

# Cherwell District Council

## Executive

6 July 2020

<p><b>Weston-on-the-Green Neighbourhood Plan: Second Examiner's Report</b></p>
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### Report of Assistant Director - Planning and Development

This report is public

#### Purpose of report

To consider a second Examination Report for the Weston-on-the-Green Neighbourhood Plan and determine whether the Plan, incorporating modifications should proceed to a referendum.

#### 1.0 Recommendations

The Executive is recommended:

- 1.1 To approve all the Examiner's recommendations and modifications (Appendices 1 and 2) to enable the Plan, incorporating the recommended modifications (Appendix 3), to proceed to a referendum.
- 1.2 To authorise the issue of a 'decision statement' confirming the Executive's decision including that the Plan will now proceed to a referendum.
- 1.3 To authorise the Assistant Director – Planning and Development to make any minor presentational changes and corrections necessary to ready the Plan for referendum.

#### 2.0 Introduction

- 2.1 This report is prepared to inform a decision by the Executive following a second, partial independent examination of the Weston-on-the-Green Neighbourhood Plan. The examination commenced on 17 March 2020 and the Examiner's report was received on 8 June 2020. The Weston-on-the-Green Parish Council has been sent a copy of the Examiner's report.
- 2.2 The Executive is invited to consider the following documents:
  - Examiner's Report (Appendix 1)
  - A schedule of the Examiner's recommendations and officer consideration of each recommendation and proposed changes (Appendix 2)

- The draft Weston-on-the-Green Neighbourhood Plan 2018-2031 incorporating all recommended modifications as shown in track changes (Appendix 3)
- The Decision Statement following the first Examination, dated 14 November 2019 (Appendix 4)
- A summary of the representations received to that Decision Statement (Appendix 5)

- 2.3 All 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/7>, together with the Examiner's correspondence.
- 2.4 It is the Executive's decision whether the Neighbourhood Plan should proceed to referendum, and what modifications, if any, should be made to the plan.
- 2.5 If the Executive decides that the neighbourhood plan proceeds to referendum it should be noted that due to the Covid-19 pandemic, the referendum cannot take place until at least 6 May 2021.
- 2.6 Once a neighbourhood plan has been independently examined and the decision taken to put the plan to a referendum, it would normally be taken in to account when determining a planning application, in so far as the policies in the plan are material to the application.
- 2.7 Revised Government advice issued in May 2020 states that in circumstances where a referendum is delayed due to Covid-19, and where a local planning authority has issued a decision statement detailing its intention to send a neighbourhood plan to referendum, that plan can now be given significant weight in decision-taking, so far as the plan is 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.
- 3.2 The Weston-on-the-Green draft Submission Neighbourhood Plan was submitted by Weston-on-the-Green Parish Council to this Council on 11 October 2018. The Neighbourhood Plan and supporting documents were publicised as required and public consultation took place between 19 November 2018 and 11 January 2019.
- 3.3 Following the consultation, the Council, in agreement with the Parish Council, appointed an Independent Examiner, Mr T Jones, to undertake the independent examination. The Examiner's report is dated 11 September 2019.
- 3.4 An Examination includes consideration of whether a plan meets the legal requirements in the prescribed 'Basic Conditions' below:
- 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.

- 3.5 The final responsibility to determine whether or not a proposed Neighbourhood Plan meets the prescribed 'Basic Conditions' sits with the Council as Local Planning Authority.
- 3.6 Having considered the Examiner's report, officers were of the view that all of his recommendations should be accepted bar those related to two key modifications (15 & 21). These related to proposed policies which sought to require development to provide a positive contribution to the character and setting of the village (E1), and which sought to preserve and manage an area of land to the west of the village known as The Schoolfield for passive, recreational, open space (C1). A plan showing the The Schoolfield is provided at p.144 of the draft Plan at Appendix 3.
- 3.7 A report was presented to the Executive on 4 November 2019. Officers expressed significant concerns that those modifications would 1) result in a lack of clarity which would create uncertainty about the land release required at Weston-on-the-Green with consequential harm, and 2) introduce a sequential test for development that would conflict with local plan policy.
- 3.8 This meant, in the view of officers, that the neighbourhood plan, as modified, would not contribute to the achievement of sustainable development and would not be in general conformity with strategic policies of the development plan as required by the Basic Conditions. Officers proposed revised policy wording to the Executive for the affected policies (E1 & C1).
- 3.9 Having considered the Examiner's recommendations, the Executive agreed. Members resolved to approve all modifications with the exception of nos. 15 & 21 and consequential modifications 24, 26 and 27. It was agreed that the Plan should not proceed to referendum but that the Neighbourhood Plan area be approved as the area for the future referendum. The issuing of a decision statement was authorized inviting representations on the proposed changes recommended by officers.
- 3.10 The decision statement (Appendix 4) was published on 14 November 2019 with the consultation period extending to 10 January 2020.
- 3.11 Annex 1 to that decision statement contains the Council's proposed alternative wording to that recommended by the Examiner. The comparison is shown below:

**First Examiner's recommendation for replacing policy E1:**

*"E1: Development should provide a positive contribution to the locally distinctive character of Weston-on-the-Green and conserve important aspects of the setting of the village, in particular it should:*

- *Recognise the importance of open space, rural character and important views;*
- *Achieve a biodiversity net gain for the parish including appropriate maintenance and expansion of green spaces;*
- *Implement a biodiversity measure for all development proposals; and*
- *Resist development outside the village confines along the B430 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.”*

**The Council’s proposed change:**

*“E1: Development should provide a positive contribution to the locally distinctive character of Weston-on-the-Green and conserve important aspects of the setting of the village, in particular it should:*

- *Recognise the importance of open space, rural character and important views; and*
- *Achieve a biodiversity net gain for the parish including appropriate maintenance and expansion of green spaces; and*
- *Implement a biodiversity measure for all development proposals; and*
- *Avoid development outside the village confines along the B430 unless it is in accordance with policies in this Plan and the adopted Cherwell Local Plan.”*

**First Examiner’s recommendation for replacing policy C1:**

*Replace the whole of the bold text shown as policy C1*

*“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 on the Oxfordshire Way is kept to a minimum.”*

## **The Council's proposed change:**

*Replace Policy C1 with*

*“C1: The preservation and management of Area B (The Schoolfield as shown in Appendix F) as a potential grassland habitat with access for passive recreational open space commensurate with the maintenance of a lowland meadow will be encouraged.”*

- 3.12 A total of 7 responses were received including a substantive objection from the Pegasus Group representing Lagan Homes. A summary of the representations is provided at Appendix 5.
- 3.13 In considering the representations received, particularly that by Lagan Homes, officers considered that it was necessary, in accordance with the regulations, to appoint a new independent examiner to undertake a further partial examination.

### **Partial Examination**

- 3.14 A new Independent Examiner (Mr J Slater) was appointed, in consultation with the Parish Council, on 17 March 2020. The scope of the partial examination was restricted to the Council's responses to the recommended modifications (15 and 21 and consequentially 24, 26 and 27).
- 3.15 The role of the Examiner was to determine whether the Council's proposed changes to the original Examiner's recommendations as set out in the decision statement met the prescribed Basic Conditions and legal requirements; and to recommend whether or not the Plan should proceed to referendum.
- 3.16 The Examiner made an unaccompanied visit to the Parish on 20 March 2020. He subsequently issued a preliminary document entitled '*Initial Comments*' dated 23 March 2020. This document asked specific questions of the Parish Council, the District Council and Pegasus Group on behalf of Lagan Homes.
- 3.17 Having received responses to these questions the Examiner concluded that he needed to hear oral representations via a video conference (due to Covid-19). He published details of the questions he wished to resolve in his document '*Further Comments*' dated 30 April 2020.
- 3.18 The video conference took place on 19 May 2020 and lasted three hours. A record of the session is available at:  
<https://www.youtube.com/watch?v=LrUKA2VNtdc&feature=youtu.be>.
- 3.19 The Examiner provided his report on 8 June 2020.

### **Examiner's Recommended Modifications**

- 3.20 The Examiner's report is presented at Appendix 1. It includes his recommended modifications to the draft Neighbourhood Plan. At Appendix 2, Members will find a schedule of the Examiners' recommendations and officer responses. The modifications proposed by the Examiner include amendments to policy, maps and supporting text.

- 3.21 The Examiner states (para.30), *“In the context of the two policies at the heart of this examination, Policies C1 and E1, it is clear that the first examiner had concerns that the extent of constraints affecting the village, imposed through the Green Belt, local green spaces, important green spaces, floodplain, conservation area and ecological designations, could potentially prevent the achievement of “sustainable development” and hence would not meet the basic conditions without modification.”*
- 3.22 He notes (para.33) that the first Examiner recognised that development may be required in locations which would ordinarily be constrained, outside of the village confines, alongside the B430 road and also possibly on The Schoolfield site, if there is shown to be a need for “sustainable development” which cannot be met in “a more sustainable location”.
- 3.23 The Examiner tests whether the neighbourhood plan is likely to be able to deliver its housing requirements, in a way that could be consistent with the existing development plan policy, as proposed by the Council’s proposed re-wording (para. 34)
- 3.24 He considers the housing requirements having regard to more up to date information than previously available and concludes that there is an outstanding requirement for 10 further homes for the village’s needs within the plan period (para’s 35-37).
- 3.25 He considers how these homes could be provided in a manner consistent with strategic policies. He has regard to ‘windfall’ development that might be expected (para. 38).
- 3.26 He has regard to housing mix and the delivery of affordable housing (para’s 39 & 40) and opines that the Parish Council could allocate land within the Green Belt for affordable housing in a future neighbourhood plan review (para’s 41-43).
- 3.27 On housing need he concludes that, the community’s housing needs for the present and future housing needs of the village can be delivered - an indicator of whether the plan will deliver sustainable development (para. 45).
- 3.28 The Examiner notes the village’s status as a Category A village, that additional homes could be promoted under the local plan to meet the wider district housing needs (para. 46) and that despite its constraints, needs can be met in a way that is consistent with other policies in the neighbourhood plan and the local plan (para. 47)
- 3.29 He recommends that the Council’s proposed amendments to Policy E1 be retained but sets out why he does not totally agree with the reasons the Council gave for not accepting the original Examiner’s recommendations (paras. 48–50).
- 3.30 These reasons include his views that the first Examiner: 1) had sought to restrict the amount of land required to be developed to the extent required to meet need, rather than to restrict the amount of development that took place on the site to that required to meet the need, irrespective of the size of the site; 2) had not intended that the village’s housing needs would need to be tested against the availability of sites in less sustainable locations beyond the [neighbourhood] plan area; and 3) as no development schemes had been put forward, it could not be concluded that

the modifications would be inconsistent with local plan policies to protect the natural, built and historic environment.

- 3.31 In his consideration of policy C1, the Examiner is satisfied that the protection of The Schoolfield site has been something of a touchstone for the village. He recognises that the first Examiner acknowledged the importance the community attached to its protection and that he was only countenancing development on that site, if unmet housing need had been established and it was shown that no more sustainable sites were available (para. 51).
- 3.32 He agrees (para. 52) with the plan's contention that The Schoolfield is seen by the village as a valuable green space. He takes into consideration that the land is in agricultural use and used for grazing and that it is in private ownership.
- 3.33 He notes public access is restricted to the public footpaths that cross the site and any public recreational use beyond the footpaths would be unauthorised and considers that wider public access is unlikely to be realisable; a conclusion compounded by the existence of a legal agreement preventing a change of use of the land (para's 53-58).
- 3.34 He concludes at paragraph 61 that Policy C1 is not a policy for the development and use of land as it principally refers to the 'preservation', 'maintenance' and 'management' of the land as habitat and as a lowland meadow. Similarly, he advises that a planning policy cannot grant access onto private land for passive recreational open space. He therefore recommends that Policy C1 should be deleted from the Plan but that reference to the community's aspirations for The Schoolfield site could be retained.
- 3.35 Whilst acknowledging the limits of his remit, the Examiner advises that the Parish Council may wish to investigate, in the future, the feasibility of seeking designation of part of The Schoolfield as a local green space; and ridge and furrow features as non-designated heritage assets.
- 3.36 In summary, the Examiner concludes that the Weston-on-the-Green Neighbourhood Plan should proceed to referendum, subject to the Plan being amended in line with his recommendations, which are required to ensure that the Plan meets the Basic Conditions. These include:
- that the changes proposed by the Council to Policy E1 be accepted;
  - that the proposed change to Policy C1 not be accepted and that Policy C1 be deleted from the plan with reference to the community's aspirations for The Schoolfield site, under the consequential changes, retained.

### **Officer's Consideration of the Examiner's Report**

- 3.37 Having considered the Examiner's report, officers are of the view that all his recommendations should be accepted. Officers consider that the Neighbourhood Plan meets the prescribed Basic Conditions with the Examiner's proposed modifications and those of the first Examiner accepted by Executive on 4 November 2019.

- 3.38 The Executive has already accepted the first Examiner's recommendations that the referendum area should be based on the designated Neighbourhood Area and that the referendum area does not need to be extended.
- 3.39 Appendix 3 to this report (the Post-Examination Neighbourhood Plan) incorporates both Examiners' recommendations. However, minor changes such as the re-numbering of policies, amendments to maps and diagrams, and cross-referencing following the implementation of recommendations will need to be made. In the interest of clarity, the proposed Neighbourhood Plan for referendum would then be made available on the Council's website.

### **Next Steps**

- 3.40 Should the Executive approve the Examiner's recommendations and the publication of the required decision statement, the Plan, as modified, would, in time, proceed to a referendum organised by the Director for Law and Governance. An Information Statement would be published providing at least 28 days' notice of the referendum. The prescribed documents, including the Neighbourhood Plan and both Examiners' reports would need to be made publicly available.
- 3.41 Due to the Covid-19 pandemic, the referendum cannot presently take place before 6 May 2021. However, in accordance with Planning Practice Guidance (Reference ID: 41-107-20200513), should the Executive approve the issuing of a decision statement detailing its intention to send the neighbourhood plan to referendum, the plan can be given significant weight in decision-making, so far as the plan is material.

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 The submission Weston-on-the-Green Neighbourhood Plan has been independently examined. The recommendations of the Examiner were considered by the Executive on 4 November 2019. It approved all the Examiner's recommendations and modifications with the exception of Modifications 15, 21, 24, 26 and 27. It also approved the area for the future referendum as being the designated Neighbourhood Plan area.
- 4.2 Following representations received to the Council's decision statement dated 14 November 2019, a second partial independent examination has been held. The Examiner of this partial examination has recommended that the Neighbourhood Plan proceed to referendum subject to the incorporation of modifications. Officers agree with the Examiner's conclusions. They consider, with his recommended modifications, together with the recommendations of the first examiner accepted by the Executive on 4 November 2019, that the Plan meets the requisite Basic Conditions and should proceed to referendum.

## **5.0 Consultation**

Councillor Colin Clarke - Lead Member for Planning



## 6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative option has been identified and rejected for the reasons as set out below.

*Option 1: Not to accept all the Examiner's recommendations*

Where a Local Planning Authority proposes to make a decision that differs from the Examiner's recommendations it is required to set out these reasons in a decision statement which would be subject to further consultation.

## 7.0 Implications

### Financial and Resource Implications

- 7.1 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.

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### Legal Implications

- 7.2 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. If the Executive resolves to follow the alternative as set out in Paragraph 6 above in addition to having to further consult it 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 Corporate Plan and Policy Framework

Business Plan 2020/21

The Neighbourhood Plan, as modified, would assist in meeting the business plan's strategic priorities:

- Housing that meets your needs
- Leading on environmental sustainability
- An enterprising economy with strong and vibrant local centres
- Healthy, resilient and engaged communities

### Lead Councillor

Councillor Colin Clarke – Lead Member for Planning

## Document Information

Appendix No	Title
Appendix 1	Second Examiner's Report - 8 June 2020
Appendix 2	Schedule of Recommended Modifications
Appendix 3	Post Examination Neighbourhood Plan with modifications in track changes
Appendix 4	14 November 2019 Decision Statement
Appendix 5	Summary of Representations to 14 November 2019 Decision Statement
<b>Background Papers</b>	
None	
<b>Reference Papers</b>	
Report of Assistant Director – Planning and Development to Executive (4 November 2019):  <i>Consideration of the Examiner's Report for the Weston-on-the-Green Neighbourhood Plan</i> <a href="http://svc-sql-modg-01:9070/ieListDocuments.aspx?CId=115&amp;MIId=3247">http://svc-sql-modg-01:9070/ieListDocuments.aspx?CId=115&amp;MIId=3247</a>  The Weston on the Green Neighbourhood Plan Submission documents <a href="https://www.cherwell.gov.uk/info/221/neighbourhood-plans/402/weston-on-the-green-neighbourhood-plan/2">https://www.cherwell.gov.uk/info/221/neighbourhood-plans/402/weston-on-the-green-neighbourhood-plan/2</a>  Documents related to the Examination of the Submission Weston on the Green Neighbourhood Plan.  <a href="https://www.cherwell.gov.uk/info/221/neighbourhood-plans/402/weston-on-the-green-neighbourhood-plan/4">https://www.cherwell.gov.uk/info/221/neighbourhood-plans/402/weston-on-the-green-neighbourhood-plan/4</a>	
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