

To: THE EXECUTIVE
19 October 2021

BRACKNELL NEIGHBOURHOOD DEVELOPMENT PLAN 2016-2036
“MAKING” THE PLAN
SECTION 38A(4) OF THE PLANNING AND COMPULSORY PURCHASE ACT
2004 (AS AMENDED)

Executive Director: Place, Planning and Regeneration

1 Executive Summary

- 1.1 The Bracknell Town Neighbourhood Development Plan (“the Neighbourhood Plan”) came into legal force as part of the statutory Bracknell Forest Development Plan (“the Development Plan”) when the results of the community referendum on the Neighbourhood Plan were published, where the majority of those who voted were in favour of Bracknell Forest Council (“the Council”) using the Neighbourhood Plan to help decide planning applications in the Bracknell Town Neighbourhood Area. As the Council is satisfied that formally ‘making’ the Neighbourhood Plan (keeping it in legal force) would not breach, or otherwise be incompatible with, any EU or human rights obligations and there has been no legal challenge related to the referendum, the Council is required to formally make the Neighbourhood Plan as soon as reasonably practicable after the referendum is held and, in any event, within 8 weeks of the referendum.

2 Purpose of Report

- 2.1 The purpose of this report is to seek agreement from the Executive to formally make the Neighbourhood Plan, keeping it in legal force as part of the Development Plan, to be used in the determination of planning applications relating to land in Bracknell Town. The decision also seeks the Executive’s approval for the form, content and publication of the associated Decision Statement

3 Recommendations

- 3.1 That the Executive approves:
- (1) the formal “making” (keeping in legal force) of the Bracknell Town Neighbourhood Development Plan to continue to form part of the statutory Bracknell Forest Development Plan pursuant to Section 38A(4) of the Planning and Compulsory Purchase Act 2004 (as amended); and**
- (2) the form, content and publication of the Decision Statement (set out in Appendix B) pursuant to Regulation 19 of the Neighbourhood Planning (General) Regulations 2012 (as amended).**

4 Reasons for Recommendations

- 4.1 The Council in its capacity as the Local Planning Authority has a statutory duty, as set out in Section 38A(4) of the Planning and Compulsory Purchase Act 2004 (as amended) (“PCPA”), to make a neighbourhood development plan if more than half of those voting at referendum have voted in favour of making the neighbourhood development plan. This must be done as soon as reasonably practicable after the referendum is held and, in any event, within 8 weeks of the referendum (as prescribed by Regulation 18A of the Neighbourhood Planning (General) Regulations 2012 (as amended) (“the Regulations”). Regulation 19 requires the Council to then

publish a statement setting out the decision and details of where and when the decision statement may be inspected. This must be done as soon as possible after deciding to make the neighbourhood development plan.

5 Alternative options considered

- 5.1 If the Council considers that the making of the Neighbourhood Plan would breach, or otherwise be incompatible with any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998 (as amended)), it would not have a duty to make the Neighbourhood Plan, as set out in Section 38A(6) of the PCPA, in which case the Neighbourhood Plan would cease to form part of the Development Plan, as set out in Section 38(3B) of the PCPA.
- 5.2 The independent Examiner who reviewed the Neighbourhood Plan considered that it met the basic conditions and statutory requirements (incorporating modifications), including the basic condition that the Neighbourhood Plan is compatible with EU obligations and Convention rights (within the meaning of the Human Rights Act 1998 (as amended)). The Council concurred with the Examiner's conclusions as set out in the published 'Post Examination Decision Statement.' Therefore, it would be in breach of the Council's statutory responsibilities in respect of Neighbourhood Planning under Section 38A(4) of the PCPA to refuse to make the Neighbourhood Plan. It would also expose the Council to legal challenge and attendant costs.

6 Supporting information

Process

- 6.1 Bracknell Town Council is the Qualifying Body for the purposes of Neighbourhood Planning in the Bracknell Town administrative area. The Council designated Bracknell Town as a Neighbourhood Area for the purposes of Neighbourhood Planning on 11 February 2014. Bracknell Town Council submitted its Neighbourhood Plan and supporting documentation to the Council on 28 November 2018.
- 6.2 The Executive Director of Place, Planning and Regeneration confirmed in writing to Bracknell Town Council on 6 December 2018 that the submitted documentation complied with the statutory requirements as set out in the Town and Country Planning Act 1990 (as amended) ("the TCPA") and Regulation 15 of the Regulations. The Leader/Executive Member for Council Strategy & Community Cohesion agreed to the Council undertaking a statutory six-week publicity period on the submitted Neighbourhood Plan in accordance with Regulation 16 and the appointment of an independent examiner in accordance with Regulation 17 (decision on 18 December 2018). Public consultation was held between 7 January 2019 and 18 February 2019. The Council also submitted a representation during this consultation period which was agreed by the Executive Member for Council Strategy & Community Cohesion on 7 February 2019.
- 6.3 With the consent of Bracknell Town Council, the Council appointed Mr John Slater to undertake the independent examination of the Neighbourhood Plan. The Council submitted the Neighbourhood Plan along with the representations received during the consultation period and other supporting documentation for examination (under Regulation 17) following the close of the Regulation 16 consultation.
- 6.4 Following an initial assessment of the plan and accompanying documents, the examiner decided to hold a public hearing on Tuesday 14 May 2019 at Bracknell Town Council's offices.

- 6.5 Following that hearing, the examiner issued 'Interim Conclusions' and gave the Town Council 3 options for taking the Plan forward. The Town Council decided to follow option of reconfiguring the submitted documents. 1. In response to the Examiner's 'Interim Conclusions' (June 2019), Bracknell Town Council submitted an amended Plan, and Schedule of Changes. The Examiner then issued 'Further Comments' (November 2019).
- 6.6 A focused consultation (for those who commented at the Regulation 16 stage, was held between Monday 18 November and Monday 16 December 2019. Following the focused consultation, the Examiner issued 'Mapping and Document Issues' (February 2020), which required the Town Council to address some specific requirements before the Examiner could issue their final report:
- 6.7 The Examiner issued his report to the Council on the Examination of the Neighbourhood Plan on 23 April 2020 and the Council subsequently published the report on its website in accordance with paragraph 10(8) of Schedule 4B of the TCPA.
- 6.8 The Examiner's Report recommended that, subject to modifications put forward by the Examiner, the Neighbourhood Plan be submitted to referendum. It also recommended that the Neighbourhood Plan should proceed to a referendum based on the designated Bracknell Town Parish Neighbourhood Area. (A copy of the Examiner's report has been published on the Council's webpage). The Council considered each of the recommendations made in the Examiner's Report (and the reasons for them) and decided what action to take in response to each recommendation (in accordance with paragraph 12(2) of Schedule 4B of the TCPA and Regulation 18 of the Regulations).
- 6.9 These Council considerations and decisions were set out in a Post Examination Decision Statement. The Leader/Executive Member for Council Strategy & Community Cohesion approved the form and content of the Post Examination Decision Statement, its subsequent publication and to the submission of the modified Bracknell Town Neighbourhood Plan to a local community referendum in his decision of 9 July 2021. The Post Examination Decision Statement was published on the Council's website on 19 July 2021.
- Referendum arrangements*
- 6.10 As required by paragraph 14(2) of Schedule 4B of the TCPA and regulation 13(1) of The Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) Regulations 2020, the Council duly made arrangements to hold a referendum on the making of the Neighbourhood Plan on Thursday 9 September 2021.
- 6.11 In accordance with paragraph 12(5) of Schedule 4B of the TCPA, the referendum was held on the Neighbourhood Plan which incorporated the agreed modifications set out in the schedule of the Post Examination Decision Statement.
- 6.12 A person was entitled to vote in the referendum if on the prescribed date of the referendum a) the person was entitled to vote in an election of any councillors of a relevant council any of whose area was in the referendum area, and b) the person's qualifying address for the election was in the referendum area.

- 6.13 The referendum area was the designated Bracknell Town Neighbourhood Area. A separate business referendum was not held since the Bracknell Town Neighbourhood Area was not designated as a business area.

Referendum results and the Neighbourhood Plan coming into legal force

- 6.14 The referendum was held on Thursday 9 September 2021 between 7am and 10pm. The following question was asked to those entitled to vote in the referendum: *“Do you want Bracknell Forest Council to use the Neighbourhood Plan for Bracknell Town to help it decide planning applications in the neighbourhood area?”*

- 6.15 At the referendum a total of 4,085 votes were cast. Of these:
- the number of votes in favour of a ‘yes’ was 3,457
 - the number of votes in favour of a ‘no’ was 582
 - 28 votes were rejected, deemed unmarked or void for uncertainty
 - the turnout was 9.6 per cent.

The official result sheet is set out in Appendix A.

- 6.16 More than half of those in the community of Bracknell Town who voted were in favour of the Council making the Neighbourhood Plan. As set out in Section 38(3A) of the PCPA, this meant that the Neighbourhood Plan came into legal force as part of the Development Plan with immediate effect. It is therefore used in the determination of planning applications in the Bracknell Town Neighbourhood Area.

7 Bracknell Forest Council’s statutory duties following a successful referendum

Context

- 7.1 When 50% + one of those who vote at a neighbourhood plan referendum are in favour of a neighbourhood development plan being made, it comes into legal force with immediate effect. In this situation, the Council in its role as the Local Planning Authority is under a legal duty to ‘make’ the neighbourhood development plan (keeping it in legal force), apart from when narrow circumstances apply as outlined in paragraph 5.1 of this report. If made, the neighbourhood development plan continues to form part of the Development Plan and to be used in the determination of planning applications in the relevant designated neighbourhood area.

Making of the Neighbourhood Plan

- 7.2 As set out in paragraph 6.16 of this report and Appendix A, more than half of those that voted at the referendum were in favour of making the Neighbourhood Plan. The Neighbourhood Plan therefore came into legal force with immediate effect. As outlined in part 5 of this report, the Council is satisfied that ‘making’ the Neighbourhood Plan (keeping it in legal force) would not breach, or otherwise be incompatible with any EU or human rights obligations, and therefore in its capacity as the Local Planning Authority, has a legal duty to ‘make’ the Neighbourhood Plan. This must be done as soon as reasonably practicable after the referendum is held and in any event, within 8 weeks of the referendum (in accordance with Section 38A(4) of the PCPA). This is a decision that must be taken by the Executive.

- 7.3 Regulation 19 of the Regulations and Section 38A(9) of the PCPA require the Council to publish a statement setting out the decision, the reasons for making that decision and details of where and when the decision statement may be inspected. This Decision Statement is appended to this report in Appendix B, and sets out that the Council does not consider that the making of the Neighbourhood Plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights. An initial Equalities Impact Screening Assessment (EIA) is

provided in Appendix C. This indicates that the policies in the Neighbourhood Plan are not considered to prejudice any particular section of the community.

- 7.4 If the Executive agrees the form and content of the Decision Statement set out in Appendix B, the Decision Statement will be published by the Council on its website and hard copies will be made available at Bracknell Central Library, Town Square, Bracknell, RG12 1BH.
- 7.5 Regulation 19 and Section 38A(10) of the PCPA additionally require the Council to send a copy of the Decision Statement to the qualifying body (Bracknell Town Council) and any person who asked to be notified of the decision at the Regulation 16 stage.
- 7.6 Once the Neighbourhood Plan is made, Regulation 20(a) of the Regulations requires the Council to publish the Neighbourhood Plan and details of where and when the Neighbourhood Plan may be inspected. The Regulations prescribe that it must be on the Council's website and advertised so that it is brought to the attention of people who live, work or carry on business in the Bracknell Town Neighbourhood Area. A hard copy of the Neighbourhood Plan will therefore be made available at Bracknell Central Library.
- 7.7 Regulation 20(b) requires the Council to notify any person who asked to be notified of the making of the Neighbourhood Plan that it has been made and where and when it may be inspected at the Regulation 16 stage.

Implementation of the Bracknell Town Neighbourhood Plan

- 7.8 If Executive agrees that the Neighbourhood Plan is made, the Neighbourhood Plan will continue to have full weight and be used, along with other adopted plans that together form the Bracknell Forest Development Plan, in the determination of planning applications relating to land in Bracknell Town Neighbourhood Area.
- 7.9 The Neighbourhood Plan will be made on 27 October 2021 (assuming that this decision is not subject to call in) and this will be the date of the Decision Statement set out in Appendix B.
- 7.10 Once made, the Neighbourhood Plan will alter the amount of Community Infrastructure Levy (CIL) receipts that are payable to Bracknell Town Council. Bracknell Town Council currently receives a neighbourhood funding element of CIL receipts of 15%; this is capped at £100 per dwelling. As a result of the Neighbourhood Plan being 'made', this increases to 25% of Levy receipts and is uncapped.
- 7.11 Bracknell Town Council will receive 25% (uncapped) of CIL payments received once the Neighbourhood Plan is made (on or after 27 October 2021) as set out in Regulation 59A of the Community Infrastructure Levy Regulations 2010 (as amended) ("CIL Regulations"). Regulation 59D of the CIL Regulations specifies that the neighbourhood portion of levy receipts must be paid every six months, at the end of October and the end of April unless otherwise agreed.
- 7.12 The neighbourhood funding portion of the levy can be spent on a wider range of things than the rest of the levy, provided that it meets the requirement to 'support the development of the area' (in accordance with Regulation 59C of the CIL Regulations). The wider definition means that the neighbourhood funding portion can be spent on things other than infrastructure, such as affordable housing to address the demands that development places on the area.

Resource Implications

- 7.13 The 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. Any costs incurred have to be funded, although it has previously been possible to access some grant funding. To date the work has been resourced from within existing budgets supplemented by grant money from Government, although it is unclear at this stage what the final cost of 'making' the Neighbourhood Plan will be. The CIL receipts that Bracknell Town Council receives will increase from 15% capped to £100 per dwelling, to 25% uncapped.
- 7.14 So far, the work of supporting the preparation of the Neighbourhood Plan has been carried out predominantly by staff within Place, Planning and Regeneration. However other Services have been involved in dispensing the Council's statutory responsibilities, for example Electoral Services and Legal.

8 Advice received from statutory and other officers

Legal advice

- 8.1 The recommendation seeks the approval of the Executive for the Neighbourhood Plan to be made – to continue to form part of the Development Plan, pursuant to Section 38A(4) of the PCPA, and the Decision Statement (set out in Appendix B) to be published pursuant to Regulation 19 of the Regulations 2012 (as amended) ("the Regulations").
- 8.2 The Neighbourhood Plan meets the basic conditions as confirmed by the Examiner's report and "Post Examination Decision Statement" referenced at paragraph 5.2 of the report. It is considered that the Neighbourhood Plan has satisfactorily completed the necessary legal and procedural steps, to date, as required by the PCPA, TCPA and Regulations.
- 8.3 A neighbourhood development plan comes into legal force with immediate effect if more than half of those voting at a referendum have voted in favour of the neighbourhood development plan. This referendum was held on the 9 September 2021.
- 8.4 Section 38A(a) of the PCPA requires the Council to "make" a neighbourhood development plan (formally decide that it will continue to be in legal force) as soon as reasonably practicable if approved at a referendum and, in any event, within 8 weeks of the referendum. The Council is not subject to this if the making of the neighbourhood development plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998 (as amended)), in which case the neighbourhood development plan would cease to form part of the Development Plan.
- 8.4 Paragraphs 6.15-6.16 of the report confirm that a positive referendum result was achieved and that at least (50% + 1) of voters were in favour of the Neighbourhood Plan (see Appendix A). The report also confirms that the Council is satisfied that the making of the Neighbourhood Plan would not breach, nor would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998 (as amended)), see paragraph 7.3.
- 8.5 Neighbourhood planning is a legal process which the Council has a statutory duty to facilitate and administer. The PCPA, TCPA, Regulations and the Local Government (Functions and Responsibilities Act) England Regulations 2010 are silent as to the

appropriate decision making process. Arrangements for the exercise of powers in decision making relating to neighbourhood planning were agreed by the Executive Member for Council Strategy and Community Cohesion (the Leader of the Council) and delegated to the Executive Member for Planning and Transport and the Director of Place, Planning and Regeneration (in respect of administrative decisions only), by way of a decision on 26 February 2016¹.

- 8.7 Decision 14 of the Revised Table A, Appendix B, of the 26 February 2016 decision reserves the decision to make a neighbourhood development plan, by bringing it into legal force, to the Executive. This reservation is made pursuant to Section 9D(1) of the Local Government Act 2000, which provides that all functions of an authority are to be the responsibility of the Executive unless specified in regulations made under that section or specified in any enactment passed or made after that Act was passed.
- 8.9 The Executive is also asked to approve the form and content of the Decision Statement. As advised in the report, this document sets out the Council's reasons for making the Neighbourhood Plan and details of where the Neighbourhood Plan can be inspected. The Council is under a statutory duty to publish this document pursuant to Regulation 19 of the Regulations and the decision making process governing this decision. In the event that the Executive approves the form and content of the Decision Statement set out in Appendix B, the administrative function of publicising the Decision Statement will be undertaken by the Executive Director: Place, Planning and Regeneration by way of delegated powers (decision 14A) of the Revised Table B to the 26 February 2016 decision.
- 8.10 Therefore, for the reasons set out above and in accordance with Part 2 of the Bracknell Forest Council Constitution 10 March 2021, paragraph 5.6 (Executive Committee Terms of Reference), which provides that the Executive is responsible for all Executive decision-making within the policy framework, the Recommendation falls within the reservation of the Executive.

Financial advice

- 8.11 The Council has a statutory duty to facilitate and administer the neighbourhood planning process. Any costs incurred have to be funded. Grant funding has been accessed on completion of previous stages of the neighbourhood planning process.
- 8.12 So far, the work of supporting the preparation of the Bracknell Town Neighbourhood Plan has been carried out predominantly by staff within Place, Planning and Regeneration. However other Services have been involved in dispensing the Council's statutory responsibilities, for example Electoral Services and Legal. In addition, the Examiner has had to be paid. To date the work has been resourced from within existing budgets. Although nearing the final stages, it is unclear at this stage what the final cost of the process of 'making' the Neighbourhood Plan will be. However, these costs should be met within existing budgets.
- 8.12 There are additional financial implications for making the Neighbourhood Plan. The CIL receipts that Bracknell Town Council receives will increase from 15% capped to £100 per dwelling, to 25% uncapped.

Equalities Impact Assessment (EqIA)

¹ Decision on amendments to arrangements for the exercise of powers relating to the Neighbourhood Planning Process: <https://democratic.bracknell-forest.gov.uk/ieDecisionDetails.aspx?Id=2390>

- 8.13 An EqlA screening exercise has been undertaken on the Bracknell Town Neighbourhood Plan (incorporating modifications), which can be found in Appendix C. This EqlA screening has found that the policies in the Bracknell Town Neighbourhood Plan are not considered to prejudice any particular section of the community.

Strategic Risk Management Issues

- 8.14 Planning policies in the Neighbourhood Plan would help ensure that development proposals align with some of the Council's priorities, including protecting and enhancing our environment, communities and economic resilience.
- 8.15 If the Bracknell Town Neighbourhood Plan is not brought into legal force, Bracknell Forest Council is at risk of non-compliance with Section 38A of the PCPA and the Regulations.

Climate Change

- 8.16 Some of the planning policies in the Neighbourhood Plan include measures that have the potential to reduce emissions, such as protecting retail and encouraging active uses thus reducing the need for residents to travel to meet day-to-day needs. They also include proposals to encourage non-car modes of transport and the protection and planting of trees and to encourage energy efficiency and use of sustainable construction materials.

Health

- 8.17 Policy measures aimed at protecting retail (Section 7 Economy and Employment) and encouraging active uses (Section 8 Transport & Infrastructure) have the potential to encourage the use of more sustainable forms of transport such as cycling and walking which have health benefits. Furthermore, Policy EV9 requires legislative limits for human health to be met by proposals for sensitive receptors (such as residential developments) within and adjacent to Air Quality Management Areas. Policies EV1 and EV2 include measures to protect new green spaces for the local community, which would assist psychological wellbeing and physical activity.

9 Consultation

Principal Groups Consulted

- 9.1 Those eligible to vote who lived in the Bracknell Town Neighbourhood Area on 9 September 2021.

Method of Consultation

- 9.2 A local community referendum was held on 9 September 2021.

Representations Received

- 9.3 84.6% of those who voted did so in favour of making the Bracknell Town Neighbourhood Plan. Turnout was 9.6%.

Background Papers

- The Neighbourhood Planning (General) Regulations 2012 (as amended)
- The Neighbourhood Planning (Referendum) Regulations 2012 (as amended)
- Town and Country Planning Act 1990 (as amended)
- The Planning and Compulsory Purchase Act 2004 (as amended)

Unrestricted

- The Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) Regulations 2020
- The Community Infrastructure Levy Regulations 2010 (as amended)
- Planning Practice Guidance CIL: <https://www.gov.uk/guidance/community-infrastructure-levy#spending-the-levy>
- Amendments to the arrangements of powers relating to the Neighbourhood Planning Process (Leader decision of 26 February 2016):
<http://democratic.bracknell-forest.gov.uk/mglIssueHistoryHome.aspx?lId=58779&optionId=0>
- Bracknell Town Neighbourhood Plan, Bracknell Town Neighbourhood Area Designation, Examiner's report, Post Examination Decision Statement, and Consultation information: <https://www.bracknell-forest.gov.uk/planning-and-building-control/planning/planning-policy/neighbourhood-planning/bracknell-town-neighbourhood-area>
- Bracknell Town Neighbourhood Plan referendum information:
<https://www.bracknell-forest.gov.uk/elections-and-voting/current-elections>
- Background information on the Bracknell Town Neighbourhood Plan:
<https://bracknelltowncouncil.gov.uk/bracknell/bracknell-town-neighbourhood-plan/neighbourhood-planning/>

Appendices

Appendix A – Official result sheet of the referendum on the Bracknell Town Neighbourhood Plan

Appendix B – Decision Statement pursuant to Regulation 19

Appendix C – Initial Equalities Impact Screening Assessment on the Bracknell Town Neighbourhood Plan (incorporating modifications)

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