

## REPORT TO CABINET

<b>Open</b>		Would any decisions proposed :		
<b>Any especially affected Wards:</b> Brancaster, South Wootton.	Mandatory	Be entirely within Cabinet's powers to decide	YES	
		Need to be recommendations to Council	NO	
		Is it a Key Decision	YES	
Lead Member: Cllr. Vivienne Spikings E-mail: <a href="mailto:cllr.Vivienne.Spikings@West-Norfolk.gov.uk">cllr.Vivienne.Spikings@West-Norfolk.gov.uk</a>		Other Cabinet Members consulted: Cllr. N. Daubney, Cllr. E. Nockolds		
Lead Officer: John Clements E-mail: <a href="mailto:john.clements@west-norfolk.gov.uk">john.clements@west-norfolk.gov.uk</a> Direct Dial: 01533 616240		Other Members consulted:		
Other Officers consulted: Alan Gomm, LDF Manager; Stuart Ashworth, Planning Control Manager; Geoff Hall, Executive Director, Environment and Planning Manager				
Financial Implications NO	Policy/Personnel Implications NO	Statutory Implications YES	Equal Impact Assessment NO	Risk Management Implications YES/NO

Date of meeting: 9<sup>th</sup> September 2015

### **SOUTH WOOTTON AND BRANCASTER NEIGHBOURHOOD PLANS: DECISIONS WHETHER TO PROCEED TO REFERENDUMS**

#### **Summary**

The Borough Council must consider the independent Examiner's recommendations, and decide for itself whether the proposed neighbourhood plans for Brancaster and South Wootton meet the statutory tests, and hence whether they should proceed to a local referendum which would decide they would be brought into force.

#### **Recommendation**

- 1) That the submitted South Wootton Neighbourhood Plan**
  - a. be amended in accordance with the recommendations of the independent Examiner; and**
  - b. so modified, should proceed to a local referendum covering the area of South Wootton Parish.**
- 2) That the submitted Brancaster Neighbourhood Plan**
  - a. be amended broadly in accordance with the recommendations of the independent Examiner but, subject to consultation, with detailed variation from those recommendations, as set out in Appendix 5; and**
  - b. so modified, should proceed to a local referendum covering the area of Brancaster Parish.**
- 3) That authority to be delegated to the Executive Director, Environment and Planning, in consultation with the Planning Portfolio Holder, to consider responses to consultation on the proposed decision differing from the changes from the Examiner's recommendations, and determine the final changes to be made to the neighbourhood plan before it proceeds to the referendum. changes to the neighbourhood plans needed to**

**achieve this, including addressing any issues arising through consultation on variation from the Examiner's recommendations.**

### **Reason for Decision**

In line with the Borough Council's obligations under the Localism Act, and in particular to achieve compliance of these neighbourhood plans with the 'Basic Conditions'.

## **1 Background**

1.1 The Council is required to facilitate the production and adoption of neighbourhood plans under the Localism Act 2011. This involves a series of actions and decisions at various stages. The Cabinet agreed a series of delegated powers to facilitate this process at its meeting of 3<sup>rd</sup> March 2015. However it reserved to itself decisions as to whether a neighbourhood plan should proceed to a referendum, and if so whether the plan must first be amended to meet the relevant statutory requirements. Two neighbourhood plans have now reached the stage where such decisions must be made.

1.2 Brancaster Parish Council's Draft Neighbourhood Plan was the first of this new type of plan to be formally submitted to the Borough Council, and South Wooton Parish Council followed closely behind with its Draft Neighbourhood Plan submission. In both cases the Plan area is for the whole of the relevant Parish.

1.3 In both cases the Borough Council, through its LDF Team, has provided advice and assistance to the parish council in its preparation of the plan, unconditional on the Borough Council's agreement or otherwise with the plan's ambitions and content.

1.4 In both cases these draft neighbourhood plans have been published for by the Borough Council, and comments from the public invited. Both Plans have been formally examined by an independent Examiner (a suitably experienced and qualified person), taking into account the comments received (including these from the Borough Council). (All the relevant documentation is published on the Borough Council's website.)

1.5 An examiner produces a report of the examination, providing recommendations to the Borough Council as to whether the neighbourhood plan meets the statutory requirements (see below). An examiner may recommend that

- the plan does not meet the requirements and should not proceed to a referendum, or
- the plan does meet the requirements and should proceed to a referendum, or
- the plan does not meet the requirements, but should be modified to do so, and then proceed to a referendum.

1.6 In practice, the latter is the most likely recommendation, and that is what is recommended in the case of both of these neighbourhood plans. (Note that legally it is the responsibility of the Borough Council to make any

required modifications, though in practice there is likely to be liaison with the parish council to achieve this.)

1.7 An examiner is also required to recommend whether any local referendum (of registered voters) on the plan should be extended beyond the plan area. This may be the case if, for instance, the provisions of the plan has serious implications beyond the plan area boundary. In the case of Brancaster and South Wootton, neither Examiner recommends that the referendum area is extended beyond the Plan area.

1.8 If a neighbourhood plan proceeds to a referendum and is supported by a majority of those voting, the Borough Council must 'make' (i.e. adopt) the Plan, and it becomes part of the development plan for the area (the starting point for decisions on planning applications, etc.) alongside the Borough Council's own adopted development plans. (In the event of any contradiction between an adopted neighbourhood plan and the adopted Borough Council plans the most recent prevails.) If the neighbourhood plan is not supported by a majority of votes in a referendum, it fails and does not come into force. (The process can be started again from the beginning.)

1.9 The Borough Council must now consider the Examiners' Recommendations and decide for itself whether the statutory tests have been met, or the plan can be modified to meet those tests. If the Borough Council is minded to make a decision different to the Examiner's Recommendations, it must first consult on this before coming to its final decision. (This is not required if the decision accords with the Examiner's Recommendations.)

1.10 The statutory tests a neighbourhood plan must meet are called the 'Basic Conditions'. These are *[wording simplified]*:

- a) the Plan contributes to the achievement of sustainable development,
- b) the Plan is in general conformity with the strategic policies in the Borough development plans;
- c) having regard to national policies and guidance, it is appropriate to bring the Plan into force;
- d) the Plan is compatible with EU obligations;
- e) the Plan is not likely to have a significant effect on a European (habitats) site or offshore marine site;
- f) prescribed procedural, etc. requirements are met;.

1.11 Note that the matters to be taken into account are quite limited. A local planning authority cannot, for example, decide the plan's contents or its progress simply on the basis it agrees or disagrees with it, nor because it considers something different would be preferable or more successful. On the other hand, assessing a plan against criteria 1 to 3, in particular, does involve significant elements of judgement, and therefore a local planning authority might reasonably come to a different conclusion than the examiner.

## 2 South Wootton Neighbourhood Plan

2.1 The South Wootton Draft Neighbourhood Plan was examined by Andrew Ashcroft BA (Hons) MA, DMS, MRTPI in July 2015. A copy of the submitted Draft Neighbourhood Plan and the Examiner's Report are appended to this Report (Appendices 1 & 2).

2.2 Mr. Ashcroft's Report concludes:

- 'The South Wootton Neighbourhood Plan sets out a wide range of policies to guide and direct development proposals in the period up to 2026. It is concise and distinctive in addressing a specific set of issues that have been identified and refined by the wider community.
- Following my independent examination of the Plan I have concluded that the South Wootton Neighbourhood Plan meets the basic conditions for the preparation of a neighbourhood plan subject to a series of recommended modifications.
- This report has recommended a range of modifications to the policies in the Plan. Whilst I have proposed modifications to several policies and the deletion of some policies, the Plan itself remains fundamentally unchanged in its role, direction and its relationship to wider development in the Borough.
- On the basis of the findings in this report I recommend to the King's Lynn and West Norfolk Borough Council that subject to the incorporation of modifications set out in this report that the South Wootton Neighbourhood Plan should proceed to referendum [covering the area of South Wootton Parish].'

2.3 Mr Ashcroft's Report appears thorough, thoughtful and clear. He has obviously taken care to understand the locality, the Parish Council's perspective and aspirations, and also the strategic context of the Core Strategy's identification of the area as one for growth. Initial feedback from the Parish Council suggests that it considers that the Plan has received a fair and supportive hearing.

2.4 In general, his recommended changes relate to

- making a clearer distinction between policies and other text;
- removing references to the Parish Council's objection to the growth planned for the area by the Borough Council;
- redrafting some policies with greater clarity so that a decision maker can apply them consistently and with confidence when determining planning applications
- deleting some policies which conflict with recent national changes to the planning system (e.g. removing control of building performance, etc.)
- moving some non-land use policies (e.g. on traffic control) to a non-development plan annexe;

2.5 It is considered that the Examiner's recommendations are sound, and there is no clear reason for the Borough Council to depart from them. Hence it is recommended that the Plan is modified as recommended and that a

referendum on the amended neighbourhood plan is held. (Current indications from the Electoral Services team suggests that this would likely take place in November.)

### **3.0 Brancaster Neighbourhood Plan.**

3.1 The Brancaster Draft Neighbourhood Plan was examined by Robert Bryan BA, MRTPI. A copy of the submitted Draft Neighbourhood Plan and the Examiner's Report are appended to this Report (Appendices 3 & 4).

3.2 The Report concludes 'I am therefore pleased to recommend that the Brancaster Neighbourhood Development Plan as modified by my recommendations should proceed to a referendum. I see no reason why the area for the referendum should be altered or extended.'

3.3 The changes Mr. Bryan recommends include:

- A clearer map of the Plan area;
- Various additions to, and re-organisation of, supporting text to explain background information; and
- Revision of various policies for clarity, to provide flexibility etc., and deletion of policies deemed superfluous.

3.4 While the broad thrust of Mr. Bryan's recommendations appears sound, there is some ambiguity in some of the suggested changes and detailed wording he proposes. In some cases these are of little significance, but there is concern about a change to a significant policy in the Draft Plan.

3.5 The Borough Council might quite reasonably consider that the Examiner's recommendations should be followed, but your officers suggest a series of variations from those recommendations to address the concerns, These are discussed below and in Appendix 5.

3.6 The change of greatest concern relates to what is the first policy in the Plan, its position indicating the importance the Parish Council places on it. The Policy is explained in the Plan as a response to concern that the size of new dwellings developed in recent times, usually constructed as second home or holiday lets, are so large as to be unlikely to ever be appropriate as a permanent residence, and also resulting in the erosion of the character of the Conservation Area and the locality more generally.

3.7 The Parish Council is known to have gone to considerable trouble, and consulted with the Borough Council and others, to try to craft a policy (and Plan more generally) which is positive, recognises the reality of, and benefits of, the housing and holiday home market, but has a view on how the village could develop in the longer term to ensure it remains sustainable and with a local resident population alongside visitors. (This is explained more fully in the plan itself.)

3.8 The Draft Policy encourages smaller dwellings of 1, 2 or 3 bedrooms; says that no dwelling should be 5 bedrooms or more; that they should be a

maximum of 2 storeys; and consideration should be given to their impact on views in the Area of Outstanding Natural Beauty.

3.9 The Examiner considers that there should be provision in the Policy to identify in what circumstances dwellings 5 dwellings or more might be allowed, and this is considered reasonable. (See Recommendation 8.) He has suggested (among other things) a new clause to the policy to achieve this. His recommended modification to the Policy on this issue says '*Proposals involving a 5 or more bedroomed dwelling on a single plot may be allowed, exceptionally, where there is a case of demonstrable need to provide accommodation for a family or there are other material planning considerations in support of the proposal.*' [emphasis added]

3.10 This is not an unreasonable suggestion, but there is concern that 'need to provide accommodation' is so broad as to possibly include, for example, a desire to have a holiday let property large enough to potentially accommodate very large families. Such a development would arguably undermine the intention of the Policy.

3.11 It is therefore suggested that an alternative clause is used which more tightly defines the type of circumstances in which a 5 or more bedroomed dwelling might be permitted would be preferable. The suggested alternative is '*Dwellings of 5 bedrooms or more will, exceptionally, be allowed where evidence is provided that this is needed to provide the main residence of a household with long standing residency in the Parish*'. This, it is considered, would ensure the Plan has sufficient regard to the National Planning Policy Framework while staying closer to the Parish Council's intentions.

3.12 The main concerns regarding the recommendations are as follows.

- Recommendation 1: It is difficult to see that the Plan would fail to meet the statutory tests without this addition. While suggested text is correct in itself, it interrupts the flow and tone of the description of the area in the Draft Plan.
- Recommendation 6: The proposed additional text is inaccurate. It is not the case that neighbourhood plans must be in general conformity with the whole of the development plan for the area, only the strategic policies of the local plan.
- Recommendation 8: While the intention of adding precision and flexibility are reasonable and consistent with the NPPF, the proposed wording does not provide a robust mechanism to achieve the policy intentions. (Covered above.) It also loses the positive tone of most of the original policy. Furthermore, the Examiner is mistaken in thinking that the term 'dwelling' does not include apartments.
- Recommendation (un-numbered but is 13<sup>th</sup>): It is not clear why the Plan's proposed encouragement of affordable housing provision should be removed.

- Recommendation (un-numbered, but is 14<sup>th</sup>): It is not clear why the Plan's promotion of shops, workshops and businesses in suitable locations would cause confusion and requires deletion.
- Recommendation (un-numbered, but is 15<sup>th</sup>): It is not clear why the Examiner's suggested AONB views text should be in this policy about heritage assets, rather than the next, which is about landscape. His text which seeks to clarify the extent to which views can be protected is not strictly accurate.
- Recommendation (un-numbered, but is 16<sup>th</sup>): The Examiner's proposed additional text is inaccurate, and the need for it unclear.

3.13 There are also a range of minor concerns such as proposed replacement or additional text, etc., which is unclear or poorly related to the context in which it would sit.

3.14 Given the extent of concerns about the necessity and suitability of the Examiner's recommended changes to the plan, an alternative set of changes to the neighbourhood plan is proposed. As mentioned above, there is a significant degree of judgement involved in applying the Basic Conditions. The Council might very reasonably agree with the Examiner's recommendations, but the alternative changes set out in Appendix 5 are considered to better ensure conformity with the Basic Conditions while, in the spirit of Localism, retaining as far as possible the Parish Council's proposals.

3.15 If provisionally agreed by the Cabinet, these would need to be advertised and comments invited and considered before a final decision is made. (This is not required if the Examiner's recommendation are accepted.) In order to expedite this process it is recommended that authority to consider responses to that consultation and determine the final changes to the neighbourhood plan is delegated to the Executive Director, Environment and Planning, in consultation with the Planning Portfolio Holder.

3.16 Once the final changes are made to the plan, it would then proceed to a referendum

#### **4 Options Considered**

Whether or not the Borough Council agrees the Examiner's recommendations that these plans should be modified to make them meet the Basic Conditions, and then proceed to referendums, and whether the Examiners' recommended modifications are the most appropriate to achieve this.

#### **5 Policy Implications**

In the likely event that either neighbourhood plan is successful it will become part of the development plan. While such plans' policies will not be those of the Borough Council, it will be obliged to apply these policies (alongside those of the local plan and national policies) in determining planning applications.

## **6 Financial Implications**

The costs of handling neighbourhood plans is offset to some extent by a grant currently received from Government at certain stages of each neighbourhood plan's preparation.

## **7 Personnel Implications**

The handling of neighbourhood plan proposals is carried out within the existing LDF Team staffing

## **8 Statutory Considerations**

The processing of neighbourhood plans is an obligation placed on local planning authorities by the Localism Act 2011 (which also modifies various planning acts to provide the basis for neighbourhood plans and their preparation). The Neighbourhood Planning (General) Regulations 2012 add detailed requirements and procedures.

## **9 Equality Impact Assessment (EIA)**

(See Pre-screening assessment report as a background paper)

## **10 Risk Management Implications**

None identified.

## **11 Declarations of Interest / Dispensations Granted**

None identified.

## **12 Background Papers**

None.