

**Cabinet Meeting: 17<sup>th</sup> March, 2021**  
**Tabled Update to Agenda Item 8:**  
**Borden Parish Conservation Areas Review**

**1 Update Note**

- 1.1 As agreed in advance with Borden Parish Council, a 6 week public consultation exercise ran from Monday the 5<sup>th</sup> October 2020 until and including Sunday the 15<sup>th</sup> November 2020.
- 1.2 The Local Plan Panel considered this matter at its meeting on the 18<sup>th</sup> February 2021, where it was unanimously agreed by members of the panel to recommend to the Cabinet that the proposed changes to the conservation areas review document recommended by officers, in light of public consultation feedback, should be approved.
- 1.3 It will be noted from the minutes of the Local Plan Panel meeting however, (attached as Appendix vi to this report) that a small number of parties potentially affected by the review work did not receive their notification letters.
- 1.4 The Cabinet report published with the agenda pack references that 3 parties did not receive their public consultation notification letters, but subsequent communication with the lead party (on 26/02/21) whom first raised this matter with officers raised the prospect that a further 3 parties did not receive notification letters.
- 1.5 Following checks being made in relation to the postal and email addresses used for notification letters, together with the processes used for sending them out, there is no evidence of any administrative error having occurred on the part of officers. If the notification letters were not received by the relevant parties as suggested, this can perhaps be explained by letters being lost in the post in relation to those posted out on Friday the 2<sup>nd</sup> October, 2020. There is however no obvious explanation for the failure of one notification sent out by email (again on Friday the 2<sup>nd</sup> October, 2020) to a publicly stated email address on a web page. Officers have subsequently exchanged email correspondence with the party in question using exactly the same email address, as from the eve of the Local Plan Panel meeting last month, and the original public consultation notification back in October 2020.
- 1.6 Notwithstanding the understandable uncertainty over the genuineness of these claims of a lack of notification in the circumstances, officers have nevertheless wanted to ensure that those parties who have advised of a lack of notification should be offered the opportunity to submit comments, and this was a principle of supporting fairness and associated transparency in the decision making process was very much supported by the Local Plan Panel. Therefore, following the conclusion of the Local Plan Panel meeting on the 18<sup>th</sup> February, the 3 initial parties said not to have been notified of the public consultation, were contacted

(be email) on the 19<sup>th</sup> February and sent a replacement consultation letter inviting them to submit any comments they might wish to make by close of business on the 12<sup>th</sup> March. Attached the covering email, along with the formal replacement consultation letter, was a copy of the PDF version of the conservation area review document used at the time of the original consultation.

- 1.7 Officers were subsequently notified (on Friday 26/02/21) by the same party (who claimed not to have received his emailed-out public consultation notification letter) that a further 3 parties had not received their public consultation notification letters. Officers did not have, and were not provided with email addresses for the 3 additional parties in question, and so the first working day after being notified of their alleged lack of notification (i.e. on Monday 01/03/21), replacement consultation letters were sent out together with hard copies of the PDF version of the conservation area review document used at the time of the original consultation. Officers received a telephone enquiry from one of these parties on Tuesday the 2<sup>nd</sup> March (duly actioned the same day) and it is therefore not unreasonably assumed that the other two parties would also have received their replacement consultation letter on the 2<sup>nd</sup> March.
- 1.8 Paragraph 5.8 of the Cabinet report published with the agenda pack states that *'In the event that any comments are received from aforementioned parties by the stated deadline, a tabled update referencing this feedback will be circulated in advance of the Cabinet meeting on the 17<sup>th</sup> March. This may include changes to the recommendations set out at the head of this report. Furthermore, it may also result in replacement or additional changes being made to the conservation areas review document, and should this be the case, a revised version of appendix ii will also be circulated in parallel with the tabled update'*.
- 1.9 Officers can now confirm that a total of 7 responses have been received following the reconsultation provided for the six parties in question. Four out of the six parties re-consulted have submitted a response, either directly or through a solicitor and/or planning agent.
- 1.10 For the purposes of transparency, full copies of the letters received are attached to this update as Appendix A. Members will note from an inspection of these letters that there are clearly repeated themes across each one, the common thread being a request to fully re-open the public consultation, essentially on the basis that there should be no possible disenfranchisement of interested and/or affected parties. It should be noted that the letters have been redacted where necessary to protect personal data in accordance with the requirements of the General Data Protection Regulations, 2018 and the Data Protection Act, 2018.
- 1.11 Members attention is drawn in particular to the content of the letters from the legal firms of Maples Teesdale, and Brachers. In light of the stated threat of a judicial review, officers have sought legal advice from Mid Kent Legal Services and have been subsequently advised that the likelihood of any legal challenge succeeding is low, as:

- (a) the review assessment work was carried out by an appropriately qualified and experienced external heritage consultant, having due regard to the relevant legislation and guidance,
  - (b) officers arranged for public consultation of the review work document to be carried out in a clear and transparent manner, in particular seeing to ensure that all land/property owners within the existing conservation area boundaries and proposed extensions to those boundaries were notified of the review work (land registry information was obtained to help support this objective),
  - (c) officers reports and associated recommendations to both the Local Plan Panel and to Cabinet are professional, objective and contain all the necessary information to enable the relevant decisions of each to have been/to be made on a properly informed basis, and
  - (d) those parties who claim not to have been originally notified of the public consultation have been given the opportunity to submit their comments late on in the process with the firm assurance that their comments will be taken into account by the Cabinet in reaching a decision on the planned re-designation of the four conservation areas in question. In particular, that the recommendation to the Cabinet from the Local Plan Panel on this matter does not result in the subsequent consideration of this matter by the Cabinet being a *fait-accompli*, as has been suggested by some of the parties in question.
- 1.12 The matter of concerns over the consultation process has been covered in the above-stated commentary, and when this is stripped away from the representations submitted by the four aforementioned parties, this leaves a number of concerns to the review document essentially consisting of objections to the proposed boundary extensions to the Borden (The Street) Conservation Area, intended to include grade II listed Yew Tree Cottage and part of the land surrounding it. These objections concerning the review work itself are set out in Appendix B to this tabled update. Members are requested to view this table of summaries of additional consultation responses (and officers' response and recommendation in relation to them) in parallel with the table of summaries of consultation responses received in relation to the original consultation (forming Appendix iii of the agenda pack report). This is to ensure that any decision made in relation to the officer recommendations is based on a proper understanding of the full extent of consultation feedback received.
- 1.13 Having carefully considered the additional feedback provided from the four of the six parties which claim not to have received the original public consultation notification letters, officers have concluded that there are no sound grounds on which to alter the recommendations as set out in the report published in the agenda pack. These therefore remain unchanged, but members are of course not bound to follow the recommendations of officers and the Cabinet members may wish to take a different view, provided they can demonstrate sound planning based reasons for doing so.

## 2 Appendices to tabled update

- **Appendix A:** Copies of all 7 representations received in relation to the additional public consultation period offered to parties whom claim not to have received the original notification letter in October 2020 (redacted to protect personal data, as appropriate)
- **Appendix B:** Public consultation extension – table of a summary of the representations on the review work itself, received (from the parties referenced in Appendix A), and the council’s response and recommendations in relation to them