

Title of report: Adoption of the Much Birch neighbourhood plan and consequential updates to the countywide policies map

Decision maker: Cabinet member Infrastructure and transport

Decision date: Monday, 7 June 2021

Report by: Neighbourhood Planning Manager

Classification

Open

Decision type

Non-key

Wards affected

Birch;

Purpose

To make the Much Birch neighbourhood development plan as part of the statutory development plan for Herefordshire and approve the consequential updates to the countywide policies maps.

To fulfil the legal duty to make /adopt the Much Birch neighbourhood development plan and update the countywide policies map as part of the statutory development plan for Herefordshire.

Herefordshire Council has positively supported communities to be involved in producing a neighbourhood development plan and currently has the greatest number being produced in a local authority area within England.

There are currently 113 plans in total; 72 of which have now been made. These neighbourhood development plans are produced by parish councils and their local communities and provide locally designed planning policies to support the delivery of the Herefordshire Local Plan – Core Strategy and guide development within the parish until 2031.

On 20 May 2016, the Council delegated authority to the cabinet member for decisions on all further neighbourhood development plans adoptions and amendments to the countywide policies map.

Recommendation(s)

That:

- a) The Much Birch neighbourhood development plan is made as part of the statutory development plan for Herefordshire; and**

b) The required consequential changes are made to the countywide policies map

Alternative options

1. There are no alternative options to making or adopting the Much Birch neighbourhood development plan following the legal requirements of a positive referendum result on the 6 May 2021 and compliance with the European obligations and Human Rights conventions, as referred to in this report

Key considerations

2. The relevant provisions of the Local Act 2011 introduced new powers to allow local communities to prepare neighbourhood development plans and shape future development within their area. Herefordshire Council has positively supported communities to be involved in producing a neighbourhood development plan and currently has the greatest number produced and adopted in any local authority area within England.
3. There are currently 113 plans being produced in Herefordshire; 72 of which has been made /adopted. These plans are produced by parish councils and their local communities and provide more locally detailed policies to support the delivery of the Herefordshire Local Plan – Core Strategy and guide development within the local parish until 2031.
4. All neighbourhood development plans are required to be legally compliant and meet a set of requirements referred to as ‘the basic conditions’; these are that they:
 - Have regard to national policies and advice contained in guidance issued by the Secretary of State;
 - Contribute to the achievement of sustainable development;
 - Be in general conformity with the strategic policies contained in the development plan for the area (Herefordshire Local Plan – Core Strategy);
 - Do not breach and is otherwise compatible with EU obligations, as incorporated into UK law; and
 - Do not breach the requirements of the Conservation of Habitats and Species Regulation 2017.
5. The neighbourhood area of Much Birch was designated on 16 August 2016; this follows the administrative boundary of Much Birch parish council. The Much Birch neighbourhood development plan was produced by Much Birch Parish Council with the assistance of a working group and the local community
6. The Much Birch neighbourhood development plan contains 6 objectives. These result in 17 general policies to guide future development within the parish but no site allocations as the selected sites had already been granted permission by the time of examination. Much Birch, Kingsthorpe and Wormelow are highlighted within the Core Strategy for

proportional growth. The plan seeks to guide any development with the designation of a number of settlement boundaries.

7. The plan was submitted to Herefordshire Council on 15 April 2020 and publicised under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012 (as amended). This consultation period took place between 27 May and 8 July 2020 where representations were invited. 13 were received in total.
8. In August 2020, Rosemary Kidd Dip TP MRTPI was appointed by Herefordshire Council, with consent of the Parish Council to undertake the independent examination of the Much Birch neighbourhood development plans. The examiner was appointed via the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) set up in 2013 to enable Local Planning Authorities to source independent examiners. Three potential examiners were provided for selection. Fee rates were the same and the examiner was selected by the parish council based on experience.
9. The examiner's report concluded that subject to making some minor modifications, the neighbourhood development plan meets the 'basic conditions' and the other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990, and therefore recommended that it should proceed to a referendum. On 1 July 2020, the 'Decision Statement'; a report outlining the examiner's modifications and confirming that the plan can proceed to referendum was published.
10. All neighbourhood development plans are required to gain a majority of 50% plus one in favour at a local referendum in order to be made / adopted by the local planning authority. If the plan received a positive result then the local planning authority have a legal duty to bring the plan into force, if compatible with all other legal duties.
11. At the referendum on the 6 May 2021, 38.1% of the electorate voted within the referendum and the results were as followed:

	Number of votes	
	Yes	No
Do you want Herefordshire Council to use the neighbourhood plan for Much Birch to help it decide planning applications in the neighbourhood area?	256	22

Therefore 92.1% of those voting have voted in favour of the Much Birch neighbourhood development plan.

12. The final plan is available on the Herefordshire Council website.
13. On adoption of the Much Birch neighbourhood development plan, there will also be a requirement to update the countywide policies map which accompanies the local plan. This policies map illustrates geographically the application of the policies in the adopted development plan for the county. The adoption of the policies map is to ensure compliance with regulation 9 of the Town and County Planning (Local Planning) (England) Regulations 2012.

14. The update of the policies map will reflect the range of statutory development plan policies set out in both the local plan and the Much Birch neighbourhood development plan. Such updates to the policies map are likely to be required each time a neighbourhood development plan is adopted.
15. Due to the substantial number of neighbourhood development plans being produced within Herefordshire and the legal duty to adopt them following a positive referendum result and all other legal duties being met, approval was gained at Council on 20 May 2016 to delegate all future adoptions to the Cabinet Member – Transport and Infrastructure.

Community impact

16. The Much Birch neighbourhood development plan has been produced by the parish council with assistance from the local community. The examiner commented that there was clear evidence that extensive consultation had been carried out. Community support has also been demonstrated for the plan during the referendum in which the turnout was 38.1% and the supportive vote was 92.1%.
17. The adoption of the Much Birch neighbourhood development plan will have a positive impact on the local community. The policies and proposals they have helped to develop over recent years will become statutory planning policy for the area. The local community now have more direct involvement in the planning policy making and the future growth of their area.
18. One of the council's priorities within the County Plan is to ensure that Herefordshire's need for more genuinely affordable homes is delivered through carefully planned policies for growth. Neighbourhood development plans and the revised local plan will ensure the delivery of sustainable development which meets the needs of local people whilst respecting our heritage and natural environment.

Environmental Impact

19. All neighbourhood plans seek to deliver the council's [environmental policy commitments](#). They contain planning policies and proposals which are in conformity with the Local Plan and align to the following success measures in the County Plan.
 - Increase flood resilience and reduce levels of phosphate pollution in the county's river
 - Reduce the council's carbon emissions
 - Work in partnership with others to reduce county carbon emissions
 - Improve the air quality within Herefordshire
 - Improve residents' access to green space in Herefordshire
 - Improve energy efficiency of homes and build standards for new housing

- Increase the number of short distance trips being done by sustainable modes of travel – walking, cycling, public transport

20. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.

Equality duty

21. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows;

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

22. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. The neighbourhood development plan has been subject to a requirement within the 'basic conditions' not to breach any Human Rights obligations. This was tested as part of the independent examination.

Resource implications

23. There are no further financial implications as a result of adopting the plan. The local planning authority is responsible for financing the independent examination and referendum of each neighbourhood development plan. This is funded by a grant from central government.

Legal implications

24. Section 38A(1) of the Planning and Compulsory Purchase Act 2004 (as amended) (the 2004 Act) (as enabled by Part 6, Chapter 3, Section 116 of the Localism Act 2011), grants local communities the right to set policies through a neighbourhood development plan as part of the planning system for determining planning applications.

25. Neighbourhood planning is not a legal requirement but a right which communities in England can choose to use but on adoption of the neighbourhood development plan it forms part of the statutory development plan and sits alongside the Local Plan.

26. Under section 38A(4) of the 2004 Act, local planning authorities have a legal duty to make a neighbourhood development plan following a positive referendum result. This is subject to limited exceptions, in section 38A(6) whereby the council need not adopt the plan if it considers that it would be incompatible with any or breach any European obligation or any of the Convention Rights (within the meaning of the Human Rights Act 1998).
27. In this regard, it is noted that the above Equality duty section of this report states that such requirements have been considered and satisfied.
28. Following the two European judgments *People over Wind* and *Sweetman vs Coillte* (C-323/17) and *Cooperation Mobilisation for the Environment vs Verengin Leefmilieu* (Dutch Nitrogen) (C-293/17), the Council have sought legal advice which has indicated that there is no likely significant effect and therefore no breach of the European objections on Habitats. The Much Birch NDP is not within the River Lugg catchment area.
29. However, it is concluded that to not make or adopt the Much Birch neighbourhood plan would be in breach of these statutory powers.
30. The countywide policies map illustrates geographically the application of the policies within the adopted development plan. The adoption of the policies map is to ensure compliance with regulation 9 of the Town and Country (Local Planning) (England) Regulation 2012.
31. In accordance with the provisions of Regulation 19 of the Neighbourhood Planning (General) Regulation 2012 (as amended), as soon as possible after deciding to make a neighbourhood development plan under Section 38A(4) of the 2004 Act the Council must publish on the Council's website and elsewhere if it is considered necessary, to bring the decision to the attention of those who live or work in the neighbourhood area, the Council's Decision Statement, setting out the decisions to make the plan and their reasons for it, and where it can be inspected.
32. Under Regulation 20 as soon as possible after making the neighbourhood development plan under Section 38A(4) of the 2004 Act, the Council must publish on the Council's website the neighbourhood development plan and details of where and when it may be inspected.
33. Under Part 3 Section 1 of the Constitution, development plan documents under section 15 of the 2004 Act are a function of the Council under the budget and policy framework rules. On 20 May 2016, the Council made a resolution to delegate authority to the Cabinet Member – Transport and Infrastructure to undertake future adoption of neighbourhood development plans and to approve any consequential amendments to the countywide policies map.

Risk management

34. The risk of not approving this neighbourhood development plan would mean that the council would be in breach of their legal duty.

Consultees

35. None in relation to this report. The Much Birch neighbourhood plan itself has been subject to extensive consultation during its production. The Parish Council have produce a Consultation Statement outlining the consultation undertaken and this has been subject to the independent examination.

Appendices

None

Background papers

None identified