

POLICY AND RESOURCES COMMITTEE - 7 SEPTEMBER 2020

PART I – NOT DELEGATED

7. CHORLEYWOOD NEIGHBOURHOOD DEVELOPMENT 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 Chorleywood Neighbourhood Development Plan, as modified by the Examiner, proceed to public referendum on 6 May 2021.

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 Chorleywood NDP (the Plan) has been produced by Chorleywood 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 Chorleywood Neighbourhood Plan Area.
- 2.5 The Chorleywood Neighbourhood Plan Area was designated by resolution of the Sustainable Development, Planning and Transport Committee on 15 July 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.

3 Details

- 3.1 In February 2020 Chorleywood Parish Council formally submitted the Draft Chorleywood NDP and supporting documents to the District Council. 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.
- 3.2 Once satisfied that the legal requirements had been met we undertook a statutory six-week consultation between 17 February 2020 – 30 March 2020.
- 3.3 The Council, with the agreement of Chorleywood 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.
- 3.4 The Examiner is required to check whether a 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.
- 3.5 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.
- 3.6 The Independent Examiner's Final Report on the Chorleywood Neighbourhood Development Plan was issued on 29 July 2020 (see Appendix 1). The report was forwarded to the Parish Council for their information.
- 3.7 The Examiner has recommended:
- modifications to the Plan to ensure that the Basic Conditions and statutory requirements are satisfactory met;
 - that the Plan, subject to modifications, should proceed to referendum;
 - that the referendum area should be the same as the Neighbourhood Plan Area.

- 3.8 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.
- 3.9 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 modified Plan should proceed to a referendum in the Chorleywood Neighbourhood Plan Area (Chorleywood Parish Area) to determine if local people support it.
- 3.10 It should be noted that due to the COVID-19 situation, all neighbourhood planning referendums scheduled to take place between 16 March 2020 and 5 May 2021 are postponed in line with the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 until 6 May 2021.
- 3.11 Given the delay to referendums, National Planning Policy Guidance now states that where the local planning authority has issued a 'decision statement' detailing its intention to send a neighbourhood plan to referendum, that plan can be given significant weight in decision-making (so far as the plan is material to the application).
- 3.12 Subject to agreement of Full Council (on 20 October 2020), we will publish a 'decision statement' detailing the decision for the Plan to proceed to referendum on 6 May 2021 together with the final modified version of the Plan. When the decision statement is issued, the Plan can be given significant weight in determining planning applications.
- 3.13 The modified Chorleywood Neighbourhood Development Plan is attached as Appendix 2. For ease of reference the final modified policies are set out in Appendix 3. Only the policies will be used in the determination of planning applications should a decision statement detailing an intention to send the Plan to referendum be published and should the Plan pass a referendum and be 'made' (adopted).
- 3.14 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.
- 3.15 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 Chorleywood Neighbourhood Development 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 Chorleywood 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.
- 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 **Potential Implications of Option 2 and 3:** 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 2020/21 allows LPAs to claim £20,000 from when they issue a decision statement detailing their intention to send the plan to referendum. The Council is responsible for the costs of the examination and the referendum. If the Council resolves to accept the recommended modifications within the Examiner's report and progress the Plan to referendum, funding of £20,000 would be available towards covering the costs.

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 Chorleywood Neighbourhood Development Plan.

7.2 Option 2 and 3 could leave the Council vulnerable to legal challenge as it is not considered that robust grounds exist to justify either option.

8 Communications and Website Implications

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

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 Customer Services Centre Implications

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

12 Equal Opportunities, Community Safety, Public Health, Customer Services Centre

12.1 None specific.

13 Risk and Health & Safety Implications

13.1 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.

13.2 The subject of this report is covered by the Economic and 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).

13.3 There are no risks to the Council in agreeing the recommendation(s). The following table gives the risks that would exist if the recommendation is rejected, together with a scored assessment of their impact and likelihood:

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat, terminate, transfer)</i>	Risk Rating <i>(combination of likelihood and impact)</i>
The Council would be vulnerable to legal challenge	Legal costs		Tolerate	6

13.4 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

Very od Likelinho	Low	High	Very High	Very High
	4	8	12	16

	Low 3	Medium 6	High 9	Very High 12
	Low 2	Low 4	Medium 6	High 8
	Low 1	Low 2	Low 3	Low 4
	Impact			
	Low -----> Unacceptable			

Impact Score

4 (Catastrophic)

3 (Critical)

2 (Significant)

1 (Marginal)

Likelihood Score

4 (Very Likely (≥80%))

3 (Likely (21-79%))

2 (Unlikely (6-20%))

1 (Remote (≤5%))

13.5 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 the management of operational risks is reviewed by the Audit Committee annually.

14 Recommendation

14.1 That the Policy & Resources Committee recommend to Full Council to resolve:

- That the modifications to the Chorleywood Neighbourhood Development Plan be made in accordance with the Examiner's Report (Appendix 1) and that the modified Chorleywood Neighbourhood Development Plan (Appendix 2) proceeds to referendum on 6 May 2021 (Option 1, as noted at Paragraph 4.1).
- That the decision statement is published.

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Background Papers

Chorleywood Neighbourhood Development Plan

Chorleywood Neighbourhood Development Plan Independent Examiner's Report

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
Local Government and Police and Crime Commissioner (Coronavirus)
(Postponement of Elections and Referendums) (England and Wales) Regulations
2020

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 Practice Guidance (2020)

Community Infrastructure Levy Regulations 2010 (as amended)

APPENDICES

Appendix 1 Independent Examiner's Report

Appendix 2 Chorleywood Neighbourhood Development Plan (Referendum Version)

Appendix 3 Final Modified Policies