

COUNCIL

DATE OF MEETING: 28 JULY 2022

**TITLE OF REPORT: THE YATELEY, DARBY GREEN AND FROGMORE
NEIGHBOURHOOD PLAN: 'MAKING' THE PLAN**

Report of: Head of Place

Cabinet Portfolio: Place

Key Decision: No

Confidentiality: Non-Exempt

PURPOSE OF REPORT

1. The purpose of this report is to formally 'make' the [Yateley, Darby Green and Frogmore Neighbourhood Plan](#) ('the Plan') following a positive referendum result on 30 June 2022.

RECOMMENDATION

2. That the Yateley, Darby Green and Frogmore Neighbourhood Plan is 'made'.
3. That Council notes that the Yateley, Darby Green and Frogmore Neighbourhood Plan became part of the Development Plan for Hart district for the area covered by Yateley Parish following the positive referendum result on 30th June 2022.

BACKGROUND

4. Yateley Town Council has prepared, in consultation with the community, a Neighbourhood Plan for the area of Yateley, Darby Green and Frogmore (Yateley Parish).
5. An independent examiner found that subject to a series of modifications, the Plan that was submitted for examination meets the basic conditions and other legal requirements and should proceed to referendum.
6. On 7 April 2022 Cabinet agreed to the modifications and to proceed to referendum.
7. A local referendum was held in Yateley on 30 June 2022. The referendum asked the following statutory question: *"Do you want Hart District Council to use the Neighbourhood Plan for Yateley, Darby Green and Frogmore Neighbourhood Planning Area to help it decide planning applications in the neighbourhood area?"*
8. For the Plan to pass referendum more than 50% of the votes must be in favour of the Plan.
9. A total of 2,395 valid votes were received: 91% (2,185) voting in favour of the Plan and 9% (210) voting against.
10. The Plan therefore passed the referendum and became part of the development plan for Hart district (under Section 38(3A) of the Planning and Compulsory Purchase Act 2004 (as amended)). Decisions on planning applications must be made in accordance with the development plan unless material considerations indicate otherwise.

11. The Council is now legally obliged to 'make' the Plan, unless it considers that the making of the Neighbourhood Plan would breach, or otherwise be incompatible with, any EU or human rights obligations.
12. If 'made', the Plan will be part of the Development Plan for Hart district for the area covered by Yateley Parish.
13. If the Council decides not to make the Plan, it will cease to be part of the Development Plan for Hart district.

MAIN ISSUES

14. Under Section 38A of the Planning and Compulsory Purchase Act, the Council is now legally obliged to 'make' the Plan unless to do so would breach, or would otherwise be incompatible with, any retained EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).
15. The Council must do this as soon as reasonably practicable after the referendum, and within 8 weeks of it. It must then publish a Decision Statement explaining the decision and the reasons for making that decision.
16. Officers are of the view that the Plan should be made and that there are no concerns regarding retained EU obligations or human rights.
17. Regarding EU obligations (now transposed into UK law), the Plan went through the necessary screening processes for Strategic Environmental Assessment (SEA) and Habitat Regulations Assessment (HRA) including consultation with the relevant statutory consultees.
18. Definitions:
 - Strategic Environmental Assessment (SEA) is a procedure (set out in the [Environmental Assessment of Plans and Programmes Regulations 2004](#)) which requires the formal environmental assessment of certain plans and programmes which are likely to have significant effects on the environment.
 - A Habitats Regulations Assessment (HRA) tests if a plan or project proposal could significantly harm the designated features of a European site e.g. the Thames Basin Heaths Special Protection Area.
19. A [Screening Statement](#) commissioned by Hart District Council concluded that neither a full SEA nor an Appropriate Assessment (under the Habitat Regulations) were needed, in part because the Plan does not allocate any sites for development:
 - a full SEA is not required because significant environmental effects arising from the Plan were unlikely; and
 - an Appropriate Assessment is not required because the submitted Plan is unlikely to have significant effects on a European site (e.g. the Thames Basin Heath Special Protection Area).
20. The Examiner considered the issues of retained EU obligations as part of the examination and was satisfied that the submitted plan met those obligations (paragraphs 6.13 to 6.17 of his [report](#)).
21. The Examiner also found that the submitted Plan complies with the Human Rights Act and does not breach, nor is in any way incompatible with the European Convention on Human Rights (paragraph 6.18 of his [report](#)).

22. In addition, an Equalities Impact Assessment (EqIA) was conducted on the Plan (both before and after incorporating the Examiner's recommended modifications) which found no adverse effects (see Section below on Equalities).
23. In April 2022 Cabinet agreed that the Referendum Version of the Plan (incorporating the Examiner's recommended modifications) should go to referendum. There were no concerns at that time that the Plan, incorporating modifications, breached retained EU obligations or Human Rights legislation.
24. Post-referendum, Officers remain of the view that making the Referendum Version of the Plan would not breach or otherwise be incompatible with any retained EU obligation or any of the Convention Rights (within the meaning of the Human Rights Act 1998).

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

25. The Council could decide *not* to make the Plan if it takes the view that to make the Plan would breach, or would otherwise be incompatible with, any retained EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998). The Plan would then cease to form part of the development plan for Hart district.

CORPORATE GOVERNANCE CONSIDERATIONS

Relevance to the Corporate Plan and/or The Hart Vision 2040

26. The Corporate Plan states under 'Healthy Communities and People' that it will empower local people to shape their surroundings through the development of neighbourhood plans and other community schemes.
27. The Plan, and the process of community engagement that went with it, reflect the Vision 2040 including building a sense of community, promoting green infrastructure and healthy transport, and reducing the impact of climate change.

Service Plan

- Is the proposal identified in the Service Plan? No
- Is the proposal being funded from current budgets? Yes
- Have staffing resources already been identified and set aside for this proposal?
Yes

Legal and Constitutional Issues

28. The Council is legally obliged to make the Plan unless it considers it would breach, or would otherwise be incompatible with, any retained EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).
29. If the Council makes the Plan, it is part of the development for Hart district. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
30. If the Council decides not to make the Plan, it will cease to be part of the development plan for Hart district i.e. it will no longer be relevant in the determination of planning applications in Yateley.

Financial and Resource Implications

31. There are no financial implications. The Council has received £20,000 in Government grant to cover the costs of Officer time to support the plan-making process and the cost of the referendum.
32. There are no significant resources arising from making the Plan. Staff time is needed to fulfil some statutory procedures including preparing a Decision Statement and notifying relevant organisation and individuals of the decision.

Risk Management

33. It is considered that the risks arising from making the Plan, i.e. a legal challenge, are low at this final stage. It is considered more likely that a legal challenge would come from *not* making the plan which is not the recommended route.

EQUALITIES

34. Both Yateley Town Council and Hart District Council are responsible authorities under the Public Sector Equality Duty. An Equalities Impact Assessment was prepared and agreed between both parties. This was initially undertaken on the submission version of the Plan and refreshed to take into consideration the recommendations set out in the Examiners Report. No adverse impacts were recorded.

CLIMATE CHANGE IMPLICATIONS

35. The Plan references Hart District Council's climate emergency declaration and explicitly seeks to deliver climate change adaptation and mitigation measures through several policies including flood risk, biodiversity, green infrastructure, and a specific policy on climate change.

ACTION

36. Some statutory procedures need to be followed including the publication of a Decision Statement setting out the decision and the reasons for that decision, and certain parties will be notified of the decision.
37. If the Plan is 'made' it will form part of the Development Plan when determining planning applications within the area covered by Yateley Parish.

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Appendices

None

Background Papers:

Equalities Impact Assessment of the Yateley, Darby Green and Frogmore Neighbourhood Plan