



# Borough of Telford and Wrekin

## Cabinet

Thursday 13 July 2023

### Ercall Magna Neighbourhood Development Plan - Referendum Version

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<b>Cabinet Member:</b>	Cllr Richard Overton - Deputy Leader and Cabinet Member: Homes & Enforcement
<b>Lead Director:</b>	Katherine Kynaston - Director: Housing, Employment & Infrastructure
<b>Service Area:</b>	Housing, Employment & Infrastructure
<b>Report Author:</b>	Gavin Ashford - Strategic Planning Team Leader
<b>Officer Contact Details:</b>	<b>Tel:</b> 01952 384260 <b>Email:</b> gavin.ashford@telford.gov.uk
<b>Wards Affected:</b>	Ercall Magna and Wrockwardine Wards
<b>Key Decision:</b>	Yes
<b>Forward Plan:</b>	14 June 2023
<b>Report considered by:</b>	SMT – 13 June 2023 Business Briefing - 22 June 2023 Cabinet – 13 July 2023

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#### 1.0 Recommendations for decision/noting:

It is recommended that Cabinet:-

- 1.1. note and agree the findings of the Independent Examiner that, subject to his recommended modifications, the Ercall Magna Neighbourhood Development Plan meets the “basic conditions” and all other legal requirements as summarised in this report and in the Independent Examiner’s report and;
- 1.2. agree that the required modifications should be made to the Ercall Magna Neighbourhood Development Plan and that the Ercall Magna Neighbourhood Development Plan Referendum Version (July 2023) should proceed to Referendum, and;

- 1.3. agree that the Referendum Area should not be extended beyond the designated area to which the Ercall Magna Neighbourhood Development Plan relates and;
- 1.4. That the Returning Officer proceed to exercise all the relevant powers and duties and undertake all necessary arrangements for the Ercall Magna Neighbourhood Development Plan (Referendum Version) to now proceed to Referendum and for the Referendum to take place asking the question whether the voter wants Telford & Wrekin Council to use this neighbourhood development plan for the Ercall Magna Neighbourhood Development Plan area to help it decide planning applications in this neighbourhood area.

## **2.0 Purpose of Report**

- 2.1 The purpose of this report is to seek Cabinet approval to implement the Independent Examiners recommended modifications to the Ercall Magna Neighbourhood Development Plan and to proceed to a referendum on the Neighbourhood Development Plan.

## **3.0 Background**

- 3.1. The Localism Act (2011) introduced legislation which allows Parish and Town Councils to produce a Neighbourhood Development Plan (NP) for their administrative area.
- 3.2. Ercall Magna Parish Council submitted their neighbourhood development plan (the “Ercall Magna Parish Neighbourhood Development Plan”) (EMNP) to Telford & Wrekin Council as local planning authority in June 2022. In accordance with its statutory duties, Telford & Wrekin undertook a number of checks to ensure that all the procedural and other requirements had been met and completed a 6-week publication period which allowed written representations to be made.
- 3.3. Telford & Wrekin appointed an Independent Examiner (the Examiner), Tony Burton, to conduct the Examination of the EMNP and his report was submitted to the Council in June 2023. The Report recommended proceeding to Referendum, subject to a number of modifications. Those modifications have now been applied to the EMNP and incorporated into a Referendum version of the EMNP (Appendix 1).
- 3.4. The purpose of this report is to seek Cabinet approval for the EMNP, subject to the modifications, to proceed to formal Referendum. The full list of modifications proposed by the Examiner are set out in the Examiner’s Report. (Appendix 2)
- 3.5. Whilst the Examiner’s proposed modifications are not binding, they are considered by Officers to be appropriate. No additional modifications are considered to be required prior to the Referendum stage.
- 3.6. Members need to be satisfied that the EMNP meets certain “basic conditions” before it can proceed to a Referendum. As explained in this report, Officers and the Examiner are satisfied that these “basic conditions” have been met.

- 3.7. The referendum version of the EMNP supports the policy approach to Ercall Magna and the rural area in the adopted Telford & Wrekin Local Plan.

#### **4.0 Summary of main proposals**

- 4.1. Neighbourhood planning was introduced by the Localism Act 2011. It provides the opportunity for a Parish/Town Council or local forum to produce a neighbourhood development plan with the involvement of local people, helping to inform future planning decisions in their area. Under the Town and Country Planning Act 1990, Telford & Wrekin Council as LPA has a statutory duty to assist communities in the preparation of the NP through the various statutory stages in the process. In accordance with the 1990 Act and the Neighbourhood Planning Regulations, Ercall Magna Parish Council submitted their NP in June 2022 for Telford & Wrekin Council to complete the necessary checks and proceed to the next stages of publication, examination and referendum.

#### **Examination of the Ercall Magna Neighbourhood Development Plan**

- 4.2. An independent examination of the plan took place between May and June 2023. The purpose of the examination was to establish whether procedural and other matters had been properly dealt with and to establish whether or not the EMNP met the ‘basic conditions’. The “basic conditions” include the following:
- Whether, having regard for national planning policy and guidance from the Secretary of State, it is appropriate that the EMNP should be made
  - Whether the EMNP contributes to the achievement of sustainable development
  - Whether the EMNP is in general conformity with the strategic policies contained in the Development Plan for the area of the Authority (i.e. the adopted Telford & Wrekin Local Plan)
  - Whether the EMNP is in breach of and/or is otherwise compatible with retained EU obligations
  - Whether the making of the EMNP is likely to have a significant effect on any “European Sites” as defined in the Conservation Habitats and Species Regulations 2012
- 4.3. The Examiner also had to consider whether the area for any referendum should extend beyond the area to which the EMNP related.
- 4.4. The Examiner has proposed a number of recommended changes to policies contained in the EMNP, which are set out in the Examiner’s report (Appendix 2). These modifications have been incorporated within the Referendum Version of the EMNP (Appendix 1). The main changes are summarised below:
- Policy H1 and H2 – where new infill housing is proposed replacing “will not adversely affect” with “does not have a significant adverse impact on” the physical landscape and character of the village.
  - Policies H4 / H5 / H6 / H7 – deletion of housing policies covering restrictions on development outside High Ercall including affordable/self build/custom build

housing as these are not sufficiently locally distinctive to policies already contained within the Telford & Wrekin Local Plan.

- Policy EG2 – The policy wording covering adverse impact of new development on open spaces not deemed to be specific enough and therefore replaced with new policy wording that states “New development will be supported where it does not have a significant adverse impact on the open spaces identified in plan”.
- Insertion of a new policy naming all Local Green Spaces identified in the EMNP.
- Policies EG3 and EG4 – New policy wording for Public Rights of Way and Green Infrastructure that is more specific.
- Policies CH2 / CH3 / CH4 – Deletion of policies covering conservation areas as policy wording not sufficiently locally distinctive to policies in the Telford & Wrekin Local Plan.
- Policy CF1 – Delete community infrastructure policy as not sufficiently distinctive to policy COM1 in the Telford & Wrekin Local Plan.

4.5. On all other aspects of the basic conditions tests, the Examiner concluded that, subject to his recommended modifications being made, the EMNP met the tests. In addition, the Examiner also concluded that the EMNP has been prepared in accordance with all other legal requirements, in particular those under paragraph 8(1) of schedule 4B of Town and Country Planning Act (TCPA), in that:

- the EMNP had been prepared and submitted for examination by a qualifying body;
- the EMNP had been prepared for an area that has been designated under Section 61G of the TCPA as applied to neighbourhood Development plans by section 38A of the Planning and Compulsory Purchase Act 2004 (PCPA);
- the EMNP met the requirements of Section 38B of the PCPA (i.e. the Plan must specify the period to which it has effect (to 2031), must not include provisions about development that is excluded development, and must not relate to more than one Neighbourhood Area); and
- the policies relate to the development and use of land for a designated Neighbourhood Area, in line with the requirements of Section 38A of the PCPA.

4.6. Consequently, the Examiner recommended that the EMNP, as modified in accordance with his report met all relevant legal requirements and should proceed to referendum. The Examiner also concluded that the boundary of the referendum (or ‘referendum area’) should be the same as the boundary of the EMNP. An additional business referendum is not required.

4.7. As stated above, it is important for the Examiner and the LPA to be satisfied that the EMNP is in general conformity with the strategic policies contained in the Telford & Wrekin Local Plan. The Examiner noted that the Parish Council prepared its EMNP policies in the context of and alongside the Local Plan and the Examiner himself had regard for the relevant strategic policies of the Local Plan when making his recommendations. Further, officers are satisfied that the EMNP is in general conformity with the strategic policies contained in the adopted Telford & Wrekin Local Plan.

## Considerations for Cabinet

### 4.8. Cabinet must:

- a) consider each of the recommendations made by the Examiner
- b) decide what action to take in respect of each recommendation
- c) be satisfied that the EMNP meets the basic conditions (see para 5.1 above); is compatible with EU Convention Rights and complies with the requirements in paragraph 6.4 above

OR

be satisfied that the EMNP would meet these conditions, rights and requirements if modifications were made to the EMNP as recommended by the Examiner.

- 4.9. In respect of a) and b), Members are recommended to accept each of the Examiner's recommendations and reasons and to agree that all of the Examiner's recommendations be incorporated into a new version of the EMNP (the Ercall Magna Neighbourhood Development Plan: Referendum Version June 2023).
- 4.10. In respect of c) Members are recommended to accept the Examiner's recommendation that the EMNP would meet these conditions, be compatible with these rights and comply with these requirements if his recommended modifications were made to the EMNP and further that these modifications should be made.
- 4.11. In respect of the area in which the Referendum is to take place, Members are recommended to accept the Examiner's recommendation that the Referendum Area should not change and should be the same as the designated EMNP area.
- 4.12. If Members accept the Examiner's and officers' recommendations, a Referendum must be held on the making of the EMNP by the LPA.
- 4.13. If Members are not satisfied in respect of c) above and do not accept the Examiner's recommendations, they must refuse to make the EMNP.
- 4.14. Members' decisions and reasoning in these matters will be published in a decision notice.

## Preparing for Referendum

- 4.15. Subject to Cabinet approval, the EMNP will proceed to the next stage; Referendum. The Referendum is organised by Telford & Wrekin Council. It will only be carried out in Ercall Magna Parish as the Neighbourhood Plan Development area. In accordance with Regulations the Council will publish an Information Statement declaring when a Referendum will be held and the questions to be asked no less than 28 working days beforehand and will ask whether voters want the Council to use the EMNP to help decide planning

applications in the Plan Area.

- 4.16. Subject to Cabinet approval, it is anticipated the Referendum will be held on 7 September 2023.
- 4.17. The organisation of the Referendum will be led by T&WC Policy, Governance Democracy Team in liaison with the Strategic Planning Team & Ercall Magna Parish Council.
- 4.18. If more than 50% of those voting vote in favour of the EMNP, Telford & Wrekin Council must then make the EMNP within 8 weeks of the referendum.
- 4.19. A neighbourhood plan comes fully into force as part of the statutory development plan once it has been made. If it is made, it will be published on Telford & Wrekin Councils website and used in the determination of planning applications in the Neighbourhood Development Plan area i.e. in the Parish of Ercall Magna.

## **Conclusion**

- 4.20. Ercall Magna Parish Council is the eighth “qualifying body” in the Borough to progress a NP to this stage, working closely with their community to produce a plan which reflects local views on future development in the Parish and policies which.
- 4.21. There are seven made neighbourhood development plans in the borough and subject to referendum Ercall Magna will be the eighth parish the Council will have assisted through the process. Over 50,000 borough residents live in parishes with Plans in place and benefit from locally distinctive policies that help protect their areas and shape development.
- 4.22. Subject to Cabinet approval (above), a further report will be brought for Cabinet consideration following the outcome of the Referendum.

## **5.0 Alternative Options**

- 5.1. The Localism Act (2011) introduced legislation which allows Parish and Town Councils to produce a Neighbourhood Development Plan (NP) for their administrative area. This process is led by Ercall Magna Parish Council, there is therefore no alternative option available.

## **6.0 Key Risks**

- 6.1 Following receipt of the Examiners report the key risk of the Council not progressing to referendum on the EMNP would be the potential for a legal challenge from Parish Council.

## **7.0 Council Priorities**

- 7.1 The report recommendations link to the following Council priorities:
  - Every child, young person and adult lives well in their community;

- Everyone benefits from a thriving economy;
- All neighbourhoods are a great place to live
- Our natural environment is protected, and the Council has a leading role in addressing the climate emergency;

## **8.0 Financial Implications**

8.1 The costs associated with the introduction of Neighbourhood Development Plans, including the additional costs of designations, referendum and examinations have to initially be met by the Local Authority. The independent examiners costs totalled £5k and the cost of holding a referendum is approximately £5k. These costs can be claimed back from the Government once the referendum date is confirmed.

## **9.0 Legal and HR Implications**

9.1. The Localism Act 2011 provided a framework for a new statutory regime to establish Neighbourhood Planning. Subsequent legislation has added more detail to that framework. Ercall Magna Parish Council has had to fulfil its publication and consultation obligations under this legislation and Telford & Wrekin Council as local planning authority has now publicised the EMNP and processed it through the Independent Examination Stage. The draft plan is either refused or put to a referendum. The examiner's report can make any of the following three recommendations:

- That the draft is subject to a referendum.
- That modifications are made to the draft and the draft as modified is submitted to a referendum.
- That the proposal for the neighbourhood plan is refused.

9.2. The LPA must consider the examiner's recommendations and decide what action to take. The LPA must hold a referendum if it is satisfied either:

- The draft meets certain criteria to include the basic conditions
- The draft would meet the criteria, if modifications were made (whether or not recommended by the examiner).

9.3. With the benefit of the Examiner's Report, the Council now has to decide what action to take and consider recommendations which appear in the body of this report. If the Council is satisfied that certain conditions have been met, a referendum must be held. If the Council is not so satisfied, the EMNP must be refused. If the referendum takes place and results in more than half of those voting (i.e. 50% + 1) voting in favour of the EMNP, subject to certain exceptional circumstances, the Council must make the EMNP as soon as reasonably practical. Further legal points are raised in this report.

## **10.0 Ward Implications**

10.1 The EMNP, subject to referendum, will become part of the Telford & Wrekin Local Development Plan and will be used to determine planning applications in the parish of Ercall Magna.

## **11.0 Health, Social and Economic Implications**

- 11.1 EMNP will help provide locally distinctive development policies for the Parish area. This will reflect the priorities of the Parish Council and local community and help to enhance the area including protecting areas of locally important green space.

## **12.0 Equality and Diversity Implications**

- 12.1 The Neighbourhood Plan will help enable a better range of accommodation in the Ercall Magna Parish as well as helping to protect locally identified areas of green space that can be used by local residents.
- 12.2 The referendum venue will be accessible to all members of the general public and the date of the referendum will be advertised within the Parish.

## **13.0 Climate Change and Environmental Implications**

- 13.1 EMNP contains locally distinctive policies that will help protect green space within the Parish, conserve and protect biodiversity and the natural environment and improve the energy efficiency of new developments.

## **14.0 Background Papers**

- A Ercall Magna Parish Neighbourhood Plan – Regulation 15 Consultation (June 2022)
- B Consultation Statement (June 2022)
- C Basic Conditions Statement (June 2022)
- D Neighbourhood Development Plan (June 2022)
- E Strategic Environmental Assessment
- F Habitat Regulation Assessment

## **15.0 Appendices**

- A Ercall Magna Parish Neighbourhood Development Plan - Referendum Version
- B Ercall Magna Parish Neighbourhood Development Plan - Independent Examiners Report
- C Ercall Magna Parish Neighbourhood Development Plan – Regulation 15 Consultation Version

## **16.0 Report Sign Off**

<b>Signed off by</b>	<b>Date sent</b>	<b>Date signed off</b>	<b>Initials</b>
Legal	16/06/2023	16/06/2023	SH
Finance	16/06/2023	16/06/2023	MLB