

Council Report

Ward(s) affected: Lovelace, The Pilgrims, and Send

Report of Director of Strategic Services

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‘Make’ (adopt) the Lovelace, Puttenham and Send Neighbourhood Plans

Executive Summary

Neighbourhood plans are development plans produced by parish/town councils or neighbourhood forums. Ripley and Ockham parish councils have produced the Lovelace Neighbourhood Plan covering the Lovelace Neighbourhood Area (Lovelace ward, which encompasses the parishes of Ripley, Ockham and Wisley). Puttenham Parish Council has produced the Puttenham Neighbourhood Plan covering the Puttenham Neighbourhood Area (Puttenham Parish). Send Parish Council has produced the Send Neighbourhood Plan covering the Send Neighbourhood Area (Send Parish).

To meet the requirements of The Neighbourhood Planning (General) Regulations 2012 (as amended) (“the Regulations”), the Council held six-week consultations and an arranged for an examination for each of the plans. The plans were then amended in line with the examiner’s recommendations and the subject of a referendum of qualifying voters within the respective neighbourhood areas on 6 May 2021. In response to the referendum question “Do you want Guildford Borough Council to use the Neighbourhood Plan for the [Lovelace or Puttenham or Send] Neighbourhood Area to help it decide planning applications in the neighbourhood area?” The following percentages of those voting voted “Yes”: Lovelace 82.33%, Puttenham 87.62% and Send 81.15%.

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 a neighbourhood plan if it considers that the making of it would be a breach, or would otherwise be incompatible with, any EU obligations (as incorporated into UK law) or any human rights obligations. Officers are of the view that making the plans would not breach these obligations. The Council must therefore decide whether or not to make the Plan.

As a result of amendments to the Regulations¹, neighbourhood plans now form part of the statutory Development Plan and carry full weight in planning decisions as soon as they are approved at a referendum, rather than when they are made by the Council at the final stage of the process. Applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Recommendation to Council

That the Council resolves to 'make' (adopt) the Lovelace, Puttenham and Send neighbourhood plans.

Reason(s) for Recommendation:

To meet the requirements of the Act and the Regulations.

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

1.1 To inform councillors of the present position regarding the Lovelace Neighbourhood Plan, the Puttenham Neighbourhood Plan and the Send Neighbourhood Plan ("the Plans") following a referendum on 6 May 2021, and to set out the reasons for the recommendation to 'make' (adopt) the Plans.

2. Strategic Priorities

2.1 The Council's Strategic Framework identifies the following relevant key strategic priorities from the Corporate Plan (2018-2023)²: 'Place-making, 'Community, and 'Innovation'.

2.2 The Plans address a range of strategic priorities across the three fundamental themes of the Corporate Plan. For example, by providing the 'range of housing that people need', 'protecting our environment', 'encouraging sustainable and proportionate economic growth', and 'supporting older, more vulnerable and less advantaged people in our community'.

2.3 The Plans have been tested at examination and amended to comply with the requirements of legislation³. The requirements include that the Plans must contribute to the achievement of sustainable development, defined in national planning policy as sustainability across the environmental, social, and economic dimensions. The Plans, as amended, therefore will help deliver a sustainable local environment in economic, social, and environmental terms.

¹ The Neighbourhood Planning Act 2017 (Commencement No. 1) Regulations 2017

² Available online at: <https://www.guildford.gov.uk/article/17282/Corporate-Plan-2018-2023>.

³ 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)

- 2.4 The Plans have been produced through engagement between the relevant parish councils and members of the parish communities. By supporting the Plans, 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) grant powers that allow qualifying bodies (parish or town councils, and 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.
- 3.2 Neighbourhood plans must be subject to an examination and pass a referendum of local voters by a simple majority before they can be adopted.

The Plans

- 3.3 The Lovelace Neighbourhood Area, Puttenham Neighbourhood Area and Send Neighbourhood Area were designated by the Council on 2 July 2015, 3 December 2014, and 2 July 2015 respectively. Designation of the neighbourhood areas conferred powers on the relevant parish councils to undertake neighbourhood planning and they subsequently produced the Plans.
- 3.4 The Lovelace Neighbourhood Plan, Puttenham Neighbourhood Plan and Send Neighbourhood Plan were submitted to the Council in September 2019, February 2020, and November 2019 respectively. Each was then subject to a six-week public consultation, followed by an independent examination, to meet the requirements of the Regulations. Each plan's examiner recommended modifications in order to make the plan meet the 'basic conditions' set out in legislation. The Council agreed with the examiner's recommendations in all three cases and published a decision statement setting this out. Officers then prepared the modified versions of the Plans. The parish councils did not object to the decisions to make the recommended modifications to the Plans.
- 3.5 The Plans were each subject to a referendum on 6 May 2021. The gap between publishing the decision statement and holding the referendums was a much longer period than is usual. The referendums were delayed to this date because regulations⁴ made under the Coronavirus Act 2020 postponed the holding of all elections, local polls and referendums which would have taken place during the period between 16 March 2020 and 5 May 2021 to the ordinary day of election in 2021 (6 May 2021). Voters who are eligible to vote in Local Elections within each of the three neighbourhood areas were eligible to vote in their respective referendum.

⁴ The Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 (Reg 13 (1))

- 3.6 The referendum question was “Do you want Guildford Borough Council to use the Neighbourhood Plan for the [Lovelace or Puttenham or Send] Neighbourhood Area to help it decide planning applications in the neighbourhood area?” The result of each referendum was as follows:

Lovelace:

	Votes Recorded
Number cast in favour of a Yes	671
Number cast in favour of a No	132
Number of rejected ballot papers	12

Electorate: 1,952	Ballot Papers Issued: 815	Turnout: 41.75%
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Puttenham:

	Votes Recorded
Number cast in favour of a Yes	177
Number cast in favour of a No	24
Number of rejected ballot papers	1

Electorate: 458	Ballot Papers Issued: 202	Turnout: 44.1%
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Send:

	Votes Recorded
Number cast in favour of a Yes	1,322
Number cast in favour of a No	289
Number of rejected ballot papers	18

Electorate: 3,415	Ballot Papers Issued: 1,629	Turnout: 47.7%
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- 3.7 Once approved at a referendum, each 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 Plans 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 EU⁵ or human rights obligations. Making the Plans will have limited impact on their status as they already form part of the Development Plan, following the majority 'Yes' vote at referendum⁶.

- 3.9 The Plans were tested against the 'basic conditions' set by legislation during their examinations. One of the basic conditions is that the Plans must be compatible with EU and human rights obligations. Officers agree with the examiners' view that the Plans, as amended, each meet all of the basic conditions including EU and human rights obligations and that therefore the Plans should be made.

4. Consultations

- 4.1 The Plans have been through two consultations required by the Regulations. The parish councils undertook a Pre-submission (Regulation 14) consultation on their draft plan and the Council undertook a Post-submission (Regulation 16) consultation on the submission plans during the following periods.

	Pre-submission (Reg 14)	Post-submission (Reg 16)
Lovelace	September - November 2018	November/December 2019
Puttenham	March/April 2019	March/April 2020
Send	April/May 2019	January/February 2020

- 4.2 The parish councils considered the comments received during their Regulation 14 consultation and made changes to their Plans prior to submission to the Council. The comments received during the Council's Regulation 16 consultations were provided to the examiner of each Plan. The amendments to each Plan recommended by the relevant examiner were informed by the content of representations received during both consultations and by a representation from the Council.

5. Key Risks

- 5.1 The Council risks reputational damage and legal challenge if it does not follow the due process set by Act and the Regulations.

6. Financial Implications

- 6.1 Should the Community Infrastructure Levy (CIL) be introduced, 15 per cent of CIL receipts must be passed to any parish council within whose parish a development occurs, capped at a maximum of £100 multiplied by the total number of dwellings in the parish area. The parish council has responsibility for determining how these CIL funds are spent but they must be spent 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.

⁵ Following the UK's departure from the EU, compliance with relevant EU obligations remains a requirement of both UK legislation and the neighbourhood planning 'basic conditions'.

⁶ Under the Neighbourhood Planning Act 2017 S3

- 6.2 The making of a neighbourhood plan for a neighbourhood area that covers a parish has the effect of increasing the neighbourhood share of CIL funds to 25 per cent (uncapped). In the case of Wisley Parish, which has no parish council, the funds would stay with the Council to be spent in consultation with the local community, as is the case for non-parished areas.
- 6.3 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.
- 6.4 The Plans will be made available to the public electronically for free. As with other planning documents, the Plans will be made available in print for a fee that covers printing costs.
- 6.5 As making the Plans does not alter their status in the planning system, there are not considered to be any additional cost implications 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 (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 the day of the referendum.
- 7.3 Under the Act, a neighbourhood plan comes into force as part of the statutory development plan once it has been approved at referendum.
- 7.4 There are narrow circumstances where the local planning authority is not required to make the neighbourhood plan. Section 38A (6) of the 2004 Act states that the authority is not subject to this duty if it considers that making the neighbourhood plans 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 neighbourhood plans are prescribed.
- 7.5 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. The neighbourhood plan examiners found the Plans to be compliant with this requirement. There is no reason for officers to question their conclusions.

8. Human Resource Implications

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

9. Equality and Diversity Implications

- 9.1 S149 of the Equality Act 2010 requires that “A public authority must, in the 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;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”
- 9.2 The making (adoption) of the Plans is not expected to have any adverse impact on people with protected characteristics under the Equality Act 2010. Each 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. Equality Impact Assessment reports were completed for each Plan and these are attached at Appendix 1 to this report.
- 9.3 The examiner’s report for each plan concludes that the plan is compatible with EU obligations and the European Convention on Human Rights.
- 9.4 The plans were also subject to extensive public consultation at the Regulation 14 (pre submission) and Regulation 16 (publicity for plan proposals) stages in order to involve as broad a range of people as possible from across the relevant local communities. At the Regulation 14 stage, the Plans employed a selection of consultation methods such as online questionnaires, publicity in local newsletters and by email and hosting community events and there was direct resident involvement on the Parish Councils’ steering groups.

10. Climate Change/Sustainability Implications

- 10.1 The Secretary of State for Housing, Communities and Local Government sets out policies and advice including the National Planning Policy Framework and the Planning Practice Guidance. Both documents cover climate change mitigation and adaptation and the principles of sustainable development. One of the ‘basic conditions’ that neighbourhood plans must meet is that they have had regard to the policies and advice from the Secretary of State. The examiners have found that the plans, as modified, meet this test and therefore the plans will respond positively to the need to mitigate and adapt to climate change and ensure development is sustainable.
- 10.2 A further ‘basic condition’ is that neighbourhood plans must contribute to the achievement of sustainable development. The plans, as modified, have been found to comply with this requirement so will have a positive impact on sustainability.

11. Summary of Options

11.1 The two options available are:

- Make the Plans
- Refuse to make the Plans

11.2 Refusing to make the Plans without sound reasons for doing so in compliance with the narrow circumstances outlined above carries legal risks as set out at paragraph 5.1 above.

12. Conclusion

12.1 Following the results of the referendums held on 6th May 2021 and based on the conclusions of the examinations, there is no reason to conclude that the Plans fail to comply with EU obligations and Convention rights. As such, it is recommended that the Council should make the Plans.

13. Background Papers

13.1 Links to background papers are available below.

Lovelace Neighbourhood Plan, examiner's report and decision statement:
<https://www.guildford.gov.uk/lovelace>

Puttenham Neighbourhood Plan, examiner's report and decision statement:
<https://www.guildford.gov.uk/puttenham>

Send Neighbourhood Plan, examiner's report and decision statement:
<https://www.guildford.gov.uk/article/16998/Send>

14. Appendices

Appendix 1: Equality Impact Assessment report – Lovelace
Appendix 2: Equality Impact Assessment report – Puttenham
Appendix 3: Equality Impact Assessment report – Send