

Dartmoor National Park Authority

4 September 2015

**Ashburton Masterplan**

Report of the Head of Legal & Democratic Services

**Recommendation: That Members:**

- (i) Resolve to rescind the decision of 3 July 2015 to approve the Ashburton Masterplan, on the basis that legal advice has been received that the Masterplan should be prepared and presented for adoption as a Supplementary Planning Document**
- (ii) Agree to the series of actions set out at para 3.2 (ii) to (ix) inclusive (below) to take forward the preparation of a Masterplan for Chuley Road, Ashburton**

**1. Introduction**

- 1.1 On 3 July 2015 Members received a report recommending the approval of a Masterplan for the Chuley Road area of Ashburton.
- 1.2 After hearing from a number of public speakers and an officer presentation, Members debated the Masterplan document and resolved to approve it.
- 1.3 On 13 August 2015 the Authority received a letter from Richard Buxton Environmental & Public Law Solicitors, on behalf of the South Devon Railway Trust. The letter expressed concern that the Masterplan had been approved by the Authority without having been through the process set out in the Planning and Compulsory Purchase Act 2004 ('PCPA 2004') and the Town & Country Planning (Local Planning) (England) Regulations 2012 ('the Regulations') to adopt the Masterplan as a Development Plan Document ('DPD') or a Supplementary Planning Document ('SPD').
- 1.4 The letter indicated that if the Authority did not rescind its approval of the Masterplan, South Devon Railway Trust reserved the right to seek permission from the Court to judicially review the Authority's decision.

**2. External Legal Advice**

- 2.1 Instructions were issued to Cornerstone Barristers, London to advise on this potential legal challenge and generally on the issues raised in relation to the Masterplan.

- 2.2 Counsel has advised that the Masterplan does not need to be a DPD or to be prepared as a DPD. This is because the policy framework which calls for the preparation of the Masterplan (and which sets out the land use policy considerations it needs to address) is already provided in Proposal ASH2 of the adopted Development Management and Delivery DPD ('the DMD').
- 2.3 However, on reflection, Counsel is of the view that the Masterplan does contain statements that fall within the scope of Regulation 5(1)(a)(iii) of the Regulations. This has the consequence that the Masterplan should be prepared as a SPD in accordance with Part 5 of the Regulations and that it should be adopted as a Local Development Document in accordance with s.17(8) and s.23(1)PCPA 2004.
- 2.4 Having reviewed the processes that have been undertaken in relation to the preparation of the Masterplan, Counsel has advised that in substance they meet the requirements for the preparation of a SPD, save that the Authority has not yet produced or invited representations on the consultation statement required by Regulation 12(a) and it has not formally adopted the Masterplan as a Local Development Document, as required by s.17(8) PCPA 2004.

### **3. The Way Forward**

- 3.1 The failures identified are capable of remedy. Counsel agrees that it is not necessary (and would be wholly disproportionate) to discard the Masterplan and to start the process of preparation afresh. To do so would simply be a waste of resources, both by the Authority and by all those individuals and bodies who have participated to date. It would create confusion and would delay the time when the Masterplan can be brought into effect to guide the redevelopment of the Chuley Road area.
- 3.2 Officers have identified a series of actions to address the procedural omissions as follows:
- i) invite Members to rescind the decision of 3 July 2015 to approve the Masterplan, on the basis that legal advice is that the Masterplan needs to be progressed and presented for adoption as a SPD
  - ii) add information to the Authority's website pages that refer to the Masterplan and to the copies of the Masterplan that are available for public inspection, to indicate that the status of the Masterplan is that of a final draft and that further steps will have to be taken before it can be finalised.
  - iii) carry out a review of the content and evidence base for the Masterplan to ensure that it is sufficient for consideration and adoption as a SPD
  - iv) prepare a formal Regulation 12 statement setting out the persons consulted, the main issues raised, how those issues have been addressed, the date by which representations must be made and the address to which any representations should be sent
  - v) engage in a further round of public consultation, issuing copies of the Masterplan (re-issued with text to make it clear that it remains in draft and is not finalised), together with the Regulation 12 statement, with a 6 week period for representations to be made

- vi) ensure that the reissued Masterplan explicitly states that it is to be a Supplementary Planning Document, as required by Regulation 8;
- vii) consider any representations received in accordance with Regulation 13 before considering whether to adopt the Masterplan, with or without any modifications to take account of those representations and any other relevant matters, in accordance with s.23(1) PCPA 2004
- viii) if Members decide to adopt the Masterplan, ensure that any resolution is made in accordance with s.17(8) and s.23(5) PCPA 2004
- ix) upon a determination by Members to adopt a Masterplan, produce an adoption statement in accordance with Regulation 14

#### **4. Financial Considerations**

- 4.1 There will be additional costs associated with the further work required. Some of these costs will accrue as officer time and some will be associated with additional external support. It is anticipated that the balance of the costs will be met from the Project Fund.
- 4.2 External legal advice and assistance has been procured and the costs of this support are being kept under close control.

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