

Chichester District Council

CABINET

24 April 2015

Loxwood Neighbourhood Plan

1. Contacts

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2. Recommendation

- 2.1. That Cabinet approves the Loxwood Neighbourhood Plan Examiner's recommendation to proceed to Referendum subject to modifications and endorses the decision of the Head of Planning Services.
- 2.2. That Cabinet agrees to publish the Decision Statement (Appendix 1) and the Examiner's Report (Appendix 2).

3. Background

- 3.1. The Loxwood Neighbourhood Plan was originally examined in March 2014. The District Council's decision to proceed to referendum with the Neighbourhood Plan was subsequently subject to an application for a judicial review in the High Court from a developer, Crownhall Estates, who is promoting the development of an alternative housing site on land to the south of Loxwood Farm Place.
- 3.2. The judicial review proceedings sought an order of the court quashing the decision of the Council to hold the referendum in respect of the Neighbourhood Plan and for the quashing of the Examiner's report. Following counsel's advice, the Council accepted that it had failed to follow the procedural requirements in relation to Strategic Environmental Assessment and accepted on those grounds alone that the decision to hold a referendum should be quashed. In order to remedy these matters, a consent order was agreed by both parties.
- 3.3. It was agreed with the claimant that in order to overcome the procedural errors it was only necessary to repeat the Regulation 16 stage which required resubmission by the parish council of a Basic Conditions Statement to confirm that all EU obligations have been met together with a screening opinion to confirm that SEA was not required.
- 3.4. The Examiner was reappointed to undertake a second examination of the Neighbourhood Plan in December 2014. The Examiner's previous recommendations were incorporated into the Submission Plan and the Examiner's second report was received by the Council in February 2015. The Examiner has advised that she recommends that the plan as modified by her recommendations should proceed to referendum and the referendum is set for 7 May.

- 3.5. On 10 April the Council was advised by Crownhall Estates that a further application for judicial review of the decision to proceed to referendum on the resubmitted Loxwood Neighbourhood Plan is to be lodged with the High Court.
- 3.6. There are six potential grounds of challenge on which the judicial review is to be based which are outlined below.
 1. The Examiner makes no mention of whether it is appropriate to make a Neighbourhood Plan having regard to national policy, merely the requirement to have regard to that policy (paragraph 18 of the Examiner's Report – Appendix 3).
 2. The Examiner gave no adequate or intelligible reasons for concluding that the housing numbers in the Neighbourhood Plan should be 60.
 3. Windfalls – The Examiner and the local planning authority erred in law:
 - a) In considering that the draft Local Plan included windfall sites in the indicative figure of 60 units for Loxwood; and
 - b) Failing to address the criticism of the Neighbourhood Plan requiring non-allocated developments to be of fewer than 6 dwellings.
 4. The site selection assessment in the Neighbourhood Plan was unlawful as it was biased against the South of Loxwood Farm Site and so based on irrelevant considerations, an improper purpose and irrational.
 5. The District Council's adoption of the Examiner's errors.
 6. Authority to go to a second referendum.

The Council's initial response to each point is outlined in Appendix 3.

4. Outcomes to be achieved

- 4.1. That the necessary authority is in place for the Loxwood Neighbourhood Plan to proceed to referendum.

5. Proposal

- 5.1. In light of the Examiner's recommendation, it is the Council's responsibility to publish a Decision Statement which sets out the stipulated modifications. The District Council and Loxwood Parish Council have agreed the modifications to the neighbourhood plan and these are set out in the Decision Statement. The purpose of this report is to advise the Cabinet so that they can consider whether to approve the Loxwood Neighbourhood Plan with modifications to proceed to referendum on the 7 May and endorse the decision of the Head of Planning Services.
- 5.2. As outlined in paragraph 3.6 above, there are six potential grounds for legal challenge. Ground 6 challenges the *decision of the Head of Planning Services on 9 March 2015 to make modifications to the draft Neighbourhood Plan and to proceed to referendum*. This decision was considered to be authorised under the constitution as amended by the decision of the Council on 23 September 2014. The signed Decision Statement is included as Appendix 1.
- 5.3. The relevant part of the constitution authorises the Head of Planning Services "*Following receipt of the Independent Examiner's report, to publish a decision statement and to proceed to referendum where the Independent Examiner's*

report recommends 'proceed to referendum as submitted' and no significant adverse representations have been made".

- 5.4. Crownhall Estates allege that the Examiner's recommendation does not fall within the scope of the delegated authority as it includes a need to make modifications to the Plan. It is also alleged that their representations were 'adverse' and 'significant' and so, again, the delegated authority exercised by the Head of Planning Services did not apply.
- 5.5. In light of the legal challenge, and without prejudice to the Council's position in responding to this ground if a judicial review is instigated, Cabinet is therefore asked to consider whether the Loxwood Neighbourhood Plan should proceed to referendum in line with the Examiner's recommendation as outlined in Appendix 1 and 2 of this report. The Decision Statement together with the Officer Comments on potential grounds for challenge (Appendix 3) demonstrates why the Neighbourhood Plan should proceed to referendum.

6. Alternatives that have been considered

- 6.1. That the Council relies upon the delegated decision to proceed to referendum (see Appendix 1) as being sufficient to defend the possible legal proceedings against the Council (Ground 6).

7. Resource and legal implications

- 7.1. The Council will incur costs associated with obtaining Counsel advice and potential defence of an application for judicial review.
- 7.2. The referendum is being held at the same time as the general election which will result in an additional cost of approximately £2,500 which will be met through existing budgets. The staff time required to draft responses to the legal challenge will be absorbed by existing staff resources.

8. Consultation

- 8.1. Loxwood Parish Council and local members have been notified of the potential judicial review and meetings with relevant parties have been held.

9. Community impact and corporate risks

- 9.1. There may be a community impact if the referendum is considered not to be valid on 7 May. By experiencing a second judicial review the Parish and community may lose confidence in the neighbourhood planning process.

10. Other Implications

Crime & Disorder:	None
Climate Change:	None
Human Rights and Equality Impact:	None
Safeguarding:	None

11. Appendices

- 11.1. Appendix 1 - Loxwood Neighbourhood Plan Decision Statement

- 11.2. Appendix 2 - Loxwood Neighbourhood Plan Examiner's Report
- 11.3. Appendix 3 – Officer comments on potential grounds for challenge in respect of Application for Judicial Review of the Decision to proceed to referendum on the resubmitted Loxwood Neighbourhood Plan

12. Background Papers

- 12.1. [Loxwood Neighbourhood Plan](#)