

## **Background Information into the second Loxwood Examination**

### **Background**

The Council received a legal challenge from Crownhall Estates concerning the decision to proceed to referendum with the Loxwood Neighbourhood Plan.

In summary the basis of the judicial review by Crownhall Estates, was that Chichester District Council's decision that a Strategic Environmental Assessment (SEA) was not required and was not adequately reasoned. This was due to the statutory consultation with Natural England, English Heritage and the Environment Agency not taking place prior to that decision. 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.

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.

### **Agreed remedy with claimant**

In order to remedy the matters raised in the judicial review a consent order was agreed by both parties namely Chichester District Council and Crownhall Estates. Within the consent order it was agreed that the judicial review was allowed and the decision by Chichester District Council to hold a referendum (and the subsequent referendum) should be quashed.

It was also agreed that Chichester District Council was prohibited from putting the Loxwood Neighbourhood Development Plan (or any modification of it) to a further referendum before:

- i. (a) a strategic environmental assessment has been carried out of the Neighbourhood Plan, or  
(b) a lawful screening decision has been made and publicised that an environmental assessment is not required.
- ii. It was agreed that if i (a) applied a further examination should be held into the Loxwood Neighbourhood Plan, or in the event that i (b) applied that a Basic Conditions Statement should be submitted by Loxwood Parish Council and a further examination should be held into the proposed Loxwood Neighbourhood Plan.
- iii. Following the consideration of the examiners report Chichester District Council may then determine whether the Loxwood Neighbourhood Plan may proceed to referendum

The Council did not consider it was necessary to go back as far as the reg. 14 consultation stage to overcome the procedural error in plan-making. 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 reg. 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.

### **Amendment to the constitution giving delegated powers for screening opinions**

Following the acknowledgement by the Council that the delegated powers for issuing screening opinions had not been set up, the Council reviewed all its powers of delegation in relation to

neighbourhood plans. Subsequently a report was approved by Cabinet on 9 September 2014 (see Appendix A), which amends the Council's constitution to enable the Head of Planning Services to undertake delegation of certain powers relating to the neighbourhood planning process to the Head of Planning Services.

### **Review of the Loxwood screening opinion process**

It was accepted that the Council had not legally complied with the process for undertaking an SEA and there was a lack of delegated authority. The section above covers the amendment to the delegation process.

In order to rectify the Council not being legally compliant with the SEA process, the Council took counsel's advice on the most effective way to recover the situation to enable the neighbourhood plan to be formally made. Counsel advised the Council to seek the advice of an independent environmental consultant to assist it in coming to a view on a screening opinion.

Lepus Consulting was appointed by the Council to provide professional opinion to the Council as to whether there will be a likely significant environmental effect due to the proposals in the neighbourhood plan and therefore whether a Strategic Environmental Assessment was required and to provide a reasoned justification to enable the production of a statement of reasons for the determination.

A report was produced by Lepus Consulting "[Strategic Environmental Assessment of the Loxwood Neighbourhood Plan: SEA Screening Opinion](#)" (October 2014). The [Screening Determination of the Loxwood Neighbourhood Plan](#) was issued on the 14<sup>th</sup> October signed by the Head of Planning Services.

### **Revised basic conditions statement**

In line with the judicial review consent order which was agreed by the Council and Crownhall Estates Loxwood Parish Council revised their [basic conditions statement](#) which was submitted to the Council as part of the Regulation 16 consultation.

### **Submission consultation on plan (Regulation 16)**

In line with the judicial review consent order which was agreed by the Council and Crownhall Estates, following a formal screening process and the issuing of the basic conditions statement the Loxwood Neighbourhood Plan was submitted for Regulation 16 consultation. The consultation ran from 23<sup>rd</sup> October to the 4<sup>th</sup> December 2014.

All comments made during the Submission consultation process including those relating to the SEA are forwarded to the Examiner for consideration.

Chichester District Council

CABINET  
2014

9 September

Neighbourhood Planning – delegation of functions

1. Contacts

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2. Recommendation

**That the Council be recommended to approve the changes to the Constitution as listed in paragraphs 5.1(a) to (i).**

3. Background

- 3.1. The neighbourhood planning regime was introduced via the Localism Act 2011 to enable communities to shape development in their areas through the production of neighbourhood development plans and other measures. Neighbourhood Plans once made, become part of the adopted development plan for the area and the policies contained within them are then used to guide the determination of planning applications.
- 3.2. The preparation of a neighbourhood plan involves a series of stages set out in the Neighbourhood Planning (General) Regulations 2012, beginning with formal designation of a neighbourhood area through to the making (adoption) of the plan. At present, draft neighbourhood plans may be reported to Cabinet at two stages:
  - (a) To report the Council's decision statement following the independent examination of the plan and whether the plan should proceed to referendum; and
  - (b) To determine whether a draft plan should be made part of the development plan for the area.
- 3.3. The Council's constitution delegates certain powers relating to the neighbourhood planning process to the Head of Planning Services. These comprise:
  - "To approve the designation of neighbourhood areas, in accordance with the Neighbourhood Planning (General) Regulations 2012, where no adverse comments have been received, and in consultation with the appropriate Cabinet Member and the relevant ward member(s).
    - (1) To accept a neighbourhood plan submission that meets the criteria set out in the *Neighbourhood Planning (General) Regulations 2012*, in consultation with the Cabinet Member for Housing and Planning and the local ward member(s),

(2) To make written representations on behalf of the Council where officers have no adverse comments on a formal neighbourhood plan submission, in consultation with the Cabinet Member for Housing and Planning and the local ward member(s).

(3) To make the decision to proceed to referendum where the independent examiner's report recommends 'proceed to referendum as submitted' and no significant adverse representations have been made, in consultation with the Cabinet Member for Housing and Planning and the local ward member(s)."

3.4. As a result of a recent application for a judicial review of the Loxwood draft Neighbourhood Plan (see report elsewhere on the agenda), officers have reviewed the extent of the current powers delegated to the Head of Planning Services in relation to the neighbourhood planning process.

#### 4. Outcomes to be achieved

4.1. The objective is to ensure that the way the Council manages the neighbourhood planning process is efficient and compliant with the law.

#### 5. Proposal

5.1. It is proposed that the delegation of powers to the Head of Planning are extended to enable officers to determine requests as to whether or not a strategic environmental assessment is required in respect of neighbourhood plans. Certain other amendments to existing delegated powers are also proposed to provide greater clarity (the text in bold type below indicates proposed additional wording):

(a) **To determine requests made under the Environmental Assessment of Plans and Programmes Regulations 2004 as to whether or not a strategic environmental assessment (including screening and scoping opinions) is required.**

(b) To approve the designation of neighbourhood areas in accordance with the Neighbourhood Planning (General) Regulations 2012.

*and in consultation with the appropriate Cabinet Member and the relevant ward member(s):*

(c) **To make formal comments on a draft Neighbourhood Plan at Pre-Submission stage and Submission stage;**

(d) To accept a Neighbourhood Plan submission **and provided that the proposal complies with the relevant legislation, to publicise and consult on the Plan in accordance with** the Neighbourhood Planning (General) Regulations 2012;

(e) **To appoint an Independent Examiner to hold an examination to assess whether the draft plan meets the basic conditions and in exceptional cases to suspend the holding of an examination;**

(f) **Following receipt of the Independent Examiner's report, to publish a decision statement and** to make the decision to proceed to referendum where the Independent Examiner's report recommends 'proceed to referendum as submitted' and no significant adverse representations have been made.

(g) **To publish an Adoption Statement;**

(h) **To carry out such other procedural processes, requirements assessments and determinations as may be necessary in accordance**

**with the Town and Country Planning Act 1990, the Neighbourhood Planning (General) Regulations 2012 and any other relevant regulations to enable preparation of a Neighbourhood Plan.**

- (i) In relation to High Court challenges of any decisions of the Council throughout the neighbourhood planning process, to reply, defend and/or consent to judgement of any claims and to settle any costs claim arising.**

## **6. Alternatives that have been considered**

- 6.1. The alternatives are to leave the Constitution in its current form or to make minor amendments only. Given the requirement of the Regulations that the Council meets the various statutory requirements 'as soon as possible' and that the process of plan preparation should be as efficient as possible, these are not considered to be suitable or appropriate options.

## **7. Resource and legal implications**

- 7.1. There are no resource implications, except for the cost of updating a few copies of the revised Constitution.

## **8. Consultation**

- 8.1. These proposals arise from a legal challenge to one draft neighbourhood plan and advice received from counsel. The proposals have been prepared in conjunction with the Planning Policy Team and have been reviewed by the Principal Solicitor. There has been no external consultation.

## **9. Community impact and corporate risks**

- 9.1. The changes will reduce the risk of challenge to draft neighbourhood plans on the grounds that officers do not have the required authority at key stages of the plan preparation process. They should also make the Council's practices clearer and more streamlined without any adverse impact on local communities.

## **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. Appendix**

None.

## **12. Background Papers**

None.