

This Report will be made public on 5 March 2019

Report Number **A/18/27**

To: Council
Date: 20th March 2019
Status: Key Decision
Head of service: Dr Sarah Robson Assistant Director - Strategy, Performance and Communications
Cabinet Member: Councillor John Collier

SUBJECT: St Mary in the Marsh Neighbourhood Development Plan

SUMMARY: The St Mary in the Marsh Neighbourhood Development Plan has had a successful planning referendum with 87% of those who voted, voting in favour of using the Plan for planning purposes. Following a successful referendum the District Council, as the local planning authority, must now bring the Plan into force (or as the legislation terms it, 'make' the plan).

REASONS FOR RECOMMENDATIONS

Following a successful Neighbourhood Plan referendum, national legislation now stipulates that the District Council, as the local planning authority, must now bring the plan into force.

RECOMMENDATIONS:

1. To receive and note report A/18/27.
2. To recommend to Full Council to make the St Mary in the Marsh Neighbourhood Plan part of the Development Plan for the St Mary in the Marsh Neighbourhood Area, in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act 2011.
3. To publish a 'Decision Statement', as set out in Appendix 1, in accordance with Section 38A (9) (10) of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act & Regulation 19 of the Neighbourhood Planning (General) Regulations 2012.

1. BACKGROUND

- 1.1 Neighbourhood planning provisions were introduced by the Localism Act 2011. The National Planning Policy Framework (2018) promotes the use of neighbourhood planning, stating that it "... gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan" (paragraph 29).
- 1.2 St Mary in the Marsh Parish Council is the first parish in the district to produce a Neighbourhood Development Plan (NDP) and submit it to the District Council for consideration.
- 1.3 The NDP has been considered twice at Cabinet. On the 13th September 2017 (C/17/38) after the Parish Council formally submitted the plan to the District Council and after a successful examination on 12th September 2018 (C/18/32).
- 1.4 **At Cabinet on the 12th September 2018 it was agreed to modify the Plan in accordance with the Examiner's Report and to undertake a public referendum.** A copy of the Neighbourhood Development Plan can be viewed on the District Council's web site¹.
- 1.5 The referendum took place on the 8th November 2018. In accordance with the Regulations, the question posed was:

'Do you want Folkestone & Hythe District Council to use the Neighbourhood Plan for St. Mary in the Marsh to help it decide planning applications in the Neighbourhood Area?'
- 1.6 There was a 23% turnout of the overall Neighbourhood Area electorate. Of those who voted, 87.2% (477 people) voted in favour of using the Neighbourhood Development Plan and 12.61% (69 people) voted against. A simple majority of 51% (of those who had voted) in favour of the Plan is required to bring the plan into force.
- 1.7 In accordance with Section 38A(4) of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011) the District Council now has to make the Plan part of the development plan for the district. This currently includes the Core Strategy Local Plan (2013) and the saved policies in the Shepway Local Plan (2006). The emerging plans, Core Strategy Review and the Places and Policies Local Plan will also become part of the Development Plan (and replace the 2013 and 2006 plans respectively) when they are adopted.
- 1.8 The District Council does not have to bring the Plan into force if it is considered that it would breach, or be incompatible, with any EU obligations or any European convention Human Rights (Section 38A (8) of the Planning & Compulsory Purchase Act 2004 Act, as inserted by the

¹ https://www.folkestone-hythe.gov.uk/media/5454/St-Mary-in-the-Marsh-Neighbourhood-Plan-September-2018/pdf/St_Mary_in_the_Marsh_Neighbourhood_Plan_Final_September_2018.pdf

Localism Act 2011). However, if the District Council considers that the Plan does not breach, or would not be incompatible with, the relevant legislation, then it must 'make' the Plan, without amendment in the form voted on at referendum.

- 1.9 The District Council must also publicise (on the web or in any other manner to bring it to the attention of those who live, work or carry on business in the area) its decision on the NDP and the reasons for that decision. The District Council must also send a copy to the Parish Council.

2. CONSULTATION

- 2.1 The Plan has been subject to public consultation throughout the preparation process, in line with Government legislation. The Parish Council undertook extensive consultation before the Plan was formally submitted to the district council for consideration.
- 2.2 The district council then published the Plan for a six week period between the 9th November and 21st December 2017. The Plan was publicised through the local press and through social media. All the representations were sent to the appointed Examiner for consideration.
- 2.2 The Plan was then subject to a Neighbourhood Planning Referendum on the 8th November 2018.

3. OPTIONS

- 3.1 There are just two options to be considered:

Option 1 – That the St Mary in the Marsh NDP breaches, or is incompatible, with any EU obligations or any European convention Human Rights, and is not made part of the Development Plan for the area; or

Option 2 – To make the St Mary in the Marsh NDP part of the Development Plan for the St Mary in the Marsh Neighbourhood Development Area.

- 3.2 This report recommends Option 2, that the St Mary in the Marsh NDP is made part of the development plan.
- 3.3 The question as to whether or not the St Mary in the Marsh NDP would breach, or is incompatible, with EU obligations or any European convention Human Rights has been considered by the Independent Examiner in her Report. Her conclusions were that it did not. There have also been no changes to either the EU Obligations or the European convention Human Rights since her report that would change this conclusion. The only option is to make the NDP part of the Development Plan for the Neighbourhood Area.

4. RISK MANAGEMENT ISSUES

- 4.1 The risk management issues are as follows:

Perceived risk	Seriousness	Likelihood	Preventative action
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That the Neighbourhood Plan is legally challenged by a developer, landowner or aggrieved party	High	Low	Neighbourhood Plans are now an established part of the planning system and have been brought into force in a large number of local authority areas. The council has given advice to the Parish Council in preparing the Plan to ensure it follows national planning policy. The Plan has been subject to independent examination according to legislation and the Examiner's recommendations have been incorporated into the Plan.
That changing circumstances render the Plan out-of-date or ineffective.	High	Low	The Neighbourhood Plan, in common with all development plans, will need to be monitored and kept under review. The council will assess how it is used in decision-making, in the granting or refusing of planning permission, and will work with the Parish Council to monitor its effectiveness.

7. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

7.1 Legal Officer's Comments (DK)

There are no legal implications arising directly out of this report other than as already stated. Parish and town councils can write a Neighbourhood Development Plan for their area. Subject to conforming to national policies, as well as local plan policies for the area, and gaining support through a referendum of the local area, the plan may be adopted as part of the development plan. The Council must ensure compliance with the National Planning Policy Framework published by the Department for Housing, Communities and Development on 24th July 2018 which sets out the Government's planning policies and objectives for England and how these should be applied. (It provides a framework within which locally-prepared plans for housing and other developments may be produced.)

7.2 Finance Officer's Comments (CS)

There are no direct financial consequences of the recommendations contained within this report.

7.3 Diversities and Equalities Implications (GE)

The Equality Act 2010 places an obligation on public bodies to consider equality implications while developing or revising policy and prior to taking decisions. A stage one Equality Impact Assessment (EIA) was previously undertaken and identified no adverse impact or discrimination against different groups in the community. The EIA was published as an appendix to support the previous report to Cabinet on 12th September 2018 (Report ref: C/18/32).

Local residents have been publically consulted on the plan through a referendum and the result was to agree the adoption the Neighbourhood Development Plan. The conclusions of the Independent Examiner confirm the Neighbourhood Development does not breach any convention on the European Convention on Human Rights. Therefore, there are no equalities implications directly arising from this report.

8. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

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The following background documents have been relied upon in the preparation of this report:

(Note: only documents that have not been published are to be listed here)

Appendices:

Appendix 1: Decision Statement