

East Devon District Council Legal Compliance Assessment

Kilmington Neighbourhood Plan Submission

Introduction

At this stage in the development of a Neighbourhood Plan, the draft Plan is formally submitted to the Council and assessed for legal compliance under the relevant provisions of Neighbourhood Planning Regulations and the Town & Country Planning Act 1990. This stage is not specifically concerned with details of plan wording or policy or sites, but is a legal compliance checking exercise.

Legal Compliance Assessment:

The following sets out the Officer assessment of the Kilmington Neighbourhood Plan against the relevant legal requirements. The questions relate to the requirements of Sections 38A, 38B & 38C of the Planning and Compulsory Purchase Act 2004 and Schedule 4B of the Town & Country Planning Act 1990 and Regulations 14 & 15 of the Neighbourhood Planning (General) Regulations 2012.

Part 1 – Overall Requirements

Question 1

Is the Plan Producer is authorised to act?

Answer

Yes, the Neighbourhood Plan was submitted by the Plan Producer, Kilmington Parish Council, on 4th January 2022. Kilmington Parish Council is authorised to act, being the approved Qualifying Body.

Question 2

Is the draft Neighbourhood Plan a 'repeat' proposal?

Answer

No, this is the first and only Neighbourhood Plan submitted for this Neighbourhood Area.

Question 3

Is there another Neighbourhood Plan in place in respect of the designated Neighbourhood Area?

Answer

No, there is not another Neighbourhood Plan already in place in respect of the Neighbourhood Area which is the whole of the parish of Kilmington.

Question 4

Have the Neighbourhood Plan Regulations been complied with, including the minimum 6 week pre-submission (Regulation 14) Consultation?

Answer

Yes. The necessary steps have been followed and the Neighbourhood Plan was appropriately advertised for at least 6 weeks in accordance with Regulation 14 (as set out in the consultation statement). In total, the consultation ran for 10 weeks to allow more time than usual for responses due to the impact of the restrictions relating to the Covid-19 pandemic. A range of digital and non-digital methods of communication were used to raise awareness of the consultation to those who live, work and carry out business in the parish.

Part 2 - The submitted Draft Plan

Question 1

A map or statement is included identifying the area to which the plan relates?

Answer

Yes, the submission includes a map and a statement identifying the area to which it relates (the whole of the parish of Kilmington) within the Neighbourhood Plan itself (at plan page 10).

Question 2

The consultation statement is included and contains details of those consulted (how they were consulted, summarises the main issues and concerns raised and how these have been considered, and where relevant addressed in the proposed Neighbourhood Plan)?

Answer

Yes, the submission includes a detailed consultation statement which is considered to meet these requirements.

Question 3

The submission includes the proposed Neighbourhood Plan?

Answer

Yes, it includes the proposed Neighbourhood Plan (Submission Version, dated December 2021).

Question 4

A statement is included explaining how the Neighbourhood Plan meets the 'basic conditions'? (These are the requirements as set out in paragraph 8(2) schedule 4B Town & Country Planning Act 1990).

Answer

Yes. A Basic Conditions Statement accompanies the submission and is considered to be fit for purpose.

The Neighbourhood Plan does not contain any Neighbourhood Development Orders.

As such, officers understand a Neighbourhood Plan will be considered to have met the Basic Conditions if:

- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood development plan,
- the making of the neighbourhood development plan contributes to the achievement of sustainable development,
- the making of the neighbourhood development plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
- the making of the neighbourhood development plan does not breach, and is otherwise compatible with, retained EU obligations, and
- prescribed conditions are met in relation to the neighbourhood development plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood development plan.

Question 5

The Submission includes either 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 for the determination of why the plan proposal is unlikely to have significant environmental effects?

Answer

Yes. A screening process was carried out by East Devon District Council (EDDC) as the Local Planning Authority to determine whether a Strategic Environment Assessment (SEA) or Habitat Regulations Assessment (HRA) would be required in support of the Kilminster Neighbourhood Plan. This concluded that the plan was unlikely to result in significant impact on the environment and European Site habitats, and that therefore neither an SEA or HRA would be required. Following consultation with the statutory consultees, additional work was undertaken by officers of East Devon District Council to carry out an Appropriate Assessment and to prepare a Landscape Impact Assessment and Heritage Impact Assessment, to consider in more detail the potential impact of the 2 proposed allocations for housing within the plan. The statutory consultees were re-consulted and subsequently advised EDDC that the additional assessment work had satisfactorily addressed the matters raised and supported the conclusion that an SEA / HRA was not required, subject to some amendments to policy wording to reflect the findings, and which are included in the Submission Version of the Neighbourhood Plan.

Therefore, basic conditions concerning Habitats and Environmental Impact Assessment as described in Schedules 2 and 3 of the Regulations have been accounted for.

The Neighbourhood Plan has regard to the fundamental rights and freedoms guaranteed under the European Convention on Human Rights and complies with the Human Rights Act 1998.

Conclusion

In the opinion of the East Devon District Council Policy Team, having consulted (if appropriate) with Legal Services, the relevant legal requirements at Submission stage have been fully met. The Plan Producer can be notified as such and the Plan can proceed to Regulation 16 Consultation.

Note on documentation accessibility:

Outside the Legal Compliance Check under the TCPA Act & NP Regulations, an 'accessibility check' has been undertaken (using Adobe software) of the three main Submission documents. This shows that the documents are not currently accessible for various reasons. It should be noted that this will need to be addressed for publishing on EDDC's website for the Regulation 16 consultation, in order to comply with the [Accessibility Regulations](#). The need for documentation to be accessible was included within EDDC's response to the Pre-Submission consultation. It is evident that the QB have made endeavours to comply. Officers are currently assisting with seeking to address outstanding accessibility errors ahead of publication. The QB should clarify whether and how there is compliance with their own Parish Council Accessibility Statement.