



Growth and Communities

Capel Neighbourhood Plan
Planning Policy
Planning Services
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BY EMAIL ONLY

17 October 2023

Dear Sir / Madam,

Re: Capel Parish Neighbourhood Plan (2022-2038) - Regulation 16 Consultation

Thank you for consulting Kent County Council (hereafter referred to as the County Council) on the Capel Parish Neighbourhood Plan, in accordance with the Neighbourhood Planning (General) Regulations 2012.

The County Council has reviewed the Neighbourhood Plan and for ease of reference, has provided general comments on the Neighbourhood Plan followed by comments structured under the chapter headings and policies used within the document.

General

Public Rights of Way (PRoW): As a general statement, the County Council is keen to ensure its interests are represented with respect to its statutory duty to protect and improve PRoW in the county (PRoW is the generic term for Public Footpaths, Public Bridleways, Restricted Byways, and Byways Open to All Traffic). The County Council is committed to working in partnership with local and neighbouring authorities, councils and others to achieve the aims contained within the County Council [Rights of Way Improvement Plan](#) (ROWIP) and the County Council [Framing Kent's Future](#) 2022-2026. The County Council intends for people to enjoy, amongst others, a high quality of life with opportunities for an active and healthy lifestyle, improved environments for people and wildlife, and the availability of sustainable transport choices.

Various changes to the Neighbourhood Plan have been made since the Regulation 14 consultation stage, and the County Council appreciates the amendments made in response to the County Council's submission to this earlier consultation.

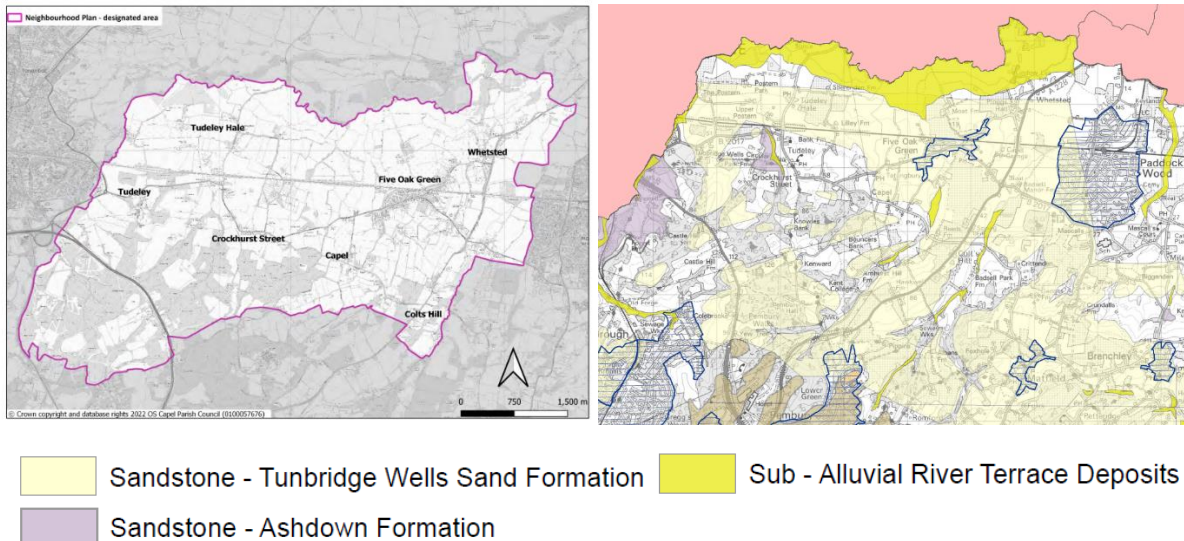
The Neighbourhood Plan to PRoW, which is encouraged given the benefits residents can gain from the PRoW network; however, the term is not defined for those uncertain of its

meaning. To aid understanding it is recommended that the following is included the Neighbourhood Plan: ***Public Rights of Way: the generic term for Public Footpaths, Public Bridleways, Restricted Byways, and Byways Open to All Traffic. These are public highways as much as public roads.***

The County Council would ask that the Neighbourhood Plan makes reference to the ROWIP, a statutory strategic document. This will assist successful partnership working, deliver improvements to the PRow network in the town, and help avoid loss of access to funding opportunities.

Minerals and Waste: The County Council, as Minerals and Waste Planning Authority, notes that the Neighbourhood Plan does accord with the [Kent Minerals and Waste Local Plan 2013-30 \[early Partial Review 2020\]](#) (KMWLP) in its reference to the presence of safeguarded waste management and/or mineral processing facilities in the area and stating that no development will be within 250m of such facilities. Thus, these facilities are not threatened with by either direct loss or the citing of incompatible development.

There are safeguarded land-won minerals in the Neighbourhood Plan area. An extract of the Plan area and the Mineral Safeguarding Area proposals map for the Tunbridge Wells Borough Council area in the KMWLP are included below. The Neighbourhood Plan recognises these safeguarded minerals and states that it does not propose any development that would threaten them with coincident sterilisation – the County Council is supportive of this.



2. About Capel

Neighbourhood Plan Objectives

Highways and Transportation: In relation to Neighbourhood Plan Objective 5, the County Council, as Local Highways Authority, draws the Neighbourhood Planning Group’s attention to schemes for active travel that are included in the [Tunbridge Wells Local Cycling and](#)

[Walking Infrastructure Plan \(LCWiP\)](#) and in the [Tunbridge Wells Borough Council Local Plan Infrastructure Delivery Plan](#). Funding for such schemes can be sought through development contributions. The Neighbourhood Plan should recognise that Transport Assessments will inform where mitigation is needed to accommodate development generated traffic.

PRoW: The County Council provided commentary in response to the Regulation 14 consultation regarding Objective 5 and the intention to establish a 'cohesive movement strategy'. Clarity is still awaited on how the Neighborhood Plan will establish this strategy and whilst Policies C14 - C16 will contribute, they are not in themselves a strategy. Establishing such a strategy would ordinarily be realised through the County Council, Borough Council and others, given the considerable resource and capability required to deliver it, with Capel Parish Council (CPC) being consulted in its preparation. It is, therefore, recommended that the Objective is re-worded to what the local community can itself deliver.

Sustainable Urban Drainage Systems (SuDS): The County Council, as Lead Local Flood Authority, is pleased to note that the majority of the County Council's comments provided at Regulation 14 stages have been considered in this consultation.

However, the Lead Local Flood Authority continues to have concerns relating to paragraph 2.7 (previously 2.11) and specifically in relation to the inferred flooding as a result of the railway embankment (and thus one would assume the associated culvert). The County Council would suggest this is more as a result of the previous culvert between Five Oak Green Road and Finches Farmhouse. The Neighbourhood Plan could include evidence, if available, of the flooding associated with the railway embankment and culvert as an appendix item.

4. The Neighbourhood Plan Policies

Highways and Transportation: The transport policies included in Figure 3 are supported by the Local Highways Authority. The County Council supports sustainable development and would seek to ensure development within the Neighbourhood Plan area is well served by alternative modes of travel to the private car.

6. Character, Heritage and Design

Heritage Conservation: The County Council was pleased to see that the Neighbourhood Plan has taken a considered and thoughtful approach to the heritage of the Neighbourhood Plan area. The review of the heritage of the area presented in the text is comprehensive, the policies are effective, and the contextual information is very helpful. The County Council is particularly supportive of Chapter 6 and the four policies it includes which will help to conserve Capel's important heritage for future generations.

7. Environment and Green Space

Policy C7: Green and blue infrastructure and delivering biodiversity net gain

Biodiversity: Paragraph 7.8 states that substantial compensation, as quantified by the Defra biodiversity metric, will be considered. However, the County Council highlights that irreplaceable habitats are considered as such and therefore cannot be quantified within the metric. The metric instead indicates that bespoke compensation will need to be designed, and agreed with the relevant consenting body, to justify any losses. The County Council suggests that this paragraph be reworded to indicate that the loss of irreplaceable habitats should only occur in exceptional circumstances (as per the National Planning Policy Framework (NPPF)), and that any losses will need a bespoke compensation strategy.

In respect of the proposed policy, the County Council recommends the following amendments:

*“A. Development proposals should be designed to create, conserve, enhance and manage green spaces and connect chains of green and blue infrastructure, as identified on the Policies Maps, with the aim of delivering a measurable net environmental benefit (where net gain involves a post development increase in biodiversity units of 10%) for local people and wildlife. **All development (unless exempted¹) will be required to result in a minimum biodiversity net gain of 10%, calculated using the latest Defra biodiversity metric/ Small Sites Metric. Unless exempted, proposals for development must be supported by a biodiversity net gain statement.***

~~*Subject to their scale, nature and location, proposals for development must be supported by a biodiversity appraisal, which must demonstrate how negative impacts would be minimised and biodiversity net gain achieved.*~~

*B. The appraisal **biodiversity net gain statement** should demonstrate that where significant harm cannot be avoided, proposed development and other changes should adequately mitigate or, as a last resort, compensate for the harm. ~~The appraisal must demonstrate a measurable biodiversity net gain of 10% by utilising the Defra biodiversity metric (or as amended).~~ Where adherence to the mitigation hierarchy and a minimum 10% biodiversity net gain is not demonstrated, permission for planning **or for change of use** should be refused.”*

In respect of part B of the proposed policy, the County Council would recommend consideration of [Government Guidance on Neighbourhood Planning](#) and need for Neighbourhood Plans to be planned positively.

Policy C8: Managing the environmental impact of development

Biodiversity: In respect of paragraph 7.13, the County Council recommends the following amendments:

¹ Some exemptions for very small sites will apply. These will be in line with outcomes of the biodiversity net gain consultation (unless or until changes come into force through further legislation/guidance). The list of exempted sites are available [here](#).

“The NPPF (para 180) stresses that planning policies and decisions should contribute to and enhance the natural environment including requiring net gain in biodiversity. **Natural assets protected within policy and legislation** ~~Protected natural assets (also area habitats shown on Figure 14-13)~~ in the neighbourhood area include:

the High Weald AONB

*areas of ancient woodland **and veteran trees**²*

RSPB reserve (Tudeley Woods)

Local Wildlife Sites: Somerhill Park, RSPB reserve Tudeley Woods, East Tonbridge copses and dykes and River Medway

Local Green Spaces: as designated in this CNP and the TWBC Local Plan (once adopted)

Native hedgerows (priority habitat)

Woodpasture and parkland (priority habitat)

Traditional orchards (priority habitat)

Lowland meadows (priority habitat)”

The County Council is not able to identify the locations of ancient woodland or important open space on Figure 13, although they are included in the key. The County Council would recommend updating Figure 13 with this information and also including the woodpasture and parkland, traditional orchards and lowland meadows.

In respect of paragraph 7.14 the County Council would recommend the following amendment “*mature ~~and veteran trees~~, ~~hedgerows~~”.*

Veteran trees are given consideration within the NPPF in the same way as ancient woodland. Most native hedgerows are considered priority habitats for conservation and priority habitats are mentioned within the NPPF paragraph 179.

The County Council would recommend that these habitats be included in paragraph 7.13. The section on orchards should also be clarified to make clear the difference between traditional orchard priority habitat and orchards that do not meet this classification.

Policy C8: Managing the Environmental Impact of Development

Biodiversity: The County Council would recommend the following addition to this policy:

Designated Sites, Priority Habitats and Priority Species:

- i. It is expected that development will not result in the loss of, or the deterioration in the quality of Local Wildlife Sites; and/or result in significant adverse impacts upon priority species or habitats***

There are a number of local wildlife sites, priority habitats and species within the Neighbourhood Plan area. These receive consideration within national and local planning policy. Specific mention of these would be of benefit within this policy. It should also be recognised that certain woodlands and hedgerows are priority habitats.

² Not shown on Figure 13, but those recorded are available on the Woodland Trust Ancient Tree Inventory, accessible [here](#)

Furthermore, the County Council would welcome the following additional text in relation to trees and woodland:

“Trees and woodland:

- i. *Proposals which include additional native woodland planting on appropriate sites will be supported, in particular where this enables public access.*
- i. *There should be no unacceptable loss of, or damage to, existing trees or woodlands during or as a result of development. Ancient woodland, priority woodland and veteran trees should be retained and protected within proposals. **Any adverse impacts to ancient woodland and veteran trees will only be acceptable where there are wholly exceptional reasons³ and a suitable compensation strategy has been produced.***

The County Council understood notable trees in the Regulation 14 consultation referred to mature/semi-mature trees of particular note as identified by an arboricultural consultant, or as defined for example by Tree Preservation Order/Conservation Area. This definition does not appear in this drafting of the Neighbourhood Plan. The County Council would recommend the following amendment:

- ii. *If **other** notable trees must be removed where fully justified, they should be replaced with trees of a similar potential size and native species elsewhere on the site.*

9. Transport and Movement

PRoW: In respect of paragraph 9.3, it is recommended to replace first reference to 'styles' with 'stiles' and remove the second entirely i.e. a 'kissing gate' is not a stile.

In respect of paragraph 9.20, this should be amended to refer to Figure 20.

Policy C15 Mitigating vehicular impacts at highway hotspots

Highways and Transportation: The County Council supports the policy direction to promote a shift towards sustainable travel. New development proposals will be required to mitigate the cumulative impact in line with the NPPF. It is recommended that the wording of Policy C15 is amended to the effect that:

*“Development proposals must address to the satisfaction of the highway authority **their** direct and cumulative transport impact. **Whilst the scope of each assessment will depend on the specific development proposal, it is requested that developers consider the following areas in their submissions....”***

³ For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.

Policy C16 Electric Vehicle charging

Highways and Transportation: The County Council supports the policy.

10. Implementation and Plan Review

PRoW: The existence of a 'made' Neighbourhood Plan can have a significant positive impact on a local community's ambitions being realised, and it is therefore important to ensure any Neighbourhood Plan is monitored and reviewed during its lifespan. This is recognised within Section 10; however, in respect of PRoW, the Neighbourhood Plan could specifically commit to a monitoring and review procedure and recommends paragraph 10.5 is revised accordingly.

12. Non-Policy Actions

PRoW: The County Council welcomes recognition of the PRoW network within Section 12, Table 6 – Non-Policy Actions, and for these in future to be constantly reviewed and open to residents' feedback.

The County Council suggests, however, that the use of future developer contributions solely for the upgrade of existing PRoW for shared modal use could unnecessarily limit the use of such funds. It is recommended the project scope is widened to seek and deliver improvement opportunities. The County Council would be pleased to work in partnership when opportunities to improve the PRoW network arise.

APPENDIX A - Capel Design Guidelines

DC.03 Landscape and sustainability.

Biodiversity: The text refers to Figure 85 and the County Council believes this is an error and it should say Figure 86.

Reference is made to priority habitats. However, the habitats mentioned in the text are not clearly linked to priority habitats (habitats of principal importance) as defined in the Natural Environment and Rural Communities Act 2006 or within the NPPF. Further clarification is needed.

The County Council would recommend correcting the reference to culverts.

Reference is made to habitat features such as bat boxes, insect hotels and hedgehog highways. The majority of images appear to show wooden features. Woodcrete boxes are generally recommended for development projects over wooden boxes. Wooden boxes are only likely to last 5-10 years before needing to be replaced to continue to provide a wildlife benefit. A woodcrete box has a much longer lifespan of 20-25 years before needing to be replaced. The County Council would always recommend durable materials be selected for installation in order to minimise maintenance in the long-term and to provide a longer-term

assurance of biodiversity net gain in line with the NPPF. The County Council therefore recommends that the design guidelines emphasise the importance of making any wildlife features durable with minimal maintenance requirements.

The County Council would recommend the avoidance of 'enhancements' such as bird feeders (shown in Figure 91) as these require very regular maintenance to provide benefits and do little to address wider habitat losses.

APPENDIX E – Roads and Transport Issues in Capel

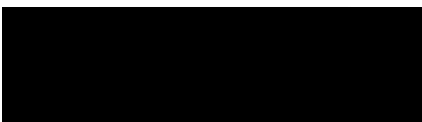
Highways and Transportation: Appendix E identifies local highway related issues and it is recommended that the Neighbourhood Plan Working Group engages with the County Council, as Local Highways Authority, with a view of ensuring inclusion in the Highway Improvement Plan (HIP).

Other busy routes across Capel Parish

Highways and Transportation: With reference to page 163, Postern Lane is referred to as a private lane carrying a public footway; however, the route is a Public Footpath, not a footway, and it is recommended that this should therefore be corrected.

The County Council would welcome continued engagement as the Neighbourhood Plan progresses. If you require any further information or clarification on any matters raised above, please do not hesitate to contact me.

Yours faithfully,



Simon Jones

Corporate Director – Growth Environment and Transport