

# Cabinet Report



Listening Learning Leading

Report of Head of Planning

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Wards affected: Cholsey

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To: CABINET

Date: 9 April 2019

## Making the Cholsey Neighbourhood Development Plan

### Recommendations:

That Cabinet recommends to Council:

1. To make the Cholsey 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 Cholsey 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. Cholsey Parish Council successfully applied for the 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 Cholsey 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 deletion of Policy CNP H6 as the policy wording is considered to be unduly restrictive and as such does not have regard to national policy. The modification also included the deletion of the associated supporting text.
  - (b) Separating the two components of the policy CNP H3 (range and mix of homes required and support for self-build). This approach will focus the range and mix element of the policy on the allocated sites and will naturally allow self-build and custom build homes to come forward on other sites in the neighbourhood area.
8. Having considered the examiner's recommendations and reasons for them the Cabinet Member for Planning decided on 24 January 2019:
  1. To accept all modifications recommended by the Examiner;
  2. to determine that the Cholsey 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 Cholsey Neighbourhood Development Plan to referendum.
9. The modifications to the plan were made and the referendum version of the Plan was published on 31 January 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 24 January 2019 (referred to in paragraph 8), published in the decision statement issued on 31 January 2019 (referred to in paragraph 9), confirmed that the Cholsey 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 Cholsey 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 Cholsey Neighbourhood Development Plan was held on Thursday 14 March 2019.
16. The question which was asked in the Referendum was: "*Do you want South Oxfordshire District Council to use the Neighbourhood Plan for Cholsey to help it decide planning applications in the neighbourhood area?*"
17. The result was as follows:
  - a. Yes = 931 votes (95.6%)
  - b. No = 43 votes (4.4%)
  - c. Turnout = 32.7%
18. The majority of local electors voted in favour of the plan; therefore, the Cholsey 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 Cholsey Neighbourhood Development Plan so that it continues to be part of the council's development plan.

## **Financial Implications**

20. 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**

21. The decision to make the Cholsey 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 Cholsey 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 Cholsey 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 24 January 2019, the council decided:
  1. To accept all modifications recommended by the Examiner;
  2. to determine that the Cholsey 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 Cholsey Neighbourhood Development Plan to referendum.
25. The local referendum was held on 14 March 2019 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 Cholsey Neighbourhood Development Plan is made.