

SOUTH OXFORDSHIRE DISTRICT COUNCIL

BRIGHTWELL-CUM-SOTWELL NEIGHBOUR DEVELOPMENT PLAN REVIEW: FINAL DECISION STATEMENT

DATE OF PUBLICATION – 04 SEPTEMBER 2024

1. Decision

- 1.1. Following an Independent Examination, South Oxfordshire District Council decided at the Council meeting on 12 October 2023:
1. To make the Brightwell-cum-Sotwell Neighbourhood Development Plan Review with the modifications specified in the Examiner's report.
 2. To delegate to the Head of Policy and Programmes, in consultation with the appropriate Cabinet Member and in agreement with the Qualifying Body, Brightwell-cum-Sotwell Parish Council, the correction of any spelling, grammatical, typographical or factual errors together with any improvements from a presentational perspective.

2. Background

- 2.1 The Brightwell-cum-Sotwell Neighbourhood Development Plan was adopted in 2017. Following the plan's adoption, the Parish Council started to work on a review in 2021. The Brightwell-cum-Sotwell Neighbourhood Development Plan Review was submitted to the district council in February 2023.
- 2.2 Following the submission of the Brightwell-cum-Sotwell Review Neighbourhood Plan ('the Plan') to the Council, the plan was publicised and comments were invited from the public and stakeholders.
- 2.3 South Oxfordshire District Council appointed an independent Examiner, Andrew Ashcroft, to review whether the plan met the basic conditions required by legislation.
- 2.4 The Examiner's Report concluded, subject to the modifications proposed in his report, that the plan meets the Basic Conditions and should be made by the council.
- 2.5 The council determined on 12 October 2023 that the Plan, as modified by the Examiner's recommendations, should be made.

3. Reason for decision

- 3.1 The Neighbourhood Planning Act 2017 identifies the circumstances that might arise as parish councils seek to review 'made' neighbourhood plans. It introduces a proportionate process for the modification of neighbourhood plans where a neighbourhood development plan has already been made in relation to that area.
- 3.2 There are three types of modification which can be made to a neighbourhood plan. The process will depend on the degree of change which the modification involves, as follows:
- **minor (non-material) modifications** to a neighbourhood plan which would not materially affect the policies in the plan;
 - **material modifications which do not change the nature of the plan** and which would require examination but not a referendum; or
 - **material modifications which do change the nature of the plan** would require examination and a referendum.
- 3.3 Whether modifications change the nature of the plan is a decision for the independent examiner. The examiner will consider the nature of the existing plan, alongside representations and the statements on the matter made by the qualifying body and the local planning authority.
- 3.4 Brightwell-cum-Sotwell Parish Council has considered this issue. It took the view that the proposed changes to the 'made' Plan Review fall into the second category – material modifications which do not change the nature of the plan.
- 3.5 South Oxfordshire District Council undertook a separate assessment and concluded that the proposed modifications materially affect the policies in the plan. However, although material, the modifications were not considered to be so significant or so substantial as to change the nature of the plan.
- 3.6 With the consent of Brightwell-cum-Sotwell Parish Council, the council appointed Andrew Ashcroft to examine the Plan. The Independent Examiner considered this issue and concluded that the review of the Plan included material modifications which did not change the nature of the Plan, and which required examination but not a referendum.

- 3.7 In these circumstances, proposals for the modification of made neighbourhood development plans are examined in line with the procedures set out in Schedule A2 of the Planning and Compulsory Purchase Act 2004 (As Amended).
- 3.8 Paragraph 13 of Schedule A2 of the 2004 Act (As Amended) sets out that after considering a draft plan, the examiner must make a report on the draft plan containing one of the following recommendations:
- that the council should make the draft plan; or
 - that the council should make the draft plan with the modifications specified in the report; or
 - that the council should not make the draft plan.
- 3.9 The Examiner's Report is available in Appendix 1. The Examiner's Report assesses the policies in the plan and identifies any modifications required to ensure that they meet the basic conditions. The Examiner concluded that the Plan meets the basic conditions subject to a limited number of recommended modifications. In the main, the recommended modifications are refinements to the wording of the policies concerned. Nevertheless, the submitted review of the Plan remains fundamentally unchanged in its role and purpose. The Examiner's Report recommends that the council should make the Plan with the modifications specified in the Report. A listing of the Examiner's recommendations exactly as they are shown in his Report is available in Appendix 2.
- 3.10 Paragraph 14 of Schedule A2 of the 2004 Act sets out that if the Examiner's Report recommends that the council should make the draft plan with the modifications specified in the report, the council must make the draft plan with those modifications. The only circumstance where the council should not make this decision is where 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).
- 3.11 The council determined on 12 October 2023 the Plan, as modified by the Examiner's recommendations, meets the basic conditions set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990, is compatible with EU obligations and the Convention rights and complies with relevant provision made by or under Section 38A and B of the Planning and Compulsory Purchase Act 2004 as amended.
- 3.12 Section 5 of the Basic Conditions Statement submitted in support of the Plan outlined the Qualifying Body's considerations to the European Convention on Human Rights (ECHR), in particular their regard to the fundamental rights and freedoms guaranteed under the ECHR and the Human Rights Act. The council is satisfied that the preparation of the Plan had regard to the fundamental rights

and freedoms guaranteed under the European ECHR and that it complies with the Human Rights Act. The Council is satisfied that there has been full and adequate opportunity for all interested parties to take part in the preparation of the Plan and to make their comments known.

- 3.13 South Oxfordshire District Council produced a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Determination in July 2022, which confirmed that a SEA and a full HRA were not required on the Plan. The screening determination has been subject to consultation with the relevant statutory consultees, who confirmed the decision. The Council's Decision Statement issued on 12 October 2023 under Regulation 18(2) confirmed that the modifications accepted by the Council, both separately and combined, produce no likely significant environmental affects and are unlikely to have any significant effects on European Designated Sites. Therefore, the Council is satisfied that the making of the Brightwell-cum-Sotwell Neighbourhood Development Plan Review, incorporating the modifications recommended by the Examiner and accepted by the council, would not breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights.
- 3.14 As the Examiner's Report recommends that the council should make the Plan with the modifications specified in the Report and the council is satisfied that the making of the Plan would not breach, or otherwise be incompatible with, any EU or human rights obligations as incorporated into UK law, the council must make the Brightwell-cum-Sotwell Neighbourhood Development Plan Review.

4. Other Information

- 4.1 In accordance with Regulations 19 and 20 of the Neighbourhood Planning (General) Regulations 2012, this Decision Statement and the made Brightwell-cum-Sotwell Neighbourhood Plan Review can be viewed on the Council's website:

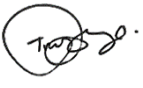
<https://www.southoxon.gov.uk/BrightwellCumSotwell-NP>

- 4.2 Copies of this Decision Statement and the Brightwell-cum-Sotwell Neighbourhood Plan Review can be inspected at:

Reception South Oxfordshire District Council Abbey House, Abbey Close, Abingdon OX14 3JE	If you would like to view these documents at the Council offices, please contact us on 01235 422600 or email: planning.policy@southandvale.gov.uk to book an appointment.
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4.3 In accordance with Regulation 19(b) and Regulation 30 of the Neighbourhood Planning (General) Regulations 2012, a copy of this Decision Statement has been sent to:

- The qualifying body, namely Brightwell-cum-Sotwell Parish Council
- The persons who asked to be notified of the decision

Signed: 

Date: 04/09/2024

Tim Oruye
Head of Policy and Programmes

Appendix 1 – Examiner’s Report

The Examiner’s Report is available here: <https://www.southoxon.gov.uk/wp-content/uploads/sites/2/2023/09/Brightwell-cum-Sotwell-NDP-Review-Examiners-Report.pdf>

Appendix 2 – Listing of the Examiner’s recommendations:

Rec.	Text	Reason
1	<p><u>BCS1 Brightwell-cum-Sotwell Village Boundary</u></p> <p>In the second part of the policy replace ‘accord with the design code of Policy BCS8’ with ‘have full regard to the local design code of Policy BCS6’.</p> <p>In the third part of the policy replace ‘consistent with lother’ with ‘consistent with other’</p>	Bring the clarity required by the NPPF
2	<p><u>BCS5 House Types and Tenures</u></p> <p>In Part A of the policy:</p> <ul style="list-style-type: none"> replace the second criterion with: ‘The scheme is supported by robust evidence of demonstrable local needs.’ replace the third criterion with: ‘The scheme is of an appropriate scale and density relative to the existing settlement character and surrounding pattern of development.’ <p><i>Replace paragraph 3.32 with: ‘Given these considerations, the availability of local facilities and local environmental constraints, the policy sets out a series of criteria with which any such proposal should comply. Key elements are that any such sites should have a boundary with the Village Boundary (as defined in Policy BCS1) and be of an appropriate scale and density relative to the existing settlement character and surrounding pattern of development. The approach also reflects the way in which the NPPF defines proportionate in size at paragraph 72b and the corresponding footnote 35.’</i></p>	Non-compliant with basic conditions; does not have regard for sustainable development.
3	<p><u>BCS5 House Types and Tenures</u></p> <p>Delete Part B of the policy.</p>	Non-compliant with basic conditions; does not have regard to national policy.
4	<p><u>BCS6 Design Codes</u></p> <p>Incorporate the SODC suggested changes (References 24 to 40) within the Design Code</p>	Bring the clarity required by the NPPF
5	<p><u>BCS8 Local Green Spaces</u></p>	Bring the clarity required by the NPPF

	Replace 'permitted' with 'supported'	
6	<p><u>BCS11 Dark Skies</u></p> <p>Replace the policy with:</p> <p>'Development proposals should conserve and enhance relative tranquillity in relation to light pollution and dark night skies.</p> <p>Development proposals should also demonstrate that they meet or exceed the Institute of Lighting Professionals guidance and other relevant standards or guidance (CIE 150:2003 Guide on the Limitation of the Effects of Obtrusive Light from Outdoor Lighting Installations), or any equivalent replacement/updated guidance for lighting within environmental zones.</p> <p>Development proposals which include lighting should ensure that:</p> <ul style="list-style-type: none"> • the measured and observed sky quality in the surrounding area is not reduced; • the lighting concerned is not unnecessarily visible in nearby designated and key habitats; • the visibility of lighting from the surrounding landscape is avoided; and • building designs should avoid large areas of glazing which would result in light spillage into rural and unlit areas.' 	Bring the clarity required by the NPPF and allow SODC to implement it in a consistent way throughout the Plan period.
7	<p><u>BCS13 Local Nature Recovery</u></p> <p>Replace the opening element of the first part of the policy with:</p> <p>'As appropriate to their scale, nature and location, development proposals should contribute to the recovery of local nature in the Parish and respond positively to the following matters:</p>	Bring the clarity required by the NPPF
8	<p><u>BCS16 Renewable Energy</u></p> <p>In the opening part of the policy delete 'in principle'</p> <p>In i replace 'suit' with 'respect'</p> <p>In ii replace 'it is.... significant harm' with 'they are effectively screened and do not cause unacceptable harm'</p>	Bring the clarity required by the NPPF and allow SODC to implement it in a consistent way throughout the Plan period.

	<p>In iii replace 'significant' with 'unacceptable'</p> <p>In iv replace 'substantial' with 'unacceptable'</p> <p>In iii, iv and v replace 'it will' with 'they will'</p>	
9	<p><u>BCS17 Community Facilities</u></p> <p>In the second part of the policy replace 'permitted with supported and 'existing community' with 'existing community facility'</p>	Bring the clarity required by the NPPF and to correct typographic errors.
10	<p><u>Other Matters – General</u></p> <p>Modification of general text (where necessary) to achieve consistency with the modified policies and to accommodate any administrative and technical changes.</p>	Bring the clarity required by the NPPF and to correct typographic errors.
11	<p><u>Other Matters – Specific</u></p> <p>Modification of general text to update the Plan (SODC comments 1 to 8; 10; 12-13; 15 to 17; 19 to 38 and 40 and correct errors (SODC comments 1– 29)</p>	Bring the clarity required by the NPPF and to correct typographic errors.