

Cabinet Report



Listening Learning Leading

Report of Head of Planning

Author: Robyn Tobutt

Telephone: 01235 422600

Textphone: 18001 01235 422600

E-mail: robyn.tobutt@southandvale.gov.uk

Wards affected: Chalgrove

Cabinet member responsible: Cllr. Leigh Rawlins

Tel: 01189 722565

E-mail: Leigh.Rawlins@southoxon.gov.uk

To: CABINET

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Making the Berrick Salome Neighbourhood Development Plan

That Cabinet recommends to Council:

(a) To make the Berrick Salome Neighbourhood Development Plan so that it continues to be part of the council's development plan.

(b) To delegate to the Head of Planning, in consultation with the Cabinet Member for Planning and 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 provide an update to the Cabinet on the progress of the Berrick Salome 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. Berrick Salome Parish Council successfully applied for the parish of Berrick Salome to be designated as a Neighbourhood Area under the Neighbourhood Planning (General) Regulations (2012).
4. The preparation of the Berrick Salome Neighbourhood Development Plan (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 council publicised the Plan and invited comments from the public and stakeholders.
6. The council appointed Mr Andrew Ashcroft to independently 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 his 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. A full copy of the proposed modifications to the Plan are set out in the Examiner's Final Report¹. More significant modifications recommended by the examiner include:
 - (a) The modification of the settlement boundaries and infill development policy (Policy BER1) to remove reference to Rokemarsh given its limited size. The settlement boundary around Rokemarsh was removed and some more general separation of settlements text was inserted.
 - (b) The deletion of some of the text in the design policy (Policy BER2) as it included elements of supporting text and was repetitive in places.
 - (c) The replacement of the text in the managing traffic policy (Policy BER8). This amended the policy so that the focus is on land use matters and to put the emphasis on achieving a good relationship between development and highways capacity rather than seeking developer contributions to mitigate traffic issues.
8. Having considered the Examiner's recommendations and reasons for them the Cabinet Member for Planning decided on 12 September 2019:
 1. to accept all modifications recommended by the Examiner;
 2. to determine that the Berrick Salome Neighbourhood Development Plan, as modified, meets the basic conditions, is compatible with the Convention rights²,

¹ Independent Examiner's Report to South Oxfordshire District Council on the Berrick Salome Neighbourhood Development Plan (2019), available at: <http://www.southoxon.gov.uk/services-and-advice/planning-and-building/planning-policy/neighbourhood-plans/berrick-salome-neighbo>

² *Convention rights* are defined in the Human Rights Act 1998 as (a) Articles 2 to 12 and 14 of the European Convention on Human Rights ("the Convention"), (b) Articles 1 to 3 of its First Protocol, and (c) Article 1 of its Thirteenth Protocol, as read with Articles 16 to 18 of the Convention. The Convention rights that are most likely to be relevant to town and country planning are those under the Convention's Article 6(1), 8 and 14 and under its First Protocol Article 1.

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 Berrick Salome Neighbourhood Development Plan to referendum.
9. The modifications to the Plan were made and the referendum version of the Plan was published on 12 September 2019 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 12 September 2019 (referred to in paragraph 8), published in the decision statement issued on 12 September 2019 (referred to in paragraph 9), confirmed that the Berrick Salome 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. The Plan, as modified by the Examiner's recommendation, would not breach, and be otherwise incompatible with EU obligations, including the following Directives: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); and the Water Framework Directive (2000/60/EC). In addition, no issue arises in respect of equality under general principles of EU law or any EU equality directive. In order to comply with the basic condition on European Union legislation the Council has prepared a Screening Opinion on the determination of the need for a Strategic Environment Assessment (SEA). This process concluded that the Plan is unlikely to have significant environmental effects and therefore a SEA is not required. Consultation was carried out with the relevant statutory bodies (Natural England, Historic England, Environment Agency and Oxfordshire County Council). The responses received agreed with the conclusion that a SEA was not required. Taking the consultation responses into account, the council issued a Screening Statement on 26th March 2019.

15. The Plan, as modified by the Examiner's recommendations, would not give rise to significant environmental effects on European sites. The Council issued a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Determination on 26 March 2019, which confirmed to the qualifying body that an Appropriate Assessment would not be required. In response to the council's screening opinion, Natural England confirmed on 23 January 2019 that the proposals in the plan will not have significant effects on sensitive sites and that an Appropriate Assessment is therefore not required.
16. The council is satisfied that the Plan is in all respects fully compatible with Convention rights contained in the Human Rights Act 1988. There has been full and adequate opportunity or all interested parties to take part in the preparation of the Plan and to make their comments known.
17. Therefore, if the majority of those voting have voted in favour of the Berrick Salome 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

18. A referendum relating to the adoption of the Berrick Salome Neighbourhood Development Plan was held on Thursday 24 October 2019.
19. The question which was asked in the Referendum was: *"Do you want South Oxfordshire District Council to use the Neighbourhood Plan for Berrick Salome to help it decide planning applications in the neighbourhood area?"*
20. The results was as follows:
 - a. Yes = 150 votes (94.3 %)
 - b. No = 9 votes (5.7 %)
 - c. Turnout = 59.5 %
21. The majority of local electors who voted have voted in favour of the plan; therefore, the Berrick Salome Neighbourhood Plan has become part of the council's development plan.
22. 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 to make the Berrick Salome Neighbourhood Development Plan so that it continues to be part of the council's development plan.

Financial Implications

23. The Government makes funding available to local authorities to help them meet the cost of their responsibilities around neighbourhood planning. A total of £20,000 can be claimed for each neighbourhood planning area. The council becomes eligible to apply to receive this single payment once a date is set for the referendum, after a successful examination. The Government grant funds the process of progressing neighbourhood plans through the formal stages, including the referendum. Any costs incurred in the formal stages in excess of £20,000 is borne by the council. Staffing costs associated

with supporting community groups and progressing neighbourhood plans through the formal stages are funded by the council.

Legal Implications

24. The decision to make the Berrick Salome 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.
25. It is not considered that the Berrick Salome 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

26. The council is required to comply with the statutory requirements (to consider whether the Berrick Salome 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

27. On the 12 September 2019, the council decided:
1. To accept all modifications recommended by the Examiner;
 2. to determine that the Berrick Salome 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 Berrick Salome Neighbourhood Development Plan to referendum.
28. The local referendum was held on 24 October 2019 to meet the requirements of The Localism Act 2011 and The Neighbourhood Planning (Referendums) Regulations 2012.
29. 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 Berrick Salome Neighbourhood Development Plan is made.