

SUBJECT:	<i>The Chalfont St Peter Neighbourhood Plan</i>
REPORT OF:	<i>Sustainable Development – Councillor Peter Martin</i>
RESPONSIBLE OFFICER	<i>Anita Cacchioli interim Director of Services Director/Peter Beckford Head of Sustainable Development</i>
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WARD/S AFFECTED	<i>Austenwood, Central, Chalfont Common and Gold Hill</i>

1. Purpose of Report

This report sets out the current position in respect of the Chalfont St Peter Neighbourhood Plan following the judicial review. The report sets out the options to progress the neighbourhood plan process and the recommendations of the officers to proceed to getting the neighbourhood plan process completed.

RECOMMENDATION

1. To note the outcome and the implications of the court judgement following the judicial review;
2. To accept the Examiner's recommendation that the reference in the draft Chalfont St Peter Neighbourhood Plan that Winkers Farm Country Club (Winkers Nightclub) should be removed from Table 8.1;
3. That the said Neighbourhood Plan (as amended in accordance with the Examiner's recommendations and the other modifications agreed by the Head of Sustainable Development under delegated authority on 23 January 2015) should proceed to referendum;
4. That a timetable for progressing the said Neighbourhood Plan be approved.

2. Executive Summary

Chalfont St Peter Parish Council produced a neighbourhood plan which was subjected to consultation and examination in accordance with the statutory procedures. The Council accepted all of the Examiner's recommendations except that relating to Winkers Farm Country Club/Nightclub (Winkers). The Neighbourhood Plan was taken to referendum on 5 March 2015, which it passed. Before the plan could be made (adopted) by Chiltern District Council a legal challenge was made by the owners of Winkers. They objected to the inclusion of the nightclub in a list of facilities to be protected by the Neighbourhood Plan. The High Court quashed the Council's decision in relation to Winkers and also quashed the referendum. As such the Council needs to re-consider its decision in relation to the Examiner's report and decide how to proceed with the plan. The report acknowledges it would be difficult to maintain the protection of Winkers as a local community facility and as such recommends that the Cabinet change its position on the Examiner's report before proceeding to a further referendum on the Neighbourhood Plan.

3. Reasons for Recommendations

The recommendation to Cabinet is to note the implications of the court judgement and to accept the Examiner's recommendation in respect of Winkers in the light of that judgment for the reasons set out below.

The recommendation to approve a timetable is so that the Parish Council and officers are aware of an agreed timetable to progress the plan. The timetable would enable a transparent decision making process to be set out.

4. Content of Report

4.1 Background

Chalfont St Peter Parish Council produced a neighbourhood plan document. This has passed the formal stages required and was submitted for examination. Key dates in this process are set out below.

Neighbourhood area approved	- 12th November 2012
Draft Neighbourhood Plan submitted	- 11th February 2014
Examiners report received	- 23rd June 2014.
Consultation on decision to not agree one examiner recommendation	- 2nd October to 14th November 2014.
Referendum	- 5th March 2015

4.2 As members will be aware the neighbourhood plan was put to a referendum which was passed by 78.9% of the people who voted. Under the regulations the Council should then have made (adopted) the Chalfont St Peter Neighbourhood Plan as part of the development plan for the Chalfont St Peter area. Cabinet considered the result of the referendum at the meeting on the 24th March 2015 where it was recommended to Council to 'make' the plan. However at the time of the Cabinet meeting the Council was aware of the potential legal challenge to the neighbourhood plan with the claimants seeking leave from the courts to make an appeal. On that basis the recommendation to Council was 'That, unless there is a legal challenge still in progress, the Council makes the Chalfont St Peter Neighbourhood Plan'. (Minute 91 refers)

4.3 The formal transcript of the court judgement was not received until January 2016. The remainder of this report sets out the implications of that judgement on the progression of the Chalfont St Peter Neighbourhood Plan.

4.4 The Examiner's report considered that the neighbourhood plan could proceed to referendum with a few minor modifications as recommended by the Examiner. One of these modifications related to the identification of Winkers as a facility to be protected for the local community. The facility was identified in table 8.1 of the plan (but not in the accompanying map 8.1). The Examiner had received an objection from the agents acting for the owners of the facility and he concluded:

“Table 8.1 contains a reference to 27, Winkers Farm Country Club. Evidence has been provided to demonstrate that this is a private facility, rather than a community facility. It is not shown on Figure 8.1.

Remove reference to 27, Winkers Farm Country Club from Table 8.1”

- 4.4 Under the Act¹ the Local Planning Authority has to consider each of the Examiner’s recommendations and decide what action to take in response to each recommendation. The Council took the view that the Examiner had been inconsistent by deciding to exclude Winkers from the neighbourhood plan list on the basis that he stated it was a private facility. In the Council’s view this ignored other private facilities listed in the neighbourhood plan and was thus inconsistent with the development plan community policies which made no such distinction.
- 4.5 On that basis the Council’s decision was to disagree with the Examiner. The Act required the Council where it proposed to disagree with an Examiner’s recommendation to consult with the public on that decision. Public consultation was undertaken and the results analysed but there was nothing noted in the responses which altered the Council’s view and as such it was recommended the plan proceed to referendum.
- 4.6 The High Court quashed the Council’s decision not to accept the Examiner’s recommendation that Winkers should be removed from the list of community facilities in the Neighbourhood Plan and the decision that the plan should proceed to referendum. Effectively this means that the Council has to decide again how to deal with the Examiner’s report recommendations and to then decide if the plan as amended should proceed to a second referendum.

Consideration

- 4.7 The High Court judgement has been considered carefully and it has been decided that to challenge the ruling in the Court of Appeal would be unlikely to succeed and would inevitably prolong the progression of the Chalfont St Peter neighbourhood plan process even further.
- 4.8 Decisions in relation to Examiner’s recommendations are delegated to the Head of Sustainable Development in consultation with the Cabinet member for Sustainable Development. The organisation of a referendum is delegated to the Council’s Chief Executive. Given the sensitivity of this particular case the Head of Sustainable Development has taken the view that any further decision on this Examiner’s report should be taken by the Cabinet.
- 4.8.1 As set out above, the Council disagreed with the one recommendation in relation to Winkers. The High Court judgment found the Council’s reasoning to be flawed. In the Judge’s opinion, the Examiner was not drawing a simplistic distinction between facilities run privately and those run by the community. Instead, he was reaching a value judgment that this particular facility provided services of a private nature rather than community benefits and concluded that a nightclub with restricted availability did not have a significant value so as to qualify as a community facility deserving of the protection of the proposed Neighbourhood Plan policy. The court also held that the need for the Neighbourhood Plan to meet the statutory “basic conditions” does not mean that it has to be in complete conformity with the remainder of the Development Plan and the NPPF. The statutory regime requires the comparison of policies between the Neighbourhood Plan and the strategic policies of the Development Plan to be taken as a whole and not as a comparison

¹ Schedule 4B Town and Country Planning Act 1990, Paragraph 12

between individual policies, even where a local planning authority may feel that a very tight degree of conformity is justifiable.

- 4.8.2 Looking at the judgment more generally, the High Court held, as well as confirming that a community facility can be privately or commercially run, that the district-wide policies in the Core Strategy or Local Plan do not require community facilities to be identified in any other part of the Development Plan. The fact that a facility is not identified in the Neighbourhood Plan does not mean that it falls outside the scope of CS28 and 29 of the Core Strategy, or GB23 and GB24 the Local Plan. If the Neighbourhood Plan passes the referendum it becomes part of the Development Plan and those sites identified within it would carry a higher level of protection, but each application would be considered and determined on its specific circumstances and the merits of the case.
- 4.8.3 As far as Winkers is concerned, the Council needs to consider the relevant local community served by the facility and then determine the extent to which the community benefits from the facility and the nature and extent of the need for that facility within community.
- 4.8.4 In theory, it would be open to the Council to continue to disagree with the Examiner if, after consideration of all the available evidence, the Council remained of the view that Winkers was a facility that provided a sufficient level of community benefit and was valued by the local community. Evidence presented with the recent planning applications on the site, combined with evidence of the owners contained in statements submitted to the court would suggest that, while some locals use the site, they are very much in the minority and that many users come from further afield. Furthermore, the local residents are supportive of a re-development. Indeed, in the most recent planning application, the Parish Council has not objected to the loss of the facility, only expressing concerns about the proposed highway accesses to the residential development proposal. Therefore, in the light of this and the court's decision it is considered that it would be difficult to maintain that the nightclub provides a vital local community benefit that should be protected under the Chalfont St Peter Neighbourhood Plan.
- 4.9 Progressing the Neighbourhood Plan – as set out above the neighbourhood plan process as a result of the High Court judgement is back at the point where the Council has to consider each of the Examiner's recommendations. Given the above reasoning that it would not be possible to justify including Winkers in a list of local facilities to be protected by the neighbourhood plan it is recommended that the decisions on the Examiner's recommendations are as before but with the exception of the Winkers issue, where the Council now agrees his recommendation. In terms of the statutory procedure the Cabinet could then propose that the plan proceeds to referendum
- 4.10 The referendum process itself requires a formal lead in period of at least 28 working days before the referendum can be held. As members are aware there are two national elections/referendums planned in the next few months (5 May and 23 June.) The neighbourhood plan referendum cannot be combined with the EU referendum and the date of the Police and Crime Commissioner election does not give enough time to organise the referendum for the same date. As such it is recommended that the neighbourhood plan referendum is held on a separate date. The Democratic Services Manager is preparing possible timetables for consideration by the Cabinet for a referendum to take place as soon as possible.

5. Consultation

The report has been considered by the Sustainable Development Policy Advisory Group, whose views will be reported to Cabinet.

6. Options

The officer's recommended option is set out in the report above. In the light of the High Court judgment, the responses to the consultation preceding the last referendum and the evidence available it is not recommended that the Council's disagreement with the Examiner's recommendation in respect of Winkers be maintained.

Although it is not required under the statutory procedure, the Cabinet could decide to carry out a further public consultation exercise on a proposed decision to accept the Examiner's recommendation in respect of Winkers. However it is considered that to hold a further public consultation would not add any value to the process (and would, in fact, introduce significant delays) and the public could be sufficiently informed and engaged by way of a publicity campaign leading up to the second referendum.

7. Corporate Implications

3.1 Financial

If the plan proceeds to referendum the main cost will be related to the referendum process.

3.2 Legal

Given the judgment following the High Court challenge the Council is under a legal requirement to re-consider the Examiner's Recommendations and to undertake the requirements of the Act to progress the Neighbourhood plan. To do nothing is not an option.

3.3 Environmental Issues - the neighbourhood plan if adopted would form a part of the Development Plan for the parish it is not considered there are any specific environmental issues.

8. Links to Council Policy Objectives

We will work towards safe, healthy and cohesive communities - 3. Promote cohesive communities - Engage with Parish and Town Councils and local neighbourhoods- the council has been working closely with the parish council to produce the neighbourhood plan.

9. Next Step

This is dependent on the Cabinet decision. However, as recommended the next step would be to proceed to a referendum.

Background	
Papers:	

