

## APPENDIX B

### ITEM                      Delegation for Neighbourhood Planning

Report of the Planning Portfolio Holder

#### Recommended

1. That the response to the Goodworth Clatford Neighbourhood Plan Request for Screening Opinion (January 2018), as set out in annex 2 to the report, be approved.

#### Recommendation to Council:

2. That for the purposes of Neighbourhood Planning, delegated authority be given to the Head of Planning Policy, in consultation with the Planning Portfolio Holder, to determine whether or not a strategic environmental assessment is required (screening process) and, if required, the scope of the strategic environmental assessment under the Environmental Assessment of Plans and Programme Regulations (2004).
3. That for the purposes of Neighbourhood Planning, delegated authority be given to the Head of Planning Policy, in consultation with the Planning Portfolio Holder, to determine whether an Appropriate Assessment is required under the Conservation of Habitats and Species Regulations (2017) as amended.

#### SUMMARY:

- To approve the Head of Planning Policy's response to the Goodworth Clatford Neighbourhood Plan Screening Opinion on the requirement for a Strategic Environmental Assessment and Habitats Regulation Assessment.
- That delegated authority be given to the Head of Planning Policy with regards to Strategic Environmental Assessment and Habitats Regulation Assessment in order to respond in a timely manner.

#### 1 Introduction

- 1.1 The Localism Act 2011 introduced neighbourhood planning to enable local communities to shape development in their areas through the production of Neighbourhood Development Plans. A Neighbourhood Plan must satisfy a number of legal requirements, including the 'basic conditions' for it to finally be 'made' (i.e. adopted) and form part of the development plan. The Council has already put into place processes to ensure that its role in neighbourhood planning can be undertaken efficiently. However, it has been identified that further improvements can be made.

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- 1.2 The purpose of this report is twofold. Firstly, to seek delegated authority for the Head of Planning Policy to determine requests made under the Environmental Assessment of Plans and Programme Regulations (2004) and the Conservation of Habitats and Species Regulations (2017). Secondly, to determine the Goodworth Clatford request for a Screening Opinion submitted in relation to the Environmental Assessment of Plans and Programme Regulations (2004) and Conservation of Habitats and Species Regulations (2017).

## 2 Background

- 2.1 The preparation of a Neighbourhood Plan involves a series of stages as required by legislation before it can be 'made'. To be 'made', a Neighbourhood Plan must meet certain Basic Conditions. These include that the making of the plan *"does not breach, and is otherwise compatible with, EU obligations"*.
- 2.2 One of these obligations is Directive 2001/42/EC 'on the assessment of the effects of certain plans and programmes on the environment'. This is often referred to as the strategic environmental assessment (or SEA) Directive. The SEA Directive seeks *"to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes."* The SEA Directive is transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004 (the 'SEA Regulations') and it is these Regulations that the neighbourhood plan will need to be compatible with.
- 2.3 Another key obligation is Directive 92/43/EEC 'on the conservation of natural habitats and of wild fauna and flora', often referred to as the Habitats Directive. This has been translated into UK law via The Conservation of Habitats and Species Regulations 2017. Under the 'Habitats Regulations' an assessment referred to as an Appropriate Assessment must be undertaken if a Neighbourhood Plan is likely to have a significant effect on a European protected wildlife site.
- 2.4 Under both the SEA and Habitats Regulations it is the Council's role to advise whether further work is required once the first stage, a screening assessment, has been undertaken by the Parish Council on its Neighbourhood Plan.
- 2.5 The Government has maintained its support for Neighbourhood Planning and has introduced a series of legislative changes which are designed to speed up and simplify the Neighbourhood Planning process.
- 2.6 To ensure a timely response the Council has delegated certain powers relating to Neighbourhood Planning to the Head of Planning Policy. These currently comprise:-

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- i. To determine all matters relevant to the publication and designation of the Neighbourhood Area pursuant to Part 2 of the Neighbourhood Planning (General) Regulations (2012) (“the Regulations”).
  - ii. In consultation with the Planning Portfolio Holder to submit the Local Planning Authority’s Consultation response and thereafter secure the publication of the Neighbourhood Plan proposal.
  - iii. In consultation with the Planning Portfolio Holder to provide the Local Authority’s further response and to appoint a person to carry out an examination of the Neighbourhood Plan and thereafter to submit the plan for examination pursuant to the Regulations.
- 2.7 These powers focus on the key stages of the planning process. However, as our parishes make progress with Neighbourhood Plans, and lessons are learnt from other authorities, it has been identified that there are areas of the Council’s processes which could be enhanced.
- 2.8 On the 8 January 2018 Goodworth Clatford submitted a request Screening Opinion on whether a Strategic Environmental Assessment (SEA) is required. A review of the process involved identified that any response under SEA Regulations would require a report to Cabinet. The same issue would exist for any response made under the Habitats Regulations.
- 2.9 Legal advice has confirmed that neither the current Head of Planning Policy’s delegated powers, nor those of the Head of Planning and Building, allow for an efficient way of responding to such requests and that in all instances a report to Cabinet would be triggered. This would not align with the Government’s approach of responding in a timely manner.
- 2.10 It should be noted that a review of the approaches of other Local Planning Authorities has shown that by putting into place comparable delegated powers it allows for an expedient response to such requests.

### **3 Corporate Objectives and Priorities**

- 3.1 The principles of neighbourhood planning encourage local communities to reach their full potential by taking the initiative in helping to preserve and enhance the natural and built environment and may help create opportunities for homes and employment.

### **4 Consultations/Communications**

- 4.1 The legislation linked to SEA is explicit that only Natural England, Historic England and Environment Agency are required to be consulted. The legislation does not require notification or consultation of wider public / organisations. The SEA Regulations are not explicit with regards to the length of time to consult with the statutory consultees on screening opinions. It is proposed that a period of 5 weeks is used as this would be consistent with other elements of the Regulations. This approach has been confirmed with the Council’s Legal officer as acceptable.

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- 4.2 With regards to the Habitats Regulations legislation, the Council would consult with Natural England on whether they consider the neighbourhood plan is likely to have a significant effect. Depending on the response, further legal stages would then be triggered.
- 4.3 With regards to the Goodworth Clatford Screening Opinion, the Council has consulted with the three statutory consultees. At the time of writing Historic England have yet to respond. An update will be provided at the Cabinet meeting.

### 5 Options

- 5.1 With regards to the first part, the option to consider is whether to grant delegated authority to the Head of Planning Policy, or not.
- 5.2 With regards to Goodworth Clatford Screening Opinion request (annex one) the option is whether to respond as proposed in annex two.

### 6 Option Appraisal

#### *Delegation*

- 6.1 The alternative option is not to amend the Scheme of Delegation and to report each decision making element of the SEA and Habitats Regulations processes to Cabinet. This would result in a delay to the Neighbourhood Plan process and be at odds with the Government's drive to make plan preparation as efficient as possible. As such this is not considered to be an appropriate course of action.

#### *Goodworth Clatford Screening Opinion*

- 6.2 Regulation 9 of the Environmental Assessment of Plans and Programmes Regulations 2004 requires that the responsible authority (Test Valley Borough Council) shall determine whether or not a plan is likely to have significant environmental effects. As part of making this assessment, the responsible authority shall:-
- (a) take into account the criteria specified in Schedule 1 to these Regulations; and
  - (b) consult the consultation bodies.
- 6.3 Natural England, Environment Agency and Historic England, as the statutory consultation bodies for the Regulations, were consulted on this SEA screening request with Natural England also having the role of highlighting any issues under the Habitats Regulations. The consultation started on 11 January 2018 for a five week period, ending on 15 February 2018.
- 6.4 Having regard to the letter and associated briefing note that was submitted the consultation responses from Natural England and the Environment Agency indicated that having regard to the matters within their remit, the

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proposed Neighbourhood Plan would not be likely to have significant environmental effects. At the time of writing no response has been received by Historic England. An update will be provided once received and annex two amended.

- 6.5 The Council has had due regard to the statutory consultee responses and the criteria within Schedule 1 of the Regulations in coming to a view on whether the proposed Neighbourhood Plan is likely to have significant environmental effects. Based on the summary of the proposed Neighbourhood Plan (as provided within the Briefing Note), it is the Council's opinion that the Plan would not be likely to have significant environmental effects due, in part, to the scale of the proposals envisaged; that no allocations are being proposed and that measures are in place through the draft Neighbourhood Plan and the strategic policies of the Local Plan. On this basis, a Strategic Environmental Assessment would not be required for the proposed Goodworth Clatford Neighbourhood Plan. No issue has been raised which would trigger the requirement for an SEA and an alternative response to that proposed in annex two, subject to receipt of the response from Historic England.
- 6.6 The Regulations advise that where the responsible authority determines that the plan is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment) it shall prepare a statement of its reasons for the determination.
- 6.7 With regards to the need for an appropriate assessment under the Habitats Regulations the Council is guided by Natural England who has not highlighted a need for one to be undertaken. This is coupled with recognising the scale of the draft proposals of the Neighbourhood Plan and that the purpose of an HRA is to protect European designations of which there are none within, or in near vicinity of, the neighbourhood area.
- 6.8 The Briefing Note refers to potential implications for European sites downstream of the parish. As the draft proposals of the Neighbourhood Plan are consistent with the current Local Plan this issue has already been assessed as part of the Council's Habitat Regulations Assessment (2013 and 2014).

## **7 Risk Management**

- 7.1 An evaluation of the risks associated with the matters in this report indicate that further risk assessment is not needed because the changes/issues covered do not represent significant risks or have previously been considered by Councillors (April 2014).

## **8 Resource Implication**

- 8.1 Any resource implications of the proposed delegation would be met within existing budgets.

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### **9 Legal Implications**

- 9.1 The process which the Council is required to follow is established in the legislation listed in this report. It should also be noted that the National Planning Practice Guidance recognises that the Council can delegate to others in the authority to discharge the duties relating to Neighbourhood Planning.

### **10 Equality Issues**

- 10.1 The issue of equality would need to be considered as part of any future individual NDP.

### **11 Other Issues**

- 11.1 Community Safety - none
- 11.2 Environmental Health Issues – none
- 11.3 Sustainability and Addressing a Changing Climate - none
- 11.4 Property Issues - none
- 11.5 Wards/Communities Affected – The proposed delegation could affect all parishes within the Borough should they choose to undertake a Neighbourhood Plan. The response at annex two is specific to Goodworth Clatford parish.

### **12 Conclusion and reasons for recommendation**

- 12.1 To ensure that Neighbourhood Plans satisfy the 'Basic Conditions' it is required for them to satisfy the obligations of the SEA Regulations and Habitats Regulations. To enable that the Council respond in a timely manner it is proposed to delegate authority to the Head of Planning Policy.
- 12.2 The Council has undertaken consultation on the Goodworth Clatford Screening Opinion. The proposed response is listed in annex two.

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<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Legislation referred to in main report			
TVBC Community Planning Toolkit (2016)			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	2	File Ref:	pp11
(Portfolio: Planning) Councillor Adams-King			
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Report to:	Cabinet	Date:	14 February 2018