

## BRECKLAND DISTRICT COUNCIL

**Report of:** Councillor Gordon Bambridge Executive Member for Growth

**To:** Cabinet - 21st May 2019

**Author:** Susan Heinrich, Neighbourhood Planning Co-Ordinator

**Subject:** Swaffham Neighbourhood Plan - Making (adoption) of the Swaffham Neighbourhood Plan

**Purpose:** To "make" the Swaffham Neighbourhood Plan as part of the statutory Development Plan for Breckland and update the district policies map with the relevant policies.

### **Recommendation(s):**

#### Council agrees:

- 1) To confirm that Swaffham Neighbourhood Plan, as written at the time of the referendum, is "made" as part of the statutory Development Plan for Breckland Council, as required by paragraph (4)(a) of section 38A of the Town and Country Planning Act (Option1)
- 2) To publish this decision as required by paragraph (9) of section 38A of the Town and Country Planning Act
- 3) To advise Swaffham Town Council and any other prescribed persons about this, to meet the requirements of paragraph (10) of section 38A of the Town and Country Planning Act
- 4) To amend the Breckland district policies map to meet the requirements of paragraph 9 Town and Country (Local Planning) (England) Regulations 2012

## **1.0 BACKGROUND**

- 1.1 The Localism Act 2011 introduced the concept of Neighbourhood Planning. This includes the option for Town and Parish Council's to prepare statutory Neighbourhood Plans which set out a vision, objectives, policies and proposals to guide the future development of their local area. The Swaffham Neighbourhood Plan Area was designated in April 2016 and has subsequently been subject to two rounds of formal public consultation, followed by an independent examination and Referendum. This report relates to the final stage in the process which is to 'make' (adopt) the Plan to bring the document into effect.
- 1.2 The plan's preparation has been guided by the provisions of the Localism Act 2011 (which amended the Town and Country Planning Act 1990), the Neighbourhood Planning (General) Regulations 2012 (as amended) and the Neighbourhood Planning (Referendum) Regulations 2012 (as amended). Also as a result of the

Neighbourhood Planning Act 2017, a neighbourhood plan needs to be taken account of when making decisions on planning applications, after the examination has been completed, as the Plan then becomes ‘material’ to planning applications in the relevant neighbourhood plan area.

- 1.3 The Swaffham Neighbourhood Plan is the fifth in Breckland to have reached this final stage in the process, and would become one of over 770 plans to be formally ‘made’ nationally.

### **Examination and Referendum**

- 1.4 The Swaffham Neighbourhood Plan was subject to an Independent Examination between February and March 2019. The Examiner found that, subject to modifications being made to the majority of the policies, the plan met the ‘basic conditions’ and recommended that it proceed to a local referendum.
- 1.5 When making a decision on the independent examination, Breckland Council considered all of the individual modifications, the reasons for them and decided to support all of them. The decision to hold the referendum was agreed on 12<sup>th</sup> March 2019 and arrangements made for the referendum process for Neighbourhood Plans to being as set out in the Neighbourhood Planning (Referendum) Regulations 2012 (as amended).
- 1.6 Paragraph 4 of these Regulations prescribes the requirements for the dates and documents that need to be published to hold a referendum. As required, the Information Statement and Specified Documents were published on the Council’s Neighbourhood Planning webpage on the 21st March 2019 and the Notice of Referendum was published on the Electoral Services webpage on the 26<sup>th</sup> March 2019.
- 1.7 The Specified Documents included the following:
- The Swaffham Neighbourhood Development Plan;
  - Report of the Independent Examiner;
  - A Summary of the representations submitted to the independent examiner;
  - A Statement by the Local Planning Authority that the draft plan meets the basic conditions and complies with the relevant legislation;
  - A statement that sets out general information about town and country planning including neighbourhood planning and the referendum.

### **Making the plan**

- 1.8 The Neighbourhood Plan referendum was held on the 2nd May 2019. The turnout was 31%, of which 81.5% (1572) voted in favour of using the Plan to help decide planning applications in the neighbourhood area and 18.5% (334) voted against. The national average in voting for a Plan is 88%.
- 1.9 Under paragraph (4)(a) of section 38A of the Town and Country Planning Act 1990, when considering to “make” a neighbourhood plan, where “...*more than half of those voting to have voted in favour of the plan* ...”, then it must be “made”, or in other words there is a legal duty to bring the plan into force. After a referendum has

occurred, the Neighbourhood Plan becomes part of the development plan, unless there is an exceptional decision by a local authority to not 'make' the neighbourhood plan (Neighbourhood Planning Act 2017).

- 1.10 This would be the case if, under paragraph (6) of the 1990 Act, the local planning authority considers that it would be incompatible with any European Union obligations or Human Rights conventions. These issues were considered to have been met by the independent examiner as part of their assessment of the 'basic conditions', one of which is that the plan may not breach any EU obligations or any Human Rights obligation.
- 1.11 There is also a requirement in the regulations under paragraphs 9 and 10, section 38A of the Town and Country Planning Act, to publicise and inform relevant persons about the decision that has been made. This is repeated under Regulation 19 of the Neighbourhood Planning (General) Regulations 2012.

### **Other actions**

- 1.12 The Town and Country (Local Planning) (England) Regulations 2012 outlines what the adopted policies map must include and contain. Specially under 9 (c) there is a requirement to "*... illustrate geographically the application of the policies in the adopted development plan*". As set out above, the Neighbourhood Plan reaching this point has the status of a "Development Plan". As such, the Council's Policies Map inset for Swaffham will be updated to show any relevant policies.

## **2.0 OPTIONS**

- 2.1 There are two options for members to consider:

- **Option 1** - Council agrees to "make" the Swaffham Neighbourhood Plan and is "made" as part of the statutory Development Plan for Breckland Council, as required by paragraph (4)(a) of section 38A of the Town and Country Planning Act as "*...more than half of those voting to have voted in favour of the plan ...*", and to undertake the required publication, advise the Town Council and other prescribed persons and subsequently update the district policies map.
- **Option 2** - Council does not make the Swaffham Neighbourhood Plan where "*...it considers that the Plan would breach, or would otherwise be incompatible with any EU obligation or any of the Convention Rights (within the meaning of the Human Rights Act 1998).*"

## **3.0 REASONS FOR RECOMMENDATION(S)**

- 3.1 It is recommended that members endorse Option 1 as there was a positive vote in favour for making the Swaffham Neighbourhood Plan through a Referendum and there is considered to be compliance, rather than being incompatible, with European obligations and Human Rights conventions.

## 4.0 EXPECTED BENEFITS

4.1 The main benefit to “making” or agreeing the Swaffham Neighbourhood Plan is that it is the last stage in the production of the plan and it will confirm that the Plan forms part of the statutory “Development Plan”, thereby continue to allow the policies to be used in the determination of planning applications in the Neighbourhood Area.

## 5.0 IMPLICATIONS

### 5.1 Carbon Footprint / Environmental Issues

5.1.1 It is the opinion of the Report Author that there are no implications.

### 5.2 Constitution & Legal

5.2.1 The Swaffham Neighbourhood Plan is “made”, and this decision is published and relevant persons advised under the requirements (paragraph (4)(a); (9) and (10)) of section 38A of the Town and Country Planning Act. Also the district policies map is amended under paragraph of the 9 Town and Country (Local Planning) (England) Regulations 2012.

5.2.2 Once “made” the Swaffham Neighbourhood Plan will form part of the statutory “Development Plan” for the Breckland District. Under section 38(6) of the Planning and Compulsory Purchase Act 2004, this requires that “...for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

### 5.3 Contracts

5.1.2 It is the opinion of the Report Author that there are no implications.

### 5.4 Corporate Priorities

5.4.1 The Swaffham Neighbourhood Plan meets the following corporate priorities:

- Your Place
- Your Health and Wellbeing

The recommendation to ‘make’ the Neighbourhood Plan, will enable it to have a positive impact on shaping social, environment and economic matters within the town of Swaffham.

### 5.5 Crime and Disorder

5.5.1 It is the opinion of the Report Author that there are no implications.

### 5.6 Equality and Diversity / Human Rights

5.6.1 It is the opinion of the Report Author that there are no implications.

### 5.7 Financial

5.7.1 It is the opinion of the Report Author that there are no implications.

## 5.8 Health & Wellbeing

5.8.1 One of the objectives of the Neighbourhood Plan is *"To provide inclusive opportunities for cultural, leisure, community, sport and other social activities, for all ages"* and this is enabled by Policy COM1, which addresses the issue of providing new and improved sports and leisure facilities.

5.8.2

## 5.9 Risk Management

5.9.1 The risk of not approving the Neighbourhood Plan would mean that the council would be in breach of its legal duty.

## 5.10 Safeguarding

5.10.1 It is the opinion of the Report Author that there are no implications.

## 5.11 Staffing

5.11.1 There are no direct implications arising from this report.

## 5.12 Stakeholders / Consultation / Timescales

5.12.1 It is the opinion of the Report Author that there are no implications in relation to this report. The Plan has been subject to a range of public consultation including two required consultation stages (Regulation 14 and 16) of the Neighbourhood Planning (General) Regulations 2012 (as amended).

## 6.0 WARDS/COMMUNITIES AFFECTED

6.1 The Neighbourhood Plan area falls within the Swaffham Ward.

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Background papers:- [See The Committee Report Guide](#)

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### Lead Contact Officer

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**Key Decision: No**

**Exempt Decision: No**

**This report refers to a Mandatory Service**

### Appendices attached to this report:

Appendix A – Swaffham Neighbourhood Plan