbourhood Plan and Section 2 Emerging Local Plan.
- 5.18 There appears to be confusion, or a different interpretation, between the submission of documents as per Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 and submission of documents to the Examiner. Although the Examiner has accepted the spatial strategy evidence exists (Site Selection Process Report) and that this was provided to the LPA as a submission document he has not considered this and other evidence base documents within the Examination. Unfortunately, no opportunity was given to the parties to address this during the course of the Examination.
- 5.19 The Examiner also raised concerns that the Tiptree Neighbourhood Plan conflicts with Section 2 of the Emerging Local Plan and in particular Policy SS14 and the supporting Policies Map. Paragraph 4.3 of his report states *"I cannot see within the submitted NP*

*itself why the spatial strategy diverges, albeit to some degree, from the eLP's 'broad areas of growth'.* The Examiner does not provide his conclusion on this matter. CBC and TPC are in agreement that the NP **does not** diverge from the emerging Local Plan.

- 5.20 The Neighbourhood Plan allocates two sites to the north-west of Tiptree for 625 dwellings (Policies TIP13 and TIP14). These are shown as one of the broad areas for residential development in the Emerging Local Plan Policies Map SS14. The broad areas of growth direction arrows were included within the emerging Local Plan as a tool to guide the consideration of planning proposals if progress on a Neighbourhood Plans was such that it had not defined the proposed site allocations more specifically within a reasonable timescale. At the time of writing the emerging Local Plan, there was still a considerable amount of work to be undertaken for the Tiptree Neighbourhood Plan including further site analysis and public consultation. As a result, three broad areas of growth arrows were included on Policies Map SS14. However, the emerging Local Plan does not state that each of the three broad areas of growth will be included within the Tiptree Neighbourhood Plan, nor does it state that more than one broad area of growth is to be selected.
- 5.21 The Emerging Local Plan reflects the status of the emerging Tiptree NP at the time it was submitted (October 2017). The Tiptree NP does not need to reflect the broad areas of growth shown by Policy Map SS14, only to be 'in general conformity with the strategic policies' in the Emerging Local Plan. The Neighbourhood Plan is considered to be in general conformity.
- 5.22 Throughout the plan making process, it has been an aspiration of the neighbourhood plan to safeguard an indicative route between the two land parcels which form the Highlands Nursey and Elms Farm allocation (TIP 14). This is to relieve existing traffic congestion within the centre of Tiptree and to provide alternative routes from Tiptree to the surrounding area and the A12. Although this area is outside of the Neighbourhood Plan area, it was considered by CBC officers, the Parish Council and their Planning Consultant that including reference to this aspiration within the neighbourhood plan and to indicate the opportunity to safeguard the route would be in accordance with the basic conditions, particularly as the plan and supporting evidence did not suggest that it was reliant on this for the delivery of the houses. The Inspector disagreed with this approach.

#### Examination Process and Conduct

- 5.23 The recommendation to not proceed to referendum was not anticipated by either CBC or TPC and this outcome came without any warning. There has been a distinct lack of communication between the Examiner and CBC/TPC throughout the examination. It is officers view that the examination has not been undertaken in accordance with the 'NIPERS Guidance to service users and examiners'.
- 5.24 The guidance states that the Examiner will write to the LPA and QB in the event that a fundamental flaw has been identified with matters being addressed through writing or an exploratory meeting. Neither approach was taken in this examination.

The guidance further states that the Examiner can clarify points, with an example being where evidence to support a policy approach may be found. This would have been fundamental in the case of Tiptree, as there has been confusion and differing opinions regarding the availability of certain evidence base documents, most notably the Site Selection Process Report. The conduct of this examination has been at complete odds with paragraph 2.5.3 of the NIPERS guidance which states *"a report failing a neighbourhood plan should not come as a surprise to the qualifying body and local*

*planning authority. Early actions including exchange(s) of correspondence (and/or an exploratory meeting) should proceed such a finding”.*

- 5.25 It is worth noting that in the case of all other Examinations which the Council has been involved with, for successfully made Neighbourhood Plans, continued dialogue and information exchange has occurred between the Examiner, Council and Qualifying Body, in accordance with the Guidance referred to above. Previously, where there has been a need for clarification, or to be directed towards relevant evidence, or any more fundamental questions, the Examiner has engaged directly with the Council and QB.
- 5.26 In practice the guidance provides the opportunity to explore whether there are options which may address fundamental or minor concerns an Examiner may have and attempt to agree a way forward which could result in a better understanding of the issues and evidence, further work or recommended modifications. In the event that this constructive engagement does not resolve the concerns of the Examiner, the QB may then wish to consider withdrawing the Plan. Unfortunately, no opportunity for any of this was created during this Examination.
- 5.27 It has been agreed between the Parish Council and CBC officers, that if this Committee agrees, a joint letter will be sent to NIPERS to identify the concerns of how the examination has been undertaken. Although it is understood this will not change the overall recommendation in the case of the Tiptree Neighbourhood Plan, it is considered necessary to inform NIPERS of the experience to prevent any future neighbourhood plan examinations from being conducted in direct conflict with the guidance.

#### Next Steps

- 5.28 The immediate next step is to publish the Examiner's Report and Regulation 18 Decision Statement to confirm acceptance of the recommendation to not proceed to referendum. CBC Officers also consider it necessary to publish a jointly prepared Examination Response Statement alongside these documents to place on record the elements of the report which are considered inconsistent and unclear.
- 5.29 The Tiptree Neighbourhood Plan will need to return to the Regulation 14 stage. Aside from addressing the points raised by the Examiner in relation to the link road and providing a robust evidence base, there are other considerations to be taken into account.
- 5.30 The Barbrook Lane appeal decision was issued in April 2020, after submission of the Tiptree Neighbourhood Plan. This grants permission for 200 dwellings outside of the settlement boundary. The implications of this will need to be reconsidered in the future iterations of the neighbourhood plan. Currently, this could include either of the following options:
- Existing commitment of 200 dwellings towards the overall housing requirement of 600 dwellings, requiring the NP to allocate a lower number of dwellings;
  - Existing permission identified within the plan, but not counted towards the overall housing requirement, enabling the NP to continue to allocate 600 houses subject to evidence supporting this.
- 5.31 As the spatial strategy will need to be reviewed for the Tiptree Neighbourhood Plan it is currently unknown the full extent of the advantages and disadvantages of counting the 200 dwellings granted permission at Barbrook Lane towards the overall housing

requirement of the neighbourhood plan. There may be justification for the neighbourhood plan to continue to plan for a minimum of 600 dwellings, in addition to the 200 at Barbrook. Either way it will be indicated as a commitment in terms of housing delivery for plan making purposes.

- 5.32 It is anticipated that the Section 2 emerging Local Plan Examination is likely to commence in early 2021. During the Section 2 Examination and through the continued work for the Tiptree Neighbourhood Plan, Policy SS14 and the accompanying policies map will be further explored to ensure the two plans are aligned, informed by any updated evidence for the neighbourhood plan and demonstrating a united plan led approach.
- 5.33 Officers are aware that there are errors within the SS14 Policy Map, particularly relating to incorrect boundaries for Local Wildlife Sites, which were revised in the latest review of the evidence base. There will also be a need to identify the Barbrook Lane site as having extant planning permission and amend the settlement boundary accordingly. It may also be necessary to reconsider the 'broad areas of growth' shown within Tiptree, in accordance with any updated evidence for the neighbourhood plan as well as the Local Wildlife Sites Review. At present a broad area of growth arrow is shown crossing the Brook Meadow wildlife site. Although these are only indicative, they do need to be realistic.
- 5.34 The situation that has arisen in relation to the Tiptree NP is disappointing for both the Parish and Borough Councils, not least because if the Examination had been conducted in line with the NIPERS guidance some issues may have been resolved or re-visited back in August/September. Furthermore, had the concerns been shared with the QB and CBC early in the Examination, regardless of the eventual outcome, the QB would have undoubtedly advanced further work and be better placed with a revised Plan. However, there are now opportunities presented for Tiptree Neighbourhood Plan to reflect on decisions that have been made, recent guidance and ensure the Plan is robust and able to provide an appropriate planning framework for decision making for many years to come. The Planning Team will continue to support the QB and positively work together with them and their appointed Planning Consultant to deliver a Neighbourhood Plan for Tiptree as soon as possible which can proceed to Referendum and be successfully made.
- 5.35 The Planning Policy Team will take on board some lessons learnt from this and build this into processes and advice/guidance going forward as support continues to be provided to communities and we remain committed to Neighbourhood Planning.

## **6. Equality, Diversity and Human Rights implications**

- 6.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking on this link: -  
<https://cbccrmdata.blob.core.windows.net/noteattachment/Equality%20Impact%20Assessment%20June%202017.pdf>

## **7. Strategic Plan References**

- 7.1 The Strategic Plan is relevant, in particular in contributing towards priorities under the themes:
- Creating safe, healthy and active communities; and
  - Delivering homes for people who need them.



## **8. Consultation**

- 8.1 Neighbourhood Plans are subject to two formal consultation stages. Both stages of consultation were undertaken in accordance with the Neighbourhood Planning PPG, Neighbourhood Planning Regulations and the Council's Statement of Community Involvement (SCI).

## **9. Publicity Considerations**

- 9.1 The recommendation of the Examiner for the Tiptree Neighbourhood Plan to not proceed to referendum is likely to attract attention from the media.

## **10. Financial implications**

- 10.1 The Council is able to apply for funding at various stages of neighbourhood plan production to cover costs such as those associated with the examination and holding a referendum.

## **11. Health, Wellbeing and Community Safety Implications**

- 11.1 None.

## **12. Health and Safety Implications**

- 12.1 None.

## **13. Risk Management Implications**

- 13.1 None.

## **14. Environmental and Sustainability Implications**

- 14.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives.
- 14.2 This report has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that the report demonstrates that the Tiptree Neighbourhood Plan can contribute to achieving sustainable development.

## **Appendices**

Appendix A – Tiptree Neighbourhood Plan Examiner's Report - 9 October 2020

Appendix B - Tiptree Neighbourhood Plan Joint Examination Response – December 2020

## **Background Papers**

Tiptree Neighbourhood Plan Regulation 16 Edition

<https://cbccrmdata.blob.core.windows.net/noteattachment/Tiptree%20Neighbourhood%20Plan/Tiptree%20NHP%20-%20Reg16%20Edn.pdf>

Neighbourhood Planning Independent Examiners Referral Service (NIPERS) Guidance to service users and examiners

<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/drs/drs-services/npiers-planning-guidance-to-service-users-and-examiners-rics.pdf>