



Cabinet

Tuesday, 12 November 2019

Upper Broughton Neighbourhood Plan

Report of the Executive Manager – Communities

Cabinet Portfolio Holder for Housing Councillor Roger Upton

1. Purpose of report

- 1.1. To decide whether to accept the Upper Broughton Neighbourhood Plan Examiner's recommended modifications to the Plan and allow the Plan to proceed to a referendum of eligible voters in Upper Broughton Parish.

2. Recommendation

It is RECOMMENDED that Cabinet

- a) Accepts all of the Examiner's recommended modifications to the Upper Broughton Neighbourhood Plan;
- b) Approves the Upper Broughton Neighbourhood Plan Decision Statement and its publication; and
- c) Approves the holding of a referendum for the Upper Borough Neighbourhood Plan, with the area for the referendum being the Parish of Upper Broughton.

3. Reasons for Recommendation

- 3.1. The Borough Council, as Local Planning Authority, has a statutory duty to assist in the production of Neighbourhood Plans where communities wish to produce them under the Localism Act 2011.
- 3.2. The Upper Broughton Neighbourhood Plan has been produced by Upper Broughton Parish Council, in conjunction with the local community. It was submitted to the Borough Council in March 2019 and contains a number of policies which would form part of the statutory development plan and be applied the determination of planning applications. The Borough Council is required by the Localism Act to assess whether the Plan and its policies meet certain criteria (the 'Basic Conditions' and other legal requirements). In order to assist in this process, the Borough Council is required to invite representations on the Plan and appoint an independent Examiner to review whether the Plan meets the Basic Conditions and other legal requirements.

- 3.3. The submitted Plan was publicised and representations were invited from the public and other stakeholders, with the period for representations closing on 7 June 2019. The Plan has been assessed by an independent Examiner and, on 14 October 2019, he published his report which concluded that, subject to the modifications proposed in his report, the Plan should proceed to referendum (see Appendix 1).
- 3.4. The legislation sets out that the Borough Council must consider each of the recommendations made by the Examiner, including the reasons for them, and decide what action to take in response to each one. The Council must also consider whether other modifications not recommended by the Examiner are necessary in order for the Plan to meet the Basic Conditions and legal requirements. Appendix 2 contains the draft Borough Council's Decision Statement in respect of each of the Examiner's recommendations and also whether other modifications are considered necessary.
- 3.5. At Appendix 3 is the final version of the Upper Borough Neighbourhood Plan showing the proposed modifications, which it is considered meets the Basic Conditions and other legal requirements. The Plan is now in a position to be put to referendum in Upper Broughton Parish to determine if local people support it.

4. Supporting Information

- 4.1. The draft Upper Broughton Neighbourhood Plan has been produced by Upper Broughton Parish Council in conjunction with the local community. The Plan contains a number of policies which are intended to form part of the statutory development plan for the Borough and, therefore, to assist the Borough Council in the determination of relevant planning applications. The draft Neighbourhood Plan was submitted to the Borough Council in March 2019.
- 4.2. The Borough Council is required by legislation to assess whether the submitted Plan meets certain prescribed 'Basic Conditions' and other statutory requirements and whether it should proceed to referendum. In order to meet the Basic Conditions, the Neighbourhood Plan must:
 - have regard to national policies and advice contained in guidance issued by the Secretary of State;
 - contribute to the achievement of sustainable development;
 - be in general conformity with the strategic policies of the development plan for the area;
 - be compatible with and not breach European Union obligations; and
 - meet prescribed conditions and comply with prescribed matters.
- 4.3. In order to assist in this process, the Borough Council is required to invite representations on the submitted draft Plan and appoint an independent Examiner to examine the Plan and consider all representations received through the consultation undertaken by the Borough Council. The submitted Plan was publicised and representations were invited from the public and

other stakeholders, with the period for representations closing on 7 June 2019. The independent Examiner appointed was Andrew Mead. He has now completed his examination of the Plan and his report was published on 14 October 2019 (see Appendix 1). The Examiner was required to recommend either that:

- (a) the Plan is submitted to a referendum without changes; or
- (b) modifications are made and that the modified neighbourhood plan is submitted to a referendum; or
- (c) the neighbourhood plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.

- 4.4. The Examiner has concluded that, subject to a number of modifications set out in his report, the Plan meets the Basic Conditions and other statutory requirements and that it should proceed to referendum.
- 4.5. The legislation sets out that the Borough Council must consider each of the Examiner's recommendations, including the reasons for them, and decide what action to take in response to each one. It is considered that each of the Examiner's recommendations is appropriate and necessary in order for the Plan to meet the Basic Conditions, other relevant legal requirements or to make factual corrections. It is also a legal requirement for the Borough Council to consider whether other modifications not recommended by the Examiner are necessary in order to meet the Basic Conditions and legal requirements. It is considered that it is not appropriate or necessary to make any other modifications beyond those recommended by the Examiner.
- 4.6. If the Borough Council were to make a decision which differs from that recommended by the Examiner, and the reason for the difference is as a result of new evidence or a new fact or a different view taken by the Borough Council as to a particular fact, then the Plan would not be able to proceed to referendum at this stage. Instead, the Borough Council would be required to consult on this course of action.
- 4.7. The Council is required to publish a 'decision statement' which sets out the decisions made in respect of the recommendations contained within the Examiners report and reasons for those decisions. A draft decision statement is provided at Appendix 2. It also includes consideration of whether other modifications not recommended by the Examiner are necessary in order to meet the Basic Conditions and legal requirements. An illustration of how the Examiner's recommended modifications would alter the Plan is provided at Appendix 3.
- 4.8. If the Council is satisfied that the Plan incorporating the Examiner's recommended modifications meets the Basic Conditions and other regulatory requirements, and that no other modifications to the Plan are necessary in order to meet the Basic Conditions and other regulatory requirements, then the decision must be taken to hold a referendum to determine whether local people support the Plan and whether it should become part of the statutory development plan.

- 4.9. The Council is also required to consider whether the area for the referendum should be extended beyond the designated neighbourhood area (the Parish of Upper Broughton). It is the Examiner's recommendation that the referendum area should not be extended, based on the conclusion that the Plan, incorporating the recommended modifications, would contain no policies or proposals which are significant enough to have an impact beyond the designated neighbourhood plan boundary. It is considered that this recommendation is reasonable and should be accepted.
- 4.10. The referendum would follow a similar format to an election. All electors registered to vote and eligible to vote in local government elections within the neighbourhood area (the Parish of Upper Broughton) would be given the opportunity to vote in the referendum. In accordance with regulatory requirements, the ballot paper would have the following question: *'Do you want Rushcliffe Borough Council to use the Neighbourhood Plan for Upper Broughton to help it decide planning applications in the neighbourhood area?'* Voters would be given the opportunity to vote 'yes' or 'no'.
- 4.11. If more than 50% of those voting in the referendum vote 'yes', then the Borough Council is required to 'make' (adopt) the Neighbourhood Plan part of the development plan for Rushcliffe. If the result of the Referendum is 'no', then nothing further happens. The Parish Council would then have to decide what it wishes to do.
- 4.12. If the Neighbourhood Plan is made part of the development plan then planning applications within the parish would then have to be determined in accordance with both the Rushcliffe Local Plan and the Upper Broughton Neighbourhood Plan, unless material considerations indicate otherwise

5. Alternative options considered and reasons for rejection

- 5.1. If the Borough Council disagrees with the Examiner's Report and does not accept one or more of the recommended modifications, the Neighbourhood Plan would not then be able to go to referendum at this stage. The reasons for this decision would need to be set out in the Decision Statement and published. This would prompt a further consultation period and potential further examination. Any decision to diverge from the recommendations of the Examiner could potentially, if requested by the Parish Council, also result in the Secretary of State intervening.
- 5.2. It is considered that each of the Examiner's recommendations is appropriate and necessary in order for the Plan to meet the Basic Conditions, other relevant legal requirements or to make factual corrections. It is also considered that it is not appropriate or necessary to make any other modifications beyond those recommended by the Examiner. There is therefore no reason to not modify the Plan in accordance with the Examiner's recommendation and allow it to proceed to referendum.

6. Risks and Uncertainties

- 6.1. Not following the legislation and regulations correctly could lead the Borough Council open to legal challenge. The circumstances whereby a legal challenge, through a claim for judicial review, can be raised are set out in the Town and Country Planning Act 1990 (as amended).

7. Implications

7.1. Financial Implications

£20,000 can be claimed from the Ministry of Housing, Communities, and Local Government once the date for referendum has been set. This financial support ensures that local planning authorities receive sufficient funding to enable them to meet their legislative duties in respect of neighbourhood planning. These duties include provision of advice and assistance, holding the examination and making arrangements for the referendum.

7.2. Legal Implications

The Neighbourhood Plan, as proposed to be amended, is considered to meet the Basic Conditions which are set out in law at Schedule 4B of the Town and Country Planning Act 1990 (as amended). This is the view taken by the Examiner, as set out in his report. It is also considered that the Neighbourhood Plan meets all the relevant legal and procedural requirements.

7.3. Equalities Implications

There are considered to be no particular equality implications that need addressing from matters arising from this report.

7.4. Section 17 of the Crime and Disorder Act 1998 Implications

There are no direct community safety implications arising from matters covered in this report.

8. Link to Corporate Priorities

- 8.1. The adoption of the Upper Broughton Neighbourhood Plan will help support the Borough Council's corporate priority for sustainable growth, including supporting others to deliver what our community needs to grow in a sustainable way.

9. Recommendations

It is RECOMMENDED that Cabinet

- a) Accepts all of the Examiner's recommended modifications to the Upper Broughton Neighbourhood Plan;

- b) Approves the Upper Broughton Neighbourhood Plan Decision Statement and its publication; and
- c) Approves the holding of a referendum for the Upper Borough Neighbourhood Plan, with the area for the referendum being the Parish of Upper Broughton.

For more information contact:	Richard Mapletoft Planning Policy Manager Tel: 0115 9148457 rmapletoft@rushcliffe.gov.uk
Background papers available for Inspection:	Electronic copies of the documents relating to the submitted Upper Broughton Neighbourhood Plan and its examination can be found at: http://www.rushcliffe.gov.uk/planningpolicy/neighbourhoodplanning/
List of appendices:	<p>Appendix 1: Examiner's 'Report on Upper Broughton Neighbourhood Plan 2011 – 2028'</p> <p>Appendix 2: Upper Broughton Neighbourhood Plan Decision Statement</p> <p>Appendix 3: Illustration of Proposed Modifications to the Upper Broughton Neighbourhood Plan 2011 – 2028</p>