

COUNCIL

1 April 2015

DENMEAD NEIGHBOURHOOD PLAN – DECISION TO MAKE PLAN FOLLOWING REFERENDUM

REPORT OF HEAD OF STRATEGIC PLANNING

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RECENT REFERENCES:

CAB2641 – 14 January 2015: Denmead Neighbourhood Plan – Examiner’s Report and Recommendations

CAB2427 (LDF) - 17 December 2012 – Denmead Neighbourhood Plan Funding

CAB2373 – 4 July 2012 – Designation of Denmead Neighbourhood Plan Area

EXECUTIVE SUMMARY:

Cabinet on 14 January 2015 (CAB2641 refers) recommended that a report on the outcome of the referendum be made direct to full Council on 1 April 2015, so as to allow the Denmead Neighbourhood Plan to be formally ‘made’ by the Council, in accordance with the statutory provisions, and thereby brought into force.

The purpose of this report is therefore to inform Members of the positive outcome of the referendum held on 5 March 2015 and pass the appropriate resolution to formally make the Denmead Neighbourhood Plan.

The Denmead Neighbourhood Plan has been prepared over a number of years with extensive community engagement in accordance with various elements of legislation, including the Town and Country Planning Act 1990 (as amended) and the Neighbourhood Planning (General) Regulations 2012.

Once brought into force, the Denmead Neighbourhood Plan will form part of the statutory development plan for the Winchester District, for the period 2011 – 2031, and will be used in determining planning applications.

RECOMMENDATIONS:

1. That in the light of the result of the referendum held on 5 March 2015, the Denmead Neighbourhood Plan be made in accordance with Section 38A(4) of the Planning and Compulsory Purchase Act 2004 (as amended).
2. That it be noted that upon being made, the Denmead Neighbourhood Plan will form part of the statutory development plan for the Winchester District, for the period 2011 – 2031.

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DETAIL:

1. Introduction

- 1.1. The purpose of this report is to allow the Council to consider the outcome of the referendum on the Denmead Neighbourhood Plan (DNP) held on 5 March 2015. In the light of the result, it is recommended that the Council resolves to make the Plan, thus bringing it into force and making it part of the statutory development plan framework.

2. Background

- 2.1. The Localism Act 2011 introduced a mechanism for local communities to produce neighbourhood plans. These planning documents, once formally “made” by the local planning authority, will be used alongside the National Planning Policy Framework and Local Plans to determine planning applications.
- 2.2. Denmead Parish Council commenced preparation of its neighbourhood plan in 2011 after successfully receiving ‘front runner’ status and funding as part of the Government’s initiative to promote the preparation of community-led plans. The Plan progressed through its various stages, receiving a favourable examiner’s report in December 2014.
- 2.3. In addition to making a number of recommendations for changes to the Plan, the Examiner concluded that the Plan as modified should be submitted for referendum. It is important to note that the legislation and guidance is clear that whilst neighbourhood plans are prepared by the community, with suggested modifications by the Examiner, the final decision to ‘make’ the plan falls with the local planning authority (the City Council).
- 2.4. The Denmead Neighbourhood Plan includes policies which allocate sites for development together with a small number of supporting policies.
- 2.5. At its meeting on 14 January 2015, Cabinet (CAB2641 refers), agreed to the recommendations made by the Examiner and that the Denmead Neighbourhood Plan, as modified, should proceed to referendum. An extract of the minutes to CAB2641 is set out in Appendix A to this report.

3. Referendum

3.1. The relevant local authority (in this case, the City Council) is responsible for administering the referendum, which must cover the same geographical area as the Plan. The referendum process, like elections, follows strict procedures and all the required documents can be viewed on the election pages of the Council's website.

3.2. The question to be asked at the referendum is set out in legislation and states:-

“Do you want Winchester City Council to use the Denmead Neighbourhood Plan for the Denmead Neighbourhood Plan Area to help it decide planning applications in the neighbourhood area?”

3.3. For a neighbourhood plan to pass the referendum, it requires the majority of the votes received to be in favour (i.e. more than 50% of the votes cast on the day).

The results were:-

YES	NO	Number of Votes
1546	785	2331

3.4. There were six spoilt votes. Of those who voted, 66.15% voted in favour of the plan.

3.5. The total electorate eligible to vote was 5638, which represents a turnout of 41.45%. This compares very favourably to other neighbourhood plan referendums where the average turn out is around 32%.

3.6. Under Section 38A(4), the local planning authority to whom a proposal for the making of a neighbourhood development plan has been made, must make the plan as soon as reasonably practical after the referendum, if the result of the referendum is that more than half of those voting have voted in favour of the plan. As can be seen above, this is the case for the Denmead Neighbourhood Plan, and therefore the Council as local planning authority must now formally make the Plan, unless the local planning authority considers that the Plan would breach, or be incompatible with, any EU obligation or any of the Convention Rights.

3.7. The Examiner in his report, covered this latter issue in some detail and concluded that the Plan is compatible with the Convention rights and does not breach and is otherwise compatible with, EU obligations (para 64, Independent Examiners Report December 2014). Cabinet considered these issues at its meeting on 14 January 2015 (CAB2641 refers) and agreed with the Examiner's conclusions. Since that decision, there have been no changes in circumstances

which might affect that conclusion. On that basis, the Council is under a duty to make the Plan.

- 3.8. Once 'made', the Denmead Neighbourhood Plan will be used alongside the National Planning Policy Framework and Local Plans to determine planning applications. The final version of the Denmead Neighbourhood Plan can be viewed on the neighbourhood planning pages of the Council's website.
- 3.9. It will be necessary following this meeting to inform all those involved in the process of the outcome, by way of a final decision statement, which is included at Appendix B.

OTHER CONSIDERATIONS:

4. COMMUNITY STRATEGY AND PORTOFOLIO PLANS (RELEVANCE TO):

- 4.1. Once formally 'made', the Denmead Neighbourhood Plan will form part of the statutory development plan. As it is required to contribute to the achievement of sustainable development, it will contribute to achieving the Community Strategy in so far as it applies to Denmead.

5. RESOURCE IMPLICATIONS:

- 5.1. The City Council has a duty to support the preparation of neighbourhood plans and to undertake key stages which are set out in legislation. The Government has now recognised that extensive resources are required at key stages and has consequently established financial support through its Neighbourhood Planning Funding for Local Authorities. The level of funding is £30,000. The first payment of £5,000 was received following designation of the area to be covered by the neighbourhood plan. The second payment of £5,000 was received once the final pre-examination version of the neighbourhood plan was publicised by the City Council prior to examination. The third payment of £20,000 has also been received following the successful completion of the neighbourhood plan examination. This final payment will cover costs associated with both the Examination and Referendum (Examiners expenses of £11,511.75 (+VAT), Referendum costs approximately £7,000).

6. RISK MANAGEMENT ISSUES:

- 6.1. CAB2641 identified a risk that if the Denmead Neighbourhood Plan was not supported at referendum, the City Council has a responsibility to plan for development in its area which includes Denmead. Therefore it would have been necessary to proceed with Local Plan Part 2 to include proposals for meeting the housing and other requirements of LPP1 for Denmead, but this will not be the case if the Neighbourhood Plan is 'made'.
- 6.2. Completing this stage and making the Plan provides certainty to the consideration of planning proposals in the area covered by the Denmead Neighbourhood Plan.

- 6.3. The referendum result can only be challenged by judicial review, and proceedings must be lodged within 6 weeks beginning on the day on which the result is declared.
- 6.4. In respect of the decision to make the plan, again this can be challenged by judicial review proceedings. Such proceedings must be brought within six weeks of the decision being challenged. The Council's decision to proceed to the referendum (taken on 14 January 2015) was not challenged within the six week period, and any complaint about the process which led to that decision to proceed, or the evidence which was or was not taken into account, cannot affect the Council's duty to make the plan in the light of the referendum result.
- 6.5. Any challenge in respect of the current decision to make the plan can only be on a matter of law, e.g. a challenge if the Council were to decide not to make the plan, with no evidence that making the plan would breach or otherwise be incompatible with any EU obligation or any of the Convention rights within the meaning of the Human Rights Act 1998

BACKGROUND DOCUMENTS:

Denmead Neighbourhood Plan – Examiner's Report:

<http://www.winchester.gov.uk/planning-policy/neighbourhood-plans/denmead-neighbourhood-plan-examiner-39-s-report/>

Denmead Neighbourhood Plan – Referendum documentation

<http://www.winchester.gov.uk/elections/denmead-neighbourhood-plan-referendum/>

APPENDICES:

Appendix A: Extract of Minutes to CAB2641 14 January 2015.

Appendix B: Final Decision Statement

EXTRACT OF MINUTES OF**CABINET****14 January 2015****1. DENMEAD NEIGHBOURHOOD PLAN – EXAMINER’S REPORT AND RECOMMENDATIONS**

(Report CAB2641 refers)

Councillor Weston highlighted that Denmead were one of the earliest communities nationally to progress a Neighbourhood Plan. The full submission Plan and Examiner’s Report were available via the City Council’s website.

The Head of Strategic Planning drew Member’s attention to additional communications regarding the Examiner’s Report received from Mr & Mrs Smith and Mr Bell-Davies. Both appeared to challenge the Examiner’s recommendations and also his decision not to hold a formal hearing. It was clarified that the Examiner was only required to assess the Plan against the ‘basic conditions’ and had decided not to hold a public hearing. Full reasons were given in the Examiner’s report.

The Head of Strategic Planning also advised on a proposed minor change to Appendix A of the Report, Policy 4, Action column as set out below:

- Delete wording “i.e. not use classes A1, A5, C1, D1 and D2” and substitute with wording “(particularly use classes A1 to A5)”

This was agreed. In response to questions regarding the concerns set out in the correspondence referred to above, the Head of Strategic Planning advised that not only had the Examiner listed all the documents referred to in their consideration of the Plan and the representations received, which included a very comprehensive consultation statement, he had also specifically considered the case whether to hold a hearing and had concluded that there were no issues which required clarification and took the decision that a hearing was not necessary. The various stages of the Neighbourhood Plan process were summarised in Section 2 of Report CAB2641.

Neil Lander-Brinkley and David Smith addressed Cabinet during the public participation period and their comments are summarised below.

Neil Lander-Brinkley (Chairman of Denmead Parish Council) explained that preparation of the Plan had started about three years ago and the Parish Council had received ‘front runner’ status and funding. The Parish Council were now able to pass on their experience gained to other parish councils wishing to prepare a Neighbourhood Plan. The consultation was undertaken

in three phases to reach all parts of the community and all age groups. Seven public meetings had been held in different venues and using different formats. The proposed Plan was consistent with Local Plan Part 2 and had been approved with the amendments outlined in the Report by the Examiner.

The Chairman congratulated Denmead Parish Council on their achievements so far in producing the Neighbourhood Plan.

David Smith (a Denmead resident) made reference to various communications he had sent to Cabinet requesting that the Examiner's recommendations not be accepted and that a full hearing be held. He had concerns that from the process followed and many of the representations received meant that the views of the local community were not taken into account. Specifically he believed that the public meetings held were not minuted, including the consultation meeting chaired by a professional facilitator which he considered had agreed a number of clear actions which had not been implemented.

The Head of Strategic Planning advised that the Examiner had not considered it necessary to hold a public hearing and therefore the only potential means to hold one now would be to go back to an earlier stage of Plan preparation and to appoint a new Examiner. This course of action would need to be justified and there was no guarantee that a different Inspector would require a hearing, as the general rule for Neighbourhood Plans was that examination is by written representations. In addition, there would not be any further funding available from the Government for additional work.

At the invitation of the Chairman, Mr Lander-Brinkley responded to points raised by Mr Smith. He confirmed that although minutes had not been taken at meetings, strategic points had been noted and discussed at the next steering group meeting. He gave an example of one meeting where proposals to relocate the Memorial Hall were dropped because of the strength of residents' views expressed. He also highlighted that the Plan had been seen informally by another Examiner prior to its submission to the Council and subsequent consideration by the formal Examiner.

At the invitation of the Chairman, Councillor Evans addressed Cabinet and congratulated all those involved in the preparation of the Plan. She queried whether the funding available would be sufficient to cover the cost of the referendum? In addition, were there contingency plans in place if the referendum produced a negative result or if the Local Plan Part 2 was delayed?

The Head of Strategic Planning confirmed that the cost of the referendum should be met from the funding received from the Government. If the result of the referendum was negative, LPP2 could be amended to include the area.

Cabinet agreed to the following for the reasons set out above and outlined in the Report.

RECOMMENDED:

THAT A REPORT ON THE OUTCOME OF THE REFERENDUM BE MADE TO FULL COUNCIL ON 1 APRIL 2015, SO AS TO ALLOW THE PLAN TO BE FORMALLY MADE AND BROUGHT INTO FORCE AS SOON AS POSSIBLE, IN THE EVENT OF THERE BEING A POSITIVE REFERENDUM VOTE IN FAVOUR OF THE DENMEAD NEIGHBOURHOOD PLAN (OVER 50% OF VOTES CAST).

RESOLVED:

1. That the recommendations of the Examiner, and the subsequent further amendments proposed, all as set out in Table 1 at Appendix A to the report, as amended above, be accepted and agreed.
2. That delegated authority be given to the Head of Strategic Planning, in consultation with the Portfolio Holder for the Built Environment and Denmead Parish Council, to make editorial amendments and updates to the Denmead Neighbourhood Plan, including those recommended by the Examiner, provided these changes will not alter the Plan's policy approach.
3. That the Examiner's recommendation that the Denmead Neighbourhood Plan, as modified in accordance with recommendations 2 and 3 above, proceeds to referendum, be agreed, on the basis that the Plan (as modified) meets the basic conditions, is compatible with the European Convention on Human Rights, complies with the statutory definition of a neighbourhood development plan and comprises provisions that can be made by such a document.
4. That in accordance with the Examiner's recommendation, the referendum be based on the neighbourhood area as defined by the Council on 17 September 2012 in the document entitled "Designation of Denmead Neighbourhood Area".

Winchester City Council

Denmead Neighbourhood Plan

Final Decision Statement

1. Summary

- 1.1 Following the result of the referendum held on 5 March 2015, Winchester City Council 'made' the Denmead Neighbourhood Plan part of the Winchester District Development Plan as its Council meeting on 1 April 2015.
- 1.2 In accordance with the examiner's recommendation published on 18 December 2014, the Denmead Neighbourhood Plan proceeded to a referendum based on the Denmead Neighbourhood Area as approved by Winchester City Council on 17 September 2012.
- 1.3 The Final Decision Statement, Result of Poll, and a copy of the 'made' Denmead Neighbourhood Plan, along with other documents such as the Examiner's Report and can be inspected on the City Council's website at www.winchester.gov.uk. Copies are also available for inspection at the council offices of, Winchester City Council, City Offices, Colebrook Street, Winchester, SO23 9LJ (Monday to Thursday 8.30am - 5.00pm and Friday 8.30am - 4.30pm) and Denmead Parish Council, The Old School, School Lane, Denmead, Waterlooville, PO7 6LU (Monday to Friday 9.30am-4.30pm).

2. Background

- 2.1 In August 2011 the Department for Communities and Local Government accepted and agreed an application by Winchester City Council on behalf of Denmead Parish Council, to be a Neighbourhood Planning Front Runner.
- 2.2 On 17 September 2012, Winchester City Council designated the Denmead Neighbourhood Area for the purpose of preparing a Neighbourhood Plan in accordance with section 61G of the Town and Country Planning Act 1990. The plan area covers the parish of Denmead with the exception of that part which lies within the administrative area of the South Downs National Park Authority and the part that lies within the West of Waterlooville strategic housing development area.
- 2.3 Following the submission of the Denmead Neighbourhood Development Plan by Denmead Parish Council to the City Council, the plan and its supporting documents was publicised and representations were invited. The period for representations ran from Monday 29 September to 5pm on Tuesday 11 November 2014.
- 2.4 Winchester City Council, in consultation with Denmead Parish Council, appointed an independent examiner, Mr Christopher Collison, to examine the Plan and review whether the Plan should proceed to referendum.

2.5 The Examiner's report was received on 18 December 2014. The Examiner concluded that subject to making the modifications recommended in his report, the Plan meets the basic conditions set out in the legislation and is compatible with Convention Rights as set out in Schedule 4B of the Town and Country Planning Act 1990. He also recommended that the Plan should proceed to referendum and that the area for the referendum should be based on the neighbourhood area to which the plan relates.

2.6 At its meeting on 14 January 2015, the Council's Cabinet (CAB2641), agreed to modify the plan as recommended by the Examiner and to proceed to referendum based on the neighbourhood area defined by the Council on 17 September 2012.

3. Decision and Reasons

3.1 A referendum asking '**Do you want "Do you want Winchester City Council to use the Denmead Neighbourhood Plan for the Denmead Neighbourhood Plan Area to help it decide planning applications in the neighbourhood area?"**', was held in the parish of Denmead on Thursday 5 March 2015.

3.2 The results of the referendum was:

Yes = 1546

No = 785

Number of Votes = 2331

Number of spoilt papers = 6

Turnout = 41.45%

3.3 Following the outcome of the referendum and the Council's decision on 1 April 2015, the Denmead Neighbourhood plan was made on 1 April 2015.

3.4 Planning applications within the Denmead Neighbourhood Plan area will now be determined against the Denmead Neighbourhood Plan, the National Planning Policy Framework, Winchester District Local Plan Part 1 and Winchester District Local Plan Review, until this is replaced by the Winchester District Local Plan Part 2.

Signed:



Steve Opacic
Head of Strategic Planning

Dated: 2 April 2015