

Cherwell District Council

Executive

4 November 2019

Consideration of the Examiner's Report for the Weston on the Green Neighbourhood Plan

Report of Assistant Director - Planning and Development

This report is public

Purpose of report

The Weston on the Green Neighbourhood Plan (submission draft) has been examined by an Independent Examiner. The Examiner has produced a report and the Council, as the Local Planning Authority, is required to consider the report's recommendations; determine whether the Plan, incorporating modifications, should proceed to a referendum; and, confirm the area covered by the referendum.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve all the Examiner's recommendations and modifications (Appendices 1 and 2), with the exception of Modifications 15, 21, 24, 26 and 27.
- 1.2 To authorise the issue of a 'decision statement' confirming the Executive's decision and to invite representations on the Council's proposed amendments to Modifications 15 and 21, and consequential changes required to Modifications 24, 26 and 27, of the Examiner's report.
- 1.3 Not to proceed to referendum on the Weston on the Green Neighbourhood Plan at this time.
- 1.4 To approve the area for the future referendum as being the designated Neighbourhood Plan area in accordance with the examiner's recommendations, noting that there will be no extension to the area.

2.0 Introduction

- 2.1 This report is prepared to inform a decision of the Executive following the independent examination of the submission draft of the Weston on the Green Neighbourhood Plan (2018 - 2031). The examination formally commenced on 24 April 2019 and the Examiner's report was received on 11 September 2019. Weston on the Green Parish Council has been sent a copy of the Examiner's report.

- 2.2 Following the receipt of the Examiner's report Weston on the Green Parish Council formally agreed to extend the period (normally five weeks) by which this Council decides what action to take in response to the Examiner's recommendations. This was to allow it to be considered by the Executive on 4 November 2019.
- 2.3 The Executive is invited to consider the following documents:
- i. Examiner's Report (Appendix 1)
 - ii. A schedule of the Examiner's recommendations and officers' consideration of each recommendation and proposed changes (Appendix 2)
 - iii. The Post-Examination Weston on the Green Neighbourhood Plan 2018-2031 with modifications recommended by the Examiner marked up in 'track changes' (Appendix 3)
 - iv. A summary of the representations received to the Submission Plan (Appendix 4)
 - v. Consultation Statement (Appendix 5)
 - vi. Basic Conditions Statement (Appendix 6)
 - vii. Strategic Environmental Assessment (SEA) Screening Statement (Appendix 7)
 - viii. A Schedule of Changes to the Weston on the Green Neighbourhood Plan proposed by the Parish Council (Appendix 8).
 - ix. A summary of the representations received to the Schedule of Changes (Appendix 9).
- 2.4 All of the documents submitted to the Examiner are available on-line at <https://www.cherwell.gov.uk/info/221/neighbourhood-plans/402/weston-on-the-green-neighbourhood-plan/2>
- 2.5 It is the Executive's decision whether the Neighbourhood Plan should proceed to referendum, and if so whether the referendum area should be expanded, and what modifications, if any, should be made to the submission plan.
- 2.6 Once a neighbourhood plan has been independently examined, and the decision taken to put the plan to a referendum, it must be taken into account when determining a planning application, in so far as the policies in the plan are material to the application.

3.0 Report Details

- 3.1 The Executive resolved, at a meeting on 2 November 2015, to designate Weston-on-the-Green Parish as a Neighbourhood Area.

Submission

- 3.2 The Weston on the Green draft Submission Neighbourhood Plan was submitted by the Parish Council to this Council on 11 October 2018. The Plan and supporting documents were publicised as required and public consultation took place between 19 November 2018 and 11 January 2019.
- 3.3 The formal representations received, including one submitted by officers from this Council, were discussed with the Parish Council. The Parish Council then decided

to submit additional documents for the examination in the form of a Schedule of Changes dated March 2019.

Examination

- 3.4 An Independent Examiner was appointed by the District Council, in consultation with the Parish Council. His role was to consider the submitted documents; determine whether the Neighbourhood Plan meets prescribed 'Basic Conditions' and legal requirements; and to recommend whether or not the Plan should proceed to referendum.
- 3.5 A neighbourhood plan meets the Basic Conditions if:
- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
 - the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations; and
 - the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.
- 3.6 Correspondence with the Examiner through the examination was published on the Council's website, at the Examiner's request to ensure that the examination process was open and transparent to all interested parties. During the examination the Examiner invited comments on the Parish Council's Schedule of Changes (March 2019) between 26 April 2019 and 10 May 2019.
- 3.7 The Examiner's report is presented at Appendix 1. The Examiner has considered the Plan and the Parish Council's Schedule of Changes and the subsequent responses following their publication.
- 3.8 The Examiner commends the Draft Neighbourhood Plan for being clear, intelligible, and well written and for its logical structure.
- 3.9 In brief, the Examiner finds:
- The Weston-on-the-Green Neighbourhood Development Plan has been prepared in accordance with Sections 38A and 38B of the Town and Country Planning Act 1990 and the Neighbourhood Planning Regulations 2012 (as amended) and that;
 - Having regard to national policies and advice contained in guidance issued by the Secretary of State it would be appropriate to make the Plan;
 - The making of the Plan would contribute to the achievement of sustainable development;
 - The making of the Plan would be in general conformity with the strategic policies of the development plan for the area;

- The Plan would not breach and will be otherwise compatible with European Union obligations, the Conservation of Habitats and Species Regulations 2017 and the European Convention on Human Rights.

- 3.10 At paragraph 70 of his report the Examiner recommends that the Weston-on-the-Green Neighbourhood Development Plan should proceed to a referendum subject to the modifications that he recommends.
- 3.11 He also recommends, at paragraph 70, that the Neighbourhood Plan should proceed to a referendum based on the area of the draft Neighbourhood Plan.
- 3.12 The Examiner states at paragraph 6 of his report that he is satisfied that the Parish Council took public consultation seriously. He did not consider that there had been any failure in consultation, let alone one that would have caused substantial prejudice. He found that the consultation was sufficient and met the statutory requirements.
- 3.13 At paragraph 22 of his report the Examiner welcomes the Neighbourhood Plan's support for pedestrians and cyclists which contributes to the environmental element of sustainable development. He continues by welcoming the Neighbourhood Plan's support for young families and young people, older people and disabled people which contributes to the social element of sustainable development. He states that the Neighbourhood Plan's support for the parish's heritage assets contributes to the environmental element of sustainable development.
- 3.14 At paragraph 65 the Examiner recognises that certain passages in the draft Plan may need updating. He states that nothing in his report should deter appropriate updating prior to the referendum in respect of incontrovertible issues of primary fact.

Examiner's Recommended Modifications

- 3.15 The Examiner's report (Appendix 1) includes 27 recommended modifications to the draft Neighbourhood Plan. Appendix 2 to this report lists these recommendations and provides officer responses to each in turn. The modifications proposed by the examiner include amendments to the plan's policies, maps and supporting text.
- 3.16 Modifications are recommended by the Examiner in the interest of ensuring that the basic conditions are met. He advises at paragraph 13 that wherever possible the suggested modifications seek to limit the extent to which the substance of the draft Neighbourhood plan is changed.

Officers' Consideration of the Examiner's Report

- 3.17 Paragraph 12 of Schedule 4B of the Town and Country Planning Act 1990 sets out what a local planning authority must do on receipt of a report by an independent examiner. The key decision is whether the plan should proceed to referendum.
- 3.18 The Council is obliged to consider each of the examiner's recommendations and the reasons for them and decide what action to take in response to each. It must come to a formal view as to whether the plan meets the prescribed basic conditions and relevant legal requirements, specifically whether the Plan would breach, and would not otherwise be incompatible with, any EU obligation or any Convention rights (within the meaning of the Human Rights Act 1998).

- 3.19 The Examiner considers EU obligations and Human Rights at para's 27 to 30 and para' 69 of his report. No concerns are raised in relation to the proposed Plan or as recommended for modification. Officers have no reason to disagree.
- 3.20 The officer consideration of each of the Examiner's recommendations are set out in detail in Appendix 2 to this report.
- 3.21 Having considered the Examiner's report, officers are of the view that all of his recommendations should be accepted with the exception of modifications: nos. 15 and 21.
- 3.22 Modification 15 concerns Policy E1 of the Plan. The policy as originally proposed sought to ensure that development should provide a positive contribution to the locally distinctive character of the village and conserve its setting. In particular, it sought to resist development outside the village confines along the B430.
- 3.23 The Examiner, at paragraph 51 of his report, states that the policy as drafted goes considerably beyond national policy, with the effect that it would create significant obstacles to sustainable development.
- 3.24 His proposed modification states that development should be resisted outside the built-up area of the village along the B430 road unless both:
- "1) a need for further sustainable development in or next to the village has been shown to exist and the extent of land used for the development does not exceed that needed to meet the need; and*
- (2) it is shown that there is no more sustainable place where such development is deliverable".*
- 3.25 Officers are concerned that:
- i) the reference to the extent of land used for development not exceeding that needed to meet the need is not clear and measurable and could lead to inefficient use of land and harm to the natural environment contrary to strategic Local Plan Policies ESD10, ESD13 and ESD15.
 - ii) the introduction of a test that there should be 'no more sustainable place' is contradictory to the strategic policies of the Local Plan which direct rural development to (in relative terms) the most sustainable villages including Weston-on-the-Green (subject to Green Belt restrictions).
- 3.26 Consequently, it is considered that the making of the neighbourhood plan with this modification would not contribute to the achievement of sustainable development and would not 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).
- 3.27 Modification 21 concerns Policy C1. The policy as originally proposed states that an area of land in the village, referred to as Area B (The Schoolfield) will be preserved and managed as a potential grassland habitat with access for passive recreation.
- 3.28 The proposed modification states that the policy should be replaced by:

'Development that prevents Area B's preservation as an open space or that destroys ridge and furrow of value on it will only be permitted if each of the following apply:

- 1) a need for further sustainable development in or next to the village has been shown to exist and the extent of land used for the development does not exceed that needed to meet the need;*
- 2) it is shown that there is no more sustainable place where such development is deliverable;*
- 3) no development takes place in flood zones 2 and 3;*
- 4) no development harms the potential priority habitat area in flood zones 2 and 3, the millstream and Gallos Brook;*
- 5) the site has been fully surveyed at appropriate times of the year for the presence of protected species;*
- 6) there is full compliance with policy H9; and*
- 7) the impact of the Oxfordshire Way is kept to a minimum.'*

3.29 Officers are concerned that a policy aimed at seeking the preservation of land as an open space now provides a set of criteria for development which effectively include the same tests as explained above.

3.30 Specifically, it is again considered that:

- i) the reference to the extent of land used for development not exceeding that needed to meet the need is not clear and measurable and could lead to inefficient use of land and harm to natural environment contrary to strategic Local Plan Policies ESD10, ESD13 and ESD15.
- ii) the introduction of a test that there should be 'no more sustainable place' is contradictory to the strategic policies of the Local Plan which direct rural development to (in relative terms) the most sustainable villages including Weston-on-the-Green (subject to Green Belt restrictions).

3.31 It is therefore considered that the making of the neighbourhood plan with this modification would not contribute to the achievement of sustainable development and would not 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).

3.32 Officers are also concerned that the effect of this policy could be contrary to the Neighbourhood Plan's aim of improving community facilities, including access to open spaces for passive recreation.

3.33 Officers consider that the incorporation of these two modifications would mean that the Neighbourhood Plan as proposed to be modified by the Examiner would not meet the prescribed Basic Conditions.

3.34 If the Executive accepts this view, there would be a need to make consequential changes to three of the Examiner's other recommendations: no.24, which relates to Table C (a summary of the Plan policies and responsibilities for their implementation); and no. 26 and no. 27 which relate to references to Policy C1 in Appendix F.

- 3.35 In conclusion, officers are of the opinion that the Neighbourhood Plan should not proceed to referendum at this time.
- 3.36 Officers do agree with the Examiner that the referendum area (in the future) should be based on the designated Neighbourhood Area and that the referendum area does not need to be extended.
- 3.37 Appendix 3 to this report is a version of the Submission Neighbourhood Plan which incorporates the Examiner's recommendations in track changes. It should be noted that minor changes such as the re-numbering of policies, cross-referencing and some updating of the text would also be required to the Plan as a consequence of the recommended modifications.
- 3.38 Officers recommended changes are found in Appendix 2 in bold and underlined type. These principally comprise alternative text for Policies E1 and C1.

Next Steps

- 3.39 Under the legislation where a Local Planning Authority proposes to make a decision that differs from the Examiner's recommendations it must issue a Decision Statement setting out the reasons why it has decided to deviate from the Examiner's recommendations. It must then notify prescribed bodies / persons and invite representations. These representations can only address the matters where the local planning authority has deviated from the Examiner's recommendations. It must then make a final decision to proceed to referendum within five weeks of the end of the consultation period or within five weeks of receipt of an Examiner's report if the Local Planning Authority refers the issue to independent examination.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The submission Weston on the Green Neighbourhood Plan has been independently examined and is recommended by the Examiner for referendum subject to the incorporation of modifications. Officers do not agree with two of the Examiner's modifications. They consider that with the incorporation of all of his recommended modifications the Plan does not meet the requisite Basic Conditions and should not proceed to referendum at this time.
- 4.2 Officers consider that the Examiner's modifications 15 and 21 (and the consequential changes to modifications 24, 26 and 27) should be amended as set out in Appendix 2 of this report. These amendments should be the subject of public consultation as prescribed by the regulations. The future referendum area should be the designated Neighbourhood Plan Area.

5.0 Consultation

- 5.1 Councillor Colin Clarke, the Lead Member for Planning, was given prior notice of this report.

6.0 Alternative Options and Reasons for Rejection

6.1 The following alternative options are available but are not recommended for the reasons set out:

Option 1: Approve all the Examiner's recommendations and proceed to a referendum.

Officers do not agree with all the Examiner's recommendations. Accepting all the modifications and proceeding to referendum would result in a neighbourhood plan that would not provide sufficient clarity to enable the consistent application of its policies in determining planning applications. This may result in development that is contrary to the overall aims and objectives of the Neighbourhood Plan. The Plan would not be in general conformity with the strategic planning policies for the area.

Option 2: To extend the area in which the referendum is to take place.

Officers agree with the Examiner's recommendations. There is no need to extend the referendum area.

7.0 Implications

Financial and Resource Implications

7.1 The costs of appointing the Examiner, and undertaking the examination is being met within existing budgets prior to reclaiming costs. Further consultation with the possibility of a further focussed examination will incur additional costs.

7.2 Local Planning Authorities can claim £20,000 from Central Government 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, which would help to contribute towards the costs of running a referendum.

Comments checked by: Dominic Oakeshott, Assistant Director – Finance (Interim), Dominic.Oakeshott@cherwell-DC.gov.uk

Legal Implications

7.3 The legal process for making the Neighbourhood Plan has been followed. The Weston on the Green Neighbourhood Plan has been prepared in accordance with the Town and Country Planning Act 1990 (as amended), the Planning and Compulsory Purchase Act 2004 (as amended), and the Neighbourhood Planning (General) Regulations 2012 (as amended). It is the Executive's function to consider the outcome of the examination and to determine next steps. All the recommended steps are within the Council's powers and appear entirely reasonable. Accepting all or either of the alternatives as set out in Paragraph 6 above could have short term adverse implications for effective development control resulting in appeals and challenges that might have been avoided.

Comments checked by: Matthew Barrett, Planning Solicitor,
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8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

Launton and Otmoor

Links to Joint Corporate Strategy and Policy Framework

This report directly links to all three themes from the Joint Corporate Strategy 2018-19:

- District of Opportunity & Growth
- Protected, Green & Clean
- Thriving Communities & Wellbeing

Lead Councillor

Councillor Colin Clarke – Lead Member for Planning

Document Information

Appendix No	Title
Appendix 1	Examiner's Report
Appendix 2	Schedule of Recommended Modifications by the Independent Examiner for the Weston on the Green Neighbourhood Plan
Appendix 3	The Post-Examination Weston on the Green Neighbourhood Plan with the Examiner's proposed modifications (in track changes)
Appendix 4	Summary of Representations received to the Submission Plan
Appendix 5	Consultation Statement
Appendix 6	Basic Conditions Statement
Appendix 7	SEA Screening Statement
Appendix 8	Schedule of Changes to the Weston on the Green Neighbourhood Plan – March 2019
Appendix 9	Summary of Representations to the Schedule of Changes.
Background Papers	
None	
Reference Documents	
The Weston on the Green Neighbourhood Plan Submission documents https://www.cherwell.gov.uk/info/221/neighbourhood-plans/402/weston-on-the-green-neighbourhood-plan/2	

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