

Council Report

Ward(s) affected: Clandon and Horsley

Report of Director of Planning and Regeneration

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## Adoption of West Horsley Neighbourhood Plan

### Executive Summary

Neighbourhood Plans are development plan documents that may be produced by parish/town councils or designated neighbourhood forums. West Horsley Parish Council ('WHPC') has produced the West Horsley Neighbourhood Plan ('the Plan') for the West Horsley Neighbourhood Area (West Horsley parish).

Following WHPC's submission of the Plan to Guildford Borough Council ('the Council'), the Council held a six-week consultation and independent examination of the Plan, subsequently amending the Plan in line with the examiner's recommendations, in order to meet the requirements of The Neighbourhood Planning (General) Regulations 2012 (as amended) ('the Regulations'). The Plan was then subject to a referendum of qualifying voter within the neighbourhood area on 22 November 2018, as recommended by the examiner. The question asked at the referendum was "Do you want Guildford Borough Council to use the Neighbourhood Plan for the West Horsley Neighbourhood Area to help it decide on planning applications in the neighbourhood area?". Nearly 96% of those voting at the referendum voted "Yes".

In accordance with the Planning and Compulsory Purchase Act 2004 (as amended) ('the Act') and the Regulations, the Council must make (adopt) the Plan as soon as reasonably practicable after the referendum is held and, in any event, not later than the last day of the period of 8 weeks from the day after the referendum. However, the Council may refuse to make the Plan if it considers that the making of it would be a breach, or would otherwise be incompatible with, any EU obligations or any human rights obligations. Council officers hold the view that the making of the Plan would not breach these obligations. The Council must decide whether to make, or refuse to make, the Plan.

Recent changes introduced to the Act<sup>1</sup> ensure that the Plan forms part of the statutory Development Plan, therefore carrying full weight in planning decisions, once the Plan is approved at referendum rather than when it is made by the relevant authority. Applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

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<sup>1</sup> See the Neighbourhood Planning Act 2017

## **Recommendation to Council**

That the Council approves the West Horsley Neighbourhood Plan.

### Reason for Recommendation:

To meet the requirements of the Act and the Regulations.

## **1. Purpose of Report**

- 1.1 To inform councillors of the present position regarding the West Horsley Neighbourhood Plan (“the Plan”) following a referendum on 22 November 2018, and to set out the reasons for the recommendation to ‘make’ (adopt) the Plan.

## **2. Strategic Priorities**

- 2.1 The Council’s Strategic Framework identifies the following relevant key strategic priorities from the Corporate Plan (2018- 2023): ‘Place-making’, ‘Community’, and Innovation’.
- 2.2 The West Horsley Neighbourhood Plan addresses a number of the strategic priorities identified within the themes of the new Corporate Plan. For example, by providing the ‘range of housing that people need’ (Plan policies WH4: Housing Mix and WH5: Rural Exception Housing), and ‘enhancing sporting, cultural, community and recreational facilities’ (policies WH6, WH7, WH8 and WH9).
- 2.3 The Plan has been tested at examination and amended to comply with the requirements of legislation<sup>2</sup>. The requirements include that the Plan must contribute to the achievement of sustainable development, defined in national planning policy as sustainability across environmental, social and economic dimensions. The Plan, as amended, therefore will help deliver a sustainable local environment in economic, social and environmental terms.
- 2.4 The Plan has been produced through engagement between West Horsley Parish Council (WHPC) and members of the West Horsley community. By supporting the Plan, the Council can support sustainable and vibrant communities at the local level.

## **3. Background**

- 3.1 The Localism Act 2011 and Neighbourhood Planning (General) Regulations 2012 (as amended) introduced powers to allow qualifying bodies (parish councils, or neighbourhood forums in areas without parish councils) to produce neighbourhood plans and Neighbourhood Development Orders. Neighbourhood plans allow communities to set planning policies for their area, which form part of the borough’s statutory development plan and therefore carry the same weight as an adopted Local Plan policy. Neighbourhood Development Orders allow communities to grant up-front planning permission for specified developments.
- 3.2 Adoption by the Council of a neighbourhood plan allows parish councils to increase the proportion of Community Infrastructure Levy (CIL) funds they receive from developments within their neighbourhood area from 15% (with a cap of £100 per dwelling) to 25% (uncapped). The parish council has responsibility for determining how these CIL funds are spent, though the funds must be spent on measures that support development and

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<sup>2</sup> These are the ‘basic conditions’ referred to in paragraph 8(2) of Schedule 4B to the Town & Country Planning Act 1990 (inserted by Schedule 10 to the Localism Act 2011)

have the agreement of the Council as the charging authority. Alternatively, the parish council can opt not to receive some or its entire portion of the CIL funds and to keep the funds with the charging authority. Guildford Borough Council is currently in the process of preparing its CIL Schedule.

- 3.3 Neighbourhood plans must be examined and pass a referendum of local voters by a simple majority before they may be adopted. The West Horsley Neighbourhood Plan has met these requirements.

West Horsley Neighbourhood Plan

- 3.4 The West Horsley Neighbourhood Area was designated by the Council on 8 September 2014. Designation of the neighbourhood area conferred powers on West Horsley Parish Council to undertake neighbourhood planning and the parish council subsequently produced the West Horsley Neighbourhood Plan.
- 3.5 The West Horsley Neighbourhood Plan was submitted to the Council in November 2017 and was then subject to a six-week public consultation, followed by an independent examination to meet the requirements of the Regulations. The examiner of the plan recommended that specific modifications be made to the plan in order for it to meet the 'basic conditions' set out in legislation. The Council agreed with the examiner's recommendations and officers prepared the modified version of the Plan, which was subject to a referendum on 22 November 2018.
- 3.6 One of the proposed modifications represented a significant modification to the plan. The Council held a further consultation on this proposed modification between 30 July and 17 September 2018.
- 3.7 The referendum question was "Do you want Guildford Borough Council to use the Neighbourhood Plan for the West Horsley Neighbourhood Area to help it decide planning applications in the neighbourhood area?" The result of the referendum was as follows:

	<b>Votes Recorded</b>
Number cast in favour of a <b>Yes</b>	777
Number cast in favour of a <b>No</b>	32
Number of spoilt ballot papers	1
Total number of votes cast	810
Electorate: 2,152	Turnout: 37.64%

- 3.8 Once approved at a referendum, the Plan forms part of the Council's Development Plan. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise (s38 (6) of the Planning and Compulsory Purchase Act 2004).
- 3.9 In accordance with the Planning and Compulsory Purchase Act 2004 (as amended) ('the Act') and the Regulations, the Council must make (adopt) the Plan as soon as reasonable practicable after the referendum is held and, in any event, not later than the last day of the period of 8 weeks from the day after the referendum. However, the Council may refuse to make the Plan if it considers that the making of it would be a breach, or would otherwise be incompatible with, any EU obligations or any human rights obligations. Council officers hold the view that the making of the Plan would not breach these obligations. Making the Plan will have limited impact on the Plan's status as it

already forms part of the Development Plan, following the majority 'Yes' vote at referendum<sup>3</sup>.

- 3.10 The Plan was tested against the basic conditions set by legislation during the examination. One of the basic conditions is that the Plan must be compatible with EU and human rights obligations. Officers agree with the examiner's view that the Plan, as amended, meets all the basic conditions, including EU and human rights obligations and that therefore the Plan should be made.

#### **4. Consultations**

- 4.1 The Plan has been subject to the two consultations required by the Regulations, alongside an additional consultation that the Council determined to hold on the significant modification proposed by the examiner. WHPC undertook the pre-submission (Regulation 14) consultation and the Council undertook a post-submission (Regulation 16) consultation between January and March 2018.
- 4.2 WHPC considered the comments received during the Regulation 14 consultation and made changes to the Plan prior to submission to the Council. The comments received during the Council's regulation 16 consultation were provided to the examiner of the Plan. The amendments to the Plan recommended by the examiner were informed by the content of representations received during both consultations.

#### **5. Equality and Diversity Implications**

- 5.1 The making (adoption) of the Plan is not expected to have any adverse impact on people with protected characteristics under the Equality Act 2010. However, your attention is drawn to Section 149(1) of the Equality Act 2010, which provides that a public authority must in the exercise of its functions have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The plan's policies were considered in relation to potential equality impacts that could arise as a result of the plan's referendum and adoption, which officers consider to be either neutral or positive. An Equality Impact Assessment screening report for the Plan has been completed and will be made available on request for anyone who wishes to view a copy.

- 5.2 The plan was also subject to extensive public consultation at the Regulation 14 and 16 stages in order to involve as broad a range of people as possible from across the local community. At the Regulation 14 stage, this involved utilising a wide selection of consultation methods to engage potentially interested parties in the production of the plan, including a household survey and leaflets that were hand delivered to every household in the village. There was also direct resident involvement on the Parish Council's Steering Group.

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<sup>3</sup> As a result of changes to the Act made under the Neighbourhood Planning Act 2017 S3

## **6. Financial Implications**

- 6.1 After the introduction of CIL, 15% of CIL receipts (capped at £100 per dwelling) must be spent within the neighbourhood where the associated development occurs. Making the Plan means that the neighbourhood share in West Horsley will increase to 25% (uncapped) of the CIL funds generated from new building in the area. Funds will be passed directly to WHPC, unless WHPC opts for the funds to stay with the Council.
- 6.2 The neighbourhood portion of the CIL must be spent to “support the development of the area”, but can be used to fund a wider range of projects than the CIL funds held by the Council, which must be spent on infrastructure. The neighbourhood share of CIL funds may be spent on affordable housing for example.
- 6.3 The Plan document will be made available to the public electronically for free. As with other planning documents, the Plan will be made available in print for a fee that covers printing costs.
- 6.4 As making the Plan does not alter its status in the planning system, there are not considered to be any additional costs for the making of planning decisions.

## **7. Legal implications**

- 7.1 Section 38A (4) of the Planning and Compulsory Purchase Act 2004 Act (“the Act”), as inserted by the Localism Act 2011, states that a local planning authority must:
- make a neighbourhood development plan if more than half of those voting in the neighbourhood plan referendum vote are in favour of the Plan; and
  - do so as soon as reasonably practicable after the referendum is held and, in any event, by such date as may be prescribed
- 7.2 Pursuant to the Neighbourhood Planning Regulations 2012 (as amended), the prescribed date for a Council to make a neighbourhood development plan following an affirmative vote at a referendum is the last day of the period of 8 weeks beginning with the day immediately following from the day of the referendum. Councillors will note that the date of this Council meeting falls within this prescribed timeframe.
- 7.3 In March 2018, the Council published a [Strategic Environmental Assessment and Habitats Regulations Assessment screening determination](#) (see background papers), which considered the impacts on European sites of the Plan’s policies. The screening determination concluded that “the nature, scale and location of the policies within the plan are not likely to adversely impact on any of the sensitive environmental receptors within or around West Horsley Parish, including the Thames Basin Heaths SPA and Mole Gap to Reigate Escarpment SAC”.
- 7.4 Under the Act, a neighbourhood plan comes into force as part of the statutory development plan once it has been approved at referendum.
- 7.5 There are narrow circumstances where the local planning authority is not required to make the neighbourhood plan. Section 38A (6) of the Act states that the authority is not subject to this duty if it considers that making the Plan would breach, or would otherwise be incompatible with, any EU or Convention rights (within the meaning of the Human Rights Act 1998). No other circumstances for refusing to make the Plan are prescribed.
- 7.6 In accordance with the Act, only a draft neighbourhood plan that meets certain prescribed basic conditions can be put to a referendum. These prescribed conditions

include whether the plan conforms with EU and Convention rights. During the examination, the independent examiner found the Plan to be compliant with this requirement. There is no reason for officers to question this conclusion.

## **8. Human Resources implications**

8.1 Making the Plan is not expected to have any significant human resource implications, as doing so will not alter the status of the Plan in planning decisions or the process of making planning decisions.

## **9. Summary of Options**

9.1 The two options available are:

- Make the Plan
- Refuse to make the Plan

9.2 It is considered that refusing to make the Plan without sound reasons for doing so in compliance with the narrow circumstances outlined above carries legal risks of challenge to such a decision.

## **10. Conclusion**

10.1 Based on the conclusions of the examination, there is no reason to conclude that the Plan fails to comply with EU and Convention rights. As such, it is recommended that the Council should make the Plan.

## **11. Background Papers**

Links to background papers are available below:

[West Horsley Neighbourhood Plan \(Referendum version\)](#)  
[West Horsley Neighbourhood Plan examination report](#)

(Both documents above available online at  
<https://www.guildford.gov.uk/westhorsleyreferendum>)

[West Horsley Neighbourhood Plan Strategic Environmental Assessment and Habitats Regulations Assessment screening determination \(September 2017\)](#)

## **12. Appendices**

None