

Cabinet report



Listening Learning Leading

Report of Head of Planning

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To: CABINET

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Making the Benson Neighbourhood Development Plan

Recommendation

To recommend that Council 'makes' the Benson Neighbourhood Development Plan so that it forms part of the council's development plan.

Purpose of Report

1. To update Cabinet on the outcome of the Benson Neighbourhood Development Plan referendum, and to present the relevant considerations in relation to whether this plan should be 'made' (formally adopted).

Corporate Objectives

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

Background

3. Benson successfully applied for its parish area to be designated as Neighbourhood Area under the Neighbourhood Planning (General) Regulations (2012).
4. The preparation of the plan was led by the parish council ('the qualifying body') and a group of volunteers from the local community.

5. Following the formal submission of the plan to the council, the plan was publicised and comments were invited from the public and stakeholders.
6. The council appointed Mr. John Slater to examine the Benson Neighbourhood Plan. Examiners are tasked with reviewing whether the plan meets the basic conditions required by legislation and whether it should proceed to referendum. The examiner's report for Benson 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 10 May 2018:
 1. To accept all modifications recommended by the examiner;
 2. To determine that the Benson Neighbourhood Development 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;
 3. To take all appropriate actions to progress the Benson Neighbourhood Development Plan to referendum. A date for the referendum is set for 28 June 2018; and
 4. To agree that the referendum area should extend beyond the neighbourhood area to include properties in Rokemarsh (as recommended by the Examiner)
8. The modifications to the plan were made and the referendum version of the Benson Neighbourhood Plan was published on 16 May 2018 alongside the decision statements required under Regulation 18(2)(a) of the Neighbourhood Planning (General) Regulations (2012).

Options

9. 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.
10. 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).
11. 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 referenda. 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.
12. The council's decision on 10 May 2018 (referred to in paragraph 7), published in the decision statement issued on 16 May 2018 (referred to in paragraph 8), confirmed that the Benson Neighbourhood Development Plan, as modified by the Examiner's

recommendations, would not breach, and be otherwise incompatible with EU obligations or human rights legislation.

13. Therefore, if the majority of those voting have voted in favour of the Benson Neighbourhood 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

14. A referendum relating to the adoption of the Benson Neighbourhood Development Plan was held on Thursday 28 June 2018.
15. The question which was asked in the Referendum was: *“Do you want South Oxfordshire District Council to use the Neighbourhood Plan for Benson to help it decide planning applications in the neighbourhood area?”*
16. The result was as follows:
- a. Yes = 1,001 votes (93.1%)
 - b. No = 74 votes (6.9%)
 - c. Turnout = 35%
17. The majority of local electors voted in favour of the plan; therefore, the Benson Neighbourhood Plan has become part of the council's development plan.
18. As the plan was approved at the local referendum and the council is satisfied it would not breach, and be otherwise incompatible with EU obligations or human rights legislation, the council is required 'make' the Benson Neighbourhood Development Plan so that it continues to be part of the council's development plan.

Financial Implications

19. There are no financial implications with this decision that cannot be accommodated within the existing planning budget.

Legal Implications

20. The decision to 'make' the Benson Neighbourhood 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.
21. It is not considered that the Benson Neighbourhood Development Plan would breach, or would otherwise be incompatible with, any such obligation or rights. Therefore, the council should now proceed to make these plans.

Risks

22. The council is required to comply with the statutory requirements (to consider whether the Benson Neighbourhood Development Plan should be made following successful local 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 its local referendum, a decision not to make the plan would place the council at risk of a legal challenge.

Conclusion

23. On 10 May 2018, the council decided to:

1. To accept all modifications recommended by the examiner;
2. To determine that the Benson Neighbourhood Development 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;
3. To take all appropriate actions to progress the Benson Neighbourhood Development Plan to referendum. A date for the referendum is set for 28 June 2018; and
4. To agree that the referendum area should extend beyond the neighbourhood area to include properties in Rokemarsh (as recommended by the Examiner)

24. The local referendum was held on 28 June 2018 to meet the requirements of The Localism Act 2011 and The Neighbourhood Planning (Referendums) Regulations 2012.

25. 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 Benson Neighbourhood Development Plan is 'made'.

Background Papers

None