

Council Report

Ward(s) affected: Clandon and Horsley

Report of Director of Planning and Regeneration

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## Adoption of East Horsley Neighbourhood Plan

### Executive Summary

Neighbourhood plans are development plans produced by parish/town councils or neighbourhood forums. East Horsley Parish Council has produced the East Horsley Neighbourhood Plan (“the Plan”, see background papers) for the East Horsley Neighbourhood Area (East Horsley parish).

To meet the requirements of The Neighbourhood Planning (General) Regulations 2012 (as amended) (“the Regulations”), the Council held a six-week consultation and an examination on the Plan, then amended it in line with the examiner’s recommendations. The Plan was then the subject of a referendum of qualifying voters within the neighbourhood area on 17 May 2018. In response to the referendum question “Do you want Guildford Borough Council to use the Neighbourhood Plan for the East Horsley Neighbourhood Area to help it decide planning applications in the neighbourhood area?” 94.5% of those voting voted “Yes”.

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 Act<sup>1</sup>, 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 Development Plan, unless material considerations indicate otherwise.

Due to a recent European legal judgement, the Council has had to prepare an Appropriate Assessment of the Plan in accordance with the Habitats Directive 1992. It formally consulted Natural England on this document, and was awaiting their response at the time

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<sup>1</sup> The Neighbourhood Planning Act 2017

of preparing this report to Council (See Legal Implications). The recommendation to Council is therefore to make the Plan subject to receipt of a response from Natural England that does not object to the Appropriate Assessment.

### **Recommendation to Council**

That the Council approves the East Horsley Neighbourhood Plan, subject to receipt of a response from Natural England that does not object to the Appropriate Assessment.

#### Reason(s) 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 East Horsley Neighbourhood Plan (“the Plan”) following a referendum on 17 May 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 from the Corporate Plan (2015- 2020): ‘Our Borough’, ‘Our Economy’, ‘Our Infrastructure’, ‘Our Environment’ and ‘Our Society’.
- 2.2 The East Horsley Neighbourhood Plan addresses a range of strategic priorities from two of the fundamental themes of the new Corporate Plan. For example, by providing the ‘range of housing that people need’ (Plan policies EH-H1 and EH-H2), and ‘improving local community facilities’ (policies EH-INF1, EH-INF2 and EH-INF5).
- 2.3 The Plan has been tested at examination and amended to comply with the requirements of legislation<sup>2</sup>. The requirements include that the Plan must contribute to the achievement of sustainable development, 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.
- 2.4 The Plan has been produced through engagement between East Horsley Parish Council (EHPC) and members of the East Horsley community. By supporting the Plan, the Council can support sustainable and vibrant communities at the local level.

## **3. Background**

- 3.1 The Localism Act 2011 and Neighbourhood Planning (General) Regulations 2012 (as amended) introduced powers to allow 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 and therefore carry the same weight as an adopted Local Plan policy. Neighbourhood Development Orders allow communities to grant up-front planning permission for developments.

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<sup>2</sup> These are the ‘basic conditions’ referred to in paragraph 8(2) of Schedule 4B to the Town & Country Planning Act 1990 (inserted by Schedule 10 to the Localism Act 2011)

- 3.2 Adoption by the Council of a neighbourhood plan allows parish and town councils to increase the proportion of Community Infrastructure Levy (CIL) funds they receive from developments within their neighbourhood area from 15% (with a cap of £100 per dwelling) to 25% (uncapped). The parish council has responsibility for determining how these CIL funds are spent but they must be on measures that support development and have the agreement of the Council as the charging authority. Alternatively, the parish council can opt not to receive some or its entire portion of the CIL funds and to keep the funds with the charging authority. Guildford Borough Council is currently in the process of preparing its CIL Schedule.
- 3.3 Neighbourhood plans must be examined and pass a referendum of local voters by a simple majority before they may be adopted.

#### East Horsley Neighbourhood Plan

- 3.4 The East Horsley Neighbourhood Area was designated by the Council on 8 September 2014. Designation of the neighbourhood area conferred powers on EHPC to undertake neighbourhood planning and the parish council subsequently produced the East Horsley Neighbourhood Plan.
- 3.5 The East Horsley Neighbourhood Plan was submitted to the Council in July 2017 and was then subject to a six-week public consultation, followed by an independent 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 17 May 2018.
- 3.6 The referendum question was “Do you want Guildford Borough Council to use the Neighbourhood Plan for the East Horsley Neighbourhood Area to help it decide planning applications in the neighbourhood area?” The result of the referendum was as follows:

	<b>Votes Recorded</b>
Number cast in favour of a <b>Yes</b>	1126
Number cast in favour of a <b>No</b>	65
Number of spoilt ballot papers	0

Electorate: 3492	Ballot Papers Issued: 1191	Turnout: 34.1%
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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 the 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 making it

would breach, or otherwise be incompatible with, any EU or human rights obligations. Making the Plan will have limited impact on the Plan's status as it already forms part of the Development Plan, following the majority 'Yes' vote at referendum<sup>3</sup>.

- 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's view that the Plan, as amended, meets all the basic conditions including EU and human rights obligations<sup>4</sup> and that therefore the Plan should be made.

#### **4. Consultations**

- 4.1 The Plan has been through two consultations required by the Regulations. EHPC undertook a Pre-submission (Regulation 14) consultation between March and April 2017 and the Council undertook a Post-submission (Regulation 16) consultation between June and July 2017.

- 4.2 EHPC 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 (adoption) of the Plan is not expected to have any adverse impact on people with protected characteristics under the Equality Act 2010. Your attention is drawn however to the duty under Section 149(1) of the Equality Act 2010 which provides that a public authority must, in exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The plan's policies were considered in relation to potential equality impacts that could arise as a result of the plan's referendum and adoption, which officers consider to be either neutral or positive. An Equality Impact Assessment screening report for the Plan has been completed and is available on request for anyone who wishes to view a copy.

- 5.2 The plan was also subject to extensive public consultation at the Regulation 14 and 16 stages in order to involve as broad a range of people as possible from across the local community. At the Regulation 14 stage, this involved utilising a wide selection of consultation methods including a public launch, open session, an Open Day, a household survey (which was hand delivered to every household in the village) and a series of mini-surveys on specific themes to inform the content of the plan. There was also direct resident involvement on the Parish Council's Steering Group.

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<sup>3</sup> As a result of changes to the Act made under the Neighbourhood Planning Act 2017 S3

<sup>4</sup> See paragraphs 3.3-3.4 of the *Report of Examination: East Horsley Neighbourhood Plan Submission Version 2017 – 2033 (Jan-Feb 2018)*

## **6. Financial Implications**

- 6.1 After the introduction of CIL, 15% of CIL receipts must be spent within the neighbourhood where the associated development occurs. Making the Plan means that the neighbourhood share in East Horsley will increase to 25% (uncapped) of the CIL funds generated from new building in the area. Funds will be passed directly to EHPC, unless EHPC 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 Section 38A (4) of the Planning and Compulsory Purchase Act 2004 Act (“the Act”) as inserted by the Localism Act 2011 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
- 7.2 Pursuant to the Neighbourhood Planning Regulations 2012 (as amended), 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.
- 7.3 Councillors will note that the date of this Council meeting falls 11 days outside of this time period. However, given that Neighbourhood Plans now carry “full weight” the day after they pass referendum, the act of making (adopting) the Plan cannot confer any additional weight, so any risk of challenge is negligible and the delay will have no impact on consideration of planning applications within the Neighbourhood Area. This delay has also been caused by the need to consider the implications of the European Court of Justice decision in *People Over Wind and Sweetman v Coillte Teoranta C-323-17 (2018)* concerning the manner in which an Appropriate Assessment of a qualifying plan or project which is likely to have a significant effect on a site protected under the Habitats Directive 1992 should be carried out. The case held that it was not appropriate to take account of measures intended to avoid or reduce the harmful effects of a qualifying plan or project at the screening stage of that plan or project. Instead, avoidance and mitigation measures to address likely significant effects must only be considered as part of the appropriate assessment stage.
- 7.4 In September 2017, the Council published a [Strategic Environmental Assessment and Habitats Regulations Assessment screening determination](#) (see Background papers), which considered the impacts on European sites of the Plan’s policies. The

screening determination ruled out likely significant effects on the Thames Basin Heaths Special Protection Area (SPA) from the Plan's site allocations, on the basis that they are outside the 5km zone of influence around the SPA.

- 7.5 The screening assessment also did not identify any likely significant effects on the Mole Gap to Reigate Escarpment Special Area of Conservation, the other European Site within the assessment range.
- 7.6 To meet the requirements of the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'), the Council has subsequently prepared an Appropriate Assessment (See Appendix 1). This considered the potential impacts of policy EH-H8, which is a general policy that supports residential infilling, on the SPA. The September 2017 screening determination had determined that *"no direct impact upon these sites [would arise] from these policies, however, indirect impacts may occur...."* The Appropriate Assessment considered these impacts further and concluded that any likely significant effects of development that may arise from policy EH-H8 would be avoided and mitigated by appropriate measures and not adversely affect the integrity of the SPA. The Council has therefore determined that there will be no adverse effects on the integrity of the SPA as a result of the making of the East Horsley Neighbourhood Plan.
- 7.7 The Council formally consulted Natural England on the Plan's Appropriate Assessment on 9 July 2018; however, at the time that this report was prepared, no response had been received. As the Habitats Regulations require that the Council must consider any representations from Natural England to the Appropriate Assessment before it can decide to make the Plan, the recommendation is therefore that the Council *'makes the Plan, subject to receipt of a response from Natural England that does not object to the Appropriate Assessment'*.
- 7.8 Under the Act, a neighbourhood plan comes into force as part of the statutory development plan once it has been approved at referendum.
- 7.9 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.
- 7.10 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 Resources 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 options available are:

- Make the Plan (subject to a satisfactory response from Natural England that does not object to the Appropriate Assessment)
- Refuse to make the Plan

9.2 It is considered that refusing to make the Plan without sound reasons for doing so in compliance with the narrow circumstances outlined above carries legal risks of challenge to such a decision.

## 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 is recommended that the Council should make the Plan.

## 11. **Background Papers**

Links to background papers are available below:

[East Horsley Neighbourhood Plan \(Referendum version\)](#)

[East Horsley Neighbourhood Plan examination report](#)

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

[East Horsley Neighbourhood Plan Strategic Environmental Assessment and Habitats Regulations Assessment screening determination \(September 2017\)](#)

## 12. **Appendices**

Appendix 1: Habitats Regulations Assessment of East Horsley Neighbourhood Plan including Appropriate Assessment for policy EH-H8 (attached)