

**TO: EXECUTIVE MEMBER FOR PLANNING & TRANSPORT
21 FEBRUARY 2019**

**PUBLICATION OF SUBMISSION VERSION OF
WARFIELD NEIGHBOURHOOD PLAN AND APPOINT AN EXAMINER**

1 PURPOSE OF REPORT

- 1.1 Warfield Parish Council prepared a Neighbourhood Development Plan (“Neighbourhood Plan”) pursuant to the Neighbourhood Planning (General) Regulations (2012) (as amended) (“the Regulations”). The Parish Council submitted its proposed Plan to Bracknell Forest Council (“the Council”) in its capacity as the local planning authority on 24 January 2019, 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).
- 1.3 The latter two decisions have been delegated to the Executive Member for Planning and Transport by a decision on 26 February 2016 by the Executive Member for Council Strategy and Community Cohesion in a report relating to ‘Revised arrangements for the exercise of powers relating to the Neighbourhood Planning Process’ (“the decision”).
- 1.4 The purpose of this report is to seek agreement to the Council undertaking public consultation on the proposed Warfield Neighbourhood Plan and the appointment of an independent Examiner. 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 Member for Planning & Transport agrees that the Council:**
- (1) undertakes public consultation on the submission version of the Warfield Neighbourhood Plan pursuant to Regulation 16; and**
 - (2) appoints an independent Examiner to undertake the examination of the Warfield Neighbourhood Plan pursuant to paragraph 7 of Schedule 4B of the Act and Regulation 17.**

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.

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.

5 BACKGROUND INFORMATION

- 5.1 Warfield Parish Council is the Qualifying Body for the purposes of Neighbourhood Planning in Warfield Parish, and the Council designated Warfield Parish as a Neighbourhood Area for the purposes of Neighbourhood Planning on 23 July 2014. Since then, Warfield Parish Council has undertaken much work on preparing a Neighbourhood Plan, culminating in public consultation on the pre-submission version of its Neighbourhood Plan between 21 June and 8 September 2017, in accordance with Regulation 14 of the Regulations. Following approval from the Executive Member for Planning & Transport, this Council provided a formal response to the pre-submission version of the draft Warfield Neighbourhood Plan which included comments on technical issues and a detailed schedule of comments.
- 5.2 Following the close of the pre-submission consultation, Warfield Parish 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 Warfield Parish Council submitted its Neighbourhood Plan and supporting documentation (including the Consultation Statement), to the Council on 24 January 2019.
- 5.4 The Director of Place, Planning and Regeneration has confirmed in a letter dated 4 February 2019 to Warfield Parish 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 Warfield 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 Warfield Parish Council has submitted the Warfield Neighbourhood Plan and associated required documentation and has met the statutory requirements. It is intended that the consultation will run from 4 March to 15 April 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 Warfield Neighbourhood Plan to the attention of people who live, work or carry on business in the Warfield Neighbourhood Area. This includes:
- details of the proposed Warfield Neighbourhood Plan,
 - details of where and when the Warfield 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 Warfield Parish Council must be notified of the Council's consultation on the proposed Warfield Neighbourhood Plan.

- 6.4 During the six-week public consultation, interested parties will be able to make written representations on the proposed Warfield Neighbourhood Plan. In accordance with National Planning Practice Guidance¹, representations should address whether or not the proposed Warfield Neighbourhood Plan meets the 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. Warfield Parish 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 Warfield Parish Council and Bracknell Forest Council,
 - does not have an interest in any land that may be affected by the Warfield 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.

¹ Paragraph Reference ID: 41-057-20140306

- 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, Warfield Parish 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 Warfield 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 Warfield Parish 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 Warfield 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 Warfield Neighbourhood Plan, the Council will have to make the necessary arrangements for holding a hearing.
- 6.10 Once the Examiner has considered the Warfield 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 Warfield Parish 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 Warfield 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 Warfield. The Council will be required to formally 'make' the Warfield 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 Warfield 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. Based on the size of the electorate in Warfield Parish, the estimated cost of a standalone referendum is £23,000; however the examiner might require the referendum area to be extended beyond the Warfield parish boundary. The cost of the referendum cannot therefore be accurately quantified at this stage and it is not possible to determine whether the grant funding will be sufficient to cover the costs. If there is a shortfall it is unlikely to be significant and options to fund it will need to be identified during the next financial year.
- 6.16 The work of supporting the preparation of the Warfield Neighbourhood Plan has been carried out in accordance with the Service Level Agreement agreed between the Council and Warfield Parish 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 Warfield Neighbourhood Plan (in accordance with Regulation 16) and to appoint an independent Examiner to examine the Warfield 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.

Director of Finance

- 7.5 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. Any funding shortfall is unlikely to be significant and options to fund it will need to be identified during the next financial year.

Equalities Impact Assessment

- 7.6 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 Warfield Neighbourhood Plan. This consultation will be held in accordance with Regulation 16 of the Regulations. It is anticipated that this will commence on 4 March 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/>
- Warfield Neighbourhood Area Designation: <https://www.bracknell-forest.gov.uk/planning-and-building-control/planning/planning-policy/neighbourhood-planning/warfield-neighbourhood-area>
- Background information on the Warfield Neighbourhood Plan: <http://warfield-np.org.uk/>
- 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 Warfield Neighbourhood Plan documents satisfy statutory criteria

Contact for further information

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