

TO: THE EXECUTIVE
12 APRIL 2016

BRINGING THE BINFIELD NEIGHBOURHOOD DEVELOPMENT PLAN INTO LEGAL FORCE

Director of Environment, Culture and Communities

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek agreement from the Executive to bring the modified Binfield Neighbourhood Development Plan ("the Neighbourhood Plan") into legal force to form part of the statutory Bracknell Forest Development Plan, to be used in the determination of planning applications relating to land in Binfield Parish. The decision seeks the Executive's approval for the form, content and publication of the associated Decision Statement (See decision 14, of the Revised Table A, Appendix B, to the Revised Amendments To Arrangements For The Exercise Of Powers Relating To Neighbourhood Planning Process report which was approved by the Executive Member for Council Strategy and Community Cohesion on 26 February 2016 ("the 26 February 2016 decision"¹).

2 RECOMMENDATION

2.1 That the Executive approves:

(1) the "making" (bringing into legal force) of the Neighbourhood Plan to form part of the statutory Bracknell Forest Development Plan pursuant to Section 38A(4) of the Planning and Compulsory Purchase Act 2004; 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) ("the Regulations") to give effect to the first limb of the above Recommendation.

3 REASONS FOR RECOMMENDATION

- 3.1 Bracknell Forest Council ("the Council"), in its capacity as the Local Planning Authority, has a statutory duty, as set out in Schedule 38A(4) of the Planning and Compulsory Purchase Act 2004 ("the PCPA"), to make a Neighbourhood Development Plan and bring it into legal force if more than half of those voting have voted in favour of making the Plan at referendum. The Council has a duty to make the Plan as soon as reasonably practicable after the referendum is held. Regulation 19 of the Regulations requires the Council to then, as soon as possible after deciding to make a Neighbourhood Development Plan, publish a statement setting out the decision and details of where and when the decision statement may be inspected.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Should the Council consider the making of the Neighbourhood Plan to breach, or otherwise be incompatible with, any EU obligation or any of the Convention rights, it is not under duty to make the Plan and bring it into legal force, as set out in Schedule 38A(6) of the PCPA.
- 4.2 The independent Examiner who reviewed the Neighbourhood Plan considered that it met the basic conditions and statutory requirements (incorporating modifications).

¹ <http://democratic.bracknell-forest.gov.uk/mglIssueHistoryHome.aspx?IId=58779&Opt=0>

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 paragraph 38A(4) of the PCPA to refuse to make the Neighbourhood Plan. It would also expose the Council to legal challenge and attendant costs.

5 BACKGROUND INFORMATION

Submission of the Plan

- 5.1 Binfield Parish Council is the 'Qualifying Body' for the purposes of Neighbourhood Planning in the Parish of Binfield. The Council designated Binfield Parish as a Neighbourhood Area for the purposes of Neighbourhood Planning on 11 February 2014. Binfield Parish Council submitted its Neighbourhood Plan and supporting documentation, to the Council on Wednesday 16 September 2015 in accordance with Regulation 15.
- 5.2 The Chief Officer for Planning and Transport confirmed in writing to Binfield Parish Council (23 September 2015) 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 Executive Member for Planning and Transport agreed to the Council undertaking a statutory six-week publicity period on the submitted Neighbourhood Plan in accordance with Regulation 16, and that an independent Examiner be appointed in accordance with Regulation 17. The Council duly undertook public consultation on the Neighbourhood Plan between 10am on 12 October 2015 and 10am on 23 November 2015. The Council submitted a representation during this period which was agreed by the Executive Member for Planning and Transport by way of a decision made on the 6 November 2015.

Examination

- 5.3 With the consent of Binfield Parish Council, the Council appointed Mr Christopher Collison to undertake the independent Examination of the Neighbourhood Plan, via the Neighbourhood Planning Independent Examiner Referral Service (NPIERS). The Council submitted the Plan, representations received in response to the consultation and other supporting documentation for Examination in accordance with Regulation 17.
- 5.4 The Examiner issued his report to the Council on the Examination of the Binfield Neighbourhood Plan on 3 December 2015, and the Council subsequently published the report on its website in accordance with paragraph 10(8) of Schedule 4B of the TCPA. This was an administrative function delegated to the Chief Officer for Planning and Transport by the 26 February 2016 decision (see decision 8).

The Council's decision on the Examiner's report

- 5.5 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 Binfield Parish Neighbourhood Area. 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).
- 5.6 These Council considerations and decisions were set out in a Post Examination Decision Statement. The Executive Member for Planning and Transport approved the

Unrestricted

form and content of the Post Examination Decision Statement, its subsequent publication by the Chief Officer for Planning and Transport, and for the modified Binfield Neighbourhood Plan to be submitted to a local community referendum in his decision of 19 January 2016. The Post Examination Decision Statement was published on the Council's website on 20 January 2016, and hard copies were made available at the Council's Time Square and Easthampstead House offices. In addition hard copies were made available at Binfield Library and Binfield Parish Council Office.

Referendum arrangements

- 5.7 As required by paragraph 14(2) of Schedule 4B of the TCPA, the Council duly made arrangements to hold a referendum on the making of the Neighbourhood Plan on Thursday 3rd March 2016.
- 5.8 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.
- 5.9 As set out in paragraph 14(4) of Schedule 4B of the TCPA, 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.
- 5.10 The referendum area was the designated Binfield Parish Neighbourhood Area, which the Council designated on 11 February 2014. A separate business referendum was not held since the Binfield Parish Neighbourhood Area was not designated as a business area.

Referendum results

- 5.11 The referendum was held on Thursday 3rd March 2016 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 Binfield Parish to help it decide planning applications in the neighbourhood area?"*
- 5.12 At the referendum a total of 938 ballots were cast. Of these:
- the number of votes in favour of a 'yes' was 770
 - the number of votes in favour of a 'no' was 166
 - 2 ballots were rejected, deemed unmarked or void for uncertainty
 - the turnout was 15.51 per cent.
- The official result sheet is set out in Appendix A.
- 5.13 More than half of those in the community of Binfield Parish that voted were in favour of Bracknell Forest Council making the Neighbourhood Plan and bringing it into legal force.

6 BRACKNELL FOREST COUNCIL'S STATUORY DUTIES FOLLOWING A SUCCESSFUL REFERENDUM

Context

- 6.1 In order for the Council to bring the Neighbourhood Plan into force, 50% + one of those who vote at the referendum need to do so in favour of making the Neighbourhood Plan. If the result of the referendum is favourable, the Council in its role as the Local Planning Authority, is under a legal duty to 'make' the Plan (bring it into force). The Neighbourhood Plan will then form part of the statutory Bracknell Forest Development Plan and be used in the determination of planning applications relating to land in Binfield Parish.

Bringing the Plan into legal force

- 6.2 As set out in paragraph 5.13 of this report and Appendix A, more than half the community of Binfield Parish voted in favour of making the Neighbourhood Plan. The Council, in its capacity as the Local Planning Authority, therefore has a legal duty to 'make' the Neighbourhood Plan and bring it into legal force (in accordance with Schedule 38A(4) of the PCPA). This is a decision that must be taken by the Executive (see decision 14, of the 26 February 2016 decision¹).
- 6.3 Regulation 19 of the Regulations and Schedule 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 Plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights. An initial Equalities Impact Screening Assessment 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.
- 6.4 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 Time Square Offices, Binfield Parish Council Offices and Binfield Library. This is an administrative function delegated to the Chief Officer for Planning and Transport by the 26 February 2016 decision (decision 14A).
- 6.5 Regulation 19 and Schedule 38A(10) of the PCPA additionally require the Council to send a copy of the Decision Statement to the qualifying body (Binfield Parish Council) and any person who asked to be notified of the decision. The latter information was gathered during the Regulation 16 consultation on the submitted Neighbourhood Plan. This is an administrative function delegated to the Chief Officer for Planning and Transport by the 26 February 2016 decision (decision 14A).
- 6.6 Once the Plan has been brought into legal force, Regulation 20(a) of the Regulations requires the Council to publish the Neighbourhood Plan and details of where and when the 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 Binfield Parish Neighbourhood Area. A hard copy of the Binfield Neighbourhood Plan will therefore be made available at the Time Square Offices, Binfield Parish Council Offices and Binfield Library. This is an administrative function delegated to the Chief Officer for Planning and Transport by the 26 February 2016 decision (decision 15).

Unrestricted

- 6.7 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. The latter information was gathered during the Regulation 16 consultation on the submitted Neighbourhood Plan. This is an administrative function delegated to the Chief Officer for Planning and Transport by the 26 February 2016 decision (decision 15).

Implementation of the Binfield Neighbourhood Plan

- 6.8 If Executive agrees that the Neighbourhood Plan is brought into legal force to form part of the statutory Bracknell Forest Development Plan, then the Neighbourhood Plan will 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 Binfield Parish.
- 6.9 The decision made by Executive is subject to a 5 working day call-in period. As a result the Neighbourhood Plan will come into legal force on 20 April 2016 and this will be the date of the Decision Statement set out in Appendix B.
- 6.10 Once in legal force, the Neighbourhood Plan will alter the amount of Community Infrastructure Levy (CIL) receipts that are payable to Binfield Parish Council. Binfield Parish 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' and brought into legal force, this increases to 25% of Levy receipts and is uncapped.
- 6.11 Binfield Parish Council will receive 25% (uncapped) of CIL payments received once the Neighbourhood Plan is in legal force (on or after 20 April 2016) 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.
- 6.12 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

- 6.13 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, including arranging the examination and the referendum. It is intended that these costs are covered by grant funding received from Government. A total of £30,000 grant funding has been received as a result of reaching the following milestones:
- £5,000 for the designation of Binfield Parish Neighbourhood Area,
 - £5,000 for holding the Regulation 16 submission consultation, and
 - £20,000 for receipt of the Examiner's report recommending the Plan is submitted to referendum.

However other Services have been involved in dispensing the Council's statutory responsibilities, for example Electoral Services and Legal. To date the work has been resourced from within existing budgets supplemented by grant money from Government, though it is unclear at this stage what the total cost of the process of 'making' the Neighbourhood Plan will be.

7 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 7.1 The recommendation of the report seeks the approval of the Executive for the Neighbourhood Plan to be brought into legal force and form part of the statutory Bracknell Forest 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”).
- 7.2 The Neighbourhood Plan meets the basic conditions as confirmed by the Examiner’s report and “Post Examination Decision Statement” referenced at paragraph 4.2 of the report. The promotion of the Neighbourhood Plan has satisfactorily completed the necessary legal and procedural steps required under the Act and Regulations to be brought into legal force and consequently become part of the Bracknell Forest Development Plan.
- 7.3 The Executive will note that, a referendum must be held on a Neighbourhood Development Plan before it can come into legal force (be ‘made’ by the Local Planning Authority). This referendum was held on the 3rd March 2016. Section 38A (a) of the PCPA requires the Council to “make,” a Neighbourhood Development Plan as soon as reasonably practicable if more than half of those voting in the referendum have voted in favour of the Neighbourhood Development Plan. 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).
- 7.4 Paragraphs 5.11-5.13 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), see paragraph 6.3 .
- 7.5 Neighbourhood planning is a relatively new legal process, which the Council has a statutory duty to facilitate and administer. The Act, Regulations and the Local Government (Functions and Responsibilities Act) England Regulations 2010 are silent as to the appropriate decision making process. Consequently, and given the relatively recent enactment of these provisions, the Bracknell Forest Borough Council Constitution May 2015 is also silent as to the mode or reservation of such decisions.
- 7.6 However, consideration has been given to the appropriate level at which Neighbourhood Planning decisions can be made, whilst ensuring the process is fair and transparent. Arrangements for the exercise of powers in decision making relating to Neighbourhood Planning has subsequently been 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 Chief Officer for Planning and Transport (in respect of administrative decisions only), by way of the 26 February 2016 decision referenced in the report.
- 7.7 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

Unrestricted

under that section or specified in any enactment passed or made after that Act was passed.

- 7.8 The Executive is advised that Neighbourhood Development Plans are not Development Plan Documents pursuant to section 15 of the Planning and Compulsory Purchase Act 2004 and nor do they comprise the Development Plan under sections 27 or 54 of the Town and Country Planning Act 1990 until they are brought into legal force. Therefore, Neighbourhood Development Plans are not considered to be amongst the specified plans and strategies listed in Column 1 of the table at Schedule 3 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). This statutory interpretation regarding the appropriate decision maker required to bring a Neighbourhood Development Plan into legal force has been endorsed by way of advice received from the Department for Communities and Local Government Neighbourhood Planning Unit.
- 7.9 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 is comprised at decision 14 of the Revised Table B, to the 26 February 2016 decision. The Executive will note, that 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 Chief Officer for Planning and Transport by way of delegated powers (decision 14A) of the Revised Table B to the 26 February 2016 decision.
- 7.10 Therefore, for the reasons set out above and in accordance with Part 2 of the Bracknell Forest Council Constitution 2015, 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.

Borough Treasurer

- 7.11 The Council has incurred financial costs in respect of arranging the examination and referendum of this Plan as stated in the report. The Council applied for the final instalments of £5,000 and £20,000 of the grant funding available to meet these costs. Since the Council has a statutory duty to facilitate and administer these neighbourhood plans any costs incurred have to be funded, should the grant not be sufficient to cover the costs then this will be reported at a later date.
- 7.12 There are additional financial implications for bringing the Binfield Neighbourhood Plan into legal force. The CIL receipts that Binfield Parish Council receives will increase from 15% capped to £100 per dwelling, to 25% uncapped.

Equalities Impact Assessment

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

Strategic Risk Management Issues

- 7.14 If the Binfield Neighbourhood Plan is not brought into legal force, Bracknell Forest Council is at risk of non-compliance with Section 38A of the PCPA 2004 and the Regulations 2012.

8 CONSULTATION

Principal Groups Consulted

- 8.1 Those eligible to vote who lived in the Binfield Parish Neighbourhood Area on 3 March 2016.

Method of Consultation

- 8.2 A local community referendum was held on Thursday 3 March 2016.

Representations Received

- 8.3 82% of those who voted did so in favour of making the Binfield Neighbourhood Plan. Voter turnout was 15.51%.

Background Papers

- The Neighbourhood Planning (General) Regulations 2012 (as amended)
- The Neighbourhood Planning (Referendum) Regulations 2012 (as amended)
- Town and Country Planning Act 1990
- The Planning and Compulsory Purchase Act 2004
- The Community Infrastructure Levy Regulations 2010 (as amended)
- Planning Practice Guidance (2014) CIL:
http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/#paragraph_072
- Binfield Neighbourhood Plan, Binfield Parish Neighbourhood Area Designation, Examiner's report, Post Examination Decision Statement, and Consultation information:
<http://www.bracknell-forest.gov.uk/binfieldparishneighbourhoodarea>
- Binfield Neighbourhood Plan referendum information: <http://www.bracknell-forest.gov.uk/currentreferendums>
- Background information on the Binfield Neighbourhood Plan:
<http://www.binfieldplan.org.uk/>

Appendices

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

Appendix B – Decision Statement pursuant to Regulation 19

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

Contact for further information

Andrew Hunter, Chief Officer: Planning and Transport - 01344 351907

Andrew.Hunter@bracknell-forest.gov.uk

Ann Moore, Head of Democratic and Registration Services – 01344 352260

Ann.Moore@bracknell-forest.gov.uk