

Council Report

Ward(s) affected: Clandon and Horsley

Report of Director of Strategic Services

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## **‘Make’ (adopt) the West Clandon Neighbourhood Plan**

### **Executive Summary**

Neighbourhood plans are development plans produced by parish/town councils or neighbourhood forums. Neighbourhood plans set planning policies for their area and form part of the borough’s statutory Development Plan. West Clandon Parish Council has produced the West Clandon Neighbourhood Plan (“the Plan”) covering the West Clandon Neighbourhood Area (West Clandon Parish).

To meet the requirements of The Neighbourhood Planning (General) Regulations 2012 (as amended) (“the Regulations”), the Council held a six-week consultation and arranged for an examination of the Plan. The Plan was then amended in line with the examiner’s recommendations and was the subject of a referendum of qualifying voters within the neighbourhood area on 17 March 2022. In response to the referendum question “Do you want Guildford Borough Council to use the Neighbourhood Plan for the West Clandon Neighbourhood Area to help it decide planning applications in the neighbourhood area?”, the majority of voters in the referendum voted ‘Yes’. The vote was 313 for and 20 against, with a turnout of 30.1%.

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 retained EU obligations (as incorporated into UK law) or 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.

As a result of amendments to The Neighbourhood Planning Act 2017 (Commencement No. 1) Regulations 2017, 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 West Clandon Neighbourhood Plan.

#### Reason 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 West Clandon Neighbourhood Plan ("the Plan") (see Appendix 1) following a referendum on 17 March 2022, and to set out the reasons for the recommendation to 'make' (adopt) the Plan.

## **2. Strategic Priorities**

- 2.1 The Council's Corporate Plan (2021-2025): Listening-Acting-Delivering has the following vision: A green, thriving town and villages where people have the homes they need, access to quality employment, with strong and safe communities that come together to support those needing help.
- 2.2 The West Clandon Neighbourhood Plan addresses a range of priorities to help deliver this vision alongside its own vision: "To achieve the sustainable, well planned and high-quality development of West Clandon in a manner which preserves and respects its rural setting, its open character and its heritage assets and which offers housing, community facilities and communications that will continue to meet the needs of all generations to the highest environmental standards."
- 2.3 The Plan has been tested at examination and amended to comply with the requirements of legislation. These include 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). In addition, 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, will help deliver a sustainable local environment in economic, social, and environmental terms.
- 2.4 The Plan has been produced by West Clandon Parish Council and members of the parish community. By making 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) grant powers that allow qualifying bodies (parish or town councils, and neighbourhood forums in non-parished areas) 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 Plan

3.3 The West Clandon Neighbourhood Area was designated by the Council on 15 March 2019. Designation of the neighbourhood areas conferred powers on West Clandon Parish Council to undertake neighbourhood planning and they subsequently produced the Plan.

3.4 The West Clandon Neighbourhood Plan was submitted to the Council on 7 January 2021. It was then subject to a public consultation between 12 May and 12 July 2021, followed by an independent examination, to meet the requirements of the Regulations. The 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 and published a decision statement setting out this decision. Officers then prepared the modified version of the Plan. West Clandon Parish Council did not object to the decision to make the recommended modifications to the Plan.

3.5 The Plan was subject to a referendum on 17 March 2022. Voters who are eligible to vote in Local Elections within the neighbourhood area were eligible to vote in the West Clandon referendum.

3.6 The referendum question was "Do you want Guildford Borough Council to use the Neighbourhood Plan for the West Clandon 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>	313
Number cast in favour of a <b>No</b>	20
Number of spoilt ballot papers	0

Electorate: 1,106	Ballot Papers Issued: 333	Turnout: 30.1%
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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 retained EU or human rights obligations. 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. Making the Plan will have limited impact on its status as it already forms part of the Development Plan, following the majority 'Yes' votes at referendum.
- 3.9 The Plan was tested against the 'basic conditions' set by legislation during its examination. One of the basic conditions is that the Plan must be compatible with retained EU and human rights obligations. Officers agree with the examiners' view that the Plan, as amended, meets all of the basic conditions including retained 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. West Clandon Parish Council undertook a Pre-submission (Regulation 14) consultation on their draft plan and the Council undertook a Post-submission (Regulation 16) consultation on the submission plan during the following periods.

	<b>Pre-submission (Reg 14) consultation period</b>	<b>Post-submission (Reg 16) consultation period</b>
West Clandon	1 February – 31 March 2020	12 May – 12 July 2021

- 4.2 The parish council considered the comments received during their Regulation 14 consultation and made changes to their Plan prior to submission to the Council. The comments received during the Council's Regulation 16 consultations were provided to the examiner. The amendments to the Plan recommended by the 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, legal challenge and related financial costs if it does not follow the due process set by Act and the Regulations.

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

- 6.1 Local Planning Authorities can claim £20,000 from the Government when they issue a decision statement detailing their intention to send the plan to referendum (as set

out under Regulation 18 of the Neighbourhood Planning (General) Regulations 2012). The Council has submitted an application for this grant.

- 6.2 Should the Community Infrastructure Levy (CIL) be introduced, 15% 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. Where a neighbourhood plan has been made, the neighbourhood share of CIL funds would be increased to 25% (uncapped). 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.
- 6.3 The Plan 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. As making the Plan does not alter its 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 in favour of the Plan; and
  - 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 plan would breach, or would otherwise be incompatible with, any retained EU or Convention rights (within the meaning of the Human Rights Act 1998). No other circumstances for refusing to make the neighbourhood plan 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 retained EU obligations and Convention rights. The neighbourhood plan examiner found the Plan to be compliant with this requirement. Officers have not found any reason to question that 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. Equality and Diversity Implications**

- 9.1 Public authorities are required to have due regard to the aims of the Public Sector Equality Duty (Equality Act 2010) when making decisions and setting policies.
- 9.2 Section 149 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.”
- 9.3 The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report. Further details are set out below.
- 9.4 The making (adoption) of the Plan is not expected to have any adverse impact on people with protected characteristics under the Equality Act 2010. An Equality Impact Assessment screening report was completed for the Plan and this is attached as Appendix 2 to this report. The Plan policies were considered in relation to potential equality impacts that could arise as a result of the Plan referendum and adoption, which officers consider to be either neutral or positive.
- 9.5 The examiner’s report on the Plan concludes that the Plan is compatible with the retained European Convention on Human Rights.
- 9.6 The Plan was also subject to extensive public consultation at the Regulation 14 (pre submission) and Regulation 16 (publicity for submitted plan proposals) stages in order to involve a broad and diverse range of people from across the local community. At the Regulation 14 stage, there were a selection of consultation methods used such as a dedicated website, updates in the Parish Council magazine and publicity by email and on the Parish Council website.
- 9.7 The conclusion of the Equality Impact Assessment is that no inequalities are identified in the Plan and as a land-use plan it is limited to addressing development. The land-use policies generally will lead to a betterment for the protected groups where this is possible. The Council has not prepared the Plan and cannot amend it so cannot use it to further advance equality or promote good relations between protected groups.

## **10. Climate Change/Sustainability Implications**

- 10.1 The Secretary of State for Levelling Up, Housing and Communities 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 wider 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 examiner has found that the Plan, as modified, meets this test and therefore the Plan 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 Plan, as modified, has 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 Plan
  - Refuse to make the Plan
- 11.2 Refusing to make the Plan without sound reasons for doing so in compliance with the narrow circumstances outlined above carries legal risks as set out in sections 5 and 7 above.

## **12. Conclusion**

- 12.1 Following the results of the referendum held on 17 March 2022 and based on the conclusion of the examination, there is no reason to conclude that the Plan fails to comply with retained EU obligations and Convention rights. As such, it is recommended that the Council makes the Plan.

## **13. Background Papers**

- 13.1 Links to background papers are available below.

West Clandon Neighbourhood Plan, examiner's report and decision statement:

<https://www.guildford.gov.uk/westclandon>

## **14. Appendices**

Appendix 1: West Clandon Neighbourhood Plan  
Appendix 2: Equality Impact Assessment screening report