

Cabinet Report



Listening Learning Leading

Report of Head of Planning

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To: CABINET

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Making the Warborough and Shillingford Neighbourhood Development Plan

That Cabinet recommends to Council:

1. To make the Warborough and Shillingford 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 Warborough and Shillingford 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. Warborough Parish Council successfully applied for the its entire parish area to be designated as a 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 Warborough and Shillingford Neighbourhood Development Plan (the Plan) to the council, the council publicised the Plan and invited comments from the public and stakeholders.
6. The council appointed Mr. Andrew Ashcroft to examine the Plan. Examiners are tasked with reviewing whether a neighbourhood plan meets 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. The modifications proposed by the examiner are largely minor in nature; re-wording and restructuring for clarity and to ensure the basic conditions are met. More significant modifications recommended by the examiner include:
 - (a) The removal of Part B of Policy H1 (Housing Mix) which set out a housing allocation/local connection criterion as it related to an issue outside of the scope of neighbourhood plans. The examiner clarified that the allocation of housing delivered is part of the role of the council as the housing authority under the Housing Acts.
 - (b) Modifications and additional requirements introduced to Policy H2 (Site Allocation) to ensure the policy has regard to national planning policy and guidance in general and has appropriate regard to the protection of heritage assets surrounding the allocated site in particular.
 - (c) Modifying the wording of Policy H4 (Pedestrian links) to ensure the policy takes a more positive and flexible approach.
 - (d) Deleting the second part of Policy C1 (Community Infrastructure), which addressed development processes and consultation requirements rather than policy matters.
 - (e) Deleting Policy C4 (Community Infrastructure Levy Contributions) and reintroducing the text into the Plan as a non-land use Project rather than a planning policy.
8. Having considered the examiner's recommendations and reasons for them the Cabinet Member for Planning decided on 15 August 2018:
 1. To accept all modifications recommended by the Examiner;
 2. to determine that The Warborough and Shillingford 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; and
 3. to take all appropriate actions to progress The Warborough and Shillingford Neighbourhood Development Plan to referendum. A date for referendum is set for 4th October 2018.
 4. the referendum area should not extend beyond the neighbourhood area approved by the District Council on 02 March 2016.
9. The modifications to the plan were made and the referendum version of the Plan was published on 22 August 2018 alongside the decision statements required under Regulation 18(2)(a) of the Neighbourhood Planning (General) Regulations (2012).

Options

10. 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.
11. 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).
12. 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.
13. The council's decision on 15 August 2018 (referred to in paragraph 8), published in the decision statement issued on 22 August 2018 (referred to in paragraph 9), confirmed that the Warborough and Shillingford Neighbourhood Development Plan, as modified by the Examiner's recommendations, would not breach, and be otherwise incompatible with EU obligations or human rights legislation.
14. Therefore, if the majority of those voting have voted in favour of the Warborough and Shillingford 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

15. A referendum relating to the adoption of the Warborough and Shillingford Neighbourhood Development Plan was held on Thursday 4 October 2018.
16. The question which was asked in the Referendum was: "*Do you want South Oxfordshire District Council to use the Neighbourhood Plan for Warborough and Shillingford to help it decide planning applications in the neighbourhood area?*"
17. The result was as follows:
 - a. Yes = 434 votes (90.41%)
 - b. No = 46 votes (approximately 9.59%)
 - c. Turnout = 63.2%
18. The majority of local electors voted in favour of the plan; therefore, the Warborough and Shillingford Neighbourhood Plan has become part of the council's development plan.
19. 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 Warborough and Shillingford Neighbourhood Development Plan so that it continues to be part of the council's development plan.

Financial Implications

20. Any financial implications can be accommodated within the existing planning budget.

Legal Implications

21. The decision to make the Warborough and Shillingford 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.

22. It is not considered that the Warborough and Shillingford Neighbourhood Development Plan would breach, or would otherwise be incompatible with, any such obligation or rights. Therefore, the council should now proceed to make the plan.

Risks

23. The council is required to comply with the statutory requirements (to consider whether the Warborough and Shillingford 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

24. On the 15 August 2018, the council decided:

1. To accept all modifications recommended by the Examiner;
2. to determine that The Warborough and Shillingford 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; and
3. to take all appropriate actions to progress The Warborough and Shillingford Neighbourhood Development Plan to referendum. A date for referendum is set for 4th October 2018.
4. the referendum area should not extend beyond the neighbourhood area approved by the District Council on 02 March 2016.

25. The local referendum was held on 4 October 2018 to meet the requirements of The Localism Act 2011 and The Neighbourhood Planning (Referendums) Regulations 2012.

26. 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 Warborough and Shillingford Neighbourhood Development Plan is made.

Background Papers

None