

TO: THE EXECUTIVE
18 DECEMBER 2018

**PUBLICATION OF SUBMISSION VERSION OF
THE BRACKNELL TOWN NEIGHBOURHOOD PLAN, APPOINT AN EXAMINER AND
AGREE DELEGATIONS FOR FORTHCOMING DECISIONS**

1 PURPOSE OF REPORT

1.1 Bracknell Town Council prepared a Neighbourhood Development Plan (“Neighbourhood Plan”) pursuant to the Neighbourhood Planning (General) Regulations (2012) (as amended) (“the Regulations”). The Town Council submitted its proposed Plan to Bracknell Forest Council (“the Council”) in its capacity as the local planning authority on the 28 November 2018, in accordance with Regulation 15.

1.2 Upon receipt of a Neighbourhood Plan proposal, the Council is required to:

- check that the correct documentation has been submitted (in accordance with Regulation 15);
- undertake publicity on the proposed Neighbourhood Plan (in accordance with Regulation 16); and,
- arrange for the Neighbourhood Plan to be examined by an independent Examiner (Regulation 17).

The latter two decisions are required to be taken by the Executive where the Executive Member for Planning and Transport has an interest in the Neighbourhood Development Plan that has been submitted. This is as agreed by a decision on 26 February 2016 by the Leader of the Council in a report relating to ‘Revised Arrangements for the exercise of powers relating to Neighbourhood Planning Process’ (“the decision”¹).

1.3 The purpose of this report is to seek agreement to the Council undertaking public consultation on the proposed Bracknell Town Neighbourhood Plan, the appointment of an independent Examiner and to delegate two forthcoming decisions on the Bracknell Town Neighbourhood Plan to the Leader. These forthcoming decisions are to agree the Council’s Regulation 16 consultation response and to agree the form, content and publication of the Decision Statement; and submission of the Neighbourhood Plan to referendum.

2 RECOMMENDATION

2.1 The Executive agrees that the Council:

- (1) undertakes public consultation on the submission version of the Bracknell Town Neighbourhood Plan pursuant to Regulation 16;**
- (2) appoints an independent Examiner to undertake the examination of the Bracknell Town Neighbourhood Plan pursuant to paragraph 7 of Schedule 4B of the Act and Regulation 17;**
- (3) delegates the agreement of the regulation 16 consultation response, the Decision Statement and to submit the plan for examination to the Leader of the Council; and,**

¹ <http://democratic.bracknell-forest.gov.uk/ieDecisionDetails.aspx?Id=2390>

- (4) agrees the cost of the examination and referendum not funded by grant is included as a one off item in the Commitment Budget for 2019/20.**

3 REASONS FOR RECOMMENDATION

- 3.1 The Council has a statutory duty, as set out in paragraph 7 of Schedule 4B of the Town and Country Planning Act 1990 (as amended) (“the Act”) and Regulations 16 and 17 of the Regulations, to consider submitted Neighbourhood Plan proposals, undertake a six week public consultation exercise and to appoint an independent Examiner to undertake the examination of a Neighbourhood Plan.
- 3.2 The decision taken on 26 February 2016 requires forthcoming decisions on the Bracknell Town Neighbourhood Plan to be undertaken by the Executive where the Lead Member has an interest in the Neighbourhood Plan, which is the case in Bracknell Town. However if forthcoming decisions are taken by the Executive, this may affect the ability of the Council to fulfil its statutory duties within time periods prescribed in the Regulations. Therefore delegation of forthcoming decisions to the Leader is sought. These decisions are:
- to agree the Council’s Regulation 16 consultation response; and
 - to agree the form, content and publication of the Decision Statement; and submission of the Neighbourhood Plan to referendum.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The alternative option of not undertaking a public consultation exercise and/or appointing an independent Examiner as set out in paragraph 3.1 above, would be in breach of the Council’s statutory responsibilities in respect of Neighbourhood Planning under Regulations 16 and 17 of the Regulations, and paragraph 7 of Schedule 4B of the Act. It would also expose the Council to legal challenge and attendant costs.
- 4.2 The alternative option of the Executive taking the forthcoming decisions could delay the ability of the Council to fulfil its statutory duties within prescribed time periods. It would also expose the Council to legal challenge and attendant costs.

5 BACKGROUND INFORMATION

- 5.1 Bracknell Town Council is the Qualifying Body for the purposes of Neighbourhood Planning in Bracknell Town, and the Council designated Bracknell Town as a Neighbourhood Area for the purposes of Neighbourhood Planning on 11 February 2014. Since then, Bracknell Town Council has undertaken much work on preparing a Neighbourhood Plan, culminating in public consultation on the pre-submission version of its Neighbourhood Plan between 9 July and 20 August 2018, in accordance with Regulation 14 of the Regulations. Following an Executive decision on 17 July 2018, the Leader approved this Council’s formal response to the pre-submission version of the draft Bracknell Town Neighbourhood Plan on 10 August 2018. The Council’s response included comments on technical issues and a detailed schedule of comments.
- 5.2 Following the close of the pre-submission consultation, Bracknell Town Council considered all consultation responses received and amended its Neighbourhood Plan as appropriate. In accordance with Regulation 15, a Consultation Statement has been produced.

- 5.3 Bracknell Town Council submitted its Neighbourhood Plan and supporting documentation (including the Consultation Statement), to the Council on 28 November 2018.
- 5.4 The Director of Place, Planning and Regeneration has confirmed in a letter dated 6th December 2018 to Bracknell Town Council that the submitted documentation complies with the statutory requirements as set out in the Act and Regulation 15 of the Regulations (see Appendix A). It should be noted that this is an administrative decision delegated to the Director: Place, Planning and Regeneration by the Executive Member for Council Strategy and Community Cohesion (decision 4 of the 26 February 2016 report), and does not consider the content of the plan proposal or whether it meets the basic conditions.

6 BRACKNELL FOREST COUNCIL'S STATUTORY DUTIES FOLLOWING SUBMISSION OF THE PLAN PROPOSAL

Context

- 6.1 The Council has a statutory duty set out in paragraph 3 of Schedule 4B of the Act to provide advice and assistance to qualifying bodies undertaking neighbourhood planning. Planning Officers at Bracknell Forest Council have provided support during the preparation of the Neighbourhood Plan in accordance with the Service Level Agreement. This has included providing informal comments and advice in respect of the emerging Neighbourhood Plan.

Publicising a plan proposal

- 6.2 The Regulations require the Council to undertake a six week public consultation on the proposed Bracknell Town Neighbourhood Plan (submission version) if the proposal meets the requirements as set out in the legislation. As stated in paragraph 5.4, the Council has confirmed that Bracknell Town Council has submitted the Bracknell Town Neighbourhood Plan and associated required documentation and has met the statutory requirements. It is intended that the consultation will run from 7th January 2019 to the 18th February 2019.
- 6.3 Regulation 16 stipulates that the consultation must be publicised on the Council's website and in such other manner as would be likely to bring the proposed Bracknell Town Neighbourhood Plan to the attention of people who live, work or carry on business in the Bracknell Town Neighbourhood Area. This includes:
- details of the proposed Bracknell Town Neighbourhood Plan,
 - details of where and when the Bracknell Town Neighbourhood Plan may be inspected,
 - details of how to make representations,
 - the date by which those representations must be received, and
 - a statement setting out that any representation may include a request to be notified of the Council's decision in respect of Regulation 19 (whether or not the Plan was 'made').
- In addition, consultees who responded to the pre-submission consultation undertaken by Bracknell Town Council must be notified of the Council's consultation on the proposed Bracknell Town Neighbourhood Plan.
- 6.4 During the six-week public consultation, interested parties will be able to make written representations on the proposed Bracknell Town Neighbourhood Plan. In accordance with National Planning Practice Guidance², representations should address whether or not the proposed Bracknell Town Neighbourhood Plan meets the

² Paragraph Reference ID: 41-057-20140306

basic conditions and other matters that the independent Examiner is required to consider under paragraph 8 of Schedule 4B of the Act. Representations may also address whether the referendum area should be extended beyond the Neighbourhood Area. If a consultee wishes to make a case for an oral hearing, this should be done as part of his/her written representations. All representations received by Bracknell Forest Council must be sent to the appointed independent Examiner for consideration as part of the examination.

Appointing the independent Examiner

- 6.5 The legislation requires the Council to appoint an independent Examiner to carry out the examination. Bracknell Town Council must consent to the appointment (paragraph 7(4) of Schedule 4B of the Act). The Council must also make such arrangements as considered appropriate in connection with the holding of the examination. The Examiner appointed must be someone who:
- is independent of Bracknell Town Council and Bracknell Forest Council,
 - does not have an interest in any land that may be affected by the Bracknell Town Neighbourhood Plan, and,
 - has appropriate qualifications and experience.

- 6.6 The Royal Institute of Chartered Surveyors (RICS) has established a Neighbourhood Planning Independent Examiner Referral Service (NPIERS), which comprises an independent panel of competent, impartial, qualified planning professionals. The examiners on the NPIERS panel have been trained and assessed to undertake Neighbourhood Plan examinations by several planning bodies, and are monitored to ensure performance and standards. Examiners time is chargeable at a rate of £750 plus VAT per day.

- 6.7 When making an application to NPIERS, details of the Neighbourhood Plan scope and any specific timeframes that need to be met can be provided. NPIERS contact Examiners who meet the criteria set out in the application and paragraph 6.5 above, and confirm that they are suitable candidates. NPIERS then provides three CVs of suitable Examiners for consideration. Whilst the appointment is made by Bracknell Forest Council, Bracknell Town Council must also agree with the decision.

- 6.8 Whilst this report seeks approval of the principle of appointing an Examiner (decision 4 of the 26 February report), the administration related to the appointment of the Examiner and submitting the Bracknell Town Neighbourhood Plan is delegated to the Director: Place, Planning and Regeneration by the Executive Member for Council Strategy and Community Cohesion (decision 6 of the 26 February 2016 report). It is recommended that the Council in conjunction with Bracknell Town Council apply to NPIERS for a suitable independent Examiner.

Submitting the plan for examination

- 6.9 Once the six week consultation has closed, the proposed Bracknell Town Neighbourhood Plan is subject to examination by the appointed independent Examiner who will check that it meets the 'basic conditions' and other matters set out in paragraph 8 of Schedule 4B of the Act. Unlike a Local Plan, the Examiner does not test 'soundness'. There is a general expectation that the examination of a submitted Neighbourhood Plan is dealt with via written representations and that it does not include a public hearing. However, if the Examiner considers it necessary to ensure adequate examination of an issue or to give a person a fair chance to put forward a case, then he/she may decide to hold a hearing to listen to oral representations. If the Examiner determines that it is necessary to hold a hearing on

the Bracknell Neighbourhood Plan, the Council will have to make the necessary arrangements for holding a hearing.

- 6.10 Once the Examiner has considered the Bracknell Town Neighbourhood Plan, he/she is required to issue a report which contains recommendations in accordance with paragraph 10 of Schedule 4B of the Act. The report must make one of the following recommendations:
- that the draft Neighbourhood Plan is submitted to a referendum, or
 - that modifications specified in the report are made to the Neighbourhood Plan and that the Neighbourhood Plan as modified is submitted to a referendum, or
 - that the proposal for the Neighbourhood Plan is refused.
- 6.11 If the Examiner proposes any modifications, these must be in accordance with paragraph 10(3) of Schedule 4B of the Act, relate to modifications necessary for the Neighbourhood Plan to meet the basic conditions, be compatible with the Convention rights, meet the requirements of relevant legislation or be for the purposes of correcting errors.
- 6.12 The Examiner must send a copy of his/her report to Bracknell Forest Council and to Bracknell Town Council (as the Qualifying Body).
- 6.13 A formal view is required by the Council on whether or not the proposed Plan meets the 'basic conditions' (and what modifications, if any, are necessary to ensure that the Bracknell Town Neighbourhood Plan meets the basic conditions and legislative requirements) (decisions 9 & 10 of the 26 February 2016 report). A decision must also be made on whether to hold a referendum on the Plan (decision 12 of the 26 February 2016 report). If the referendum is successful, the Neighbourhood Plan will form part of the Bracknell Forest Development Plan and be used in the determination of planning applications relating to land in Bracknell Town. The Council will be required to formally 'make' the Bracknell Town Neighbourhood Plan within 8 weeks of a successful referendum being held (Regulation 18A), and publicise the decision (decisions 14 & 15 of the 26 February 2016 report).

Resource Implications

- 6.14 As indicated above, this Council, as the local planning authority, has a statutory duty to provide advice and assistance and to carry out certain parts of the neighbourhood planning process, including organising the consultation, holding and arranging the examination and the referendum.
- 6.15 The Council has already received £5,000 of Government grant funding following the designation of the Bracknell Town Neighbourhood Area. A further £20,000 will be available to claim once the Council has set a date for the referendum. The Council will need to fund the independent examination and the referendum. It is estimated the examination costs will be in the region of £7,500. It should be noted that the size of the electorate in Bracknell Town means the estimated cost of a stand alone referendum is £65,000. The grant funding will therefore not fully cover the costs of the examination and referendum.
- 6.16 The work of supporting the preparation of the Bracknell Town Neighbourhood Plan has been carried out in accordance with the Service Level Agreement agreed between the Council and Bracknell Town Council. To date the work has been resourced from within existing budgets supplemented by the grant money from Government. As set out above, there will be future financial resource implications in arranging the Examination and referendum of the Neighbourhood Plan.

7 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 7.1 The recommendations of the report seek the Executive approval for the Council to: undertake a public consultation on the submission version of the Bracknell Town Neighbourhood Plan (in accordance with Regulation 16) and to appoint an independent Examiner to examine the Bracknell Town Neighbourhood Plan (in accordance with paragraph 7 of Schedule 4B of the Act and Regulation 17).
- 7.2 Consideration has been given to the nature of and the appropriate level at which Neighbourhood Planning decisions can be made, whilst ensuring the process is fair and transparent.
- 7.3 The Regulations are directed at the Council as Local Planning Authority, although, most decisions are of an administrative nature and to be taken against a specific set of criteria (e.g. as to the characteristics of a qualifying body). Therefore, it is considered that most Neighbourhood Planning decisions can be taken either by the Executive Member for Planning and Transport or the Director: Place, Planning and Regeneration.
- 7.4 Revised governance arrangements for the discharge of decisions in relation to facilitating the Neighbourhood Planning Process were approved by the Leader in February 2016. These entailed approval of undertaking public consultation and appointing an examiner to the Executive Member for Planning and Transport. However since the Executive Member has been involved in the preparation of this Neighbourhood Plan, the approval of the Council's response is, in accordance with the arrangements, vested in the Executive.
- 7.5 The Executive decisions which are the subject of the recommendations in this report are administrative decisions required by regulation. As such there should be no conflict of interest, other than for the Executive Member for Planning and Transport and the for Executive Member for Culture, Resources & Public Protection, who are on the Neighbourhood Plan steering group as referred to above.

Director of Finance

- 7.6 The financial implications are set out in the body of the report. There is no specific budget for the difference between the costs of the examination and referendum and the amount that the Council can expect to receive as grant, which is likely to be in the order of £47,500. This will therefore need to be included as a one-off item in the Commitment Budget for 2019/20.

Equalities Impact Assessment

- 7.7 This is not considered relevant as the policies do not prejudice any particular section of the community and the Council has not prepared the policies.

8 CONSULTATION

- 8.1 The Council will be arranging and undertaking a six week public consultation on the submission version of the Bracknell Town Neighbourhood Plan. This consultation will be held in accordance with Regulation 16 of the Regulations. It is anticipated that this will commence on the 7th January 2019.

Background Papers

- The Neighbourhood Planning (General) Regulations 2012 (as amended)
- Town and Country Planning Act 1990
- National Planning Practice Guidance:
<http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/>
- Bracknell Town Neighbourhood Area Designation: <https://www.bracknell-forest.gov.uk/planning-and-building-control/planning/planning-policy/neighbourhood-planning/bracknell-town-neighbourhood-area>
- Background information on the Bracknell Town Neighbourhood Plan:
<http://bracknelltowncouncil.gov.uk/bracknell/bracknell-town-neighbourhood-plan/>
- Neighbourhood Planning Independent Examiners Referral Service (NPIERS):
<https://www.rics.org/uk/footer/dispute-resolution-service/drs-services/neighbourhood-planning-independent-examiner-referral-service/>

Appendices

Appendix A – Letter confirming submitted Bracknell Town Neighbourhood Plan documents satisfy statutory criteria

Contact for further information

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