

BABERGH DISTRICT COUNCIL

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| TO: Cabinet | REPORT NUMBER: BCa/19/12 |
| FROM: Cllr Clive Arthey - Cabinet Member for Planning | DATE OF MEETING: 12 September 2019 |
| OFFICER: Robert Hobbs (Corporate Manager - Strategic Planning) | KEY DECISION REF NO. CAB119 |

ELMSETT NEIGHBOURHOOD PLAN

1. PURPOSE OF REPORT

- 1.1 To presents the findings of the Independent Examiner's Report on the content of the Elmsett Neighbourhood Plan Submission Draft document.
- 1.2 Subject to the implementation of the detailed recommendations contained within the Examiner's Report, it is proposed that Cabinet agree that the Elmsett Neighbourhood Plan proceed to a local referendum.

2. OPTIONS CONSIDERED

- 2.1 The local planning authority may propose to make a decision on a recommendation that differs from that set out by the Examiner in their report. If so, it must give its reason why and undertake further consultation before issuing a final decision. As appropriate, this may require the matter to be re-examined. For the reasons set out in section 4 below, this option has been discarded.
- 2.2 The recommended option as set out below is that the local planning authority agree that this Neighbourhood Plan proceed to a local referendum.

3. RECOMMENDATIONS

- 3.1 That Elmsett Parish Council be requested to make the necessary modifications to their Neighbourhood Plan in accordance with the Examiner's recommendations.
- 3.2 That, subject to the satisfactory completion of the above (to be agreed by the Corporate Manager for Strategic Planning), the Neighbourhood Plan be advanced to a local referendum covering the parish of Elmsett.

REASON FOR DECISION

- 3.3 To enable the Council to meet its statutory obligations under Section 17A of the Neighbourhood Planning (General) Regulations 2012 (as amended) and to allow the Elmsett Neighbourhood Plan to proceed to a local referendum

4. KEY INFORMATION

- 4.1 The Localism Act 2011 introduced the concept of neighbourhood plans. These are plans developed by local communities covering the area in which they live and work,

and provide them with an opportunity to prepare planning policies and allocate land to shape the future of their area. Consequently, each plan has its own character.

4.2 The Elmsett Neighbourhood Plan has been prepared in accordance with the Neighbourhood Planning (General) Regulations 2012 (as amended). The key stages prior to independent examination are set out below:

- Area Designation: 27 October 2017
- Regulation 14 Pre-submission Consultation: 19 October - 30 November 2018 (carried out by the Parish Council).
- Regulation 16 Submission Draft Consultation: 11 February - 27 March 2019 (carried out by the District Council). During this period, twelve written representations were received.

The Consultation Statement provided by the Parish Council / Neighbourhood Plan Working Group sets out in more detail how they went about preparing the Plan. Officers at the District Council have also had regular engagement with the group during the Plan's preparation.

4.3 The independent examination of this Plan was carried out by Ann Skippers BSc (Hons) MRTPI FRSA AoU, she being a suitably qualified and experienced person who was independent of the plan making process. The examination was conducted via the written representation, and through matters of clarification from the Examiner to which both the Parish and District Council responded.

4.4 On 5 August 2019, the Examiner issued their Final Report. In general, it describes the Plan as being well written and clearly presented with short sections that set the context for the policies and objectives. The Examiner is also satisfied that the Plan, subject to the modifications recommended, meets the basic conditions and all other requirements that they are obliged to examine. The modifications and other recommendations of note are summarised in paragraph 4.7 below. The Examiner's full report can be accessed via the link at Appendix 1. The Examiner did not consider it necessary to extend the local referendum area.

4.5 The District Council must now consider each recommendation, the reasons for them, and decide what action to take in each case. It must also come to a formal view about whether the Plan meets the 'Basic Conditions'.

4.6 The 'Basic Conditions' are set out in Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act, 1990 (as amended). In order to satisfy them, the 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 contained in the development plan for the area,*
- *not breach, and is otherwise compatible with, European Union (EU) obligations, and*
- *meet the prescribed conditions in relation to the neighbourhood plan and the prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.*

4.7 As noted further above, the Examiner has concluded that, subject to the implementation of the modifications, the Neighbourhood Plan meets the Basic Conditions and other statutory requirements and can proceed to a referendum. In the main the recommendations, of which there are very few, involve improving the wording of policies so that they are clear and unambiguous and can be used in a consistent manner by decision makers. Of particular note are:

- confirmation that seven of the seventeen policies within the submission version of the Plan require no modification;
- the deletion of Policy EMST4 (a site allocation for 7 dwellings on land South of Whatfield Road) on the basis that construction is underway and that retaining this policy within the Plan would not serve any other useful planning purpose; *and*
- at Policy EMST13 (Development Design Considerations), a number of specific modifications which add clarity or remove restrictions on, for example, building height, as the latter is not appropriately evidenced. Also, the inclusion of revised wording which refers to the District Councils emerging Recreational Avoidance Mitigation Strategy.

4.8 Officers have assessed the content of the Examiner's Report and each recommendation and concur with its findings. It is therefore recommended to Cabinet that all the modifications proposed be made by the Parish Council. If the Cabinet agrees with this recommendation the District Council will need to publicise its decision (a 'Decision Statement') and move to a local referendum.

4.9 The Housing and Planning Act 2016 has made it clear that the only modifications that the District Council can make at this stage are those required to ensure that:

- the plan is compatible with EU obligations,
- the plan does not breach Convention Rights, or
- those required for the purpose of correcting minor errors.

The District Council is therefore only able to exercise limited discretion at this point.

4.10 The task of modifying the plan falls to the Parish Council with assistance from the District Council. While there are no prescribed periods for this process, a copy of the plan, as modified, along with other specified documents will be required before the date of the local referendum can be confirmed.

4.11 Elmsett Parish Council are already working proactively with the District Council to prepare a final version of their Plan which will incorporate all of the Examiner's recommendations. The plan is therefore nearing the local referendum stage.

4.12 The referendum process is governed by the Neighbourhood Planning (Referendum) Regulations, 2012 (as amended). The regulations set out that not less than 28 working days' notice must be provided of the date of the local referendum. Officers will work with colleagues in the Electoral Services Team and with the Parish Council to agree an appropriate date on which the local referendum will take place.

4.13 The Parish Council will be expected to promote the referendum but it should be noted that there are restrictions on the publication of promotional material, advertisements and expenses. The format of the Referendum question will be:

‘Do you want Babergh District Council to use the neighbourhood plan for Elmsett to help it decide planning applications in the neighbourhood area?’

- 4.14 If more than 50% of those who vote in the referendum are in favour of the Neighbourhood Development Plan, then it must be brought into legal force and be ‘made’ (adopted) by the District Council. A further paper would be presented to Full Council to ratify the eventual outcome.

5. LINKS TO JOINT STRATEGIC PLAN

- 5.1 The successful making (adoption) of the neighbourhood plan will enable the District Council to fulfil its corporate priorities, in terms of housing delivery, business growth and community capacity building.

6. FINANCIAL IMPLICATIONS

- 6.1 The District Council receives £20,000 from the Ministry of Housing, Communities and Local Government for each neighbourhood plan once a referendum date has been set following a successful examination. This sum is paid to meet the District Council’s costs in helping to deliver this Plan and will be sufficient in this case.
- 6.2 If the Elmsett Neighbourhood Plan is successfully ‘made’ (adopted) the Parish Council will be eligible to receive 25% of any Community Infrastructure Levy receipts from qualifying development in its area.

7. LEGAL IMPLICATIONS

- 7.1 The Neighbourhood Plan has been prepared in accordance with the provisions of the Town and Country Planning Act, 1990, the Planning and Compulsory Purchase Act, 2004 and the Neighbourhood Planning (General) Regulations, 2012 (as amended). It has also had regard to the Environmental Assessment of Plans and Programmes Regulations, 2004 and the Conservation of Habitats and Species Regulations, 2017.
- 7.2 If ‘made’ (adopted), the Elmsett Neighbourhood Plan will become part of the Development Plan and, where relevant, used to determine planning applications.

8. RISK MANAGEMENT

- 8.1 This report is most closely linked with Significant Business Risk No. 3a - Enabling communities to become more sustainable. The key risks are set out below:

| Risk Description | Likelihood | Impact | Mitigation Measures |
|--|-------------------|---------------|---|
| The Neighbourhood Plan fails to receive support at the referendum stage. | Unlikely - 2 | Bad - 3 | The Parish Council is responsible for promoting the referendum. |
| Legal challenge to the content of the Neighbourhood Plan and/or judicial review of the District Council’s decisions. | Unlikely - 2 | Bad - 3 | Ensuring that the relevant Regulations are followed and that the decision making processes are clear and transparent. |

9. CONSULTATIONS

- 9.1 As noted in paragraph 4.2 above, the District Council undertook formal consultation on the content of the submission draft Elmsett Neighbourhood Plan between 11 February and 27 March 2019. The written representations received can be accessed via the link at Appendix 2.
- 9.2 Guidance issued in early 2018 by the Independent Examiner Referral Service (NPIERS) affords the Parish Council / Neighbourhood Plan Working Group the opportunity to consider and respond to the submitted representations before the examination commences. A link to the Parish Councils response is also provided at Appendix 2.

10. EQUALITY ANALYSIS

- 10.1 There are no equality or diversity implications arising directly from this report. An Equality Impact Assessment (EqIA) is not required.

11. ENVIRONMENTAL IMPLICATIONS

- 11.1 The consideration of environmental implications are an integral part of the Neighbourhood Plan preparation process. The Elmsett Neighbourhood Plan has been subject to the appropriate Strategic Environmental and Habitats Regulations screening assessments.

12. APPENDICES

| Title | Location |
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| (1) Examiners Final Report' | https://www.babergh.gov.uk/assets/Neighbourhood-Planning/Elmsett-NP-Exam-Report.pdf |
| (2) Submission Draft Representations <i>and</i> Elmsett PC response to the above | https://www.babergh.gov.uk/assets/Neighbourhood-Planning/Elmsett-NP-R16-Reps.pdf https://www.babergh.gov.uk/assets/Neighbourhood-Planning/Elmsett-NP-R16-Reps-Response.pdf |

13. BACKGROUND DOCUMENTS

The submission version of the Elmsett Neighbourhood Plan can be found at:

<https://www.babergh.gov.uk/assets/Neighbourhood-Planning/Elmsett-NP-Sub-Jan19.pdf>

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