

# Cabinet Report



Listening Learning Leading

Report of Head of Planning

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Wards affected: Goring

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To: CABINET

Date: 10 July 2019

## Making the Goring Neighbourhood Development Plan

### That Cabinet recommends to Council:

1. To make the Goring 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 Goring 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. Goring on Thames 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 Goring 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 Timothy Jones (Barrister, Fellow of the Chartered Institute of Arbitrators, Independent Examiner) 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. Some of the modifications proposed by the examiner were minor in nature; factual updates, re-wording and restructuring for clarity and to ensure the basic conditions are met. More significant modifications recommended by the examiner include:
  - a) The addition of a reserve site (**GNP8** - Gatehampton Road - reserved for 10 to 16 new dwellings should the four allocated sites not provide approximately 94 new dwellings). This modification will help ensure the specified housing requirement can be met over the plan period.
  - b) Re-wording of Policy 2 (Infill) to ensure the policy does not unintentionally promote development in inappropriate locations. The limitation of the scale of infill development proposed in the submitted plan was removed to ensure the Plan would meet basic conditions.
8. In addition to accepting the examiner's recommendations, the council exercised its power to make modifications to correct errors and ensure the Plan meets Basic Conditions. The modifications were largely minor in nature; factual updates, re-wording and restructuring of the Plan. More significant modifications relate to factual corrections in response to updated Environment Agency's flood map concerning Site GNP3 allocated for residential development under Policy 7. Within this context, requirement five of Policy 7 was modified in response to the updated flood map, and to ensure the policy wording provides the clarity required in the National Planning Policy Framework.
9. Having considered the examiner's recommendations and reasons for them the Cabinet Member for Planning decided on 1 May 2019:
  1. To accept all modifications recommended by the Examiner;
  2. to determine that the Goring 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 Goring Neighbourhood Development Plan to referendum.
10. The modifications to the plan were made and the referendum version of the Plan was published on 30 May 2019 alongside the decision statements required under Regulation 18(2)(a) of the Neighbourhood Planning (General) Regulations (2012).

## **Options**

11. 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.
12. 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).
13. 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.
14. The council's decision on 1 May 2019 (referred to in paragraph 8), published in the decision statement issued on 30 May 2019 (referred to in paragraph 9), confirmed that the Goring Neighbourhood Development Plan, as modified by the Examiner's recommendations, would not breach, and be otherwise incompatible with EU obligations or human rights legislation.
15. The council is satisfied that the Plan will not breach or 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 the European Union legislation the Qualifying Body has prepared a Basic Conditions Statement and a Sustainability Appraisal Report. The Sustainability Appraisal prepared by the Qualifying Body incorporates a Strategic Environmental Assessment. The Sustainability Appraisal sets out a non-technical summary in Section 1, Section 2 sets out the purpose and process, Section 3 details the sustainability context for Goring, Section 4 gives a plan overview, Section 5 identifies the sustainability objectives, Section 6 details the assessment of reasonable alternatives, Section 7 provides an assessment of plan sustainability objectives against plan policies, and Section 8 sets out the monitoring, review and delivery.
16. The council is satisfied that the Plan will not give rise to significant environmental effects on European sites. The council appointed consultants from LUC (Environmental Planning, Design and Management) to carry out a Habitats Regulations Screening

Assessment (HRA) of the Plan. The HRA Screening was originally published in April 2018, however it was later updated to ensure compliance with the ruling from the the Court of Justice of the European Union 'People over Wind, Peter Sweetman v Coillte Teoranta (Case C-323/17)' which 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. The revised Screening Assessment (July 2018) concluded that the Plan will not have any likely significant effects on the integrity of European sites either alone or in combination with other plans or projects. Natural England confirmed on 22 August 2018 that they agree with the conclusions of the revised screening assessment.

17. 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.
18. Therefore, if the majority of those voting have voted in favour of the Goring 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**

19. A referendum relating to the adoption of the Goring Neighbourhood Development Plan was held on Thursday 4 July 2019.
20. The question which was asked in the Referendum was: *"Do you want South Oxfordshire District Council to use the Neighbourhood Plan for Goring to help it decide planning applications in the neighbourhood area?"*
21. The result was as follows:
  - a. Yes = 835 votes (62.7%)
  - b. No = 492 votes (37.3%)
  - c. Turnout = 49.6%
22. The majority of local electors who voted have voted in favour of the plan; therefore, the Goring Neighbourhood Plan has become part of the council's development plan.
23. 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 Goring Neighbourhood Development Plan so that it continues to be part of the council's development plan.

## **Financial Implications**

24. Government funding is available to local authorities to help them meet the cost of their neighbourhood planning responsibilities. 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**

25. The decision to make the Goring 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.
26. It is not considered that the Goring 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**

27. The council is required to comply with the statutory requirements (to consider whether the Goring 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**

28. On the 1 May 2019, the council decided:

1. To accept all modifications recommended by the Examiner;
2. to determine that the Goring 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 Goring Neighbourhood Development Plan to referendum.

29. The local referendum was held on 4 July 2019 to meet the requirements of The Localism Act 2011 and The Neighbourhood Planning (Referendums) Regulations 2012.

30. 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 Goring Neighbourhood Development Plan is made.