
Subject: **MAKING THE ASH PARISH COUNCIL NEIGHBOURHOOD DEVELOPMENT PLAN 2021**

Meetings and Dates: **Cabinet – 6 September 2021**
Council – 15 September 2021

Report of: **Stuart Watson, Senior Policy Planner - Planning, Regeneration and Development**

Portfolio Holder: **Councillor Nicholas Kenton, Portfolio Holder for Planning and Environment**

Decision Type: **Key**

Classification: **Unrestricted**

Purpose of the report: To set out the requirements for the Ash Parish Council Neighbourhood Development Plan (Ash NDP 2021) to become part of the Council's Development Plan and the process undertaken.

Recommendation Cabinet: **to** That Cabinet resolves to agree the recommendation to 'make' the Ash NDP 2021 to Full Council.

Recommendation Council: **to** That Council resolves to 'make' the Ash NDP 2021.

1. **Summary**

1.1 The Localism Act 2011 provides communities with powerful tools to produce policies to enable development within their community area. Ash Parish Council have produced a neighbourhood development plan (NDP) that meets both legislative requirements and support from their local community. On 22 July 2021 a referendum was held on the Ash NDP 2021 within the Ash neighbourhood area and asked the question of residents "Do you want Dover District Council to use the Neighbourhood Plan for Ash to help it decide planning applications in the neighbourhood area?" 86% of those who voted in the referendum voted in favour of the Ash NDP 2021.

1.2 Dover District Council has eight weeks from the day after the referendum in which to decide whether to 'make' the Ash NDP 2021 or not. If the Plan were to be made, it would then form part of the Development Plan for the District.

2. **Introduction**

2.1 The Localism Act 2011 introduced a new type of community led development plan. The Act enables communities to produce a Neighbourhood Development Plan that can set out policies on the development and use of land within a parish or neighbourhood area. Neighbourhood planning provides powerful tools to communities to help facilitate their needs where they align both with the strategic needs and priorities of the wider local area.

2.2 The National Planning Policy Framework 2021 at paragraph 30 makes clear that once a Neighbourhood Development Plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering

the neighbourhood area. This is until the neighbourhood policies themselves are then superseded by strategic or non-strategic policies.

- 2.3 In effect, once a Neighbourhood Development Plan has been 'made' by a Local Authority, the policies within the Plan are used to determine planning applications within the neighbourhood area. This is until they are either replaced by reviews to the Neighbourhood Plan or through a subsequent Local Plan.

Background

- 2.4 Ash Parish was designated a Neighbourhood Area by the Cabinet of Dover District Council on the 4 February 2013. Since 2017, preparation of the Ash NDP has been led by its Neighbourhood Development Plan Committee. The committee is made up of volunteers from the local community.

- 2.5 The Ash NDP 2021 contains a series of policies to help determine planning applications. Policies include:

- Environmental (including green and open spaces, biodiversity and climate change);
- Housing (provision for 437 new dwellings between 2018 and 2037);
- Leisure & Well being, Health Care, Education;
- Local Economy (including support for the villages' shops/public houses and home working); and,
- Local infrastructure (enabling provision for off street parking, telecommunications and transport).

- 2.6 Ash Parish Council ran a Regulation 14 pre-submission draft Plan consultation between 11 November 2019 to 23 December 2019. On subsequently completing the Neighbourhood Development Plans evidence base, Ash Parish Council resolved to formally submit the Plan to Dover District Council and a Regulation 16 submission Plan consultation was held from 1 December 2020 to 15 January 2021. Planning officers from Dover District Council's Local Plans team provided advice and assistance throughout the drafting of the Plan, the consultation processes and examination.

- 2.7 Mr Derek Stebbing B.A. (Hons), Dip E.P., MRTPI, an independent examiner, was appointed by Dover District Council in agreement with Ash Parish Council to examine the Neighbourhood Development Plan. The examination was dealt with by written representations and the examiner's report was published on the 5 May 2021. The examiner concluded that, subject to the modifications set out in his report, the Plan met the basic conditions and other legal requirements, and that the Plan should proceed to referendum.

- 2.8 The basic conditions a neighbourhood development plan has to meet are:

- regard to national policies and advice contained in guidance issued by the Secretary of State;
- special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest;
- special regard to the desirability of preserving or enhancing the character or appearance of any conservation area;
- the making of the neighbourhood development plan contributes to the achievement of sustainable development;
- the making of the neighbourhood development plan is in general conformity with the strategic policies contained in the development plan for the area;
- the making of the neighbourhood development plan does not breach, and is otherwise compatible with, EU obligations; and,

- prescribed conditions (conservation of species/habitats and regard to all material considerations) are met in relation to the neighbourhood development plan and that prescribed matters have been complied.
- 2.9 On the 1 June 2021, Ash Parish Council formally submitted the referendum version of the Plan incorporating the examiners modifications to Dover District Council. On 8 June 2021, Dover District Council determined that subject to the examiner's modifications, the Ash NDP 2021 met the basic conditions and should proceed to referendum. On 22 July 2021, a referendum was held on the Ash NDP 2021, and the referendum asked residents of the neighbourhood area the question "Do you want Dover District Council to use the Neighbourhood Plan for Ash to help it decide planning applications in the neighbourhood area?"
- 2.10 Section 38A (4) of the Planning and Compulsory Purchase Act 2004 Act, as inserted by the Localism Act 2011 states, that a local planning authority must 'make' a neighbourhood development plan if more than half (50.1% or above) of those voting in the neighbourhood plan Referendum vote in favour of the Plan. Further, the Neighbourhood Planning (General) Regulations 2012 (as amended) stipulates under Regulation 18a that the Plan must be 'made' by the local planning authority within 8 weeks beginning the day after the referendum.
- 2.11 Failure to 'make' the Ash NDP 2021 within the 8 weeks period could open the Plan up to challenge by way of Judicial Review and could result in the Plan being quashed. Section 113 of the Planning and Compulsory Purchase Act 2004 (as amended) (3) states, a person aggrieved may make an application to the High Court on the ground that a procedural requirement has not been complied with. A procedural requirement is a requirement made by Regulations or an order which relates to the adoption, publication or approval of a plan/document. The application must be made within 6 weeks, for example when a decision has been made or the expiry of a prescribed time period.
- 2.12 After a successful referendum, there are only narrow circumstances where the local authority would not be required to 'make' the neighbourhood development plan. These include, where making of the Plan would breach EU or human rights obligations. For example, where the Plan could inhibit or prevent: right to life, respect for private and family life, freedom of: thought, conscience, religion, expression and assembly or association, amongst other matters.
- 2.13 The Ash NDP 2021 referendum returned an 86% majority in favour of using the Plan in planning application decision making for the neighbourhood area. Further, it is considered that the Ash NDP 2021 does not breach or inhibit EU or human rights obligations. This means the Council must choose to 'make' the Plan, and the eight weeks period in which to make the decision would end on 17 September 2021.
- 2.14 The Ash NDP 2021 has been positively prepared through hard work and dedication by the local community. It is supported by an evidence base that considers issues like sustainable development and habitats impacts. Further, the Plan has undergone rigorous public consultation and been found (subject to modifications) by an independent examiner to meet the basic conditions. And finally, the referendum on the 22 July 2021 demonstrated that the majority of residents who voted, support the Plan.
- 3. Identification of Options**
- 3.1 That Cabinet resolve to agree the recommendation to 'make' the Ash NDP 2021 to Full Council.
- 3.2 That Cabinet do not resolve to agree the recommendation to 'make' the Ash NDP 2021 to Full Council and subsequently the Council do not 'make' the Plan.

4. Evaluation of Options

- 4.1 It is a legal requirement to make a neighbourhood development plan within 8 weeks after the day of a referendum where the majority vote in favour of the Plan. There are very narrow grounds where the Council could refuse to make the Plan and it is considered that the Plan does not breach or is not incompatible with any EU or Human rights obligations
- 4.2 The attached Ash NDP 2021 (Appendix 1) has been prepared within planning legislative requirements. The Plan has been found by an independent examiner to meet the basic conditions and the majority who voted in the referendum voted for the Dover District Council to use the Plan to help it decide planning applications in the neighbourhood area.
- 4.3 Failure to 'make' the Ash NDP 2021 within the 8 week period could open the Plan up to challenge by way of Judicial Review, which could result in the Plan being quashed.

5. Resource Implications

- 5.1 There are no resource implications in taking the Ash NDP 2021 to Council.
- 5.2 Making of the Ash NDP 2021 will require the neighbourhood plan to be published on the Council's website and this can be carried out within the existing Local Plan teams resourcing.

6. Climate Change and Environmental Implications

- 6.1 As this report is seeking agreement to take the Ash NDP 2021 to Council and that Council 'make' the Plan, there are no specific Climate Change and Environmental Implications.
- 6.2 In making the neighbourhood plan, The Ash NDP 2021 proposes a series of environmental policies in the determination of planning applications within the neighbourhood area for Ash. When planning applications are submitted within the Ash neighbourhood area the precise climate change and environmental issues and implications will be known and considered at that time.

7. Corporate Implications

- 7.1 Comment from Finance (linked to the MTFP): Accountancy has been consulted and has no further comment to make.
- 7.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.
- 7.3 Comment from the Equalities Officer: This report does not specifically highlight any equality implications, however in discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

8. Appendices

- 8.1 Appendix 1 – Ash Neighbourhood Development Plan 2021

9. Background Documents

- 9.1 The Examiner's Report and other background documents are available on the Council's Ash Neighbourhood Plan webpage:
<https://www.dover.gov.uk/Planning/Planning-Policy-and-Regeneration/Neighbourhood-Planning/Ash-Neighbourhood-Plan-Consultation.aspx>

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