

To: EXECUTIVE
12 December 2023

WINKFIELD NEIGHBOURHOOD PLAN 2022-2037 – MAKING THE PLAN
Executive Director: Place, Planning & Regeneration

1 Purpose of Report

- 1.1 The purpose of this report is to seek the agreement from the Executive to:
- i. formally make the Neighbourhood Development 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 the Winkfield Neighbourhood Area; and
 - ii. the form, content and publication of the associated Decision Statement.
- 1.2 The Winkfield 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. 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 Winkfield 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 within 8 weeks of the referendum.

2 Recommendation

2.1 **That the Executive agrees:**

- (1) the formal “making” (keeping in legal force) of the Winkfield 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 A) pursuant to Regulation 19 of the Neighbourhood Planning (General) Regulations 2012 (as amended).**

3 Reasons for Recommendation

- 3.1 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 a referendum have voted in favour of making the neighbourhood development plan. This must be done 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.

4 Alternative Options Considered

- 4.1 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.
- 4.2 The independent Examiner who reviewed the Neighbourhood Plan considered that, subject to modifications, it met the basic conditions and statutory requirements, 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.

5 Supporting Information

Process

- 5.1 Winkfield Parish Council is the qualifying body for the purposes of neighbourhood planning in Winkfield. The Neighbourhood Plan area was originally designated in December 2015 and was amended on 14 July 2023. During the Examination, minor changes were made to the boundary of Winkfield Parish, which took effect from 2 March 2023. Subsequently, in May 2023, Winkfield Parish Council applied to the Council to amend the designated Neighbourhood Area to remove three small areas of land which now fall within an adjoining parish. Following agreement by the Executive Member for Planning and Transport on 14 July 2023, the amended area was designated by the Council as the Winkfield Neighbourhood Area.
- 5.2 Winkfield Parish Council submitted its Neighbourhood Plan and supporting documentation to the Council on 22 July 2022. The Executive Director: Place, Planning and Regeneration confirmed on 4 August 2022 that it 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. Following agreement by the Executive Member for Planning and Transport on 2 September 2022, the Neighbourhood Plan was published for consultation from 20 October to 2 December 2022 and an Examiner was appointed. The Council provided a formal consultation response and the Plan was submitted for independent examination following agreement by the Executive Member for Planning and Transport on 24 November 2022.
- 5.3 With the consent of Winkfield Parish Council, the Council appointed Mr Andrew Ashcroft to undertake the independent examination of the Neighbourhood Plan. The Council submitted the Plan, along with representations received during the consultation period and other supporting documentation to the Examiner following the close of consultation.

- 5.4 The Examiner's report was issued on 24 July 2023 and has been published on the Council's website. The report recommended that, subject to a series of modifications, the Plan met the basic conditions set out in legislation and should proceed to local referendum. It also recommended that the area for the referendum should be limited to the amended designated Neighbourhood Plan Area.
- 5.5 The Council considered each of the recommendations made in the Examiner's report and the reasons for them. It decided what action to take in response to each recommendation (as required by paragraph 12(2) of Schedule 4B of the TCPA and Regulation 18 (1)(c) of the Regulations). These considerations were set out in the Post Examination Decision Statement. The Executive Member for Planning and Transport approved the form and content of the Post Examination Decision Statement together with its publication, and the submission of the modified Winkfield Neighbourhood Plan to a local community referendum in his decision on 15 September 2023. The Post Examination Decision Statement was subsequently published on the Council's website and made available to view at Ascot Heath, Whitegrove and Bracknell Libraries, Time Square and Winkfield Parish Council's offices.

Referendum arrangements

- 5.6 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 23 November 2023.
- 5.7 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.
- 5.8 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.
- 5.9 The referendum area was the amended designated Winkfield Neighbourhood Area. A separate business referendum was not held since the Winkfield Parish Neighbourhood Area was not designated as a business area.

Referendum and result

- 5.10 The referendum was held on Thursday 23 November 2023 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 Winkfield Parish to help it decide planning applications in the neighbourhood area?"
- 5.11 At the referendum a total of 1,245 votes were cast. Of these:
- the number of votes in favour of a 'yes' was 1,097.
 - the number of votes in favour of a 'no' was 142.
 - 6 votes were rejected.
 - the turnout was 10.6 per cent. The official result sheet is set out in Appendix C.

Making of the Neighbourhood Plan

- 5.12 More than half of those in the Neighbourhood Plan area who voted were in favour of the Council making the Neighbourhood Plan. As set out in Section 38(3A) of the PCPA, the above result means that the Neighbourhood Plan came into legal force as

part of the Development Plan 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 4.1 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 designated neighbourhood area.

- 5.13 As outlined in paragraph 4.2 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 decision must be taken by the Executive.
- 5.14 Regulation 19(a) 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 the details of where and when the decision statement may be inspected. This Decision Statement is appended to this report (Appendix A) 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 is provided in Appendix B. This indicates that the policies in the Neighbourhood Plan are not considered to prejudice any particular section of the community.
- 5.15 Regulation 19(b) and Section 38A(10) of the PCPA additionally require the Council to send a copy of the Decision Statement to the qualifying body (Winkfield Parish Council) and any person who asked to be notified of the decision at the Regulation 16 stage.
- 5.16 If the Executive agrees the form and content of the Decision Statement set out in Appendix A, the Decision Statement will be published by the Council on its website, sent to Winkfield Parish Council and hard copies will be made available at Ascot Heath, Whitegrove and Bracknell Libraries, Time Square and at Winkfield Parish Council's offices.
- 5.17 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 Winkfield Neighbourhood Area.
- 5.18 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 Winkfield Neighbourhood Plan

- 5.19 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 the Winkfield Neighbourhood Area.

- 5.20 The Neighbourhood Plan will be made on 20 December 2023 (assuming that this decision is not called in) and this will be the date of the Decision Statement set out in Appendix A.
- 5.21 Once made, the Neighbourhood Plan will alter the amount of Community Infrastructure Levy (CIL) receipts that are payable to Winkfield Parish Council. Winkfield Parish Council currently receives a neighbourhood funding element of CIL receipts of 15%.
- 5.22 Winkfield Parish Council will receive 25% of CIL payments received once the Neighbourhood Plan is made 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.
- 5.23 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

- 5.24 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 holding and arranging the referendum. The work of supporting the preparation of the Winkfield Neighbourhood Plan has been resourced from within existing planning budgets supplemented by grant money from the Government. As stated in paras. 5.21 and 5.22, the CIL receipts received by Winkfield Parish Council will increase from 15% to 25%.
- 5.25 The work of supporting the preparation of the Neighbourhood Plan has been carried out predominantly by staff within Place, Planning and Regeneration, assisted by other Services, for example, Electoral Services and Legal.

6 Consultation and Other Considerations

Legal Advice

- 6.1 The recommendation seeks the approval of the Executive to the 'making' of the Neighbourhood Plan –so that it can continue to form part of the Development Plan, pursuant to Section 38A(4) of the PCPA, TCPA and the Decision Statement (set out in Appendix A) to be published pursuant to Regulation 19 of the Regulations.
- 6.2 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.
- 6.3 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. To date, the Neighbourhood Plan is considered to have satisfactorily completed the necessary legal and procedural steps, as required by the PCPA, TCPA and Regulations.

- 6.4 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 23 November 2023.
- 6.5 Section 38A(4) 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 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.
- 6.6 Paragraph 5.11 of the report confirms that a positive referendum result was achieved and that at least (50% + 1) of voters were in favour of the Neighbourhood Plan. 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 5.13.
- 6.7 Governance arrangements for the discharge of decisions in relation to facilitating the neighbourhood planning process were approved by the Leader in September 2015 and updated in February 2016. The decision to make a neighbourhood development plan, by bringing it into legal force, is made by the Executive.

Financial Advice

- 6.8 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 earlier stages of the neighbourhood planning process.
- 6.9 So far, the work of supporting the preparation of the Winkfield 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. In addition, the Examiner has had to be paid. To date the work has been resourced from within existing budgets and these costs should be met within existing budgets.
- 6.10 There are additional financial implications of making the Neighbourhood Plan. The CIL receipts that Winkfield Parish Council receives will increase from 15% to 25%.

Equalities Impact Assessment

- 6.11 An Equalities Impact Assessment screening (see Appendix B) has been undertaken and has found that the policies in the Winkfield Neighbourhood Plan are not considered to prejudice any particular section of the community.

Strategic Risk Management Issues

- 6.12 There are no strategic risk management issues arising from this report.

Climate Change and Ecological Impacts

- 6.13 Some of the planning policies in the Neighbourhood Plan include measures that have the potential to reduce emissions, such as protecting community facilities (Policy W6)

and employment (Policy W7) which reduce the need for residents to travel to meet day-to-day needs. Policy W12 encourages the use of more sustainable forms of transport such as cycling and walking. In addition, Policy W8 protects wildlife corridors and supports sustainable drainage, and natural flood management, which will help mitigate the impacts of climate change and provide and protect habitats.

Health and Wellbeing Considerations

- 6.14 Policy measures aimed at protecting community facilities (Policy W6) and encouraging active uses have the potential to encourage the use of more sustainable forms of transport such as cycling and walking which have health benefits (Policy W12). In addition, Policy W11 includes measures to protect local green spaces for the local community, which assist psychological wellbeing and encourage physical activity.

Background Papers

- The Neighbourhood Planning (General) Regulations 2012 (as amended)
- The Neighbourhood Planning (Referendum) Regulations 2012 (as amended)
- The Community Infrastructure Levy Regulations 2010 (as amended)
- Town and Country Planning Act 1990 (as amended)
- The Planning and Compulsory Purchase Act 2004 (as amended)
- National Planning Policy Framework (2023)
- National Planning Practice Guidance:
<http://planningguidance.planningportal.gov.uk/blog/guidance/neighbourhood-planning/> and <https://www.gov.uk/guidance/community-infrastructure-levy#spending-the-levy>
- Winkfield Neighbourhood Plan, designated Neighbourhood Area, Examiner's report, Post Examination Decision Statement, and Consultation information www.bracknell-forest.gov.uk/winkfield-plan
- Bracknell Forest Council decision relating to the Winkfield Neighbourhood Plan Pre-Submission consultation response: <https://democratic.bracknell-forest.gov.uk/mglIssueHistoryHome.aspx?IId=105842&PlanId=2455&RPID=55533422>
- Bracknell Forest Council decision relating to the Winkfield Neighbourhood Plan publication and appointment of examiner: <https://democratic.bracknell-forest.gov.uk/mglIssueHistoryHome.aspx?IId=107876&PlanId=2500&RPID=57554509>
- Bracknell Forest Council decision relating to the Winkfield Neighbourhood Plan consultation response and submission to examiner: <https://democratic.bracknell-forest.gov.uk/mglIssueHistoryHome.aspx?IId=109949&Opt=0>
- Bracknell Forest Council decision relating to minor amendments to Winkfield Neighbourhood Plan Designated Neighbourhood Area: <https://democratic.bracknell-forest.gov.uk/ieDecisionDetails.aspx?Id=3537>
- Bracknell Forest Council decision relating to Decision Statement and Referendum: <https://democratic.bracknell-forest.gov.uk/mglIssueHistoryHome.aspx?IId=115790&PlanId=2643&RPID=65339135>

Appendices

- Appendix A: Regulation 19 Decision Statement on the Winkfield Neighbourhood Plan
Appendix B: Equalities Impact Assessment Screening
Appendix C: Winkfield Neighbourhood Plan Referendum – Declaration of Results

Contact for further information

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