

EXTRAORDINARY POLICY AND RESOURCES COMMITTEE - 22 OCTOBER 2018

PART I – NOT DELEGATED

3. CROXLEY GREEN NEIGHBOURHOOD PLAN: PROGRESS TO REFERENDUM (DCES)

1 Summary

- 1.1 The purpose of this report is to enable the Policy and Resources Committee to consider recommending to Full Council that the Croxley Green Neighbourhood Plan, as modified by the Examiner, proceed to public referendum on 6 December 2018.

2 Background

- 2.1 Neighbourhood planning was introduced through the Localism Act 2011. New powers allowed qualifying bodies (Parish or Town Councils) to produce Neighbourhood Development Plans (NDP). NDPs allow communities to set planning policies for their area.
- 2.2 Once adopted, NDPs become part of the development plan for the District and they must be considered when planning decisions are made, along with the Local Plan and national planning policy.
- 2.3 NDPs must be examined by a suitably qualified independent person, appointed by the Council and agreed by the qualifying body (Parish/Town Council). Neighbourhood plans must also pass a referendum of local voters by a simple majority. If a plan passes referendum, the Council must 'make' (adopt) it, unless it breaches EU obligations or human rights legislation.
- 2.4 The Croxley Green Neighbourhood Plan (the Plan) has been produced by Croxley Green Parish Council (the Parish) in conjunction with the local community. The Plan does not seek to allocate sites for housing but provides policies which are to be considered in the determination of planning applications for development within the Croxley Green Neighbourhood Plan Area.
- 2.5 The Croxley Green Neighbourhood Plan Area was designated by resolution of the Executive Committee on 27 January 2014.
- 2.6 The Council has a duty to provide technical advice and support to communities producing a Neighbourhood Plan. Officers have assisted the Parish by providing technical advice, feedback on draft versions of the Plan and supporting documents since 2014.

3 Details

- 3.1 In January 2017 Croxley Green Parish Council formally submitted the Draft Croxley Green Neighbourhood Plan and supporting documents to the District Council. It was subsequently withdrawn to allow for further amendments to be made following an independent review of the submitted Plan commissioned by Officers. The Plan was then resubmitted on 6 April 2017.
- 3.2 On receipt of the Plan legislation requires us only to determine whether the following legal requirements have been met:

- A map or statement which identifies the area to which the proposed neighbourhood development plan relates
 - A consultation statement
 - The proposed neighbourhood development plan
 - A statement explaining how the proposed neighbourhood development plan meets the 'basic conditions' as set out in the legislation, and
 - Information to enable appropriate environmental assessments if required.
- 3.3 Once satisfied that the legal requirements had been met we undertook a statutory six-week consultation between 21 April – 2 June 2017.
- 3.4 The Council, with the agreement of Croxley Green Parish Council, appointed Ann Skippers BSc (Hons) MRTPI FRSA AoU as the independent Examiner of the Plan. The representations received from the formal consultation were considered by her.
- 3.5 The Examiner is required to check whether an NDP:
- Has been prepared and submitted for examination by a qualifying body
 - Has been prepared for an area that has been properly designated for such plan preparation
 - Meets the requirements to:
 - i) specify the period to which it has effect
 - ii) not include provision about excluded development
 - iii) not relate to more than one neighbourhood area, and
 - That its policies relate to the development and use of land for a designated neighbourhood area.
- 3.6 The Examiner also has to consider whether a neighbourhood plan meets the Basic Conditions. In order to do this, the Plan must:
- Have regard to national policies and advice contained in guidance issued by the Secretary of State
 - Contribute to the achievement of sustainable development
 - Be in general conformity with the strategic policies of the development plan for the area, and
 - Be compatible with European Union obligations and, not breach, nor be in anyway incompatible, with the European Convention on Human Rights.
- 3.7 On 30 July 2017 the Examiner sought clarification from the Parish and District Councils on the procedure undertaken with regards to the Strategic Environmental Assessment (SEA) and Habitat Regulations Assessment (HRA).
- 3.8 After considering the responses, she set out her preliminary findings in a letter dated 4 September 2017, that the Plan would fail to meet the Basic Conditions at that point. However, as the matter could be remedied she suggested that the examination be suspended in order for additional work and a further consultation be undertaken in relation to the SEA and HRA.

- 3.9 The Parish Council confirmed that they wished to suspend the examination and proceed with the additional work. The examination was suspended on 7 September 2017.
- 3.10 The Examination recommenced on 30 July 2018 following a formal consultation on the newly drafted SEA and HRA Screening Reports between 8 June and 20 July 2018.
- 3.11 The Independent Examiner's Final Report on the Croxley Green Neighbourhood Plan was issued on 21 September 2018 (See Appendix 1). The report was forwarded to the Parish Council for their information.
- 3.12 The Examiner has recommended:
- a significant number of modifications to the Plan to ensure that the Basic Conditions and legal requirements are satisfactorily met
 - that the Plan as modified should proceed to referendum, and
 - that the referendum area should be the same as the Neighbourhood Plan Area.
- 3.13 The Regulations set out that the Council should consider each of the recommendations in the Examiner's Report and decide what action to take in response to each recommendation.
- 3.14 It is the Officers' considered opinion that the recommended modifications should be incorporated into the Plan in order to ensure that the Plan is robust, meets the Basic Conditions and comprises a user-friendly and efficient document. On this basis, the Plan should proceed to a referendum in the Croxley Green Neighbourhood Plan Area (Croxley Green Parish Area) to determine if local people support it.
- 3.15 The modified Croxley Green Neighbourhood Plan and appendices are attached as Appendix 2 and 3. For ease of reference the final modified policies are set out in Appendix 4. Only the policies will be used in the determination of planning applications should the Plan pass a referendum and be 'made' (adopted).
- 3.16 Should the referendum return a positive result the Council must 'make' the plan within eight weeks of the referendum date unless legal issues arise which are unresolved by the end of this eight-week period.
- 3.17 Subject to the result of the referendum and any legal issues, the intention is for the Plan to be brought to the next available Full Council meeting after the referendum with a recommendation that the Plan be made.

4 Options and Reasons for Recommendations

- 4.1 **Option 1: Make the modifications to the Croxley Green Neighbourhood Plan in accordance with the Examiner's Report and proceed to referendum.** This is the option recommended in this report. Officers are of the opinion that the Croxley Green Neighbourhood 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.
- 4.2 **Option 2: Make a decision that differs from the Examiner's recommendations.** If the Council were to propose a decision that differs from the Examiner's

recommendations, the Council is required to a) notify all those identified in the consultation statement of the Parish Council and invite representations during a six-week period, and b) refer the issue to a further independent examination if appropriate.

4.3 **Option 3: Refuse the Plan.** The Council can decide that the Plan fails to meet the Basic Conditions, is not compatible with the Convention rights nor complies with that provision, even with the modifications recommended by the Examiner.

4.4 Without robust grounds, which are not considered to be present in this case, Option 2 and Option 3 could leave the Council vulnerable to a legal challenge.

5 Policy/Budget Reference and Implications

5.1 The recommendations in this report are within the Council's agreed policy and budgets. The relevant policy is the Local Plan.

6 Financial Implications

6.1 The LA Funding Neighbourhood Planning Grant 2018/19 allows LPAs to claim £20,000 once they have set a date for a referendum following a successful examination where a neighbourhood plan has not previously been made for that area. The Council is responsible for the costs of the examination and the referendum. If the Council resolves to accept the Examiner's report and progress the Plan to referendum, funding of £20,000 would be available towards covering the examination costs of £8,770 and contributing to the cost of the referendum which is estimated to be no more than £10,000. Electoral Services has an existing Referendum budget which will be used to pay for any shortfall.

6.2 Producing an NDP allows Parish and Town Councils to increase the amount of Community Infrastructure Levy (CIL) funds they receive from developments within their area from 15% to 25%.

7 Legal Implications

7.1 The report and recommendations outline the current legal position with regard to proceeding to the next stage in the process. The Council's discretion with regards to proceeding to referendum or otherwise is strictly limited by statute and in this case the requirements for proceeding to referendum have been met subject to the proposed modifications being included in the Croxley Green Neighbourhood Plan.

8 Equal Opportunities Implications

8.1 Relevance Test

| | |
|--|----|
| Has a relevance test been completed for Equality Impact? | No |
| Did the relevance test conclude a full impact assessment was required? | No |

9 Staffing Implications

9.1 The referendum will be organised by Electoral Services.

10 Environmental Implications

10.1 Part of the role of the Independent Examiner is to consider whether the neighbourhood plan would breach, or otherwise be incompatible with, the European Convention on Human Rights. The Examiner was satisfied that the neighbourhood plan meets this requirement.

11 Community Safety Implications/Public Health Implications

11.1 None specific.

12 Customer Services Centre Implications

12.1 The Customer Service Centre will be briefed about the referendum.

13 Communications and Website Implications

13.1 All the documents relating to the Examination of the Croxley Green Neighbourhood Plan are available on the Council's website. Electoral Services will be responsible for any communications relating to the referendum.

14 Risk Management and Health & Safety Implications

14.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

14.2 The subject of this report is covered by the Economic & Sustainable Development service plan. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this/these plan(s).

14.3 There are no risks to the Council in agreeing the recommendation(s).

14.4 The following table gives the risks that would exist if the recommendation is rejected, together with a scored assessment of their impact and likelihood:

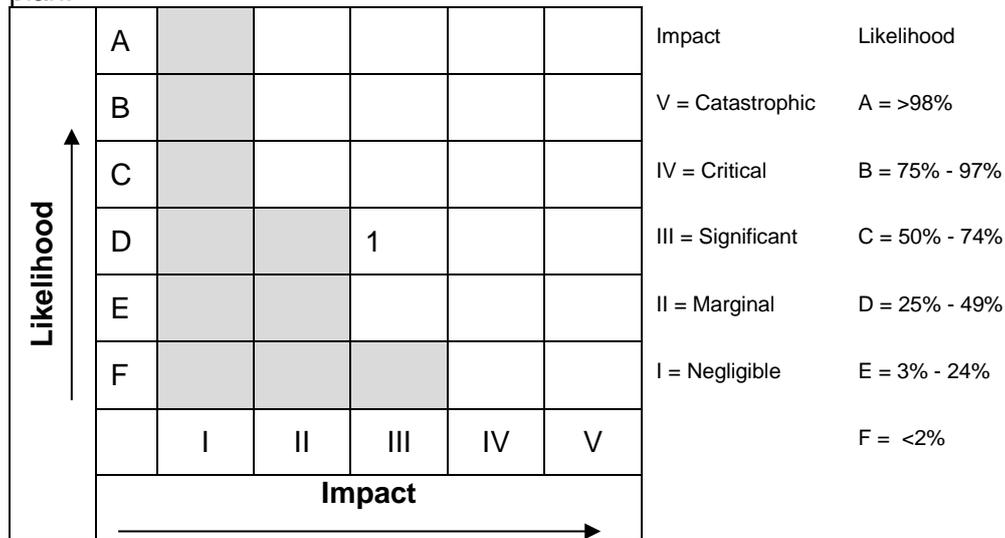
| Description of Risk | | Impact | Likelihood |
|---------------------|---|--------|------------|
| 1 | The Council would be vulnerable to a legal challenge. | III | D |

14.5 Of the risks above the following are already included in service plans:

| Description of Risk | | Service Plan |
|---------------------|--|------------------------------------|
| 1 | The Council would be vulnerable to a legal challenge | Economic & Sustainable Development |

14.6 The above risks are plotted on the matrix below depending on the scored assessments of impact and likelihood, detailed definitions of which are included in the risk management strategy. The Council has determined its aversion to risk and

is prepared to tolerate risks where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require a treatment plan.



14.7 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of treatment plans is reviewed by the Audit Committee annually.

15 Recommendation

- 15.1 That the Policy & Resources Committee recommend to Full Council to resolve:
- That the modifications to the Croxley Green Neighbourhood Plan be made in accordance with the Examiner's Report (Appendix 1) and that the modified Croxley Green Neighbourhood Plan (Appendices 2 & 3) proceed to referendum on 6 December 2018.

Report prepared by: Claire May, Head of Planning Policy & Projects

Background Papers

- Draft Croxley Green Neighbourhood Plan
- The Localism Act 2011
- Town and Country Planning Act 1990 (as amended)
- Neighbourhood Planning (General) Regulations 2012 (as amended)
- The Planning and Compulsory Purchase Act 2004 as amended by the Localism Act
- National Planning Policy Framework 2012
- National Planning Policy Framework 2018
- National Planning Policy Guidance
- Community Infrastructure Levy Regulations 2010 (as amended)

APPENDICES

- Appendix 1 Independent Examiner's Report
- Appendix 2 Croxley Green Neighbourhood Plan (Referendum Version)

Appendix 3 Croxley Green Neighbourhood Plan Appendices (Referendum Version)

Appendix 4 Final Modified Policies

Data Quality

Data sources:

- See Background Papers.

Data checked by: Marko Kalik, Senior Planning Officer

Data rating:

| | | |
|---|------------|---|
| 1 | Poor | |
| 2 | Sufficient | |
| 3 | High | √ |