

# SWANLEY NEIGHBOURHOOD PLAN

Cabinet - 18 April 2024

**Report of:** Deputy Chief Executive, Chief Officer - Planning & Regulatory Services

**Status:** For Decision (Cabinet)

**Key Decision:** Yes

**Executive Summary:** This report provides an overview of the Swanley Neighbourhood Plan (SNP) and recommends that it proceeds to referendum, subject to modifications, followed by it being 'made' at Full Council, if the referendum's outcome is positive.

**This report supports the Key Aim of:**

Protecting the Green Belt

Supporting and developing the local economy

Supporting the wellbeing of residents, businesses and visitors

Ensuring that Sevenoaks District remains a great place to live, work and visit

**Portfolio Holder:** Cllr. Simon Reay

**Contact Officer** Vivienne Riddle, Ext. 7357

**Recommendation to Cabinet:**

1. That the independent examiner's report at Appendix A be noted.
2. That the SNP be modified according to the examiner's recommendations, including any minor proposed modifications to be agreed with Swanley Town Council, and be approved.
3. That the decision statement at Appendix C and the decision to progress the SNP to referendum be approved.
4. That a referendum takes place on a date to be arranged.
5. That in the event the referendum result on the SNP is positive (more than 50% of the vote) the Council formally 'makes' (adopts) the final referendum version of the SNP, so that it has effect as part of the statutory Development Plan for the Neighbourhood Area. This will be passed to Full Council.

**Reason for recommendation:** To progress the Swanley Neighbourhood Plan.

## **Introduction and Background**

- 1 SDC is supporting a number of towns and parishes who are at various stages of developing neighbourhood plans. There are 13 'designated areas', which is the first stage of producing a neighbourhood plan.
- 2 The 'designated areas' for neighbourhood plans in Sevenoaks District are: Sevenoaks Town, Swanley, Edenbridge, Ash-cum-Ridley, Otford, Badgers Mount, Fawkham, Seal, Hextable, Halstead, Hartley, Chevening and Shoreham. They are all at different stages of the process, with only Sevenoaks Town's 'made' to date.
- 3 For context, in Kent, there are 31 'made' Neighbourhood Plans - Tunbridge Wells has 9, Maidstone has 7, Ashford has 6, Dover and Swale have 2 each, Thanet has 3, and Dartford and Folkestone & Hythe have 1 each.
- 4 This report relates to the Swanley Neighbourhood Plan (SNP), which is the second neighbourhood plan to have progressed to its current stage, which is where we, as the local planning authority, decide what action to take in response to the recommendations of the examiner.

## **Stages of the Swanley Neighbourhood Plan**

- 5 The Swanley Neighbourhood Plan originally commenced with the designation of the neighbourhood area in November 2014. The neighbourhood area comprises the whole of the parish area covered by Swanley Town Council (STC) (the qualifying body). Following engagement with local residents and businesses over a number of years, STC proceeded to the pre-submission consultation and publicity stage as required under the Neighbourhood Planning (General) Regulations 2012 (as amended), undertaking it between 09 January 2023 and 20 February 2023. It was then submitted to us in order to proceed to consultation under Regulation 16. In accordance with the regulations, we publicised the neighbourhood plan over a 6 week period, between 30 November 2023 and 11 January 2024. We also responded to this consultation via DCAC and Cabinet but the response was subject to final agreement by the Portfolio Holder, due to the timings of meetings in relation to the consultation deadline.
- 6 The submitted Swanley Neighbourhood Plan sets out a Vision for the future of the parish of Swanley, as well as objectives and planning policies. If successfully 'made', these policies will be used to determine planning applications locally and will carry the same weight as Local Plan policies.
- 7 In addition to the submitted version of the Swanley Neighbourhood Plan (October 2023) it included the following documents:
  - A map on page 3 of the neighbourhood plan identifying the area to which the proposed neighbourhood plan relates.

- Consultation Statements (November 2022 and October 2023)
- A Basic Conditions Statement (October 2023) and the Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment Screening (appended)
- The Swanley Village Design Guide (February 2021)

## Examination

- 8 Following the consultation, the Swanley Neighbourhood Plan was sent for examination by David Hogger BA MSc MRTPI MCIHT of Intelligent Plans and Examinations Ltd, whose appointment was mutually agreed with Swanley Town Council. It was received by IPE Ltd on 30 January 2024.
- 9 The role of the independent examiner is to assess whether the neighbourhood plan (NP) meets certain statutory requirements, known as the 'Basic Conditions'. These state that NPs should:
  - 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 plan for the area;
  - not breach, and is otherwise compatible with, EU obligations (including Human Rights Act);
  - meet prescribed conditions and comply with prescribed matters; and
  - not breach requirements of the Conservation of Habitats and Species Regulations.
- 10 Following submission, the examiner sent a letter outlining procedural matters and a list of questions for us and Swanley Town Council to respond to. The letter, questions and responses are all available to view on our website.
- 11 It was followed by a 'fact-check' report on Friday 22 March, which was sent to us and Swanley Town Council; this is an informal stage, providing the opportunity to pick up on any purely factual errors within the examiner's report. Responses were requested, collated in a single document, by 05 April.
- 12 The 'fact-check' report was received just prior to the last DCAC on 26 March. An update on the Swanley Neighbourhood Plan comprised an element of the Local Plan update (paragraphs 49-51 of agenda item 6). Following receipt of the fact-check report, a verbal update was provided confirming its receipt, noting its purpose and setting out the examiner's recommendation to proceed to referendum, subject to 19 limited plan modifications. Cllr Darrington at DCAC noted that the Town Council were happy with the report and wish to proceed to referendum as soon as possible.
- 13 Following DCAC a limited number of factual changes were suggested to the examiner in relation to this report, being jointly provided with Swanley Town Council on the 03 April 2024. The examiner accepted those suggestions and

issued his final report on 04 April 2024. As such the examination has now concluded.

### Post-examination stage

- 14 The current stage is to decide what action to take in response to the examiner's recommendations. The regulations set out this must take place within 5 weeks, starting the day after receipt of the report, unless a different date has been agreed with the qualifying body.
- 15 The examiner's recommendations in respect of a neighbourhood plan (NP) are different to those made by inspectors when considering local plans. In the case of a NP, instead of the requirement of meeting the test of 'soundness', it must meet a 'Basic Conditions' test, providing more scope for interpretation.
- 16 Neighbourhood plans, when finally approved (and then referred to as a 'made' neighbourhood plan), become part of the development plan for the area to which they geographically apply, which means that they are a key document in the determination of planning applications in that area.
- 17 The legal context for preparation of neighbourhood plans is provided by:
  - the Localism Act 2011  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5959/1896534.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5959/1896534.pdf),
  - the Neighbourhood Planning Regulations 2012 (as amended)  
[https://www.legislation.gov.uk/uksi/2012/637/pdfs/uksi\\_20120637\\_en.pdf](https://www.legislation.gov.uk/uksi/2012/637/pdfs/uksi_20120637_en.pdf),
  - and The Neighbourhood Planning Act 2017 (as amended)  
<https://www.legislation.gov.uk/ukpga/2017/20/part/1/crossheading/neighbourhood-planning/enacted>.
- 18 Policies in neighbourhood plans need to be in general conformity with the strategic policies of the local plan, as well as having regard to the National Planning Policy Framework (NPPF) and any other relevant legislation.
- 19 A copy of the examiner's report can be viewed via the link at Appendix A.
- 20 The examiner's report recommends that the neighbourhood plan, once modified, proceed to referendum on the basis that it has met all the relevant legal requirements including the basic conditions test. The report sets out 19 proposed modifications to be incorporated into the Plan.
- 21 The draft track-changed Referendum version of the Swanley Neighbourhood Plan attached at Appendix D and the Schedule of Proposed Modifications and Minor Proposed Modifications attached at Appendix B includes the examiner's proposed modifications only.
- 22 In addition, the examiner set out at paragraph 4.57 that *'amendments to the text can be made consequential to the recommended modifications, alongside any other minor non-material changes, factual up-dates, or corrections in agreement*

*between the Parish and District Council. I note that a number of respondents, including the District Council, Kent County Council and Crockenhill Parish Council make several suggestions with regard to minor amendments. These would not be material changes but would add further polish to the document’.*

- 23 The final Referendum version of the Swanley Neighbourhood Plan will include any other minor proposed modifications (MPMs) provided by Swanley Town Council and agreed with us at officer level.
- 24 The majority of the examiner’s recommended modifications relate to matters of clarity, accuracy and precision or to ensure policies reflect national advice and are designed to ensure that the Plan fully accords with national policy. They include the deletion of policy SwT4 – Car and Cycle Parking, which set out parking standards, however the examiner concluded that he was not satisfied that the policy was in general conformity with the strategic policies of the Development Plan (paras 4.47-4.50).
- 25 The examiner also considered whether the referendum area should extend beyond the designated area to which the plan relates and he concluded that it should not. Therefore, the referendum area corresponds with the Swanley Town Council administrative boundary.
- 26 Based on the examiner’s recommendations, it is recommended that the Swanley Neighbourhood Plan proceed to the next stage.

## **Referendum**

- 27 The next stage is to arrange the referendum on the Neighbourhood Plan. This is a simple yes/no vote, where the plan is ‘made’ (approved) if more than 50% of voters support the Plan.
- 28 A person is entitled to vote if at the time of the referendum, they meet the eligibility criteria to vote in a local election for the area and if they live in the referendum area.
- 29 The referendum would pose the question, ‘Do you want Sevenoaks District Council to use the Swanley Neighbourhood Plan to help it decide planning applications in the Swanley neighbourhood area?’
- 30 An Information Statement must be published 28 working days prior to the referendum polling day. This is effectively the minimum period of time to prepare and run the referendum. The referendum must also be held within 56 working days of the date the Cabinet decision.
- 31 Referendum dates are being explored and it is likely that we can proceed to referendum in June/early July. As is now required, the referendum will require Voter ID to be provided by people voting in polling stations.
- 32 In terms of funding, the Council can claim £20,000 from central government when a decision statement (see section below) is issued, detailing the intention to send the plan to referendum (as set out under Regulation 18 of the Neighbourhood Planning (General) Regulations 2012).

- 33 The Council is required to make a 'decision statement' available to outline what action it proposes to take in response to the recommendations of the examiner. The Neighbourhood Planning (General) Regulations 2012, Regulation 18 requires the local planning authority to outline what action to take in response to the recommendations of an examiner made in a report under paragraph 10 of Schedule 4a to the Town and Country Planning Act 1990 (as applied by Section 38A of the Planning and Compulsory Purchase Act 2004). This decision statement will be made available, outlining the decision and the reasons for it and details of the referendum.

### **Conclusion and next steps**

- 34 The examiner's recommended modifications are reflected in the draft Referendum version of the SNP presented in Appendix D.
- 35 The Council must publish what action will be taken in response to the recommendations of an examiner, in the 'decision statement', a draft version of which is presented in Appendix C but which currently doesn't include a referendum date.
- 36 Subject to the Cabinet decision on the recommendations in this report, the Council will work with Swanley Town Council on the minor modifications, as referenced at para 4.57 of the examiner's report and arrange for a referendum to be held to ensure that the local community has the final say on whether the final Referendum version of the SNP comes into force or not.
- 37 The principal effect of this is that, once 'made' (or adopted) the SNP will become part of the statutory 'development plan' for the area after a positive referendum. The local planning authority (SDC) must formally make the neighbourhood plan within 8 weeks of the positive referendum outcome.
- 38 There are narrow circumstances where the local planning authority is not required to make the neighbourhood plan. These are where it considers that the making of the neighbourhood plan would breach, or otherwise be incompatible with, any EU or human rights obligations (see section 61E(8) of the Town and Country Planning Act 1990 Act as amended). Paragraph: 064  
Reference ID: 41- 064-20170728
- 39 It is therefore requested that where the referendum result is positive, then the SNP can, post-referendum, go directly to be considered at Full Council.

### **Other options Considered and/or rejected**

Note the examiner's report and the recommended amendments, but do not agree the decision statement and do not progress the SNP to referendum. As noted, the examiner's report is largely positive, and it is considered that the SNP should proceed to referendum.

## **Key Implications**

### Financial

The Council can claim £20,000 from central government when a decision statement is issued, detailing the intention to send the plan to referendum. This will largely cover the cost of holding the referendum.

### Legal Implications and Risk Assessment Statement.

Accepting the recommendations in this report will fulfil the Council's duties under the Town and Country Planning Act 1990, as amended by the Localism Act 2011, the Housing and Planning Act 2016, and the Neighbourhood Planning Act 2017. The recommendations also comply with the Neighbourhood Planning (General) Regulations 2012 as amended.

### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users. Furthermore, the Public Sector Equality Duty applies to town councils: Swanley Town Council will be responsible for demonstrating due regard to this in the production of a neighbourhood plan.

### Climate Change Implications

The decisions recommended through this paper have a remote or low relevance to the council's ambition with respect to climate change. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment.

## **Conclusions**

The examiner's final report recommends that it proceeds to referendum, subject to a number of modifications. We could choose not to issue a decision statement and not progress the SNP to referendum but there is nothing to support such an approach. As such, this report recommends that we proceed in accordance with those recommendations and should the referendum produce a positive outcome, that the neighbourhood plan be 'made' at Full Council.



## **Appendices**

Appendix A - SNP - Examiner's report

[https://www.sevenoaks.gov.uk/info/20069151/neighbourhood\\_planning/703/swanley\\_neighbourhood\\_plan](https://www.sevenoaks.gov.uk/info/20069151/neighbourhood_planning/703/swanley_neighbourhood_plan)

Appendix B - Draft Schedule of Proposed Modifications and Minor Proposed Modifications, showing examiner's modifications only (attached)

Appendix C - Draft decision statement (attached)

Appendix D - Draft Referendum Version of SNP (showing examiner's modifications only)

## **Background Papers**

All background documents are available on the Swanley Neighbourhood Plan webpage.

[https://www.sevenoaks.gov.uk/info/20069151/neighbourhood\\_planning/703/swanley\\_neighbourhood\\_plan](https://www.sevenoaks.gov.uk/info/20069151/neighbourhood_planning/703/swanley_neighbourhood_plan)

**Richard Morris**

**Deputy Chief Executive and Chief Officer - Planning and Regulatory Services**