

Council Report

Ward(s) affected: Effingham

Report of Director of Planning and Regeneration

Author: Dan Knowles

Tel: 01483 444605

Email: dan.knowles@guildford.gov.uk

Lead Councillor responsible: Paul Spooner

Tel: 07970 953232

Email: paul.spooner@guildford.gov.uk

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## **Adoption of Effingham Neighbourhood Plan**

### **Executive Summary**

Neighbourhood plans are statutory development plans produced by parish/town councils or neighbourhood forums. Effingham Parish Council has produced the Effingham Neighbourhood Plan ("the Plan", see background papers) for the Effingham Neighbourhood Area (Effingham ward and parish).

To meet the requirements of The Neighbourhood Planning (General) Regulations 2012 (as amended) ("the Regulations"), the Council subjected the Plan to a six-week consultation and an examination, after which the Plan was amended in line with the recommendations of the examiner. The Plan was then the subject of a referendum of qualifying voters within the neighbourhood area on 22 February 2018. A majority voted to accept the plan.

By virtue of the Planning and Compulsory Purchase Act 2004 (as amended) ("the Act") and the Regulations, the Council must make (adopt) the Plan as soon as reasonably practicable after the referendum is held and, in any event, not later than the last day of the period of 8 weeks from the day after the referendum. The Council does not need to make the neighbourhood plan if it considers that the making of it would be a breach, or would otherwise be incompatible with, any EU obligations or any human rights obligations. Officers are of the view that making the Plan would not breach these obligations. The Council must therefore decide whether or not to make the Plan.

Under recent changes to the Regulations, the Plan forms part of the statutory development plan and carries full weight in planning decisions as soon as it is approved at a referendum, rather than when it is made. Applications for planning permission must be determined in accordance with the statutory development plan, unless material considerations indicate otherwise.

## **Recommendation to Council**

That the Council makes the Effingham Neighbourhood Plan.

### Reason for Recommendation:

To meet the requirements of the Act and the Regulations.

## **1. Purpose of Report**

- 1.1 To inform councillors of the present position regarding the Effingham Neighbourhood Plan (“the Plan”) following a referendum on 22 February 2018, and to set out the reasons for the recommendation to ‘make’ (adopt) the Plan.

## **2. Strategic Priorities**

- 2.1 The Council’s Strategic Framework identifies the following relevant key strategic priorities: sustainable local environment, safe and vibrant community and dynamic economy.
- 2.2 The Plan has been tested at examination and amended to comply with the requirements of legislation. The requirements include that the Plan must contribute to the achievement of sustainable development, which is defined in national planning policy as sustainability across the environmental, social and economic dimensions. The Plan as amended therefore will help deliver a sustainable local environment in economic, social and environmental terms.
- 2.3 The Plan has been produced through engagement between Effingham Parish Council (EPC) and members of the Effingham community. By supporting the Plan, the Council can support vibrant communities at the local level.

## **3. Background**

- 3.1 Neighbourhood planning was introduced through the Localism Act 2011. New powers allowed qualifying bodies (parish or town councils, or neighbourhood forums in areas without parish or town councils) to produce neighbourhood plans and Neighbourhood Development Orders. Neighbourhood plans allow communities to set planning policies for their area which form part of the borough’s statutory development plan. Neighbourhood Development Orders allow communities to grant up-front planning permission for developments.
- 3.2 Producing a neighbourhood plan allows parish and town councils to increase the amount of Community Infrastructure Levy (CIL) funds they receive from developments within their area from 15 per cent capped at £100 per dwelling to 25 per cent uncapped. Responsibility for determining how these funds are spent falls to the parish council but funds must be spent on measures that support development. While parish, town and community councils are not required to spend their neighbourhood funding in accordance with the priorities of the charging authority (the Council), national planning guidance states that parish councils are expected to work closely with the charging authority to agree priorities for

spending. Alternatively, the parish council can opt not to receive some or all of its portion of the CIL funds and keep the funds with the charging authority.

- 3.3 Neighbourhood plans must be examined and pass a referendum of local voters by a simple majority.

#### Effingham Neighbourhood Plan

- 3.4 The Effingham Neighbourhood Area was designated by the Council on 4 April 2013. Designating the neighbourhood area conferred powers on EPC to undertake neighbourhood planning and the parish council subsequently produced the Effingham Neighbourhood Plan.

- 3.5 The Plan was submitted to the Council in March 2017 and was then subject to a six-week consultation and an examination to meet the requirements of the Regulations. The examiner of the plan recommended modifications in order to meet the “basic conditions” set out in legislation. The Council agreed with the examiner’s recommendations and officers prepared the modified version of the Plan, which was subject to a referendum on 22 February 2018.

- 3.6 The result of the referendum was as follows:

	<b>Votes Recorded</b>
Number cast in favour of a <b>Yes</b>	843
Number cast in favour of a <b>No</b>	59
Number of spoilt ballot papers	0

Electorate: 2070	Ballot Papers Issued: 902	Turnout: 44%
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- 3.7 Once approved at a referendum the Plan forms part of the Council’s development plan. Applications for planning permission must be determined in accordance with development plan, unless material considerations indicate otherwise (s38 (6) of the Planning and Compulsory Purchase Act 2004).

- 3.8 By virtue of the legislative framework, the Council must now make (adopt) the Plan as soon as reasonably practicable after the referendum is held and, in any event, the last day of the period of 8 weeks starting from the day after the referendum. The Council does not need to make a neighbourhood plan if it considers that the making of it would be a breach, or would otherwise be incompatible with, any EU obligations or any human rights obligations. Making the Plan will not alter the Plan’s status as, following its approval at referendum, it already forms part of the development plan. However, deciding not to make the Plan would mean that the weight afforded to it is less when determining planning applications.

- 3.9 The Plan was tested against the basic conditions set by legislation during the examination. One of the basic conditions is that the Plan must be compatible with EU and human rights obligations. Officers agree with the examiner that the Plan,

as amended, meets all the basic conditions including EU and human rights obligations and that therefore the Plan should be made.

#### **4. Consultations**

- 4.1 The Plan has been through two consultations required by the Regulations. EPC undertook a pre submission (regulation 14) consultation in March and April 2016 and the Council undertook a post-submission (regulation 16) consultation in March and April 2017.
- 4.2 EPC considered the comments received during the regulation 14 consultation and made changes to the Plan prior to submission to the Council. The comments received during the Council's regulation 16 consultation were provided to the examiner of the Plan. The amendments to the Plan recommended by the examiner were informed by the content of representations received during both consultations.

#### **5. Equality and Diversity Implications**

- 5.1 The making of the Plan is not expected to have any disproportionate impact on people with protected characteristics under the Equality Act 2010. The examination report concluded that no sectors of the community were likely to be discriminated against as a result of the Plan (paragraph 5.5.5).

#### **6. Financial Implications**

- 6.1 After the introduction of CIL, 15 per cent of CIL receipts must be spent within the neighbourhood where the associated development occurs. Making the Plan means that the neighbourhood share in Effingham will increase to 25 per cent (uncapped) of the CIL funds generated from new building in the area. Funds will be passed directly to EPC, unless EPC opts for the funds to stay with the Council.
- 6.2 The neighbourhood portion of the CIL must be spent to "support the development of the area" but can be used to fund a wider range of projects than the CIL funds held by the Council, which must be spent on infrastructure. The neighbourhood share of CIL funds may be spent on affordable housing.
- 6.3 The Plan document will be made available to the public electronically for free. As with other planning documents, the Plan will be made available in print for a fee that covers printing costs.
- 6.4 As making the Plan does not alter its status in the planning system, there are not considered to be any additional costs for planning decisions.

#### **7. Legal Implications**

- 7.1 The Localism Act 2011 provided a new statutory regime for neighbourhood planning.
- 7.2 Section 38A (4) of the Planning and Compulsory Purchase Act 2004 Act ("the Act") as inserted by the Localism Act states that a local planning authority:

- must make a neighbourhood development plan if more than half of those voting in the neighbourhood plan referendum vote are in favour of the Plan; and
- do so as soon as reasonably practicable after the referendum is held and in any event by such date as may be prescribed

7.3 Pursuant to the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016, the prescribed date for a Council to make a neighbourhood development plan following an affirmative vote at a referendum is the last day of the period of 8 weeks beginning with the day immediately following from the day of the referendum.

7.4 Under the Act, a neighbourhood plan comes into force as part of the statutory development plan once it has been approved at referendum.

7.5 There are narrow circumstances where the local planning authority is not required to make the neighbourhood plan. Section 38A (6) of the Act states that the authority is not subject to this duty if it considers that making the Plan would breach, or would otherwise be incompatible with, any EU or Convention rights (within the meaning of the Human Rights Act 1998). No other circumstances for refusing to make the Plan are prescribed.

7.6 In accordance with the Act, only a draft neighbourhood plan that meets certain prescribed conditions can be put to a referendum. The prescribed conditions include whether a plan conforms with EU and Convention rights and at Examination the Inspector found the Plan to be compliant with this requirement. There is no reason for officers to question this conclusion.

## **8. Human Resource Implications**

8.1 Making the Plan is not expected to have any significant human resource implications as doing so will not alter the status of the Plan in planning decisions or the process of planning decisions.

## **9. Summary of Options**

9.1 The two available options are:

- Make the Plan
- Refuse to make the Plan

9.2 Refusing to make the Plan without sound reasons for doing so in compliance with the narrow circumstances outlined above carries legal risks.

## **10. Conclusion**

10.1 Based on the conclusions of the examination, there is no reason to conclude that the Plan fails to comply with EU and Convention rights. As such, it appears the Council, acting reasonably, should make the Plan.

**11. Background Papers**

[Effingham Neighbourhood Plan \(Referendum version\)](#)

[Effingham Neighbourhood Plan examination report](#)

(Both documents available online at <https://www.guildford.gov.uk/effingham>)

**12. Appendices**

None