

## NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

### CABINET – 8 DECEMBER 2015

Title of report	<b>ASHBY NEIGHBOURHOOD PLAN – PROPOSED RESPONSE TO CONSULTATION</b>
Key Decision	a) Financial No b) Community Yes
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Purpose of report	To determine the District Council's response to a consultation on a draft neighbourhood plan for Ashby de la Zouch.
Reason for Decision	The District Council is a consultee and so it is appropriate to provide comments to assist with the formulation of the neighbourhood plan.
Council Priorities	Businesses and Jobs Homes and Communities Green Footprint Challenge
Implications:  Financial/Staff	<p>The emerging neighbourhood plan for Ashby will incur direct costs to the District Council to support an independent examination of the plan and, should the examination be successful, a local referendum. Grant funding from central government (£30,000 per neighbourhood plan) is payable to the authority to support this agenda.</p> <p>Once the Ashby Neighbourhood Plan is made it will form part of the Development Plan for North West Leicestershire. Should the document be legally challenged, the District Council will be responsible for meeting such costs.</p>
Link to relevant CAT	None

Risk Management	The ultimate decision on how to proceed in respect of the Neighbourhood Plan rests with Ashby Town Council. As currently set out there are conflicts between the draft Neighbourhood Plan and national policies and the adopted Local Plan as well as the District Council's draft Local Plan. These conflicts represent a risk to the success of the Neighbourhood Plan. It is appropriate for the District Council to work with Ashby Town Council to seek to minimise risks to the Neighbourhood Plan.
Equalities Impact Screening	Not applicable
Human Rights	No discernible impact
Transformational Government	Not applicable
Comments of Head of Paid Service	The report is satisfactory
Comments of Section 151 Officer	The report is satisfactory
Comments of Deputy Monitoring Officer	The report is satisfactory
Consultees	None
Background papers	<a href="#">National Planning Policy Framework</a> <a href="#">The Neighbourhood Planning (General) Regulations 2012.</a> <a href="#">The Neighbourhood Planning (General) (Amendment) Regulations 2015.</a> <a href="#">Planning Practice Guidance.</a>
Recommendation	<b>THAT CABINET RATIFIES THE RESPONSE TO THE DRAFT ASHBY NEIGHBOURHOOD PLAN AS SET OUT IN APPENDIX B OF THIS REPORT</b>

## 1.0 INTRODUCTION

- 1.1 Ashby Town Council has published a draft Neighbourhood Plan for Ashby de la Zouch. The purpose of this report is to formulate the District Council's response to the draft Neighbourhood Plan.

## 2.0 BACKGROUND

- 2.1 Neighbourhood planning was introduced under the Localism Act 2011 to give local communities a more hands on role in the planning of their neighbourhoods. It

introduced new rights and powers to allow local communities to shape new development in their local area.

- 2.2 Neighbourhood Plans can be prepared by a Parish or Town Council (or neighbourhood forums in areas not covered by a Parish or Town Council) once they have been designated as a neighbourhood area by the District Council.
- 2.3 Neighbourhood Plans should consider local and not strategic issues and must be in line with higher level planning policy. A Neighbourhood Plan can be detailed or general, depending on what local people want but they must be in line with European Union obligations and human rights requirements; they must have regard to national planning policy and must be in general conformity with strategic policies in the adopted development plan in force for the local area.
- 2.4 The District Council as Local Planning Authority has an important role to play in the neighbourhood plan process even though the council is not responsible for its preparation. The key stages in producing a neighbourhood plan as governed by The Neighbourhood Planning (General) Regulations 2012 and The Neighbourhood Planning (General) (Amendment) Regulations 2015 together with the District Council's role are summarised in Table 1.

**Table 1**

<b>Regulation</b>	<b>Stage of neighbourhood plan process</b>	<b>District Council role</b>
Reg 6A	Designating a neighbourhood area	To agree to the designation of a neighbourhood area
	Preparing a draft neighbourhood plan (the current stage)	To provide advice and assistance
Reg 14	Pre-submission publicity & consultation	To be a consultee
Reg 15	Submission of a neighbourhood plan to the local planning authority	Ensure that the submitted draft neighbourhood plan is accompanied by the following  (a) a map or statement which identifies the area to which the proposed neighbourhood development plan relates; (b) a consultation statement; (c) the proposed neighbourhood development plan; and (d) a statement explaining how the proposed neighbourhood development plan meets the "basic conditions" (requirements of paragraph 8 of Schedule 4B to the 1990 Act). Basic conditions are: (a) That it has regard to national policies and advice; (b) That it contributes to the achievement of sustainable development;

		<p>(c) That it is in general conformity with the strategic policies in the local Development Plan;</p> <p>(d) That it is compatible with EU obligations; and</p> <p>(e) That it is not likely to have a significant effect on a European site or a European offshore marine site</p>
Reg 16	Publicising a plan proposal	Organise and undertake consultation on the draft neighbourhood plan for a 6 week period
Reg 17	Submit the draft plan for independent examination	<p>Arrange for an independent examination including the appointment of an examiner in consultation with the Parish or Town Council.</p> <p>The examination will normally take the form of written representations rather than formal hearings, although the examiner can undertake hearings if considered necessary.</p>
Reg 18	Publication of examiner's report and plan proposal decisions	<p>To receive the examiner's report and decide to:</p> <ul style="list-style-type: none"> <li>(a) Decline to consider a plan proposal</li> <li>(b) To refuse a plan proposal</li> <li>(c) What action to take in response to the recommendations of an examiner regarding a NP</li> <li>(d) What modifications if any they are to make to the draft plan</li> <li>(e) Whether to extend the area to which a referendum is to take place</li> <li>(f) That they are not satisfied with the plan proposal</li> </ul> <p>As soon as possible after making a decision referred to above, the District Council must publish on their website and elsewhere as appropriate</p> <ul style="list-style-type: none"> <li>(a) The decision and the reasons (the decision statement)</li> <li>(b) Details of where and when the decision statement may be inspected</li> <li>(c) The report made by the examiner</li> </ul>

Para 12, Sch 4B TCPA 1990	Referendum	If the District Council is satisfied that the draft plan meets the basic conditions, a referendum on the plan <b>must</b> be held where this reflects the advice of the Examiner. The District Council is responsible for arranging and paying for the cost of the referendum.
Reg 19	Decision on a plan proposal	As soon as possible after deciding to make a neighbourhood development plan (or refusing to make a plan), the District Council must: <ul style="list-style-type: none"> <li>(a) Publish on their website or elsewhere as appropriate <ul style="list-style-type: none"> <li>(i) a statement setting out the decision and their reasons (the decision statement)</li> <li>(ii) details of where and when the decision statement may be inspected</li> </ul> </li> <li>(b) Send a copy of the decision statement to <ul style="list-style-type: none"> <li>(i) The qualifying body</li> <li>(ii) any person who asked to be notified of the decision</li> </ul> </li> </ul>
Reg 20	Publicising a neighbourhood development plan	As soon as possible after making a neighbourhood development plan, the District Council must: <ul style="list-style-type: none"> <li>(a) Publish on their website and elsewhere as appropriate <ul style="list-style-type: none"> <li>(i) the neighbourhood development plan</li> <li>(ii) details of where and when the neighbourhood development plan may be inspected</li> </ul> </li> <li>(b) Notify any persons who asked to be notified of the making of the neighbourhood development plan that it has been made and where and when it may be inspected.</li> </ul>

- 2.5 In addition to the regulations, guidance has also been published by the Government as part of the national Planning Practice Guidance (PPG).
- 2.6 To date two Neighbourhood Areas have been designated in the district; Ashby de la Zouch Town Council area (excluding Blackfordby) and Ellistown and Battleflat. These were both designated on 27 February 2014.
- 2.7 The District Council has received some funding from the Department for Communities and Local Government to help towards the cost of supporting the

preparation of these Neighbourhood Plans. A further round of funding will be sought following an examination to help cover some of the costs of the examination.

- 2.8 It is understood that Ellistown & Battleflat will be publishing a consultation on their draft Neighbourhood plan shortly.

### **3.0 THE ASHBY NEIGHBOURHOOD PLAN**

- 3.1 Following designation a series of working groups were formed to look at different themed areas (e.g. economy, housing etc).
- 3.2 Each group set out their suggested issues and policies which were used to inform the draft Neighbourhood Plan. A number of council officers attended meetings of some of these working groups to provide advice and assistance, as required by Paragraph 21 of the PPG. However, officers were not involved in writing the draft Neighbourhood Plan or determining its contents as this would be inappropriate given that the plan is intended to reflect the views of the local community.
- 3.3 Ashby Town Council agreed at its meeting on 12 October 2015 to publish the draft Neighbourhood Plan for consultation purposes. A copy of the draft Neighbourhood plan is attached at Appendix A of this report. The draft document contains background information and policies on housing, Ashby town centre, employment and economic growth, transport, education, leisure and well-being.
- 3.4 The consultation period ran from 13 October until 24 November 2015. As part of their consultation the Town Council have held a series of drop-in sessions and workshops to enable people to find out further information and give their views on the Neighbourhood Plan.
- 3.5 It will now be for the Town Council to analyse the responses. It is anticipated that a pre-submission version of the Neighbourhood Plan will be produced in the New Year.

### **4.0 COMMENTS ON THE DRAFT NEIGHBOURHOOD PLAN**

- 4.1 The Director of Services has delegated authority to respond to consultation documents, including Neighbourhood Plans. However, in view of the conflict between the provisions of the draft Ashby Neighbourhood Plan and the draft Local Plan it is considered appropriate for the Council's response to be agreed by Cabinet. In view of the fact that the consultation period closed before the draft Neighbourhood Plan could be considered by Cabinet it was agreed with Ashby Town Council that officer comments would be submitted in response to the consultation but that these are subject to ratification by Cabinet. Officer's comments are set out at Appendix B of this report and the following provides an explanation for these.
- 4.2 In reviewing the draft Neighbourhood Plan it is important to note that a neighbourhood plan must:
- have regard to national policy;
  - contribute towards sustainable development;
  - generally conform with the strategic policies of the local plan and;
  - not breach any EU obligations including those relating to the Strategic Environmental Assessment (SEA) Directive 2001/42/EC.
- 4.3 In terms of the relationship between a neighbourhood plan and a local plan, it is important to note that the conformity required is to the local plan in force (i.e.

adopted) at the time that the neighbourhood plan is examined. In this instance it is the North West Leicestershire Local Plan adopted in 2002. Once a Neighbourhood Plan has been agreed at referendum and been made by the Local Planning Authority it becomes part of the Development Plan for the District and therefore afforded the same weight as the Local Plan in determining planning applications.

- 4.4 The PPG advises that “They [neighbourhood plans] can be developed before or at the same time as the local planning authority is producing its Local Plan” (paragraph 9).
- 4.5 There are a number of examples across the country where neighbourhood plans have been made (i.e. adopted) before a new local plan is in place.
- 4.6 Members will be aware that the District Council has recently completed consultation in respect of its draft Local Plan. It has to be recognised, therefore, that having regard to the advice in the PPG, that there is no reason in principle as to why the Ashby Neighbourhood Plan should not be able to proceed ahead of the Local Plan.
- 4.7 In such circumstances the PPG advises that “*Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between the policies. It is important to minimise any conflicts between policies in:*
- *The emerging neighbourhood plan*
  - *The emerging Local Plan*
  - *The adopted development plan*

*with appropriate regard to national policy and guidance”.*

- 4.8 As currently proposed, the draft Neighbourhood Plan clearly conflicts with the District Council’s **draft** Local Plan. The Neighbourhood Plan proposes that only an additional 58 dwellings should be provided for in Ashby up to 2031, compared to 1,750 dwellings in the draft Local Plan. The Neighbourhood Plan does not propose the allocation of land north of Ashby (Money Hill) for housing development as proposed in the draft Local Plan.
- 4.9 If both the Neighbourhood Plan and the Local Plan were to go forward in their current form and the Neighbourhood Plan was considered acceptable by an examiner (and for reasons set out later this may not be the case) and it then proceeded to be made, it is likely that this would happen before the draft Local Plan was adopted. Once the draft Local Plan was adopted there would be a clear conflict between the two plans. The PPG advises that where there is a conflict then “*that conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan*”. In this instance that would mean the Local Plan.
- 4.10 This would, in effect, make the Neighbourhood Plan out-of-date in respect of those matters where there was a conflict with the Local Plan; this could also potentially undermine the rest of the Neighbourhood Plan.
- 4.11 The draft Neighbourhood Plan does recognise that there is a conflict with the draft Local Plan and suggests that changes to the Neighbourhood Plan may be required. As written it is not clear what changes would be required or when such changes would be made, but if it was after the Neighbourhood Plan was made than it would

be necessary to review the whole Neighbourhood Plan as there is no mechanism for reviewing just a part of it.

- 4.12 The issue of housing numbers and housing allocations is considered to be the most significant concern identified by officers in respect of the draft Neighbourhood Plan. However, there are also a number of other areas of concern.
- 4.13 As noted above a neighbourhood plan has to be in conformity with national policies. There are a number of instances where this is not considered to be the case. For example, a key aspect of national policy is to ensure that developments are deliverable. The PPG makes it clear that “*a neighbourhood plan needs to be deliverable*”. Some of the policies, such as the affordable housing policy and the housing mix policy in the draft Neighbourhood Plan would, it is considered, impact upon the viability of development.
- 4.14 The PPG also advises that “*A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications.*” This is particularly important bearing in mind that the decision maker in most instances will be the District Council as the Local Planning Authority but as the Council is not the author of the neighbourhood plan it would not necessarily be aware of the intention of a policy if it is not clearly set out in the Neighbourhood Plan.
- 4.15 Both of these issues are likely to be addressed at examination stage and whilst an examiner might recommend changes it is considered that it would be better to make changes now, so as to avoid undermining the rest of the plan. Officers have highlighted these concerns and suggested the changes that may be needed to various policies to provide clarity or overcome potential conflicts with national policy.

## **5.0 OPTIONS AND NEXT STAGES**

- 5.1 The next stage of the process will be for the Town Council to consider all of the consultation responses and make changes to the Neighbourhood Plan as they consider suitable.
- 5.2 The overall affect of continuing with the Neighbourhood Plan in its current form would be, in the view of officers, a high risk strategy for the Town Council and potentially the Neighbourhood Plan could represent a waste of time, effort and resource.
- 5.3 The Town Council will ultimately have to decide how to proceed and it has to be recognised that the Neighbourhood Plan represents an expression of the views of the local community. However, the view of officers is that in the interests of trying to ensure that the Neighbourhood Plan is supported by an examiner and that it has some longevity to it, it would be appropriate for consideration to be given to delaying the progression of the Neighbourhood Plan until such time as the District Council has agreed the pre-submission Local Plan (currently anticipated to be in March 2016) and for the Neighbourhood Plan to then take account of the provisions of the emerging Local Plan.
- 5.4 Another option open to the Town Council would be for the Neighbourhood Plan not to deal with the issue of housing numbers or allocations and to leave this to the Local Plan. There is no requirement that the Neighbourhood Plan deal with such issues.



5.5 Whatever decision is made by Ashby Town Council in respect of the Neighbourhood Plan, the District Council has an ongoing duty to continue to support the Town Council through this process.