

Meeting date: 22 January 2019
Report to: Cabinet Member Managed Growth



Subject/report title: Knowle, Dorridge and Bentley Heath Neighbourhood Plan Independent Examination
Report from: Assistant Director – Growth and Development
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Wards affected:

- All Wards | Bickenhill | Blythe | Castle Bromwich | Chelmsley Wood |
 Dorridge/Hockley Heath | Elmdon | Kingshurst/Fordbridge | Knowle |
 Lyndon | Meriden | Olton | Shirley East | Shirley South |
 Shirley West | Silhill | Smith's Wood | St Alphege

Public/private report: Public

Exempt by virtue of paragraph: Select an Exemption paragraph from the Quick Parts drop-down list

1. Purpose of Report

- 1.1 To consider the report of the Independent Examiner; agree the Council's response to the recommended modifications; and consider whether the Neighbourhood Plan can proceed to a local referendum.

2. Decision(s) recommended

The Cabinet Member is asked to:

- (a) Agree the Council's responses to the Examiner's recommended modifications to the Knowle, Dorridge and Bentley Heath Neighbourhood Plan as set out in Table 1A of the Decision Statement Table at Appendix A.
- (b) Agree that the Knowle, Dorridge and Bentley Heath Neighbourhood Plan is modified in accordance with the Decision Statement Table (Tables 1A – 1F) at Appendix A and can proceed to referendum;
- (c) Accept the Examiner's recommendation that it is not necessary to extend the referendum area and that the most appropriate area for the referendum will be the designated Knowle, Dorridge and Bentley Heath Neighbourhood Area.

3. What is the issue?

3.1 A Neighbourhood Development Plan (NDP) is a community led plan which sets out policies to guide the future use and development of land within a specified Neighbourhood Area.

3.2 The regulatory process for preparation of a NDP can be summarised as follows:

Key Stage / Process	Action
1. Neighbourhood Area Designation	Parish/Town Council or Neighbourhood Forum apply to Solihull Council for Area designation
2. Pre-Submission Consultation	6 week consultation on draft Neighbourhood Plan undertaken by the local community
3. Submission	Neighbourhood Plan formally submitted to Solihull Council
4. Technical Compliance Check	Local planning authority check that all regulatory procedures have been followed
5. Publication	6 week consultation undertaken by Solihull Council
6. Examination	Solihull Council send Neighbourhood Plan to independent examination
7. Plan Proposal Decision	Solihull Council considers examiners report, including any recommended modifications and if satisfied with the Plan proposal, proceed to referendum
8. Referendum	Organised and funded by Solihull Council. Where 50% or more of those voting are in favour of the draft Neighbourhood Plan, it must be 'made' by the local authority and it then forms part of the statutory Development Plan.

3.3 In October 2015 the Council approved a Neighbourhood Area application for Knowle, Dorridge and Bentley Heath (KDBH). At the same time, the KDBH Neighbourhood Forum (NF) was formally designated as the qualifying body authorised to act for the area.

3.4 In accordance with the stages outlined above, a Pre-Submission draft Neighbourhood Plan was published for consultation by the KDBH NF in November 2017 and the final [Submission version of the Plan](#) was formally submitted to the Council in May 2018.

3.5 Following a technical compliance check the Submission Neighbourhood Plan was published for public consultation by the Council. As a statutory consultee, the Council made representations on the Plan which were considered and agreed by Cabinet Member at the decision session on [24 May 2018](#).

3.6 In accordance with Stage 6 above, the Council submitted the KDBH Neighbourhood

Plan for Independent Examination in July 2018.

4. Independent Examination and the Examiner's Report

- 4.1 The Council, with the agreement of the KDBH NF, appointed Mr Robert Bryan as the Independent Examiner of the Neighbourhood Plan. The Examination, which included all accompanying background documents and representations received during the consultation period, commenced on 10 July 2018 by means of written representations. An unaccompanied site visit to the Neighbourhood Area was also carried out by the Examiner.
- 4.2 The [Examiner's Report](#) was received on 14 September 2018. The Examiner concluded that he was satisfied that the Neighbourhood Plan was capable of meeting the legal requirements set out in the Localism Act 2011, including meeting the basic conditions, subject to 33¹ recommended modifications outlined in his report. These are also set out in Table 1A at Appendix A.
- 4.3 Section 12 of Schedule 4B of the Town and Country Planning Act 1990, requires that the Local Planning Authority (LPA) must consider each of the recommendations made in the Examiner's report and decide what action to take in response to each of them. However, the LPAs role at this stage is to also satisfy itself that the Plan meets the basic conditions, or would meet those conditions if modifications were made to the Plan (whether or not recommended by the Examiner).
- 4.4 In summary, for a plan to meet the basic conditions it must:
- Have regard to national policy and guidance issued by the secretary of state
 - Have special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses
 - Have special regard to the desirability of preserving or enhancing the character or appearance of any conservation area
 - Contribute to the achievement of sustainable development
 - Be in general conformity with the strategic policies contained in the Development Plan for the area of the Authority (or any part of that area)
 - Does not breach, but is otherwise compatible with EU obligations – this includes the SEA Directive of 2001/42/EC and Human Rights requirements
- 4.5 Whilst the Examiner's recommended modifications are not therefore binding and there is scope for the LPA to also make modifications to the plan, the regulations set out that the only modifications that the authority may make are those that are necessary to ensure the Plan meets the basic conditions, or for the purposes of correcting errors.

¹ The Examiner's report includes 2 Recommendation 11s. This is an error. For the purposes of the Decision Statement Table, Recommendation 11 has been split into Recommendation 11A and 11B. This avoids the need to renumber all subsequent recommendations.

- 4.6 It must be acknowledged that the NF does not agree with some of the Examiner's recommendations and these issues have been raised and discussed with the Council. Independent facilitation support has been sought by the NF to consider options for moving forward with modifications to the post-examination plan. In the spirit of collaboration, the Council has participated in these discussions and has considered all suggestions made.
- 4.7 Whilst the facilitation exercise proved helpful in reaffirming what changes and modifications the LPA could make to the Plan within the scope of the regulations, this informal advice does not form part of the statutory neighbourhood planning process or have any legal status within that process.
- 4.8 The Council's response to each of the Examiner's 33 recommendations is set out in Table 1A of Appendix A. The Table also identifies what changes are required to the KDBH Neighbourhood Plan in order for it to meet the basic conditions.
- 4.9 The LPA agrees with 23² of the Examiner's 33 recommendations in their entirety. In these cases the Examiner justifies that some policies do not meet the basic conditions because they are too prescriptive, too vague, repeat / do not comply with national or local policies, or have elements of ambiguity. The Examiner therefore recommends amendments to some policies / supporting text, or policy deletions. Notable policy deletions as recommended by the Examiner and agreed by the LPA include:
- Policy NE2: Habitats and Biodiversity - It is a part repeat of Local Plan Policy P10.
- Policy H1: Scale of New Housing - It is vague, confusing and lacks precision.
- Policy H5: Apartments - Policy wording is imprecise and confusing.
- Policy H6: Windfall Housing – Provides criteria that is too general and confusing.
- Policy T1: Parking for Residents – The requirements of the policy are too prescriptive and more onerous than required by the Council.
- Policy T2: Parking for Non-Residential Premises – The policy is vague and there is no reference to local policy.
- Policy T5: Transport Assessments and Travel Plans – Unsuitable for inclusion as a policy as it deals with matters of planning process.
- Policy T9: The works identified are outside of planning control and therefore unsuitable as a policy.
- Policy T10: The objective of the policy cannot be achieved under planning legislation.
- 4.10 As indicated above, in most cases the changes made to the KDBH Neighbourhood Plan will be those as recommended by the Examiner. However, in some areas, additional minor wording modifications / amendments are proposed by the LPA in

² These are recommendations 1, 3, 5, 6, 7, 9, 11A, 11B, 12, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 25, 27, 31 and 32

order meet the basic conditions. For 5 out of 33 recommendations, the LPA agree with the Examiner's modifications in part, with some minor amendments to ensure that the basic conditions are met. The main changes relate to the following Policies:

VC1: Green Belt and Landscape – Recommendation 2: This requires a minor wording amendment to reflect more accurately how Green Belt policies should be applied.

VC4: Green Space – Recommendation 4: Three sites have been deleted from the list of Local Green Spaces. Whilst the Council does not disagree with the Examiner's recommendation and reasoning, it is considered that more detailed maps indicating the precise boundaries of the remaining Local Green Spaces should be included in the Plan.

H2: Housing on Allocated and Larger Sites – Recommendation 8: The Council largely agrees with the Examiner's modification. However it is considered that some of the recommended wording would not provide certainty for a decision maker. Minor textual amendments to the Examiner's modification have been necessary to provide clarity for how the policy should be applied.

T3: Parking at Village Centres and for Rail Users – Recommendation 17: The Council agrees in part with the Examiner's modification. However, it is considered that an alternative form of wording could be introduced which would secure at least some provision for the charging of electric vehicles, without specifying the proportion of spaces.

ECF6: Community Access and Management – Recommendation 29: The Council agrees in part with the Examiners modification. However, as some of the recommended wording is considered to be ambiguous, it has been necessary to remove this text.

- 4.11 There are instances, however, where the LPA either does not agree with the Examiner, considers that a different form of wording could effectively meet the basic conditions or considers that more significant changes are required. Out of the 33 recommendations, there are 5 which fall into this category as follows:

Policy H4: Housing Mix – Recommendation 10:

Whilst officers largely agree with the Examiners reasons for the modification, it is considered that some of the recommended wording is not entirely clear and could be seen as ambiguous. It would not therefore meet the basic conditions.

With reference to the requirement for the provision of sheltered and institutionalised housing on sites, the Examiner correctly states this is too prescriptive. However, it is considered that the policy could set out that this type of development would be supported, whilst still meeting the basic conditions. Additional text could be added to the policy to reflect this.

Amended and additional wording is therefore proposed that would ensure that the policy meets the basic conditions, whilst addressing the Examiner's issues with the policy.

Policy T8: Road Infrastructure –Recommendation 22:

Whilst the Council do not disagree with the Examiner's comments, it is considered that rather than deletion, amendments to the policy can be made to ensure that it falls within the scope of land-use planning.

This would ensure that the spirit of the policy is retained, the Examiner's issues with the policy are addressed and the basic conditions are met.

Policy ECF2: Formal Education – Location of New Schools – Recommendation 26

The Examiner's modified wording effectively provides double support for development. This is considered to be ambiguous and would not provide certainty for a decision maker, nor would it meet the basic conditions in terms of promoting sustainable development.

The reference in the original policy text to buildings being "well designed" is considered to be confusing as it is unclear whether this would replace general design policies in the plan, or not. This ambiguity would mean that the policy fails to meet the basic conditions. Overall, it is considered that the basic conditions can still be met with amended / additional or an alternative form of wording, whilst addressing the Examiner's issue with the policy.

Policy ECF5: Recreation, Leisure and Sport – Recommendation 28

There is agreement with some of the Examiner's recommended modifications for this policy. However, as with Policy ECF2, the Examiner's modified wording effectively provides double support for development. This is considered to be ambiguous and would not provide certainty for a decision maker, nor would it meet the basic conditions in terms of promoting sustainable development.

Overall it is considered that the basic conditions can still be met with amended / additional or an alternative form of wording.

Policy E1: Retention of Shops and Services – Recommendation 30

Whilst the Council would agree with most of the recommended modifications to the text, there is no justification why the Examiner has introduced a percentage threshold of 75% for Part A uses in Dorridge. This does not meet the basic conditions and reference to the 75% threshold should therefore be deleted.

The inclusion of additional text is also proposed in order that the policy is clear and unambiguous and that it can be interpreted positively and flexibly. This will ensure that the basic conditions are met, whilst also addressing the Examiner's issues with the policy.

- 4.12 Where the LPA is recommending changes which are markedly different to the Examiner's recommendation, the revised wording is set out fully on a policy by policy basis in Tables 1B – 1F of Appendix A. For ease of reference, the final Plan text is set out alongside both the original wording and the Examiner's recommended text.
- 4.13 As far as possible the Council has worked with the NF in its consideration of the

Examiner's recommended modifications. In some cases the NF has sought the inclusion of additional modifications or an alternative form of words. The Council has considered these in the context of whether they are necessary to meet the basic conditions or whether any suggested text would itself meet the basic conditions.

- 4.14 Tables 1A and 1B – 1F in Appendix A set out the changes that are required to the Knowle, Dorridge and Bentley Heath Neighbourhood Plan in order for it to meet the basic conditions and proceed to referendum.
- 4.15 The regulations set out that when a local authority proposes to make a decision which differs from that recommended by the Examiner, representations must be invited. However, this further consultation is only required when a departure from the Examiner's recommendation is based on new evidence. In this case, new evidence is not being introduced and further consultation is not considered to be necessary.
- 4.16 Finally, if the Examiner recommends that the NDP should proceed to referendum, he must advise whether the referendum area should be extended. This may occur where a proposal in the NDP will have a substantial direct impact beyond the NDP area. In this case, it is considered that the most appropriate area for the referendum will be that of the Knowle, Dorridge and Bentley Heath Neighbourhood Area as designated.

5. What options have been considered and what is the evidence telling us about them?

- 5.1 If the authority is satisfied that, subject to the modifications made, the draft Neighbourhood Plan meets the legal requirements and basic conditions as set out in legislation, a referendum must be held. If the Local Authority is not satisfied that the plan meets the basic conditions and legal requirements then it must refuse the proposal.
- 5.2 The KDBH Neighbourhood Plan has been independently examined and found to meet the basic conditions subject to the recommended modifications. The Examiner has recommended that the Plan should proceed to referendum.
- 5.3 In accordance with the regulations, the Council has decided what action it proposes to take in response to each of the Examiner's recommendations and it has been considered necessary to make further modifications to ensure the Plan meets the basic conditions.

6. Reasons for recommending preferred option

- 6.1 The Council is satisfied that subject to the agreed modifications recommended by the Examiner, together with additional amendments and further modifications by the LPA, the KDBH Neighbourhood Plan meets the basic conditions and should proceed to referendum.
- 6.2 Failure to take the KDBH Neighbourhood Plan forward to referendum would therefore be a failure of the Council's statutory duty as set out above.

7. Next Steps

- 7.1 The Council must formally publish the decision it has made on the Examiner's

recommended modifications and whether the plan meets the basic conditions, or would meet those conditions if modifications were made to the Plan and should proceed to referendum.

- 7.2 The Council is then required to organise a referendum on the KDBH Neighbourhood Plan within 56 days (excluding weekends and bank holidays) of the publication of the decision to proceed to referendum.
- 7.3 Subject to agreement from Cabinet Member that the KDBH Neighbourhood Plan can proceed, a referendum will be held on Thursday 14 March 2019.
- 7.4 The question to be asked at the referendum is set out in the Neighbourhood Planning (Referendums) Regulations 2012 as follows:

Do you want Solihull Metropolitan Borough Council to use the Neighbourhood Plan for Knowle, Dorridge and Bentley Heath to help it decide planning applications in the neighbourhood area?

- 7.5 In order for the plan to be 'made' (i.e. brought into force) a majority of those voting must vote in favour of the Neighbourhood Plan.

8. Implications and Considerations

- 8.1 Delivery of key themes in the Council Plan:

How will the options/proposals in this report contribute to the delivery of the key themes in the Council Plan?

- Managed Growth
- Build Stronger Communities

- 8.2 Implications for children and young people, vulnerable groups and particular communities:

- 8.2.1 None Identified.

- 8.3 Consultation and Scrutiny:

- 8.3.1 In accordance with the Neighbourhood Planning Regulations, the KDBH Neighbourhood Plan has been published for consultation at pre-submission and submission stage. This has provided interested stakeholders with the opportunity to comment on the plan.

- 8.3.2 In addition, the Council has publicised all consultation details and information about the Plan on its website, and where appropriate, Twitter feed and Stay Connected bulletin. No scrutiny issues have been identified at any stage in the process.

- 8.4 Financial implications:

- 8.4.1 The staff time associated with providing support to areas currently undertaking neighbourhood planning is funded through the existing Planning, Design and

Engagement Services budget. The Council is required to organise and pay for the independent Examination of a Neighbourhood Plan and any subsequent referendum. However, through the Neighbourhood Planning Grant, £20,000 can be reclaimed once a date has been set for a referendum following a successful Examination.

8.5 Legal implications:

8.5.1 Section 12 of Schedule 4B of the Town and Country Planning Act 1990, requires that the LPA must consider each of the recommendations made in the Examiner's report and decide what action to take in response to each of them. However, the LPAs role at this stage is to also satisfy itself that the Plan meets the basic conditions, or would meet those conditions if modifications were made to the Plan (whether or not recommended by the Examiner).

8.5.2 The regulations make provision for the LPA to make modifications to the Plan if they are considered necessary to meet the basic conditions. If the LPA are satisfied that the basic conditions are met, a referendum must be held on the making of the Neighbourhood Plan. The Plan on which the referendum is to be held is the draft Plan subject to such modifications (if any) as the LPA consider appropriate.

8.5.3 Solihull Council has a legal obligation to assist Parish / Town Councils and Neighbourhood Forums with the process of preparing NDPs, if requests come forward. Although the regulations do not require local planning authorities to give financial assistance to such groups, as outlined above, the Council is required to organise and pay for the independent examination of a plan and the referendum.

8.6 Risk implications:

8.6.1 None identified.

8.7 Statutory Equality Duty:

8.7.1 None identified.

9. List of appendices referred to

9.1 Appendix A – Decision Statement Table

10. Background papers used to compile this report

10.1 Knowle, Dorridge and Bentley Heath Submission Draft Neighbourhood Plan

10.2 Knowle, Dorridge and Bentley Heath Neighbourhood Plan Examiner's Report