

**Cabinet - 18<sup>th</sup> August 2015**

**Coton Forward Neighbourhood Plan Decision Statement**

**Report of the Economy, Development and Culture Portfolio Holder**

**Recommendation:**

- (1) Following consideration of the consultation responses on the Council's proposal to make a decision that differs from that recommended by the independent examiner (and the reasons for it) and the legal opinion sought by the Council, Coton Forward Neighbourhood Plan (as modified) proceeds to the referendum stage; and
- (2) the referendum area be the same as the designated Coton Forward Neighbourhood Area.

**1. Introduction**

- 1.1 Following the Cabinet decision dated 9th March 2015, a public consultation was held by Rugby Borough Council on its proposal to make a decision that differs from that recommended by the Examiner.
- 1.2 This report summarises the responses received during this consultation period and Officers response to these before making a recommendation as to how the Coton Forward Neighbourhood plan should proceed.

**2. Background**

- 2.1 Coton Forward submitted its Submission Neighbourhood Plan; Consultation Statement and Basic Conditions Statement to the Council, as required by the statutory requirements, in October 2014. The Council undertook a six week public consultation on the content of these documents which was held from the 24<sup>th</sup> October to the 5<sup>th</sup> December 2014.
- 2.2 In accordance with the statutory regulations, the Council, in agreement with Coton Forward, appointed an independent examiner to review the submitted plan. Accordingly, Christopher Lockhart-Mummery QC was appointed as the independent examiner. The examiner submitted his report to the Council on the 16<sup>th</sup> January 2015.

- 2.3 Cabinet considered the examiners' report on the 9th March 2015. It was reported to Cabinet that, following receipt of the report, the Council must consider each of the recommendations made by the examiner and the reasons for them in accordance with the Localism Act 2011 Schedule 10 (sections 12 and 13). The Council must then decide what action to take in response to each recommendation.
- 2.4 It was reported to Cabinet that the examiner only made one recommendation which was that the proposal for the Neighbourhood Plan should be refused. The reason for the recommendation can be summarised as; key parts of the Neighbourhood Plan do not satisfy the statutory requirements and it would not be appropriate to recommend modifications to secure compliance with the statutory requirements as they would be too extensive and the remaining policies could be achieved by other means.
- 2.5 On the 9th March 2015 Cabinet agreed to take a decision that differs from that recommended by the examiner and took a different view about the use of modifications powers to that expressed by the examiner. The report therefore set out a number of modifications to the submitted Plan that were proposed to ensure that the Plan would meet the statutory requirements.
- 2.6 At that point in time it was officers' interpretation of the statutory requirements, following discussion with Planning Aid and DCLG, that in accordance with the Localism Act 2011 schedule 10 (13 (1)) the Council should undertake a public consultation on its proposed decision (and the reason for it) and invite comment. The consultation document also contained the modifications to the submitted plan. The consultation was carried out for a period of 6 weeks from 27<sup>th</sup> March – 8<sup>th</sup> May 2015. Letters were distributed to all households in the Neighbourhood Area and to the statutory consultation bodies directing them to where the proposed decision document can be viewed. A public notice was published in the local press.
- 2.7 During this consultation period a response was received questioning the Council's interpretation of the statutory requirements asserting that no valid reason was provided to overturn the examiner's recommendation for refusal. Given the nature of the response a legal opinion was sought to ascertain whether the correct procedures had in fact taken place.
- 2.8 The legal opinion offered a different interpretation of legislation and stated it was not strictly necessary for the Council to undertake the consultation in line with Localism Act 2011 Schedule 10 (13(1)) as the Council could have proceeded to referendum with modifications to the Plan (whether or not recommend by the examiner) to ensure its compliance with the statutory requirements. The legal opinion stated that that it was no bad thing for the Council to undertake the consultation given the level of modification that it has proposed to the Neighbourhood Plan and officers agree with this statement. The consultation response questioning whether the Council could proceed with the Plan to referendum has therefore been addressed.

### **3. Coton Forward Neighbourhood Plan Further Consultation Responses**

- 3.1 The consultation document set out the reason as to why the Council proposed to make a decision that differed from that recommended by the examiner and modifications required to ensure the Plans' compliance with the statutory requirements. The specific question asked within the consultation document was "Do you agree with the Council's proposal to make a decision which differs from that recommended by the examiner?"
- 3.2 Despite the legal opinion received that consultation was not required, given the extent of the modifications proposed to the Plan it is viewed that Cabinet should still consider the responses and officers' responses to them.
- 3.3 During the consultation period 16 responses were received. Of the responses received 2 supported the Council's proposed decision, 5 respondents had no further comments to make/ no comment on the Council's proposed decision and 9 respondents objected. Appendix 1 contains the consultation document and Appendix 2 a summary of responses received and Officer responses to these.
- 3.4 Warwickshire County Council (WCC) supported the modifications proposed to delete policies relating to the roundabouts. However, WCC also state that the highway projects contained within Section I of the modified Coton Forward Neighbourhood Plan are aspirational and are without funding for the future. Further comments are provided on each of the highway projects setting out their reservations or concerns. Despite this WCC state that the inclusion of the transport projects in the Plan will enable discussions between the County Council, Rugby Borough Council and Coton Forward to be had on the various elements of each project.
- 3.5 Four of the objections were in relation to the modified project 7 Community focus - allotments and community gardens. Despite the modified project 7 not identifying proposed locations for allotment provision, the responses contain assumptions about specific areas where the allotments would be located and object to the suggested impacts on traffic, parking, air and noise pollution, property prices and visual amenity.
- 3.6 The comments received are also not related to the Council's consultation question. Irrespective of this as stated, modified project 7 does not identify a location for the allotments and the supporting text to the project identifies that there are Section 106 constraints in relation to changing the use of land to allotments. Further to this it should be noted that projects are aspirational and it will not form part of the development plan which would guide planning applications. Whilst these proposals will be included in the project list appended to the Neighbourhood Plan, this does not mean that the Section 106 constraints would be overcome. It should also be mentioned that this project is not new and that no comments were previously received on this matter during the Submission consultation held in 2014.

- 3.7 A number of objections were received which stated that they agreed with the Examiners' Report that the plan should be withdrawn. Pegasus, on behalf of Persimmon Homes and AC Lloyd, state that the Plan should be withdrawn as the proposed modifications to the Neighbourhood Plan would leave two policies that will add no further detail to existing national and local plan policies therefore the plan would be superfluous to the Development Plan. Pegasus question whether modified Policy 1 is required at all as the Council are the owners of the land and already in principle agree to the proposal. Questions are also raised about the deliverability of modified Policy 1 Coton Park Community Centre and state that the policy is therefore ambiguous thus it would not meet the basic conditions.
- 3.8 In relation to Pegasus's consultation response it is considered that the policies contained within the modified Plan do meet the basic conditions and do provide an additional level of detail, distinct to national and local planning policy. Modified Policy 1 is clear that an area of land will be designated for a community centre and this goes beyond an "in principle agreement". Therefore should such an application be submitted to the Council, the decision taker can apply the policy consistently and with confidence when determining the planning application. The concern as to the deliverability of the community centre was considered by the examiner but on balance he judged that the policy met the statutory requirements. It is therefore deemed that the policy would meet the basic condition.
- 3.9 With regard to Pegasus's concern with modified Policy 2, NPPF paragraph 77 allows for the designation of Local Green Spaces and the level of protection afforded with such designations is distinct to that of Saved Local Plan Policy LR4 and NPPF paragraph 74. As the opens spaces contained within Policy 2 do not currently benefit from local green space designation the policy does provide an additional level of detail beyond existing national and local planning policy and should therefore remain within the modified Plan.
- 3.10 Pegasus also commented that in relation to modified Policy 2 that there is no evidence to substantiate the additional text relating to the "richness of wildlife attributes" of the area under the pylons. This is founded by surveys and previous work undertaken on land to the east of Coton Park which did not highlight the area being particularly valuable for ecology. However, it is considered that the reference within NPPF paragraph 77 to "richness of its wildlife" is related to the local communities' view of local significance which differs from surveys undertaken to inform planning applications to demonstrate whether sites are of ecological value thus requiring protection or mitigation.
- 3.11 Further objections were made with regard to modifications proposed to the plan. One respondent questioned the movement of Policies 1 and 2 as submitted to the projects section, after they were not found to meet the statutory requirements, considering that the policies are simply being resurrected. The proposed modifications reflect that the "policies" cannot be contained within the Plan as they do not meet the statutory requirements. In moving the "policies" to the projects section, highlights potential solutions to highway concerns raised by the community which would require further discussions with Warwickshire County Council. Therefore the "policies" have

not been resurrected as they do not form part of the Plan to guide planning application within the area.

#### **4. Recommendation following further consultation**

- 4.1 Due to the legal opinion received that it was not necessary for the Council to undertake the consultation on its proposed decision and modification, the Council do not need to consider whether further examination of the Plan is required as a result of the consultation responses, as previously envisaged within the Cabinet Report dated 9<sup>th</sup> March 2015. The responses received also do not provide evidence for the Council to come a different conclusion on the modifications it proposed to ensure the Plans' compliance with the statutory requirements.

#### **5. Coton Forward Proposed Decision**

- 5.1 Whilst it may not have been necessary to undertake the consultation on the Council's proposed decision, the legal opinion received highlighted that the Council should seek to expand on its reasons for disagreeing with the examiner about why he considered he could not make contemplated modifications to ensure the Plans' compliance with the statutory requirements.

- 5.2 For clarity the reasons the examiner considered he could not make modifications to the plan are set out below;

(1) I have concluded that Policies 1 and 2 do not comply with the statutory requirements. These policies are not readily or appropriately excisable from the NP. They are central to the NP. Page 18 states that the claimed deficiencies of the roundabouts constitute "the crux of the problem and one of the main motivations to prepare the neighbourhood plan".

(2) The Modifications that would be necessary to secure compliance with the statutory requirements would necessitate a substantial re-writing of the NP, an exercise not generally appropriate for Modifications.

(3) "Modification" of the NP by deletion of Policies 1 and 2 would leave Policies 3 and 4. A relevant consideration is whether these surviving Policies are, in their substance, necessary for inclusion in this NP. So far as Policy 3 is concerned, the Council own the relevant land and "have agreed in principle to the site being used for the community centre". This Policy does not, therefore, seem to be essential (though I note that the Council, in responding to the Pre-Submission Draft of the NP, drew attention to Saved Local Plan and NPPF policies which are protective of open space). Further, the supplementary text offers no assurance that the Policy is deliverable. So far as Policy 4 is concerned, the majority of these proposed Local Green Spaces are owned by the Council, and Saved Local Plan Policies and the NPPF would, in principle, resist their loss as open space.

(4) The contemplated “Modification” would also leave the Projects in Section I. These are, in accordance with PPG, not formally part of the NP and are listed separately. Having said that, similar concerns as explained above arise in relation to the position of the highway authority. In relation to Project 1, all the land is highway land, and, in the absence of drawings, the County Council have been unable to express a view on this Project. In relation to Project 2, this lies outside the area of the NP, on land controlled by the housebuilder currently promoting further residential development to the east. The NP provides no evidence that it would be deliverable. The County Council have been unable to express a view as to Project 3. I make no comment in relation to Projects 4 and 5.

- 5.3 Expanding on the reasons as to why the Council disagreed with the examiners reasoning, which was set out in Cabinet Report dated 9<sup>th</sup> March 2015, the following additional comments are made.
- 5.4 It is considered that whilst policies 1 and 2 were identified as being one of the main motivations in preparing the Plan, consultation with the community identified other issues and objectives which resulted in the development of policies 3 and 4. Policies 3 and 4 are of significance to the community and they cannot be disregarded on the basis they were not the main motivation to prepare the plan. Policies 1 and 2 do not impede the delivery of policies 3 and 4 as such they could be deleted from the Plan. Whilst the deletion of policies 1 and 2 would necessitate a substantial re-write of the Neighbourhood Plan there is no guidance as to what is considered to be excessive modifications and therefore not appropriate. It is therefore considered that the modifications could have been made.
- 5.5 The modification contemplated by the examiner would have resulted in two policies which officers consider are of substance and provide an additional level of detail beyond existing national and local planning policy. Policy 3 which is in relation to the community centre provides certainty that should an application be submitted to the authority for a community centre in accordance with the policy that it would be approved this goes beyond an in principle agreement which could change. Therefore the policy is of substance and worthy of inclusion. The examiner does express concern about the deliverability of the policy however he considered that the policy met the basic condition. In terms of Policy 4 Local Green Space Designations, NPPF paragraph 77 allows for such designation and the level of protection afforded with such designations is distinct to that of Saved Local Plan Policy LR4 and NPPF paragraph 74. Whilst the green spaces are in public ownership this does not preclude it from being designated and this is apparent with the national planning policy guidance paragraph 019 stating “a Local Green Space does not need to be in public ownership.” As the open spaces contained within Policy 4 do not currently benefit from local green space designation the policy provides an additional level of detail beyond the NPPF and local planning policy.
- 5.6 In terms of the projects, they are appended to the Plan and clearly highlighted as not forming part of the development plan. As a result, they would not be subject to the basic conditions thus it is considered that they should not have

been a consideration for the examiner when he contemplated modifications to be made to the plan.

- 5.7 Given the above it is proposed that modifications should be made to the Submission Coton Forward Neighbourhood Plan to ensure conformity with the statutory requirements and to enable the Plan to proceed to referendum. The modifications are set out in within the Decision Statement which is appendix 3 of this report.
- 5.8 Before proceeding to referendum the Council also has to decide if the referendum area should be that of the Neighbourhood Plan area or cover a wider area. As the examiner considered the Plan should not proceed to referendum no recommendation was made as to the referendum area. It is noted that Coton Forward submitted a response to the Submission Coton Forward Neighbourhood Plan consultation asking for the referendum area to be extended. However, having considered the content of the modified Neighbourhood Plan it is recommended that the referendum area should be the same as the Coton Forward neighbourhood area.

## **6. Conclusion**

- 6.1 Following consideration of the consultation responses on the Council's proposal to make a decision that differs from that recommended by the independent examiner (and the reasons for it) and the legal opinion sought by the Council, it is recommended that the Modified Coton Forward Neighbourhood Plan should proceed to the referendum stage.
- 6.3 On this basis it is also recommended that the referendum area should be the same as the designated Coton Forward Neighbourhood Area.
- 6.2 The modified Plan will be compliance with the statutory requirement and will contain two planning policies, which the electorate within the referendum area will vote as to whether they would want Coton Forward Neighbourhood Plan (as modified) to be used to help decide planning applications within their neighbourhood area. A simple majority of votes (over 50% of those voting) in favour of your Neighbourhood Plan is sufficient for it to succeed.