

# Public Document Pack

## JOHN WARD

Head of Finance and Governance Services

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A meeting of **Cabinet** will be held in Old Court Room, The Council House (Chichester City Council), North Street, Chichester on **Friday 24 April 2015 at 9.30 am**

MEMBERS: Mrs H P Caird (Chairman), Mrs E P Lintill (Vice-Chairman),  
Mr M A Cullen, Mr J C P Connor, Mr A P Dignum, Mrs L C Purnell and  
Mr J J L T Ransley

## AGENDA

- 1 **Minutes** (Pages 1 - 10)  
To approve as a correct record the minutes of the Cabinet meeting held on 7 April 2015.
- 2 **Urgent Items**  
Chairman to announce any urgent items which due to special circumstances are to be dealt with under agenda item 6(b).
- 3 **Declarations of Interests**  
Members and officers are reminded to make any declarations of disclosable pecuniary, personal and/or prejudicial interests they may have in respect of matters on the agenda for this meeting.
- 4 **Public Question Time**  
Questions submitted by members of the public in writing by noon on the previous working day (for a period up to 15 minutes).
- 5 **Loxwood Neighbourhood Plan** (Pages 11 - 39)  
Further to minute 648 of 9 September 2014, following the legal proceedings which led to the quashing of the previous decision to hold a referendum on the Loxwood Neighbourhood Plan, this report describes the results of a second examination of the Neighbourhood Plan and a potential further legal challenge. To authorise publication of the Examiner's Report and Decision Statement in respect of the Loxwood Neighbourhood Plan, to endorse the decision of the Head of Planning Services and to approve the Examiner's recommendation to proceed to referendum.
- 6 **Consideration of any late items as follows:**
  - (a) Items added to the agenda papers and made available for public inspection
  - (b) Items which the chairman has agreed should be taken as matters of urgency I reason of special circumstances to be reported at the meeting
- 7 **Exclusion of the Press and Public**  
There are no restricted items for consideration.

## NOTES

1. The press and public may be excluded from the meeting during any item of business wherever it is likely that there would be disclosure of “exempt information” as defined in section 100A of and Schedule 12A to the Local Government Act 1972
2. The press and public may view the report appendices which are not included with their copy of the agenda on the Council's website at [Chichester District Council - Minutes, agendas and reports](#). unless they contain exempt information.
3. Subject to the provisions allowing the exclusion of the press and public, the photographing, filming or recording of this meeting from the public seating area is permitted. To assist with the management of the meeting, anyone wishing to do this is asked to inform the chairman of the meeting of their intentions before the meeting starts. The use of mobile devices for access to social media is permitted, but these should be switched to silent for the duration of the meeting. Those undertaking such activities must do so discreetly and not disrupt the meeting, for example by oral commentary, excessive noise, distracting movement or flash photography. Filming of children, vulnerable adults or members of the audience who object should be avoided. (Standing Order 11.3)
4. A key decision means an executive decision which is likely to:
  - a. result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates or
  - b. be significant in terms of its effect on communities living or working in an area comprising one or more wards in the Council's area or
  - c. incur expenditure, generate income, or produce savings greater than £100,000.



Minutes of the meeting of the **Cabinet** held in Committee Room 1 - East Pallant House on Tuesday 7 April 2015 at 9.30 am

**Members Present:** Mrs H P Caird (Chairman), Mrs E P Lintill (Vice-Chairman), Mr M A Cullen, Mr J C P Connor, Mr A P Dignum, Mrs L C Purnell and Mr J J L T Ransley

**Members not present:**

**In attendance by invitation:**

**Officers present all items:** Mrs D Shepherd (Chief Executive), Mr S Carvell (Executive Director), Mr J Ward (Head of Finance and Governance Services) and Mr P Coleman (Member Services Manager)

## 740 **Minutes**

### **RESOLVED**

That the minutes of the meeting of the Cabinet held on 3 March 2015 be signed as a correct record.

## 741 **Urgent Items**

There were no urgent items for consideration at this meeting.

## 742 **Declarations of Interests**

No interests were declared at this meeting.

## 743 **Public Question Time**

No public questions had been submitted.

## 744 **Coastal Management: Award of Maintenance Contract 2015-2018**

The Cabinet considered the report circulated with the agenda (copy attached to the official minutes). Mr Connor introduced the report, explaining that the proposal was for the continuation of a contract to maintain coast protection works not covered by the Beach Management Plan.

Mr Lowsley, Senior Engineer, added that this was a fairly routine matter, which arose every three years. The contract had been tendered and the tenders had been

scored on price (75%) and quality (25%). The existing contractor's bid had scored markedly higher than competing bids on both assessments.

In response to questions, Mr Lowsley explained the alternatives if the Council chose not to use its coast protection powers, in the absence of any statutory duty to do so. He explained that either a Government-appointed Coast Protection Board or the Environment Agency would be likely to look to the Council for additional funding, and would be less accountable to local communities. The Cabinet agreed that the Council should continue to fulfil this function, which was much appreciated by local coastal communities.

Cabinet Members expressed concern that so few contractors had responded. Mr Lowsley explained that the contract had been tendered through the Solent Minor Works Coast Protection Framework, and there were only three contractors on the approved list. The Framework was due to be renewed later in the year and he hoped for a better response. There were, however, relatively few specialist contractors with relevant experience of timber coast protection structures.

#### **RESOLVED**

- (1) That the Contract for the routine maintenance of coast protection assets for the period 1 April 2015 to 31 March 2018 be awarded to JT Mackley.
- (2) That the Head of Housing and Environment Services (following consultation with the Cabinet Member for the Environment) be authorised to extend the contract by mutual agreement, for a further two years should the contractor perform satisfactorily.

#### **745 Avenue de Chartres, Multi Storey Car Park, Chichester - major refurbishment scheme.**

The Cabinet considered the report and appendix circulated with the agenda (copy attached to the official minutes, except for the restricted appendix of costs breakdown). Mr Ransley introduced the report, explaining that approval was being sought for a Project Initiation Document (PID) for a 2 year refurbishment programme of the Avenue De Chartres car park. The preliminary estimate for the essential works was £1,043,000, excluding loss of income. In addition, there were additional optional works, referred to in paragraph 5.3, for which the preliminary estimate was a further £615,000.

Mr Ransley commented that he believed that, of the optional works, a vacancy lighting system and electric vehicle charging points were justified. However, he asked members to consider whether the provision of a coloured flexible coating to the pedestrian walkways and parking bays was desirable and justified to be included as an option in the tender process. In his view, such works would not only add a significant cost but also extend the time period of the works, thus incurring an increased loss of income.

Mr Bacon, Buildings and Facilities Services Manager, described the works required and explained that there were cracks in the car park decks which would require

treatment to combat corrosion and the application of a coating. The application of a coating to the complete deck would be more attractive, but not essential.

It was pointed out that there was no need, at this stage, to make a decision on this; tenders should be sought for a full menu of options and final choices about works should be made later. At this stage, no survey by consulting engineers had been carried out, and so the full extent of the required repairs was unknown. It was, therefore, not necessary to approve the allocation of funding from reserves until the final costs of the works was known.

Mr Bacon agreed that this was the case for the structural repairs; however, some works, such as those to the brickwork, could go ahead without further approval, if the tenders were within budget. These would be a separate contract from the structural works.

The Cabinet **RESOLVED** that, in accordance with section 100A of the Local Government Act 1972 (the Act), the public and the press be excluded from the meeting during the consideration of the appendix on costs breakdown, for the reason that it is likely in view of the nature of the business to be transacted that there would be disclosure to the public of 'exempt information' being information of the nature described in Paragraph 3 (information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Part I of Schedule 12A to the Act and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Mr Bacon advised on the funding required to carry out cleaning and repairs to the brickwork and for consulting engineers to carry out structural surveys and other relevant consultancy work.

The Cabinet **RESOLVED** to re-admit the press and public.

**RESOLVED**

- (1) That the Project Initiation Document (PID) set out in the Appendix to this report be approved and funded from the Asset Replacement Programme (ARP).
- (2) That the option for coloured flexible surfacing, red/green vacancy lights and electric vehicle charging points be included as optional costs as part of the invitation to tender process.
- (3) That £93,000 be released from the Asset Replacement Fund to undertake the works to the brickwork, general repairs, consultancy and survey work.
- (4) That the tender analysis be submitted to a future meeting of Cabinet for contract award.

746 **Asset Maintenance Standards 2015-2020**

The Cabinet considered the report circulated with the agenda (copy attached to the official minutes). Mr Ransley introduced the report, explaining that the Council had an annual asset maintenance budget of £380,000 to repair and maintain its property

assets valued at £85m. The last 5 year programme had just been completed and the new programme standards for 2015-2020 needed to be approved. The objective of the new programme was to reduce property maintenance costs by 3% and, once in place, the proposed new standards approach would provide an opportunity for challenge to demonstrate effectiveness within a fixed annual budget as well as inform the Asset Management Plan.

**RESOLVED**

That the Asset Maintenance Standards (April 2015 – March 2020) be approved.

**747 Digital Access Strategy 2015-2018**

The Cabinet considered the report and appendix circulated with the agenda (copy attached to the official minutes). Mr Ransley introduced the report. He referred to the Richard Dimpleby Lecture, recently delivered by Baroness Lane-Fox, which was an inspirational reminder that the opportunities to take advantage of digital technologies and their potential to change public services delivery were enormous. He was, therefore, delighted to introduce the Digital Access Strategy (2015-2018) to move the Council on from information technology and to make services accessible to a more mobile customer and a flexible workforce.

The Strategy embraced the key areas of channel shift, embedding digital services and engagement, digital working and extended data access that supported the four key enabling objectives for the Council to deliver services. If approved, the Strategy resources would be defined to ensure targeted delivery of projects and it was important that resources within other services contributed to outcomes, especially business process change, customer insight, and implementation. The Council was fortunate with the talent in the ICT Department, but there were great challenges ahead in balancing new projects and day-to-day work.

The member-led Information Technology Advisory Group (ITAG), the Senior Leadership Team (SLT) and Business Improvement Board (BIB) had been consulted and their comments included in the strategy.

Cabinet Members received an assurance that, even if less efficient channels were closed, help would be available to those who could not or would not use digital channels to access services.

Cabinet members expressed the view that careful prioritisation in cost/benefit terms was needed in implementing the Strategy, and Mrs Dodsworth, Head of Business Improvement Services, confirmed that the Business Improvement Board would scrutinise the workplan to ensure this was the case.

**RESOLVED**

That the Digital Access Strategy (2015 to 2018) be approved.

## 748 **Committee Rooms Audio System and Recording Meetings**

The Cabinet considered the report circulated with the agenda (copy attached to the official minutes). Mr Ransley introduced the report. He reminded the Cabinet that he had previously lobbied for the introduction of webcasting Council and other major committee meetings without success. When the Government introduced regulations on openness of Local Government, considered by Council last September, he had again raised webcasting with the hope that this would be used as a chance to embrace more openness, increased transparency, increased public awareness and more participation in the Council's work.

He was, therefore, disappointed to be introducing a recommendation from the Overview and Scrutiny Committee for the procurement of a new microphone system with a proposal for audio publication online, albeit that the system would be suitable to accommodate a webcasting option.

His personal view was that, whilst online audio broadcast was a step towards providing easy access to the Council's deliberations, it made no attempt to meaningfully engage with customers, given that this was a visual age.

The viewing figures from West Sussex County Council in the last year indicated that 1340 people on average viewed the webcast of their 13 main meetings at a cost of 80p a view. That compared to relying on the local printed press choice and interpretation of what they chose to inform residents at a cost of £1 a copy.

If even 350 Chichester district residents watched the Council's deliberations this would, in his view, be a meaningful engagement. Unfortunately this recommendation supported the view that the additional cost of 129p per webcast view, based on 350 views, was too high a price to pay for more openness, transparency and increased awareness of the democratic process.

Mrs Dodsworth, Head of Business Improvement Services, explained that, as a result of the deliberations of the Task and Finish Group and subsequent member testing of various microphone systems, a detailed specification of requirements had been drawn up for use in the tendering process. The cost of the proposed one year pilot to audio record and publish meetings online was £3,900, which would be funded from reserves.

The Cabinet expressed disappointment that, because the Task and Finish Group had decided not to recommend webcasting of meetings, the full costs and implications of this option were not included in the report. They, therefore, decided to defer any recommendation to the Council on publication of meetings online, in order for these matters to be researched and reported to a later meeting.

### **RESOLVED**

- (1) That a new microphone system be purchased with the capability of making audio recordings for council use and for publication online and compatible with possible future webcasting and that the appended Project Initiation Document (PID) be approved.

- (2) That the Head of Business Improvement Services be authorised, following consultation with the Cabinet member for Support Services, to finalise the specification for the new microphone system and award the contract.
- (3) That a detailed report, with costs, be brought to the Cabinet meeting in July 2015 on the practical possibilities of webcasting, rather than audio recording, meetings.

**749 Chichester Contract Services (CCS):Service Improvements**

The Cabinet considered the report circulated with the agenda (copy attached to the official minutes). Mr Connor introduced the report, and asked that recommendation 2.1 should be amended to make it clear that the £71,250 would be carried forward from an underspend in the current year.

Mr Darton, Head of Contract Services, explained that Chichester Contract Services (CCS) was a very successful service, but needed to maintain momentum by introducing digital, rather than continuing to rely on paper, systems, in order to reduce the supply chain and improve reconciliation of income. In order to achieve this, the appointment was sought, by secondment, of a Business Development Manager to work with the CCS Management Team. The report also sought funding for a Trade Waste ICT system; proposals for systems for other services would be submitted later.

The Cabinet welcomed the proposals to modernise this high profile service and asked Mr Darton to improve the advertising and promotion of the services provided by CCS.

**RESOLVED**

- (1) That the carry forward of £71,520 to fund the new Trade Waste Information and Communication Technology (ICT) system and the Business Development Manager post be approved.
- (2) That the Initial Project Proposal Document (IPPD) for the new Trade Waste system be approved.

**750 Byelaw Enforcement**

The Cabinet considered the report circulated with the agenda (copy attached to the official minutes). At the Chairman's invitation, Mr Ward introduced the report, explaining that a review of the Council's byelaws had shown that the delegated authority to take action under the byelaws was fragmented. It was, therefore, proposed to grant authority to all Chief Officers and Heads of Service to authorise action, if necessary, under the Council's byelaws. Mr Ward confirmed that the use of byelaws was discretionary and the delegated authority would leave discretion with Chief Officers and Heads of Service whether to take enforcement action in any particular circumstance.

## **RECOMMENDED TO COUNCIL**

That the following addition be made to the powers granted to any Chief Officer and Heads of Service under the Constitution:

“To authorise any action under Council Byelaws including prosecution.”

### **751 Air Quality Action Plan for Chichester District**

The Cabinet considered the report and appendix circulated with the agenda (copy attached to the official minutes). Mr Connor introduced the report, making the following amendments to it:

Paragraph 3.2 fourth bullet: add “initiating” before “55”

Paragraph 5.1: add “that is maintaining the annual mean NO<sub>2</sub> measure” at the end of the second sentence

Paragraph 7.1(a): add “or any replacement system” after “Members’ Bulletin Board”

Paragraph 7.1(b) Add “Highways England” to list of external consultees

Mr Connor explained that the proposal was to update the Air Quality Action Plan (AQAP), which had first been put to public consultation in 2008. Since 2008, the Council’s Environmental Protection Team had carried out considerable work with West Sussex County Council Highways on behavioural change, and further evidence had come to light about the harm to human health caused by air pollution. There was, as mentioned in paragraph 8.2, a risk of the UK Government being fined by the EU for breach of the air quality limit, and such fines could be passed on to local authorities. However, it was hoped that this would have less impact on authorities that could demonstrate determined action to tackle the problem. It was ironic that a significant contributor to air pollution in parts of Chichester was associated with traffic congestion on the A27, which was the responsibility of Highways England.

Mr Ballard, Senior Environmental Protection Officer, answered members’ questions about the report, including the effectiveness of measures to encourage council staff and members to cycle using the pool bikes scheme and to provide for electric cars through installation of charging points. Members commented on the pollution caused by diesel engines and expected the Government to take action on diesel emissions.

The Chairman congratulated Mr Ballard and his team on attracting funding for measures to tackle air pollution.

## **RESOLVED**

- (1) That the draft revised Air Quality Action Plan (AQAP) for Chichester District be approved for public consultation.
- (2) That the Head of Housing and Environment Services be authorised to consider any representations arising from the consultation exercise and, provided the representations do not require significant amendments to the AQAP, to approve adoption (with minor amendments if considered appropriate) of the AQAP following consultation with the Cabinet Member for the Environment.

## 752 **Think Family Neighbourhoods - Selsey Pilot Evaluation**

Further to minutes 564 of 1 April 2014, the Cabinet considered the report and appendix circulated with the agenda (copy attached to the official minutes). Mrs Lintill introduced the report, and reminded the Cabinet that, in March 2012, Chichester in Partnership had agreed to a pilot project in the Selsey area to investigate whether a targeted approach by partner organisations to work in the area would be feasible. This approach was approved by the Cabinet in May 2012. Following research, an action plan for the Selsey area had been developed and approved by the Cabinet on 5 February 2013 and by Chichester in Partnership Core group on 7 February 2013.

The report was an evaluation of this interesting project and spelled out the lessons that had been learned. It was significant that, as reported in paragraph 5.9, the project had revealed hidden needs within the community. In consequence, some of the anticipated income streams from fee-earning projects had not materialised. The consultation had revealed that the project was viewed positively by other partners, including the Selsey Town Council.

Mr Hansford, Head of Community Services, added that the project was a pilot. It had demonstrated the effort and time required to build relationships. The involvement of Selsey Town Council and its Town Co-ordinator had been critical success factors. The benefits of the project fell across several public services and agencies, and it anticipated the Early Help and Think Family initiatives that had arisen subsequently. The Overview and Scrutiny Committee had endorsed the recommendations in the report.

Mrs Purnell agreed that the project had been a success, but it did show the need for sustainable revenue funding on a continuing basis. The Selsey Works project would continue, but in a different form in a different place.

Mr Ransley and Mr Dignum pointed to the cost benefit analysis summarised in paragraph 5.6, which demonstrated an excellent return on investment and an improvement in the lives of disadvantaged people. They felt that the Council should take the lead in maintaining the project and that officers should be invited to put forward a costed proposal for long-term or transitional funding.

Mr Hansford pointed out that the pilot had addressed a number of issues and that the Selsey Works project had grown out of it. Funding was still in place to continue that until the end of the Summer and partnership work was taking place to explore how it could be put on a sustainable footing, including the preparation of a business case for a part time Advisor. Consideration was also being given to how to replicate the project in other neighbourhoods in the district. There was no need at this time to seek approval for additional funding, and a further report would be made if this became necessary.

The Chief Executive emphasised that the Council had not cut off funds for the project. It was important that key partners, such as Selsey Town Council should be involved in developing a sustainable future for the project, and that consideration should be given to the roll out of the project to other areas. Revenue funding would be supported where appropriate on a case by case basis.

**RESOLVED**

- (1) That the SelseyWorks project be supported in its transition to a sustainable service model and that the Council's services outreach support be continued.
- (2) That the lessons learnt at paragraph 5 be noted, and continued support for the Think Family Neighbourhood work in the areas identified at paragraph 5.10 be endorsed.

**753 Development Management Service Resourcing**

The Cabinet considered the report circulated with the agenda (copy attached to the official minutes). Mrs Purnell introduced the report, explaining that the workload of the Major Applications and Business Team had increased since the division of the Development Management Service into three teams in 2013. The existing team of five was not adequate to deal with the predicted workload, with more enquiries and applications expected on parish sites and strategic locations identified in the Local Plan. It was, therefore, proposed to carry forward an underspend to fund the first year of an additional senior planning officer post, which would be included in the base budget from 2016/17. Mr Whitty, Development Management Service Manager, confirmed that the number of major applications in 2014/15 anticipated in paragraph 3.1 of the report had been realised.

**RESOLVED**

That an underspend of £42,000 in 2014/15 be carried forward to 2015/16 to fund the cost for the first year of an additional senior planning officer post in the Development Management Major Applications and Business Team.

**754 Envoi**

The Chairman thanked the officers and Cabinet Members for all their support during her term of office as Leader of the Council, and thanked the press for their generally fair reporting of the Cabinet's discussions.

The meeting ended at 12.13 pm

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CHAIRMAN

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Date:

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**Chichester District Council**

**CABINET**

**24 April 2015**

**Loxwood Neighbourhood Plan**

**1. Contacts**

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**Report Author:**

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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**

<b>Crime &amp; Disorder:</b>	None
<b>Climate Change:</b>	None
<b>Human Rights and Equality Impact:</b>	None
<b>Safeguarding:</b>	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](#)

## Appendix 1

### Chichester District Council Local Planning Authority

### Loxwood Neighbourhood Development Plan 2013-2029

#### DECISION STATEMENT

##### 1. Introduction

- 1.1 Under the Town and Country Planning Act 1990 (as amended), the Council has a statutory duty to assist communities in the preparation of Neighbourhood Plans and Orders to take plans through a process of examination, referendum and adoption. The Localism Act 2011 (Part 6 Chapter 3) sets out the local planning authority's responsibilities under Neighbourhood Planning.
- 1.2 This report confirms that the modifications proposed by the examiner's report have been accepted, the draft Loxwood Neighbourhood Plan has been altered as a result of it; and that this plan may now proceed to referendum.

##### 2. Background

- 2.1 The Loxwood Neighbourhood Development Plan relates to the area that was designated by Chichester District Council as a neighbourhood area on 8 March 2013. This area is coterminous with the Loxwood Parish Council boundary that lies within the Chichester District Council local planning authority area.
- 2.2 The Loxwood Neighbourhood Plan was first examined in March 2014 and proceeded through to referendum. Following a legal challenge it was subsequently agreed that the submission and examination stages of the Loxwood Neighbourhood Plan process would be repeated.
- 2.3 Following the re-submission of the Loxwood Neighbourhood Plan to the Council, the plan was publicised and representations were invited. The publicity period ended on 4 December 2014.
- 2.4 Ms Janet Cheesley was appointed by Chichester District Council, with the consent of Loxwood Parish Council, to undertake the examination of the Loxwood Neighbourhood Development Plan and to prepare a report of the independent examination.

- 2.5 The examiner’s report concludes that subject to making minor modifications recommended by the examiner, the Plan meets the basic conditions set out in the legislation and should proceed to a Neighbourhood Plan referendum.
- 2.6 Having considered each of the recommendations made by the examiner’s report, and the reasons for them, the Parish Council has decided to make the modifications to the draft plan referred to in Section 3 below, to secure that the draft plan meets the basic conditions set out in legislation.

### 3. Decision

- 3.1 The Neighbourhood Planning (General) Regulations 2012 require the local planning authority to outline what action to take in response to the recommendations of an examiner made in a report under paragraph 10 of Schedule 4A to the 1990 Act (as applied by Section 38A of the 2004 Act) in relation to a neighbourhood development plan.
- 3.2 Having considered each of the recommendations made by the examiner’s report, and the reasons for them, Chichester District Council in consent with Loxwood Parish Council has decided to accept the modifications to the draft plan. Table 1 below outlines the alterations made to the draft plan under paragraph 12(6) of Schedule 4B to the 1990 Act (as applied by Section 38 A of the Act) in response to each of the examiner’s recommendations and the justification for them.

**Table 1: Recommendations by the Examiner and further modifications agreed by Chichester District Council in consent with Loxwood Parish Council**

POLICY	MODIFICATION RECOMMENDED	JUSTIFICATION
Policy 1	<p>At the request of CDC and the Parish Council, I consider that the suggested amendment to Policy 1 to refer to ‘provide’ rather than ‘allocate’ meets the Basic Conditions. Policy 1 to read as follows:</p> <p>The Loxwood Parish Neighbourhood Plan will provide a minimum of 60 houses on allocated and windfall sites located within the Settlement Boundary defined in accordance with policy two of this Plan.</p>	At the request of CDC and the Parish Council and meets the Basic Conditions.
Policy 2	To meet the Basic Conditions, I recommend modification to Policy 2 by the deletion of ‘and development should comply with policy 12 of this neighbourhood plan.’	To meet the Basic Conditions.

Policy 8	<p>Modification to the last sentence of Policy 8 to read as follows:</p> <p>New development will be permitted only if the network can accommodate the additional demand for sewerage disposal either in its existing form or through planned improvements to the system in advance of the construction of the development, or can be provided in time to serve it.</p>	Re ordering of phrases to meet the Basic Conditions.
Policy 12	<p>In the interests of clarity and precision, I recommend modification to the first paragraph of Policy 12 to read as follows:</p> <p>Development within the rural area will be in accordance with the NPPF paragraph 55, the CDC Emerging Local Plan and the General Permitted Development Order. The re-use of farm and rural buildings outside the Settlement Boundary for agricultural/business purposes or to provide dwellings for agricultural workers, which is not allowed under the General development Order, will be subject to the following criteria:</p>	In the interests of clarity and precision.
Policy 16	<p>To have regard to Planning Policy Guidance, I recommend the inclusion of the wording 'where applicable' in Policy 16 and for clarity I recommend a similar amendment to paragraph 18.6.9. The first sentence of Policy 16 to read as follows:</p> <p>Traffic calming along the B2133 and Station Road in the parish of Loxwood will be progressively introduced during the Plan period by means of developer contributions where applicable.</p>	To have regard to Planning Policy Guidance and for clarity.
Policy 17	Modify Policy 17 by the deletion of the second sentence.	On the basis of the indication of the direction and intentions of National Policy.

#### 4. Conclusion

- 4.1 The Authority (Chichester District Council) confirms that the Loxwood Neighbourhood Development Plan 2013-2029, as revised, complies with the legal requirements and basic conditions set out in the Localism Act 2011, and can therefore proceed to referendum.

- 4.2 It is recommended that the Loxwood Neighbourhood Development Plan 2013-2029 should proceed to referendum based on the neighbourhood area defined by Chichester District Council on 8 March 2013.
- 4.3 This decision has been made according to the advice contained in the above report in response to the recommendations of the examiner made in a report under paragraph 10 of Schedule 4B to the 21990 Act (as applied by Section 38A of the 2004 Act) in relation to the Neighbourhood Development Plan.

Signed:

A handwritten signature in black ink that reads "Andrew Hunt". The signature is written in a cursive style with a horizontal line under the name.

**Head of Planning Services**

Date: 9 March 2015

# **Loxwood Neighbourhood Plan 2013 to 2029**

**Report by Independent Examiner**

**Janet L Cheesley BA (Hons) DipTP MRTPI**

**CHEC Planning Ltd**

**February 2015**

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## Summary and Conclusion

1. This is my second examination of the Loxwood Neighbourhood Plan following a legal challenge from Crownhall Estates concerning the decision to proceed to referendum with the Loxwood Neighbourhood Plan.
2. I have given careful consideration to representations requesting additional housing and criticism of the site selection process. I have found that the housing allocations will contribute towards the achievement of sustainable development and that there are no adopted strategic policies to justify a more significant growth strategy.
3. I have recommended modification to some of the policies in the Plan. In particular, I have recommended modification to Policies 16 and 17.
4. Since my previous examination, Planning Policy Guidance has been revised with regard to infrastructure contributions through planning obligations. Therefore, it has been necessary to recommend modification to Policy 16 in this respect.
5. Since my previous examination, a Ministerial Statement on Building Regulations indicates that it is unlikely for it to be appropriate to refer to the Code for Sustainable Homes in Neighbourhood Plans once a statement of policy has been produced in early 2015. Therefore, it has been necessary to recommend modification to Policy 17 in this respect.
6. My recommendations ensure that the Plan meets the Basic Conditions. Subject to my recommendations being accepted, I consider that the Loxwood Neighbourhood Plan will provide a strong practical framework against which decisions on development can be made.

## Introduction

7. I was appointed as an independent Examiner for the Loxwood Neighbourhood Plan 2013 to 2029 in March 2014. Chichester District Council (CDC) received a legal challenge from Crownhall Estates concerning the decision to proceed to referendum with the Loxwood Neighbourhood Plan.
8. A Local Authority is not subject to the duty to make a neighbourhood plan following a supportive referendum if it considers that the making of the plan would breach, or would otherwise be incompatible with, any EU obligation.
9. The judicial review proceedings raised seven grounds. In summary the basis of the judicial review by Crownhall Estates, was primarily that CDC's decision that a Strategic Environmental Assessment (SEA) was not required and was not adequately reasoned. It was also proposed that the officer who made that decision did not have delegated authority. The decision to hold the referendum should therefore be quashed and the referendum therefore had no legal effect.

10. It was also suggested that if the draft Loxwood Neighbourhood Plan were to be progressed further then a SEA should take place or that a decision is made that a SEA is not required. In order to remedy the matters raised in the judicial review a consent order was agreed by both parties.
11. It was agreed with the claimant that in order to overcome the procedural error it was only considered necessary to go back as far as the 'Regulation 16' stage where the Basic Conditions Statement, in confirming that all EU obligations had been met, could refer to a fit for purpose SEA or fit for purpose screening opinion to confirm that SEA was not required. I will refer to the new SEA screening later in my report.
12. I was re-appointed to undertake this second examination in December 2014. The Plan for examination has been modified following my previous recommendations. Most of my recommendations have been incorporated into this Plan. Exceptions are a further modification to Policy 1 and amendments to Policies 2, 8 and 12, which I will refer to in more detail later.
13. I do not consider it necessary to 'reinvent the wheel'. Therefore, where appropriate I have included relevant explanatory sections from my previous examination.
14. On 8 March 2013, CDC approved that the Loxwood Neighbourhood Area be designated in accordance with the Neighbourhood Planning (General) Regulations 2012. The Area covers the whole of the parish of Loxwood.
15. The qualifying body is Loxwood Parish Council. The plan has been prepared by a Steering Group of parish councillors and local residents on behalf of Loxwood Parish Council. The plan covers the period to 2029.

## Legislative Background

16. As an independent Examiner, I am required to determine, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, whether:
  - the policies in the Plan relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004;
  - the Plan meets the requirements of Section 38B of the 2004 PCPA where the plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one Neighbourhood Area; and
  - that the Plan has been prepared for an area that has been designated under the Localism Act 2011 and has been developed and submitted for examination by a qualifying body.
17. Subject to the modifications I have recommended in this report, I am content that these requirements have been satisfied.

18. I am obliged to determine whether the plan complies with the Basic Conditions. These are that the Plan is required to:
- have regard to national policies and advice contained in guidance issued by the Secretary of State;
  - contribute to the achievement of sustainable development;
  - be in general conformity with the strategic policies contained in the Development Plan for the area; and
  - not breach, and is otherwise compatible with, EU obligations and human rights requirements.
19. Lepus Consulting has prepared advice on the need for a Strategic Environmental Assessment of the Plan for CDC to consider. It concludes that no significant environmental impacts are likely to occur. CDC has prepared a Strategic Environmental Assessment Screening Opinion, within which it has stated that an environmental assessment of the Plan is not required. There were no adverse comments from Statutory Consultees. Based on this screening opinion and accompanying report, I consider that the Plan does not require a full Strategic Environmental Assessment and is in accordance with the provisions of the European Directive 2001/42/EC.
20. Natural England has stated that the Plan is unlikely to result in significant effect on designated habitats. Therefore, I consider that the Plan does not require an assessment under Article 6 or 7 of the Habitats Directive.
21. I am satisfied that the Plan is compatible with EU obligations and does not breach the European Convention on Human Rights obligations.

## Policy Background

22. *The National Planning Policy Framework 2012 (NPPF)* sets out the Government's planning policies for England and how these are expected to be applied. The *Planning Practice Guidance* provides Government guidance on planning policy.
23. Loxwood Parish is within the local authority area of Chichester District Council (CDC). The development plan for the Loxwood Neighbourhood Plan Area comprises saved policies from the *Chichester District Local Plan First Review* (adopted in April 1999). This Local Plan includes saved strategic policies regarding the natural environment.
24. I have been referred to CDC's Interim Policy Statements on *Planning for Affordable Housing* (2007) and on *Planning and Climate Change* (2012).
25. CDC published the *Chichester Local Plan: Key Policies Pre-submission 2014-2029* in November 2013. This Local Plan and the Loxwood Neighbourhood Plan have been advancing in parallel.

## The Neighbourhood Plan Preparation

26. I am required under The Localism Act 2011 to check the consultation process that has led to the production of the plan. The requirements are set out in Regulation 14 in The Neighbourhood Planning (General) Regulations 2012.
27. The consultation process started with regard to the production of a Community Led Plan. Much of the data collected was used to form the evidence base when this process was switched to a Neighbourhood Plan.
28. The views of local residents were initially sought via a variety of exercises including three workshops run with the help of The Glass House, open days, and a survey questionnaire. Additional support was received from Action in Rural Sussex, Locality and URS.
29. The Consultation period on the pre-submission draft Neighbourhood Plan ran from 4 November 2013 until 15 December 2013. The document was made available on the village web site and 200 hard copies were produced. These were made available at the village post office, butchers and the two pubs in the parish. Copies were also emailed to the statutory stakeholders. A flyer was sent to all households in the parish advertising the consultation. The consultation was advertised in the local village and community publications as well as local news media. Responses could be sent in by email or letter. Two consultation open days were held. 17 display boards were erected around the parish advertising the open days. At these events, residents were encouraged to provide comments on a pre-printed form. A summary of all comments was prepared together with an analysis of comments and proposed changes to the plan arising from these comments.
30. I am satisfied that the pre-submission consultation and publicity has met the requirements of Regulation 14 in The Neighbourhood Planning (General) Regulations 2012. It went well beyond the requirements and it is clear that the Steering Group went to considerable lengths to ensure that local residents were able to engage in the production of the Neighbourhood Plan. I congratulate them on their efforts.
31. CDC publicised a submission Plan for comment during the publicity period between 17 January 2014 and 28 February 2014 in line with Regulation 16 in The Neighbourhood Planning (General) Regulations 2012. My original examination was with regard to that submission Plan.
32. Due to the reasons outlined above with regard to the judicial review, CDC published a further submission Plan for comment during the publicity period between 23 October 2014 and 4 December 2014 in line with Regulation 16 in The Neighbourhood Planning (General) Regulations 2012.
33. A total of 20 responses were received, of which a number of local residents supported the plan in its entirety. I am satisfied that all these responses can be assessed without the need for a public hearing.

34. Some responses suggested additions and amendments to policies. My remit is to determine whether the Plan meets the Basic Conditions. Where I find that policies do meet the Basic Conditions, it is not necessary for me to consider if further suggested additions or amendments are required. Whilst I have not made reference to all the responses in my report, I have taken them into consideration.
35. In an email dated 22 December 2014, CDC stated that *'In relation to the representations submitted by Planit Consulting on behalf of Crownhall Estates, the Council has noted that these are quite extensive and include a legal opinion. In this respect the Council is requesting the opportunity to reply to you in more detail in relation to these submissions.'* By return email dated 22 December 2014 I confirmed that I wished to seek clarification on this matter, to assist my examination. Once I received the clarification, in the interest of fairness and openness, I gave Crownhall Estates the opportunity for final comments.

## **The Loxwood Neighbourhood Plan 2013 to 2029**

36. Loxwood Parish is made up of the village of Loxwood together with the hamlets of Alfold Bars to the North and Roundstreet Common to the South.
37. The Plan defines a clear vision statement for the parish as follows: *To maintain Loxwood as a semi-rural parish, yet one which welcomes incremental change that will sustain and enhance its facilities and character and contribute to a greater sense of community and neighbourliness.*
38. It is clearly stated that the objectives identified for the plan period will be used to define the Plan policies.

### **POLICY 1**

39. CDC has recognised that it has a five-year housing land supply shortfall. There is not an up-to-date strategic policy against which to assess the overall housing figures. Draft Policy 5 in the emerging Local Plan states an indicative figure of 60 dwellings for Loxwood Parish during the period 2012-2029. I realise that this figure may be subject to alteration through the Local Plan examination. It is not for me to pre-judge the outcome of that examination. I understand that the indicative figure of 60 dwellings has been derived reflecting the settlement hierarchy and following assessment of the housing potential and capacity of each Parish.
40. Following my previous examination, CDC and the Parish Council sought further alteration to Policy 1. One of these amendments was to refer to 'provide' rather than 'allocate' a minimum of 60 dwellings. In the editing, it appears that this was not altered. Having pointed this out to CDC, it was confirmed by CDC and the Parish that they wished to see this amendment to provide clarity to the policy. Although this could have been considered as an editorial matter, in the interest of fairness and openness, I considered it appropriate to seek the views of interested parties. I sought these views

between 22 January and 7 February 2015. The views received have not altered my opinion that this amendment does not significantly alter the objective of this policy with regard to housing provision.

41. Since my previous examination, The Local Plan Key Policies Pre-Submission document which was submitted for examination in May 2014 provided for 6,973 homes (410 homes per year) in the District as a whole. Following the Inspector's comments at the Local Plan examination, CDC undertook a re-assessment of the evidence supporting the Local Plan. Based on this, CDC is now proposing modifications to the Local Plan which would increase the housing provision to 7,388 homes (435 homes per year) in the District as a whole. This is less than the objectively assessed housing needs (OAN) of 560-575 homes per year for the District. CDC has stated that the OAN figures cannot be readily disaggregated to the level of individual parishes or settlements, or to sub-areas of the District such as the North of the Plan area. CDC anticipates that there will be a small shortfall in projected housing supply in the north of the Local Plan area.
42. The district-wide housing provision is currently being considered as part of the examination of the Local Plan. The Neighbourhood Plan Examination process does not require a rigorous examination of district wide housing land requirements. This is the role of the examination of the emerging Local Plan.
43. The housing allocations in the Neighbourhood Plan meet the requirements for Loxwood Parish in Draft Policy 5 in the emerging Local Plan. From the evidence before me, I consider the indicative housing figure provides me with the best guidance on total housing numbers for the Loxwood Parish area. In the absence of adopted strategic housing policies, it is not my role to determine whether the Neighbourhood Plan would be inconsistent with the adopted version of the emerging Local Plan if it were to be subject to future amendments to accommodate further growth.
44. There has been objection to the definition of windfall sites from Crownhall Estates. The definition in the Plan of small developments of less than 6 houses is that defined in paragraph 7.13 in the emerging Local Plan. Paragraph 7.29 in the emerging Local Plan recognises that *in some cases, suitable sites of 6+ dwellings may come forward as planning applications. Where such sites are permitted, the requirement for additional housing in the parish will be reduced accordingly.* Most importantly paragraph 7.28 states that *it is intended that the identification of sites and phasing of delivery will be determined primarily by local communities through a neighbourhood planning process.*
45. The NPPF in paragraph 185 is clear that outside the strategic elements *neighbourhood plans will be able to shape and direct sustainable development in their area.* National policy emphasises that development means growth. The Neighbourhood Plan has sought to provide for sustainable growth by allocating two sites and identifying the provision of a minimum of 60 dwellings on those sites and windfall sites. In this respect, I

consider that Policy 1, with the suggested revised wording, meets the Basic Conditions.

46. The criteria for site selection was based on a matrix. I realise that certain criteria including the settlement boundary and access were not framed in the most appropriate manner. The Site Assessment Table is not an 'exact science' and the consultants URS who derived the criteria in the table have confirmed that it has subsequently been revised. What it does give is an indication of suitability of sites and it is clear that the two allocated sites and the site South of Loxwood Place Farm were all considered against the criteria.
47. Whilst the site selection process has been criticised, the chosen sites received local support during a transparent and robust consultation process. Any assessment of land availability in the production of Neighbourhood Plans needs to be proportionate. I am satisfied that the chosen sites are deliverable and together with the overall housing strategy in the Neighbourhood Plan will contribute towards the achievement of sustainable development by the provision of sustainable growth.
48. There is no legal requirement to test the Neighbourhood Plan against emerging policy although Planning Policy Guidance advises that the reasoning and evidence informing the Local Plan process may be relevant to the consideration of the basic conditions against which the neighbourhood development plan is tested. The qualifying body and the local planning authority should aim to agree the relationship between policies in the emerging Neighbourhood Plan, the emerging Local Plan and the adopted development plan, with appropriate regard to national policy and guidance.
49. CDC has confirmed in its *Chichester District Council Response to Examiner's Request (22 December 2014) re Crownhall Estates Representations* that CDC does not consider it to be necessary to allocate further development (specifically on the site promoted by Crownhall Estates) in order for the Neighbourhood Plan to be in accordance with the emerging Local Plan. This demonstrates an agreed relationship between policies.
50. In reaching my conclusion on this matter, I consider it relevant to refer to the recent High Court Judgment of *Gladman Developments Limited v Aylesbury Vale District Council & Winslow Town Council [2014] EWHC 4323 (Admin)* on 18 December 2014.
51. The following is an extract of paragraph 58 of that judgment: *In my judgment, a neighbourhood development plan may include policies dealing with the use and development of land for housing, including policies dealing with the location of a proposed number of new dwellings, even where there is at present no development plan document setting out strategic policies for housing. The examiner was therefore entitled in the present case to conclude that the Neighbourhood Plan satisfied basic condition 8(2) (e) of Schedule 4B to the 1990 Act as it was in conformity with such strategic policies as were contained in development plan documents notwithstanding the fact that the local planning authority had not yet adopted a development*

*plan document containing strategic policies for housing. Further, the examiner was entitled to conclude that condition 8(2) (d) of Schedule 4B to the 1990 Act was satisfied. That condition requires that the making of the neighbourhood development plan “will contribute to the achievement of sustainable development”. The examiner was entitled to conclude that a neighbourhood plan that would provide for an additional 455 dwellings, in locations considered to be consistent with sustainable development, did contribute to the achievement of sustainable development notwithstanding that others wanted more growth and development plan documents in future might provide for additional growth. Similarly, the examiner was entitled to conclude that having regard to national guidance and advice, including the Framework, it was appropriate to make the neighbourhood plan even though there might, in future, be a need for further growth.*

52. **Recommendation: at the request of CDC and the Parish Council, I consider that the suggested amendment to Policy 1 to refer to ‘provide’ rather than ‘allocate’ meets the Basic Conditions. Policy 1 to read as follows:**

**The Loxwood Parish Neighbourhood Plan will provide a minimum of 60 houses on allocated and windfall sites located within the Settlement Boundary defined in accordance with policy two of this Plan.**

**(Policy three will define the location of the sites.)**

## **POLICY 2**

53. Representations have been made with regard to the Settlement Boundary line. These include an extension to the settlement boundary to include land in the south of the village on High Street. I do see some sense in such an extension and a suggested extension to the Settlement Boundary to incorporate the dwellings between Hall Hurst Close and the allocated Nursery Site. However, my role is restricted to determining whether the Plan meets the Basic Conditions. Neither of these matters has any bearing on whether the Plan meets the Basic Conditions.
54. It is necessary for new development in rural areas to be in accordance with not only Policy 12 in this Neighbourhood Plan, but also all relevant policies in this Plan, the wider development plan and the NPPF. Therefore, in the interest of clarity, I recommend the deletion of the last part of the Policy where it refers to ‘and development should comply with policy 12 of this neighbourhood plan’.
55. **Recommendation: to meet the Basic Conditions, I recommend modification to Policy 2 by the deletion of ‘and development should comply with policy 12 of this neighbourhood plan.’**

## **POLICIES 3, 4 and 5**

56. Whilst the choice of specific allocations has been objected to by Crownhall Estates, this has not extended to the detailed content of these policies. I found in my previous examination that Policy 3 met the Basic Conditions. The modifications I suggested to Policies 4 and 5 as part of that examination have been incorporated into these policies. I have already expressed my opinion with regard to the allocation of the sites in the Plan. For these reasons, I consider that these policies meet the Basic Conditions.
57. Southern Water has requested the inclusion of specific reference within the accompanying text to Policy 4 to existing sewers below the site. Whilst it may be prudent to identify this constraint in the supporting text to this policy, it would have no bearing on whether Policy 4 meets the Basic Conditions.

## **POLICY 6**

58. Southern Water has requested reference to the need to allow essential infrastructure in designated Local Green Space. The NPPF states that local communities will be able to rule out new development on Local Green Spaces other than in very special circumstances. These very special circumstances are not defined in the NPPF and it is not for me to decide whether essential infrastructure constitutes very special circumstances. I am aware that the national Planning Practice Guidance states that: *in identifying sites it will be important to recognise that water and wastewater infrastructure sometimes has particular locational needs (and often consists of engineering works rather than new buildings) which mean otherwise protected areas may exceptionally have to be considered where consistent with their designation.*
59. In my opinion, Policy 6 meets the Basic Conditions. If the development of essential infrastructure in Loxwood constitutes the very special circumstances as defined in the NPPF and the locational needs are as recognised in the national Planning Practice Guidance, this would be supported by national policy and guidance. Therefore, specific reference in Policy 6 is not necessary to meet the Basic Conditions.

## **POLICY 8**

60. Southern Water has raised concern that Policy 8 requires local infrastructure to be required in advance of construction of development. In my previous examination, I recommended the inclusion of the phrase 'or can be provided in time to serve it', at the end of the policy. This would meet the Basic Conditions with regard to the deliverability of the proposed new housing development. The phrase has been included in Policy 8, but prior to the phrase 'in advance of the construction of the development'. This alters the meaning of Policy 8 significantly. There is no reason why infrastructure could not be provided in parallel with development. To meet the Basic Conditions, I recommend modification to Policy 8 to re order the phrases.

61. **Recommendation: modification to the last sentence of Policy 8 to read as follows:**

**New developments will be permitted only if the network can accommodate the additional demand for sewerage disposal either in its existing form or through planned improvements to the system in advance of the construction of the development, or can be provided in time to serve it.**

62. Southern Water has requested a new policy regarding the provision of utility infrastructure. The development plan currently seeks to ensure the provision of adequate infrastructure in saved Local Plan Policy BE11. It is not necessary to replicate policies already found elsewhere in a Local Plan. Therefore, it is not necessary to include the suggested policy in this Plan in order to meet the Basic Conditions.

**POLICIES 7, 9, 10, 11, 13, 14, 15 and 18.**

63. These policies have not been objected to during the Regulation 16 consultation period. They have been subject to my suggested modifications where required to meet the Basic Conditions as part of my initial examination of the Plan. There has been no material change in circumstances since my previous examination in respect to these policies. As such, I do not intend to dwell on the content of these policies and simply confirm that they meet the Basic Conditions.

**POLICY 12**

64. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 allows existing redundant agricultural buildings of 500m<sup>2</sup> or less to change to a range of new business uses, to boost the rural economy whilst protecting the open countryside from development. Prior approval is required for such a change of use of buildings between 150 - 500m<sup>2</sup>.
65. The *Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014* came into force on 6 April 2014. This allows, under certain circumstances, the change of use of agricultural buildings to residential use and change of use of agricultural buildings to registered nurseries providing childcare or state-funded schools, under the prior approval system.
66. In my previous examination I recommended that the Policy be modified to clarify that development supported in this Policy is in addition to that allowed under the General Permitted Development Order. Although Policy 12 refers to the General Permitted Development Order, it does not provide sufficient clarity with regard to the re-use of agricultural buildings.

67. **Recommendation: in the interest of clarity and precision, I recommend modification to the first paragraph of Policy 12 to read as follows:**

**Development within the rural area will be in accordance with the NPPF paragraph 55, the CDC Emerging Local Plan and the General Permitted Development Order. The re-use of farm and rural buildings outside the Settlement Boundary for agricultural/ business purposes or to provide dwellings for agricultural workers, which is not allowed under the General Development Order, will be supported subject to the following criteria:**

## **POLICY 16**

68. Paragraph 18.16.9 in the accompanying text to Policy 16 refers to developer contributions towards traffic calming works. These contributions would not only be from allocated site developments. They would also be contributions from the development of any open market housing development greater than one house in size.

69. Since my previous examination, Planning Policy Guidance has been revised (on 28 November 2014) with regard to infrastructure contributions through planning obligations. By way of explanation, the following is an extract from the Planning Practice Guidance (Paragraph: 012 Reference ID: 23b-012-20141128):

*There are specific circumstances where contributions for affordable housing and tariff style planning obligations (section 106 planning obligations) should not be sought from small scale and self-build development.*

*Contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm.*

*In designated rural areas, local planning authorities may choose to apply a lower threshold of 5-units or less. No affordable housing or tariff-style contributions should then be sought from these developments. In addition, in a rural area where the lower 5-unit or less threshold is applied, affordable housing and tariff style contributions should be sought from developments of between 6 and 10-units in the form of cash payments which are commuted until after completion of units within the development. This applies to rural areas described under section 157(1) of the Housing Act 1985, which includes National Parks and Areas of Outstanding Natural Beauty.*

*Affordable housing and tariff-style contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home.*

70. CDC has confirmed that Loxwood lies within a rural area described under section 157(1) of the Housing Act 1985. It is not for me to determine whether the lower threshold of 5-units or less is appropriate. As the

Planning Policy Guidance states, this is for local planning authorities to choose. In the absence of a determination by CDC as to whether the lower threshold applies, I recommend modification to the first paragraph of Policy 16 to refer to developer contributions 'where applicable'.

71. **Recommendation: To have regard to Planning Policy Guidance, I recommend the inclusion of the wording 'were applicable' in Policy 16 and for clarity I recommend a similar amendment to paragraph 18.16.9. The first sentence of Policy 16 to read as follows:**

**Traffic calming along the B2133 and Station Road in the parish of Loxwood will be progressively introduced during the Plan period by means of developer contributions where applicable.**

### **POLICY 17**

72. Since my previous examination, a Ministerial Statement on Building Regulations (September 2014) indicates that it is unlikely for it to be appropriate to refer to the Code for Sustainable Homes in neighbourhood plans once a statement of policy has been produced in early 2015. As this is a clear indication of the direction and intentions of National Policy, I recommend deletion of this section in Policy 17.
73. **Recommendation: modification to Policy 17 by the deletion of the second sentence.**

## **Referendum and the Loxwood Neighbourhood Plan Area**

74. I am required to make one of the following recommendations:
- the Plan should proceed to Referendum, on the basis that it meets all legal requirements; or
  - the Plan as modified by my recommendations should proceed to Referendum; or
  - the Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.
75. **I am pleased to recommend that the Loxwood Neighbourhood Plan as modified by my recommendations should proceed to Referendum.**
76. I am required to consider whether or not the Referendum Area should extend beyond the Loxwood Neighbourhood Plan Area. I see no reason to alter or extend the Neighbourhood Plan Area for the purpose of holding a referendum.

**Janet Cheesley**

**Date 25 February 2015**

## Appendix 1 Background Documents

The background documents include

The National Planning Policy Framework (The Framework) (2012)

The Planning and Compulsory Purchase Act (2004)

The Localism Act (2011)

The Neighbourhood Planning Regulations (2012)

The Planning Practice Guidance (2014)

### Statutory and Core Documents

Chichester District Council 1999 Local Plan saved policies including August 2011 status of Development Plan documents doc, and Chichester District Public Art Strategy.

Chichester District Local Plan Key policies pre submission November 2013

Chichester District Local Plan preferred options document April 2013

Coastal West Sussex SHMA – Chichester District summary.

Interim Policy Statement on Planning and Climate Change June 2013

Interim Statement on affordable housing September 2007

Chichester District Council – Allocation scheme July 2013

CDC Design Guidelines for Alterations to Dwellings and Extensions (2009).

Saved Policies report June 2012

The Consultation Summary which has excel spread sheets as a separate document

The Basic Conditions Statement October 2014

Traffic Calming Report

Allocated site assessment table

CDC landscape capacity assessment - Loxwood area

CDC Neighbourhood Plan guide

Chichester District Council - Settlement Capacity Profiles - Loxwood Parish

Chichester District Local Housing Requirements Study Final Report by DTZ

Final CLP Questionnaire 25th Aug 12

Glass-House final report

Housing trajectory

Initial CDC Sustainability appraisal for Loxwood

Localism Act 2011

Locality Neighbourhood Plan roadmap

Locality Neighbourhood Plan Roadmap-worksheets

Loxwood CLP Survey Report - October 2012

Loxwood Neighbourhood Plan designation letter

Loxwood Neighbourhood Plan Evidence Base Gap Analysis 12.03.13

Loxwood Neighbourhood Plan Support Basic Conditions March 2013

Loxwood Neighbourhood Plan Support Site Allocations March 2013

Loxwood Neighbourhood Plan Support Writing Policies March 2013

Loxwood Village Design Statement July 2003

Strategic Housing Land Availability Assessment Loxwood 2010

Strategic Housing Land Availability Assessment March 2013

Survey Actions

Survey responses analysis of responses and graphics  
 URS Loxwood Neighbourhood Plan Support Transport Evidence May 2013  
 report  
 WSSC planning school places document

<b>Regulation 14 responses.</b>
Chichester District Council (CDC)
West Sussex County Council
Southern Water
Natural England
Landlinx Estates
Cathy & Howard Thomas
Jonathan Lane
Kelly Heath and Geoff Richards
Mrs Elizabeth Dugdale
Mr Hugh Kersey
Christopher Chapman
Margaret Carr
Yvonne Rees
Ian Barnard
Bryan Smith
Peter Hyem
Anita Bates
Featherstone and Ford
Mr B Frost
Mrs Hannah Harbottle
MR R J Setterfield
Mr Stewart & Mrs Anne Holmes

Mr David & Mrs Hilary Mahony
Mr & Mrs TC Walker
Mr Roger Newman
Peter Dale
Peter Winney
Steve & Alix Parsons
Mr R Brennan
John Baker
Mrs Patricia Breakell
Nigel Gibbons
Peter Hughes
James Jewell
Peter & Sue Hyem

**Regulation 16 responses.**

Chris Agar

Genesis Planning

Highways Agency

Andrew Spencer

Elsbeth Carr

Hugh and Ann Kersey

James Dore

Jean Spira

Linda Colling

Roger Good

Roger Good – Plan

Roger Good – additional

Mr and Mrs Denny

Nigel Gibbons

Peter Hughes

Planit Consulting

Robert Brennan

Sport England

SGN Gas

Southern Water

Tony Colling

WSCC

Legal Opinion CDC

Chichester District Council Response to Examiner's Request (22 December 2014) re Crownhall Estates representations

Planit Consulting- Comments on the District Council's Submissions and Further Matters Raised By The Examiner On The Second Draft Document

Responses to the revised wording to Policy 1

## Appendix 3

### **Officers' 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**

The comments set out below are officer comments relating to the various grounds of potential challenge set out on behalf of Crownhall Estates Ltd with regard to the decision by the District Council to proceed to referendum on the resubmitted Loxwood Neighbourhood Plan.

#### Ground 1:

*The Examiner makes no mention of whether it is appropriate to make the Neighbourhood Plan having regard to national policy, merely the requirement to have regard to that Policy (para 18).*

Contrary to Crownhall's assertion it is absolutely clear, reading her report, that the Examiner considers it appropriate to make the Neighbourhood Plan having regard to national policy (see paragraphs 18, 34, 45 and 48-51 of the Examiner's report). Indeed, the Examiner sets out the parameters of her determination in paragraphs 16-18 of her report. Paragraph 74 sets out the various options regarding recommendations that are available to her to make on the Loxwood Neighbourhood Plan. Within her recommendation (stated at paragraph 75) it is clear that she considers that the legal requirements have been met as she has recommended that the Loxwood Neighbourhood Plan as modified by her recommendations should proceed to Referendum. In so doing, she has not sought to recommend that the Plan should not proceed to referendum, on the basis that it does not meet the relevant legal requirements, an option that was available to her. Given the Examiner's conclusions, it is self-evident that she considers it appropriate to make the plan.

#### Ground 2:

*The Examiner gives no adequate or intelligible reasons for concluding that the housing numbers in the Neighbourhood Plan should be 60.*

The Loxwood Neighbourhood Plan proposes to provide a minimum of 60 dwellings which accords with the indicative parish housing number identified in the Chichester Local Plan Key Policies. The Examiner sets out clearly the progress of the Chichester Local Plan Key Policies since her previous examination (paragraph 41 onwards). In addition, she sets out that the Neighbourhood Plan examination process does not require a rigorous examination of district wide housing land requirements. As is correctly identified, this is the role of the examination of the emerging Local Plan. The Examiner states in her report on the Loxwood Neighbourhood Plan (paragraph 43) that 'From the evidence before me, I consider the indicative housing figure provides me with the best guidance on total housing numbers for the Loxwood Parish area.' She goes on to say that in the absence of adopted strategic housing policies it is not her role to determine whether the Neighbourhood Plan would be inconsistent with the adopted version of the emerging Local Plan if it were to be subject to future amendments to accommodate further

growth. It is considered that this is a proportionate and appropriate response for an Examiner of a Neighbourhood Plan. Therefore, contrary to Crownhall's assertion, the Examiner was entitled to say that the emerging Local Plan figure was best guidance and the basis for this view and approach is clear.

Ground 3(a):

*Windfall – 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;*

The Loxwood Neighbourhood Plan makes reference (in Policy 1) to the provision of a minimum of 60 houses on allocated and windfall sites located within the settlement boundary. Policy 4 – Land at Farm Close seeks to allocate a minimum of 17 houses; Policy 5 – Land at Nursery Site identifies an indicative number of 43 dwellings. Together these allocations provide for a minimum of 60 dwellings as required.

In addition, Policy 1 allows for other small scale windfall sites to come forward within the settlement boundary. Whereas housing permitted on the two allocated sites will count against the indicative housing number of 60 units identified for Loxwood within the Chichester Local Plan Key Policies, small scale windfall sites (of less than 6 dwellings) are taken into consideration in the Small Sites Windfall Allowance included within the Chichester Local Plan Key Policies (see amended paragraph 7.29 in Proposed Modifications document) and will not count against the indicative housing number identified for Loxwood. The Council does not accept the contention put forward by Crownhall in relation to this issue and this is supported by the Examiner's report in paragraph 45 that states that the revised wording of Policy 1 meets the Basic Conditions.

Ground 3(b):

*Windfall – The Examiner and the local planning authority erred in law:*

*(b) failing to address the criticism of the Neighbourhood Plan requiring non-allocated developments to be of fewer than 6 dwellings.*

As set out under 3(a) above, Policy 1 allows for small scale windfall sites (of less than 6 dwellings) to come forward over and above the allocation of 60 dwellings within the settlement boundary. This policy approach is not contrary to the Chichester Local Plan Key Policies but it is nevertheless the case that this does not necessarily prevent larger windfall sites within the settlement boundary coming forward. If any such site was forthcoming, it would be considered on its individual planning merits having regard to relevant policies in the Neighbourhood Plan, Local Plan and National Planning Policy Framework (NPPF).

The NPPF sets out clearly the role of neighbourhood plans with regard to the ability of local communities to shape and direct sustainable development in their area. The Neighbourhood Plan was therefore entitled to take the approach expressed in the policy and this is not contrary to the emerging Local Plan.

Crownhall's criticism of the Examiner in relation to this issue is therefore not accepted. The Examiner (in paragraph 44 of her report) acknowledged that the emerging Local Plan recognises that in some cases suitable sites of over 6+ dwellings may come forward as planning applications. However, the Examiner also states that most importantly paragraph 7.28 of the emerging Local Plan states that it is intended that the identification of sites and phasing of delivery will be determined primarily by local communities through a neighbourhood planning process.

Ground 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.*

The Examiner makes the point that the approach to site selection for the purpose of neighbourhood planning is not an exact science. She makes it clear that she is satisfied that all sites were considered against the same criteria and that a robust consultation process was carried out. The Examiner specifically refers to one of the basic conditions when she states that the sites within the plan will, in her view, contribute towards the achievement of sustainable development. Given the requirement that the plan meets the basic conditions rather than other tests (e.g. of soundness for a Local Plan), the approach to site selection undertaken by the parish council is considered to be a proportionate and reasonable one as set out by the Examiner (paragraphs 46 onwards).

Ground 5:

*The District Council's adoption of the Examiner's errors.*

The District Council resolved to accept the Examiner's report on the basis that the recommended modifications were relatively minor. This process was undertaken in conjunction with the Parish Council. The District Council was satisfied that the Plan met the basic conditions and that it was therefore appropriate to proceed to referendum. The District Council's Decision Statement makes it clear that the District Council fully and properly considered these matters.

Ground 6:

*Authority to go to a second referendum.*

The matter relating to the officer decision is addressed in the Cabinet report attached.