

Meeting date: 22 May 2019
Report to: Cabinet Member Managed Growth
Subject/report title: Berkswell Parish Neighbourhood Development Plan Independent Examination
Report from: Assistant Director – Growth and Development
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Wards affected:

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Public/private report: Public

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1. Purpose of Report

1.1 To consider the report of the Independent Examiner and agree the Council's response to the recommendations.

2. Decision(s) recommended

The Cabinet Member is asked to:

- (a) Agree the Council's responses to the Examiner's recommended modifications to the Berkswell Parish Neighbourhood Development Plan as set out in the Decision Statement at Appendix A.
- (b) Agree that the Berkswell Parish Neighbourhood Development Plan is modified in accordance with the Decision Statement at Appendix A and can proceed to referendum;
- (c) Accept the Examiner's recommendation that it is not necessary to extend the referendum area and that the most appropriate area for the referendum will be the Berkswell Parish Neighbourhood Area.

3. What is the issue?

3.1 A Neighbourhood Development Plan (NDP) is a community led plan which sets out policies to guide the future use and development of land within a specified Neighbourhood Area.

3.2 The regulatory process for preparation of a NDP can be summarised as follows:

Key Stage / Process	Action
1. Neighbourhood Area Designation	Parish/Town Council or Neighbourhood Forum apply to Solihull Council for Area designation
2. Pre-Submission Consultation	6 week consultation on draft Neighbourhood Plan undertaken by the local community
3. Submission	Neighbourhood Plan formally submitted to Solihull Council
4. Technical Compliance Check	Local planning authority check that all regulatory procedures have been followed
5. Publication	6 week consultation undertaken by Solihull Council
6. Examination	Solihull Council send Neighbourhood Plan to independent examination
7. Plan Proposal Decision	Solihull Council considers examiners report, including any recommended modifications and if satisfied with the Plan proposal, proceed to referendum
8. Referendum	Organised and funded by Solihull Council. Where 50% or more of those voting are in favour of the draft Neighbourhood Plan, it must be 'made' by the local authority and it then forms part of the statutory Development Plan.

3.3 In July 2017 the Council approved a Neighbourhood Area application for Berkswell Parish. As defined in Section 61G (2) of the Town and Country Planning Act 1990, Berkswell Parish Council is the 'relevant body' to prepare a NDP for the proposed area.

3.4 In accordance with the stages outlined above, a Pre-Submission draft Neighbourhood Plan was published for consultation by Berkswell Parish Council in June 2018 and the final [Submission version of the Plan](#) was formally submitted to the Council in October 2018.

3.5 Following a technical compliance check the Submission Neighbourhood Plan was published for public consultation by the Council between 5 November and 21 December 2018. As a statutory consultee, the Council made representations on the Plan which were considered and agreed by Cabinet Member at the decision session on [17 December 2018](#).

- 3.6 In accordance with Stage 6 above, the Council submitted the Berkswell Parish Neighbourhood Development Plan for Independent Examination in January 2019. Following consultation with Berkswell Parish Council, Mr Andrew Matheson was appointed as the Independent Examiner of the Neighbourhood Plan. The Examination, which included all accompanying background documents and representations received during the consultation period, commenced on 24 January 2019 by means of written representations. An unaccompanied site visit to the Neighbourhood Area was also carried out by the Examiner.
- 3.7 The Examiner's Report was received on 9 April 2019, see Appendix B. The Examiner concluded that he was satisfied that the Neighbourhood Plan was capable of meeting the legal requirements set out in the Localism Act 2011, including meeting the basic conditions, subject to 27 recommended modifications outlined in his report. These are also set out in Appendix A.
- 3.8 Section 12 of Schedule 4B of the Town and Country Planning Act 1990, requires that the Local Planning Authority (LPA) must consider each of the recommendations made in the Examiner's report and decide what action to take in response to each of them. However, the LPA's role at this stage is also to satisfy itself that the Plan meets the basic conditions, or would meet those conditions if modifications were made to the Plan (whether or not recommended by the Examiner).
- 3.9 In summary, for a plan to meet the basic conditions it must:
- Have regard to national policy and guidance issued by the secretary of state
 - Have special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses
 - Have special regard to the desirability of preserving or enhancing the character or appearance of any conservation area
 - Contribute to the achievement of sustainable development
 - Be in general conformity with the strategic policies contained in the Development Plan for the area of the Authority (or any part of that area)
 - Not breach, but otherwise be compatible with EU obligations – this includes the SEA Directive of 2001/42/EC and Human Rights requirements.
- 3.10 Whilst the Examiner's recommended modifications are not therefore binding and there is scope for the LPA to also make modifications to the plan, the regulations set out that the only modifications that the authority may make are those that are necessary to ensure the Plan meets the basic conditions, or for the purposes of correcting errors.
- 3.11 Berkswell Parish Council is broadly satisfied with the Examiner's recommendations, and indeed welcomes many of the changes to the wording which respect its intentions whilst improving the policies. However, there is one recommendation where the reasoning behind the policy wording has been lost. This has been discussed with the Parish Council with some additional wording in the supporting text proposed. The Council agrees with the remaining 26 recommendations, and the response to each is set out in Appendix A.

- 3.12 The recommendation that is not agreed relates to Policy B8: Car Parking and Cycle Storage, where the minimum standards for off-street car parking provision for new housing proposed by the Parish Council has been changed to a criteria based policy, similar to that used by the Council. The Examiner considered that there was no convincing evidence for the minimum standards, which he doubted could be met alongside the design requirements elsewhere in the NDP. The criteria recommended by the Examiner include accessibility, the type, mix and use of development, public transport availability, local car ownership levels and provision of spaces for charging electric and other low emission vehicles, thereby recognising the comparatively high levels of car ownership and poor public transport provision in the Neighbourhood Area. In changing the supporting text, the Examiner recommends deletion of text which explains that the policy was intended to prevent discrimination on the basis of disability and age contrary to the requirements of the Equality Act 2010.
- 3.13 It is not suggested that there should be any change to the wording of Policy B8 itself, as recommended by the Examiner. However, the addition of a sentence at the end of paragraph 10.12 to read; '*This is potentially discriminatory on the basis of age and disability and contrary to the duty on public authorities to prevent such discrimination under the Equality Act, 2010.*' would address the deficiency as recommended, and ensure that the basic conditions are met. This wording has been discussed with and formally agreed by the Parish Council.
- 3.14 The Council should recognise that once the recommended changes have been made to the NDP, there may still be a need for some minor editorial amendments to ensure the document reads well. A full review of the final version of the NDP as a whole will be undertaken accordingly.
- 3.15 The regulations set out that when a local authority proposes to make a decision which differs from that recommended by the Examiner, representations must be invited. However, this further consultation is only required when a departure from the Examiner's recommendation is based on new evidence. In this case, new evidence is not being introduced and further consultation is not considered to be necessary.
- 3.16 Finally, if the Examiner recommends that the NDP should proceed to referendum, he must advise whether the referendum area should be extended. This may occur where a proposal in the NDP will have a substantial direct impact beyond the NDP area. In this case, it is considered that the most appropriate area for the referendum will be the Berkswell Parish Neighbourhood Area as designated.

4. What options have been considered and what is the evidence telling us about them?

- 4.1 If the authority is satisfied that, subject to the modifications made, the draft Neighbourhood Plan meets the legal requirements and basic conditions as set out in legislation, a referendum must be held. If the Local Authority is not satisfied that the plan meets the basic conditions and legal requirements then it must refuse the proposal.
- 4.2 The Berkswell Parish Neighbourhood Development Plan has been independently

examined and found to meet the basic conditions subject to the recommended modifications. The Examiner has recommended that the Plan should proceed to referendum.

- 4.3 In accordance with the regulations, the Council has decided what action it proposes to take in response to each of the Examiner's recommendations and it has been considered necessary to make further modifications to ensure the Plan meets the basic conditions.

5. Reasons for recommending preferred option

- 5.1 The Council is satisfied that subject to the agreed modifications recommended by the Examiner, together with the additional modifications by the LPA, the Berkswell Parish Neighbourhood Development Plan meets the basic conditions and should proceed to referendum.
- 5.2 Failure to take the Berkswell Parish Neighbourhood Development Plan forward to referendum would therefore be a failure of the Council's statutory duty as set out above.

6. Next Steps

- 6.1 The Council must formally publish the decision it has made on the Examiner's recommended modifications and whether the plan meets the basic conditions, or would meet those conditions if modifications were made to the Plan, and should proceed to referendum. A date of 31 May 2019 has been agreed with the Parish Council for publication of the decision.
- 6.2 The Council is then required to organise a referendum on the Berkswell Parish Neighbourhood Development Plan within 56 days (excluding weekends and bank holidays) of the publication of the decision to proceed to referendum.
- 6.3 Subject to agreement from Cabinet Member that the Berkswell Parish Neighbourhood Development Plan can proceed, a referendum must be held by the middle of August, 2019.
- 6.4 The question to be asked at the referendum is set out in the Neighbourhood Planning (Referendums) Regulations 2012 as follows:

Do you want Solihull Metropolitan Borough Council to use the Neighbourhood Plan for Berkswell Parish to help it decide planning applications in the neighbourhood area?

- 6.5 In order for the plan to be 'made' (i.e. brought into force) a majority of those voting must vote in favour of the Neighbourhood Development Plan.

7. Implications and Considerations

7.1 Delivery of key themes in the Council Plan:

How will the options/proposals in this report contribute to the delivery of the key themes in the Council Plan? *(select which themes apply and briefly state how the options / proposals in this report contribute to their delivery):*

- Improve Health and Wellbeing -
- Managed Growth -
- Build Stronger Communities -
- Deliver Value -

7.2 Implications for children and young people, vulnerable groups and particular communities:

7.2.1 None identified.

7.3 Consultation and Scrutiny:

7.3.1 In accordance with the Neighbourhood Planning Regulations, the Berkswell Parish Neighbourhood Development Plan has been published for consultation at pre-submission and submission stage. This has provided interested stakeholders with the opportunity to comment on the plan.

7.3.2 In addition, the Council has publicised all consultation details and information about the Plan on its website, and where appropriate, Twitter feed and Stay Connected bulletin. No scrutiny issues have been identified at any stage in the process.

7.4 Financial implications:

7.4.1 The staff time associated with providing support to areas currently undertaking neighbourhood planning is funded through the existing Planning, Design and Engagement Services budget. The Council is required to organise and pay for the independent Examination of a Neighbourhood Plan and any subsequent referendum. However, through the Neighbourhood Planning Grant, £20,000 can be reclaimed once a date has been set for a referendum following a successful Examination.

7.5 Legal implications:

7.5.1 Section 12 of Schedule 4B of the Town and Country Planning Act 1990, requires that the LPA must consider each of the recommendations made in the Examiner's report and decide what action to take in response to each of them. However, the LPAs role at this stage is to also satisfy itself that the Plan meets the basic conditions, or would meet those conditions if modifications were made to the Plan (whether or not recommended by the Examiner).

7.5.2 The regulations make provision for the LPA to make modifications to the Plan if they are considered necessary to meet the basic conditions. If the LPA are satisfied that the basic conditions are met, a referendum must be held on the making of the Neighbourhood Plan. The Plan on which the referendum is to be held is the draft Plan subject to such modifications (if any) as the LPA consider appropriate.

7.5.3 Solihull Council has a legal obligation to assist Parish / Town Councils and Neighbourhood Forums with the process of preparing NDPs, if requests come forward. Although the regulations do not require local planning authorities to give financial assistance to such groups, as outlined above, the Council is required to organise and pay for the independent examination of a plan and the referendum.

7.6 Risk implications:

7.6.1 None identified.

7.7 Statutory Equality Duty:

7.7.1 The modification proposed by the Council and supported by Berkswell Parish Council recognises the importance of Policy B8 in ensuring that the NDP meets the Equality Act 2010.

8. List of appendices referred to

8.1 Appendix A – Decision Statement

8.2 Appendix B – Examiner's Report

9. Background papers used to compile this report

9.1 Berkswell Parish Submission Neighbourhood Development Plan 2018-2033

9.2 Report of the Independent Examiner to Solihull Metropolitan Borough Council on the Berkswell Neighbourhood Development Plan

10. List of other relevant documents

10.1 None.