

Cabinet Report



Report of Head of Planning

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To: CABINET

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Making the Ashbury Neighbourhood Development Plan

That Cabinet recommends to Council:

1. To make the Ashbury 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 consultation with the Cabinet Member for Planning and 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 provide an update to the Cabinet on the progress of the Ashbury 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. Ashbury Parish Council successfully applied for the parish of Ashbury to be designated as a Neighbourhood Area under the Neighbourhood Planning (General) Regulations (2012).
4. The preparation of the Ashbury Neighbourhood Development Plan (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 Plan to the council, the council publicised the Plan and invited comments from the public and stakeholders.
6. The council appointed Mr Andrew Ashcroft to independently 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 his report, the Plan should proceed to referendum.
7. The modifications proposed by the Examiner are largely minor in nature; re-wording and restructuring for clarity and to ensure the basic conditions are met. A full copy of the proposed modifications to the Plan are set out in the Examiner's Final Report¹ and in Appendices 1 and 2 of the Background Paper attached to this report. A few significant modifications were recommended by the examiner including:
 - (a) The deletion in the plan of a proposed Local Green Space (v. Chalk Springs) from Policy 6: Local Green Spaces as it is considered the definition of this proposed Local Green Space designation is unclear and the policy would be difficult to define when implementing the policy in decision-making.
 - (b) The inclusion in the Plan of an additional policy relating to chalk springs and watercourses (Policy 6A: Chalk Springs and watercourses). This approach would have a similar effect to the designation of this land as a proposed Local Green Space in the submission version of the Plan. This policy ensures development proposals take account of the character and geological and ecological significance of the chalk springs and Millstream watercourse between Ashbury and Kingstone Winslow, as specified in Figure 7.29 of the plan. The modification also includes the addition of supporting text to the new policy to provide some local context, and
 - (c) The inclusion of some additional policy wording in Policy 4: Spatial Plan of the plan to make an appropriate cross-reference to the wider development plan, in this instance the Local Plan 2031.
8. Having considered the Examiner's recommendations and reasons for them the Cabinet Member for Planning decided on 22 May 2019:
 1. to accept all modifications recommended by the Examiner;

¹ Independent Examiner's Report to Vale of White Horse District Council on the Ashbury Neighbourhood Development Plan (2019), available at:
<http://www.whitehorsedc.gov.uk/sites/default/files/Ashbury%20Neighbourhood%20Development%20Plan-Examiner's%20Report.pdf>

2. to determine that the Ashbury 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 Ashbury Neighbourhood Development Plan to referendum.
9. 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

10. 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.
11. 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).
12. 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.
13. The Basic Conditions statement (specifically paragraph 8.1) submitted alongside the Ashbury Neighbourhood Plan explores the Plan's compatibility with EU obligations and legislation and concludes the Plan has regard to the fundamental rights and freedoms guaranteed under the European Convention on Human Rights and complies with the Human Rights Act 1998. The council's decision on 22 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 Ashbury Neighbourhood Development Plan, as modified by the Examiner's recommendations, would not breach, nor otherwise be incompatible with EU obligations or human rights legislation.
14. Therefore, if the majority of those voting have voted in favour of the Ashbury 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

15. A referendum relating to the adoption of the Ashbury Neighbourhood Development Plan was held on Thursday 4 July 2019.
16. The question which was asked in the Referendum was: *"Do you want Vale of White Horse District Council to use the Neighbourhood Plan for Ashbury to help it decide planning applications in the neighbourhood area?"*

17. The result was as follows:

- a. Yes = 195 votes (94.2 %)
- b. No = 11 votes (5.31 %)
- c. Turnout = 46.2 %

18. The majority of local electors who voted, voted in favour of the Plan; therefore, the Ashbury Neighbourhood Plan has become part of the council's development plan.

19. 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 to make the Ashbury Neighbourhood Development Plan so that it continues to be part of the council's development plan.

Financial Implications

20. The Government makes funding available to local authorities to help them meet the cost of their responsibilities around neighbourhood planning. 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

21. The decision to make the Ashbury 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.

22. It is not considered that the Ashbury 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

23. The council is required to comply with the statutory requirements (to consider whether the Ashbury 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

24. On the 22 May 2019, the council decided:

- 1. To accept all modifications recommended by the Examiner;

2. To determine that the Ashbury 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 Ashbury Neighbourhood Development Plan to referendum.

25. 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.

26. 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 Ashbury Neighbourhood Development Plan is made.