

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. Anne-Marie Simpson
Key decision?	No
Date of decision (same as date form signed)	13 March 2023
Name and job title of officer requesting the decision	Ricardo Rios Planning Policy Team Leader (Neighbourhood)
Officer contact details	Tel: 07801203535 Email: Ricardo.Rios@southandvale.gov.uk
Decision	<p>To recommend to Council:</p> <ol style="list-style-type: none"> 1. To make the Benson 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, Benson 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

	<ul style="list-style-type: none">• material modifications which do change the nature of the plan would require examination and a referendum. <ol style="list-style-type: none">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. Benson 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 materially affect the policies in the plan. However, although material, the modifications were not considered to be so significant or so substantial as to change the nature of the plan. The goals and objectives of the plan were updated but remained largely unchanged in their nature.6. With the consent of Benson Parish Council, the council appointed Mr. Andrew Matheson 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:<ul style="list-style-type: none">• revised policies largely update those in the 'made' Plan;• where there are additional policies, these do not change the nature of the Plan when considered alongside the made Plan; and• modifications made within the Revision bring the Plan up to date to reflect changes in national and local planning policy7. 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:<ul style="list-style-type: none">• 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.
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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 Benson 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 does not allocate any new sites for development, it carries over the existing allocations, and continues to place great emphasis on conserving the character and appearance of the area. In addition, it comments that the allocations already benefit from planning permission. The report concludes that the implementation of the review of the Plan 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

	<p>or programmes and that an Appropriate Assessment is therefore not required.</p> <p>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> <p>14. The modifications set out in the Examiner’s Report individually or combined are not considered to produce likely significant environmental affects 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 Benson 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 Benson 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 and that of the housing allocations. The policies</p>

	<p>in the plan provide the necessary degree of protection of valuable assets and where appropriate mitigation. There are policies in the plan around sustainable travel, the protection and creation of green spaces and on drainage and flood risk management.</p> <p>The plan made in 2018 has exceeded the minimum levels of housing growth required by the Local Plan to achieve the full funding of a relief road from approved developments. The plan review retains this approach. The decision to exceed the minimum levels growth to fund the relief road contribute to ‘sustainable development’ in its broadest sense however it is important to acknowledge that both elements have significant negative carbon emission implications.</p> <p>Overall, the Plan has set out to achieve sustainable development in the neighbourhood area in a balanced and mutually supportive way.</p>
Legal implications	<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 Benson 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 Benson 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. Benson Neighbourhood Plan Review and supporting documents 2. National Planning Policy Framework (2021) 3. National Planning Policy Guidance (July 2014 and subsequent updates) 4. South Oxfordshire Local Plan 2035 5. South Oxfordshire Strategic Environmental Assessment Screening

	<p>Statement July 2022</p> <p>6. Representations submitted in response to the Benson Neighbourhood Plan Review</p> <p>7. Relevant Ministerial Statements</p>			
<p>Declarations/ conflict of interest?</p> <p>Declaration of other councillor/officer consulted by the Cabinet member?</p>	None			
List consultees		Name	Outcome	Date
	Ward councillors	Andrea Powell	Support	09/03/2023
		Sue Cooper	Support	09/03/2023
	Legal legal@southandvale.gov.uk	Vivien Williams	Approved without changes	13/03/2023
	Finance Finance@southandvale.gov.uk	Nicole Tyreman	No comment	10/03/2023
	Human resources hradminandpayroll@southandvale.gov.uk		No comment	13/03/2023
	Strategic property Property@southandvale.gov.uk	Christopher Mobbs	No comment	13/03/2023
	Climate and biodiversity climateaction@southandvale.gov.uk	Jessie Fieth	Recommended the climate and ecological implications section of the report should be updated to acknowledge the carbon emissions implications associated with the level of growth supported to help fund the delivery of the relief road. The report has been amended accordingly.	10/03/2023
	Diversity and equality equalities@southandvale.gov.uk		No comment	13/03/2023
	Health and safety healthandsafety@southandvale.gov.uk	Debbie Porter	No comment	10/03/2023
	Risk and insurance risk@southandvale.gov.uk		No comment	10/03/2023

	Communications communications@southandvale.gov.uk	Andrea Busiko	No comment	10/03/2023
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?				
Cabinet portfolio holder's signature To confirm the decision as set out in this notice.	Signature ___ Councillor Anne-Marie Simpson _____ Date _____ 13 March 2023 _____			

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

For Democratic Services office use only		
Form received	Date: 13 March 2023	Time: 14:19
Date published to all councillors	Date: 13 March 2023	
Call-in deadline	Not applicable as this is not a key decision.	

Appendix 1 – Examiner's Report

Appendix 2 – Listing of the Examiner’s recommendations exactly as they are shown in his Report

Rec.	Text	Reason
1	<p>1.1 Delete from the front cover and the page headings "Submission Version – September 2022"; delete or update the 'version' information on page 2.</p> <p>1.2 Review the Table of Contents in the light of the modifications recommended in this Report and so as to number the section heading (also in the body of the Plan), reference all the Policy content and remove the stray footnote indicator.</p> <p>1.3 Bring forward and alter the table 'List of Policies' to provide a comparison between the numbers and titles used in the Revision and the original versions of the Plan.</p>	For clai
2	<p>2.1 Under the sub-heading "Deliver approximately 565 new houses", in the last sentence of the first paragraph replace "a" with 'the 15% growth'.</p> <p>2.2 Under the sub-heading "Designate Local Green Spaces", in the first sentence remove the use of capital letters for "Local Green Space".</p> <p>2.3 Under the sub-heading "Climate Statement", at the top of page 14, replace the bullet point beginning "using Local Green Space designation" with 'using</p>	For clai

	<p>3.3 Declare the Local Plan source for the map on page 26.</p> <p>3.4 Replace paragraph 3.7 with 'Policy H9 in the Local Plan 2035 sets out that 40% affordable housing is required on all sites with a net gain of 10 or more dwelling or where the site has an area of 0.5 hectares or more. In the AONB this is required on sites with a net gain of five or more dwellings.'</p> <p>3.5 <i>Reword paragraph 3.12 as: 'The Local Plan 2035 requires the mix of housing types to reflect local circumstances. This Revision maintains its focus on promoting a housing mix that matches the needs of our community'.</i></p> <p>3.6 In paragraph 3.18 replace "The framework" with 'The Local Plan 2035'.</p>	
4	<p>4.1 Under the heading "Housing Allocation Policy" amend the first sentence of paragraph 6.10 to read: 'This Revision Plan includes changes to the clauses of Neighbourhood Plan Policy NP1 that deal with development other than major allocations'.</p> <p>4.2 Within Figure 6 remove the brown shading for the sites now excluded from the BEN 3/4 land take.</p> <p>4.3 Within Policy NP1: 4.3.1 In the third paragraph replace "expectations" with 'strategy'</p>	For clause Basic C

	<p>and play facilities as required by Policies NP20 and NP22, including Skate Park and Fitness Trail, plus the provision of a Community Hall building with appropriate parking’.</p> <p>4.4.2 Delete the third criterion, beginning “Payment to OCC”, of Policy NP3.</p> <p>4.4.3 Delete the third criterion, beginning “Payment to OCC”, of Policy NP4.</p>	
5	<p>Under the heading “Riverside”:</p> <p>5.1 In paragraph 6.38 correct the reference to “Figure 11” to ‘Figure 22’, update the map and ensure a clear source reference.</p> <p>5.2 Within Figure 10:</p> <p>5.2.1 Replace the boundary and infill indicating the Buffer Zone with an open green hatching showing the buffer as indicative rather than hard-bounded.</p> <p>5.2.2 Amend the view arrows such that they all originate inside the defined Neighbourhood Area.</p>	For clar Basic C
6	<p>Under the heading “Design”:</p> <p>6.1 Ensure that all references to the South Oxfordshire District Council Joint Design Guide acknowledge that it is now an adopted Supplementary Planning</p>	For clar

	<p>'Modifications to the fabric of historic buildings within the Neighbourhood Plan Area, to increase thermal efficiency and/or introduce renewable energy, should have regard for the particular character of the building, and for related local and national guidance relevant to its historic significance.'</p>	
7	<p>Under the heading 'Roads and Transport' in paragraph 9.16 delete "proposed" which precedes "Oxfordshire Local Transport and Connectivity Plan".</p>	For cla
8	<p>Under the heading "Community Facilities Policies":</p> <p>8.1 Amend Policy NP14 to read: 'Where planning permission is required, proposals that result in the loss of Class E (Commercial, Business and Service) uses at ground floor level within the Village Centre, as identified in Figure 17, should, to be supported:</p> <ul style="list-style-type: none"> • not undermine the vitality and viability of the village centre, and either • ensure the new use meets an evidenced community need, or • evidence that there is no market interest in the premises concerned for Class E uses following one year of active and effective marketing. <p>8.2 Within Policy NP15 delete the fourth bullet point and, in the last sentence</p>	For cla Basic C

9.3 In paragraph 11.15, between “spaces” and “from”, add ‘of particular local significance’.

9.4 In paragraph 11.16, in the last sentence, replace “LGS” with ‘Local Green Space’.

9.5 In paragraph 11.17, after “summer 2022”, insert ‘(detailed references in Appendix K)’.

9.6 Delete paragraph 11.18 and renumber subsequent paragraphs accordingly.

9.7 Within Policy NP21 delete “(new Local Green Space designation)” and number the spaces to match the numbers used in Figure 19.

9.8 The reference at the end of paragraph 11.24 is incorrect. It should be reworded as “See Para 11.44 and map at Figure 21”.

9.9 Within Policy NP22 delete “Local” in the title and delete the final sentence.

9.10 Within Policy NP23 replace the last sentence with:
‘Development proposals should demonstrate the appropriate use of street tree planting to provide space for nature throughout the village and shade in a warming climate.’

9.11 Within Policy NP24 replace the last

10.3 In Paragraph 11.42 delete *'and identifies locally important gaps in Figure 20'* in the last sentence of bullet point 4. Split the fifth bullet point into two after the first reference to Appendix E. Reword the new sixth bullet point as: *'A revised Policy NP28. This relates more comprehensively to all development within the Plan area, including within the countryside and requires consideration of a greater number of views, important local gaps and the new Landscape Character Assessments in Appendix E. The views and important gaps are shown in Figure 20 below together with a short description of each view. Illustrations are included in Appendix E Part 3. Views from outside the Plan area are taken into account, particularly where affecting views into and out of the AONBs, but only with regard to development within the Plan area.'*