

AGENDA

LOCAL DEVELOPMENT FRAMEWORK PANEL MEETING

Date: Tuesday, 20 June 2017

Time: 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, Kent, ME10 3HT

Membership:

Councillors Mike Baldock, Monique Bonney, Andy Booth, Richard Darby, James Hunt, Gerry Lewin (Chairman), Peter Marchington, Bryan Mulhern (Vice-Chairman) and David Simmons.

Quorum = 3

Pages

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Therefore by entering the Chamber and speaking at Committee you are consenting to being recorded and to the possible use of those sound recordings for training purposes.

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1. Confirmation of Chairman and Vice-Chairman

To confirm the Chairman and Vice-Chairman for the Municipal Year 2017/18.

2. Fire Evacuation Procedure

The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.

The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second

closest emergency exit route is, in the event that the closest exit or route is blocked.

The Chairman will inform the meeting that:

(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. Nobody must leave the assembly point until everybody can be accounted for and nobody must return to the building until the Chairman has informed them that it is safe to do so; and

(b) the lifts must not be used in the event of an evacuation.

Any officers present at the meeting will aid with the evacuation.

It is important that the Chairman is informed of any person attending who is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.

3. Apologies for Absence and Confirmation of Substitutes

4. Declarations of Interests

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the room while that item is considered.

Advice to Members: If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

PART A REPORTS FOR RECOMMENDATION TO CABINET

5. Swale Borough Local Plan Bearing Fruits

Information item on the Local Plan Inspector's Report; the Adoption version of the Plan and Sustainability Appraisal. To accord with statutory regulations a Full Council resolution to adopt will be sought.

Item to follow as soon as Inspector's Final Report is released from Planning Inspectorate.

6. Faversham Creek Neighbourhood Plan 1 - 30

Information item on the outcome of the Judicial Review and Referendum and next steps to adopt. A full Council resolution to adopt the Faversham Creek Neighbourhood Plan as part of the local development plan will be sought.

7. Local Plan Review 31 - 36

In the light of the Inspector's Final Report and recommendations in the Housing White Paper to review local plans every five years, a recommendation to commence local plan review will be sought.

8. Statement of Community Involvement (SCI) 37 - 80

A draft of a refreshed and updated SCI (which was originally adopted in 2008) will be presented for approval for consultation. This covers both local plan and planning application consultation with the general public.

Issued on Monday, 12 June 2017

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of the Local Development Framework Panel, please visit www.swale.gov.uk

Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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Local Development Framework Panel		Agenda Item: 6
Meeting Date	20 June 2017	
Report Title	Faversham Creek Neighbourhood Plan: Referendum Results and Adoption	
Cabinet Member	Cllr Gerry Lewin, Cabinet Member for Planning	
SMT Lead	Emma Wiggins	
Head of Service	James Freeman	
Lead Officer	Natalie Earl	
Key Decision	No	
Classification	Open	
Forward Plan	Reference number:	
Recommendations	1. That Members receive this report for information, noting that a Full Council resolution is required to adopt the Neighbourhood Plan.	

1 Purpose of Report and Executive Summary

- 1.1 This report outlines the process since the receipt of the Examiner's Report, covering the Judicial Review and the Referendum stages. The adoption of the Neighbourhood Plan needs to be by Full Council. This item is therefore to inform Panel Members of the outcome of the above processes and the final steps to adoption.

2 Background

- 2.1 Panel Members will recall receiving a report on 19 May 2016 on the Examiner's Report and the next steps to the referendum stage. Members agreed to accept the modifications to the Faversham Creek Neighbourhood Plan as set out in the Examiner's Report and approved the organisation of a referendum.
- 2.2 In July 2016, Swale received notification that Swan Quay LLP were seeking permission to bring a claim for a Judicial Review against the decision of the Defendant (Swale Borough Council) to hold a referendum.
- 2.3 A hearing was scheduled for 12th January 2017 at the High Court, London and was attended by Officer Natalie Earl and a barrister instructed by Mid-Kent Legal Services. The hearing took two days.

- 2.4 On 27th January 2017 Mr Justice Dove conducted a read out of his judgement. He concluded that the claim was dismissed. (See Appendix I.)
- 2.5 The referendum was then held alongside the Kent County Council elections on Thursday 4th May. The question asked, as set out in national guidance, was "*Do you want Swale Borough Council to use the neighbourhood plan for Faversham Creek to help it decide planning applications in the neighbourhood area?*"
- 2.6 5,418 (88%) voted in favour and 706 (12%) voted not in favour. Turnout was 42.28%.
- 2.7 The Localism Act requires local planning authorities to 'make' a Neighbourhood Development Plan as soon as reasonably practicable following a successful referendum. A report will therefore be taken to Full Council on 26th July for adoption of the Neighbourhood Plan.
- 2.8 Once adopted, the neighbourhood plan will become part of the Development Plan and will be used when assessing planning applications in the neighbourhood plan area.

3 Proposals

- 3.1 The proposal for Panel is simply to acknowledge this report for information.

4 Alternative Options

- 4.1 No alternative options are proposed.

5 Consultation Undertaken or Proposed

- 5.1 The Neighbourhood Plan was subject to extensive public consultation throughout its preparation and there was public involvement at the hearing sessions and the Referendum stage.

6 Implications

Issue	Implications
Corporate Plan	Supports the Council's corporate priorities for a Borough and a community to be proud of.
Financial, Resource and Property	None identified at this stage.
Legal and	None identified at this stage.

Statutory	
Crime and Disorder	None identified at this stage.
Sustainability	A Sustainability Appraisal report was undertaken for the Neighbourhood Plan.
Health and Wellbeing	None identified at this stage.
Risk Management and Health and Safety	None identified at this stage.
Equality and Diversity	None identified at this stage.

7 Appendices

Appendix I: Judgement of Mr Justice Dove Case No. CO/3447/2016

8 Background Papers

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The Queen on the Application of Swan Quay LLP v Swale Borough Council

CO/3447/2016

High Court of Justice Queen's Bench Division the Administrative Court

27 January 2017

[2017] EWHC 420 (Admin)

2017 WL 00895228

Before: Mr Justice Dove

Friday, 27 January 2017

Hearing date: 12 January 2017

Representation

Ms Mary Cook and Mr Robert Williams (instructed by Shakespeare Martineau LLP) appeared on behalf of the Claimant.

Ms Megan Thomas (instructed by Sharpe Pritchard LLP) appeared on behalf of the Defendant.

Judgment

Mr Justice Dove:

Introduction

1 This is a claim for judicial review of the defendant's decision to hold a referendum in respect of the Faversham Creek Neighbourhood Plan ("FCNP") on 21 June 2016. Holgate J granted permission solely on one ground. As this ground was clarified at the hearing, it amounts to the alleged failure of the examiner to provide adequate reasons for his recommendation (adopted by the defendant) that the FCNP should be modified in relation to its proposals for Swan Quay, and thus it is contended that the court could not be satisfied that neither the examiner nor the defendant had acted within the powers given to them to modify a neighbourhood plan which has been submitted.

The facts

2 In the early Middle Ages, Faversham was part of the Cinque Ports Confederation as a

limb of Dover. Its significance as a port was built upon the development of Faversham Creek. Faversham Creek is described as a tidal inlet of the Swale waterway, penetrating some 6 kilometres inland on a winding course across the marshes of the North Kent coast. Its fortunes steadily declined as a port, in particular in the 20th century, and by 2000 commercial boat traffic had completely ceased.

3 The creek area forms part of the conservation area and is identified within a draft Character Assessment for the Conservation Area as "Creekside". In particular, that part of the Conservation Area containing the Swan Quay site, which is owned by the claimant and the subject of these proceedings, is described in the following terms:

"4.33. A large joinery works occupies the southern end of Belvedere Road, where a rather pleasing array of traditional-looking industrial buildings fronts onto the creek (although most of the structures are relatively modern). Exceptionally, Faversham Chandlery is a brightly-painted weatherboarded building dating from the early C19. Despite having no direct connection with the water this site has established a rather convincing aesthetic relationship with the creek, the buildings being expressed for the most part in a local vernacular of treated weatherboarding and slated roofs. Alongside to the north is the impressive C19, five storeys high, yellow brick-built Belvedere Mill now being converted to flats and a restaurant. With its characteristic projecting hoist bays the structure is a crucial and prominent part of the historical record of the creek's industrial past. On the opposite side of Belvedere Road are other vacant buildings and land, whilst to the north are brewery premises where barrels and pallets are stored both in the open and under cover."

4 The Swale Borough Local Plan 2008 established a specific planning policy context for the development of Faversham Creekside within its policy AAP2, which provided, together with its explanation, as follows:

"5.12. Faversham creek winds inland crossing the marshes into the heart of the town. Once a thriving place of industry and water-trade, recent years have seen a change in the character of the creekside with new waterside housing. Despite this, as a central component to the historic development of Faversham, the creek remains an important ingredient in its unique character as well as a place of employment, leisure, and tourism opportunity. It is an irreplaceable historic asset of great significance.

[...]

5.14. House builders and homeowners have found the creekside's industrial sites an attractive prospect, but these change the character of the area and place pressures — both financial and environmental — on the remaining businesses and vacant sites to follow suit. Such changes to the character of the creekside lead to the loss of diversity of activity and a severance in the old links between the water and waterside uses. The Council considers that levels of new housing have reached the point where further proposals will damage the area and it will now resist them as both contrary to the strategy for the Local

Plan and the policy for this AAP. Additionally, the Council considers that frontage development not involving active use or management of the creek itself, or that which prevents use of the creek by vessels, should not be permitted.

[...]

5.16. For existing and former employment sites, a rigorous application of Policy B1 will mean retaining the availability of employment land and buildings along the creekside. For existing employment uses, within the context of the strategy for the town and Policy AAP2, the Council will look to support proposals to expand and diversify businesses that will enable them to maintain a presence within the town. However, given the proximity of recent housing development, there are employment uses that would now be entirely inappropriate, as they would in any other residential area, and the suitability of their retention will need to be carefully considered. However, where sites may be considered unsuitable for their current or former use, it will normally be the case that an alternative, more suitable, commercial use will be sought by the Council, rather than the site being accepted for housing development. In exceptional cases, where mixed uses, or wholly non commercial developments, are considered appropriate under Policy B1 and Policy AAP2 for those sites with a frontage to the water, the provision of links to the water, whether by moorings, mooring points, rubbing strips, or through commercial activity, will be sought, alongside the restoration of the quayside frontage.

[...]

5.19. [...] To address the regeneration of the creek basin as described, and the future of the various sites referred to above, Policy B17 promotes use of the wider area of the creek basin for the mooring, maintenance and use of historic craft for employment/tourism purposes. These would be focused around land and buildings at Ordnance Wharf, the Purifier building, and the BMM Weston car park (where open space and environmental enhancement should be additionally considered around a retained car park), but could extend onto other wharfage. Housing development would prejudice these proposals and will not be permitted.

- Conduit Street and Quay Lane: maintaining the strongly industrial character of the area and creekside on both sides of these roads.
- Belvedere Road: retaining remaining employment sites and seeking a greater diversity of uses and activity in what is largely now a residential area.

[...]

Policy AAP2

Faversham Creekside

An Area Action Plan is designated for Faversham Creekside, as shown on the Proposals Map. Within this area the Borough Council will seek to ensure that it continues to function as a place of special interest and activity with strong associations with the water, and will specifically encourage the regeneration of the creek basin for commercial and tourism purposes, including use of the basin and its wharfage for historic craft. Planning permission will not be granted for proposals that would result in the loss of land or buildings suitable for employment uses or, on appropriate sites, would not involve active use or management of the creek itself. All development proposals will:

1. maintain or enhance a mix of uses and activity that respect the maritime, industrial and residential character, as appropriate to the varied parts of the AAP area;
2. maintain or enhance an environment appropriate to enable traditional waterside activities to flourish, including, where appropriate, financially contributing toward improving and maintaining the navigability of the creek channel and its infrastructure, including providing wharfage and moorings;
3. preserve or enhance the area's special archaeological, architectural and historic character, including its open spaces; and
4. avoid any significant adverse environmental impacts and where possible enhance the biodiversity interest of neighbouring internationally designated sites for nature conservation. The Borough Council will expect development to:
 - a. preserve or enhance landmark and other important buildings, waterside structures and details;
 - b. preserve and create access to the waterside, including wharfage and moorings, and where appropriate provide for a creekside walk;
 - c. by use of its grain, scale, form and theme of materials, be creekside in character;
 - d. retain existing greenspace and, where appropriate provide new areas; and
 - e. retain or enhance existing townscapes, including those in the views of higher ground."

5 On 15 January 2013, Faversham Town Council ("FTC") applied to have Faversham Creek designated as a neighbourhood area. The neighbourhood area, and thus the area ultimately covered by the FCNP, is, for present purposes, essentially the same as the area covered by AAP2. The neighbourhood area's designation was confirmed by the defendant on 20 February 2014. FTC published a pre-submission draft of the FCNP for consultation and thereafter consultation occurred in May and June 2014. The pre-submission draft included specific proposals for a number of identified sites within the neighbourhood area. In particular, Site 5 was identified as Swan Quay.

6 In the consultation responses, concern was expressed by a number of respondents in relation to the extent of housing proposed in the neighbourhood plan and its impact on heritage value, especially where housing might manifest itself on the waterfront. FTC responded to these representations by stating that further creekside housing was not being promoted and any housing was solely as an element of an overall mixed-use development.

7 In November 2014, a submission version of the FCNP was submitted by FTC to the defendant, accompanied by a basic conditions statement and a consultation statement. The submission version contained the following proposals for Site 5 Swan Quay:

"Site 05

Swan Quay

Site Context

This site was formerly used by Frank and Whittome joinery company and comprises four buildings. The blue two storey building set at right angles to the Creek is listed grade II and was last used as an office. Attached to the rear of this is a vacant shed dating from the turn of the 19th and 20th Centuries, which has been re-clad in weatherboarding to the south and west sides. This is currently vacant but as an attached building would require listed building consent to remove.

There is an open shed with a metal trussed roof with a long elevation to Conduit Street with attached modern offices built in the 1990s. The fourth building is a modern building built for the joinery company (c. 1990) constructed in brick and weatherboard, now used by a sail maker. The site has access for both vehicles and pedestrians off Belvedere Road.

Suggested Redevelopments, Designs and Land Uses

On the side of the site adjacent to Town Quay, a range of buildings running at right angles to the creek, up to three and a half storeys, could replace the existing structures. This would create a wider gap between the new and existing buildings to allow more open views of the water down Quay Lane.

- Land uses could include offices/workshops (Class B1) and a gallery (Class D1) and some limited car parking. New buildings should be constructed in yellow stock brickwork and slate roof with metal framed windows
- The upper floors could be in residential use. A second shorter building, also using traditional materials and three and a half storeys in height, could be set parallel to this, with a ground floor workshop with the upper floors residential.
- A single storey extension to the retained workshop at the corner of the site adjacent to Belvedere Quay constructed in suitable materials (e.g. brick and

weatherboard) could provide a retail, restaurant or workshop use. The retained workshop could be used by the sailmaker.

- Additional three storey buildings using traditional materials to the rear of the blue buildings could be used for ground floor parking with residential above. This could provide approximately 15–20 residential units.

[...]

Swan Quay Site Specific Policies

SWQ1: Use classes: the site shall be used for a mix of retail (A1), restaurant (A3), office and workshops (Class B1) and a gallery (Class D1), with residential (C3) on some upper floors.

SWQ2: Public walkways shall be created through the site from Belvedere Road and along the Creek frontage to connect with the existing walkways to sites on either side with regard to the Faversham Creek Streetscape Strategy.

SWQ3: Moorings shall be provided to the Creek frontage suitable for all sizes of craft up to and including Thames Barges or similar. Swan Quay Site Specific Projects Improvements to the junction of Quay Lane and Conduit Street as indicated in the Faversham Creek Streetscape Strategy, including negotiation with the landowners to improve boundary treatments as necessary.”

8 During the course of the consultation, English Heritage (as they then were) raised concerns as to the potential impact of the FCNP's proposals on the historic environment. English Heritage were concerned that, without modification, the plan may not meet the basic conditions, which I shall set out below.

9 On 18 December 2014, English Heritage wrote to the defendant setting out their concerns in relation to the FCNP as it was then proposed as follows, in so far as is relevant to this claim:

“In summary, the areas where we have concern about the plan's policies are:

- The lack of assessment of significance of sites, buildings and activities that contribute positively to the Faversham Conservation Area's significance and promotion of their protection and enhancement as part of a designated heritage asset;
- The absence or low level of analysis of the positive components of the area's character, including variation between character areas within the Neighbourhood Plan Area and the definition of an appropriate response to this within the policies relating to the allocated sites;
- Consideration of the potential for presence of as yet unidentified assets of archaeological interest within the plan area and promotion of the need to develop understanding of their significance and their conservation in a manner

appropriate to their significance within policies relating to the allocated sites;

- The potential impact of the policy approach of providing public access to the creekside on the industrial working character of the creek as a distinct area of the Faversham Conservation Area and on Faversham's maritime traditions;
- The impact of the policy approach of providing a mix of uses including residential use on creekside land on the character of the Faversham Conservation Area and Faversham's maritime traditions;
- The lack of a positive strategy for the conservation and enjoyment of the non-designated heritage assets identified within the evidence base study;

[...]

Whilst the draft conservation area appraisal prepared by the Council in 2004 provided a detailed consideration of the character areas that form the conservation area, this assessment does not appear to have been transferred to the neighbourhood plan. [...] The contribution of the historic character which might be distinguished from the character of more recent development of the creekside, appears to be particularly lacking in this analysis. Indeed, without a proper assessment of the potential impacts of development of the opportunity sites on the significance of the conservation area, including potential loss of the special historic or architectural interest of the area or impacts on its character and appearance, the policies cannot be shown to represent a positive strategy for the conservation and enjoyment of the historic environment.

Furthermore, the special interest and character of the conservation area may not reside solely in its buildings and spaces, but may also result from the activities that traditionally were and, in some cases, continue to be conducted within these. The loss of key employment sites that contribute to the viability of the area for a range of waterside industries, notably boat building, that contributes to the working character of the waterway and creekside, would represent a loss of the significance of the conservation area as an historic focus for such activities and ultimately, a reason for the town's existence. The need to protect this character was referred to in the recent planning appeal decision relating to the Black Shed at Standard Quay (Appeal Decisions APP/V2255/A/13/2202894, APP/V2255/E/13/2202924). As un-neighbourly industries these may not be suitable for continuance within mixed-use development. As such, the potential impact of any such allocation on the viability of the creek for these activities should form a part of the analysis that underpins the plan in order for it to comply with both the national and local planning policies.

[...]

Site 5 Swan Quay: We have serious reservations about the appropriateness of the development proposed, including: its potential impact on the character and

appearance of the conservation area; the impacts to archaeological remains that may be of national significance; and the impacts on listed buildings, including impacts to their settings and potential curtilage listed structures. Without more detailed evidence being presented on the significance of these heritage assets and the contribution of the site to them, as well as assessment of the potential impacts of the proposed land use, including the 'suitable development' identified, there is a serious risk that the policy sets a presumption in favour of a development that would not conform with local or national planning policy.

Consideration of the appropriateness of the allocation policy should include assessment of: the impact of the proposed development on the architectural character of the creekside as a distinct character area within the conservation area; the impact on the spatial character of the creek, including the grain of development, open spaces and relationship of buildings to spaces; the impact on the listed buildings both within the site and in its immediate vicinity, including assessment of potential curtilage listed buildings and the settings of buildings both within the site and in its vicinity; and, the impact of the key views looking along the creek. Moreover the early 20th century open sided shed described is likely to be considered both a curtilage listed building associated with the listed 'blue building', as well as contributing positively to the significance of the conservation area by representing the historic and architectural interest of the creekside as a distinct character area within the conservation area as a whole. As such, its demolition would be regarded as substantial harm to the conservation area and would not normally be expected to receive permission.

Whilst the plan may provide guidance that sets parameters within which development should be proposed, the supporting text reads as a description of a specific development that would be considered to impose a detailed form and style of development that is unsubstantiated as a requirement (see paragraph 60 of the NPPF, which sets out limitations on how specific planning policies should be on the style or form of development that can be required). The plan should not prejudice the decision-making process by describing a particular development proposal."

10 During the hearing of this claim, I was provided with summaries of the representations made by other objectors. They expressed concern about the inclusion of new residential development within the proposals for the Swan Quay site and also about the impact of the proposal described and its proposed uses on the historic environment.

11 Following discussion between the defendant, FTC and English Heritage, a statement of common ground was agreed containing what were called "minor modifications" of the plan. Amendments were proposed to the text explaining the historic context of the site and a change to the development proposals and the policy was proposed as follows:

"Site 4 and 5 Swan Quay/Frank and Whittome

At page 47 amended text to read: [Page 47 is the text from the submission draft of the FCNP which I have quoted above]

This site was formerly used by the Frank and Whittome Joinery Company and comprises four buildings: The first is a blue two storey building set at right angles to the Creek is listed grade II and is an early 19th century industrial building last used as an office. Attached to the rear of this is a second building, a shed dating from the turn of the 19th and 20th Centuries, which has been re-clad in weatherboarding to the south and west sides. This is currently vacant but as an attached building would require listed building consent for any alterations that would affect its contribution to the listed building's historic or architectural interest.

The third building is an open shed with a metal-trussed roof with a long elevation to Conduit Street with attached modern offices built in the 1990s. As an industrial building illustrating the working history of this part of the Conservation Area, the form, shape and scale of the open sided shed makes a positive contribution to the character of the Conservation Area.

The fourth building is a modern building built for the joinery company (c. 1990) constructed in brick and weatherboard, now occupied by a sail maker. The low level of the building, its sensitive choice of materials (preserving an industrial aesthetic) and its position set back from the Creek's edge creating a wharf space, means this building has integrated well with the Conservation Area and retained a distinct working edge to the Creek with views over it to the surrounding historic buildings.

The site provides a long section of timber wharf fronting the creek with an open space of quay behind, both of which make a positive contribution to the character and appearance of this part of the Conservation Area as part of the historic working Creekside. A slip way within the site provides one of the few points of access for boat launching in this side of the creek. The site has access for both vehicles and pedestrians off Belvedere Road.

At page 47 paragraph two text to be added as follows:

The site lies adjacent to the medieval Town Quay and close to the Grade II* listed 15th century warehouse that is now referred to as TS Hazard. The site is likely to have formed a part of the abbey wharfs from the medieval period and is known to have included a dock in the late 18th Century. The potential for a waterlogged environment and the likelihood of successive phases of wharf development, as well as development of buildings and structures for associated uses throughout the site's history creates a high potential for remains of archaeological interest and, potentially, those of national

importance.

At page 47 text to be amended as follows:

The scale of new development will be given particular consideration when considering its sensitivity to the character and appearance of the Conservation Area and the significance of other heritage assets. Whilst three storeys is considered to be an expected maximum height, it is likely that variation across the site, including lower buildings in some areas, will be required to protect the setting of listed buildings and to provide a suitable architectural character. The upper floors could be in residential use.

At page 48 after policy SWQ1 amended text to read:

SWQ1. The site is considered suitable for a mix of uses that can include retail (A1), restaurant (A3), office and workshops (Class B1) and a gallery (Class D1) with residential (C3) on some upper floors. New development requiring change of use should not result in a reduction in the footprint of employment uses within the site or an overall loss of the site's contribution to industrial and maritime character of the Conservation Area."

12 Two additional policies at Swan Quay were also agreed in the statement of common ground to be necessary. One of those policies dealt with existing buildings and features which made a positive contribution to the character of the conservation area. This arose from the agreement between the parties that, as set out above in the amended text describing the site, there was a third building and also the timber wharf frontage to the creek which made a positive contribution to the conservation area. The second additional policy which was proposed and agreed related to archaeological potential.

13 In response to the publication of the statement of common ground, the claimant provided a full and detailed response to the issues which were raised and the observations which had been made within it. An examiner was appointed in order to examine the submitted draft of the FCNP. He issued several notes, providing directions and guidance in relation to the conduct of the examination. In particular, he directed on 14 September 2015 that the examination should include a hearing in relation to certain key issues, one of which was Swan Quay.

14 Evidence has been provided within this claim as to what happened at the hearing between 5 and 7 October 2015. Within the evidence from both sides, accounts of the hearings are provided. In particular, notes of the hearing sessions have been provided by Mrs Taylor, a planning consultant who was retained by the claimant to represent them at the hearing. It appears from the notes which were produced by Mrs Taylor that there was debate in the session on Swan Quay about whether the third building did in fact make a positive contribution to the conservation area. Further, it appears that

there was discussion, and the examiner explored “at length”, the merits of three-and-a-half storey buildings and their relationship to existing listed buildings.

15 The claimant provided the examiner during the course of the hearing with floor plans and elevations of an illustrative proposal for the development of the site. It is clear that there were wide-ranging discussions during the course of the hearing about Swan Quay. At a later stage, the hearing turned to consider other proposals at sites known as Standard Quay and Standard House. During the course of that discussion, Mrs Taylor noted the following:

“There was then discussion re the wider issue of maritime uses including Swan Quay and Ordnance Wharf.

RE commented that the Plan should not prevent such uses — any requirements to be demand-led.

Harold Goodwin, speaking for Faversham Society:

Commented that the town had turned its back on the Creek for 30 or 40 years — marketed as a market town.

Maritime connection is very important.

History relating to gunpowder and bricks.

Industrial grittiness important — lost with gentrification and now significant loss of maritime heritage.”

16 On 4 April 2016 the defendant received the examiner's report. In light of the statutory definition of the basic conditions (which is set out below), the examiner proceeded to identify what were the relevant strategic policies of the Swale Borough Local Plan, and, in doing so, was guided by the provisions of the National Planning Practice Guidance. No criticism is made of his identification of policy AAP2 and policy B1 from the Swale Borough Local Plan as the relevant strategic policies for the consideration of the basic conditions. Policy AAP2 has been set out in detail above. Policy B1 provides as follows:

“B1. Supporting and Retaining Existing Employment Land and Businesses

1. Land and buildings currently in employment use will be retained for that use unless it is:

- a) inappropriately located for any employment use, and having an unacceptable environmental impact in an area; or
- b) demonstrated by expert advice that the site is no longer suitable for any employment use; or
- c) demonstrated by market testing that there is insufficient demand to justify its retention for any employment use; or

d) allocated in the Plan for other purposes.

In cases involving a change of use or redevelopment for residential purposes, the Council will additionally require proposals to: (a) demonstrate, by reference to 1a) to c) above, that a mixed use approach to the site, involving a viable level of replacement or alternative employment provision, is not appropriate; and (b) that there is no conflict with Policy SH1.

2. Proposals for the expansion of existing businesses on-site, or onto adjoining land, will be permitted provided the expansion proposal would not result in a loss in the supply of small sites or units which are specifically intended for start-up businesses. Where expansion would result in the development of greenfield land mitigation measures will be required to minimise any adverse impacts on biodiversity and landscape.”

17 In relation to Site 5 Swan Quay, the examiner formed the following conclusions in his report:

“59. Site 05 is in a particularly sensitive location. As the plan on page 46 shows, it is to the north of a critical cluster of heritage assets (TS Hazard with undesignated heritage assets) and existing local landmarks, next to the Creek and at a location that is clearly visible from the publicly accessible Brents Swing Bridge and the proposed (in my opinion rightly) Designated Local Green Space at Front Bents. Two listed buildings, TS Hazard (built in the 15th century as a town warehouse and grade II*) and the Faversham Creek Hotel (18th-century, grade II) are very close to it and within the site the early 19th-century Chandlery building is listed grade II. It contains a maritime use (sail-making) in a modern building that is in an appropriate style for its location and that contributes to jobs in a town that has a shortfall of jobs. I am not persuaded that the possibility that somewhere might be found for this in new development is a likelihood or a risk worth taking. As such, the loss of this employment use would conflict with SBLP policies B1 and AAP2 and would be of sufficient importance to prevent the NDP being in general conformity with the development plan.

60. In considering this site, I have had regard to national policies and advice contained in guidance issued by the Secretary of State. This includes:

- The Framework's 10th core principle, '*conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations*' ;
- The special position of designated heritage asset's in the Framework's paragraph 65; and
- The Framework's specific advice on Conserving and Enhancing the Historic Environment;

61. I also note

- The fact that the LBA in general and the general duties under its [ss 66 and 72](#) underpin government and local policy in respect of listed buildings and their settings and of conservation areas;
- The references in the SBLP to Faversham's '*outstanding range and quality of historic buildings*' and its '*rich architectural and historical heritage reflecting its naval and maritime history, its Roman and medieval legacy and its industrial heritage and archaeology*';
- The protection for existing buildings provided in SBLP's policy AAP2's '*preserve or enhance landmark and other important buildings, waterside structures and details*'; and
- The fact that EH had serious reservations about the appropriateness of the development proposed.

62. The proposals, which I recognise are illustrative, that Ms Taylor showed me for redevelopment of this site, did not impress me. Rather they illustrated the risk of gentrification of a part of the Creek that maintains something of its old character. I do not consider that residential development of this site would occur without gentrification. I recognise that, for some people, more open views of the creek down Quay Lane would be attractive, but this factor does not begin to outweigh my concerns about the historic damage of the proposals.

63. I consider that the first two paragraphs on page 47's column 1 are inadequate for this particularly sensitive site. The suggested '*minor modification*' gives a better and adequate description, which corresponds with my opinion following my site visits. Accordingly I recommend modification to replace the existing text."

18 The examiner's modification incorporated the description of the site and its contribution to the historic environment from the first five paragraphs of the statement of common ground which I have set out in full above and do not repeat. Thus, the examiner accepted that that which had been agreed in those first five paragraphs as a description of the site and its historic context were appropriate for inclusion by way of modification of the plan.

19 Having set out that modification, his report then continues in the following terms:

"64. Having regard to national policies and advice contained in guidance issued by the Secretary of State, I would not consider it appropriate to make the Plan if the proposals in the draft NDP in respect of Swan Quay remained. Without modification, basic conditions (a) and (e) would not be met. I would also have given considerable weight in the balance exercise basic condition (d) requires to the negative contribution to the achievement of sustainable development that these proposals would entail. However since I am recommending

modification to meet basic condition (a) and (e), I need not consider the latter point more fully.

65. In addition to my rejection in principle of the approach to site 05, I do not consider that three and three and a half storey (or higher) buildings would be appropriate in this location. This is not based on public opposition, which is not a matter for the examination stage of the draft NDP, but on my assessment of the impact of such buildings. I agree with the criticisms of such tall buildings by Mr Harrison, whose architectural and conservation expertise I note with respect. I am of course aware that there are taller buildings in other part of the Creek, but I do not consider that these set a precedent in this sensitive location.

Recommendation 21

On page 47 delete the bottom half of column 1 from and including the heading '*Suggested Redevelopments, Designs and Land Uses*' and the whole of column 2 replace with:

'The current nature of the site, including its role as part of the setting of nearby listed buildings should be preserved and enhanced.

- Land uses could include offices/workshops (Class B1), maritime general industrial (B2 limited by condition) and a gallery (Class D1) and some limited car parking, but not dwelling houses (Class C3). It may be possible to permit new building consistent with the site's current character. If so, they should be constructed in yellow stock brickwork and slate roof with metal framed windows.
- In the event of any substantial development on the site a Creekside walkway must be provided along the frontage of the site in front of all the buildings.
- Moorings to be provided along the frontage suitable for a range of sizes of craft.
- Any redevelopment will need to provide a connection to the nearest point of adequate capacity in the sewerage network, as advised by Southern Water. There should be an adequate gap between the wastewater pumping station and development to allow odour dispersion and help prevent an unacceptable impact from vibration. Development proposals must ensure future access to the existing sewerage infrastructure for maintenance and upsizing purposes.
- Close to this site is the junction of Quay Lane and Conduit Street. The Faversham Creek Streetscape Strategy sets out a project to form a sitting-out area for the Faversham Creek Hotel and formation of a square with better quality paving, measures to encourage slower traffic including a shared surface and measures to improve the boundary treatments of adjoining sites.

The neighbourhood plan places responsibility firmly upon any applicant to demonstrate the appropriateness and suitability of their proposed design through the formal planning application process. This demonstration must be made with regard to the range of policies in this neighbourhood plan, not just the

site-specific ones. It must also comply with the [Planning \(Listed Buildings and Conservation Areas\) Act 1990 sections 66 and 72](#) .’

66. For the above reasons I also recommend modification of policies SWQ1 and SWQ2.

Recommendations 22

Replace policies SWQ1 and SWQ2 with:

‘SWQ1: Use classes: the site shall be used for a mix of office and workshops (Class B1) retail, maritime general industrial (Class B2 limited by condition), and may be used for a gallery (Class D1). It shall not be used for dwelling houses (Class C3).

SWQ2 Public walkways shall be created along the Creek frontage and to the extent that is consistent with the site's character through the site from Belvedere Road.’”

20 The examiner also accepted that it was necessary to include the two additional policies from the statement of common ground in relation to buildings and features making a positive contribution to the conservation area and archaeology. It will be noted that the examiner's modifications to the suggested redevelopment in effect replaced in toto that which was proposed for the redevelopment of the site in the submission draft of the FCNP. In addition his modifications to policy SWQ2, excluded the possibility of residential uses at Swan Quay. This aspect of the modifications is the focus of the claimant's attack on the examiner and the defendant's conclusions and proposed modifications.

21 On 25 May 2016, the defendant resolved to accept the examiner's modifications, as he had concluded that without the modifications he proposed the basic conditions would not be met. The defendant also resolved to progress the FCNP to a referendum. The decision statement in relation to those resolutions was published on 21 June 2016 and is the subject of this challenge.

The law

22 A central feature of the planning system is the development plan. By [section 38\(3\) of the Planning and Compulsory Purchase Act 2004](#) , which defines the development plan outside London, the neighbourhood development plans which have been made in relation to a local planning authority's area are included within the development plan. The neighbourhood development plan as an element of the development plan is itself defined in [section 38A](#) of the 2004 Act:

"38 A Meaning of 'neighbourhood development plan'

(1) Any qualifying body is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development plan.

(2) A 'neighbourhood development plan' is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan.

(3) [Schedule 4B](#) to the principal Act, which makes provision about the process for the making of neighbourhood development orders, including—

(a) provision for independent examination of orders proposed by qualifying bodies, and

(b) provision for the holding of referendums on orders proposed by those bodies is to apply in relation to neighbourhood development plans (subject to the modifications set out in [section 38C\(5\)](#) of this Act).

(4) A local planning authority to whom a proposal for the making of a neighbourhood development plan has been made—

(a) must make a neighbourhood development plan to which the proposal relates if in each applicable referendum under that Schedule (as so applied) more than half of those voting have voted in favour of the plan, and

(b) if paragraph (a) applies, must make the plan as soon as reasonably practicable after the referendum is held and, in any event, by such date as may be prescribed.

[...]

(12) [...] 'qualifying body' means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development plan to act in relation to a neighbourhood area as a result of [section 61F](#) of the principal Act, as applied by [section 38C](#) of this Act."

23 As a consequence of these provisions, [schedule 4B of the Town and Country Planning Act 1990](#) applies directly to the preparation of neighbourhood plans, although the language of [schedule 4B](#) is expressed in terms of neighbourhood development orders. [Paragraph 7 of schedule 4B](#) of the 1990 Act requires the submission by the local planning authority of the neighbourhood plan to independent examination if the requirements of [paragraph 6\(2\) of schedule 4B](#) (which are essentially formal and procedural) have been met. [Paragraph 8 of schedule 4B](#) provides the framework for the independent examination and requires (adjusted for the effect of [section 38C\(5\)](#) of the 2004 Act) as follows:

(1) The examiner must consider the following—

(a) whether the draft neighbourhood development order meets the basic conditions (see sub-paragraph (2))

(b) whether the draft order complies with the provision made by or under [sections 38A and 38B](#)

[...]

(d) whether the area for any referendum should extend beyond the neighbourhood area to which the draft order relates, and

(e) such other matters as may be prescribed.

(2) A draft order meets the basic conditions if—

(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,

[...]

(d) the making of the order contributes to the achievement of sustainable development,

(e) the making of the order 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),

(f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and

(g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.

[...]

(6) The examiner is not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft order is compatible with the Convention rights)."

24 Further provisions, so far as relevant to this case, are contained within [paragraph 10 of schedule B](#) in the following terms:

(1) The examiner must make a report on the draft order containing recommendations in accordance with this paragraph (and no other recommendations).

(2) The report must recommend either—

(a) that the draft order is submitted to a referendum, or

(b) 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

(c) that the proposal for the order is refused.

(3) The only modifications that may be recommended are—

(a) modifications that the examiner considers need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),

[...]

e) modifications for the purpose of correcting errors.

(4) The report may not recommend that an order (with or without modifications) is submitted to a referendum if the examiner considers that the order does not—

(a) meet the basic conditions mentioned in paragraph 8(2), or

(b) comply with the provision made by or under [sections 61E\(2\), 61J and 61L](#) .

[...]

(6) The report must—

(a) give reasons for each of its recommendations, and

(b) contain a summary of its main findings.”

25 Upon receipt of the examiner's report, the local planning authority must consider it and, in relation to that, [paragraph 12 of schedule 4B](#) provides as follows:

(1) This paragraph applies if an examiner has made a report under paragraph 10.

(2) The local planning authority must—

(a) consider each of the recommendations made by the report (and the reasons for them), and

(b) decide what action to take in response to each recommendation.

[...]

(4) If the authority are satisfied—

(a) that the draft order meets the basic conditions mentioned in paragraph 8(2), is compatible with the Convention rights and complies with the provision made by or under [sections 61E\(2\), 61J and 61L](#) , or

(b) that the draft order would meet those conditions, be compatible with those rights and comply with that provision if modifications were made to the draft order (whether or not recommended by the examiner)

a referendum in accordance with paragraph 14, and (if applicable) an additional referendum in accordance with paragraph 15, must be held on the making by the authority of a neighbourhood development order.”

26 [Section 61N](#) of the 1990 Act provides that a challenge to a decision maker under [paragraph 12 of schedule 4B](#) shall be brought by way of judicial review.

27 There has been limited consideration by the courts of the statutory framework relating to neighbourhood plans. In [R \(on the application of Larkfleet Homes Ltd\) v Rutland County Council \[2015\] EWCA Civ 597](#) , the Court of Appeal identified the bespoke and separate nature of the neighbourhood planning statutory regime, distinct from the regime for local development documents which are prepared by the local planning authority. As that case established, neighbourhood plans are capable of containing site allocation policies, as indeed the present FCNP did. In *BDW Trading Ltd (t/a Barratt Homes) & Anor v Cheshire West & Chester Borough Council* [2014] EWHC 1470 , Supperstone J had to deal with a judicial review challenge which, amongst other grounds, included a contention that there was a breach of the duty upon the local planning authority to ensure that the neighbourhood development plan met the basic conditions. Amongst other matters, the claimant submitted that the basic condition contained within paragraph 8(2)(a) (ie whether it was appropriate to make the order having regard to national policies and advice contained in guidance published by the Secretary of State) did not admit of a lighter touch than the requirement of soundness contained within [section 20](#) of the 2004 Act in relation to a local plan. Supperstone J concluded in the following terms in relation to that submission:

“In my view the criticisms made by the Claimants under Ground 2 of the challenge fail to appreciate the limited role of the Examiner which was to assess whether the Basic Conditions had been met. Condition (a) required Mr McGurk to have regard to national policies and then consider whether it was appropriate that the Plan should proceed. Condition (d) required that ‘the making of the order contributes to the achievement of sustainable development’. The Examiner considered both conditions and was entitled, in my view, on the evidence, to conclude that ‘Policy 1 has regard to national policy and contributes to the achievement of sustainable development’ (see para 33 above).

Further, I accept Mr Sauvain's submission that the only statutory requirement

imposed by Condition (e) is that the Neighbourhood Plan as a whole should be in general conformity with the adopted Development Plan as a whole. Whether or not there was any tension between one policy in the Neighbourhood Plan and one element of the eventual emerging Local Plan was not a matter for the Examiner to determine. The parties are agreed that there is no current strategic housing policy in an adopted plan that sets out the overall housing requirement or method of distribution of housing across the local authority area, but the Council does not accept that there are no strategic housing or other policies in the current adopted Local Plan.”

28 In paragraph 83 of the judgment, Supperstone J went on to reject the submission that the requirements of the basic conditions equated to a similar test to that demanded by [section 20](#) of the 2004 Act in respect of a local plan, namely that it is sound, a requirement which is further elaborated in paragraph 182 of the National Planning Policy Framework.

29 I entirely agree with Supperstone J that the basic conditions cannot be equated with soundness as understood from paragraph 182 of the Framework. I would, however, with respect, differ from the suggestion that “the only statutory requirement imposed by Condition (e) is that the Neighbourhood Plan as a whole should be in general conformity with the adopted development plan as a whole”. That observation does not reflect the clear statutory language of paragraph 8(2)(e). First, this basic condition relates to the strategic policies of the development plan, not the development plan as a whole. Those strategic policies which are identified will have to be considered as a whole in addressing the question of whether or not the neighbourhood plan is in general conformity with them. This underlines the point made by Supperstone J in paragraph 82 that tension or conflict between one policy of the neighbourhood plan and one policy of the local plan is not the matter at stake. Where there are no strategic policies in a local plan, then paragraph 8(2)(e) is not engaged, as Lewis J concluded in *R (on the application of Gladman Developments Ltd) v Aylesbury Vale District Council* [2014] EWHC 4323 , and the absence of strategic policies does not preclude as a matter of law a neighbourhood plan being produced.

30 The question which is posed under paragraph 8(2)(e) is one which is entirely a matter of planning judgment. The phrase “general conformity” was considered in [*Persimmon Homes \(Thames Valley\) Ltd v Stevenage Borough Council* \[2005\] EWCA Civ 1365](#) , in which Laws LJ observed at paragraphs 28 and 29 as follows:

“28. [...] I agree with the judge (at [53]) that to read ‘general conformity’ as simply meaning that the proposals of the local plan should be ‘in character’ with the structure plan would be to accept too broad a construction. On the other hand, there are the features to which I have earlier referred – the long lead-times involved, the fact that the exigencies of planning policy may present a changing picture, and the statutory words themselves. In construing the general conformity requirement the court should in my judgment favour a balanced approach by which these different factors may be accommodated. I consider that on its true construction the requirement may allow considerable

room for manoeuvre within the local plan in the measures taken to reflect structure plan policy, so as to meet the various and changing contingencies that can arise. In particular (for it is relevant here) measures may properly be introduced into a local plan to reflect the fact, where it arises, that some aspect of the structure plan is itself to be subject to review. This flexibility is not unlimited. Thus measures of this kind may not pre-judge the outcome of such a review. They must respect the structure plan policies as they are, while allowing for the possibility that they may be changed. I doubt whether it is possible to derive any more focussed conclusion on the construction of the general conformity requirement. [...]

29. [...] But if the right interpretation of 'general conformity' is, as in agreement with the judge I would hold, a balanced one, it will as I have said allow what may be a considerable degree of movement within the local plan to meet the various and changing contingencies that can arise. In that case the question whether the local plan is in general conformity with the structure plan is likely to admit of more than one reasonable answer, all of them consistent with the proper construction of the statute and of the relevant documents. In those circumstances the answer at length arrived at will be a matter of planning judgment and not of legal reasoning."

31 In his judgment, Lloyd LJ added the following observations:

"71. The use of the phrase 'general conformity' leaves some scope for flexibility and even, as noted above, for some conflict. The context is that of the structure plan authority setting a general policy, which could no doubt be regarded as a strategy, for its area, leaving it to the local plan authorities within the area to implement those policies and that strategy by detailed policies. It cannot be open to a local plan authority to subvert the general policies, or to resolve that it will not give effect to a general policy within its area. It is open to such an authority to exercise some flexibility as to how the general policy is implemented, though the degree of flexibility may depend on the nature of the general policy. [...]

[...]

86. As I said at paragraph 68 above, it is not sensible to attempt to define the statutory phrase 'in general conformity with' a structure plan, and I do not propose to try. However, it seems to me that, at least, in order to be in general conformity with a structure plan, the local plan must give effect to the main policies set out in the structure plan, and must do so in a way which does not contradict or subvert their achievement. There is room for flexibility, subject to the terms in which the general policies are stated. There may be scope for variations of detail as regards timing, for example. But the local plan must not put obstacles in the way of the fulfilment of the strategic policies in the structure plan such that they will not, or may well not, be achieved as provided for in the structure plan. Otherwise the purpose of the structure plan, and the basis of the relationship between one structure plan and a series of local plans

would be altogether undermined, with the purpose behind an overall strategic policy being implemented differently and in conflicting ways in different parts of the area governed by the structure plan, and in some of those parts possibly not implemented at all.”

32 These observations demonstrate that in exercising the planning judgment in relation to general conformity there is sufficient elasticity in the evaluation to accommodate some conflict with strategic policies as well as the prospect of strategic policies being reviewed. But that elasticity has limits, and the extent of the limit will be part and parcel of the planning judgment.

33 The basic condition at paragraph 8(2)(e) does not refer to the neighbourhood plan (or neighbourhood order, for that matter) “as a whole”. Clearly evaluating the overarching policies and proposals of a neighbourhood plan will be a necessary exercise, but where, as here, a neighbourhood plan contains site-specific proposals, then it will be proper, if not essential, for the examiner additionally to consider those proposals individually against the basic conditions. I should add that it is clear that the basic condition in paragraph 8(2)(a), namely that having regard to material policies and advice in guidance from the Secretary of State it is “appropriate” to make the order, is again a question of planning judgment for the examiner to reach, applying that clear and straightforward statutory language.

34 As identified by [paragraph 10\(3\) of schedule 4B](#) , there is a clear limitation on the modifications which can be proposed by the examiner. In this instance only modifications which are needed to secure that the basic conditions would be met can be sanctioned in accordance with the legislation.

35 [Paragraph 10\(6\) of schedule 4B](#) requires the examiner to give reasons for each of the report's recommendations, along with a summary of the report's main findings. The seminal decision in relation to the giving of reasons in planning appeals is [South Bucks District Council v Porter \(No. 2\) \[2004\] 1 WLR 1953](#) . In R (on the application of Crownhall Estates Ltd) v Chichester District Council [2016] EWHC 73 , Holgate J expressed the concern that, given the more limited ambit of the task of an examiner compared to a decision maker in a planning appeal, some modification may be necessary to the principles in South Bucks . Those concerns are understandable. But, for the reasons which I will set out below, this case and my judgment on the reasons in this case do not turn on any such distinction. For the avoidance of doubt and for the purposes of this case, I have deployed the South Bucks principles as the yardstick for considering the examiner's reasons.

The grounds

36 The claimant contends that the examiner's reasons, in particular in paragraphs 59, 62 and 64 to 65, are inadequate. It is submitted that he has failed to properly explain intelligibly why the redevelopment proposals endorsed by the submission draft should be abandoned, and in particular why residential development can no longer be part and

parcel of any residential redevelopment proposal. It is complained that his use of the term “gentrification”, which is not a land use planning term, is incapable of amounting to a land use planning basis for establishing conflict with policy AAP2. It is submitted that it is not capable of being a basis to reject residential redevelopment of the site.

37 Further, in so far as the examiner was concerned about tall buildings, his proposed modifications did not address building height. It is submitted that it was not legitimate to base any of his concerns on the claimant's illustrative scheme which did not represent a firm proposal or a planning application and was but one design response to the submission draft proposals of the FCNP for Swan Quay. Further, the examiner endorsed both the loss of employment use and the promotion of residential development on other of the FCNP sites, and it is complained that he failed to explain why that was appropriate on those sites but not on Swan Quay, or why the inappropriate and harmful effects he identified at Swan Quay would not also and equally be manifest on those sites.

Conclusions

38 It is important to appreciate, as Ms Thomas pointed out in her submissions on behalf of the defendant, that the inspector's reasoning incorporated his adoption of the description of the site and its context taken from the statement of common ground. The incorporation of that description as part of the modifications recommended by his report is also part and parcel of the reasons which he gave for the conclusions he reached.

39 It is clear, in my judgment, from the examiner's reasons that a number of specific factors underpin his approach. As he noted in paragraph 59 of the report, the Swan Quay site is “in a particularly sensitive location”. The balance of that paragraph sets out the heritage assets which made the location particularly sensitive in terms of the historic environment. In paragraph 63, he explains that the submission draft's site description is inadequate and that the description from the statement of common ground is a better one and corresponds with his view of the site following his site visits. In adopting that description, the examiner also adopts the conclusions in relation to the positive contribution which the third building and the section of timber wall fronting the creek, with the open quay behind, make to the character and appearance of the conservation area. This is, of course, necessarily a very different context for proposals for the site from the submission draft, which contemplated more widespread demolition, and also represents a very different appreciation of the historic value and sensitivity of Swan Quay.

40 All of those matters are, in my judgment, fully, clearly and adequately reasoned and explained in the contents of the report. As the examiner explained in paragraphs 59 and 63 of his report, those conclusions are grounded in the historic assets in and around the site and his site visits, alongside the other material which he rehearses as part and parcel of the report. The site description which he endorsed emphasised within its terms “the working history of this part of the conservation area” and “the character and appearance of this part of the conservation area as part of the historic working Creekside”. The “industrial aesthetic” of a modern building housing a sail

maker “integrated well with the conservation area and retained a distinct working edge to the Creek”. In paragraphs 59 to 61, the examiner set out a range of policies from the Framework, and also included the strategic policies B1 and AAP2 which stressed the importance of retaining employment uses and, further identified the importance of the preservation of the historic character of the AAP2 area and its associations with industrial uses and the port use which historically had taken place within that area.

41 These reasons, in my judgment, fully explain the examiner's findings. His conclusion in paragraph 59 about the potential loss of employment from Swan Quay as a conflict with policies B1 and AAP2, which did not comply with the general conformity requirement, were a clearly explained planning judgment about which no legitimate complaint could be made. He was entitled to have regard to the claimant's proposals which had been placed before him as part and parcel of the examination. He recognised that they, and the residential use which they brought, were inconsistent with and harmful to the historic industrial character of that part of the creek and the site with which he was concerned.

42 Whilst I entirely accept that “gentrification” is not a land use planning technical term, in my view it did not need to be; it is a word which describes the erosion of the legacy of industrial use, and the surroundings of the historic assets associated with that use, by the introduction of a new and historically unprecedented residential use and associated activities. That new and historically unprecedented inconsistent use would bring with it, as the proposals showed, a different aesthetic and different design requirements which would harm the historic character. The findings as to the historic character and value of Swan Quay, the harm to that character caused by residential use and taller buildings, and the weight to be afforded to these matters were all questions of planning judgment, as was the issue of whether the extent of the harm arising meant that the basic conditions at paragraphs 8(2)(a) and 8(2)(e) could not be met by the FCNP without modification. The reasons for both the failure to meet basic conditions at paragraphs 8(2)(a) and 8(2)(e) and the need for modifications are clearly explained, in my judgment, by the examiner. True it is that the examiner could have said more. But that is not the test; his conclusions are clear from the reasons given.

43 The claimant is correct that the examiner did not explain in detail why his concerns in relation to the residential use at Swan Quay did not arise on other sites in the FCNP where residential uses and loss of employment were proposed. However, in my view, he did not need to. The reasons which he gave clearly set out that at Swan Quay he was addressing a site which was “particularly sensitive”. It was a site which, by virtue of the reasons he gave and the site description which he adopted in the modification, was clearly different, with its own particular qualities, from those other sites within the FCNP. There was, in those circumstances, no need for any form of compare-and-contrast exercise with the other sites in the FCNP. The examiner's evaluation of the Swan Quay site and of the FCNP and his modifications addressed the particular sensitivity of the site which he was considering, the demands which that raised in the context of the historic environment and the constraints which had to be respected as to what uses could properly be accepted as consistent with the particularly sensitive historic environment that he concluded was present.

44 It follows that, for all of these reasons, I am satisfied that the examiner's reasons

were legally adequate and fit for purpose, and make clear the basis upon which he made the modifications, which, in my judgment, he plainly had power to make.

45 For all of these reasons, this claim must be dismissed.

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Local Development Framework Panel Meeting		Agenda Item: 7
Meeting Date	20 June 2017	
Report Title	Local Plan Review	
Cabinet Member	Cllr Gerry Lewin, Cabinet Member for Planning	
SMT Lead	Emma Wiggins	
Head of Service	James Freeman	
Lead Officer	Gill Harris	
Key Decision	Yes	
Classification	Open	
Forward Plan		
Recommendations	<p>1. That Members consider and, subject to adoption of the emerging Local Plan by Full Council, agree:</p> <ul style="list-style-type: none"> a) the principle of an early review of the Local Plan; and b) that a report is presented to a future meeting of the Panel to scope the extent, resourcing and timescale of the review. 	

1 Purpose of Report and Executive Summary

- 1.1 At the time of writing the Inspector's report into the Local Plan is expected imminently. Provided that the Plan is found to be sound and that it is adopted by Full Council on 26 July (see information report on the Agenda), Members are recommended to instruct officers to commence work on an early Local Plan review. The need to commence a review is likely to be recommended by the Local Plan Inspector who is expected to give the Council less than five-years to put a new plan in place.
- 1.2 This report discusses the purpose of a Local Plan review, recommending that it be commenced to address the issues highlighted by the Inspector, alongside the implications that arise from so doing.
- 1.3 It is recommended that the scope, programme, budget and proposed evidence base should be presented at a later meeting of the Panel.

2 Background

- 2.1 Members will be aware from the information report on this Agenda that the expected arrival of the Local Plan Inspector's report is likely, subject to the Plan being found sound, to lead to a recommendation to adopt the Swale Borough Local Plan (Bearing Fruits 2031) at its meeting on 26 July 2017.
- 2.2 One of the issues considered at the Local Plan Examination was the timing of any review of the Local Plan. Discussion of this issue initially focused on whether the Council would need to review the plan should certain indicators be triggered by changes in the delivery of housing, employment or infrastructure. However, questions subsequently emerged as to the impacts of the Plan on the local highway network managed by KCC beyond the first five years of the plan from adoption.
- 2.3 Given this, it is expected that the Local Plan Inspector will recommend an early review of the Local Plan and it is most likely that the Council will be given five years to achieve this. This would be in line with emerging Government thinking, in terms of five year rolling Local Plan reviews, as recently signalled by the White Paper. A failure to adhere to any programme leading to that adoption date will lead to suggestions that the Local Plan is out of date and expose the Council to any punitive measures that may eventually be imposed by Government, alongside difficulties in defending unsuitable development proposals on non-allocated sites.
- 2.4 Although not a specific reason for a review of the Local Plan, it is also anticipated as likely that the Inspector's report will highlight the need to prepare a new Gypsy and Traveller Accommodation Assessment.

3 Proposals

- 3.1 Paragraph 153 of the NPPF states that:

"Each local planning authority should produce a Local Plan for its area. This can be reviewed in whole or in part to respond flexibly to changing circumstances. Any additional development plan documents should only be used where clearly justified."
- 3.2 Although the detailed scope of any Local Plan review will need to be determined and agreed by Members, a principal aim would be to address the transport conditions cited by KCC at the Examination, notably those on the A2 between Teynham and Newington.
- 3.3 At first sight, this might imply a relatively narrow scope for any review, but it is likely that resolution of these transport issues will include land use implications that can only be addressed via a Local Plan. For example, they might require new infrastructure schemes with developer funding from sites not currently allocated, development in locations not envisaged by any adopted Local Plan and/or a new Local Plan policy to require financial contributions from sites across a particular area.
- 3.4 Officers are already in discussion with transport colleagues from Kent County Council and Highways England to both scope and undertake the necessary transport modelling work which is a pre-requisite to both dealing with the transport issues highlighted to the

Examination and any longer term proposals that might emerge through scoping and preparing a Local Plan review. An update on these discussions can be provided at the meeting.

- 3.5 In respect of any new Gypsy and Traveller Accommodation Assessment, officers are currently exploring the possibility of joint commissioning with other Kent Councils. Again, an update can be provided at the meeting.
- 3.6 If a Local Plan review is to be undertaken, a further issue affecting its scope will be the length of the plan period agreed. Assuming adoption of the emerging Local Plan in July, there would then be slightly less than 14 years of its plan period remaining. If the Local Plan is then reviewed, paragraph 157 of the NPPF would look for at least a 15 year horizon, probably resulting in a plan period extending to 2035/36 (to the nearest five year period). This new period would bring with it pressures to address the requirements associated with demographic change. An issue for the Council will be whether the Council's 2015 Strategic Housing Market Assessment (inc. the level of objectively assessed need) will need to be re-visited.
- 3.7 There are also other factors that might impact upon the scope of a Local Plan review:
1. Whether the current settlement strategy should be reviewed.
 2. Implications from the recent 'White Paper', notably the Housing Delivery Test.
 3. The timing of any review relative to the plan preparation of adjacent authorities and the scope for joint plan preparation.
 4. The reducing supply of employment land in the Borough, particularly for Sheppey and Sittingbourne.
 5. Whether there are sufficient grounds to review existing adopted allocations (taking into account the need to maintain the land supply continuously throughout the review process).
 6. Whether any Core or Development Management policies might be judged as out of date.
- 3.8 A Member workshop to explore some of these issues is currently being considered. At a future Panel meeting, a report will be presented which will set out in more detail, for Members agreement, the potential scope of the review, an indicative programme (via an updated Local Development Scheme), the anticipated budget and evidence base arising.
- 3.9 In the meantime, subject to adoption of the emerging Local Plan by Full Council, the Panel is recommended to agree in principle commencement of its early review. It is judged as necessary, not simply because it has been recommended by the Local Plan Inspector, but also because the means to identify and deliver the solutions needed to address the likely problems on the road network is most likely to require the future policy and development framework changes required in a reviewed Local Plan.

4 Alternative Options

- 4.1 At this point, the only alternatives to an early review of the Local Plan are either not to undertake it or defer the decision to a later date.
- 4.2 Either step is not recommended. They would lead to a situation where the means to address the transport issues highlighted by KCC at the Examination could not be realised. In the medium to longer terms, this situation would frustrate delivery of development, particularly within the Sittingbourne area, and expose the Council to the risks that come with it. Additionally, it would lead to a failure to meet the five-year review programme likely to be recommended by the Inspector, leading to inevitable calls for the plan to be determined as being out-of-date. This would also be in line with the indications from the White Paper in terms of Local Plan reviews being on a five-year rolling review. No doubt there would be punitive measures for Councils who had not undertaken such reviews within the necessary timescale, notwithstanding the pressures to release non-allocated sites.

5 Consultation Undertaken or Proposed

- 5.1 None necessary at this time, however, engagement will be undertaken as part of any review in accordance with the Council's existing/revised Statement of Community Involvement (see item elsewhere on the Agenda).

6 Implications

Issue	Implications
Corporate Plan	Supports the Council's corporate priorities for a Borough and a community to be proud of.
Financial, Resource and Property	Preparation of a Local Plan is a resource intensive process. A budget will need to be presented for agreement once the scope and timescale for the review is established.
Legal and Statutory	None anticipated at this time.
Crime and Disorder	None anticipated at this time.
Sustainability	None anticipated at this time, although any review itself is subject to a Sustainability Appraisal process.
Health and Wellbeing	None anticipated at this time.
Risk Management and Health and Safety	None anticipated at this time.
Equality and	Community Impact Assessments will be required at key stages.

Diversity	
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7 Appendices

7.1 None.

8 Background Papers

8.1 None.

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Local Development Framework Panel		Agenda Item: 8
Meeting Date	20 June 2017	
Report Title	Statement of Community Involvement	
Cabinet Member	Cllr Gerry Lewin, Cabinet Member for Planning	
SMT Lead	Emma Wiggins	
Head of Service	James Freeman	
Lead Officer	Natalie Earl	
Key Decision	No	
Classification	Open	
Forward Plan	Reference number:	
Recommendations	<ol style="list-style-type: none"> 1. Agree the draft Statement of Community Involvement (SCI) be recommended for a period of public consultation; and 2. Agree to delegate to the Chairman of the LDF Panel together with the Head of Planning Services to allow the document to be updated prior to consultation if any of the proposals set out within the government's Housing White Paper (2017) are adopted into policy before September. 	

1 Purpose of Report and Executive Summary

- 1.1 This report outlines what a Statement of Community Involvement (SCI) is and why Swale needs to refresh its existing one. It presents a draft SCI to publish for consultation.

2 Background

- 2.1 An SCI sets out how, when and where the Council will consult with local and statutory stakeholders both during the production of development plan documents and within the development management process. The overall ethos behind an SCI is that local planning authorities should be informative and receptive to views from the earliest stages and throughout the planning process, to give everyone the opportunity to contribute.
- 2.2 The Council is required by law to produce an SCI and, once adopted, the provisions which relate to plan-making become binding. The Council's current SCI was adopted in 2008. Since then the National Planning Policy Framework 2012 (NPPF) has been introduced and along with the Localism Act in 2011, means that the emphasis is now firmly placed on early engagement and

collaboration with neighbourhoods, local organisations and businesses, making planning more inclusive of people and communities who want to be involved in planning in their area.

- 2.3 There have also been changes to national legislation since 2008, such as the introduction of Neighbourhood Plans, the Duty to Cooperate, assets of community value. Changes at the local level have also occurred such as a suite of new planning policy documents and the inclusion of social media as a public engagement tool. Much of the terminology used in the adopted SCI is also now out of date and needs refreshing.
- 2.4 The draft SCI has therefore been written to reflect the above changes and sets out processes of consultation which are inclusive and meaningful, whilst recognising the time and resource constraints resulting from the need to adhere to statutory processes and the capacity of the planning teams.

3 Proposals

- 3.1 The proposal is for members to agree the draft SCI to go out to consultation for a period of 6 weeks, starting at the beginning of September 2017.
- 3.2 If any of the proposals set out within the government's Housing White Paper 'Fixing our broken housing market' (February 2017) are adopted into policy or regulation before the SCI is published for consultation, any necessary amendments will be made in consultation with the Chairman of the LDF Panel and the Head of Planning Services. The White Paper was unclear on what these could involve – merely inviting comment on what could offer a more 'proportionate' means of consultation and examination of different types of plan.

4 Alternative Options

- 4.1 The Council is required by Statutory Regulation to produce an SCI and local development documents and planning applications must be prepared in accordance with it. As such, it is essential to adopt one.
- 4.2 The only alternative option would be to change the content of the draft SCI and agree to go out for consultation by the end of the year as an updated SCI needs to be in place before work on the formal stages of the Local Plan review can begin. However, it is felt that the draft SCI, as currently written, represents a reasonable balance between the need to undertake meaningful consultation and the need to continue to progress local planning documents and to determine planning applications in a timely manner.

5 Consultation Undertaken or Proposed

- 5.1 The draft SCI will go out for a 6 week consultation at the start of September 2017, in order to avoid the summer holidays.

6 Implications

Issue	Implications
Corporate Plan	Supports the Council's corporate priorities for a Borough and a community to be proud of.
Financial, Resource and Property	This will be undertaken within the Planning Policy teams existing workload and budget.
Legal and Statutory	Section 18 of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to produce a Statement of Community Involvement, which should explain how they will engage local communities and other interested parties in producing their Development Plan and determining planning applications. The Statement of Community Involvement should be published on the local planning authority's website.
Crime and Disorder	None identified at this stage.
Sustainability	None identified at this stage.
Health and Wellbeing	None identified at this stage.
Risk Management and Health and Safety	None identified at this stage.
Equality and Diversity	The SCI itself ensures that all members of the community will be able to participate, if desired, in Swale's planning process.

7 Appendices

Appendix I: Draft Statement of Consultation

8 Background Papers

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Statement of Community Involvement

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1 Introduction

1 Introduction

What is a Statement of Community Involvement?

1.1 A Statement of Community Involvement (SCI) sets out how the community can get involved in the preparation of local planning policy documents and in decisions on planning applications. The Statement of Community Involvement is part of Swale's Development Plan. For details of the Swale Development Plan see section 2 'Guide to the Planning System.'

1.2 The aim of this SCI is to overcome the traditional reactive way people tend to become involved with planning by recognising that people who are likely to be affected by new developments should be encouraged to participate more directly and earlier in the preparation of the documents which will allocate land for development and in the processing of planning applications. This will help strengthen evidence and encourage a sense of local ownership and commitment. Ultimately, this front loading approach should help to reduce, if not resolve, conflicts and reach a consensus on essential issues in the early stages of the process, thereby reducing the time taken for decisions to be made.

1.3 This SCI therefore describes the types of planning processes where consultation is important and sets out our approaches toward community engagement.



Picture 1.0.1 A community workshop

2 Guide to the Planning System

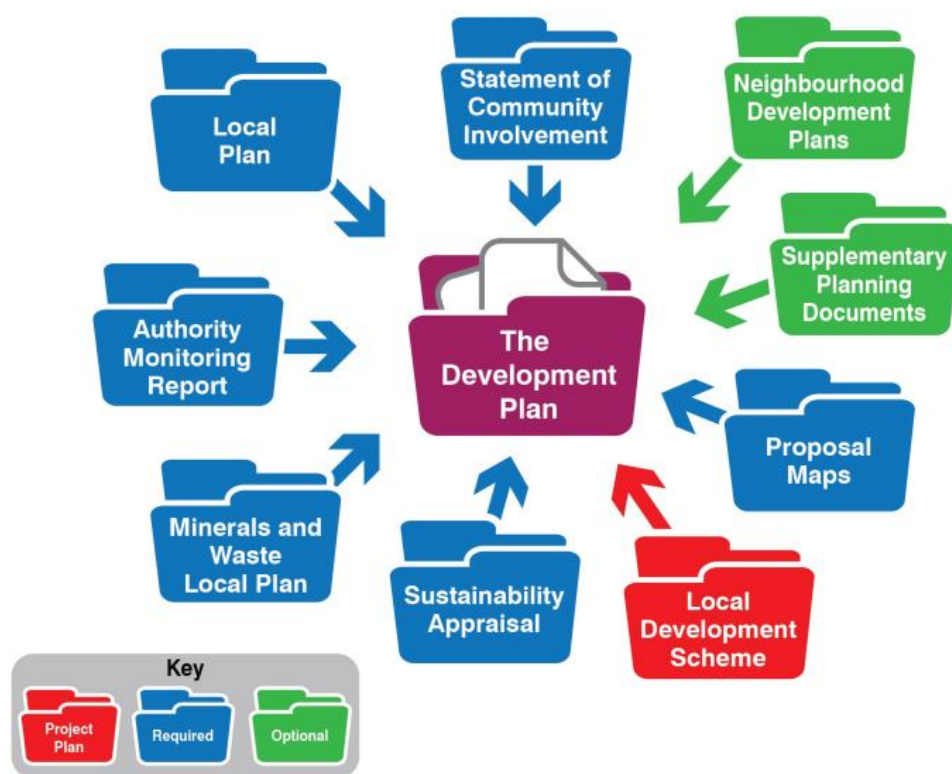
The Plan Making System

2.1 The planning system is often seen as represented by two primary functions:

1. The Plan making system, by which long term plans (the Development Plan) set out strategies, policies and allocate land to meet development needs.
2. The Development Management System, by which planning applications are made in accordance with the Development Plan.

Summary of Planning Policy Documents

2.2 The development plan comprises a suite of different planning documents. The different documents can be seen in picture 2.0.1 below and they are explained more fully below.



Picture 2.0.1 The Development Plan

Local Development Documents (LDD)

2.3 These comprise of: The Statement of Community Involvement, Development Plan Documents and Supplementary Planning Documents. Definitions of these documents are provided below.

Statement of Community Involvement (SCI)

2.4 This sets out how and when the local community can become involved in the preparation of the Local Development Documents and in the consideration of planning applications. The Council must comply with its adopted Statement of Community Involvement when preparing its Local Development Documents and this compliance will be tested when these are independently examined.

Development Plan Documents (DPD)

2 Guide to the Planning System

2.5 Development Plan Documents have status as part of the development plan for the area. They must be subject to a sustainability appraisal and community involvement during their preparation and can only be adopted after independent examination resulting in recommendations which are binding on the Council.

2.6 DPDs can include the following:

- The Local Plan which sets out the long term vision for the area and the policies required to deliver that vision
- Development Plan policies, based on topics such as housing, employment, and retail and will guide development in the borough
- Site specific allocations of land for individual uses e.g. housing, employment, community uses
- A Proposals Map illustrating the spatial extent of the policies

Supplementary Planning Documents (SPD)

2.7 These documents are optional and may cover a range of issues, both theme based and site specific which provide additional detail to the policies in the development plan document. They may be subject to sustainability appraisal and community involvement and do not require independent examination.

Local Development Scheme (LDS)

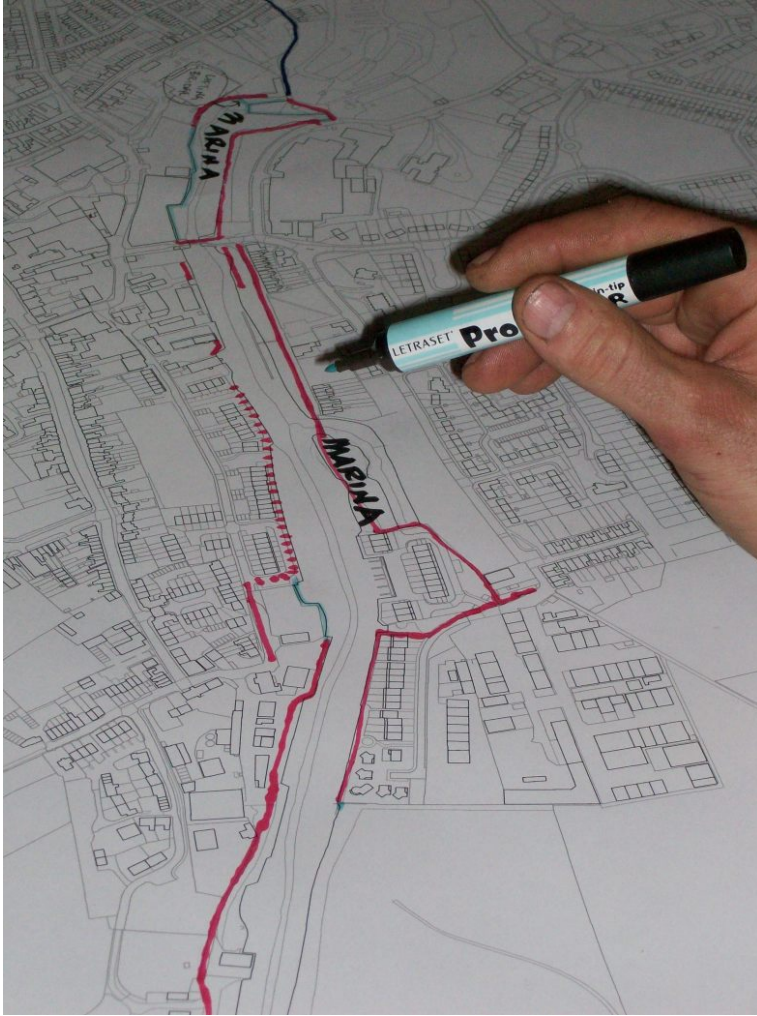
2.8 This is a list of what documents will be included in the Local Plan and timetable for their production. The Local Development Scheme for Swale can be found on the Council's website. The scheme is regularly reviewed. The Local Development Scheme can be found at: www.swale.gov.uk/local-plan

Neighbourhood Development Plans (NDP)

2.9 These are also optional and give every community the opportunity to shape the way their area develops within the guidelines of the Local Plan. Guidance on how to formulate a Neighbourhood Development Plan and details of the help that is available can be found at: www.swale.gov.uk/neighbourhood-planning

Sustainability Appraisals (SA)

2.10 Sustainability Appraisals are an assessment of the social, economic and environmental impacts of the policies and proposals contained within the Local Plan. All Local Development Documents are subject to a Sustainability Appraisal to assess the contribution the document or policy makes in achieving sustainable development in terms of social, economic and environmental factors.



Picture 2.0.2 An example of an interactive consultation method

you want to build something new, make a change to your building or change the use of your building. If so, you would need to submit a planning application to Swale Borough Council. The National Planning Policy Framework (NPPF) encourages pre-application discussions with Swale before you submit your planning application.

Strategic Environmental Assessments (SEA)

2.11 Strategic Environmental Assessments are sometimes required in order to comply with the SEA European Directive 2001/42/EC. The Strategic Environmental Assessment Directive is a European Union requirement that seeks to provide a high level of protection of the environment by integrating environmental considerations into the process of preparing certain plans and programmes. The directive requires the preparation of an Environmental Report on the likely significant effects of the draft plan or programme.

Authority Monitoring Report (AMR)

2.12 The Council are required to produce an Authority Monitoring Report (previously called the Annual Monitoring Report.) This report will consider the effectiveness of the policies within the Local Plan and identify what needs to be reviewed/prepared in the future. The Authority Monitoring Report also sets out the Council's performance in achieving the key milestones set in the Local Development Scheme.

The Development Management System

2.13 You may need planning permission if

Policy and Legislative Context

2.14 This SCI has been prepared with regard to the following policies and legislation:

- The Town and Country Planning (Local Planning) (England) Regulations 2012
- The National Planning Policy Framework (NPPF) 2012
- The Localism Act 2011
- The Town and Country Planning (Development Management Procedure) (England) Order 2015, and
- Planning and Compulsory Purchase Act 2004 (as amended)

2.15 There have been a number of legislative changes in recent years that impact on the way communities are involved in the planning process. These changes mostly arose from the introduction of the Localism Act 2011 which sought to speed up and simplify the planning process. The Act also introduced measures

2 Guide to the Planning System

to shift new rights and planning powers to local authorities and local communities. Amendments to the General Permitted Development Order 2015 and the Introduction of the Community Infrastructure Regulations 2010 (as amended) have also resulted in additional consultation opportunities.

2.16 Relevant changes include:

1. A Duty to Co-operate on all planning bodies to co-operate on cross boundary planning matters. The Duty to Co-operate, set out in the Planning and Compulsory Purchase Act 2004 (as amended) and by the Localism Act 2011 establishes a legal principle of cooperation with neighbouring boroughs the Mayor of London and other authorities, public bodies and agencies when reviewing policies. These bodies play a very important role in providing expertise and context within which our local aspirations can be delivered.
2. The ability to introduce a Community Infrastructure Levy (CIL) on development to help pay for local infrastructure. The CIL is a non-negotiable charge which will raise infrastructure funds on new developments. It was introduced by the Planning Act 2008 and came into force through the CIL Regulations 2010 (as amended) on 6 April 2010. Local Planning Authorities adopting CIL are required to prepare and publish a list of those items or types of infrastructure to fund through CIL. Swale has yet to decide whether to implement CIL charges.
3. The ability for local communities to prepare their own plan for their local neighbourhood area through Neighbourhood Plans. Neighbourhood Plans were introduced under the Localism Act 2011 to give communities rights and powers to shape development and growth in their area. Neighbourhood Planning provides a robust set of tools to facilitate communities to get the right types of development for their communities through either parish/Town Councils or 'Neighbourhood Forums' which comprise of local community groups. These groups provide communities with the power to set planning policies through Neighbourhood Plans, which must conform to the strategic policies contained within the Swale's Local Plan. Through Neighbourhood Planning, communities can also apply for Neighbourhood Development Orders and Right to Build Orders which grant planning permission for specific developments that comply with the order. The Council is proactive in providing information about Neighbourhood Planning and will provide support in preparing a Neighbourhood Plan. The Council will ensure that the proposed plans are in conformity with the Local Plan and that the due processes have been followed in accordance with the Localism Act 2011 A summary regarding consultation on neighbourhood planning can be found in Section 5 of this document.
4. Amendments to the General Permitted Development Order The Town and Country Planning (General Permitted development) (England) Order 2017, has introduced additional types of proposals that are deemed as 'permitted' subject to Prior Approval being obtained. The Prior Approval process involves public consultation.
5. Assets of Community Value (Community Right to Bid) gives members of the local community the right to nominate buildings and land (assets) that they think are important to their community for listing on the Register of Assets of Community Value – and can be publicly or privately owned. The Right came into force in September 2012 as part of the Localism Act 2011. If a building or land on the register comes up for sale or a lease of at least 25 years, the nominating group will be notified and they will have up to six weeks to say whether or not they will bid for it, and up to six months to prepare the bid to buy or lease it. The owner does not have to sell the building or land to the community group, but they will be allowed time to put together a bid to buy it on the market. For more information on Assets of Community Value please see: [Swale Community Right to Bid](#)

3 General Principles

Statement 1

Our General Principles to Consultation

By 'involvement' we mean any interaction between our planning team and the community, which can occur on a number of different levels:

Participation – active involvement in identifying needs and priorities, such as workshops

Consultation – consulting the community on their views, such as through on-line consultation processes and surveys

Information – providing information, such as adverts in newspapers, notices on Swale's website and publishing reports

Wherever it is appropriate to do so, we will apply the above general principles to community involvement in all of our planning decisions. We will also encourage other organisations that involve the community in planning processes to adopt these principles. For example, Town/Parish Councils consultations when producing Neighbourhood Plans and developers consultation events prior to the submission of their planning applications for major planning applications.

3.1 For all planning policy consultations Swale will:

- Seek views as early as possible
- Ensure involvement is open to all
- Take into account our duties under the Equality Act 2010
- Choose consultation processes that are proportionate in type and scale to the potential impacts of the proposed plan
- Target consultation to include people whom we consider would be most affected by the particular proposals or plans, and where possible we will include known interest/community/residents groups
- Provide sufficient information for people to comment effectively
- Create concise consultation documents, without understating the complexities of any issues or decisions
- Avoid unnecessary jargon
- State clearly how to respond and by when
- Aim to make all representations publicly available
- Tell people who participate in the consultation how to access the results
- Ensure that information received through consultation processes complies with the Data Protection Act 1998 and the Freedom of Information Act 2000

Question 1

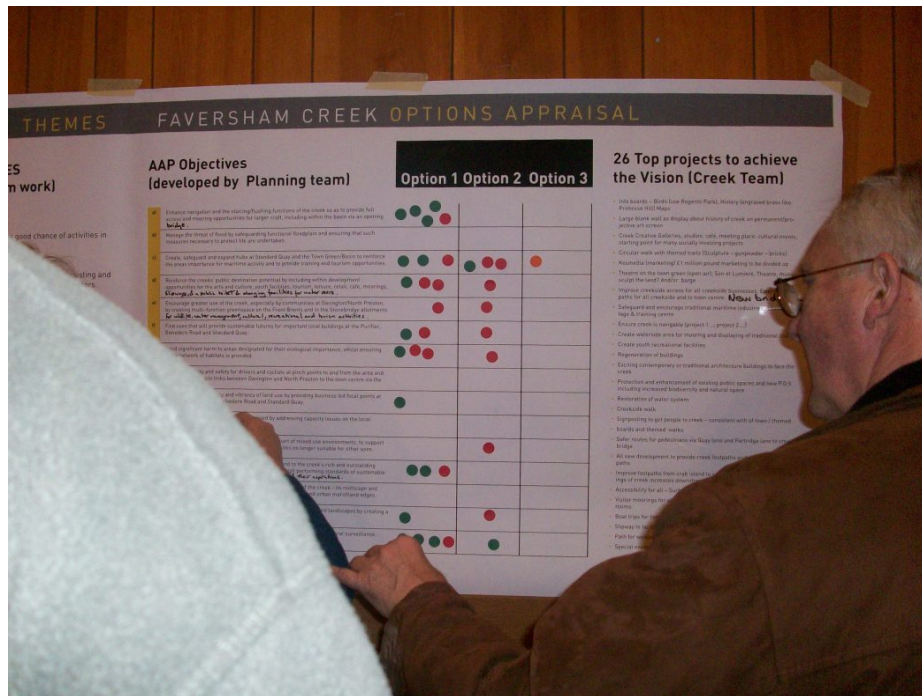
Swale's General Principles to Consultation

Do you agree or disagree with Swale's General Principles of Consultation? If you do not agree, which parts would you change and what, if anything, would you replace them with?

3.2 Public consultation results are a type of participatory evidence. This is often the starting point for both planners, and in the case of Neighbourhood Plans, the designated body, to understand their community's

3 General Principles

views on the high level issues they think a plan needs to address. This is a form of qualitative data. It can be gathered in a number of ways by asking those with an interest in the area for information and views. (See Appendix 1 for different types of public consultation methods.)



Resourcing and managing the process

3.3 In considering the Swale approach to community consultation set out in this SCI, we have had to be mindful of resources available to undertake consultation exercises and deliver meaningful results within tight timescales and resources. A balance has to be struck between consultation and the various production and management issues associated with the range of planning documents that are to be prepared. To facilitate this, electronic communication will be utilised whenever possible, including regular updates on the council website, and via social media.

Picture 3.0.1 An example of an interactive workshop session on a planning document

3.4 This document should be read in conjunction with [Swale's Communications Strategy](#)

4 Who will we involve in consultations?

4.1 The Town and Country Planning (Local Planning) (England) Regulations 2012 set out those bodies that the Council must consult with when preparing development plan documents and planning applications.

4.2 The main groups to be targeted are Central, Regional and Local Government organisations, statutory bodies, community, voluntary, resident and interest groups, members of the public, Parish/Town Councils, local businesses and developers/agents. Information with regard to specific consultees can be found in **table **** below.

4.3 The preparation of Local Development Documents will be more relevant to some groups than others. The list will therefore be used as a guide to identifying the types of groups to involve and consult with. The groups and organisations will change over time and the planning consultation database will be reviewed regularly to maintain an up to date and relevant list of groups and organisations to consult.

Who We Will Involve In Plan Making

4.4 The National Planning Policy Framework emphasises the need to involve all sections of the community in plan-making.

4.5 The Council also has a legal duty to consult residents and businesses when appropriate. In addition, legislation (Town and Country Planning (Local Planning) (England) Regulations 2012) sets out who must be consulted at prescribed stages of the document preparation.

4.6 Many individuals and organisations contribute to the preparation of planning documents. For clarity the Council has divided consultees into four groups. This may alter over time due to changes in legislation or re-organisations of public bodies, so the lists are reviewed regularly.

Statutory Consultees – Specific Bodies	Statutory Consultees – General Bodies	Other Consultation Bodies And Organisations
<ul style="list-style-type: none"> Local planning authorities that adjoin the Borough and the Greater London Authority 	<ul style="list-style-type: none"> Voluntary bodies 	<ul style="list-style-type: none"> Local environmental groups
<ul style="list-style-type: none"> Kent County Council 	<ul style="list-style-type: none"> Bodies which represent the interests of disabled people in the area 	<ul style="list-style-type: none"> Groups representing users, and the providers, of leisure, sport and recreation
<ul style="list-style-type: none"> Parish and Town Councils within and adjoining the Borough 	<ul style="list-style-type: none"> Bodies which represent the interests of different religious groups in the area 	<ul style="list-style-type: none"> Health, education, social service and community based service providers
<ul style="list-style-type: none"> A local policing body 	<ul style="list-style-type: none"> Bodies which represent the interests of businesses in the area 	<ul style="list-style-type: none"> Civic societies, cultural, historical and archaeological groups or bodies
<ul style="list-style-type: none"> The Coal Authority 	<ul style="list-style-type: none"> Bodies which represent the interests of different ethnic or national groups in the area 	<ul style="list-style-type: none"> Groups representing young people
<ul style="list-style-type: none"> Environment Agency 		<ul style="list-style-type: none"> Associations of local residents and communities
<ul style="list-style-type: none"> Historic England 	<p>Page 49</p>	<ul style="list-style-type: none"> Registered social landlords

4 Who will we involve in consultations?

Statutory Consultees – Specific Bodies	Statutory Consultees – General Bodies	Other Consultation Bodies And Organisations
<ul style="list-style-type: none"> Natural England 		<ul style="list-style-type: none"> House builders and developers - both through the Forum and individually
<ul style="list-style-type: none"> The Marine Management Organisation 		<ul style="list-style-type: none"> Landowners and land agents - both through the Forum and individually
<ul style="list-style-type: none"> The Port Authority 		<ul style="list-style-type: none"> Public transport users and providers
<ul style="list-style-type: none"> Network Rail Infrastructure Limited 		<ul style="list-style-type: none"> Groups representing retired and elderly persons
<ul style="list-style-type: none"> Highways England 		<ul style="list-style-type: none"> South East Local Economic Partnership
<ul style="list-style-type: none"> Mobile Phone Operators Association 		<ul style="list-style-type: none"> Gender and ethnicity groups
<ul style="list-style-type: none"> Mobile Phone Operators with apparatus situated in any part of the Borough 		<ul style="list-style-type: none"> The wider community
<ul style="list-style-type: none"> Primary Care Trusts 		
<ul style="list-style-type: none"> Utilities and service providers 		
<ul style="list-style-type: none"> Homes and Communities Agency 		

Consultees for plan making

Question 2

Other Consultation Bodies and Organisations

Do you think that the list of 'other consultation bodies and organisations' covers all of Swale's community and interest groups? If not, what group of people would you add?



Picture 4.0.1 An example of an exhibition consultation event

not fixed and anyone can ask for their details to be added. Others who no longer wish to be involved will be removed from the list on request.

4.8 We will usually also publicise consultations through local media and our social media options.

Duty to Co-operate

4.9 Swale Borough Council is required to work with neighbouring authorities and other public bodies involved in planning when it comes to tackling issues at a larger than local scale (Section 110 of the Localism Act 2011 and guidance in the National Planning Policy Framework). The duty to cooperate is a legal test that requires cooperation between local planning authorities and other public bodies to maximise the effectiveness of policies for strategic matters in Local Plans. It is separate from but related to the Local Plan test of soundness. The bodies that we are bound to work together with by the duty include:

- Neighbouring local planning authorities
- Kent County Council including Kent Highways
- The South East Local Economic Partnership
- The Environment Agency
- Historic England
- Highways England
- Natural England
- The Office of Rail Regulation
- The Primary Care Trusts
- The Civil Aviation Authority
- The Port Authority
- Homes and Community Agency
- Greater London Authority and Transport for London
- The Marine Management Organisation

4.10 In addition, the National Planning Policy Framework requires local planning authorities to work collaboratively with Local Nature Partnerships.

Consultation Register

4.7 Members of the public who would like to be notified about planning policy consultations and the progress of documents can add their details to the Council's database of consultees. You can register on Swale's consultation register here [Limehouse Consultation Register](#). These people are alerted by email when opportunities arise to make representations on proposed planning documents. The list is

4 Who will we involve in consultations?

Hard to Reach Groups

4.11 The relatively dispersed population of Swale, spread over a wide urban and rural area, raises particular problems in devising the most appropriate means of consultation to be used. There may also be problems in identifying representative groups to be consulted on behalf of ethnic minority or socially excluded groups, where fairly small numbers of people are involved. Barriers to engagement for hard to reach groups in Swale may include a lack of access to computers and the internet, language barriers, difficulties accessing Swale's three offices, the working community not having the time to engage, young people, people with low literacy and minority ethnic and cultural groups.

4.12 As and when it is deemed necessary by the Council, in order to widen the involvement of the community, a broader range of engagement methods will be used to ensure hard to reach groups are engaged. The Council will avoid a tick-box approach to the hard to reach and engage them in dialogues which are significant, especially when they have specific interests.

Question 3

Swale's Hard to Reach Groups

Do you think that the table of consultation methods covers all of the possible consultation types? If not, what type of consultation method would you add?

Do you agree with the consultation considerations in the table above?

4.13 Appendix 1 shows a table of possible consultation methods available for use by the Council and for each, it looks at the different considerations for when each method would be most suitable. When choosing which consultation methods to choose the Council will need to ensure that all members of the community, especially those at risk of exclusion, who may be interested are given the chance to participate.

Question 4

Consultation Methods

Do you think that the table of consultation methods in Appendix 1 covers all of the possible consultation types? If not, what type of consultation method would you add?

Do you agree with the consultation considerations in the table?

Role of elected members

4.14 Swale Borough Council has 47 councillors who are elected to represent their ward constituents. They have an important role to play in the community involvement process by keeping their local communities informed, representing their views and encouraging and assisting them to engage in the future planning and development of their area.

4.15 It is vital that all elected members are either involved in, or aware of the Local Plan preparation process to provide ownership, leadership and commitment to future implementation. Where appropriate, and depending on the issues in question, arrangements will be made with Councillors to involve them in emerging policy work. This approach will be in addition to the Council's established procedures for decision making.

Who will we involve in consultations? 4

Who We Will Involve In the Development Management Process

4.16 The operation of the development management process is governed by requirements that are set out in national legislation. With respect to publicity and consultation on planning applications the requirements are set out in The Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended)

Statutory Consultees	Non-statutory Consultees
Adjoining landowners	Emergency Services and Multi-Agency Emergency Planning
Canal and River Trust	Forestry Commission
Coal Authority	Health and Safety Executive
Control of major-accident hazards competent authority	Ministry of Defence
County Planning Authorities	Office of Nuclear Regulation
Crown Estates Commissioners	Police and Crime Commissioners
Department of Energy and Climate Change	Rail Network Operators
Environment Agency	Sport England
Forestry Commission	Business Improvement Districts
Garden History Society	Local residents; especially of neighbouring properties
Greater London Authority	
Health and Safety Executive	
Highways Authority	
Highways England	
Historic England	
Local Highway Authority	
Adjacent Local Planning Authorities	
National Parks Authorities	
Natural England	
Town and Parish Councils	
Rail Infrastructure Managers	
Rail Network Operators	
Sport England	
Theatres Trust	

4 Who will we involve in consultations?

Statutory Consultees	Non-statutory Consultees
Toll Road Concessionaries	
Water and sewerage undertakers	

Consultees for development management

4.17 This is prescribed in article 15 of the Development Management Procedure Order. There are separate arrangements for listed buildings which are set out in regulation 5 and regulation 5A of the Listed Buildings and Conservation Area Regulations 1990 (as amended).

4.18 The Development Management Procedure Order includes powers for the Secretary of State to direct local planning authorities that additional consultation must take place in specific local circumstances. This process is referred to as a 'consultation direction'. Any consultation required by a direction – where there are further, locally specific, statutory consultation requirements as set out in a consultation direction.

4.19 A consultation direction may be issued in relation to areas, sites and routes which are typically of more than local importance, or to allow the further consideration of proposals in the vicinity of existing facilities (such as airports).

4.20 Safeguarding directions are a specific type of consultation direction, and typically set out detailed maps of areas (for example, those around some existing facilities, such as certain airports or in relation to proposed infrastructure) where statutory consultation is required on planning applications within their area. Detailed guidance on mineral's safeguarding is provided in the Minerals guidance.

4.21 For further information on consultation and planning applications please see section 6 'Community involvement in the planning application process.'

5 Community Involvement in Plan Making

The Plan Making Process

5.1 Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities. Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise. (NPPF, para 150.)

5.2 When planning applications are determined a wide range of both national and local planning documents have to be taken into consideration. Table 4.1 below shows the different types of documents which, together form Swale's Development Plan. Community involvement will vary from document to document depending on their content, purpose and their status. The table also shows the level of community involvement possible, linking back to the three types of involvement set out in section 1 'General Principles', which can occur on a number of different levels, for each of the planning documents.

Document Type	Produced by	Document Purpose	Level of Community Involvement
The Development Plan: The Swale Local Plan Kent Minerals and Waste Local Plan Supplementary Planning Documents Neighbourhood Plans	Swale Borough Council Kent County Council Swale Borough Council Town/Parish Councils or Neighbourhood Forums	A suite of planning documents that sets out a vision and framework for the future development of Swale over (usually) a 20 year period To develop a vision for a neighbourhood and set policies and allocate land uses for that area	Participation, information and consultation Participation, information and consultation
Sustainability Appraisals	Swale Borough Council	Local Plans and some Supplementary Planning Documents are subject to these. They assess the economic, environmental and social effects of a plan	Information and consultation
Strategies and other supporting Documents	Swale Borough Council	To set out objectives and implementation schemes to achieve planning objectives	Participation (usually), information and consultation
Statement of Community Involvement	Swale Borough Council	Sets out Swale's consultation processes	Information and consultation
Community Infrastructure Levy	Swale Borough Council	Sets a charge on new development to help fund infrastructure	Information and consultation
Local Development Scheme	Swale Borough Council	Programme for preparing new planning policy documents	Information

5 Community Involvement in Plan Making

Document Type	Produced by	Document Purpose	Level of Community Involvement
Authority Monitoring Report	Swale Borough Council	Reports on progress of the LDS and monitors the adopted Local Plan	Information

5.3 Further details of the type of consultation proposed for each stage of the plan making process is set out below.

Evidence Base

5.4 An extensive suite of technical evidence base documents is required to underpin and inform the production of the Local Plan and other development plan documents. The methodology for some pieces of evidence base is prescribed in national planning policy and practice guidance.

5.5 The National Planning Policy Framework (NPPF) states that local planning authorities should ensure that their Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Their assessments of and strategies for housing, employment and other uses must be integrated, and must take full account of relevant market and economic signals. (NPPF, para 158.)

5.6 Evidence base documents can be both quantitative (facts and figures such as census data and housing need) as well as qualitative (e.g. opinions given in consultation responses) and is used to inform the development of the policies and strategies.

5.7 Evidence base documents are technical pieces of work and therefore are not widely consulted on. However, targeted consultation may occur with specific statutory and non-statutory consultees who have expertise in that area. e.g. The Environment Agency would be consulted on the Strategic Flood Risk Assessment.

Question 5

Level of Community Involvement

Do you agree or disagree with the levels of community involvement for the list of planning documents in table ** above? If not, which would you change and why?

How Will We involve the Community in Plan Making

Development Plan Documents

Document and Stage	What We Will Do	Who We Will We Consult	How Will We Consult
Development Plan Documents			

Community Involvement in Plan Making 5

Document and Stage	What We Will Do	Who We Will We Consult	How Will We Consult
<p>Stage 1: Prepare Issues and Options Document</p> <p>At the initial stages of producing a plan it is important that the community has an opportunity to identify local issues, influence the options for future development and examine the evidence.</p>	<p>As a minimum, we will ensure that we comply with the relevant current planning regulations.</p> <p>We will also:</p> <ul style="list-style-type: none"> • Consult more widely where it is relevant and appropriate and timely to do so • Advertise any consultation and make it clear where material can be viewed by the community • When possible, summary documents, maps and diagrams explaining the key issues and proposals will be published • Maintain and add people to our planning database of consultees at any time • Comments received at this stage will be acknowledged and taken into account, together with any available technical evidence as well as national policies and guidance 	<p>We will notify specific, general and other consultation bodies that may have an interest in the document.</p>	<ul style="list-style-type: none"> • We will engage all specific and general consultation bodies, and other consultation bodies as appropriate • We will consult with the wider community at least once during this stage in the production of the document • We will publish consultation documents on-line and the preferred route for comments is via the website, because this helps make the process as efficient as possible • We will make all the comments received publicly available • The council will also consider using one or more of the following methods: <ul style="list-style-type: none"> • Correspondence through letters or email • Workshops or focus groups • Presentations at community events • Joint consultations • Drop-in events, displays or exhibitions • Meetings (one to one or group)

5 Community Involvement in Plan Making

Document and Stage	What We Will Do	Who We Will We Consult	How Will We Consult
			<ul style="list-style-type: none"> • Make plans available on our website and at public inspection points • Targeted measures for hard to reach groups
<p>Stage 2: Publish Proposed Submission Document</p> <p>The council will prepare and consult on the final draft of the plan before it is submitted to the Secretary of State for examination.</p> <p>Representations submitted at this stage are forwarded to the Planning Inspector.</p>	<ul style="list-style-type: none"> • As a minimum, the council will comply with the relevant planning regulations • We will consult on the plan for at least six weeks • The submission documents and other relevant documents must be available for inspection on the website and at the council's office and other public inspection points • When possible, summary documents, maps and diagrams explaining the key issues and proposals will be published • We will notify consultees • The council will publicise where and when the documents may be inspected • Make printed copies of the plan available at a reasonable charge if requested • Where appropriate, the council will make changes to the document before it is submitted to the Secretary of State • All representations received at this stage will be forwarded in full to the Secretary of State. 	<ul style="list-style-type: none"> • We will notify those specific, general and other Consultation bodies that were invited to make representations at an earlier stage • The wider community (as appropriate to the document) will also be consulted 	<ul style="list-style-type: none"> • We will contact everyone on our planning consultation database by letter or email and where appropriate we will use targeted measures for hard to reach groups • To explain the preferred plan we will consider using one or more of the following methods: events, displays, exhibitions or meetings

Community Involvement in Plan Making 5

Document and Stage	What We Will Do	Who We Will We Consult	How Will We Consult
<p>Stage 3: Examination</p> <p>The council is required to submit the plan and supporting information for public examination. The Inspector in charge of the examination will take into account written comments on the plan and, if invited by the Inspector, people can also appear at the examination to speak in support of, or against, the plan. The Inspector will consider whether the Document has complied with the requirements of this Statement of Community Involvement.</p>	<ul style="list-style-type: none"> • We will comply with all the relevant planning regulations for the submission and examination of the plan • We will ensure that all the relevant submission documents are available for inspection on our website and at the council's office and local libraries • We will publish full details of the submission • We will appoint an independent Programme Officer to assist the Inspector with the examination • Full details of the running of the Examination will be published on behalf of the Programme officer on the Council's website 	<ul style="list-style-type: none"> • We will notify all those specific, general consultation bodies, the wider community, and other bodies who have previously been invited to make representations on the plan, about the submission of the plan to the Secretary of State • We will also notify anyone else who requested to be notified of the submission of the plan to the Secretary of State • The Programme Officer will notify all those who commented on the plan at stage 2 with details of the examination 	<p>Consultees will be informed by email or letter</p>
<p>Stage 4: Adoption</p>	<ul style="list-style-type: none"> • We will publish the Inspector's Report and 		<ul style="list-style-type: none"> • We will send the adoption statement

5 Community Involvement in Plan Making

Document and Stage	What We Will Do	Who We Will We Consult	How Will We Consult
<p>Following the Examination, the Inspector will produce a report. The council will consider the Inspector's report, make changes to the plan where appropriate and adopt the final plan.</p> <p>Sometimes, the Inspector may issue Interim Findings and propose that Main Modifications be made to the plan to make it sound. The Inspector will usually indicate that these will also need to be consulted upon and may need a further round of Examination. Any such Main Modifications will be consulted on in the same way as the submission stage proposals (stage 2.)</p>	<p>notify anyone who who requested to be notified</p> <ul style="list-style-type: none"> We will make the adopted document, a sustainability appraisal report, relevant information and adoption statement available for inspection at the council's main offices and on the website as soon as practicable 		<p>to the Secretary of State and any person who requested to be notified</p> <ul style="list-style-type: none"> We will write to everyone who has made a representation on the document to inform them of the adoption process

Other Development Plan Documents

5.8 Kent County Council is responsible for the Minerals and Waste Local Plan. Anyone who wishes to participate in the preparation of this document needs to contact Kent County Council Minerals and Waste Planning Policy Team on 03000 42 23 70 or mwdf@kent.gov.uk. Their website [KCC Minerals and Waste](#) provides further information.

Neighbourhood Plans

5.9 Town and Parish Councils lead on the preparation of Neighbourhood Plans The Localism Act (2011). They are responsible for undertaking consultation during the preparation stage (Neighbourhood Planning (General) Regulations 2012) and may decide who to consult, according to the scope and nature of the proposals being developed. The plan is then submitted to Swale Borough Council and we are responsible for undertaking consultation upon the completed document prior to independent examination.

5.10 The Localism Act 2011 has reformed the planning system to give local people new rights to shape the development of the communities in which they live. There is no compulsion for parishes to prepare a Neighbourhood Development Plan (NDP)

Community Involvement in Plan Making 5

Document and Stage	What Will We Do	Who Will Be Consulted
Neighbourhood Development Plans		
Stage 1: Defining the Neighbourhood Area	<ul style="list-style-type: none"> Swale will undertake the statutory 4 week consultation period. The Council will publicise the application online, along with site notices across the Neighbourhood area, informing interested parties how a representation can be made. 	<ul style="list-style-type: none"> Those within the Neighbourhood area Adjoining Parish/Town Councils Specific, general and other consultation bodies
Stage 2: Publicise the draft Neighbourhood Development Plan	<ul style="list-style-type: none"> The Council's Neighbourhood Planning team are there to provide guidance and advice throughout the plan making process to ensure the plan is in line with the regulations and legislative requirements and conforms to planning policies. 	<ul style="list-style-type: none"> The Parish/Town Council or Neighbourhood Forum decide the level of detail that will make up their Neighbourhood Development Plan. Views of the local community, interest groups and stakeholders should be sought, in order to form a well evidenced foundation for the plan. A consultation statement detailing how this has been achieved will be required for the final submission of the Neighbourhood Development Plan. The draft plan should be published locally, by the Parish/Town Council or Neighbourhood Forum, for a minimum period of 6 weeks in order for any representations to be made. Consultation must also be made with specified consultees, to assist compliance with Reg 14.
Stage 3: Submission of the final Neighbourhood Development Plan	<ul style="list-style-type: none"> The Planning Policy team will publish the plan for a minimum 6 week consultation period. Following conclusion of the consultation, the Planning Policy team will make a recommendation regarding progress of the plan. Final approval for the plan to move forward to examination stage will be given by Local Development Framework Panel. 	<p>The final plan should be submitted to Swale Borough Council Planning Policy team.</p> <p>In accordance with Reg 15, the plan should consist of:</p> <ul style="list-style-type: none"> A map showing the area in which the Neighbourhood Development Plan covers The proposed Neighbourhood Development Plan

5 Community Involvement in Plan Making

Document and Stage	What Will We Do	Who Will Be Consulted
		<ul style="list-style-type: none"> • A consultation statement detailing how the opinions of interested parties have been sought • A written statement explaining how the Neighbourhood Development Plan has met the basic conditions • Any required environmental assessments (Strategic Environmental Assessment and/or Habitat Regulation Assessment.)
Stage 4: Independent Examination	<p>The Council will organise and pay for an independent examination of the Neighbourhood Development Plan and supply the relevant documents to the examiner, including any details of any representations during the final consultation. Many examinations will be dealt with by written representation; however there may be some via hearing or public examination, depending on the circumstances.</p> <p>The examiner will recommend either:</p> <ol style="list-style-type: none"> 1. The plan move to a referendum 2. Following amendment the plan move to a referendum 3. The plan should be refused <p>The examiner's report is not binding and consideration will be given to the recommendations within it. A decision statement will be produced by the Planning Policy team, outlining the decision reasons, where it can be inspected and any modifications made to the plan. The report and Council decision will be published on the website and within the Neighbourhood Area.</p>	<p>The Council will appoint an Independent Examiner and if they decide to hold an examination they will decide who will be able to speak. The Programme Officer who will invite all of those to the relevant hearing sessions.</p>
Stage 5: Referendum	<ul style="list-style-type: none"> • Once the plan is finalised and any amendments have been made, Swale Borough Council will arrange and pay for a referendum. The Examiner will have specified the area for the referendum to cover. It will include all those on the electoral roll within the specified area. 	

Community Involvement in Plan Making 5

Document and Stage	What Will We Do	Who Will Be Consulted
	<p>Swale Democratic Services will undertake the referendum and will send poll cards to all those eligible to vote.</p> <ul style="list-style-type: none"> If the referendum result rules in favour by 50% or more, then the Neighbourhood Development Plan will move on to the final stage in the process. 	
Stage 6: Adoption	<ul style="list-style-type: none"> A recommendation will be made to Swale Borough Council's Council to adopt the agreed Neighbourhood Development Plan and this will form the basis of development and determine planning applications as part of the Development Plan. Adopted plans will be published on the Council website and made available for viewing at local customer service centres and libraries. Copies of the decision to adopt will be sent to the Parish/Town Council or the Neighbourhood Forum and any person who has previously asked to be notified. 	

Supplementary Planning Documents

Document and Stage	What Will We Do	Who Will We Consult	How Will We Consult
Supplementary Planning Documents			
<p>Stage 1: Prepare Supplementary Document (SPD)</p> <p>Evidence and ideas are gathered, and alternative approaches are considered</p>		<ul style="list-style-type: none"> We will consult with those individuals and bodies who are relevant to the successful implementation of the SPD. We may consult more widely if it is considered 	<ul style="list-style-type: none"> This will depend on the type of SPD. The council will consider using one or more of the following methods: <ul style="list-style-type: none"> Correspondence by letter or email Workshops or focus groups

5 Community Involvement in Plan Making

Document and Stage	What Will We Do	Who Will We Consult	How Will We Consult
		relevant and appropriate to do so.	<ul style="list-style-type: none"> Meetings Drop in events
<p>Stage 2: Publish draft Supplementary Planning Document</p> <p>The council is required to consult on the SPD. Publishing a draft provides opportunity to get comments on the document before it is finalised.</p>	<ul style="list-style-type: none"> As a minimum, the council will comply with the relevant planning regulations We will consult for at least 6 weeks and make copies of the draft SPD available for inspection on the website and at the council's main office and other locations as appropriate to the type of SPD We will make all the comments received publicly available We will consider all representations received. 	<ul style="list-style-type: none"> We will consult the specific, general and other bodies who are relevant to the topic of the SP being prepared We will consult residents or persons carrying on business in the area where it is appropriate to 	<p>This will depend on the type of SPD. The council will consider using one or more of the following methods:</p> <ul style="list-style-type: none"> Making documents available on the council's website and at inspection points Workshops or drop in events Correspondence through letters or emails Leaflets/Newsletters Targeted measures for hard to reach groups relevant to the topic of the SPD
<p>Stage 3: Adoption</p> <p>Once the council has taken into account comments and made any changes to the document, it will be adopted by the council's Cabinet. An independent examination is not required.</p>	<ul style="list-style-type: none"> We will prepare a consultation statement We will adopt the SPD We will publish the SPD, consultation statement and an adoption statement on the website These documents will also be available for inspection at the council offices and other locations as appropriate to the type of SPD 	<ul style="list-style-type: none"> We will send a copy of the adoption statement to any person who has asked to be notified of the adoption. 	

Community Involvement in Plan Making 5

Document and Stage	What Will We Do	Who Will We Consult	How Will We Consult

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For guidance notes on making a representation to a planning policy document please see Appendix 2

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6 Community Involvement in the planning application process

6 Community Involvement in the planning application process

Preparing and Publicising Planning Applications

Pre-application Advice

6.1 Swale offer a pre-application advice service to anyone who is considering building works and/or changes of use to properties. This advice is provided for a fee (free for charities, voluntary groups, Parish/Town Councils and advice relating to the repair of listed buildings) and is the stage before making a planning application. Swale strongly recommend applicants use this service.

6.2 There are many benefits of pre-application advice, including:

- It gives you an opportunity to understand how our policies will be applied to your development and you can identify potential problems and resolve them before an application is submitted. This can help prevent costly and time consuming amendments to schemes later
- It may indicate that a proposal has little or no realistic chance of success, so saving you considerable time and money
- It may lead to a reduction in time spent by your professional advisers in working up the proposals in more detail
- It can identify at an early stage whether any specialist advice is needed, e.g. about listed buildings, trees, flood risk, highways etc
- We can discuss with you details of the proposal such as its design and the materials to be used. This can help you prepare a better planning application so we can process it more quickly and give you a decision sooner

6.3 We strongly encourage applicants to discuss their proposals, both minor and major, with their neighbours, the local community, the relevant town or parish council and their ward councillor at an early stage. The greater the likely impact of a proposed development, the greater the need for community involvement. For further information please go to [Pre-Application Advice](#)

6.4 Applicants of large, major schemes are also encouraged to undertake pre-application briefings with Swale Members to ensure that there is an early two way dialogue and so that local Members can then share this information with their residents.

Type of Development	What Applicants Need To Do	What Swale Will Do
MAJOR Residential development of 10 or more dwellings (or a site of more than 0.5ha) Non-residential development with floor space of 1,000 sq m	Choose appropriate methods to involve the community prior to submission of the planning application e.g. Public meetings/exhibitions, workshops, consultation website Provide a statement with the application describing how the community was involved and what their views were Consider local planning documents and national guidance	Provide pre-application advice on request (a charge will be made for this service) Publish all of the documents on our website Post site notices at or near the proposed site Place an advert in the local press Consult statutory and non-statutory consultees as well as internal consultees Send a neighbour notification letter to neighbouring properties

Community Involvement in the planning application process 6

Type of Development	What Applicants Need To Do	What Swale Will Do
	Strongly consider undertaking pre-application advice from the Council and appropriate statutory and non-statutory consultees	
MINOR Smaller in scale than a major development and outside the definition for change of use or householder	Consider the need for pre-submission community consultation depending on the nature, scale, and location of the proposed development May need to provide a statement with the application describing the actions taken to involve the community and what their views were Consider local planning documents and national guidance Strongly consider undertaking pre-application advice from the Council and appropriate statutory and non-statutory consultees	Provide pre-application advice on request (a charge will be made for this service) Publish all of the documents on our website Post site notices, where appropriate, at or near the proposed site Advertise in the local press if the application: <ul style="list-style-type: none"> • Is for a listed building • Is in a conservation area • Is near or affects a public right of way • Is accompanied by an Environmental Impact Assessment • Departs from the development plan • Affects the setting of a listed building/conservation area
OTHER Includes the categories of: Change of Use (which does not involve building or engineering work) Householder (within the curtilage of a dwelling that requires permission and is not a change of use)	It is good practice to consult with neighbours before submitting a planning application and any consultation actions can be reported within the planning application documents Consider local planning documents and national guidance Strongly consider undertaking pre-application advice from the Council and appropriate statutory and non-statutory consultees	Consult statutory and non-statutory consultees as well as internal consultees Send a neighbour notification letter to neighbouring properties

Submitting Planning Applications

6.5 If requested, we will send the relevant forms in the post to you by the next working day. We will also help you to complete the appropriate forms if required. Once we have received a planning application we will acknowledge receipt of your planning application within 5 working days.

6 Community Involvement in the planning application process

6.6 When planning applications are received by the Council we first check to ensure that all the necessary information has been provided, please see the [Swale Local Validation Requirements](#) to help you with what information you need to include with your application. Larger and more complex applications require more supporting data.

Public Consultation on Planning Applications

6.7 We put all planning applications on the statutory planning register so that it can be inspected by any interested member of the public. The public can use the [Planning Application Search](#) to view and leave comments on all planning applications in Swale.

6.8 The public can register on our [Public Access System](#) in order to track the progress of a planning application, including being informed of any new information (such as new objections) being made and any amendments to a scheme.



Picture 6.0.1 An example of a consultation 'game' to enable consultees to manipulate different land use layouts

6.9 We will allow 21 days for third parties (including parish and town councils) to comment on applications. It is common for submitted applications to be altered during the process of determination, usually as a result of negotiation between the applicant and the case officer, for example following receipt of comments from consultees, or local residents. We will reconsult for a further 14 days when amended details are received. For example, we would re-consult if we consider that the new proposals are likely to cause a significantly greater detrimental impact on the occupants of adjoining properties.

6.10 We will write to neighbouring properties of the application site to let them know about the application and to explain to them how they can comment on the application.

6.11 Where statutorily required, we will also put up a notice on or near the site and advertise the application in a local newspaper.

6.12 Planning legislation and guidance specifies that various organisations must be consulted when a Local Planning Authority is considering applications; these are known as statutory consultees. We always consult the relevant town or parish council, but the other statutory consultees vary according to the type of application. For example with a Listed Building Consent application for works to a Grade 1 listed building, Historic England must be consulted. Other relevant organisations include the Highway Authority, Environment Agency, Natural England, Kent County Council, etc. We may also seek internal professional advice from our own officers within the council who have expertise in conservation/heritage, design, trees, open space, noise, pollution, licensing and legal matters. All comments received from statutory consultees and internal consultations are available to view via our website.

6.13 We also use a Development Team approach to consult with internal and some statutory consultees. Pre-application submissions and submitted planning applications are discussed at these meetings by officers from across the Council, such as from open space, economic development, environmental health, housing and by outside consultees such as Kent County Council, Environment Agency and Building Control. These meetings help us to engage with experts to gain their views and to get all of the relevant information early in the decision making process.

Community Involvement in the planning application process 6

6.14 We also use Swale's Design Panel to gain expert advice on submitted planning applications. The Panel undertakes a local design review by an impartial panel of experts providing clear, constructive and consistent advice on design issues. The Council encourages its use by applicants of all major planning applications. The developer pays for this service.

6.15 All comments, from residents, statutory and internal consultees, are read and taken into account, but they can only be given weight when making our decision if they are made on valid planning grounds (also known as "material planning considerations"). A list of common [Material Planning Considerations](#) is available on the national Planning Portal website. We will not reply individually to comments received about applications.

6.16 The majority of decisions on planning and related applications are made in accordance with the Council's Scheme of Delegation – that is the decision is made by an Officer on behalf of the Council. Other decisions are made by the Planning Committee.

6.17 We will hold, and allow anyone to see, a copy of any reports sent to the Planning Committee and background papers used to prepare the report. These will be available five working days prior to the meeting at [Planning Committee Reports](#)

6.18 We will inform everyone, by letter or email, who has commented on an application if it is going to Planning Committee, inviting them to the meeting and explaining how they can register to speak if they so wish. Where an application is to be determined by the Planning Committee, members of the public can request to speak at the committee meeting. This is limited to one person speaking in favour of the application and one person against. The agent/applicant can also register to speak. The Parish/Town council and the local Borough Councillor may also speak. The speakers are allowed up to three minutes each. Requests to speak at the meeting must be registered with Democratic Services (democraticservices@swale.gov.uk or call 01795 417328) by noon on the day before the committee meeting.

6.19 We will place the decision notices on our website and those registered on our public access system will be informed by email.

6.20 If an appeal is submitted we will inform everyone who commented on the original planning application of the details of the appeal. The appeal process is managed by the independent Planning Inspectorate.

Question 6

Planning Application Consultations

Do you think that the opportunities to view and comment on a planning application are adequate? If not, what improvements would you suggest?

Notification of Decisions

6.21 We aim to decide the majority of applications within eight weeks, unless they are major category development proposals which will be decided within 13 weeks. Prior approval applications have to be decided within 56 days from receipt of the application.

6.22 We will issue a decision notice within two working days of a formal decision. A copy will be emailed/posted to the applicant and a copy will be placed on the Council's website. If you are registered on our public access system you will receive a notification email informing you that the decision notice has been issued. The decision notice will give reasons for our decisions if planning permission is refused or approved and it will set out any conditions which have been imposed. Where necessary, it will advise of the rights of appeal to the Secretary of State. Only applicants have the right of appeal; there are no third party rights of appeal.

7 Monitoring and Reviewing the SCI

7 Monitoring and Reviewing the SCI

7.1 We aim to make our planning consultations easy to understand and to participate in, and to carry them out in a fair and open way.

7.2 The Statement of Community Involvement recognises that now a great deal of communication occurs by electronic means. This edition of the SCI also takes into account recent changes to legislation and national guidance relevant to consultation.

7.3 We will review feedback from consultees obtained through planning consultations to check whether our methods are working effectively. We will monitor the success of community involvement techniques by assessing the representations received during the planning process.

7.4 We will also continue to take advice on best practice by consulting with relevant council departments, such as Communications and Equalities. We will do this when consultation statements are prepared when plans are submitted for examination. We intend to continue improving our consultation practices as required.

7.5 The effectiveness of consultations will be also be reviewed annually in the council's Authority Monitoring Report.

7.6 We propose to review the SCI after each Local Plan is adopted, or if our monitoring shows that we could improve our approach to consultation, or if the government requires us to change the way in which consultation takes place. Any proposed review will be identified within the Council's Local Development Scheme with a clear timetable for its production.

8 Glossary

8.1 Adoption - The final formal stage in the evolution of a statutory planning document. Once a plan is adopted it has full legal weight in the determination of planning applications.

8.2 Authority Monitoring Report (Previously called Annual Monitoring Report) - A report produced each year by local authorities, which assesses progress with, and the effectiveness of, its plan-making documents.

8.3 Communities and Local Government (CLG) - The Government department with responsibility for planning and local government.

8.4 Consultation Statement - A summary of the main issues raised by a consultation.

8.5 Development Management (DM) - The of determining planning applications (and similar) in conformity with the development plan and material considerations. (Previously known as Development Control.)

8.6 Development Management Service Standards - The Council's detailed approach to involving people in the process of making decisions on planning applications. It goes beyond the principles and legal requirements as set out in Section 5.

8.7 Development Management policies - A set of criteria-based policies required to ensure that all development within the area meets the vision and strategy set out in the core strategy.

8.8 Development Plan - The suite of development plan documents that collectively provide the planning framework used to assess development proposals for a given local planning authority area.

8.9 Development Plan Document (DPD) - Spatial planning documents that set out the local planning authority's policies and proposals for the development and use of land and buildings in the authority's area. In two-tier areas it may include adopted borough local plans, adopted county local plans for minerals & waste, development plan documents policies and site specific allocations. All DPD's are subject to independent examination. There is a right for those making representations seeking change to be heard at an independent examination.

8.10 Duty to Co-operate - The duty to co-operate is a legal test that requires cooperation between local planning authorities and other public bodies to maximise the effectiveness of policies for strategic matters in Local Plans. It is separate from, but related to the Local Plan test of soundness.

8.11 Elected Members - Locally elected community representatives that form part of the decision making body in a local authority.

8.12 Environmental Impact Assessment - An analytical process that systematically examines the possible environmental consequences of a development.

8.13 General Consultation Bodies - These organisations are listed in the Town and Country Planning (Local Development) (England) Regulations 2012.

8.14 Independent Examination - The process by which a planning inspector may publicly examine a Development Plan Document.

8.15 Inspector's Report - This will be produced by the Planning Inspector following the Independent Examination.

8.16 Inspection Point - Locations across the borough where consultation documents can be viewed. As a minimum this means the main council offices at Sittingbourne and the area offices in Sheerness and Faversham.

8 Glossary

8.17 Localism Act - The Localism Act 2011 devolves greater powers to local government and neighbourhoods and gives local communities more rights and powers over decisions about development. It also includes reforms to make the planning system more democratic and more effective.

8.18 Local Community - A generic term which includes all individuals (including the general public) and organisations external to the Council. It can also include statutory and other consultees.

8.19 Local Development Scheme (LDS) - Sets out the programme for the preparation of the development plan documents.

8.20 Local Enterprise Partnership - A partnership between Local Government and the private sector, designated by the Secretary of State and established for the purpose of creating or improving the conditions for economic growth in an area. Swale is covered by the South East Local Economic Partnership (SELEP), covering Kent, Essex and East Sussex.

8.21 Local Plan (LP) - May consist of a single document or a set of documents such as site allocations, development management policies and core policies. These are formal plans for a geographical area which are key points of reference when deciding planning applications.

8.22 Minerals and Waste Local Plan - Produced by Kent County Council, these documents set out plans relating to mineral and waste developments in Kent.

8.23 National Planning Policy Framework (NPPF) - A document setting out the Government's national planning requirements, policies and objectives. It replaces much of the national advice previously contained within Planning Policy Statements, Planning Policy Guidance and Circulars. The NPPF is a material consideration in the preparation of planning documents and when considering planning applications.

8.24 Neighbourhood Plan - Prepared by local communities, these set out policies and proposals for the future development of a neighbourhood but they must conform to the strategic policies of the Local Plan.

8.25 Planning Inspectorate - An organisation which processes planning appeals and holds examinations into development plan documents and planning application appeals.

8.26 Pre-application Advice - The service provided by Swale is given to anyone who is considering building works and /or changes of use to properties in Swale. This advice will be provided, usually for a fee, and is the stage before making a planning application. It gives applicants an opportunity to understand how Swale's policies will be applied to their development and it can identify potential problems and resolve them before an application is submitted.

8.27 Pre-application Consultation - The process by which a prospective developer will give local people an opportunity to help shape development proposals before they are formally submitted to the planning authority as a planning application.

8.28 Programme Officer - Person appointed to assist with all administrative matters related to Examinations of Local Plan documents.

8.29 Public Consultation - A process through which the public is informed about emerging plans or proposals put forward by a planning authority or by development promoter, and are invited to submit comments upon them.

8.30 Representation - A formal statement submitted by a consultee at the submission stage of a development plan document.

8.31 Specific Consultation Bodies - These organisations are listed in Town and Country Planning (Local Development) (England) Regulations 2012.

8.32 Supplementary Planning Document (SPD) - These documents, including issue-based documents, design guidance and masterplans, provide more detail to how policies in the Local Plan should be used.

8.33 Sustainability Appraisal (including Strategic Environmental Assessment) – A systematic and iterative appraisal process, incorporating the requirements of the Strategic Environmental Assessment Directive. Its purpose is to appraise the social, environmental and economic effects of the strategies and policies in a local development document from the outset of the preparation process. This will ensure that decisions are made that accord with sustainable development.

Appendix 1: Table of Consultation Methods

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Consultation Method	Considerations
Swale Borough Council web site	Information can be provided quickly and efficiently and accessed by the public from their own home or office at a time which is convenient to them. This can overcome the problems of trying to consult with rural communities. However, access to the internet is not universal and therefore may disadvantage certain groups. Internet speeds and a lack of bandwidth may also hamper the downloading of large planning documents. The Council has web access at it's Sittingbourne and Sheerness offices and at it's libraries and will continue to consider ways in which access to web based information can be improved. Web pages should be user friendly. It's use is likely to continue to increase.
Email Notifications (from both Objective and direct from the Planning Policy team)	Information and responses can be provided quickly and efficiently. Increased use of this means of communication is sought with Town and Parish Councils, specified consultees and all other parties and will be communicated in this way wherever possible. Every effort will be made to gather and maintain email addresses, unless an individual specifies otherwise.
Swale borough Council social media platforms	Use of sites such as Facebook and Twitter keep users informed with regular updates for a low cost. Likely to be utilised as a means of keeping people informed, rather than a formal part of consultation. Many people still not using these mediums. Therefore, where appropriate, pages should be referred to on literature & website to raise awareness.
Formal advertisements in local press	Statutory requirements to publish notices advertising certain planning applications.
Press releases	It is cost effective in terms of bringing local issues into the broader local arena. Releases will be sent out to all major borough publications. However, items may only be reported if they are considered newsworthy by the newspaper editors, therefore publication is not guaranteed. Local newspaper readership is low.
Consultation documents available for sale, CD or inspection at Council offices, by post and on the web	Traditional means of consultation and the information supplied can be in detail. Information needs to be in plain English with simplified formats. Due to limitations for people with mobility or sight disabilities and where English is not a first language, modified versions need to be made available at no extra cost to the individual.
Leaflet, newsletters and brochures	Can publicise and explain in simple language and invite comment. The Inside Swale magazine is a good communication link and should be utilised where appropriate and when publication dates coincide. Specific newsletters can be sent to all residents; however, it can be expensive to distribute.
Formal written letter	Letters will be sent when there is no other means of communication or a person has requested to be written to by post specifically. High postage and administration costs.
Public Exhibitions/Public meetings/presentations	Can be used to circulate information, seek views and endorse proposals. Gives residents some flexibility in deciding when to visit and can encourage feedback. Takes planning issues to the people and provides an opportunity

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Consultation Method	Considerations
	for people to discuss local issues directly with planning officers in an environment which local people will be familiar and therefore comfortable with. However, people attending may not be representative of the whole community and there is no guarantee of turn out. High staff and material costs. Borough-wide consultations require extensive coverage and numbers of events. Displaying information in local shops and leisure outlets where people frequent should be considered as an alternative, where appropriate.
Notices displayed on a site	Direct and local notification of proposals to those around a site and in local area, however notices can be vandalised or removed before the end of consultation period. Used for all planning applications.
Through partnership organisations and focus groups, existing forums/panels	Useful for topic based discussions and to find out what specific groups feel. Provides opportunity to discuss issues in depth and to have ongoing dialogue. However can have high direct costs of facilitating. Important to build on existing networks rather than reinvent with new ones.
Councillor networks	Councillors play a very important role in terms of community engagement. They are a recognised point of contact for the local community to go to with regard to Council matters. It is vital to ensure that Councillors are kept well briefed.
One to one meetings and briefings	Useful for seeking views from targeted groups/individuals however they are time consuming and require costly staff resource.
Parish and Town Council networks/publications	If Town and Parish Councils are effectively involved with consultation exercises they can provide an invaluable contact with local communities. Many have developed their own websites and social media pages and newsletters and notice boards and should be encouraged to share planning information relevant to parish/town residents.
Questionnaire/surveys	Enables quantifiable information to be collected. Questionnaires need to be well designed. There is no guarantee of response rate. Likely to be time consuming and costly.
Workshops	Organised discussion based event to present and gather information. Can be targeted at key stakeholders. Requires skilled facilitators to ensure objectives are achieved. Requires costly staff resource.

Appendix 2: Guidance Notes on Making a Representation

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Guidance Notes on making a representation

Throughout the planning process, opportunities will be given in the form of consultation for all interested parties to be involved and make their views known. At the start of a consultation period, a form will be made available for anyone wanting to make a representation. Dates of the consultation will be made clear and only representations received inside these dates, will be taken into consideration. A completed form should include contact details and the comments on the form should relate directly to the aspect of the document as indicated on the form by the Local Plans team. Only names and/or organisations will be published on the Council website, as well as comments made on the form. However, other information will be shared with the Planning Inspector, who may want to contact those who have made a representation to discuss comments and concerns prior to concluding the formal examination.

All representations will be considered by the Planning Inspector as part of the examination of the plan and/or planning document.

The Planning and Compulsory Purchase Act 2004 (as amended) (PCPA) states that the purpose of an examination is to consider whether the Plan complies with the legal requirements, the duty to co-operate and is sound.

Legal Compliance and Duty to Co-operate

The Inspector will first check that the Plan meets the legal requirements under s20(5)(a) and the duty to co-operate under s20(5)(c) of the PCPA before moving on to test for soundness.

You should consider the following before making a representation on legal compliance:

- The Plan in question should be included in the current Local Development Scheme (LDS) and the key stages should have been followed. The LDS is effectively a programme of work prepared by the Local Planning Authority (LPA). It will set out the key stages in the production of any Plans which they propose to bring forward for independent examination. If the Plan is not in the current LDS it should not have been published for representations. The LDS should be on Swale's website and at its main offices.
- The process of community involvement for the Plan in question should be in general accordance with the LPA's Statement of Community Involvement (SCI). The SCI sets out the LPA's strategy for involving the community in the preparation and revision of LDDs (including Plans) and the consideration of planning applications.
- The Plan should comply with the Town and County Planning (Local Planning) (England) Regulations 2012 (the Regulations). On publication, the LPA must publish the documents prescribed in the Regulations, and make them available at its principal offices and on its website. The LPA must also notify the Local Plan bodies (as set out in the Regulations) and any persons who have requested to be notified.
- The LPA is required to provide a Sustainability Appraisal Report when it publishes a Plan. This should identify the process by which the Sustainability Appraisal has been carried out, and the baseline information used to inform the process and the outcomes of that process. Sustainability Appraisal is a tool for appraising policies to ensure they reflect social, environmental, and economic factors.
- The Plan must have regard to any Sustainable Community Strategy (SCS) for its area. The SCS is usually prepared by the Local Strategic Partnership which is representative of a range of interests in the LPA's area. The SCS is subject to consultation but not to an independent examination.

You should consider the following before making a representation on compliance with the duty to co-operate:

Appendix 2: Guidance Notes on Making a Representation

- The duty to co-operate came into force on 15 November 2011 and any plan submitted for examination on or after this date will be examined for compliance. LPAs will be expected to provide evidence of how they have complied with any requirements arising from the duty.
- The PCPA establishes that non-compliance with the duty to cooperate cannot be rectified after the submission of the Plan. Therefore the Inspector has no power to recommend modifications in this regard. Where the duty has not been complied with, the Inspector has no choice but to recommend non-adoption of the Plan.

Soundness

The purpose of the examination is to enable the inspector to decide whether the plan is 'sound'. For a plan to be sound, it must be:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities
- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

The above points should be considered when making a representation.

The Plan should enable the delivery of sustainable development in accordance with the policies in the NPPF.

If you think the content of the Plan is not sound because it does not include a policy where it should do, you should go through the following steps before making representations:

- Is the issue with which you are concerned already covered specifically by national planning policy? If so it does not need to be included?
- Is what you are concerned with covered by any other policies in the Plan on which you are seeking to make representations, or in any other Plan?
- If the policy is not covered elsewhere, in what way is the Plan unsound without the policy?
- If the Plan is unsound without the policy, what should the policy say?

General advice

If you wish to make a representation seeking a modification to a Plan or part of a Plan you should make clear in what way the Plan or part of the Plan is not sound having regard to the legal compliance, duty to cooperate and the four requirements of soundness set out above. You should try to support your representation by evidence showing why the Plan should be modified. It will be helpful if you also say precisely how you think the Plan should be modified. Representations should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested modification, as there will not normally be a subsequent opportunity to make further submissions based on the original representation made at publication. After this stage, further submissions will be only at the request of the Inspector, based on the matters and issues he/she identifies for examination.

Where there are groups who share a common view on how they wish to see a Plan modified, it would be very helpful for that group to send a single representation which represents the view, rather than for a large number of individuals to send in separate representations which repeat the same points. In such cases the group should indicate how many people it is representing and how the representation has been authorised.

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