

Meeting:	Cabinet member infrastructure
Decision date:	Friday, 25 January 2019
Title of report:	Adoption of the Border Group neighbourhood development plan and consequential updates to the countywide policies map
Report by:	Neighbourhood Planning Manager

Classification

Open

Decision type

Non-key

Wards affected

Mortimer;

Purpose and summary

To make the Border Group neighbourhood development plan as part of the statutory development plan for Herefordshire and approve the consequential updates to the countywide policies maps.

To fulfil the legal duty to make /adopt the Border Group neighbourhood development plan and update the countywide policies map as part of the statutory development plan for Herefordshire. Council delegated authority for the making of the neighbourhood development plans, and consequential amendments to the countywide policies map, to the cabinet member infrastructure.

Recommendation(s)

That:

- (a) The Border Group neighbourhood development plan is made as part of the statutory development plan for Herefordshire; and**
- (b) The required consequential changes are made to the countywide policies map**

Alternative options

1. There are no alternative options to making or adopting the Border Group neighbourhood development plan following the legal requirements of a positive referendum result on 20 December 2018 and compliance with the European obligations and Human Rights conventions, as referred to in this report.

Key considerations

2. The relevant provisions of the Localism Act 2011 introduced new powers to allow local communities to prepare neighbourhood development plans and shape future development within their area. Herefordshire has positively supported communities to be involved in producing a neighbourhood development plan and currently has the greatest number being produced in a local authority area within England.
3. There are currently 110 plans being produced in Herefordshire (45 of which have now been Made) by parish councils and their local communities. These neighbourhood development plans will provide more locally detailed policies to support the delivery of the Herefordshire Local Plan – Core Strategy and guide development within the local parish until 2031.
4. All neighbourhood development plans are required to be legally compliant and meet a set of requirements referred to as ‘the basic conditions’; these are that they:
 - Have regard to national policies and advice contained in guidance issued by the Secretary of State;
 - Contribute to the achievement of sustainable development;
 - Be in general conformity with the strategic policies contained in the development plans for the area (Herefordshire Local Plan – Core Strategy);
 - Do not breach, and be otherwise compatible with EU obligations;
 - Not be likely to have a significant effect on a European site either alone or in combination with other plans or projects.
5. The neighbourhood area of Border Group was designated on 18 July 2013; this follows the administrative boundary of Border Group of parishes. The Border Group neighbourhood development plan was prepared by Border Group Parish Council with the assistance of a steering group and the local community.
6. The Border Group neighbourhood plan contains 5 objectives and 22 policies to guide future development within the parish. The plan does have settlement boundaries for three settlements; Adforton, Lingen and Walford and highlights Brampton Bryan. These settlements have been indicated within the local plan for proportional growth under policy RA2.
7. The plan was submitted to Herefordshire Council on 12 March 2018 and publicised under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012. This consultation period took place between 16 March and 27 April 2018 where representations were invited. 17 in total were received.

8. In May 2018, Deborah McCann BSc MRICS MRTPI Dip Arch Con Dip LD was appointed by Herefordshire Council, with consent of the parish council, to undertake the independent examination of the Border Group neighbourhood development plan. The examiner was appointed via the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) set up in 2013 to enable Local Planning Authorities to source independent examiners. Three potential examiners were provided for selection. Fee rates were the same and the examiner was selected by the parish council based on experience.
9. The examiner's report concluded that subject to making some minor modifications, the neighbourhood development plan meets the 'basic conditions' and the other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990. Therefore recommended that it should proceed to a referendum. On 23 October 2018, the 'Decision Statement'; a report outlining the examiner's modification and confirming that the plan can proceed to referendum was published.
10. All neighbourhood development plans are required to gain a majority of 50% plus one in favour at a local referendum in order to be 'made'/ adopted by the local planning authority. If the plan received a positive result then the local planning authority have a legal duty to bring the plan into force.
11. A referendum was held on the 20 December 2018. 21.45% of the electorate voted within the referendum and the results were as follows;

Question in referendum	Number of Votes	
	Yes	No
Do you want Herefordshire Council to use the neighbourhood plan for Border Group to help it decide planning applications in the neighbourhood area?	87	31
73.7% of those voting have voted in favour of the Border Group neighbourhood development plan.		

The final plan is available at:

https://www.herefordshire.gov.uk/download/downloads/id/16321/neighbourhood_development_plan_october_2018.pdf

12. On adoption of the Border Group neighbourhood development plan, there will also be a requirement to update the countywide policies map which accompanies the local plan. This policies map illustrates geographically the application of the policies in the adopted development plan for the county. The adoption of the policies map is to ensure compliance with regulation 9 of the Town and Country Planning (Local Planning) (England) Regulations 2012.
13. The update to the policies map will reflect the range of statutory development plan policies set out in both the local plan and the Border Group neighbourhood development plan for the parishes within the Border Group. Such updates to the policies map are likely to be required each time a neighbourhood development plan is adopted. The updated countywide policies map is available at:

14. Due to the substantial number of neighbourhood development plans being produced within Herefordshire and the legal duty to adopt them following a positive referendum result, approval was gained at Council on 20 May 2016 to delegate all future neighbourhood development plan adoptions to the Cabinet Member – Infrastructure. A regular update report will be presented to council outlining the neighbourhood development plans referendum results and date of their adoption within the period.

Community impact

15. The Border Group neighbourhood development plan has been produced by the parish council with assistance from the local community. The examiner commented that it was clear that every effort has been made to engage the community and that this effort had been sustained over a long period. Community support has also been demonstrated for the plan during the referendum in which the turnout was 21.45% and the supportive vote was 73.7%.
16. The adoption of the Border Group neighbourhood development plan will have a positive impact on the local community. The policies and proposal they have helped to develop over the past 2 years will become statutory planning policy for the area.

Equality duty

17. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
18. There are no direct implications on equality within this report. The neighbourhood development plan has been subject to a requirement within the 'basic conditions' not to breach any EU obligations or any Human Right obligations. This was tested at the independent examination.

Resource implications

19. There are no further financial implications as a result of adopting the plan. The local planning authority is responsible for financing the independent examination and referendum of each neighbourhood development plan. This is funded by a grant from central government.

Legal implications

20. Section 38A(1) of the Planning and Compulsory Purchase Act 2004 (as amended) (as enabled by Part 6, Chapter 3, Section 116 of the Localism Act 2011), grants local communities the right to set polices through a neighbourhood plan as part of the planning system for determining planning applications.
21. Neighbourhood planning is not a legal requirement but a right which communities in England can choose to use but on adoption of the Neighbourhood Development Plan it forms part of the statutory development plan and sits alongside the Local Plan.
22. Under section 38A (4) of the Planning and Compensation Act 2004 (as amended), local planning authorities have a legal duty to make a neighbourhood development plan following a positive referendum result. This is subject to the limit exception, in sub section (6), whereby the council need not adopt the plan if it considers that it would be incompatible with any European obligations or Convention rights (within the meaning of the Human Rights Act 1998). In this regard, it is noted that the above Equality duty section of this report, at paragraph 19, states that such requirements have been considered and satisfied. Following the European judgment *People of Wind and Sweetman vs Coillte* (C-323/17) the Council have sought legal advice which has indicated that there is no 'likely significant effects' and therefore no breach of the European obligation on Habitats, this has caused a delay in the final making of the plan over the prescribed period. However, it has now been concluded that to not make/adopt the Border Group neighbourhood development plan would be in breach of these statutory provisions.
23. The countywide policies map illustrates geographically the application of the policies in the adopted development plan. The adoption of the policies map is to ensure compliance with Regulation 9 Town and Country (Local Planning) (England) Regulations 2012.
24. In accordance with the provisions of Regulation 19 of the Neighbourhood Planning (General) Regulations 2012, once the neighbourhood plan is formally made by the council's 'decision statement', setting out the decision to make the plan and their reasons for it, it is required to be published on the council's website, and elsewhere if it's considered necessary, to publicise such decision to those who live and work in the neighbourhood area.
25. Under Part 3 Section 1 of the Constitution, development plan documents under Section 15 of the Planning and Compulsory Purchase Act 2004 are a function of the Council under the budget and policy framework rules. On 20 May 2016 Council made a resolution to delegate authority to the Cabinet Member – Infrastructure to undertake future adoption of neighbourhood development plans and to approve any consequential amendments to the countywide policies map.

Risk management

26. The risks of not approving this neighbourhood development plan would mean that the council would be in breach of their legal duty.

Consultees

27. None in relation to this report. The Border Group neighbourhood development plan itself has been subject to extensive consultation during its production.

Appendices

None

Background papers

None