

This Report will be made public on 13 September 2022



Report Number **C/22/34**

To: Cabinet
Date: 21st September 2022
Status: Key Decision
Responsible Officer: David Whittington Strategy & Policy Senior Specialist
Cabinet Member: Councillor David Monk Leader of the Council

SUBJECT: LYMINGE NEIGHBOURHOOD AREA

SUMMARY: Lyminge Parish Council has submitted a 'neighbourhood area' application, the first stage in producing a neighbourhood development plan. As the proposed area is the same as the parish boundary, the District Council must now designate it.

REASONS FOR RECOMMENDATIONS

Regulation 5A of the Neighbourhood Planning (General) Regulations 2012 (as amended) indicates that if the local planning authority receives an area application from a parish council that consists of the whole of the parish council's area, then it must exercise its powers under section 61G of the Town and Country Planning Act 1990 (as amended) to designate the specified area as a neighbourhood area.

RECOMMENDATIONS:

- 1. To receive and note report C/22/34.**
- 2. To designate the Lyminge Neighbourhood Area.**

1. BACKGROUND

- 1.1 Neighbourhood planning was introduced by the Localism Act in 2011. The idea behind localism is that decision-making be passed to a more local level, from national or local government to local communities. Parish and town councils or neighbourhood forums (in unparished areas) can produce neighbourhood plans for their local areas, putting in place a strategy and policies for the future development of the area.
- 1.2 There are two main routes for neighbourhood planning, neighbourhood plans¹ and neighbourhood development orders (including community right to build orders)². The production of each generally follow the same plan making process. Within the Folkestone & Hythe District, there is currently only one neighbourhood development plan that has been brought into force, St. Mary in the Marsh. There are no development orders.
- 1.3 Lyminge Parish Council has decided to undertake a neighbourhood development plan. The first stage in producing either a plan or an order is to designate the 'neighbourhood area', an identified geographical area in which the planning policies will operate.
- 1.4 When designated this will be the sixth neighbourhood area in the district, the others being St Mary in the Marsh, Hythe, New Romney, Sellindge and Lympe. (As noted above, St Mary in the Marsh went on to complete a neighbourhood development plan for the parish, but the remaining four areas did not proceed beyond designation stage.)

Consideration of the Neighbourhood Area Application

- 1.5 The Neighbourhood Planning (General) Regulations 2012 (as amended) and the Town and Country Planning Act 1990 (as amended by the Localism Act 2011) set out the considerations for the neighbourhood area application by the district council.
- 1.6 Essentially the district council as local planning authority must:
 - Ensure the correct information has been submitted in the application;
 - Consider the desirability of designating the whole of the area; and
 - Consider whether the area submitted should be designated as a 'business area'. A 'business area' would be a neighbourhood area which is wholly or predominantly business in nature.
- 1.7 Regulation 5 (1) sets out what a parish council must include in their application. These requirements are:

¹ A neighbourhood plan puts in place planning policy for a neighbourhood area to guide future development. A neighbourhood plan sets out the use and development of land and may contain a vision, aims, planning policies, proposals for improving the area or providing new facilities, or allocation of key sites for specific kinds of development. The legislation only permits one plan in one neighbourhood area.

² A neighbourhood development order is a means for parish and town councils to grant planning permission for certain kinds of development within a specified area. For example, a neighbourhood development order could allow improvements to shop fronts or extensions to houses or other buildings. The legislation permits multiple orders in one neighbourhood area.

- a) a map which identifies the area to which the area application relates;
- b) a statement explaining why this area is considered appropriate to be designated as a neighbourhood area; and
- c) a statement that the organisation or body making the area application is a relevant body for the purposes of section 61G of the 1990 Act.

1.8 Lyminge Parish Council's application for a neighbourhood area is attached in Appendix 1. The requirements set out above have been met as the parish council's application includes:

- a) a map outlining the parish boundary as the neighbourhood area;
- b) a statement setting out why the parish council has decided on the parish boundary. They have stated that the '...area has been selected as it is the borders of the Lyminge Parish, and the Council have taken the leadership in developing the plan with our community...'; and
- c) a statement that the parish council is a qualifying body under Section 61G (2) of the Town and Country Planning Act 1990 (as amended).

1.9 A local planning authority may decline to consider an area application if the relevant body has already made an area application and a decision has not yet been made on that application (Regulation 5(2)). There are no alternative neighbourhood areas for Lyminge being considered at this time.

1.10 The Regulations were updated in 2016 to enable the designation of an area without consultation if a parish or town council submitted an area the same as their parish boundary (Regulation 5A). The area submitted by Lyminge Parish Council is the same as their parish boundary. Therefore, consultation by the district council is not required.

1.11 Regulation 5A then states that '...the local planning authority must exercise their powers under section 61G of the 1990 Act to designate the specified area as a neighbourhood area'. Cabinet must, therefore, now designate the neighbourhood area.

Next Stages

1.12 When the Neighbourhood Area is designated the district council must publish it on the web site and '...in such a manner to bring it to the attention of people who work, live or carry on business in the neighbourhood area'.

1.13 The parish council will produce the neighbourhood development plan and carry out the pre-submission consultation in line with the legislation. Local planning authorities have a duty to support parish councils with their neighbourhood development plans. This can include officer time and the provision of data but does not include financial assistance. Grants are available for parish and town councils to assist with their work (please see paragraph 1.21 below).

- 1.14 When the plan is ready, the Lyminge Parish Council will submit the plan to the district council. The district council will publicise the plan for consultation and arrange for the independent examination.
- 1.15 If successful at the examination stage, with modifications if necessary, then the district council will arrange the neighbourhood development plan referendum. A referendum will be held of all registered voters within Lyminge parish; voters will be asked a 'yes' or 'no' question as to whether they want the district council to use the neighbourhood development plan to help it decide planning applications in the parish. If there is a majority 'yes' vote, then the plan will need to be formally brought into force by the district council and becomes part of the statutory development plan for the area against which planning applications will be assessed.
- 1.16 The development plan for the district currently consists of the Core Strategy Review (2022), the Places and Policies Local Plan (2020), the Kent Minerals and Waste Local Plan (2020) and the St Mary in the Marsh Neighbourhood Development Plan (2019). The neighbourhood development plan will need to be in 'general' conformity with the strategic policies set out in the development plan.

Financial Assistance

- 1.17 The Department for Levelling Up, Housing and Communities has confirmed funding for the 2022/23 financial year to support the '...vital role...' local authorities play in the neighbourhood planning process.
- 1.18 Local authorities can claim £5,000 per area designation but only for the first five designated areas. This will be the sixth in the district so the district council will not be able to claim this funding.
- 1.19 Local authorities can claim £20,000 from when the decision statement detailing the intention to send the plan to referendum has been issued (after a successful examination).
- 1.20 It should be noted that the Department for Levelling Up, Housing and Communities reviews funding each year and whilst funding has been provided for local authorities since the neighbourhood plan process was first introduced, it is not guaranteed this will continue in the future.
- 1.21 The Government has also provided grant funding to parish and town councils consisting of a Basic Grant Funding (up to £10,000) and Additional Grant Funding (up to a further £8,000). Both are subject to eligibility criteria. Parish and town councils can also apply for technical support.

Future Planning Reforms

- 1.22 The Levelling-Up and Regeneration Bill, currently before parliament, proposes major changes to the planning system.
- 1.23 While the draft legislation may change, the explanatory notes to the Bill indicate that the Government's intention is for neighbourhood planning to

continue as part of the new system. The notes state that local plans will be given more weight in planning decisions and this increased status will also apply to other types of plan, including neighbourhood plans.

- 1.24 The Bill will introduce a new neighbourhood planning tool called a 'neighbourhood priorities statement'. This is intended to provide communities with a simpler and more accessible way to set out their key priorities and preferences for their local areas. The Bill will also prescribe in more detail what communities can address in their neighbourhood plans and ensure that neighbourhood plans are aligned with wider changes to the planning system.

2. CONSULTATION

- 2.1 Regulation 5A of the Neighbourhood Planning (General) Regulations 2012 (as amended) indicates that if the local planning authority receives an area application from a parish council that consists of the whole of the parish council's area, then it must exercise its powers under section 61G of the Town and Country Planning Act 1990 (as amended) to designate the specified area as a neighbourhood area.
- 2.2 The Regulations only stipulate consultation for a neighbourhood area if the area does not follow the parish boundary (options include being an area smaller than the parish, including part of neighbouring parish or two parishes working together).
- 2.3 As set out above, the parish council will carry out consultation with the local community when developing the plan. When the parish council submit the plan, the district council will publish the plan for consultation and arrange for the examination. If successful at examination, the district council will also prepare and hold the referendum.

3. OPTIONS

- 3.1 The options the district council can consider are limited. A local planning authority can decline an area application if the required information is not submitted. The application submitted by Lyminge Parish Council meets the requirements set out in the Regulations so cannot be declined.
- 3.2 The application can be declined if there is another area application currently being considered. There are no other area applications for Lyminge currently being considered.
- 3.3 Regulation 5A of the Neighbourhood Planning (General) Regulations 2012 (as amended) indicates that if the local planning authority receives an area application from a parish council that consists of the whole of the parish council's area, then it must exercise its powers under section 61G of the Town and Country Planning Act 1990 (as amended) to designate the specified area as a neighbourhood area. As outlined above, the submitted neighbourhood area is the same as the parish boundary. The Council must, therefore, designate the neighbourhood area.

3.4 The Act (S61H) indicates that the local planning authority must consider whether the area be designated as a business area. As indicated above, the area must be wholly or predominantly business in nature, such as an industrial estate, town centre or business park, but this application covers the whole of a rural parish and therefore does not meet the requirement.

4. RISK MANAGEMENT ISSUES

4.1 There is not a great deal of risk management involved in the designation of the neighbourhood area. The Government’s legislation provides clear guidance on the process that will need to be followed.

4.2 In the longer term, the risk would be associated with the Neighbourhood Development Plan, which could fail at the examination stage or at the referendum.

Perceived risk	Seriousness	Likelihood	Preventative action
Plan fails at examination	High	Medium	Working with the parish council to ensure their emerging plan meets the requirements in the legislation such as having ‘regard’ to national legislation and is in ‘general conformity’ with the strategic policies in the development plan.
The plan fails to get a majority ‘yes’ vote at referendum	High	Medium	Working with the parish council to ensure engagement with the community has been undertaken and policies and proposals reflect the community’s needs.

5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

5.1 Legal Officer’s Comments (EC)

There are no legal implications arising directly from this report.

5.2 Finance Officer’s Comments (RH)

Financial implications are noted within the report (Financial Assistance). It is noted that currently F&HDC can claim £20,000 to cover costs incurred, however the Department for Levelling Up, Housing and Communities does review funding each year.

5.3 Diversities and Equalities Implications (GE)

There are no equality and diversity implications directly arising from this report. A draft of the neighbourhood development plan developed by Lyminge Parish Council will be subjected to a public consultation and independent examination arranged on their behalf by the district council. The district council should ensure suitable awareness is raised of the public consultation and independent examination through its communication channels at the appropriate times to allow for local communities impacted by the plan to have their say.

5.4 **Climate Change Implications (DW)**

There are no Climate Change implications relating to the designation of the neighbourhood area. When the parish council submit their neighbourhood development plan, the policies within it will have to have 'regard' to national policy and be in 'general conformity' with the strategic policies in the district's development plan. This will include those for climate change.

6. **CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

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The following background documents have been relied upon in the preparation of this report:

Appendices:

Appendix 1: Lyminge Neighbourhood Area application.