

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Council
<b>Date of Meeting:</b>	27 September 2022
<b>Subject:</b>	Ashchurch Rural Neighbourhood Plan to be made part of the Development Plan for Tewkesbury
<b>Report of:</b>	Senior Planning Policy Officer
<b>Head of Service/Director:</b>	Head of Development Services
<b>Lead Member:</b>	Lead Member for the Built Environment
<b>Number of Appendices:</b>	Two

## **Executive Summary:**

Local Planning Authorities have a statutory duty to advise and assist communities in the preparation of Neighbourhood Development Plans, often referred to as 'Neighbourhood Plans', or by the acronym 'NDP'. The Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012, as amended, set out the responsibilities at each stage of the preparation of an NDP.

A referendum relating to the adoption of the Ashchurch Rural Neighbourhood Plan (ARNDP) was held on Thursday 28 July 2022. The question which was asked in the referendum was:

"Do you want Tewkesbury Borough Council to use the neighbourhood plan for Ashchurch Rural to help it decide planning applications in the neighbourhood area?"

The results were as follows:

Yes = 155 (88.57%)

No = 20 (11.43%)

Turnout = 14.45%

All NDPs are required to gain a simple majority of those voting in favour at the referendum in order to be 'made' (adopted) by the Local Planning Authority. If the plan receives a positive referendum result then the plan has full legal effect but still requires the decision of the Local Planning Authority to be formally made.

In the very limited circumstances that the Council might decide not to make the NDP, i.e. where it is believed that the plan would breach, or be otherwise incompatible with, retained EU obligations or human rights obligations, it will cease to be part of the Development Plan for the area. In this regard, the resolution to send the ARNDP to referendum determined that this was not the case.

Having regard to the resolution of the Executive Committee and the positive referendum result, Members are therefore recommended to resolve that the ARNDP is made part of the Development Plan for Tewkesbury Borough.

**Recommendation:**

1. That Council **RESOLVES** that the Ashchurch Rural Neighbourhood Development Plan is made part of the Development Plan for Tewkesbury Borough; and
2. That authority be delegated to the Head of Development Services, in consultation with the Lead Member for the Built Environment, and in agreement with the Qualifying Body (Parish Council), to correct any minor errors such as spelling, grammar, typographical or formatting errors that do not materially affect the substantive content of the plan.

**Financial Implications:**

A decision to make the Ashchurch Rural Neighbourhood Development Plan will ensure that the Parish Council qualifies for the increased Neighbourhood share of the Community Infrastructure Levy, which increases from 15% (capped at £100 per dwelling) to a full 25% (uncapped).

**Legal Implications:**

Whilst Neighbourhood Planning is not a legal requirement for Towns, Parishes and other communities, it is a right which they can choose to exercise. Once exercised, Local Planning Authorities have a duty to support them and undertake elements of the work under the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012 as amended (2015) and associated legislation.

In this case, following a positive referendum result there is a legal duty, under Section 38A(4) of the Planning and Compulsory Purchase Act 2004 (as amended), to 'make' a Neighbourhood Development Plan, providing we do not consider it incompatible with any retained European Union obligations or Human Rights conventions (within the meaning of the Human Rights Act 1998). In this regard, the resolution to send the Ashchurch Rural Neighbourhood Development Plan to referendum determined that this was not the case and therefore there is a duty, under The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016, to 'make' the plan within eight weeks from the date of the referendum.

**Environmental and Sustainability Implications:**

The implications for biodiversity, habitats, energy usage, waste and recycling or protected species have been considered by the Qualifying Body, with the assistance of the Borough Council, as required by the Environmental Assessment of Plans and Programmes Regulations 2004 and the Conservation of Habitats and Species Regulations 2010.

**Resource Implications (including impact on equalities):**

There are no additional resource implications arising from the adoption of the Ashchurch Rural Neighbourhood Development Plan.

**Safeguarding Implications:**

There are no safeguarding implications arising from the adoption of the Ashchurch Rural Neighbourhood Development Plan.

**Impact on the Customer:**

The Ashchurch Rural Neighbourhood Development Plan, once adopted, will form part of the Development Plan for the Borough and will be used when determining planning applications within the designated neighbourhood planning area of Ashchurch Rural Parish.

## **1.0 INTRODUCTION**

- 1.1** The planning system is essential for supporting economic growth, improving people's quality of life and protecting the natural environment. Neighbourhood Planning was introduced in the Localism Act 2011 with secondary legislation including the Neighbourhood Planning (General) Regulations 2012, as amended. It gives communities the power to create a shared vision for their local area and to shape future development and growth through the setting of planning policies.
- 1.2** Neighbourhood Plans which are adopted or 'made' by a Local Planning Authority form part of their development plan, alongside the Local Plan. Decisions on planning applications within the designated neighbourhood plan area will be made using the Joint Core Strategy (JCS), the Tewkesbury Borough Plan and the neighbourhood plan, and any other material considerations.
- 1.3** There are five key stages in the preparation of a Neighbourhood Plan:
- Stage 1 – Defining the Neighbourhood Area and apply to the Borough Council to have it formally designated.
- Stage 2 – Preparing the Plan includes a number of activities including public consultation undertaken by the Neighbourhood Planning Group, submission of a draft plan, as a proposal to the Borough Council and then the Borough Council undertaking its own public consultation.
- Stage 3 – With the agreement of the Qualifying Body (Parish Council), the Borough Council is required to appoint an independent examiner to check that it meets the basic standards required. It is when the Examiner publishes their final report that the Borough Council must consider any recommendations of changes to be made so that the plan meets the basic conditions and formally decide whether to send the plan to Referendum.
- Stage 4 – The Borough Council is responsible for organising a referendum of those people in the Neighbourhood Area who are entitled to vote in local elections.
- Stage 5 – If more than 50% of people voting in the referendum support the plan then the Borough Council must bring it into legal force.
- 1.4** The Ashchurch Rural Neighbourhood Plan area was designated on 8 January 2014 and since that time the Parish Council have progressed through the stages of Neighbourhood Plan preparation.
- 1.5** The ARNDP was submitted to Tewkesbury Borough Council on 14 July 2021 and the Borough Council undertook a consultation under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012 for a 6 week period from September to November 2021. A total of 13 representations were received.
- 1.6** An independent Examiner, Liz Beth BA (Hons) MA Dip Design in the Built Environment MRTPI, was appointed to conduct the examination for the Neighbourhood Plan and her final report was received on 26 April 2022.
- 1.7** In conducting her examination the Examiner had due regard to the representations made by the Local Planning Authority and all other consultees.
- 1.8** The Examiner concluded that, subject to the modifications recommended, the ARNDP met the basic conditions and could proceed to referendum. The Examiner

also recommended that the referendum boundary remain the designated neighbourhood plan area.

- 1.9** At a meeting of Executive Committee on 1 June 2022, it was resolved that the Ashchurch Rural NDP, modified according to the Examiner's recommended amendments, be formally approved to proceed to referendum, as prescribed by Regulation 18 of the Neighbourhood Planning (General) Regulations 2012, as amended.
- 1.10** Following the resolution of the Executive Committee on 1 June 2022, a referendum relating to the adoption of the Ashchurch Rural Neighbourhood Plan (ARNDP) was held on Thursday 28th July 2022.
- 1.11** The question which was asked in the referendum was: "Do you want Tewkesbury Borough Council to use the neighbourhood plan for Ashchurch Rural to help it decide planning applications in the neighbourhood area?" A turnout of 14.45% of the Ashchurch Rural electorate was achieved. 155 voted in favour (88.57%) and 20 voted against (11.43%).
- 1.12** The Declaration of Result of Poll is provided at Appendix B.
- 2.0** **MAKING THE ASHCHURCH RURAL NEIGHBOURHOOD PLAN AS PART OF THE DEVELOPMENT PLAN FOR TEWKESBURY BOROUGH**
- 2.1** Section 3 of the Neighbourhood Planning Act 2017, which came into force on 19 July 2017, amends section 38 of the Planning and Compulsory Purchase Act 2004 to ensure that neighbourhood plans have full legal effect once they have passed their local referenda. Even though the Neighbourhood Plan has assumed full legal effect, it still requires the decision of the Local Planning Authority to be formally made.
- 2.2** The Council's options are limited by statute. Paragraph 38A (4)(a) of the Planning and Compulsory Purchase Act 2004 sets out that the Council must make a neighbourhood plan if more than half of those voting at the referendum have voted in favour of the plan being used to help decide planning applications in the plan area.
- 2.3** The only circumstance where the Council should not make this decision is where the making of the plan would breach, or would otherwise be incompatible with, any retained EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).
- 2.4** The decision of Executive Committee 1 June 2022 (referred to in paragraph 1.9), published in the Neighbourhood Plan Basic Conditions Statement issued on 20 June 2022, confirmed that the Ashchurch Rural Neighbourhood Development Plan, as modified by the Examiner's recommendations, would not breach, or be otherwise incompatible with EU obligations or human rights legislation.
- 2.5** Therefore, given that the majority of those voting in the Referendum have voted in favour of the Ashchurch Rural Neighbourhood Plan being used to help decide planning applications in the neighbourhood area, to not make the plan would be in breach of these statutory provisions.

**2.6** Once 'made' the ARNDP (Appendix A) will form part of the statutory Development Plan for the Borough and will be used to assist in determining planning applications within the relevant designated Neighbourhood Area. Paragraph 12 of the National Planning Policy Framework (NPPF) states that 'Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.'

**2.7** As soon as possible after the Council has resolved to make the plan the Council must: publish the plan, details of when and where it can be inspected and notify any person who has asked to be notified that it has been made and where and when it can be inspected.

### **3.0 OTHER OPTIONS CONSIDERED**

**3.1** The options open to the Council are limited by legislation. In summary, the Council can either:

- (i) Resolve to make the Ashchurch Rural NDP part of the Development Plan for Tewkesbury Borough in accordance with Paragraph 38A (4)(a) of the Planning and Compulsory Purchase Act 2004; or
- (ii) Resolve **not** to make the Ashchurch Rural NDP as part of the Development Plan for Tewkesbury Borough. Option (ii) is not recommended. A decision not to make the plan would leave the Council vulnerable to a legal challenge.

### **4.0 ASSOCIATED RISKS**

**4.1** There is a risk of a legal challenge, should the Council resolve not to make the Ashchurch Rural NDP part of the Development Plan for Tewkesbury Borough.

### **5.0 MONITORING**

**5.1** It is expected that the Qualifying Body will monitor the implementation and effectiveness of the Neighbourhood Plan policies.

**5.2** The Qualifying Body may decide at a future date to review or update the Neighbourhood Plan. Preparation of any such update to the NDP will need to follow statutory processes and the Borough Council shall be duty bound to assist and advise the QB as appropriate.

**6.0 RELEVANT COUNCIL PLAN PRIORITIES/COUNCIL POLICIES/STRATEGIES**

**6.1** Tewkesbury Borough Council Plan

Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031

Tewkesbury Borough Plan 2011 - 2031

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**Background Papers:** None

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**Appendices:**

- A Ashchurch Rural Neighbourhood Development Plan
- B Ashchurch Rural Neighbourhood Development Plan Referendum  
– Declaration of Result of Poll