

Report to: Cabinet

Date: 10 February 2020

Title: Adoption ('making') of the Seaford Neighbourhood Plan

Report of: Director of Regeneration and Planning

Cabinet member: Councillor Emily O'Brien, Cabinet Member for Planning

Ward(s): All, but with particular impact on:

Seaford Central, Seaford West, Seaford North, Seaford East and Seaford South

Purpose of report: To consider whether the Seaford Neighbourhood Plan should be adopted by the District Council as part of the statutory development plan if the referendum on 6th February 2020 is successful.

Decision type: Budget and policy framework

Officer recommendation(s): (1) To recommend to Full Council that the Seaford Neighbourhood Plan is formally adopted/'made' as part of the statutory development plan for the district, subject to a majority 'yes' vote at referendum.

(2) To recommend to Full Council that if the Seaford Neighbourhood Plan does not receive a majority 'yes' vote at referendum, it is not formally adopted/'made' as part of the statutory development plan for the district.

Reasons for recommendations: To ensure the Seaford Neighbourhood Plan is 'made' within the timeframe set out by the Neighbourhood Planning (General) Regulations 2012 (as amended)

Contact Officer(s): Name: Thea Davis
Post title: Neighbourhood Planning Officer
E-mail: thea.davis@lewes-eastbourne.gov.uk
Telephone number: 01273 085773/01323 415773

1 Introduction

- 1.1 The Localism Act 2011 introduced a right for communities to draw up neighbourhood plans. Seaford Town Council, with support and advice from the District Council, has produced a neighbourhood plan which has subsequently undergone a successful examination and is due to go to referendum on Thursday 6th February 2020. Should the Neighbourhood Plan succeed at referendum, it will become part of the development plan for the District. This

report considers whether the Seaford Neighbourhood Plan should be formally 'made' by the District Council and continue to be part of the development plan.

- 1.2 The Localism Act 2011 allows local communities to shape their areas by enabling town and parish councils to prepare neighbourhood development plans. A detailed legislative framework for undertaking neighbourhood planning is set out in the Neighbourhood Planning (General) Regulations 2012 (as amended). Neighbourhood planning has been enthusiastically taken up by the many of the towns and parishes in the district (within and outside the South Downs National Park), with 12 plans at various stages of preparation, ranging from 'made' plans to those in the earliest stage of preparation.
- 1.3 Subject to a successful examination and referendum, a neighbourhood plan becomes part of the statutory development plan and sits alongside the Local Plan prepared by the Local Planning Authority (part of Seaford lies within the South Downs National Park). Planning applications submitted within an area covered by a neighbourhood plan forming part of the development plan must be determined in accordance with both the neighbourhood plan and the Local Plan. Regard should be had to post-examination neighbourhood plans in making planning decisions also, despite not yet having been to referendum.
- 1.4 Seaford Town Council, with support and advice from the District Council, has produced a neighbourhood plan which has subsequently undergone a successful examination and is due to go to referendum on Thursday 6th February 2020.

2 Proposal

- 2.1 The Seaford Neighbourhood Plan has undergone a successful examination. The independent examiner recommended that subject to modifications, the Seaford Neighbourhood Plan should proceed to referendum. To comply with the Localism Act and provisions of the Neighbourhood Planning (General) Regulations 2012 (as amended), the local planning authority is required to 'make' a neighbourhood development plan within 8 weeks of the day following a successful referendum.
- 2.2 Part of the parish of Seaford lies within the South Downs National Park. However, the majority of the parish population is located outside the Park and so, in-line with an agreed approach that Lewes District Council and the South Downs National Park Authority have in place for such cases, Lewes District Council assumed the responsibility as the lead planning authority for the Seaford Neighbourhood Plan.
- 2.3 An application was received from Seaford Town Council to designate the entire parish as a neighbourhood area. The Seaford Neighbourhood Area corresponds with the Seaford Town Council boundary and was designated on 13th January 2016, following public consultation.
- 2.4 The Neighbourhood Plan was submitted for examination in August 2019. The independent examiner determined that the Neighbourhood Plan met the basic

conditions¹ (against which a Neighbourhood Plan is examined), subject to modifications, and recommended that the Plan proceeds to a referendum. This outcome was set out in the Examiner's Report received in December 2019 and published by both authorities soon after (under Regulation 18).

2.5 The Seaford Neighbourhood Plan was amended in line with the examiner's recommended modifications. The actions taken in response to the recommendations of the examiner are detailed in a Decision Statement along with the modifications recommended by the Examiner. This was published (Regulation 19) in December 2019 confirming that both authorities were satisfied that the Plan met the basic conditions and could proceed to referendum.

2.6 A referendum is due to be held in Seaford on Thursday 6th February 2020, posing the following question to eligible voters:

“Do you want Lewes District Council and the South Downs National Park Authority to use the Neighbourhood Plan for Seaford to help it decide planning applications in the neighbourhood area?”

2.7 In accordance with the Neighbourhood Planning (General) Regulations (as amended), following the outcome of the referendum with a majority 'yes' vote, it will be for Lewes District Council and the South Downs National Park Authority to 'make' the neighbourhood plan so that the Plan is formally 'made' and continues to be part of the development plan for Lewes District and the South Downs National Park.

2.8 For the avoidance of doubt and to make absolutely clear with respect to compliance with the Habitat Regulations (that transpose EU obligations into UK law), Lewes District Council is the competent authority in this respect and can only approve a plan or project if it is confident that there will be no likely significant adverse effects on the integrity of an EU protected site.

2.9 It is hereby confirmed unequivocally that the Seaford Neighbourhood Plan has been determined not to have a likely significant adverse effect on any EU designated habitats, either within Lewes District or beyond, either alone or in combination with other plans or projects. This statement is made in light of the conclusions of a full and detailed, robust Habitat Regulations Assessment (HRA) that has been endorsed by the statutory consultee, Natural England. It is further clarified that the HRA was substantially updated following the 'Wealden Judgement' regarding the Joint Core Strategy and responds to all the criticisms outlined in that judgement and the endorsement from Natural England follows a full update of their own internal guidance on responding to the judgement. More

¹ As detailed in paragraph 8 of [Schedule 4B](#) to the Town and Country Planning Act 1990 (as amended), a draft order meets the basic conditions if: (a) it has regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order, (b) it has special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order, (c) it has special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order, (d) the making of the Plan contributes to the achievement of sustainable development, (e) the making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area), (f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and (g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.

information can be found on the Council's Habitat Regulations webpage at:
www.lewes-eastbourne.gov.uk/planning-policy/habitats-regulations

3 Outcome expected and performance management

- 3.1 If the Seaford Neighbourhood Plan is successful at referendum on 6th February 2020 with a majority 'yes' vote, it will form part of the development plan for Lewes District and the South Downs National Park. If it is subsequently supported at Full Council, the Plan will be formally 'made' and will continue to form part of the development plan for Lewes District.
- 3.2 Should the neighbourhood plan fail to secure a majority vote in favour of its adoption, the authorities are not obliged to 'make' it. It is a requirement of the legislation² that Neighbourhood Plans successful at referendum are 'made' (unless the Local Planning Authorities consider that it breaches or is otherwise incompatible with any EU or human rights obligations).
- 3.3 The purpose of the Neighbourhood Planning is for local communities to decide what development is undertaken in the area and where it should happen. The Seaford Neighbourhood Plan seeks to allocate housing and commercial land in the neighbourhood area as well as designated local green spaces, therefore contributes to the housing delivery for the District and provides development management equivalent to Green Belt land for the proposed green spaces. During the process of preparing the Neighbourhood Plan, the proposed sites have been through a series of public engagement events and consultation.
- 3.4 A 'made' Neighbourhood Plan can be reviewed at any time, particularly if the policies become out of date due to strategic Local Plan policies being reviewed and updated or if the Council falls below a sufficient housing land supply (rendering the development plan out of date). It is the Qualifying Body's – in this case, the Town Council's - responsibility to review its Neighbourhood Plan. There are now measures in place to allow Neighbourhood Planning groups to modify 'made' Neighbourhood Plans, where the original legislation required a whole new Plan to be prepared if it was to be updated.
- 3.5 Until the Seaford Neighbourhood Plan is successful at referendum the Local Plan policies that are specific to this designated area will continue to be used to assess development proposals in the Seaford area. However, as the Plan is now a "post-examination" Neighbourhood Plan this means regard must be also be had to its modified policies in making decisions on relevant planning applications.

4 Consultation

² Section 38A of the Planning and Compulsory Purchase Act 2004 (as amended), states:

(4) A local planning authority to whom a proposal for the making of a neighbourhood development plan has been made –

(a) must make a neighbourhood development plan to which the proposal relates if in each applicable referendum under that Schedule (as so applied) more than half of those voting have voted in favour of the plan...

(6) The authority are not to be subject to the duty under subsection (4)(a) if they consider that the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).

- 4.1 The Seaford Neighbourhood Plan has undergone three regulated public consultations under the Neighbourhood Planning (General) Regulations 2012 (as amended) . Two consultations under Regulation 14 (Reg. 14) undertaken by the Qualifying Body in 2017 and 2018 and a Regulation 16 consultation undertaken by the Local Planning Authority (Lewes District Council) in 2019.
- 4.2 The Town Council carried out the statutory consultations (Regulation 14) on the draft plan between November 2017 and January 2018 and as a result, a number of amendments were then made to the Plan in order to respond to representations received from the consultation. Another Reg. 14 consultation was carried out later, between November and December 2018 as a result of making some changes to the draft Plan well as. Some further amendments were then made to the Plan in order to respond to feedback received from this second consultation.
- 4.3 The Town Council submitted the revised plan (Regulation 15), along with other statutory submission documents, to Lewes District Council and the South Downs National Park Authority in May 2019. A further statutory consultation (Regulation 16) took place (carried out by the District Council) between May and July 2019 where comments were invited on the submission documents.
- 4.4 Following the Regulation 16 consultation period, Lewes District Council and the South Downs National Park Authority (with the approval of Seaford Town Council) appointed a suitably qualified and experienced independent examiner, Mr Nigel McGurk, to conduct the examination of the Seaford Neighbourhood Plan which took place between August and December 2019.

5 Business case and alternative option(s) considered

- 5.1 Not relevant for this report

6 Financial appraisal

- 6.1 Formally adopting the Seaford Neighbourhood Plan will allow the Town Council to benefit from a higher proportion of revenues arising from CIL chargeable development that takes place in the parish. This will rise from a capped 15% of levy revenue to an uncapped 25% when the Neighbourhood Plan is made. This will result in the transfer of an increased proportion of CIL levy revenue from LDC to Seaford Town Council from applications approved after the Seaford Neighbourhood Plan is 'made' to spend on infrastructure required to support the development of the area.
- 6.2 There will be a financial implication in adopting the Neighbourhood Plan in terms of the apportionment of CIL income. There will be no financial implications for the General Fund base budget.

7 Legal implications

- 7.1 The legislation governing the decision to adopt a Neighbourhood Plan proposal is contained within S. 38 Planning and Compulsory Purchase Act 2004 and Part 5 of the Neighbourhood Planning (General) Regulations 2012. As well as setting

out the steps to be taken in connection with the earlier stages of the process, it also sets out what steps the local planning authority must take to publicise their decision on a proposal, and for publicising any neighbourhood development plan made by Full Council.

Legal Implications Provided (Seaford) 15.01.20 008876 -LDC-JCS

8 Risk management implications

8.1 I have completed a risk assessment. The following risks will arise if the recommendations are not implemented:

- (a) If the Seaford Neighbourhood Plan is successful at referendum (gaining a majority vote in favour of its adoption), the Council will be in breach of its statutory duty under the Town and County Planning Act 1990 if it does not bring it into force (i.e. 'make' it). As the legislation concerning the recommendation is quite explicit there is no way of mitigating this risk if it is found to be in conformity with EU obligations and the Convention Rights.
- (b) If the Seaford Neighbourhood Plan fails at referendum, the Council would not be in breach of its duty not to 'make' it.

No new risks will arise if the recommendations are implemented.

9 Equality analysis

9.1 Equality analysis has been submitted.

10 Environmental sustainability implications

10.1 The Seaford Neighbourhood Plan is supported by a Sustainability Appraisal incorporating a Strategic Environmental Assessment, ensuring the Plan is economically, socially and environmentally sustainable, and that it meets European sustainability obligations.

11 Background papers

11.1 The background papers used in compiling this report were as follows:

- Seaford Neighbourhood Plan
- Sustainability Appraisal incorporating the Strategic Environmental Assessment
- Examiner's Report
- Summary of Representations (made at Regulation 16)
- Decision Statement (Regulation 18)

Each paper is located in the Seaford section of the Neighbourhood Planning page:

<https://www.lewes-eastbourne.gov.uk/planning-policy/neighbourhood-planning/>