

Adoption of the revised Sutton St Nicholas neighbourhood plan and consequential updates to the countywide policies map

Decision maker: Cabinet member finance, corporate services and planning

Decision date: 14 March 2023

Report by: Neighbourhood Planning Service Manager

Classification

Open

Decision type

Non-key

Wards affected

Sutton Walls;

Purpose

To make the revised Sutton St Nicholas 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 revised Sutton St Nicholas neighbourhood development plan and update the countywide policies map as part of the statutory development plan for Herefordshire.

On 20 May 2016, the Council delegated authority to the cabinet member for decisions on all further neighbourhood development plans adoptions and amendments to the countywide policies map.

Recommendation(s)

That:

- a) The revised Sutton St Nicholas neighbourhood development plan be 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 revised Sutton St Nicholas neighbourhood development plan following the determination within the examiner's report (dated 8 February 2023) that a referendum would not be required. This is because the modifications suggested to the current made neighbourhood development plan were not considered significant or substantial to change the nature of the plan. As a result, Herefordshire Council are required to make/adopt the revised neighbourhood development plan. This is subject to compliance with the European obligations and Human Rights conventions, as referred to in this report.

Key considerations

2. The relevant provisions of the Local Act 2011 introduced new powers to allow local communities to prepare neighbourhood development plans and shape future development within their area. Herefordshire Council has positively supported communities to be involved in producing a neighbourhood development plan and currently has the greatest number of produced and adopted in any local authority area within England.
3. There are currently 113 plans being produced in Herefordshire; 86 of which have been made /adopted. These plans are produced by parish councils and their local communities and 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:
 - a) Have regard to national policies and advice contained in guidance issued by the Secretary of State;
 - b) Contribute to the achievement of sustainable development;
 - c) Be in general conformity with the strategic policies contained in the development plan for the area (Herefordshire Local Plan – Core Strategy);
 - d) Do not breach and is otherwise compatible with EU obligations, as incorporated into UK law; and
 - e) Do not breach the requirements of the Conservation of Habitats and Species Regulation 2017.
5. The Sutton St Nicholas NDP was first adopted/made on 9 March 2017. In April 2022, the parish council decided that the plan needed to be revised to take account of issues raised during the monitoring of the plan in its first five years. The Neighbourhood Planning Act 2017 identifies the circumstances that made arise which a plan may need to be reviewed and a proportionate process for that review to be undertaken. As part of the examination, the examiner determines whether the reviewed plan includes minor, material or significant modifications which would change the nature of the current made/adopted plan.
6. The revised Plan was submitted to Herefordshire Council on 22 September 2022, and the consultation under Regulation 16 took place between the 27 September to 8 November 2022, where the Plan was publicised and representations invited.
7. The modifications suggested to the adopted/made Plan included minor rewording of the objectives, six new policies to include agricultural and forestry developments; householder extensions; renewable and low carbon energy; key views; heritage and communication

infrastructure. Some policies have also been subject to minor amendments to add local detail. No additional sites have been included within the revised plan.

8. On 11 November 2022, Ann Skippers MRTPI was appointed by Herefordshire Council, with the consent of the parish council, to undertake the examination of the revised Sutton St Nicholas neighbourhood development plan and to prepare a report of the independent examination. 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 concludes that subject to making the minor modifications recommended by the examiner, the plan meets the basic conditions set out in the legislation and that Herefordshire Council should make the revised Sutton St Nicholas NDP.
10. Each of the recommendations made within the examiner's report and the reasons for them have been considered and the required environmental assessments have been undertaken. On 9 February 2023, the 'Decision Statement'; a report outlining the examiner's modifications was published. In line with the Neighbourhood Planning Act 2017 and Section 38(A) of the Planning and Compulsory Purchase Act 2004 (as amended), Herefordshire Council have a statutory duty to make the revised Sutton St Nicholas neighbourhood development plan.
11. The [final plan](#) is available on the Herefordshire Council website.
12. On adoption of the revised Sutton St Nicholas 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 County Planning (Local Planning) (England) Regulations 2012.
13. The update of the policies map will reflect the range of statutory development plan policies set out in both the local plan and the Sutton St Nicholas neighbourhood development plan. Such updates to the policies map are likely to be required each time a neighbourhood development plan is adopted.
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 and all other legal duties being met, approval was gained at Council on 20 May 2016 to delegate all future adoptions to the Cabinet Member – Infrastructure.

Community impact

15. The Sutton St Nicholas neighbourhood development plan has been produced by the parish council with assistance from the local community. The examiner commented that the parish council had undertaken consultation and engagement on the plan satisfactorily.
16. The adoption of the Sutton St Nicholas neighbourhood development plan will have a positive impact on the local community. The policies and proposals they have helped to develop over recent years will become statutory planning policy for the area. The local community now have more direct involvement in the planning policy making and the future growth of their area.
17. One of the council's priorities within the County Plan is to ensure that Herefordshire's need for more genuinely affordable homes is delivered through carefully planned policies for growth. The provision of affordable housing could assist provisions and life changes for those looked after

children or those leaving care in the future. Neighbourhood development plans and the revised local plan will ensure the delivery of sustainable development which meets the needs of local people whilst respecting our heritage and natural environment.

Environmental Impact

18. All neighbourhood plans seek to deliver the council's [environmental policy commitments](#). They contain planning policies and proposals which are in conformity with the Core Strategy and aligns to the following success measures in the County Plan;
 - a) Increase flood resilience and reduce levels of phosphate pollution in the county's river
 - b) Reduce the council's carbon emissions
 - c) Work in partnership with others to reduce county carbon emissions
 - d) Improve the air quality within Herefordshire
 - e) Improve residents' access to green space in Herefordshire
 - f) Improve energy efficiency of homes and build standards for new housing
 - g) Increase the number of short distance trips being done by sustainable modes of travel – walking, cycling, public transport
19. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.

Equality duty

20. 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.
21. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. All neighbourhood development plans are required by regulations to engage with all sectors of the community and report within a [Consultation Statement](#). This is tested as part of the independent examination. The neighbourhood development plan has been subject to a requirement within the 'basic conditions' not to breach any Human Rights obligations. This was tested as part of the independent examination.

Resource implications

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

Legal implications

23. The Localism Act 2011 introduced neighbourhood development plans which once adopted become part of the statutory development plan.
24. Neighbourhood development plans can establish general planning policies for the development and use of land in a designated neighbourhood area. The plan can be detailed or general and can be taken forward by two types of body being town and parish councils or neighbourhood forums.
25. The Local Planning Authority must provide support to help people develop the neighbourhood development plan and organise the independent examination necessary before the plan can be finalised and voted on in a local referendum.
26. Neighbourhood planning is not a legal requirement but a right which communities in England can choose to use, however the adoption of the neighbourhood development plan forms part of the statutory development plan and sits alongside the Local Plan.
27. Neighbourhood development plans do not take effect unless there is a majority of support in a referendum of the neighbourhood area community. They also have to meet a number of conditions (known as the Basic Conditions) before they can be put to the community referendum and legally come into force. These conditions are to ensure they are legally compliant and take account of the wider policy considerations. The conditions are:-
 - a) They must have regard to national planning policy
 - b) They must contribute to the achievement of sustainable development
 - c) They must have special regard for any listed buildings and conservation areas
 - d) They must be in general conformity with strategic policies in the development plan for the areas and
 - e) They must be compatible with EU obligations and human rights requirements.

In this regard, it is noted that the above Equality duty section of this report states that such requirements have been considered and satisfied.

28. In line with the Neighbourhood Planning Act 2017 and Section 38(A) of the Planning and Compulsory Purchase Act 2004 (as amended), the Local Planning Authority has a statutory duty to make any revised neighbourhood development plan if the examiner determines that there have been no significant or substantial modifications to the current plan which would require a referendum.
29. The Local Planning Authority has a statutory duty to bring the same into force within five weeks of the publication of the Examiner's Report (other than where a legal challenge regarding the examination has been brought or where the LPA considers that to make the plan would breach or be incompatible with any EU or Human Rights obligations). There has been no such challenge to the examination in this case.

30. This report concludes that the legal requirements to make of adopt the revised Sutton St Nicholas neighbourhood Plan have been met. Accordingly, to not make or adopt the revised Sutton St Nicholas neighbourhood plan would be in breach of these statutory duty in this regard.
31. The countywide policies map illustrates geographically the application of the policies within the adopted development plan. The adoption of the policies map is to ensure compliance with Regulation 9 of the Town and Country (Local Planning) (England) Regulation 2012.
32. In accordance with the provisions of Regulation 19 of the Neighbourhood Planning (General) Regulation 2012 (as amended), as soon as possible after deciding to make a neighbourhood development plan under Section 38A(4) of the 2004 Act the Council must publish the Council's Decision Statement along with the location of where it can be inspected, on the Council's website and elsewhere if it is considered necessary. This is to bring the decision to the attention of those who live or work in the neighbourhood area.
33. Under Regulation 20 as soon as possible after making the neighbourhood development plan under Section 38A(4) of the 2004 Act, the Council must publish on the Council's website the neighbourhood development plan and details of where and when it may be inspected.
34. Under Part 3 Section 1 (2a table of functions) of the Constitution, development plan documents under section 15 of the 2004 Act are a function of the Council under the budget and policy framework rules. On 20 May 2016, the Council made a resolution to delegate authority to the Cabinet Member –Infrastructure and transport to undertake future adoption of neighbourhood development plans and to approve any consequential amendments to the countywide policies map. The portfolio holder for planning has now changed to the Cabinet Member Finance, Corporate Services and Planning. The Council's May 2016 delegation is now exercisable by the Cabinet Member for Finance, Corporate Services and Planning and the recommendation of this report does not amend or extend the scope of that delegation. In this instance the delegated authority is to undertake the adoption of the Sutton St Nicholas neighbourhood development plan.

Risk management

35. The risks of not approving this neighbourhood development plan would mean that the council would be in breach of their legal duty. The allocations within Neighbourhood development plans can also contribute to the Council's five year housing land supply, not approving neighbourhood development plan can placed added risk on the county's ability to meet this target each year.

Consultees

36. None in relation to this report. The revised Sutton St Nicholas neighbourhood development plan itself has been subject to extensive consultation during its production. The Parish Council have produce a Consultation Statement outlining the consultation undertaken and this has been subject to the independent examination.

Appendices

None.

Background papers

Revised Sutton St Nicholas Neighbourhood Development Plan

Report Reviewers Used for appraising this report:

Governance	John Coleman	Date 15/02/2023
Finance	Louise Devlin	Date 17/02/2023
Legal	Ingrid Lekaj	Date 20/02/2023
Communications	Luenne Featherstone	Date 15/02/2023
Equality Duty	Harriet Yellin	Date 17/02/2023
Procurement	Lee Robertson	Date 17/02/2023
Risk	Kevin Lloyd	Date 20/02/2023
Approved by	Ross Cook	Date 28/02/2023