

Report to: **Cabinet**



Date of Meeting 14<sup>th</sup> July 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

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## **Response to the Colyton Neighbourhood Plan Submission**

### **Report summary:**

The purpose of the report is to formally agree the response by this Council to the submission consultation for the Colyton Neighbourhood Plan. Colyton Parish Council has formally submitted their Neighbourhood Plan to the District Council. The Neighbourhood Planning (General) Regulations 2012 (Regulation 16) require the District Council to formally consult on the Plan for a minimum of 6 weeks. As part of this consultation the District Council has the opportunity to comment on the Neighbourhood Plan. Officer observations are set out at the end of this report and members are asked to endorse these as the formal representation on the plan. The comments of this Council and all other comments received during the consultation will be submitted to an independent Examiner who will inspect the Plan against a series of conditions that must be met in order for it to proceed to a referendum.

### **Is the proposed decision in accordance with:**

Budget Yes  No

Policy Framework Yes  No

### **Recommendation:**

1. That Cabinet note the formal submission of the Colyton Neighbourhood Plan and congratulate the producers of the plan on their dedicated hard work and commitment in producing the document.
2. That Cabinet make the proposed representation set out at paragraph 1.19 in this report in response to the consultation.

### **Reason for recommendation:**

To ensure that the view of the District Council is formally recorded and informs the consideration of the Neighbourhood Plan by the independent Examiner.

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Portfolio(s) (check which apply):

- Climate Action and Emergencies
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Culture, Tourism, Leisure and Sport
- Democracy and Transparency

- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

### **Equalities impact** Low Impact

Neighbourhood Planning is designed to be inclusive and extensive consultation is a fundamental requirement. The Neighbourhood Plan has gone through wide consultation with the community and has been advertised in a variety of formats to increase accessibility. All electors are invited to vote in the referendum.

### **Climate change** Low Impact

**Risk:** Low Risk; There is a risk that the Neighbourhood Plan could fail the examination if it is considered to conflict with the Basic Conditions to which all plans must comply.

**Links to background information** [The Localism Act](#); [Plain English Guide to the Localism Act](#); [National Planning Policy Framework \(2019\)](#); [Neighbourhood Planning Regulations](#); [Neighbourhood Planning Roadmap Guide](#); [East Devon Neighbourhood Planning webpages](#).

### **Link to [Council Plan](#):**

Priorities (check which apply)

- Outstanding Place and Environment
- Outstanding Homes and Communities
- Outstanding Economic Growth, Productivity, and Prosperity
- Outstanding Council and Council Services

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## **Report in full**

### **Background to the Colyton Neighbourhood Plan**

- 1.1 Colyton Parish Council commenced work on their Neighbourhood Plan following the Neighbourhood Area being designated on 28 July 2015.
- 1.2 Since then, the Parish Council and volunteers from the local community have spent considerable time and effort consulting with residents of the parish and other stakeholders to produce a plan which endeavours to reflect the aspirations of the community.
- 1.3 The Colyton Neighbourhood Plan contains 18 policies designed to both protect and enhance the special qualities of the parish of Colyton. The policies relate to: the natural environment; the built environment (including heritage and housing); the local economy; transport and travel and; community and recreation facilities. The Plan aims to secure the parish's future as "a uniquely characterful and caring place to live and work", with regard to the use of land, through to 2031.
- 1.4 Prior to submitting the Plan to East Devon District Council, Colyton Parish Council have held their own 10 week public consultation on a draft version of the plan; a step which is also required by the Neighbourhood Planning (General) Regulations 2012 (Regulation 14). The group exceeded the 6 week minimum duration for the consultation to make an allowance for the restrictions relating to the Covid-19 pandemic. The comments made during this consultation, including informal comments from District Council officers, have been considered and the plan updated prior to formal submission to East Devon District Council.

## **Submission of the Colyton Neighbourhood Plan**

- 1.5 The District Council received formal submission of a Neighbourhood Plan from Colyton Parish Council in March 2021. However, a delayed start to the formal Regulation 16 consultation until 27 April was subsequently agreed with the Parish Council to enable further discussion locally on outstanding matters. The Plan and its supporting documents are available to view on the [planning pages](#) of the District Council website.
- 1.6 This is the twenty-second neighbourhood plan to reach submission stage in the District. The Parish Council has received regular support from the District Council and additional financial support from the Ministry for Housing Communities and Local Government.
- 1.7 The statutory regulations require that the District Council organise and undertake a consultation on a plan when it reaches this stage. This is commonly referred to as the submission or 'formal' consultation. The public consultation period ran from 27 April 2021 to 22 June 2021. The Plan proposal was publicised through notices on the District Council website, a press release and social media, email sent to all Members, adjoining authorities and statutory consultees, including Devon County Council, Natural England, Historic England and the Environment Agency, and publicised widely locally through the Parish Council. In addition, to make allowance for restrictions relating to the Covid-19 pandemic, the usual timeframe was extended from 6 weeks to 8 weeks and hard copies of the Plan were made available on request and at Colyton Library.
- 1.8 One of the statutory roles of the District Council is to consider whether the Plan meets the legislative requirements, in production process terms. Cabinet has previously endorsed a protocol for District Council involvement into neighbourhood plans and in accordance with this protocol an officer review has been completed. Officer assessment is that legislative requirements are met.
- 1.9 Anyone may comment on a neighbourhood plan. It is particularly important that the District Council comments. This is because the plan will eventually (if adopted) form part of the statutory Development Plan for East Devon, and should conform to the strategic policies of the Local Plan. This report provides the recommended representations on the Plan, made by officers of this authority, to be formally submitted to the Examiner undertaking the Plan examination.

## **Neighbourhood Plan Examination and Referendum**

- 1.10 In preparation for the examination that will follow the current consultation period, the District Council has confirmed the appointment of Deborah McCann as the 'appropriately qualified and independent Examiner'. This appointment was agreed in liaison with Colyton Parish Council. Deborah McCann has extensive relevant experience, having carried out over 50 neighbourhood plan examinations, mostly in the south west of England.

- 1.11 All responses from the consultation (including any made by this Council) are forwarded to the Examiner who will consider them, either by written representations or at an oral hearing (if she decides one is necessary). The District Council is responsible for paying the costs of the examination but can recoup these expenses by claiming funding from Central Government of £20,000.
- 1.12 The Neighbourhood Plan examination is different to a Local Plan examination. The Examiner is only testing whether the plan meets the Basic Conditions and other relevant legal requirements – they are not testing the soundness of the plan or looking at other material considerations. The Examiner will be considering whether the plan:
- has appropriate regard to national policy and advice contained in guidance issued by the Secretary of State;
  - contributes to the achievement of sustainable development;
  - is in general conformity with the strategic policies in the development plan for the local area (in this case the adopted East Devon Local Plan 2013-2031);
  - is compatible with human rights requirements;
  - is compatible with any retained EU obligations.
- 1.13 As part of the Development Plan used in future planning decisions, it is in the interests of the District, Town and Parish Councils to produce high quality neighbourhood development plans.
- 1.14 Following the examination, the Examiner's Final Report will set out the extent to which the draft plan proposal meets the Basic Conditions and what modifications (if any) are needed to ensure it meets the Basic Conditions. The Examiner has 3 options for recommendation:
- A. That the Plan proceeds to referendum as submitted.
  - B. The Plan is modified by the District Council to meet Basic Conditions and then the modified version proceeds to referendum.
  - C. That the Plan does not proceed to referendum.

If the Examiner chooses A or B above they must also consider whether the referendum area should be extended beyond the boundaries of the Plan area (this could be applicable if plan proposals could impact on a larger area). The report must give reasons for each recommendation and contain a summary of its findings. It is the responsibility of the District Council decide what action to take in response to the recommendations of the Examiner.

- 1.15 Once the Plan has been finalised it will be subject to a referendum where everyone on the electoral roll (for the defined area) will have a right to vote for or against it. If at least half of votes cast support the Plan then it can be brought into legal force. It should be noted that due to the Coronavirus Act 2020 and the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 made in response to the coronavirus crisis, the referendum will currently not be able to take place until after 6 May 2021. However, once it has been formally decided by this Council that it should proceed to a referendum, the Plan will then carry significant weight in the determination of planning applications in Colyton parish.

## **The Colyton Neighbourhood Plan Response**

- 1.16 As part of the current consultation the District Council can comment on the Plan. In terms of meeting the Basic Conditions, the Parish Council has produced a statement setting out how the Plan complies with the conditions which the Examiner will assess.
- 1.17 Officers have reviewed the Neighbourhood Plan contents, and recommend that the following representation of East Devon District Council be formally submitted to the examiner. It should be noted that comments we make at this stage are primarily restricted to land use planning policy matters rather than other content on the Plan including supporting text or community actions and are made on the basis of:
- Do Colyton Neighbourhood Plan policies comply with strategic policies in our adopted Local Plan and have appropriate regard to National Planning Policy?
  - Do we have concerns about policy given the wider objectives of the Council?
  - Are the policies workable and enforceable - could they be reasonably applied through the Development Management process? and
  - Are they otherwise appropriate or desirable?
- 1.18 Overall it is noted that the District Council comments made at the previous Regulation 14 consultation have been carefully considered by the Parish Council and various amendments to the Plan made accordingly. In terms of the planned replacement of the adopted Local Plan with a new Local Plan for east Devon, this is at too early a stage for conformity or otherwise with emerging strategy and policy to be assessed. However, the neighbourhood plan notes that this work is on-going.
- 1.19 East Devon District Council comments on the Regulation 16 Submission Version of the Plan are proposed as follows (a full schedule of the Plan policies is provided in Annex 1 for reference):

### **Policy Coly1 Protecting the Natural Environment**

Suggest this policy could be further strengthened by:

- replacing 'should' with 'must';
- "whenever possible" could also be removed from point (iv) to give a clearer position and be consistent with the Government's intention to make 10% biodiversity net gain mandatory on all development.

### **Policy Coly2 Trees, Woodlands and Hedgerows**

Again, to further strengthen this policy, suggest:

- Point A – replace 'exists' with 'proposed and secured'.
- Point B – similar to the wording of Point A, suggest also stating as the clear position that loss/damage 'will be resisted', and default to point D for the mitigation requirement should such loss/damage unavoidable.
- Point D - replace "it" with 'Where loss or damage is unavoidable to allow otherwise acceptable development' and make it so that development proposals may be supported where suitable mitigation is provided for through "appropriate replacement planting...etc...."

- To note that the tree sizes are currently missing from the glossary. In line with that agreed recently for the Farringdon Neighbourhood Plan, suggest this relates to the TDAG guidance of :small tree <10m; medium tree 10m – 15m; and large tree 15m-25m+.

### **Policy Coly3 Public Rights of Way**

- In recognition there are most likely other paths used by the public beyond those classed as a PROW, and that in new developments, new paths often have this 'public' but not PROW status, consider adding in "and other paths and cyclepaths used by the public" after 'public rights of way' in the first sentence.

### **Policy Coly4 Green Wedge**

- This reinforces the green wedge designation and associated policy in the adopted Local Plan. However, due to the work underway on a new Local Plan, suggest it would give this policy greater longevity if it avoided stating a need to comply with Local Plan Strategy 8, and instead embodied the requirements of that policy. This could be achieved by replacing criteria (iv) with "not adding to existing sporadic or isolated development, cause damage to the individual identity of Colyton or Colyford and/or lead to or encourage settlement coalescence".
- Criteria ii - needs the word 'or' inserted between 'residential' and 'employment' use.

### **Policy Coly6 Sustainable Development**

- Criteria iv - to reflect correct terminology and broaden the reach of this criteria, replace term 'listed buildings' with 'heritage assets'.
- Criteria vii – to increase the degree to which this is a requirement, and to acknowledge other potential measures than those listed, suggest alternative wording to this criteria of, "measures to improve biodiversity should be incorporated into new development including, but not limited to, bee bricks, bat and bird boxes and hedgehog highways".
- Criteria viii – suggest replace 'should' with must to increase weight.

### **Policy Coly7 Housing Development within the Built-up Area Boundary**

- Criteria i – suggest remove 'generally' to better reflect the expectation.

### **Policy Coly8 Exception Site Housing Development**

- Noted that this policy refers directly to Local Plan Strategy 35. However, it does not require compliance with the policy as such but sets out the evidence that any proposal is expected to demonstrate. In the absence currently of any replacement policy, it is considered reasonable for this reference to be retained, and that its removal altogether would weaken the policy.
- Clarification is strongly advised in the last sentence of the policy to state that the proportion of open market homes should be a maximum of one-third of the total units (in line with Local Plan Strategy 35).
- To note that whilst smaller schemes may be preferred, the inclusion of a definition of scale of 'up to 15 dwellings' has been included further to comments made by officers at the Regulation 14 stage, to align to that which could be brought forward under the strategic exemptions housing policy of the Local Plan (i.e. Strategy 35) and the

supporting text of the plan. It is noted that no sites have been allocated for affordable housing through the Neighbourhood Plan. However, some further control could be given by encompassing locational preferences expressed within the supporting text into the policy itself (i.e. that the preferred location for development under this policy is “adjacent to existing settlements; below the 60metre contour, and where the protection given to areas or assets of importance such as the Green Wedge and AONB are not compromised”).

### **Policy Coly9 Parking Provision for New Housing Development**

To further strengthen this policy,

- Suggest ‘should’ could be replaced with ‘must’ throughout.

### **Policy Coly10 Employment Uses**

- To give greater protection, particularly in view of the impact of Covid, the minimum marketing period stated could be extended from 12 to 24 months.
- Suggest adding a criteria specific to live-work units to ensure that the residential use is secondary to the primary employment use.
- Suggest adding a criteria relating to a requirement to provide ‘off-road parking commensurate to the location, size and scale of the proposal’, given that parking is a key issue in this Plan and is a requirement in policies for other types of use.

### **Coly11 Tourism Development**

- Further to comments made at Regulation 14, suggest it would be helpful to be clearer regarding acceptable scale of development. Potential alternative wording for criteria (i) to this end would be, “the scale of development is in keeping with, or subordinate to, the pre-existing scale of development in the neighbourhood plan area generally, and serves primarily a local market.” In addition, to request the examiner to comment on definition of scale in respect of this policy and others throughout this Plan.

### **Coly13 Connectivity**

Notwithstanding that this policy wording has been used elsewhere in neighbourhood plans and was proposed as an example for consideration at Regulation 14 stage:

- Suggest it would be preferable to avoid use of the non-specific term “other” within the policy, and that the standalone requirement regarding ducting in ALL new development, may not always be appropriate. Therefore, suggest amending the final point to read “provision for high-speed, reliable connection to communication networks for internet and mobile connectivity, including provision of suitable ducting to accommodate FTTP broadband.”

### **Policy Coly14 Public Transport**

- Suggest this policy may have further application, if re-framed from “Development proposals specifically to maintain and enhance existing public transport provision, within the area will be supported provided...” to “Measures to retain and enhance existing public transport provision in the area through development proposals will be supported provided...”.

### **Policy Coly15 Walking and Cycling Routes**

- Suggest that the 'safeguarded routes' referred to in this policy be added to Map 5 with an addition to the key to reflect.
- Suggest including expectations currently only found within the supporting text for pedestrians and cycle routeways to 'wherever possible be adequate width for shared use, including by mobility vehicles', into the criteria of the policy.

### **Policy Coly16 Public Car Parking**

- Suggest that electric vehicle charging points can be more than 'supported' and can now be required.
- Suggest that in common with other policies in this plan, this policy includes a requirement for "permeable materials for surface parking areas should be used where practicable."

### **Policy Coly17 - Community Horticulture**

To reflect that the supporting text includes an aim for larger developments to bring forward opportunities for community horticulture, to support an addition to the first sentence of the policy to say 'and provision of this nature will be sought in connection with major developments as appropriate'.

### **Other non-policy specific comments:**

- Accessibility - Plan to be made as accessible as possible, with reference to the latest Government standards (EDDC can give some guidance on this if required).

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### **Financial implications:**

As mentioned in Section 1.11 of the report, Central government Grant funding is available. This income covers not only Examination fees but also all other costs associated with Neighbourhood planning such as employment costs and all other supplies and services. Any residual funds are placed into an earmarked reserve and utilised to cover funding gaps in subsequent years.

### **Legal implications:**

The legal implications are fully set out within the report. It is important that EDDC comment on the content of the submitted Colyton Neighbourhood Plan (given that it will form part of the Development Plan and therefore help guide decision making on planning applications) to ensure it sits within the strategic requirements of the East Devon District Council's Local Plan.