

**CABINET MEMBER FOR STRATEGIC PLANNING, DEVELOPMENT MANAGEMENT,  
STRATEGIC HOUSING, PROPERTY AND WASTE - CLLR TOBY STURGIS**

**ECONOMY AND REGENERATION**

**OFFICER CONTACT:** Georgina Clampitt-Dix 01225 713472  
Email: [georgina.clampitt-dix@wiltshire.gov.uk](mailto:georgina.clampitt-dix@wiltshire.gov.uk)

**REFERENCE:** SDSPW- 001-13

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**FRESHFORD AND LIMPLEY STOKE NEIGHBOURHOOD PLAN**

**Purpose of Report**

1. To approve, subject to the agreement of a memorandum of understanding with Bath and North East Somerset Council:
  - (i) Bath and North East Somerset Council as the lead authority for the purpose of determining the Freshford and Limpley Stoke Neighbourhood Area designation applications and, subject to its formal designation, any subsequent stages in the preparation of the proposed Neighbourhood Plan.
  - (ii) The transfer of the Council's function to Bath and North East Somerset Council to ensure that (i) above occurs on a sound and legal basis.

**Background**

2. The parishes of Freshford, within Bath and North East Somerset and Limpley Stoke, within Wiltshire are currently preparing a joint neighbourhood plan under the provisions of the Localism Act 2011.
3. In November 2011, Wiltshire Council and Bath and North East Somerset Council (BANES) submitted a joint application for a grant under the Government's Neighbourhood Planning Frontrunners' Scheme to support Freshford and Limpley Stoke Parish Councils in their aspiration to prepare a neighbourhood plan. The two villages of Freshford and Limpley Stoke are close, both physically and in terms of community ties and function, including concerns over the need to provide for affordable housing. This formed the basis for the application. The application was successful and grant funding (£20,000) was secured, which is managed by BANES in association with Wiltshire Council.
4. In November 2012, Wiltshire Council and BANES received applications to designate the Freshford and Limpley Stoke Neighbourhood Area. Wiltshire Council and BANES publicised the application over the same time period and the consultation closed on Thursday 21 February 2013. The next step is to determine the application.

**Main Considerations for the Council**

5. The decision to designate the neighbourhood area and undertake subsequent stages in a neighbourhood plan's preparation is an executive function, which the Service Director for Economy and Regeneration has delegated authority.

6. The appropriate procedure for the joint determination of the applications, which falls within the area of both Councils (see Legal Implications below) would be for a single officer from the Councils to consider whether or not to designate the area on behalf of both authorities and that this should be enabled through the formal transfer of function to one authority. The same approach can be applied to other subsequent formal stages relating to the preparation of the Neighbourhood Plan, should the area be designated.
7. To date, BANES has been the lead authority in the administration of the frontrunner application and grant funding; as such, in the interest of continuity it is proposed that this lead authority arrangement continues.
8. In order to ensure that the lead authority approach works effectively, and Wiltshire Council is properly engaged in the decision making process, a memorandum of understanding should be prepared and agreed between both authorities. This will need to include the joint use of further grant funding that may be secured.

### **Safeguarding Considerations**

9. There are none with this proposal, as it relates to the transfer of function to another authority.

### **Public Health Implications**

10. There are no direct implications with this proposal.

### **Environmental and Climate Change Considerations**

11. There are no direct considerations with this proposal.

### **Equalities Impact of the Proposal**

12. There are none with this proposal, as it relates to the transfer of function to another authority.

### **Risk Assessment**

13. Preparation and signing of an agreed memorandum of understanding will ensure that Wiltshire Council is properly involved in the process and any risks are minimised.

### **Risks that may arise if the proposed decision and related work is not taken**

14. The Council has a legal duty to determine applications for the designation of Neighbourhood Areas and duties relating to subsequent stages in the preparation of a Neighbourhood Plan. In order to consider the designation of the Freshford and Limpley Stoke Neighbourhood Area application that crosses two local authority administrative areas in the most robust way, one authority needs to transfer its function to the other. The Parish Councils cannot lawfully prepare a Neighbourhood Plan without the Neighbourhood Area being designated.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

15. Continued compliance with legislation will be necessary to minimise the risk of legal challenge and ensure that due process is followed.

<b>Risk</b>	<b>Action to mitigate the risk</b>
1. Legal challenge of process	Consult Legal Services/Counsel and involve in preparation of the memorandum of understanding
2. Lack of collaboration by Bath and North East Somerset	As above

### **Financial Implications**

16. The Council is entitled to burdens funding for each neighbourhood planning project. Currently (2013/2014 financial year) payments of £5,000 will be made for each Neighbourhood Area designation, a further £5,000 will be made when the plan is publicised by the local planning authority prior to examination and the final payment of £20,000 will be made once a draft plan has undergone a successful examination. The memorandum of understanding will need to cover future grant funding and ensure that it is apportioned appropriately between the two authorities.
17. There are no costs to the Council, other than what would have been incurred if Limpley Stoke Parish Council had made an application on its own.

### **Legal Implications**

18. Wiltshire Council and BANES instructed Counsel on the basis that this is a new and complex area of law and the ramifications of not having followed procedure and process for designating the Neighbourhood Area, which could withstand a legal challenge, would be significant as the Neighbourhood Area designation provides the legal basis for the Neighbourhood Plan. This report has been prepared taking into account and following both external and internal legal advice.
19. There is a power under the Localism Act 2011 for two Parishes from within two separate Local Authority areas to be designated as a neighbourhood area.
20. Section 101 (5) of the Local Government Act 1972 provides that two or more authorities may discharge any of their functions jointly and, where arrangements are in force, may do so.
21. Under Regulations 9 and 4 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 joint arrangements may be made under Section 101(5) of the LGA 1972 for executive functions by:
- (a) the Executive Leader;
  - (b) unless the Executive Leader otherwise directs -
    - (i) the executive of the local authority;
    - (ii) a member of the executive other than the Executive Leader.
22. The Leader has not directed that the Executive member for planning should not determine such applications and therefore the Executive member for planning can determine this issue.

23. The joint exercising of the function by way of a single Officer of the Lead Authority in respect of cross-local authority boundary neighbourhood planning applications would generally be the best way of ensuring that statutory requirements for both Parishes are complied with.
24. The exercise of this power by a neighbouring authority on behalf of Wiltshire Council in respect of a Parish area within Wiltshire does require appropriate controls to ensure that all relevant factors pertaining to Limpley Stoke are taken into account and provided a memorandum of understanding is entered into prior to the exercise of this power by the nominated Officer of Bath and North East Somerset Council, as the lead, then this issue is sufficiently safeguarded.

### **Options Considered**

25. The options considered are whether each Council individually makes decisions related to the neighbourhood planning process or whether the function is transferred to a lead authority. Having regard to the two Parishes wish to work together to develop a neighbourhood plan that covers both parishes and In the interests of efficiency and consistency the only reasonable option available to the Council is to nominate a lead authority.

### **Conclusions**

26. Consultation closed on the application to designate a Neighbourhood Area for Freshford and Limpley Stoke in February 2013. A decision needs to be made on whether or not the area should be designated. As the area relates to two local planning authorities, in the interests of efficiency and consistency it would be reasonable to nominate BANES as the lead authority to consider the area designation and, should it be approved, to undertake subsequent duties in the preparation of the proposed neighbourhood plan on behalf of both authorities. In order to ensure that the transfer of this function in relation to the Freshford and Limpley Stoke Neighbourhood Plan is undertaken effectively, a memorandum of understanding should be agreed with BANES.

### **Reason for Proposal**

27. To ensure that the application for the designation of the Freshford and Limpley Stoke Neighbourhood Area can be determined and subject to approval, progress made on the preparation of the Neighbourhood Plan.

### **Proposal**

28. To approve, subject to the agreement of a memorandum of understanding between Wiltshire Council and Bath and North East Somerset Council:
  - (i) Bath and North East Somerset Council as the lead authority for the purpose of determining the Freshford and Limpley Stoke Neighbourhood Area designation applications and subject to its formal designation, any subsequent stages in the preparation of the proposed Neighbourhood Plan.
  - (ii) The transfer of the Council's function to Bath and North East Somerset Council to ensure that (i) above occurs on a sound and legal basis.

And:

- (iii) Delegates to the Director for Economy and Regeneration authority to agree a memorandum of understanding with Bath and North East Somerset Council in consultation with the Director of Law and Governance.

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**The following unpublished documents have been relied on in the preparation of this report:**

None

**Appendices**

None