

Report to:	Lead Cabinet Member
Date:	13 May 2021
Title:	‘Making’ the Chailey Neighbourhood Plan
Report of:	Ian Fitzpatrick, Director of Regeneration and Planning and Deputy Chief Executive
Cabinet member:	Councillor Emily O’Brien, Cabinet Member for Planning and Infrastructure
Ward(s):	Chailey, Barcombe and Hamsey ward
Purpose of report:	To consider whether the Chailey Neighbourhood Plan should be adopted by the District Council as part of the statutory development plan.
Decision type:	Non-key
Officer recommendation(s):	To recommend to Full Council that the Chailey Neighbourhood Plan is formally made and adopted as part of the statutory development plan for the district, following a majority ‘yes’ vote at referendum.
Reasons for recommendations:	To ensure that the Chailey Neighbourhood Plan is ‘made’ within the timeframe set out by the Neighbourhood Planning (General) Regulations 2012 (as amended)
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1.0 Introduction

- 1.1** The Localism Act 2011 introduced a right for local communities to shape their areas by enabling town and parish councils to prepare neighbourhood development plans. Neighbourhood planning has been enthusiastically taken up by 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.

- 1.2 Chailey Parish Council, with support and advice from Lewes District Council, has produced a neighbourhood plan that has subsequently undergone a successful examination and was subject to referendum on Thursday 6th May 2021. The Neighbourhood Plan should now be 'made' (or adopted) by Lewes District Council.
- 1.3 Once a neighbourhood plan has been 'made, it becomes part of the statutory development plan and sits alongside the Local Plan prepared by the local planning authority, and will be used in the determination of relevant planning applications for the area they cover (this is usually the parish area). The 'making' of the Neighbourhood Plan is a function of Full Council.

2.0 Background

- 2.1 The production of a neighbourhood plan must follow a regulatory process and the Planning and Compulsory Purchase Act as amended by the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012 (as amended) sets out this process and the key stages in the preparation of such plans.
- 2.2 In 2015, Lewes District Council received an application from Chailey Parish Council to designate the entire parish of Chailey as a neighbourhood area. Following public consultation, Lewes District Council designated the Chailey Parish as a neighbourhood area on 17th March 2015.
- 2.3 Chailey Parish Council prepared the Neighbourhood Plan with the benefit of extensive community input between 2016 and 2019, culminating in the submission of the Neighbourhood Plan for examination in February 2020. The independent examiner determined that the Neighbourhood Plan met the basic conditions and other statutory requirements as set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended), and subject to the modification proposed, recommended that the Neighbourhood Plan proceeds to referendum. This outcome was set out in the Examiner's Report received in July 2020.
- 2.4 The Chailey 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 March 2020 confirming that the local authority was satisfied that the Plan met the basic conditions and could proceed to referendum.
- 2.5 Following the outcome of the referendum with a majority 'yes' vote, the

neighbourhood plan comes into force as part of the development plan. However, the regulations provide that it must also be formally 'made' by Lewes District Council so that it continues to be part of the development plan for the Lewes District.

3.0 Referendum

- 3.1 The referendum enables the local community to vote on whether they support the Neighbourhood Plan or not. If there is a positive vote (more than 50% of the votes cast), the local planning authority is required by the Localism Act and provisions of the Neighbourhood Planning (General) Regulations 2012 (as amended) to 'make' a neighbourhood development plan within 8 weeks of the day following a successful referendum (i.e. 2nd July).
- 3.2 Due to restrictions as a result of the Covid-19 pandemic, the earliest date that the referendum on the Neighbourhood Plan could take place was Thursday 6th May 2021. At the referendum on 6th May 2021, the following question was posed to eligible voters in the Parish:

"Do you want Lewes District Council to use the neighbourhood development plan for Chailey Parish to help them decide planning applications in the neighbourhood area?"

- 3.3 The Chailey Neighbourhood Plan was successful at referendum. There was a 43.3% turnout for the referendum with 82.5% voting to support the plan and 17.5% voting against the plan. Therefore Lewes District Council is now under a statutory duty to 'make' the Chailey Parish Neighbourhood Plan.
- 3.4 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.
- 3.5 It is confirmed that the Chailey 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.

4.0 Consultation

- 4.1 The Chailey Neighbourhood Plan has undergone two public consultations under the Neighbourhood Planning (General) Regulations 2012 (as amended). This includes one consultation under Regulation 14 undertaken by the Qualifying Body in 2019 and a Regulation 16 consultation undertaken by the Local Planning Authority (Lewes District Council) in 2020.
- 4.2 The Parish Council carried out the statutory consultations (Regulation 14) on the draft plan between May and June 2019 and as a result, a number of amendments were then made to the Plan in order to respond to representations received from the consultation.
- 4.3 The Parish Council submitted the revised plan (Regulation 15), along with other statutory submission documents, to Lewes District Council in November 2019. A further statutory consultation (Regulation 16) took place (carried out by the District Council) between February and March 2020 where comments were invited on the submission documents.
- 4.4 Following the Regulation 16 consultation period, Lewes District Council (with the approval of Chailey Parish Council) appointed a suitably qualified and experienced independent examiner, Mr John Slater, to conduct the examination of the Chailey Neighbourhood Plan which took place between May and July 2020.

5.0 Corporate plan and council policies

- 5.1 The 'making' of the Chailey Neighbourhood Plan is consistent with the Lewes District Council Corporate Plan 2020-24, particularly in relation to the Council's commitment to *support communities in maintaining up to date Neighbourhood Plans*.

6.0 Financial appraisal

- 6.1 'Making' the Chailey Neighbourhood Plan will allow the Parish 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 Lewes District Council to Chailey Parish Council from applications approved after the Chailey Neighbourhood Plan is 'made' to spend on infrastructure required to support the development of the area.

- 6.2 There will be no other financial implications of making the Chailey Neighbourhood Plan.

7.0 Legal implications

- 7.1 The legislation governing the decision to adopt a Neighbourhood Plan proposal is contained within Section 38 of the Planning and Compulsory Purchase Act 2004 and Part 5 of the Neighbourhood Planning (General) Regulations 2012 (as amended).
- 7.2 Section 38A(4)(a) of the Planning and Compulsory Purchase Act 2004 requires the Council to 'make' a neighbourhood plan if more than half of those voting in a referendum have voted in favour of it. The making of a neighbourhood plan is therefore a legal requirement following a positive outcome of a referendum, save for narrow circumstances where adoption of the plan would breach, or otherwise be incompatible with, any habitats or human rights obligations.
- 7.3 As well as setting out the steps to be taken in connection with the earlier stages of the process, the Neighbourhood Planning (General) Regulations 2012 (as amended) also sets out the steps that 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 Implication checked JCS 2.04.21 IKEN 9113

8.0 Risk management implications

- 8.1 As the Chailey Neighbourhood Plan was 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') the Neighbourhood Plan. 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 habitats obligations and the Convention Rights.

9.0 Equality analysis

- 9.1 The 'making' of the Chailey Neighbourhood Plan is not expected to have any equalities impacts.

10.0 Environmental sustainability implications

- 10.1 Environmental and sustainability implications have been considered by the Examiner. The Chailey 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

sustainability obligations.

11.0 Appendices

- Appendix 1 – Chailey Neighbourhood Plan

12.0 Background papers

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

- Chailey Neighbourhood Plan
- Sustainability Appraisal incorporating the Strategic Environmental Assessment
- Examiners Report
- Summary of Representations (made at Regulation 16)
- Decision Statement (Regulation 18)

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

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