

**CABINET - 25 FEBRUARY 2016**

**WATERS UPTON NEIGHBOURHOOD PLAN: CONSIDERATION OF EXAMINER'S  
RECOMMENDATIONS AND PROPOSED MODIFICATIONS PRIOR TO REFERENDUM**

**REPORT OF ASSISTANT DIRECTOR : BUSINESS, DEVELOPMENT & EMPLOYMENT**

**LEAD CABINET MEMBER: COUNCILLOR RICHARD OVERTON**

**PART A) – SUMMARY REPORT**

**1.0 SUMMARY OF MAIN PROPOSALS**

- 1.1 Waters Upton Parish Council submitted their Neighbourhood Plan (NP) with supporting documents to the Council in December 2014. In response and in accordance with its statutory duties, the Authority undertook certain checks to ensure that all the procedural and other requirements had been met and completed a 6-week publicity period which allowed written representations to be made.
- 1.2 The council carried out a further two week period of consultation on the Council's response to the publicity period.
- 1.3 The Authority appointed an Independent Examiner (the Examiner), John Parmiter, to conduct the Examination with a report being submitted back to the Council in January 2016 including a recommendation to proceed to Referendum, subject to a number of modifications. Those modifications have now been applied to the NP and incorporated in a Referendum version of the NP (Appendix 1)
- 1.4 The purpose of this report is to seek Cabinet approval for the NP, subject to the modifications, to proceed to formal Referendum. The full list of modifications proposed by the Examiner are set out in the Examiner's Report. (Appendix 2 )
- 1.5 Whilst the Examiner's proposed modifications are not binding, they are considered by Officers to be appropriate. No additional modifications are considered to be required prior to the Referendum stage.
- 1.6 Members need to be satisfied that the NP meets certain "basic conditions" before it can proceed to a Referendum. As explained in this report, Officers and the Examiner are satisfied that these "basic conditions" have been met.

**2.0 RECOMMENDATIONS**

- 2.1 That Cabinet agree with the Independent Examiner that, subject to the modifications recommended by him being made, the Waters Upton Neighbourhood Plan meets the "basic conditions" and all other legal requirements as summarised in this report and the Independent Examiner's report;**
- 2.2 That Cabinet agree that the required modifications should be made to the Waters Upton Neighbourhood Plan and that the Waters Upton Neighbourhood Plan - Referendum Version (January 2016) should proceed to Referendum;**
- 2.3 That Cabinet agree that the Referendum Area should not be extended beyond the designated area to which the Waters Upton Neighbourhood Plan relates;**

**2.4 That the Managing Director be authorised to exercise all the relevant powers and duties and undertake all necessary arrangements for the Waters Upton Neighbourhood Plan (Referendum Version) to now proceed to Referendum and for the Referendum to take place asking the question whether the voter wants Telford & Wrekin Council to use this neighbourhood plan for the Waters Upton Neighbourhood Plan area to help it decide planning applications in this neighbourhood area.**

### **3.0 SUMMARY IMPACT ASSESSMENT**

<b>COMMUNITY IMPACT</b>	Do these proposals contribute to specific Priority Plan objective(s)?	
	Yes	Co-operative Council: - Involving local people more in planning and running services - As a Council, supporting our community better and encouraging people to do more to help their own communities
	Will the proposals impact on specific groups of people?	
	Yes	Neighbourhood Plans establish a formal statutory planning framework for future development within a designated area. Production of the Waters Upton NP has involved the whole of the Waters Upton Parish community through consultation where people have had the opportunity to provide formal comments on policies which will affect the future development of their area, including a 6-week formal publicising consultation period. The referendum stage provides an opportunity for the whole Waters Upton Parish to vote on the plan prior to formally making the Plan.
<b>TARGET COMPLETION/ DELIVERY DATE</b>	Subject to Cabinet approval, the Waters Upton NP will proceed to referendum, the outcome of which will determine if the NP can be made (approved) by the Authority. To achieve this, the referendum must result in more than half of those voting in favour of the NP. It is anticipated that, after putting all necessary arrangements in place, the NP will proceed to referendum in May 2016. Subject to a favourable outcome, the final version of NP will come to Cabinet for approval in the summer of 2016.	
<b>FINANCIAL/VALUE FOR MONEY IMPACT</b>	Yes	The costs associated with the introduction of Neighbourhood Plans, including the additional costs of designations, referendum and examinations have to be met by the Local Authority. The scheme has received Fronrunner and DCLG funding and there is sufficient funding available to meet the costs of the referendum which are estimated at £2 per elector (total £1,800). JAC 140116
<b>LEGAL ISSUES</b>	<p>The Localism Act 2011 provided a framework for a new statutory regime to establish Neighbourhood Planning. Subsequent legislation has added more detail to that framework. The Parish Council has had to fulfil its publication and consultation obligations under this legislation and the Borough Council as local planning authority has now publicised the NP and processed it through the Independent Examination stage. With the benefit of the Examiner's report the Borough Council as LPA ("the LPA") now has to properly consider a number of matters relating to the NP before it can proceed to a referendum.</p> <p>The issues which the LPA now needs to consider and determine are set out in this report. If the LPA is satisfied that certain conditions have been met a referendum must be held. If the LPA is not so satisfied, the NP must be refused.</p> <p>If the referendum takes place and results in more than half of those voting (i.e. 50% + 1) voting in favour of the NP, subject to certain exceptional circumstances, the LPA must make the NP as soon as</p>	

		reasonably practical. Further legal points are raised later in this report IR – 15/01/16
<b>OTHER IMPACTS, RISKS &amp; OPPORTUNITIES</b>		The main risk associated with the referendum stage is that the referendum itself does not deliver a majority vote in favour of the Plan. The result would be that the Authority would be unable to make the NP a statutory plan to be applied to the determination of planning applications in the designated area. However, this is unlikely bearing in mind the level of engagement carried out by Waters Upton Parish Council with the assistance of the Authority, which has sought to address the key issues identified through the consultation process. Opportunities associated with the NP include a strengthening of local engagement in the planning process and in the development of the Telford & Wrekin Local Plan, including acceptance of proposed development in the area. A successful NP will raise the profile of the Council locally and nationally.
<b>IMPACT ON SPECIFIC WARDS</b>		Edgmond and Ercall Magna Ward

#### **4. PART B) – ADDITIONAL INFORMATION**

##### **4.1 Background**

4.1.2 In February 2011 Telford & Wrekin Council and Waters Upton Parish Council successfully bid for Waters Upton to become one of the government's Frontrunners in neighbourhood planning. The Waters Upton Neighbourhood Plan Steering Group was subsequently formed and has led development of the Neighbourhood Plan (or NP) through a number of key stages. Under the Town and Country Planning Act 1990 Telford & Wrekin Council as LPA has a statutory duty to assist communities in the preparation of the NP through the various statutory stages in the process.

4.1.3 In accordance with the 1990 Act and the Neighbourhood Planning Regulations, Waters Upton Parish Council submitted their NP on 15 December 2014 for Telford & Wrekin Council to complete the necessary checks and proceed to the next stages of publication, examination and referendum. The NDP, along with supporting documents are available at:

[www.telford.gov.uk/info/20172/planning\\_policy\\_and\\_strategy/544/waters\\_pton\\_neighbourhood\\_plan](http://www.telford.gov.uk/info/20172/planning_policy_and_strategy/544/waters_pton_neighbourhood_plan)

4.1.4 The referendum version of the NP is in accordance with and supports the policy approach to Waters Upton and the Rural Area in the emerging Telford & Wrekin Local Plan

##### **4.2 Examination of the Waters Upton Neighbourhood Plan**

4.2.1 An independent examination of the plan took place between 23<sup>rd</sup> November 2015 and 4<sup>th</sup> January 2016. The purpose of the examination was to establish whether procedural and other matters had been properly dealt with and in establishing whether or not the NP met the 'basic conditions'. The "basic conditions" include the following:

- Whether, having regard for national planning policy and guidance from the Secretary of State, it is appropriate that the NP should be made
- Whether the NP contributes to the achievement of sustainable development

- Whether the NP is in general conformity with the strategic policies contained in the Development Plan for the area of the Authority
- Whether the NP is in breach of and/or is otherwise compatible with EU obligations
- Whether the making of the NP is likely to have a significant effect on any “European Sites” as defined in the Conservation Habitats and Specis Regulations 2012

The Examiner also had to consider whether the area for any referendum should extend beyond the area to which the NP related.

4.2.2 The Examiner has proposed a number of recommended changes principally relate to modifying the Objectives and Policies contained in the NP. Members’ attention is drawn to the proposed modifications which are set out in the Examiner’s report (Appendix 2) and are summarised below :

- Several objectives and policies have been reworded to make them easier to understand and to clarify their purpose
- Several policies have been removed where they did not relate to land use ( the wording has been retained but has now been placed in the supporting text rather than in the policy).

4.2.3 These have been incorporated within the Referendum Version of the NP.

4.2.4 On all other aspects of the basic conditions tests, the Examiner concluded that, subject to his recommended modifications being made, the NP met the tests. In addition, the Examiner also concluded that the NP has been prepared in accordance with all other legal requirements, in particular those under paragraph 8(1) of schedule 4B of Town and Country Planning Act (TCPA), in that:

- the NDP had been prepared and submitted for examination by a qualifying body;
- the NP had been prepared for an area that has been designated under Section 61G of the TCPA as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 (PCPA);
- the NP met the requirements of Section 38B of the PCPA (i.e. the Plan must specify the period to which it has effect (to 2031), must not include provisions about development that is excluded development, and must not relate to more than one Neighbourhood Area); and
- the policies relate to the development and use of land for a designated Neighbourhood Area, in line with the requirements of Section 38A of the PCPA.

4.2.5 Consequently, the Examiner recommended that the Plan, as modified in accordance with his report met all relevant legal requirements and could proceed to referendum. The Examiner also concluded that the boundary of the referendum (or ‘referendum area’) should be the same as the boundary of the NP. An additional business referendum is not required.

### **4.3 Considerations for Cabinet**

4.3.1 Cabinet must:

- a) consider each of the recommendations made by the Examiner and the reasons for them
- b) decide what action to take in respect of each recommendation
- c) be satisfied that the NP meets the basic conditions (see para 4.2.1 above) and be satisfied that the NP is compatible with EU Convention Rights and be satisfied that the NP complies with the various requirements referred to at paragraph 4.2.3 above

OR

be satisfied that the NP would meet those conditions, be compatible with those rights and comply with those requirements if modifications were made to the NP as recommended by the Examiner.

In respect of a) and b), Members are recommended to accept each of the Examiner's recommendations and reasons and to agree that all of the Examiner's recommendations be incorporated into a new version of the NP (the Waters Upton Neighbourhood Plan: Referendum Version January 2016)

In respect of c) Members are recommended to accept the Examiner's recommendation that the NP would meet these conditions, be compatible with these rights and comply with these requirements if his recommended modifications were made to the NP and further that these modifications should be made.

In respect of the area in which the Referendum is to take place, Members are recommended to accept the Examiner's recommendation that the Referendum Area should not change and should be the same as the designated NP area.

- 4.3.2 If Members accept the Examiner's and officers' recommendations, a Referendum must be held on the making of the NP by the LPA
- 4.3.3 If Members are not satisfied in respect of c) above and do not accept the Examiner's recommendations, they must refuse to make the NP.
- 4.3.4 In any event, Members' decisions and reasoning in these matters has to be published in a decision notice.

#### **4.4 Preparing for Referendum**

- 4.4.1 Subject to Cabinet approval, the NP will proceed to the next stage; Referendum. The Referendum is organised and carried out by Telford & Wrekin Council. The Referendum will only be carried out in Waters Upton Parish as the Neighbourhood Plan area. In accordance with Regulation 4 of the Neighbourhood Planning (Referendum) Regulations 2012 the Council will publish an Information Statement declaring when a Referendum will be held and the questions to be asked no less than 28 working days beforehand. In accordance with Regulation 3, the Referendum will ask whether voters want the LPA to use the NP to help decide planning applications in the Plan Area.
- 4.4.2 It is anticipated that the Referendum will be held on 5 May 2016.
- 4.4.3 The key tasks involved in preparing for the Referendum include the preparation of documents and website information for inspection including 'information statement', printing of polling cards and organisation of polling stations similar to those used at local government elections. The organisation of the Referendum will be lead by TWC Electoral Services in liaison with the Environment & Planning Policy Team and Waters Upton Parish Council.
- 4.4.4 If more than 50% of those voting vote in favour of the NP, Telford & Wrekin Council must then 'make' the NP. It will then be published on Telford & Wrekin Councils website and used in the determination of planning applications for the Neighbourhood Plan area i.e. the Parish of Waters Upton.

#### **4.5 Conclusion**

- 4.5.1 As a front-runner Waters Upton Parish Council is the second NP in the Borough to progress to this stage, working closely with their community to produce a plan which reflects local

views on future development in the Parish and policies which, subject to it being made, will be taken into consideration in the determination of planning applications in the plan area.

4.5.2 The Neighbourhood Plan has reached this stage following extensive consultation and cooperative working between the Council and the Parish Council. The Parish Council also accepts the Examiner's findings.

4.5.3 A further report will be brought for Cabinet consideration following the outcome of the Referendum.

## **5.0 IMPACT ASSESSMENT – ADDITIONAL INFORMATION**

5.1 Once the Waters Upton NP is made, it will become part of the statutory planning framework for the Borough. In accordance with the ethos of neighbourhood planning, the NP is based on extensive community engagement and therefore a product of the community with policies reflecting their views. The policies, once modified, are considered to be in general conformity with the existing Core Strategy and saved policies from the Wrekin Local Plan

5.2 In accordance with legal requirements, planning applications should be determined in accordance with the provisions of relevant Development Plan's which, for the Waters Upton Parish, would include the NP as well as the Core Strategy and saved policies from the Wrekin Local Plan. This is unless material considerations indicate otherwise, meaning the NP policies must be balanced with other considerations as part of the decision making process undertaken by the LPA.

## **6.0 PREVIOUS MINUTES**

Application for the Designation of a Neighbourhood Area – Waters Upton (Cabinet, 14 Nov. 2013)

Submission of Waters Upton Neighbourhood Plan (Cabinet 26th Feb. 2015)

## **7.0 BACKGROUND PAPERS**

Waters Upton Neighbourhood Plan – Examination Version (December 2014) (Appendix 3)

Basic Conditions Statement (December 2014)

Consultation Statement (December 2014)

Regulation 14 Consultation (December 2014)

Evidence base Summary (December 2014)

The Environmental Assessment of Plans and Programmes Regulations 2004, Regulation 9 Screening Determination – Waters Upton Neighbourhood Plan

Available at :

[www.telford.gov.uk/info/20172/planning\\_policy\\_and\\_strategy/544/waters\\_pton\\_neighbourhood\\_plan](http://www.telford.gov.uk/info/20172/planning_policy_and_strategy/544/waters_pton_neighbourhood_plan)

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### **Appendix 1: Waters Upton Neighbourhood Plan Referendum Version**

### **Appendix 2: Waters Upton Neighbourhood Plan Examination Version: Report to Telford & Wrekin Council by the Independent Examiner**

### **Appendix 3: Waters Upton Neighbourhood Plan Examination Version**