

Cabinet report



Listening Learning Leading

Report of Head of Planning

Author: Keerpa Patel

Telephone: 01235 422600

Textphone: 18001 01235 422600

E-mail: keerpa.patel@southandvale.gov.uk

Wards affected: Watlington

Cabinet member responsible: Cllr. Felix Bloomfield

Tel: 01491 832690

E-mail: felix.bloomfield@southoxon.gov.uk

To: CABINET

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Making the Watlington Neighbourhood Development Plan

That Cabinet recommends to Council:

1. To make the Watlington 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 Watlington Neighbourhood Development Plan 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. Watlington 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. Andrew Ashcroft to examine the Watlington 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 Watlington 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 8 May 2018:
 1. To accept all modifications recommended by the examiner;
 2. To determine that the Watlington 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 Watlington Neighbourhood Development Plan to referendum on Thursday 28 June 2018; and
 4. To agree that the referendum area should extend beyond the neighbourhood area to include properties in Pyrton parish (as recommended by the Examiner).
8. The modifications to the plan were made and the referendum version of the Watlington 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 8 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 Watlington 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. The council has considered the potential implications of the recent judgment from the Court of Justice of the European Union 'People over Wind, Peter Sweetman v Coillte Teoranta (Case C-323/17) (Commonly referred to as 'Sweetman judgement') on the HRA Screening of the Watlington Neighbourhood Plan. This recent judgement ruled that Article 6(3) of the Habitats Directive should be interpreted as meaning that mitigation measures should be assessed as part of an Appropriate Assessment, and should not be taken into account at the screening stage.
14. Having given this matter due consideration, the council commissioned a revised Habitats Regulations Assessment (HRA) Screening Report (July 2018). The revised report concluded that likely significant effects on the integrity of European sites in the South Oxfordshire District and adjacent Planning Authority areas from policies in the Neighbourhood Plan either alone or in combinations with other plans or projects will not occur, and that an Appropriate Assessment would not be required. This conclusion was endorsed by Natural England. In light of this, the council can be satisfied that the making of the Watlington Neighbourhood Plan would not breach, or would otherwise be incompatible with EU Obligations.
15. As the majority of those voting have voted in favour of the Watlington Neighbourhood Plan being used to help decide planning applications in the plan area, and the making of the plan would not breach, or would otherwise be incompatible with any EU obligation or any of the Convention rights, to not make the plan would be in breach of statutory provisions.

Referendum

16. A referendum relating to the adoption of the Watlington Neighbourhood Development Plan was held on Thursday 28 June 2018.
17. The question which was asked in the Referendum was: "*Do you want South Oxfordshire District Council to use the Neighbourhood Plan for Watlington to help it decide planning applications in the neighbourhood area?*"
18. The result was as follows:
 - a. Yes = 808 votes (80.9%)
 - b. No = 191 votes (19.1%)
 - c. Turnout = 47%
19. The majority of local electors voted in favour of the plan; therefore, the Watlington Neighbourhood Plan has become part of the council's development plan.
20. 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 Watlington Neighbourhood Development Plan so that it continues to be part of the council's development plan.

Financial Implications

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

Legal Implications

22. The decision to make the Watlington 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.
23. It is not considered that the Watlington 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

24. The council is required to comply with the statutory requirements (to consider whether the Watlington 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

25. On the 8 May 2018, the council decided:
1. To accept all modifications recommended by the examiner;
 2. To determine that the Watlington 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 Watlington Neighbourhood Development Plan to referendum on Thursday 28 June 2018; and
 4. To agree that the referendum area should extend beyond the neighbourhood area to include properties in Pyrton parish (as recommended by the Examiner).
26. 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.
27. 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 Watlington Neighbourhood Development Plan is 'made'.

Background Papers

None