

Adoption of the revised Bartestree with Lugwardine Neighbourhood Plan and the consequential updates to the countywide policies map

Decision maker: Cabinet member environment

Decision date: 4 August 2023

Report by: Karla Johnson, Senior Planning Officer

Classification

Open

Decision type

Non-key

Wards affected

Hagley;

Purpose

To make the revised Bartestree with Lugwardine Group neighbourhood development plan (NDP) 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 Bartestree with Lugwardine Group neighbourhood development plan and update the countywide policies map as part of the statutory development plan for Herefordshire.

Recommendation(s)

That:

- a) **The revised Bartestree with Lugwardine Group 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 Bartestree with Lugwardine Group neighbourhood development plan following the legal requirements of a positive referendum result on 22 June 2023 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 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; 96 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 Bartestree with Lugwardine Group NDP was first adopted/made on 1 December 2016. In January 2021 the Group 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 in 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 Bartestree with Lugwardine Group neighbourhood development plan contains 13 objectives. These result in 15 general policies to guide future development within the parish. Bartestree and Lugwardine villages are highlighted within the Core Strategy for growth. The plan seeks to guide any development within the designation settlement boundaries, 3 site allocations and existing commitments through planning permissions.
7. The plan was submitted to Herefordshire Council on 13 October 2022 and publicised under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012 (as amended). This consultation period took place between 18 October and 29 November 2022 where representations were invited. 12 representations were received in total; 1 from local residents.

8. The modifications suggested to the adopted/made Plan where the Vision and some objectives have been reworded and additions made to add clarification. All made policies have had some modifications made. 6 new policies have been added including settlement boundary gap, site allocations, housing mix, community facilities, landscape views, and further criteria to support and enhance water quality. These changes were considered to constitute 'significant' in nature in terms of the regulations and this was concurred by Bartestree with Lugwardine Group Parish Council.
9. On 16 January 2023, Ann Skippers MRTPI was appointed by Herefordshire Council, with consent of the Group Parish Council to undertake the independent examination of the revised Bartestree with Lugwardine 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.
10. 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, and therefore recommended that it should proceed to a referendum. On 17 March 2023, the 'Decision Statement'; a report outlining the examiner's modifications and confirming that the plan can proceed to referendum, was published.
11. 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, if compatible with all other legal duties.
12. At the referendum on the 22 June 2023, 12.87% of the electorate voted within the referendum and the results were as follows:

	Number of votes	
	Yes	No
Do you want Herefordshire Council to use the neighbourhood plan for Bartestree with Lugwardine Group to help it decide planning applications in the neighbourhood area?	200	31

Therefore 86.58% of those voting have voted in favour of the revised Bartestree with Lugwardine Group neighbourhood development plan.

13. The [final plan](#) is available on the Herefordshire Council website.
14. On adoption of the revised Bartestree with Lugwardine 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 County Planning (Local Planning) (England) Regulations 2012.
15. The update of the policies map will reflect the range of statutory development plan policies set out in both the local plan and the revised Bartestree with Lugwardine Group neighbourhood development plan. Such updates to the policies map are likely to be required each time a neighbourhood development plan is adopted.
16. 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 (now Cabinet Member – Environment).

Community impact

17. The revised Bartestree with Lugwardine Group 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. Community support has also been demonstrated for the plan during the referendum in which the turnout was 12.87% and the supportive vote was 86.58%.
18. The adoption of the revised Bartestree with Lugwardine Group 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 has more direct involvement in the planning policy making and the future growth of their area.
19. One of the council's priority 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

20. 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
21. 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

22. 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.
23. 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

24. 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

25. Section 38A(1) of the Planning and Compulsory Purchase Act 2004 (as amended) (the 2004 Act) (as enabled by Part 6, Chapter 3, Section 116 of the Localism Act 2011), grants local communities the right to set policies through a neighbourhood development plan as part of the planning system for determining planning applications which once adopted become part of the statutory development plan.
26. 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 (town and parish councils or neighbourhood forums).
27. 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.
28. 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.
29. Neighbourhood development plans do not take effect unless there is a majority of support in a referendum of the neighbourhood area community under section 38A(4) of the 2004 Act. 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.

30. 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.
31. If the majority of those who vote in the referendum are in favour of the neighbourhood development plan, the Local Planning Authority have a statutory duty to bring the same into force within eight weeks of the referendum (other than where a legal challenge regarding the referendum 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 have been no such challenge to the referendum in this case.
32. This report concludes that the legal requirements to make of adopt the revised Bartestree with Lugwardine Group neighbourhood development Plan have been met. Accordingly, to not make or adopt the revised Bartestree with Lugwardine Group neighbourhood development plan would be in breach of these statutory duty in this regard.
33. 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.
34. 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 on the Council's website and elsewhere if it is considered necessary, to bring the decision to the attention of those who live or work in the neighbourhood area, the Council's Decision Statement, setting out the decisions to make the plan and their reasons for it, and where it can be inspected.
35. 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. As a consequence of receiving the examiner's report for the Bartestree with Lugwardine Group Neighbourhood Plan, Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that the local planning authority must have regard to the adopted neighbourhood plan, as a material consideration in the determination of planning applications within the parish of Bartestree with Lugwardine Group.

36. 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 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 Environment. The Council’s May 2016 delegation is now exercisable by the Cabinet Member for Environment 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 revised Bartestree with Lugwardine Group neighbourhood development plan.

Risk management

37. 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 place added risk on the county’s ability to meet this target each year.

Consultees

38. None in relation to this report. The revised Bartestree with Lugwardine Group neighbourhood development plan itself has been subject to extensive consultation during its production. The Parish Council have produced a Consultation Statement outlining the consultation undertaken and this has been subject to the independent examination.

Appendices

None

Background papers

[Revised Bartestree with Lugwardine Group Neighbourhood Plan](#)

Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	John Coleman	Date 14/07/2023
Finance	Wendy Pickering, Judith Pickering	Date 14/07/2023
Legal	Mark Sorrentino	Date 14/07/2023
Communications	Luenne Featherstone	Date 14/07/2023
Equality Duty	Harriet Yellin	Date 14/07/2023
Procurement	Lee Robertson	Date 05/07/2023
Risk	Kevin Lloyd	Date 03/07/2023
Approved by	Ross Cook	Date 14/07/2023