

Executive

27 June 2019

Report of the Director for Economy and Place
Portfolio of the Executive Member for Economy and Strategic
Planning

Earswick Neighbourhood Plan

Summary

1. The purpose of the report is to consider the results of the Earswick Neighbourhood Plan referendum. It asks Members to formally 'make' the Neighbourhood Plan and bring it into full legal force as part of the Development Plan for York. This will allow the Neighbourhood Plan to progress in line with the relevant Neighbourhood Planning legislation and Regulations. This paper will be considered by Members of Local Plan Working Group on 20 June 2019.

Recommendations

2. The Executive is asked to:
 - i) Consider the results of the referendum and formally 'make' the Earswick Neighbourhood Plan.

Reason: To allow the Neighbourhood Plan to progress in line with the Neighbourhood Planning Regulations.

- ii) To approve the Decision Statement attached at Annex B to be published in accordance with Regulation 19 of the Neighbourhood Planning (General) Regulations 2012 (as amended).

Reason: To allow the Neighbourhood Plan to progress in line with neighbourhood planning legislation.

Background

3. The Localism Act 2011 introduced new powers for community groups to prepare neighbourhood plans for their local areas. The Council has a statutory duty to assist communities in the preparation of Neighbourhood Plans and to take plans through a process of Examination and Referendum. The local authority is required to take decisions at key stages in the process within time limits that apply, as set out in the Neighbourhood Planning (General) Regulations 2012 as amended in 2015 and 2016 (“the Regulations”).
4. The Earswick Neighbourhood Plan has been prepared by Earswick Parish Council with on-going engagement with the local community and City of York Council. The Plan has been through the following stages of preparation:
 - Designation as a Neighbourhood Area (9 December 2015)
 - Consultation on 1st Pre-Submission version (20 November 2016 to 7 January 2017)
 - Consultation on 2nd Pre-Submission version (4 December 2017 to 5 February 2018)
 - Submission to City of York Council (5 February 2018)
 - Submission consultation (4 October to 15 November 2018)
 - Examiner Report considered at LPWG and Executive (27 February and 7 March 2019 respectively)
 - Referendum (2 May 2019)
5. The Examiner’s Report concluded that subject to a series of recommended modifications, the Earswick Neighbourhood Plan met the necessary basic conditions (as set out in Schedule 4b (8) of the Town and Country Planning Act 1990, as amended by the Localism Act 2011) and subject to these modifications being made it should proceed to referendum.
6. At Local Plan Working Group on 27 February 2019 and Executive on 7 May 2019, Members accepted the Examiner’s recommendations and agreed that the Earswick Neighbourhood Plan should proceed to referendum.
7. A referendum was held on 2 May 2019.

Referendum

8. A referendum on the Earswick Neighbourhood Plan was held on 2 May 2019 and was organised by the City of York Council. As per the Examiner's recommendations, the referendum area was the same as the Neighbourhood Area designated by the Council, which is the parish of Earswick.
9. A polling station at Earswick Village Hall was open from 7am until 10pm on Thursday 2 May 2019.
10. The Declaration of Results of Poll contained at Annex A to this report confirms that 347 residents casted a valid vote in the referendum, out of a potential 712 on the electoral roll (50.4% turnout). The results on whether to accept the Earswick Neighbourhood Plan were:-
 - YES = 327 (94.2%)
 - NO = 20 (5.8%)
11. The Neighbourhood Planning Regulations (2012 as amended) requires that where over 50% of those voting in the Neighbourhood Plan referendum, vote in favour of the Neighbourhood Plan, then the Council is legally obliged to 'make' the plan (i.e. bring it into force as part of the Development Plan). The Council is not subject to this legal requirement if the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998) or there are unresolved legal challenges.
12. The Planning and Compulsory Purchase Act 2004 also provides that a Neighbourhood Plan for an area becomes part of the development plan for that area after it is approved by an applicable referendum, prior to the plan being 'made' by the Council. In the very limited circumstances where the local planning authority might decide not to 'make' the neighbourhood plan, it will cease to be part of the development plan for the area. Given that the referendum result was 94.2% in favour of the Neighbourhood Plan; the Earswick Neighbourhood Plan and the policies within it are now part of the statutory development plan for City of York.
13. The Neighbourhood Plan must be made by the Council within 8 weeks beginning with the day immediately following that on which the

referendum is held (unless the Plan is incompatible with EU/HR legislation or there is an unresolved legal challenge). This date is 28 June 2019.

Consultation

14. As mentioned earlier in the report, the Earswick Neighbourhood Plan has been through several stages of consultation. These are: consultation on designation as a Neighbourhood Area (9 December 2015), consultation on 1st Pre-Submission version (20 November 2016 to 7 January 2017), consultation on 2nd Pre-Submission version (4 December 2017 to 5 February 2018) consultation on a Submission version (4 October to 15 November 2018) and the Referendum (2 May 2019).
15. A Consultation Statement accompanied the submission version of the Neighbourhood Plan and sets out the consultation undertaken. All the consultation undertaken by City of York Council has been carried out in accordance with the Council's Statement of Community Involvement.

Options

16. Members are asked to formally 'make' the Earswick Neighbourhood Plan and bring it into full legal force as part of the Development Plan for York. The Council is legally obliged to make the plan because it meets the legal requirements for making a plan.

Analysis

17. This report presents to Members the outcome of the Earswick Neighbourhood Plan referendum. At 94.2% in favour of using the Neighbourhood Plan to help determine planning applications in the defined neighbourhood area, this endorsement is demonstrably higher than the required threshold of more than half of those voting. A positive majority at the referendum means that the Council is now obliged to "make" the plan and bring it into full legal force as part of the Development Plan for York.
18. The Neighbourhood Plan is considered to meet the basic conditions and all relevant legal and procedural requirements and this is supported in the Examiner's Report. It is advised that the plan be made by the Council given the positive vote in support of the neighbourhood plan and nothing has changed since the earlier consideration of the

Examiner's report and modifications which would suggest that the Plan would breach, or be incompatible with any EU obligation or any of the Convention of Rights. Nor is there any unresolved legal challenge in respect of the Plan. There are no reasons why the Council should not proceed to 'make' the Neighbourhood Plan in accordance with the outcome of the referendum.

Next Steps

19. Once the plan is 'made', it will achieve its full legal status. It forms part of the statutory development plan for the area and will sit alongside the Local Plan (once adopted). The Neighbourhood Plan contains a series of policies that will be used when determining planning applications that are located within the defined Neighbourhood Area. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Council Plan

20. Under the 2015-2019 Council Plan objectives the project will assist in the creation of a Prosperous City for All, and be a Council that listens to residents particularly by ensuring that:
 - i. Everyone who lives in the city can enjoy its unique heritage and range of activities.
 - ii. Residents can access affordable homes while the greenbelt and unique character of the city is protected.
 - iii. Visitors, businesses and residents are impressed with the quality of our city.
 - iv. Local businesses can thrive.
 - v. Efficient and affordable transport links enable residents and businesses to access key services and opportunities.
 - vi. Environmental Sustainability underpins everything we do.
 - vii. We are entrepreneurial, by making the most of commercial activities.
 - viii. Engage with our communities, listening to their views and taking them into account.

Implications

21. The following implications have been assessed:

- **Financial** – There are no financial implications
- **Human Resources (HR)** – There are no HR implications
- **One Planet Council / Equalities** - Better Decision Making Tool attached at Annex C.
- **Legal** - The legal implications are set out within the body of this report.
- **Crime and Disorder**– There are no crime and disorder implications
- **Information Technology (IT)** – There are no financial implications
- **Property** – There are no property implications
- **Other** – None

Risk Management

22. In compliance with the Council’s risk management strategy, the main risks associated with the Earswick Neighbourhood Plan are as follows:

- The decision whether or not to ‘make’ the Neighbourhood Plan is, like all decisions of a public authority, open to challenge by judicial review. The risk of any such legal challenge being successful has been minimised by the thorough and robust way in which it has been prepared and tested.
- Risks arising from failure to comply with the laws and regulations relating to Planning and the SA and Strategic Environmental Assessment processes and not exercising local control of developments.

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Specialist Implications Officer(s):

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Wards Affected: Strensall

For further information please contact the author of the report

Background Papers: None

Annexes:

Annex A: Declaration of Result of Poll
Annex B: Regulation 19 Decision Statement
Annex C: Better Decision Making Tool

List of Abbreviations Used in this Report:

EU	European Union
HR	Human Rights
SEA	Strategic Environmental Assessment
HRA	Habitat Regulation Assessment
NP	Neighbourhood Plan