

Cabinet Report



Listening Learning Leading

Report of Head of Planning

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To: CABINET

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Making the Brightwell-cum-Sotwell Neighbourhood Development Plan

That Cabinet recommends to Council:

1. To 'make' the Brightwell-cum-Sotwell Neighbourhood Development Plan so that it continues to be part of the council's development plan.
2. to delegate to the Head of Planning, in agreement with the Qualifying Body, the correction of any spelling, grammatical, typographical or factual errors together with any improvements from a presentational perspective.

Purpose of Report

1. To update the Cabinet on progress of the Brightwell-cum-Sotwell Neighbourhood Development Plan and to present the relevant considerations in relation to whether the plan should be 'made' (formally adopted).

Corporate Objectives

2. Strongly supporting the development of neighbourhood plans for our towns and villages.

Background

3. Brightwell-cum-Sotwell Parish Council successfully applied for Brightwell-cum-Sotwell Parish to be designated as a Neighbourhood Area under the Neighbourhood Planning (General) Regulations (2012).
4. The preparation of the Brightwell-cum-Sotwell Neighbourhood Development Plan was led by Brightwell-cum-Sotwell Parish Council ('the qualifying body') and a group of volunteers from the community.
5. Following the formal submission of the Brightwell-cum-Sotwell Neighbourhood Development Plan to the council, the plan was publicised and comments were invited from the public and stakeholders. The publicity period closed on 28 April 2017.
6. South Oxfordshire District Council appointed an independent examiner, Andrew Ashcroft, to review whether the plan met the basic conditions required by legislation and whether it should proceed to referendum. The examiner's report concluded that the plan meets the basic conditions, and that subject to the modifications proposed in the report, the plan should proceed to referendum.
7. Having considered the examiner's recommendations and reasons for them, the Cabinet Member for Planning decided on 25 July 2017:
 1. To accept all modifications recommended by the examiner;
 2. To determine that the plan, as modified, meets the basic conditions, is compatible with the Convention rights (within the meaning of the Human Rights Act 1998), complies with the definition of a neighbourhood development plan (NDP) and the provisions that can be made by a NDP;
 3. To take all appropriate actions to progress the plan to referendum on the 7 September 2017; and
 4. The referendum area should not extend beyond the neighbourhood area approved by the District Council on 13 April 2015.
8. The modifications were made and the referendum version of the plan was published on 28 July 2017 alongside the decision statement required under Regulation 18(2)(a) of the Neighbourhood Planning (General) Regulations (2012).
9. Due to a mapping error, the referendum version of the plan was updated and re-published at 5pm on Tuesday 1 August 2017. The updated plan amended the boundary of site allocation BSC3 to appropriately reflect land ownership and the site area of a then current planning application: P17/SO164/O. A copy of the updated plan showing the boundary of site allocation BSC3 is available in Appendix 1.
10. To give all interested parties sufficient time to review the referendum version of the plan, the polling day for the local referendum was postponed to 14 September 2017.

Options

11. The council's options are limited by statute. Paragraph 38A (4)(a) of the Planning and Compulsory Purchase Act 2004 sets out that the council must 'make' a neighbourhood

plan if more than half of those voting at the referendum have voted in favour of the plan being used to help decide planning applications in the plan area.

12. The only circumstance where the district council should not make this decision is where the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).
13. Section 3 of the Neighbourhood Planning Act 2017, which came into force on 19 July 2017, amends section 38 of the Planning and Compulsory Purchase Act 2004 to ensure that neighbourhood plans have full legal effect once they have passed their local referendums. In the very limited circumstances that the council might decide not to make the neighbourhood development plan, it will cease to be part of the development plan for the area.
14. The council's decision on 25 July 2017 (referred to in paragraph 7) was published in the decision statement issued on 28 July 2017 (referred to in paragraph 8). It confirmed that the Brightwell-cum-Sotwell Neighbourhood Development Plan, as modified by the Examiner's recommendations, would not breach, and be otherwise incompatible with EU obligations or human rights legislation. Therefore, if the majority of those voting have voted in favour of the Brightwell-cum-Sotwell Neighbourhood Development Plan being used to help decide planning applications in the plan area, to not 'make' the plan would be in breach of these statutory provisions.

Referendum

15. A Referendum relating to the adoption of the Brightwell-cum-Sotwell Neighbourhood Development Plan was held on Thursday 14 September 2017.
16. The question which was asked in the Referendum was: "*Do you want South Oxfordshire District Council to use the Neighbourhood Plan for Brightwell-cum-Sotwell to help it decide planning applications in the neighbourhood area?*"
17. The result was as follows:
 - Yes = 602 votes (95.5%)
 - No = 25 votes (3.9%)
 - Turnout = 630 votes (51.89%)
18. As the majority of local electors voted in favour of the plan, the Brightwell-cum-Sotwell Neighbourhood Plan became part of the council's development plan.
19. As the plan was approved at the local referendum and the council is satisfied that the plan would not breach, and be otherwise incompatible with EU obligations or human rights legislation, the council is required 'make' the Brightwell-cum-Sotwell Neighbourhood Development Plan so that it continues to be part of the council's development plan.

Financial Implications

20. There are no direct significant financial implications with this decision that cannot be accommodated within budget.

21. If the council's decisions relating to the Brightwell-cum-Sotwell Neighbourhood Development Plan are subjected to a judicial review, the council may have to cover legal costs.

Legal Implications

22. The decision to 'make' the Brightwell-cum-Sotwell Neighbourhood Development Plan is a legal requirement in the Planning and Compulsory Purchase Act 2004. The only circumstance where the district council should not make this decision is where the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998). There is a requirement that the district council will publish a formal decision statement as required under the Neighbourhood Planning (General) Regulations 2012.

23. On the 29 August 2017, the council received a judicial review pre-action protocol letter challenging the council's decision to accept the recommendations of the examiner and proceed to referendum. This potential legal challenge is summarised on the following grounds:

1. That the council failed to exercise its own independent judgement and/or provide its own reasons in relation to the basic conditions;
2. That the council 'failed to provide reasons for its significant change in position which were intelligible, adequate and proper; and
3. That the council relied upon a flawed and inadequate understanding of the features of the Site (Sotwell Manor Fruit Farm) and therefore also conclusion as to the suitability or otherwise of it for inclusion within the Settlement Boundary.

24. The council responded to the pre-action protocol letter confirming that its decision to accept the recommendations of the examiner and proceed to referendum was not unlawful in any of the ways alleged or at all.

25. The last expected date for the submission of a judicial review was 08 September 2017. A judicial review was not formally submitted.

26. It is not considered that the neighbourhood plan would breach, or would otherwise be incompatible with, any EU obligations or any of the Convention rights. Therefore, the council should proceed to make the plan.

Risks

27. The council is required to comply with the statutory requirements (to consider whether the plan should be made following a successful referendum), which this recommendation seeks to achieve. In view of the considerations referred to elsewhere in this report, as the majority of those voting have voted in favour of the plan at the local referendum, a decision not to make the Plan would place the council at risk of a legal challenge.

28. If the council's decisions relating to the Brightwell-cum-Sotwell Neighbourhood Development Plan are subjected to a judicial review, the council may have to cover legal costs.

Conclusion

29. On the 25 July 2017, the council decided:

1. To accept all modifications recommended by the examiner;
2. To determine that the plan, as modified, meets the basic conditions, is compatible with the Convention rights, complies with the definition of a neighbourhood development plan (NDP) and the provisions that can be made by a NDP; and
3. To take all appropriate actions to progress the plan to referendum on the 7 September 2017
4. The referendum area should not extend beyond the neighbourhood area approved by the District Council on 13 April 2015.

30. Due to a mapping error, the referendum version of the plan was updated and re-published at 5pm on Tuesday 1 August 2017. A local referendum was held on 14 September 2017 to meet the requirements of The Localism Act 2011 and The Neighbourhood Planning (Referendums) Regulations 2012.

31. As the majority of those voting have voted in favour of the plan being used to help decide planning applications in the plan area, it is recommended that the Brightwell-cum-Sotwell Neighbourhood Development Plan is 'made'.

32. No judicial review was submitted.

Background Papers

None

Appendix 1 – Updated plan showing the updated boundary of site allocation BSC3

