

Record of individual Cabinet member decision

Local Government Act 2000 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Decision made by	Cllr David Rouane
Key decision?	No
Date of decision (same as date form signed)	29 September 2023
Name and job title of officer requesting the decision	Tom Gill Planning Policy Officer (Neighbourhood)
Officer contact details	Tel: 07510 921689 Email: thomas.gill@southandvale.gov.uk
Decision	<p>To recommend to Council:</p> <ol style="list-style-type: none"> 1. To make the Brightwell-cum-Sotwell Neighbourhood Development Plan Review with the modifications specified in the Examiner's report. 2. To delegate to the Head of Policy and Programmes, in consultation with the appropriate Cabinet Member and in agreement with the Qualifying Body, Brightwell-cum-Sotwell Parish Council, the correction of any spelling, grammatical, typographical or factual errors together with any improvements from a presentational perspective.
Reasons for decision	<ol style="list-style-type: none"> 1. The Neighbourhood Planning Act 2017 identifies the circumstances that might arise as parish councils seek to review 'made' neighbourhood plans. It introduces a proportionate process for the modification of neighbourhood plans where a neighbourhood development plan has already been made in relation to that area. 2. There are three types of modification which can be made to a neighbourhood plan. The process will depend on the degree of change which the modification involves and as follows: <ul style="list-style-type: none"> • minor (non-material) modifications to a neighbourhood plan which would not materially affect the policies in the plan; • material modifications which do not change the nature of the plan and which would require examination but not a referendum; or

- material modifications which do change the nature of the plan would require examination and a referendum.

3. Whether modifications change the nature of the plan is a decision for the independent examiner. The examiner will consider the nature of the existing plan, alongside representations and the statements on the matter made by the qualifying body and the local planning authority.
4. Brightwell-cum-Sotwell Parish Council has considered this issue. It took the view that the proposed changes to the 'made' Plan fall into the second category.
5. South Oxfordshire District Council undertook a separate assessment and concluded that the proposed modifications, including the new and amended policies responding to national policy changes, are material, but are not so significant or substantial as to change the nature of the plan itself. The changes add a local level of detail and clarity regarding how planning applications within the Neighbourhood Area should be considered. The plan Vision remains unaltered.
6. With the consent of Brightwell-cum-Sotwell Parish Council, the council appointed Mr. Andrew Ashcroft to examine the Plan. The Independent Examiner considered this issue and concluded that the review of the Plan included material modifications which did not change the nature of the Plan, and which required examination but not a referendum. The Examiner reached this decision for the following reasons:
 - the new policies largely update those in the 'made' Plan; and
 - the modifications to the existing policies will bring the Plan up to date to reflect changes in national and local planning policy.
7. In these circumstances, proposals for the modification of made neighbourhood development plans are examined in line with the procedures set out in Schedule A2 of the Planning and Compulsory Purchase Act 2004 (As Amended).
8. Paragraph 13 of Schedule A2 of the 2004 Act sets out that after considering a draft plan, the examiner must make a report on the draft plan containing one of the following recommendations:
 - that the council should make the draft plan; or
 - that the council should make the draft plan with the modifications specified in the report; or
 - that the council should not make the draft plan.
9. The Examiner's Report is available in Appendix 1. The Examiner's Report assesses the policies in the plan and identifies any modifications required to ensure that they meet the basic conditions. The Examiner concluded that the Plan meets the basic conditions

subject to a limited number of recommended modifications. The recommended modifications refine the wording of the policies concerned. Nevertheless, the submitted review of the Plan remains fundamentally unchanged in its role and purpose. The Examiner's Report recommends that the council should make the Plan with the modifications specified in the Report. A listing of the Examiner's recommendations exactly as they are shown in his Report is available in Appendix 2.

10. Paragraph 14 of Schedule A2 of the 2004 Act sets out that if the Examiner's Report recommends that the council should make the draft plan with the modifications specified in the report, the council must make the draft plan with those modifications. The only circumstance where the 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. The making of the Brightwell-cum-Sotwell Neighbourhood Development Plan Review (the Plan) would not breach, or otherwise be incompatible with, any EU or human rights 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 issues arise in respect of equality under general principles of EU law or any EU equality directive. In order to comply with the basic condition on the European Union legislation, the council produced a Strategic Environmental Assessment Screening Report in July 2022. It comments that the plan review does not allocate any new sites for development, it carries over the existing allocations, the settlement boundary remains unchanged, and the plan continues to place great emphasis on conserving the character and appearance of the area. The report concludes that the implementation of the Brightwell-cum-Sotwell NDP Review would not result in likely significant effects on the environment.
12. The reviewed Plan would not give rise to significant environmental effects on European sites. The council screened the Plan's potential impact on EU Special Areas of Conservation (SACs) in July 2022. The Habitats Regulations Assessment Screening Report concluded that the Plan would not have any likely significant effects on the integrity of European sites in or around South Oxfordshire, either alone or in combination with other plans or programmes and that an Appropriate Assessment is therefore not required.
13. 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 for all interested parties to take part in the preparation of the Plan and to make their comments known.

	<p>14. The modifications set out in the Examiner’s Report individually or combined are not considered to produce likely significant environmental effects and are unlikely to have any significant effects on the integrity of European Designated Sites.</p> <p>15. As the Examiner’s Report recommends that the council should make the Plan with the modifications specified in the Report and the council is satisfied that the making of the Plan would not breach, or otherwise be incompatible with, any EU or human rights obligations as incorporated into UK law, the council must make the Brightwell-cum-Sotwell Neighbourhood Development Plan Review.</p>
<p>Alternative options rejected</p>	<p>The council’s options are limited by statute. Paragraph 14 of Schedule A2 of the Planning and Compulsory Purchase Act 2004 sets out that if the Examiner’s Report recommends that the council should make the draft plan with the modifications specified in the report, the council must make the draft plan with those modifications.</p> <p>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).</p> <p>In this case, the Examiner’s Report has recommended that the council should make the Plan with the modifications specified in the Report. For the reasons set out in paragraphs 11 to 14, the council is satisfied that the Brightwell-cum-Sotwell Neighbourhood Development Plan would not breach or be incompatible with EU obligations or human rights legislation.</p>
<p>Climate and ecological implications</p>	<p>The Plan contributes to the achievement of sustainable development. Sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.</p> <p>There are clear overlaps between national policy and the contribution that the Plan makes to achieving sustainable development. Sustainable development has three principal dimensions – economic, social and environmental. The Plan recognises that there will be a series of environmental and landscape issues to be addressed as part of the development in general (BCS1, BCS5, BCS6) and that of the housing allocations (BCS2, BCS3, BCS4). The policies in the plan provide the necessary degree of protection of valuable assets and where appropriate mitigation. There are policies in the plan around heritage (BCS7), the protection and creation of green spaces (BCS8, BCS9, BCS12), landscape character and biodiversity (BCS10, BCS13), flood management (BCS14), renewable energy (BCS16), and community facilities (BCS17, BCS18).</p> <p>Overall, the Plan has set out to achieve sustainable development in the neighbourhood area in a balanced and mutually supportive way.</p>
<p>Legal implications</p>	<p>The legal implications are set out elsewhere in the report on the basis of which it is considered that the council should now proceed to make the Brightwell-cum-Sotwell Neighbourhood Plan Review. The process undertaken and proposed accords with planning legislation.</p>

Financial implications	<p>The Government makes funding available to local authorities to help them meet the cost of their responsibilities around neighbourhood planning. In the case of neighbourhood plan reviews which require an examination but no new referendum, a total of £10,000 can be claimed for each neighbourhood planning area. The council becomes eligible to apply for this additional grant after the revised plan comes into force following examination. Once such a claim is made, claims for further updates to that specific neighbourhood plan will be restricted to one every 5 years.</p> <p>Any costs incurred in the formal stages in excess of Government grants 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. It is expected that costs associated with progressing this neighbourhood plan can be met from within the existing neighbourhood planning budget.</p>			
Other implications	<p>The council is required to comply with the statutory requirements (to consider whether the Brightwell-cum-Sotwell Neighbourhood Development Plan Review should be made following the issuing of the Examiner's Report, which this recommendation seeks to achieve. In view of the considerations referred to elsewhere in this report, a decision not to make the plan would place the council at risk of a legal challenge.</p>			
Background papers considered	<ol style="list-style-type: none"> 1. Brightwell-cum-Sotwell Neighbourhood Plan Review and supporting documents 2. National Planning Policy Framework (2023) 3. National Planning Policy Guidance (July 2014 and subsequent updates) 4. South Oxfordshire Local Plan 2035 5. South Oxfordshire Strategic Environmental Assessment Screening Statement July 2022 6. Representations submitted in response to the Brightwell-cum-Sotwell Neighbourhood Plan Review 7. Relevant Ministerial Statements 			
Declarations/ conflict of interest? Declaration of other councillor/officer consulted by the Cabinet member?	<p>None.</p>			
List consultees		Name	Outcome	Date
	Ward councillors	Anne-Marie Simpson	Approved	19/09/23
		Ben Manning	Approved	18/09/23
	Legal legal@southandvale.gov.uk	Vivien Williams	Approved	18/09/23
	Finance Finance@southandvale.gov.uk	Roger McLeod	Approved	20/09/23

	Human resources hradminandpayroll@southandvale.gov.uk	Trina Mayling	No comment	19/09/23
	Strategic property Property@southandvale.gov.uk	Christopher Mobbs	No comment	20/09/23
	Climate and biodiversity climateaction@southandvale.gov.uk	Jessie Fieth	No comment	18/09/23
	Diversity and equality equalities@southandvale.gov.uk		No comment	21/09/23
	Health and safety healthandsafety@southandvale.gov.uk		No comment	21/09/23
	Risk and insurance risk@southandvale.gov.uk		No comment	21/09/23
	Communications communications@southandvale.gov.uk		No comment	21/09/23
Confidential decision? If so, under which exempt category?	No			
Call-in waived by Scrutiny Committee chairman?	n/a			
Has this been discussed by Cabinet members?	n/a			
Cabinet portfolio holder's signature To confirm the decision as set out in this notice.	Signature <u>David Rouane</u>			
	Date <u>29 September 2023</u>			

ONCE SIGNED, THIS FORM MUST BE HANDED TO DEMOCRATIC SERVICES IMMEDIATELY.

For Democratic Services office use only		
Form received	Date: 29 September 2023	Time: 14:14
Date published to all councillors	Date: 29 September 2023	
Call-in deadline	Not applicable as this decision notice contains recommendations to full Council, so call-in provisions do not apply.	

Appendix 1 – Examiner’s Report

The Examiner’s Report is available here: <https://www.southoxon.gov.uk/wp-content/uploads/sites/2/2023/09/Brightwell-cum-Sotwell-NDP-Review-Examiners-Report.pdf>

Appendix 2 – Listing of the Examiner’s recommendations:

Rec.	Text	Reason
1	<p><u>BCS1 Brightwell-cum-Sotwell Village Boundary</u></p> <p>In the second part of the policy replace ‘accord with the design code of Policy BCS8’ with ‘have full regard to the local design code of Policy BCS6’.</p> <p>In the third part of the policy replace ‘consistent with lother’ with ‘consistent with other’</p>	Bring the clarity required by the NPPF
2	<p><u>BCS5 House Types and Tenures</u></p> <p>In Part A of the policy:</p> <ul style="list-style-type: none"> replace the second criterion with: ‘The scheme is supported by robust evidence of demonstrable local needs.’ replace the third criterion with: ‘The scheme is of an appropriate scale and density relative to the existing settlement character and surrounding pattern of development.’ <p><i>Replace paragraph 3.32 with: ‘Given these considerations, the availability of local facilities and local environmental constraints, the policy sets out a series of criteria with which any such proposal should comply. Key elements are that any such sites should have a boundary with the Village Boundary (as defined in Policy BCS1) and be of an appropriate scale and density relative to the existing settlement character and surrounding pattern of development. The approach also reflects the way in which the NPPF defines proportionate in size at paragraph 72b and the corresponding footnote 35.’</i></p>	Non-compliant with basic conditions; does not have regard for sustainable development.
3	<u>BCS5 House Types and Tenures</u>	Non-compliant with basic conditions; does

	Delete Part B of the policy.	not have regard to national policy.
4	<u>BCS6 Design Codes</u> Incorporate the SODC suggested changes (References 24 to 40) within the Design Code	Bring the clarity required by the NPPF
5	<u>BCS8 Local Green Spaces</u> Replace 'permitted' with 'supported'	Bring the clarity required by the NPPF
6	<u>BCS11 Dark Skies</u> Replace the policy with: 'Development proposals should conserve and enhance relative tranquillity in relation to light pollution and dark night skies. Development proposals should also demonstrate that they meet or exceed the Institute of Lighting Professionals guidance and other relevant standards or guidance (CIE 150:2003 Guide on the Limitation of the Effects of Obtrusive Light from Outdoor Lighting Installations), or any equivalent replacement/updated guidance for lighting within environmental zones. Development proposals which include lighting should ensure that: <ul style="list-style-type: none"> • the measured and observed sky quality in the surrounding area is not reduced; • the lighting concerned is not unnecessarily visible in nearby designated and key habitats; • the visibility of lighting from the surrounding landscape is avoided; and • building designs should avoid large areas of glazing which would result in light spillage into rural and unlit areas.'	Bring the clarity required by the NPPF and allow SODC to implement it in a consistent way throughout the Plan period.
7	<u>BCS13 Local Nature Recovery</u> Replace the opening element of the first part of the policy with: 'As appropriate to their scale, nature and location, development proposals	Bring the clarity required by the NPPF

	should contribute to the recovery of local nature in the Parish and respond positively to the following matters:	
8	<p><u>BCS16 Renewable Energy</u></p> <p>In the opening part of the policy delete 'in principle'</p> <p>In i replace 'suit' with 'respect'</p> <p>In ii replace 'it is.... significant harm' with 'they are effectively screened and do not cause unacceptable harm'</p> <p>In iii replace 'significant' with 'unacceptable'</p> <p>In iv replace 'substantial' with 'unacceptable'</p> <p>In iii, iv and v replace 'it will' with 'they will'</p>	Bring the clarity required by the NPPF and allow SODC to implement it in a consistent way throughout the Plan period.
9	<p><u>BCS17 Community Facilities</u></p> <p>In the second part of the policy replace 'permitted with supported and 'existing community' with 'existing community facility'</p>	Bring the clarity required by the NPPF and to correct typographic errors.
10	<p><u>Other Matters – General</u></p> <p>Modification of general text (where necessary) to achieve consistency with the modified policies and to accommodate any administrative and technical changes.</p>	Bring the clarity required by the NPPF and to correct typographic errors.
11	<p><u>Other Matters – Specific</u></p> <p>Modification of general text to update the Plan (SODC comments 1 to 8; 10; 12-13; 15 to 17; 19 to 38 and 40 and correct errors (SODC comments 1– 29)</p>	Bring the clarity required by the NPPF and to correct typographic errors.