

Part I

Main author: Julie Spicer

Executive Member: Cllr Stephen Boulton

Ward: Northaw and Cuffley

WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING AND PARKING PANEL – 16 FEBRUARY 2023
REPORT OF THE ASSISTANT DIRECTOR - PLANNING

NORTHAW AND CUFFLEY NEIGHBOURHOOD PLAN - EXAMINER'S REPORT

1 Executive Summary

- 1.1 The Northaw and Cuffley Neighbourhood Plan has been produced by the Northaw and Cuffley Neighbourhood Plan Steering Group, with the Parish Council acting as the local 'Qualifying Body'. Work on the Plan began in 2016 and has included several consultation stages. The Parish Council submitted the draft version of the Plan to the Borough Council in July 2022, after which the Borough Council undertook further statutory consultation and appointed an independent person to conduct the examination into the plan.
- 1.2 The purpose of the independent examination process is to ensure Neighbourhood Development Plans meet a set of nationally prescribed 'Basic Conditions', and to recommend if the Plan should proceed to a local referendum. The examination into the Northaw and Cuffley Neighbourhood Plan concluded in December 2022. The Examiner's Report is attached to this Report as Appendix A.
- 1.3 The Examiner has recommended the Plan can proceed to local referendum, subject to several modifications being made. It is now the Borough Council's role to consider the outcome of the Examiner's report, including the proposed modifications, and to agree if the Plan should proceed to referendum.
- 1.4 Appendix C to this report sets out the proposed final 'referendum' version of the Northaw and Cuffley Neighbourhood Development Plan. The schedule of modifications is shown in Appendix B. This schedule has followed consideration of the Examiner's conclusions and proposed modifications. It is therefore recommended that the 'referendum' version of the Plan proceed to referendum.
- 1.5 If agreed, the referendum will take place on a date to be agreed (likely 4 May 2023). Should the Plan gain public support at the referendum, the Borough Council will formally 'make' (adopt) the Northaw and Cuffley Neighbourhood Plan to form part of the statutory Development Plan for the Borough.

2 Recommendation(s)

- 2.1 That the Cabinet Planning and Parking Panel recommends to Cabinet/Full Council that:
 - i. subject to the modifications recommended in the examiner's report being agreed, the Northaw and Cuffley Neighbourhood Plan should proceed to referendum; and,
 - ii. should the Northaw and Cuffley Neighbourhood Plan receive a majority vote in favour at referendum, Welwyn Hatfield Borough Council formally 'makes'

the Northaw and Cuffley Plan, to enable it to form part of the Development Plan for the borough.

3 Background

- 3.1 The Government's National Planning Policy Framework (NPPF) supports the principle of Neighbourhood Plans and their status as part of the Development Plan. The NPPF states "Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies". It is also made clear that Neighbourhood Plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies
- 3.2 Neighbourhood Development Plans must follow a defined regulatory process in both their preparation and adoption. This includes the formal designation of the area (Regulation 16 Stage), the consultation on a draft version of the Plan (Regulation 14 Stage), submission to the Local Planning Authority (Regulation 15 stage), and consultation and examination on the Final Draft version of the Plan (Regulation 16 stage).
- 3.3 The Northaw and Cuffley Neighbourhood Plan has been produced by the Northaw and Cuffley Neighbourhood Plan Steering Group, with the Parish Council acting as the local 'Qualifying Body'. Work on the Plan began in 2016 and has included several consultation stages.
- 3.4 The Council, as the local planning authority, has a duty to support and provide technical advice to any emerging neighbourhood plan, and a responsibility to make timely decisions. Previous decisions made by the Council in facilitating and supporting the Neighbourhood Plan has progressed include:
 - 7 October 2014: The Northaw and Cuffley Neighbourhood Plan Area was formally designated, following a decision made by Cabinet Planning and Housing Panel.
 - 23 June 2022: CPPP recommended to Cabinet that the Council accepts the draft Northaw and Cuffley Neighbourhood Plan as validly made: that the draft Northaw and Cuffley Neighbourhood Plan go out for consultation for a period of 6 weeks; and an independent examiner be appointed and for the neighbourhood plan to be submitted for examination following the public consultation
- 3.5 In addition, the Council has been a consultee at two stages of the plan's preparation.
- 3.6 The Parish Council submitted the draft version of the Plan to the Borough Council in June 2022, after which the Borough Council undertook further statutory consultation and appointed an independent person to conduct the examination into the plan.
- 3.7 The purpose of the independent examination process is to ensure Neighbourhood Development Plans meet a set of nationally prescribed 'Basic Conditions', and to recommend if the Plan should proceed to a local referendum. The examination into the Northaw and Cuffley Neighbourhood Plan concluded in December 2022. The Examiner's Report is attached to this Report as Appendix A.
- 3.8 The Examiner has recommended the Plan can proceed to local referendum, subject to several modifications being made. It is now the Borough Council's role to consider

the outcome of the Examiner's report, including the proposed modifications, and to agree if the Plan should proceed to referendum.

3.9 Appendix C to this report sets out the proposed final 'referendum' version of the Northaw and Cuffley Neighbourhood Development Plan. The schedule of modifications is shown in Appendix B. This schedule has followed consideration of the Examiner's conclusions and proposed modifications. It is therefore recommended that the 'referendum' version of the Plan proceed to referendum.

3.10 The Examiner has now completed his examination of the Plan and has submitted his report to Welwyn Hatfield Borough Council. This report seeks approval for the Northaw and Cuffley Neighbourhood Development Plan (the Plan) to proceed to a referendum to determine if the Plan should be used for the purposes of deciding planning applications in the neighbourhood area. If agreed, the Northaw and Cuffley Neighbourhood Plan will proceed to referendum, the question will be:

Do you want Welwyn Hatfield Borough Council to use the Northaw and Cuffley Neighbourhood Plan to help it decide planning applications in the neighbourhood area?

3.11 The Plan will need to gain the support of over 50% of those who cast a vote to be able to move forward to be 'made' (adopted) by Welwyn Hatfield Borough Council.

3.12 If agreed, the referendum will take place on a date to be agreed but is likely to be to coincide with the Local Elections on 4 May 2023.

3.13 There are advantages to holding the referendum on the same date as the Local Elections. The cost of holding the referendum to coincide with the Local Elections would be approximately £2825. The cost of a stand-alone referendum on another date would be £3900. There is also likely to be a better turnout to vote on the referendum if it is held on the same day as the Local Elections.

3.14 Should the Plan gain public support at the referendum, the Plan will be formally 'made' (adopted) and will form part of the statutory Development Plan for the Borough.

3.15 This report seeks authority to progress the emerging Northaw and Cuffley Neighbourhood Plan to a neighbourhood referendum with the intention of 'making' (adopting) the plan should it receive a majority vote in favour. (The term 'make' rather than 'adopt' is used in legislation and government guidance relating to neighbourhood plans but effectively means the same.)

3.16 The examiner has made a series of recommendations to modify several policies and the text to ensure that the neighbourhood plan would meet the "basic conditions" and other legal requirements.

3.17 The main modifications to note are the deletion of two housing site policies, specifically Policy S1: The Meadway and Policy S2: East of Northaw Road East. These sites are allocated for development in Policy SADM 33 in the Welwyn Hatfield Local Plan as HS27 (Cuf1) and HS28 (Cuf6).

3.18 The Examiner has recommended that these policies be deleted from the Neighbourhood Plan despite as the effect of the policy would be to allocate a site in the Green Belt for residential purposes. It is established practice (NPPF 140-145) that the release of land from the Green Belt is a strategic matter (in this case for

WHBC) rather than a neighbourhood planning matter (here for Northaw and Cuffley Parish Council). If the Parish Council is looking to review a made neighbourhood plan after WHBC's Local Plan has been adopted, these sites could then be included in that process if the Parish Council wishes to provide any further policy guidance on this and any or all the allocated sites in the parish in the Local Plan.

Implications

4 Legal Implication(s)

- 4.1 Under the Town and Country Planning Act 1990 (as amended), the Council has a statutory duty to assist communities in the preparation of neighbourhood development plans and orders and to take plans through a process of examination and referendum. The Localism Act 2011 (Part 6 chapter 3) sets out the Local Planning Authority's (LPA) responsibilities.

5 Financial Implication(s)

- 5.1 The Localism Act and Regulations provide that the following costs would fall to Welwyn Hatfield Borough Council: delivering a supporting role particularly in the latter stages of the Plan's development; appointing an Examiner for the Plan; and conducting an Examination and holding a Referendum. Current provisions allow an application for these additional costs to be met. It is anticipated these costs will be recoverable through grants received from MHCLG. Upon a date for the local referendum being set, the Council can claim £20,000 of the neighbourhood planning grant from MHCLG which can be offset against both the cost of the examination incurred in 2022/23 (expected to be between £7,000 and £10,000) and the referendum itself.
- 5.2 It is considered likely the robustness of the Neighbourhood Plan Policies will be tested over time by independent Planning Inspectors on Planning appeals made under Section 78 of the TCPA 1990. Members are advised that the liability for future appeal costs rests with Welwyn Hatfield Borough Council as Local Planning Authority and as such the usability of such plans and their impact on local decision making will need to be carefully monitored. However, it should be noted that in seeking approval to proceed to referendum on this Plan, there is agreement that the content of the Neighbourhood Plan is in broad conformity with the policies of adopted District Plan. It is therefore considered there is very limited risk to Welwyn Hatfield Borough Council of additional financial liability because of this report and recommendations.

6 Risk Management Implications

- 6.1 Having received a draft Neighbourhood Plan from a qualifying body (normally a Parish or Town Council), it is the responsibility of the Local Planning Authority, under regulation 16 of the Neighbourhood Planning (General) Regulations 2012, to publicise and to seek representations on Plan. It is also the responsibility of the Local Planning Authority under paragraph 7 of Schedule 4B to the Town and Country Planning Act 1990 (TCPA 1990) to appoint an independent person to assess the Plan. In following these requirements Welwyn Hatfield Borough Council published and consulted on the submission version of the Northaw and Cuffley Neighbourhood Development Plan between 3 August and 30 September 2022 and appointed Mr Andrew Ashcroft to examine the Plan in October 2022, in agreement with the Parish Council.

- 6.2 Only a draft Neighbourhood Plan that meets each of a set of basic conditions can be put to a referendum and be 'made' (adopted) by the Local Authority. The basic conditions, as set out in paragraph 8(2) of Schedule 4B of the TCPA 1990 and applied to Neighbourhood Plans by the Planning and Compulsory Purchase order 2004, are:
- a) Having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan.
 - b) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order. NB. This applies only to Neighbourhood Development Orders.
 - c) the making of the neighbourhood plan contributes to the achievement of sustainable development.
 - d) the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).
 - e) the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations.
 - f) prescribed conditions are met in relation to the neighbourhood plan) and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.
- 6.3 In assessing the Plan, the examiner has three options:
- a) that the plan proceeds to referendum as submitted.
 - b) that the plan is modified by the LPA to meet 'basic conditions' and then the modified version proceeds to referendum; or
 - c) that the plan does not proceed to referendum.
- 6.4 The neighbourhood development plan examination is therefore a particularly focussed process, unlike that of an examination applied to Local Plans prepared by Local Planning Authorities. This leaves little in the way of opportunity to actively make changes to improve the plan at this stage, unless these changes (or modifications) are to ensure the Plan meets one or more of the basic conditions.
- 6.5 The Examiner's Report is included as Appendix 1 to this report. It is the role of Welwyn Hatfield Borough Council to consider the overall conclusions and the proposed modifications in the Examiner's Report. Whilst the Examiner's report is not binding on the authority, it is considered there is a risk of a legal challenge if the local authority's conclusions were to differ significantly from that of the Examiner without appropriate rationale. However, it is considered there will be occasions where it may be necessary for the Local Authority to propose different modifications to that proposed by the examiner or indeed to disagree with the need for a modification.
- 6.6 In this instance, the examiner's report has concluded that it be modified by the Local Planning Authority to meet the basic conditions and it should be this modified version of the Plan which should proceed to referendum. The Schedule of Modifications attached as Appendix 2 to this report shows how the Local Planning Authority has considered each of the proposed modifications proposed by the Examiner.

- 6.7 The examiner's report also recommends the Referendum Area be restricted to the neighbourhood plan area, i.e. the Parish boundary, as the plan does not have a substantial, direct and demonstrable impact beyond the neighbourhood area. Assuming the Plan is approved to proceed to referendum, the Council's Electoral Services will administer this process in line Neighbourhood Plan Regulations, which specifies that this should take place no more than 56 working days from the publication of the decision statement (following the decision of full Council). Considering the necessary notice periods, it is considered the referendum will take place between to coincide with the Local Elections on 4 May 2023. It is considered there is little risk to the Council if this process follows the regulations closely.

7 Security & Terrorism Implication(s)

- 7.1 There are no security and terrorism implications as a direct result of holding a referendum on the Northaw and Cuffley Neighbourhood Plan or in relation to the making (adoption) of the Plan.

8 Procurement Implication(s)

- 8.1 There are no procurement implications arising as a direct result of holding a referendum on or making (adoption) of the Northaw and Cuffley Neighbourhood Plan.

9 Climate Change Implication(s)

- 9.1 The recommendations propose that to the proceed to referendum with the Neighbourhood Plan. If successful at referendum, and the Plan is subsequently adopted by the Council, it will become part of the statutory Development Plan for the area and will be used in the determination of planning applications. Policy T2 Walking and Cycling of the Plan identifies that opportunities should be maximised to improve the connectivity of walking routes identified to help reduce car, dependency

10 Policy Implication(s)

- 10.1 The Northaw and Cuffley Neighbourhood Plan will form part of the development plan for Welwyn Hatfield Borough. It must be in conformity with the Welwyn Hatfield Local Plan.

11 Link to Corporate Priorities

- 11.1 The Northaw and Cuffley Neighbourhood Plan is linked to all five of the Council's corporate priorities, but with particular links to protect and enhance the environment), (meet the borough's housing needs.

12 Equality and Diversity

- 12.1 An Equality Impact Assessment (EIA) has not been carried out, as this formed part of the examination of the NP.

13 Health and Wellbeing

- 13.1 There are no health and wellbeing implications arising as a result of agreeing to hold a referendum on the Northaw and Cuffley Neighbourhood Plan.

14 Human Resources

14.1 The referendum will be arranged by Electoral Services and the Planning Policy Team With the use of existing staff resources.

15 Communications and Engagement

15.1 The examiner's report has been published on the Borough Council's website and is included in Appendix A.

15.2 The publicity for the referendum will be in accordance with the Neighbourhood Planning (Referendum) Regulations 2012, as amended.

Appendices:

- Appendix A: Examiner's Report Northaw and Cuffley Neighbourhood Plan
- Appendix B: Schedule of Proposed Modifications
- Appendix C: Proposed 'Referendum' Version of the Northaw and Cuffley Neighbourhood Development Plan

Background Papers

[Publication of the Northaw And Cuffley Neighbourhood Plan and Supporting Documentation for public consultation and examination, CPPP 23.06.22](#)