

## Report to Council

26 June 2019

By the Cabinet Member for Planning and Development

### KEY DECISION



Not Exempt

## Warnham Neighbourhood Development Plan

### Executive Summary

Following extensive preparations and Examination the Warnham Neighbourhood Plan was subject to a Referendum on 13 June 2019, where the majority of those who voted were in favour of the plan. The purpose of this report is to seek Council's formal approval to "make" the Warnham Plan part of the statutory Development Plan as required by the Town and Country Planning Act 1990 (as amended) and the Localism Act 2011. Once made, the plan will be used to determine planning applications within Warnham Parish in addition to the Horsham District Planning Framework (HDPF).

The preparation of Warnham Neighbourhood Plan to 2031 has followed the statutory procedures set out in The Neighbourhood Planning (General) Regulations 2012 (as amended). The plan has successfully undergone Examination and has satisfied the basic conditions and the plan is in conformity with the Horsham District Planning Framework (HDPF).

Where a Referendum results in a majority 'yes' vote, the Local Planning Authority is required to "make" the Warnham Neighbourhood Plan within 8 weeks of the Referendum decision in accordance with the Regulations. This will enable the District Council to use the Warnham Neighbourhood Plan to determine planning applications in the parish area.

Under recent changes to the Planning and Compulsory Purchase Act 2004 pursuant to the Neighbourhood Planning Act 2017, the Plan forms part of the statutory Development Plan and carries full weight in planning decisions as soon as it is approved at a referendum, rather than when it is made. Applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

### Recommendation(s)

Council is recommended to:

- i) Formally "make" the Warnham Neighbourhood Plan as part of the statutory Development Plan, following the Referendum held on 13 June 2019.

## **Reason for Recommendation**

- i) To meet the requirements of the Town and Country Planning Act 1990 (as amended), the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012 (as amended)

## **Background Papers**

- i) The Localism Act 2011
- ii) The Neighbourhood Planning (General) Regulations 2012 (as amended)
- iii) Warnham Neighbourhood Plan
- iv) Examiner's Report & HDC Decision Statement (12 April 2019) for the Neighbourhood Plan

**Parishes affected:** Warnham Parish

## **Contact:**

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## **Background Information**

### **1 Introduction and Background**

- 1.1 The Localism Act, which received Royal Assent on 15 November 2011, introduced new rights and powers to allow local communities to shape development in their areas by coming together to prepare neighbourhood plan. The Act allows Parish/Town Councils and other forums to prepare a Neighbourhood Plan for their designated area.
- 1.2 Preparation of a Neighbourhood Plan is subject to several key stages set out in The Neighbourhood Planning (General) Regulations 2012 (as amended) which include:
  1. Designation of the neighbourhood plan area;
  2. Pre-submission publicity and consultation;
  3. Submission of the plan to the Local Planning Authority;
  4. Independent Examination;
  5. Referendum; and
  6. Making the Neighbourhood Plan (i.e. bringing it into force).
- 1.3 Warnham Parish Council has undertaken the preparation of a Neighbourhood Plan and following the completion of the Examination process a Referendum was held on 13 June 2019 to seek the support of the community for the plan. The result of the Referendum was a majority 'yes' vote in favour of the plan with a turnout of 34.07% and 76% voting in favour of the Warnham Neighbourhood Plan.

### **2 Relevant Council policy**

- 2.1 The Local Plan for Horsham District, (the Horsham District Planning Framework or HDPF), sets out the key planning policies against which development in the District is considered. It is a requirement that Neighbourhood Plans contain policies, which are broadly in accordance with the Local Plan. This includes a requirement that Neighbourhood Plans allocate a proportion of the 1,500 homes that the Local Plan identifies to be delivered through neighbourhood planning (Policy 15 HDPF). The Warnham Neighbourhood Plan has been positively prepared and will contribute a proportion of the Council housing's supply.

### **3.0 DETAILS**

#### **Preparation of the Warnham Neighbourhood Plan**

- 3.1 Warnham Parish Council, as the qualifying body, successfully applied to Horsham District Council to be designated as a Neighbourhood Area under Regulation 5 of The Neighbourhood Planning (General) Regulations 2012. The Neighbourhood Plan Area for Warnham covers the whole of the Parish of Warnham and was designated as a Neighbourhood Plan Area on the 25 February 2014.
- 3.2 Warnham Parish Council completed a number of tasks that are required to prepare a Neighbourhood Plan. These included the preparation and gathering of evidence and undertaking various consultation exercises before drawing up a draft

of the plan (known as the Pre-Submission Plan). The Pre-Submission Plan then underwent consultation under Regulation 14 of the Neighbourhood Planning (General) Regulations 2012, from 17 March 2018 – 30 April 2018.

- 3.3 The Pre-Submission Plan was amended in response to the comments made during the consultation and the “Submission Plan” was then formally submitted to the District Council. The Council, in accordance with Regulation 16 of the Neighbourhood Planning (General) Regulations 2012, undertook a further consultation of the Submission Plan. Representations were invited between 17 August 2018 to the 12 October 2018.
- 3.4 In agreement with the Parish Council, Horsham District Council appointed Mr Jeremy Edge to carry out an independent Examination of the Neighbourhood Plan. The purpose of the Examination was to determine whether the Plan met the Basic Conditions together with other legislative requirements and therefore whether the Plan should proceed to Referendum. The Examiner’s Report was formally completed and sent to Horsham District Council on the 9 March 2019. The Examiner concluded that with a number of modifications the Submission Warnham Neighbourhood Plan would meet the Basic Conditions and could proceed to Referendum on that basis.
- 3.5 Following consultation with the Parish Council, both HDC and the Parish Council accepted all of the Examiner’s recommendations and it was agreed to progress the plan to referendum.
- 3.6 On 13 June 2019, the Warnham Neighbourhood Development Plan to 2031 successfully passed Referendum with 76% of the votes cast agreeing that the Warnham Neighbourhood Development Plan be used by Horsham District Council to help in the determination of planning applications in the Parish of Warnham (turnout at the Referendum was 34.07%).

### **Strategic Environmental Assessment (SEA)**

- 3.7 Regulation 18 of the Neighbourhood Planning (General) Regulations 2012 requires the Council as local planning authority to outline what action to take in response to the recommendations of the Examiner made his report under paragraph 10 of Schedule 4A to the 1990 Act (as applied by Section 38A of the 2004 Act). The Council has given consideration to the commentary made by the Examiner, including having regard to the adequacy of the plan in meeting EU legislation. It is considered the final decision is the most comprehensive and delivers the most sustainable form of development for Warnham village.
- 3.8 Taking into account the National Planning Policy Guidance (‘the NPPG’) which states: *“(The SEA) should focus on the environmental impacts which are likely to be significant. It does not need to be done in any more detail, or using more resources, than is considered to be appropriate for the content and level of detail in the neighbourhood plan.”* The Council is of the view that the SEA, which accompanies the Warnham Neighbourhood Plan has considered an appropriate range of alternatives, and in addition makes reference to cumulative impacts of the Plan. The Council is therefore of the view that the SEA meets the necessary regulatory requirements.

## **4 Next Steps**

- 4.1 As a result of the Referendum, the Council is required, in accordance with Legislation to formally 'make' the Warnham Neighbourhood Plan as over 50% of those who voted in the Referendum were in favour of the Plan. Making the Plan will allow the document to be given full weight in determining planning applications within the parish. Horsham District Council is required to 'make' the Plan within 8 weeks of the Referendum in accordance with the Regulation 18A of the Neighbourhood Planning (General) Regulations 2012 (as amended).

## **5 Outcome of Consultations**

- 5.1 The preparation of the Neighbourhood Plan has been undertaken in consultation with stakeholders and the community. These consultations have been carried out by both the Parish and District Council in accordance with The Neighbourhood Planning (General) Regulations 2012 (as amended).

## **6 Other Courses of Action Considered but Rejected**

- 6.1 The Council could reject Warnham Neighbourhood Plan if it considers that the Plan is in breach of any EU or other legal obligations, convention or rights. Taking into account the views of the Examiner, as set out in section three of this report, it is not considered that this is the case. The Council is therefore required to make the Plan in accordance with the Neighbourhood Planning (General) Regulations 2012 (as amended).

## **7 Resource Consequences**

- 7.1 Failure to adopt the Warnham Neighbourhood Plan could result in the Council being open to High Court challenge on the ground that it has acted in breach of the Town and Country Planning Act 1990 as amended by the Localism Act 2011. This would incur significant costs in terms of Officer's time and costs associated with legal challenges and appeals.
- 7.2 The Plan document will be made available to the public electronically for free. As with other planning documents, the Plan will be made available in print for a fee that covers printing costs.
- 7.3 As making the Plan does not alter its status in the planning system, there are not considered to be any additional costs for planning decisions.
- 7.4 There are no other staffing or financial consequences resulting from this decision.

## **8 Legal Consequences**

- 8.1 Section 38A (4) of the Planning and Compulsory Purchase Act 2004 Act, as inserted by the Localism Act 2011 states that a local planning authority:
1. must make a neighbourhood development plan if more than half of those voting in the neighbourhood plan Referendum vote are in favour of the Plan; and
  2. do so as soon as reasonably practicable after the Referendum is held and in any event by such date as may be prescribed

- 8.2 Furthermore, the Neighbourhood Planning (General) Regulations 2012 (as amended) stipulate under Regulation 18a the following: *“Prescribed date for making a neighbourhood development plan 18A.—(1) The date prescribed for the purposes of section 38A(4)(b) of the 2004 Act is the date which is the last day of the period of 8 weeks beginning with the day immediately following that on which the last applicable referendum is held.* It follows if the plan is not made within the 8 weeks, it will not be in accordance with the Regulations.
- 8.3 Under Section 113 of the Planning and Compulsory Purchase Act 2004 (as amended) (3) a person aggrieved may make an application to the High Court on the ground that a procedural requirement has not been complied with. The application must be made within 6 weeks. A procedural requirement is a requirement made by Regulations or an order which relates to the adoption publication or approval of a plan/document. Therefore, if the Warnham Neighbourhood Plan is not adopted by the Council within 8 weeks of the Referendum, they could be challenged by way of a Judicial Review which can result in the Plan being quashed.

## **9 Risk Assessment**

- 9.1 Once the Warnham Neighbourhood Plan has been ‘made’ there is a six-week period when an application to for Judicial Review can be sought on the decision to adopt the Plan. The Council has sought to minimise the likelihood of a successful legal challenge.

## **10 Other Considerations**

### **10.1 Equality and Diversity Implications**

The making of the Plan is not expected to have any adverse impact on people with protected characteristics under the Equality Act 2010. Your attention is drawn however to the duty under Section 149(1) of the Equality Act 2010 which provides that a public authority must, in exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The plan’s policies were considered in relation to potential equality impacts that could arise as a result of the plan’s referendum and making, which officers consider to be either neutral or positive.

### **10.2 Human Rights**

The Plan was tested against the basic conditions set by legislation during the examination. One of the basic conditions is that the Plan must be compatible with EU and human rights obligations. Officers agree with the Examiner’s view that the Plan, as amended, meets all the basic conditions including EU and human rights obligations and that therefore the Plan should be made.