

## **Background**

An SHDC officer recently referred the Harberton Neighbourhood Plan Steering Group to certain Regulations which apply to Neighbourhood Planning and I undertook to produce a summary of the regulations to which she referred. This paper is not intended to summarise the other relevant regulations. The HNP steering group is already working through the requirements for most of them but a couple of others need to be addressed after the draft plan is fairly well advanced but before it is submitted to SHDC. The best order in which to tackle them needs to be agreed at some point as several will become iterative if commenced too early in the process. [I have set out in blue those requirements which the HNP steering group does not currently have in hand.](#)

## **Summary of main outstanding action points arising:**

- A. prepare a consultation statement;**
- B. consult with entities set out in paragraph 1 Schedule 1** (Natural England, Environment Agency, Highways Agency etc). These entities are allowed 5 weeks in which to respond.
- C. prepare a statement explaining how the proposed neighbourhood plan meets the requirements of paragraph 8 of Schedule 4B to the 1990 Act** (i.e. that it accords with national policy and generally with the local plan, contributes to sustainable development, and that it conforms with EU obligations);
- D. prepare an environmental report prepared in accordance with paragraphs (2) and (3) of regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004(a); or a statement of reasons why it does not require an environmental assessment because it is unlikely to have significant environmental effects.** The HNP is likely just to need a statement saying why no environmental assessment is necessary but the responsibility for this process lies with SHDC.

It will be inefficient to consult with the entities listed in para 1 Sch 1 (point B above) until the draft plan is well advanced as any subsequent amendments will presumably trigger a requirement to send revised copies again to the relevant entities which, itself, triggers a 5 week response period. So the steering group will need to decide how these stages will mesh with the remaining “Have we got it right?” public consultation and legal review.

## **Details**

**Neighbourhood Planning (General) Regulations 2012 [SI 2012/637]** were introduced under powers in the Town & Country Planning Act (as amended) 1990. The text below is as amended by SI 2015/20.

These set out the basic requirements and procedures for Neighbourhood Plans following the 2011 Localism Act.

Of these, the ones relevant to the HNP at its present stage are set out in Part 5 ‘Neighbourhood development plans.’ Although the steering group has not yet drafted the consultation statement required by Regulation 15, or the statement explaining how the requirements of Paragraph 8 Schedule 4B of the Town and Country Planning Act 1990 are met, it has collected most of the material required to do so.

Regulation 15(e) adds to the list of documents that the parish council must submit to a local planning authority with a proposal for a neighbourhood plan. The additional document which must be submitted is either an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, or a statement of reasons why an environmental assessment is not required.

#### **Reg 14 Pre-submission consultation and publicity**

14. Before submitting a plan proposal to the local planning authority, a qualifying body must —

(a) publicise, in a manner that is likely to bring it to the attention of people who live, work or carry on business in the neighbourhood area—

- (i) details of the proposals for a neighbourhood development plan;
- (ii) details of where and when the proposals for a neighbourhood development plan may be inspected;
- (iii) details of how to make representations; and
- (iv) the date by which those representations must be received, being not less than 6 weeks from the date on which the draft proposal is first publicised;

**(b) consult any consultation body referred to in paragraph 1 of Schedule 1 whose interests the qualifying body considers may be affected by the proposals for a neighbourhood development plan; and**

(c) send a copy of the proposals for a neighbourhood development plan to the local planning authority.

#### **Reg 15 Plan proposals**

15.—(1) Where a qualifying body submits a plan proposal to the local planning authority, it must include—

(a) a map or statement which identifies the area to which the proposed neighbourhood development plan relates;

**(b) a consultation statement;**

(c) the proposed neighbourhood development plan;

**(d) a statement explaining how the proposed neighbourhood development plan meets the requirements of paragraph 8 of Schedule 4B to the 1990 Act; and**

**(e)**

**(i) an environmental report prepared in accordance with paragraphs (2) and (3) of regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004(a); or**

**(ii) where it has been determined under regulation 9(1) of those Regulations that the plan proposal is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), a statement of reasons for the determination.”**

(2) In this regulation “consultation statement” means a document which—

- (a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;
- (b) explains how they were consulted;
- (c) summarises the main issues and concerns raised by the persons consulted; and
- (d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan.

Regs 16 to 20 relate to the LA's responsibilities after the PC has submitted its draft to the LA. Parts 6 & 7 relate to neighbourhood development orders and community right to build orders neither of which are relevant to the HNP. Part 8 refers to revocations of existing NPs NDOs and CRBOs, which, again is not relevant at the HNP's presubmission stage.

Paragraph 8 of Schedule 4B TCPA 1990 referred to at Reg 15(1)(d) lists the matters that the examiner must consider in their examination of the proposed plan or order. These include whether the plan or order is appropriate having regard to national policy, whether it contributes to the achievement of sustainable development, whether it is in general conformity with the strategic policies in the local development plan and whether the order is compatible with EU obligations. There is also a basic condition relating only to orders (see new section 38C(5)(d) of the Planning and Compulsory Purchase Act 2004) relating to the appropriateness of an order having regard to considerations relating to listed buildings and conservation areas (paragraph 8(2)(b) and (c) and (3) to (5) of Schedule 4B). The examiner is not able to consider any matter that doesn't fall within the list of matters in paragraph 8(1) of the Schedule (apart from compatibility with the Convention rights, as defined in the Human Rights Act 1988). The examiner will also consider whether the referendum area should extend beyond the neighbourhood area to which the draft order or plan relates. The paragraph also provides a power to require the examiner to consider such matters as are prescribed in regulations - for example, taking into account an environmental statement which meets the requirements of the Environmental Impact Assessment Directive.

## Consultation Bodies

The consultation bodies referred to in Reg 14(b) are set out in Schedule 1 para 1.

### Consultation Bodies

#### Neighbourhood development plans

1. For the purposes of regulations 14 and 16, a "consultation body" means—
  - (a) where the local planning authority is a London borough council, the Mayor of London;
  - (b) a local planning authority, county council or parish council any part of whose area is in or adjoins the area of the local planning authority;
  - (c) the Coal Authority(a);
  - (d) the Homes and Communities Agency(b);
  - (e) Natural England(c);
  - (f) the Environment Agency(d);
  - (g) the Historic Buildings and Monuments Commission for England (known as English Heritage)(e);
  - (h) Network Rail Infrastructure Limited (company number 2904587);
  - (i) the Highways Agency;
  - (j) the Marine Management Organisation(f);
  - (k) any person—
    - (i) to whom the electronic communications code applies by virtue of a direction given under section 106(3)(a) of the Communications Act 2003;
    - and

- (ii) who owns or controls electronic communications apparatus situated in any part of the area of the local planning authority;
- (l) where it exercises functions in any part of the neighbourhood area—
  - (i) a Primary Care Trust established under section 18 of the National Health Service Act 2006(a) or continued in existence by virtue of that section;
  - (ii) a person to whom a licence has been granted under section 6(1)(b) and (c) of the Electricity Act 1989(b);
  - (iii) a person to whom a licence has been granted under section 7(2) of the Gas Act 1986(c);
  - (iv) a sewerage undertaker; and
  - (v) a water undertaker;
- (m) voluntary bodies some or all of whose activities benefit all or any part of the neighbourhood area;
- (n) bodies which represent the interests of different racial, ethnic or national groups in the neighbourhood area;
- (o) bodies which represent the interests of different religious groups in the neighbourhood area;
- (p) bodies which represent the interests of persons carrying on business in the neighbourhood area; and
- (q) bodies which represent the interests of disabled persons in the neighbourhood area.

This is a long list. The steering group will need to assemble a list of relevant persons and entities and draft a standard letter to send to each. The steering group should note that the requirement to consult imposed by Reg 14 applies only to those persons and entities whose interests the qualifying body, i.e. the parish council, considers may be affected by the proposals for a neighbourhood development plan. In other words, the parish council would appear to have discretion to decide which consultees are to be approached, based upon perceived relevance. Each consultee has 5 weeks in which to respond. Obviously, it will be inefficient to consult with these entities before the draft HNP is close to being finalised, as revisions may well trigger the need for a further round of consultations.

In addition Part 9 'European legislation' which covers both Habitats and Environmental Impacts has effect as set out in Schedules 2 & 3 respectively. The new requirements in Schedule 3 in relation to Environmental Impact assessments apply only to Neighbourhood Development Orders and not to Neighbourhood Development Plans and are therefore not relevant to the HNP.

## **SCHEDULE 2**

### **Habitats**

### **Neighbourhood development plans**

1. In relation to the examination of neighbourhood development plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act(c)—

The making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2010(d)) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(e)) (either alone or in combination with other plans or projects).

The only relevant European site is the South Devon SAC designated for its greater horseshoe bat interest. This has been highlighted in the draft HNP and any effect the HNP has on the site can only be positive.

## **Amendments to the Conservation of Habitats and Species Regulations 2010**

2. The Conservation of Habitats and Species Regulations 2010 are amended in accordance with the following paragraphs.

4. After regulation 102 (assessment of implications) insert the following—

### **“Assessment of implications for European site: neighbourhood development plans**

102A.—(1)A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 102 or to enable them to determine whether that assessment is required.

This is a gloss on the requirement to consult Natural England and just requires that they are to be provided with any information may require to determine whether an assessment is required. I imagine that sending out a standard consultation request with a copy of the HNP to Natural England will elicit a standard response.

Amendments introduced by the Neighbourhood Planning (General) (Amendment) Regulations 2015 [SI 2015/20] are incorporated in the text quoted above.

The Neighbourhood Planning (Referendums) (Amendment) Regulations 2016 [SI 2016/934] refers only to regulations affecting the referendums carried out by local authorities after submission of the NP by the PC to the LA. it is not relevant to the current stage of the HNP's progress.