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and examinations

## **Report on the Lydiate Neighbourhood Plan 2017 - 2030**

**An Examination undertaken for Sefton Council with the support of  
Lydiate Parish Council on the April 2017 submission version of the Plan.**

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Date of Report: 18 September 2018

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## **Main Findings - Executive Summary**

From my examination of the Lydiate Neighbourhood Plan (the Plan) and its supporting documentation, including the representations made, I have concluded that subject to the policy modifications set out in this report, the Plan meets the Basic Conditions.

I have also concluded that:

- the Plan has been prepared and submitted for examination by a qualifying body – Lydiate Parish Council;
- the Plan has been prepared for an area properly designated – the Lydiate Neighbourhood Plan Area – Figure 1 in the Plan;
- the Plan specifies the period to which it is to take effect – 2017 - 2030; and
- the policies relate to the development and use of land for a designated neighbourhood area.

I recommend that the Plan, once modified, proceeds to Referendum on the basis that it has met all the relevant legal requirements.

I have considered whether the referendum area should extend beyond the designated area to which the Plan relates and have concluded that it should not.

## **1. Introduction and Background**

### *Lydiate Neighbourhood Plan 2017 - 2030*

- 1.1 The irregularly-shaped designated area lies to the southwest of Ormskirk. From the southern boundary, it is traversed in a northeasterly direction by the A59 and towards the northwest by the A5147. The Leeds & Liverpool Canal runs through the middle of the area, roughly in a north-south direction.
- 1.2 The majority of the area is rural in nature. However, the southern-central part of Lydiate is suburban, being an extension of Maghull in the direction of Liverpool to the south. Rural Lydiate and suburban Lydiate are more fully described in the Parish Council's April 2018 Character Assessment<sup>1</sup>. In addition, key characteristics are set out in Section 4.10 of the Neighbourhood Plan.
- 1.3 As indicated below, initial work towards preparation of the Plan began in 2015. Designation in September 2015 was followed by establishment of a

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<sup>1</sup> Character Assessment, Lydiate Parish Council, 19 April 2018.

Steering Group, which met monthly to oversee development of the Plan. Surveys of local residents, young people and businesses were used to develop the Vision and Objectives. Attendance at the Lydiate Festival and consultation under Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 (as amended) ("the 2012 Regulations") were important stages in the participation process.

### *The Independent Examiner*

- 1.4 As the Plan has now reached the examination stage, I have been appointed as the examiner of the Lydiate Neighbourhood Plan by Sefton Council with the agreement of Lydiate Parish Council.
- 1.5 I am a chartered town planner and former government Planning Inspector with over forty years experience. I have worked in both the public and private sectors. I am an independent examiner and do not have an interest in any of the land that may be affected by the draft Plan.

### *The Scope of the Examination*

- 1.6 As the independent examiner I am required to produce this report and recommend either:
- (a) that the neighbourhood plan is submitted to a referendum without changes; or
  - (b) that modifications are made and that the modified neighbourhood plan is submitted to a referendum; or
  - (c) that the neighbourhood plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.
- 1.7 The scope of the examination is set out in Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990 (as amended) ("the 1990 Act"). The examiner must consider:
- whether the Plan meets the Basic Conditions;
  - whether the Plan complies with provisions under Section 38A and Section 38B of the Planning and Compulsory Purchase Act 2004 (as amended) ("the 2004 Act"). These are:
    - it has been prepared and submitted for examination by a qualifying body for an area that has been properly designated by the local planning authority;
    - it sets out policies in relation to the development and use of land;

- it specifies the period during which it has effect;
  - it does not include provisions and policies for “excluded development”;
  - it is the only neighbourhood plan for the area and does not relate to land outside the designated neighbourhood area;
  - whether the referendum boundary should be extended beyond the designated area should the Plan proceed to referendum; and
- such matters as prescribed in the 2012 Regulations.

1.8 I have considered only matters that fall within Paragraph 8(1) of Schedule 4B to the 1990 Act, with one exception. That is the requirement that the Plan is compatible with the Human Rights Convention.

#### *The Basic Conditions*

1.9 The “Basic Conditions” are set out in Paragraph 8(2) of Schedule 4B to the 1990 Act. In order to meet the Basic Conditions, the neighbourhood plan must:

- have regard to national policies and advice contained in guidance issued by the Secretary of State;
- contribute to the achievement of sustainable development;
- be in general conformity with the strategic policies of the development plan for the area;
- be compatible with and not breach European Union (EU) obligations; and
- meet prescribed conditions and comply with prescribed matters.

1.10 Regulation 32 of the 2012 Regulations prescribes a further Basic Condition for a neighbourhood plan. This requires that the neighbourhood plan should not be likely to have a significant effect on a European Site (as defined in the Conservation of Habitats and Species Regulations 2017) or a European Offshore Marine Site (as defined in the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007) either alone or in combination with other plans or projects.

## 2. Approach to the Examination

### *Planning Policy Context*

- 2.1 The Development Plan for this part of Sefton Council, not including documents relating to excluded minerals and waste development, is the Local Plan for Sefton, adopted April 2017.
- 2.2 Relevant planning policy for England is set out principally in the National Planning Policy Framework (NPPF). Related Planning Practice Guidance (PPG) offers guidance on how this policy should be implemented. A revised NPPF was published during this examination on 24 July 2018 replacing the previous 2012 NPPF. The transitional arrangement for local plans and neighbourhood plans are set out in Paragraph 214 of the 2018 NPPF. This provides that, "The policies in the previous Framework will apply for the purposes of examining plans, where those plans are submitted on or before 24 January 2019."
- 2.3 A footnote clarifies that, for neighbourhood plans, "submission" in this context means where a qualifying body submits a plan to the local planning authority under Regulation 15 of the 2012 Regulations. The Lydiate Neighbourhood Plan was submitted to the Council in the summer of 2018. Thus, it is the policies in the previous NPPF that are applied to this examination and all references in this report are to the March 2012 NPPF and its accompanying PPG<sup>2</sup>.

### *Submitted Documents*

- 2.4 I have considered all policy, guidance and other reference documents I consider relevant to the examination, including those submitted which comprise:
- the draft Lydiate Neighbourhood Development Plan 2017 - 2030, 19 April 2017 (sic);
  - a map which identifies the area to which the proposed Neighbourhood Development Plan relates;
  - the Consultation Statement, 19 April 2018;
  - the Basic Conditions Statement, 19 April 2018;
  - all the representations that have been made in accordance with the Regulation 16 consultation;

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<sup>2</sup> View at: <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

- the Strategic Environmental Assessment / Habitats Regulation Assessment Final Screening Report, January 2018, prepared by Sefton Council; and
- the responses from Sefton Council and the qualifying body dated 22 August 2018, in response to the questions set out in my letter of 10 August 2018<sup>3</sup>.

#### *Site Visit*

2.5 I made an unaccompanied site visit to the Neighbourhood Plan Area on 18 August 2018 to familiarise myself with it and visit relevant sites and areas referenced in the Plan and evidential documents.

#### *Written Representations with or without Public Hearing*

2.6 This examination has been dealt with by written representations. There were no requests for an appearance amongst the Regulation 16 representations. I considered hearing sessions to be unnecessary as the consultation responses clearly articulated the objections to the Plan and presented arguments for and against the Plan's suitability to proceed to a referendum.

#### *Modifications*

2.7 Where necessary, I have recommended modifications to the Plan (**PMs**) in this report in order that it meets the Basic Conditions and other legal requirements. For ease of reference, I have listed these modifications separately in the Appendix.

### **3. Procedural Compliance and Human Rights**

#### *Qualifying Body and Neighbourhood Plan Area*

3.1 The Lydiate Neighbourhood Plan has been prepared and submitted for examination by Lydiate Parish Council which is a qualifying body for an area that was designated by Sefton Council on 28 September 2015.

3.2 It is the only neighbourhood plan for the Plan area. It does not relate to land outside the designated Neighbourhood Plan Area.

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<sup>3</sup> View at: <https://www.sefton.gov.uk/planning-building-control/planning-policy-including-local-plan-and-neighbourhood-planning/neighbourhood-planning.aspx>

### *Plan Period*

- 3.3 The Plan specifies clearly the period to which it is to take effect, which is from 2017 to 2030.

### *Neighbourhood Plan Preparation and Consultation*

- 3.4 Details of the Plan's preparation and consultation are set out in the Parish Council's Consultation Statement, 19 April 2018. Application for designation as a Neighbourhood Plan Area was made in 2015. Following statutory publicity, the Neighbourhood Plan Area was approved by Sefton Council on 28 September 2015.
- 3.5 During the summer of 2016, the Parish Council carried out surveys of local residents, young people and businesses to find out what they wanted for the future of the area and what was most important to them. The results were used to develop the Vision and Objectives for the Neighbourhood Plan.
- 3.6 A second consultation exercise was undertaken under Regulation 14 between 1 December 2017 and 31 January 2018. This was extended until 9 March 2018, to allow landowners to consider the proposals in more detail. The consultation process gained residents' and stakeholder views on the draft Neighbourhood Plan and led to updating. Some 36 responses are recorded in the Consultation Statement, together with the action taken.
- 3.7 At the Regulation 16 stage, 10 responses were received. The majority of the responses were from statutory consultees. In addition, there were three responses from interested residents.
- 3.8 I confirm that the legal requirements have been met by the consultation process. In addition, there has been regard to the advice in PPG on plan preparation.

### *Development and Use of Land*

- 3.9 The Plan sets out policies in relation to the development and use of land in accordance with Section 38A of the 2004 Act.

### *Excluded Development*

- 3.10 The Plan does not include provisions and policies for "excluded development".

### *Human Rights*

- 3.11 The Parish Council's Basic Conditions Statement, at Paragraph 6.1, records that the Plan has regard to the fundamental rights and freedoms

guaranteed under the European Convention on Human Rights and complies with the Human Rights Act. From my independent assessment, I see no reason to disagree.

#### **4. Compliance with the Basic Conditions**

##### *EU Obligations*

- 4.1 The Neighbourhood Plan was screened for Strategic Environmental Assessment (SEA) by Sefton Council, which found that SEA was not required. Having read the SEA Screening Report, I support this conclusion. The Plan was also screened for Habitats Regulations Assessment (HRA), with the conclusion that appropriate assessment would not be required. Natural England agreed with the report's conclusions.
- 4.2 With regard to HRA, I note that the Neighbourhood Plan has a policy supporting housing on land north of Kenyon's Lane (Policy LNP HOU1). This is pursuant to a policy in the Local Plan, where there is a requirement to ensure that sufficient information is provided with the planning application to enable the Council to make a Habitats Regulations Assessment. However, as the Neighbourhood Plan does not seek to allocate the site, I agree that no further assessment is required.

##### *Main Issues*

- 4.3 Having regard for the Lydiate Neighbourhood Plan, the consultation responses and other evidence, and the site visit, I consider that there are four main issues relating to the Basic Conditions for this examination. The main issues relate to the first four of five policies in the Plan. The main issues concern:
- Protecting and Enhancing the Character of Lydiate;
  - Land north of Kenyon's Lane;
  - Land at Lambshear Lane; and
  - Non-Designated Heritage and Cultural Assets.

##### *Introduction to the Discussion*

- 4.4 This section of my report sets out modification that are necessary in order to meet the Basic Conditions. Some of the proposed modifications are

factual corrections<sup>4</sup>. Others are necessary in order to have closer, appropriate regard to national policies and advice. In particular, policies should be clear and unambiguous; also, supported by appropriate evidence<sup>5</sup>.

#### *Protecting and Enhancing the Character of Lydiate*

- 4.5 Policy LNP DEV1 is concerned to ensure that development proposals protect and enhance the character and heritage of the natural and built environment of Lydiate. The policy accords with various provisions of the NPPF including those relating to good design (Section 7), the natural environment (Section 11) and the historic environment (Section 12).
- 4.6 Through the wording of the policy, it would apply to sites allocated in the Local Plan. However, as confirmed by the Parish Council<sup>6</sup>, it is also intended to apply to sites allocated in any replacement or revised Local Plan and thus included sites that are safeguarded but not yet allocated. This intention is not covered in the present wording of the policy. The matter would be corrected through proposed modification **PM1**.

#### *Land North of Kenyon's Lane*

- 4.7 Land north of Kenyon's Lane is allocated for housing purposes in the Local Plan. Neighbourhood Plan Policy LNP HOU1 indicates that permission for housing proposals will be granted in circumstances where specified criteria are met. This is in line with Paragraph 154 of the NPPF whereby policies should give a clear indication of how decision makers would react to a development proposal.
- 4.8 Criterion iii) of the policy is designed to safeguard access to Moreton's Dairy should other parts of the site be developed first. However, the provision is lacking in clarity. This would be corrected under proposed modification **PM2**.
- 4.9 Criterion iv) looks for houses towards the eastern area of the site to face Northway with a landscape buffer similar to the arrangement where Ridgeway Drive runs along Northway. I saw that this landscape buffer comprises a flat, treed, grass verge and hedge. It would offer little noise attenuation. Whilst the solution would be acceptable in visual terms, potential traffic noise from the A59 needs to be taken into consideration. This omission would be included under proposed modification **PM3**. In

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<sup>4</sup> Modifications for the purpose of correcting errors is provided for in Paragraph 10(3)(e) of Schedule 4B to the 1990 Act.

<sup>5</sup> PPG Reference ID: 41-041-20140306.

<sup>6</sup> Response to the points raised by the examiner, Lydiate Parish Council, 22 August 2018.

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terms of sustainable development, the modification would address an environmental role by helping to minimise pollution (NPPF Paragraph 7).

- 4.10 There is a mistake in the wording of criterion vi) whereby “the arrangement the height of housing” should read “the arrangement and the height of housing”. This would be corrected in proposed modification **PM4**.
- 4.11 A final point under this heading concerns flood risk. Criterion xi) of Policy LNP HOU1 calls for consultation with the Environment Agency. However, the agency’s evidence<sup>7</sup> points out that the site is within Flood Zone 1. Formal consultation would not be expected. As such, the wording of the criterion needs to be changed; also, to be consistent with other references to the same matter (Policy LNP HOU2). Proposed modification **PM5** sets out a suitable change.

#### *Land at Lambshear Lane*

- 4.12 Land at Lambshear Lane is located between the Green Belt and the urban area but is “safeguarded” in the adopted Local Plan. Policy LNP HOU2 sets out the circumstances under which planning permission for residential development would be granted in the event that the site were released through review or replacement of the Local Plan. Again, the policy is in line with Paragraph 154 of the NPPF by giving a clear indication of how decision makers would react to a development proposal.
- 4.13 One of the requirements of the policy is that proposals should be consistent with a single detailed master plan for the whole site as approved before the submission of any planning application. This is a laudable objective. However, the Council would not be able to invalidate a planning application or refuse planning permission just because there had been no agreement to a master plan at the pre-application stage. The policy would have to be worded more loosely and embrace both approval of a “voluntary” master plan in advance of a planning application or a master plan that would accompany the related application. Proposed modification **PM6** addresses this difficulty.
- 4.14 A further matter relates to policy criterion xiv). This refers to strategic landscaping incorporating “the natural lay of the land”. This expression is lacking in clarity. A clear form of wording is set out in proposed modification **PM7**.

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<sup>7</sup> Regulation 16 representations of the Environment Agency (10).

## *Non-Designated Heritage and Cultural Assets*

- 4.15 Neighbourhood Plan Policy LNP HER is directed at safeguarding eight buildings of local heritage and cultural interest. The provisions are analogous to those supported in Paragraph 135 of the NPPF. I have considered whether the policy should apply to any other buildings identified in the future. Given that designation is often part of an on-going process, I agree with the evidence<sup>8</sup> that this would be an appropriate addition. Proposed modification **PM8** refers.
- 4.16 In a further proposed modification (**PM9**), I am recommending an alternative form of wording that will refer to *elements* of buildings that contribute to the significance of the assets. This is to meet the evidence of Historic England<sup>9</sup>.
- 4.17 Heritage and cultural assets in Lydiate are identified on a plan in Appendix 1 of the Neighbourhood Plan. The notation includes "Other Feature (The Gallops)". However, it is now agreed<sup>10</sup> that The Gallops is not an asset suitable to be covered by Policy LNP HER. It should be deleted from the Plan, as under proposed modification **PM10**.

## *Other Matters*

- 4.18 The Neighbourhood Plan contains a fifth policy, Policy LNP PATH. This deals with the protection and enhancement of footpaths, cycle ways, canal towpaths and bridle paths. The policy accords with NPPF policy on sustainable transport (Section 4) and complies with the Basic Conditions.
- 4.19 Various representors have suggested additions to the Plan. However, as confirmed in PPG<sup>11</sup>, neighbourhood plans are not obliged to contain policies addressing all types of development. I am satisfied that matters relating to the Basic Conditions have been dealt with above.
- 4.20 There are a number of other points that require attention but which can be addressed by the Parish Council of its own volition. They do not affect the Basic Conditions:
- In Paragraph 1.15 (i) and (ii), the Consultation Statement is not attached as an Annex (whether Annex 1 or Annex 4).

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<sup>8</sup> Regulation 16 representations of Historic England (5).

<sup>9</sup> Regulation 16 representations of Historic England (5).

<sup>10</sup> Response to the points raised by the examiner, Lydiate Parish Council, 22 August 2018.

<sup>11</sup> PPG Reference ID: 41-040-20160211.

- Paragraph 2.1 sets out the Vision for the parish up to 2030 (not 2027).
- In Paragraph 3.5, Issue 3 would benefit from cross-reference to Section 5.0.
- With regard to land at Turnbridge Road (Paragraph 3.2), work does not appear to have started on site.
- The formatting in Paragraph 3.3 causes confusion. Only 3.3(i) and (ii) are Local Plan requirements. The matters in 3.3(iii) to (vi) are part of the Plan's context.
- The matters in Paragraph 3.4 D to F are not part of the explanatory note on safeguarding.
- The numbering in Section 4 is abnormal, starting as it does at Paragraph 4.10.
- Point "H" in the text following Policy LNP DEV1 should refer to Appendix 1, not Appendix 4.
- At Paragraph 4.11, the Housing Objective is Objective 3, not Objective 4.
- Paragraph 4.42 should refer to Appendix 1, not Annex 1.

## 5. Conclusions

### *Summary*

- 5.1 The Lydiate Neighbourhood Plan has been duly prepared in compliance with the procedural requirements. My examination has investigated whether the Plan meets the Basic Conditions and other legal requirements for neighbourhood plans. I have had regard for all the responses made following consultation on the Neighbourhood Plan and the evidence documents submitted with it.
- 5.2 I have made recommendations to modify a number of policies and text to ensure the Plan meets the Basic Conditions and other legal requirements. I recommend that the Plan, once modified, proceeds to referendum.

### *The Referendum and its Area*

- 5.3 I have considered whether or not the referendum area should be extended beyond the designated area to which the Plan relates. The Lydiate Neighbourhood Plan as modified has no policy or proposals which I

consider significant enough to have an impact beyond the designated Neighbourhood Plan boundary requiring the referendum to extend to areas beyond the Plan boundary. I recommend that the boundary for the purposes of any future referendum on the Plan should be the boundary of the designated Neighbourhood Plan Area.

*Overview*

- 5.4 It is evident that a considerable amount of time and effort has been devoted to the development and production of this Plan and I congratulate those who have been involved. The Plan should prove to be a useful tool for future planning and change in Lydiate over the coming years.

*Andrew S Freeman*

EXAMINER

## Appendix: Modifications

Proposed modification number (PM)	Page no./ other reference	Modification
PM1	Page 11	In Paragraph ii) of Policy LNP DEV1, after the second reference to "Local Plan", insert the words "or any revised or replacement Local Plan".
PM2	Page 14	In Policy LNP HOU1 iii), replace "the remainder of the site" with "the dairy".
PM3	Page 14	In Policy LNP HOU1 iv), before "high quality landscaping", insert ", subject to consideration of traffic noise,".
PM4	Page 14	In Policy LNP HOU1 vi), replace "arrangement the height of housing" with "arrangement and the height of housing".
PM5	Page 15	In Policy LNP HOU1 xi), replace with the wording used in Policy LNP HOU2 xii).
PM6	Page 17	In Policy LNP HOU2 i), delete the words "before any planning application is submitted" and replace with "and which may be submitted prior to or with the first application".
PM7	Page 18	In Policy LNP HOU2 xiv), replace "incorporate" with "take account of".
PM8	Page 20	At the end of the first paragraph of Policy LNP HER, add "Any such assets identified in the future will also be subject to this policy".
PM9	Page 20	In Policy LNP HER, replace "aspects" with "elements".
PM10	Page 25	On the plan in Appendix 1, remove reference to "Other Feature (The Gallops)".