

TO: LEADER OF THE COUNCIL
26 FEBRUARY 2016

**REVISED ARRANGEMENTS FOR THE EXERCISE OF POWERS RELATING
TO THE NEIGHBOURHOOD PLANNING PROCESS
(Director of Corporate Services – Legal)**

1 PURPOSE OF DECISION

- 1.1 To seek approval for the amendment of the governance arrangements for the various Neighbourhood Planning decisions set out in Table A, Appendix 1 of the Arrangements For The Exercise Of Powers Relating To The Neighbourhood Planning Process report approved by the Leader on the 3 September 2015.

2 RECOMMENDATION

- 2.1 The recommendation of the report requests that the Leader of the Council:
- (1) Agrees to proposed amendments set out at paragraphs 4.6 - 4.7 of the report to the Neighbourhood Planning decision making process set out in the original Table A, Appendix 1, of the Arrangements For The Exercise Of Powers Relating To The Neighbourhood Planning Process report approved by the Leader of the Council on the 3 September 2015 appended at Appendix A of this report ; and
 - (2) Agrees to the substitution of the original Table A, Appendix 1 to the Arrangements For The Exercise Of Powers Relating To The Neighbourhood Planning Process Report, approved by the Leader of the Council on the 3 September 2015 with the Revised Table A, Appendix B, of this report to reflect the guidance provided by advisers at the Department for Communities and Local Government (“DCLG”) and other required improvements to the Neighbourhood Planning Process identified from a recent review of the process.

3 REASONS FOR RECOMMENDATION

- 3.1 To amend the governance arrangements for various aspects of the Neighbourhood Planning decision making arrangements approved by the Leader on the 3 September 2015, to incorporate the guidance recently received by the Department for Communities and Local Government (“DCLG”) and other necessary updating amendments required to streamline the Neighbourhood Planning process.
- 3.2 The arrangements set out in paragraphs 4.6 - 4.7 and the Revised Table A, Appendix B, of this report continue to reserve the majority of the decisions relating to the Neighbourhood Planning process to the Executive Member for Planning and Transport (or Executive where appropriate) whilst affording the Chief Officer: Planning and Transport sufficient powers to administer and facilitate the Neighbourhood Planning process within Bracknell Forest Council.

BACKGROUND

- 3.3 The Neighbourhood Planning (General) Regulations 2012 (as amended) commenced on 6 April 2012. The Regulations set out clear statutory criteria for the Neighbourhood Planning decision making process. It is therefore important that that

the Council adopts a formal decision-making framework, and clear scheme of delegation to process future Neighbourhood Planning applications.

- 3.4 The report to the Leader, dated the 3 September 2015, set out the justification for the Neighbourhood Planning decisions to be taken by the Executive Member for Planning and Transport, Executive and Chief Officer: Planning and Transport. The report explained that very few decisions relating to Neighbourhood Planning are required by law to be taken by Members' but it would clearly be inappropriate for officers to take decisions in regards to key decisions such as the designation of Neighbourhood Areas, the making of Neighbourhood Development Plans or the holding of referendums.
- 3.5 The Leader granted authority for the delegation of non-key decisions of an administrative nature in regards to Neighbourhood Planning to the Chief Officer: Planning and Transport and reserved all key decisions within the process to the Executive Member for Planning and Transport or Executive (where appropriate) and Council as set out in the original Table A at Appendix A of this report, for the reasons stated above. Following recent advice received from DCLG it has become necessary to amend the reservation made to Council within the original Table A.
- 3.6 The Leader will note that the original Table A reserved the decision of "making" the Neighbourhood Plan and bringing into force following a successful referendum to Council. Nationally, there is a lack of consistency regarding whether this decision is taken by the Executive or Council and the Council was advised by DCLG that ultimately, it was up to Local Planning Authorities to decide on the matter. However, following this advice the Council was subsequently advised by DCLG that this was not the case in accordance with Section 9D (1) of the Local Government Act 2000.
- 3.7 Section 9D(1) of the Local Government Act 2000 provides that all functions of the 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. This is because Neighbourhood Development Plans are not Development Plan Documents under 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. 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).
- 3.8 Therefore, Decision 14 of the Revised Table A, Appendix B, seeks to redress this point by reserving the decision to make and bring the Neighbourhood Development Plan into legal force, the Neighbourhood Development Decision Statement, to Executive.
- 3.9 Additionally, following a review of the Neighbourhood Planning process administered by Bracknell Forest Council a number of other amendments to the original Table A, see Appendix A, have been identified as being necessary to correct administrative errors, ensure proper governance arrangements are adhered to, and to streamline the Neighbourhood Planning process as summarised below:
 - Decision 1 (Regulation 5) – Application for designation of a Neighbourhood Development Area - reference to the Executive Member for Planning and Transport has been replaced with the Chief Officer: Planning and Transport as this is an administrative decision.

- Decision 1 (Regulation 6) – Publicising the Neighbourhood Development Plan Application – reference to the Chief Officer: Planning and Transport has been inserted.
- New Decision 5A – Local Authorities Representation to the Examiner – This new decision has been identified as being omitted from the original Table A Neighbourhood Planning decision making process. This decision is reserved to the Executive Member for Planning & Transport and to the Executive in circumstances that the executive Member for Planning and Transport has an interest in the matter.
- Decision 8 – Publication of Examiner’s Report – reference to the Local Planning Authority being required to send a copy of the Examiner’s report to the qualifying Body has been deleted. This is a statutory obligation placed upon the Examiner as opposed to the Local Planning Authority.
- Decision 10, Regulation 18 – minor non-controversial amendments have been inserted to reflect the statutory provisions.
- Decision 11 – Decision Statement Publication – The requirement for the Local Planning authority to send a copy of the matters required to be published to the Qualifying Body in accordance with paragraph 12 (a) of Schedule 4B to the 1990 Act has been inserted into the procedure.
- Decision 12 – Neighbourhood Development Plans referendum – reference to paragraph 12 (4) of Schedule 4B to the 1990 Act has been inserted to reflect the statutory provisions.
- New Decision 14A – Neighbourhood Planning Decision Statement – Making a plan proposal (bringing into legal force) – A new decision has been included with the process to provide the Chief Officer: Planning & Transport with authority to deal with the necessary administrative publication and notification requirements in regards to the Decision Statement.
- Decision 16 – Revocation or Modification of a Neighbourhood Development Plan – An amendment has been made to correct the reservation of this decision from the Chief Officer: Planning and Transport to the Executive Member for Planning and Transport. It is not considered that this is an administrative decision.
- Decision 18 – Publicising the Revocation of the Neighbourhood Development Plan – An amendment has been made to correct the reservation of this decision from Executive Member for Planning and Transport to the Chief Officer: Planning and Transport. It is not considered that is an Executive decision but an administrative function.

4 ALTERNATIVE OPTIONS CONSIDERED

None. The report recommendations reflect legislative requirements.

5 SUPPORTING INFORMATION

- 5.1 The Localism Act 2011 (by amending the Town and Country Planning Act 1990) (“the Act”) introduced provisions which empower parish and town councils and designated Neighbourhood Forums to initiate the process for making Neighbourhood Development Orders and Neighbourhood Development Plans in relation to the designation of Neighbourhood Areas. The powers came into force on the 6 April 2012 when the associated Neighbourhood Planning (General) Regulations 2012 (as amended by The Neighbourhood Planning (General) (Amendment) Regulations 2015) (“the Regulations”) and the Neighbourhood Planning (Referendum) Regulations 2012 came into force.

- 5.2 Bracknell Forest Council is comprised of parish and town councils. Parish and town council's automatically have a special status which means they do not need to be designated as a Neighbourhood Forum. In accordance with the Act and Regulations, a Parish or Town Council is defined as a "Qualifying Body" for a particular Neighbourhood Area, being their respective town's and parishes.
- 5.3 Whilst the new Neighbourhood Planning provisions include various powers, the most commonly used power exercised to date, nationally, has been the ability to prepare a 'Neighbourhood Development Plan.' A Neighbourhood Development Plan is a plan which sets out policies in relation to the development and use of land in the whole, or part of, a Neighbourhood Area. A Neighbourhood Development Plan may contain a range of policies or proposals for land use development that will carry weight in the determination of planning applications in the Neighbourhood Area when made.
- 5.4 A Neighbourhood Development Order is another power available to a "Qualifying Body" under the Act and Regulations. This power grants planning permission in relation to a particular Neighbourhood Area for development specified in the Order or for a class of development specified in the Order. Both Neighbourhood Development Plans and Neighbourhood Development Orders must be in general conformity with the strategic policies in the development plan for the relevant areas. Nationally, Neighbourhood Development Orders have not been taken up by parish councils, and there is no expectation they will be applied for by the parish and town councils in Bracknell Forest, hence the recommendation of this report focuses on the Neighbourhood Planning process in respect of Neighbourhood Development Plans.
- 5.5 There are numerous actions and decisions required in connection with the administration of the Neighbourhood Planning process, which is a relatively new process which the Council has a duty to facilitate and administer. In addition to the duty to provide advice and non-financial assistance, the Regulations outline the following key roles and responsibilities for local planning authorities in respect of the Neighbourhood Planning process:
- The designation of a Neighbourhood Development Plan areas
 - The consideration of compliance with statutory and EU requirements
 - The organisation and funding of independent examinations
 - The organisation and funding of referenda
 - A general 'duty to support' applicants
 - A duty to 'make' the plan (bring into legal force)
- 5.6 The Act and the Regulations, state that the local authority must agree the area for which a Neighbourhood Development Plan is to be prepared. The Regulations further set out the Neighbourhood Planning procedure for a Neighbourhood Development Plan to be put to a referendum of local people and, in some cases, of local businesses to satisfy the statutory criteria to qualify for adoption.
- 5.7 Neighbourhood planning is an Executive function under the terms of the Local Government Act 2000, and it is therefore the Executive which has the authority to determine the scheme of delegation for such functions. Broadly speaking, key decisions include the designation of Neighbourhood Areas and the holding of referendums. Therefore, full 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.

- 5.8 Under Section 9E of the Local Government Act 2000 the “senior Executive Member” (the Leader) may arrange for the discharge of Executive functions by:-
- the Leader
 - the Executive
 - another member of the Executive
 - a Committee of the Executive
 - an area Committee
 - an officer
- 5.9 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. Therefore, it is considered that most decisions can be delegated to the Executive Member for Planning and Transport and the Chief Officer: Planning and Transport, in consultation with the Head of Democratic Services as appropriate.
- 5.10 The Leader will note that, Neighbourhood Development Plans must first and foremost be in general conformity with strategic policies in the statutory Development Plan, thus amounting to administrative decisions which do not require the exercise of substantive discretion. Therefore, the implementation of the decision making processes in relation to Neighbourhood Planning falls within the Executive Member for Planning and Transport’s individual decision making remit and he is advised to approve the recommendations as set out in the report.
- 5.11 Once a Neighbourhood Development Plan is ‘made’ it will become part of the Development Plan and will have significant weight in the determination of planning applications in the Neighbourhood Area to which it relates. The proposed governance arrangements set out in the Revised Table A, Appendix B, states that the making of a Neighbourhood Development Plan, following a referendum in which more than half of the electorate vote in favour of the making of a Neighbourhood Development Plan, will be taken by the Executive.
- 5.12 Following approval of this Report, future applications relating to Neighbourhood Planning decisions will be dealt with in accordance with the Neighbourhood Planning process set out in this Revised Table A, Appendix B of this report in substitution of the original Table A, Appendix 1 of the Arrangements For The Exercise Of Powers Relating To The Neighbourhood Planning Process Report approved by the Leader on the 3 September 2015 found at Appendix A to this report.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The report has been written on behalf of the Borough Solicitor and advice is contained within the main body of the report.

Borough Treasurer

- 6.2 There are no financial implications directly arising.

Equalities Impact Assessment

- 6.3 Not Required.

Strategic Risk Management Issues

- 6.4 None.

6.5 CONSULTATION

Planning policy

- 6.6 The Council has carried out ongoing engagement and correspondence relating to the emerging neighbourhood planning process with Town and Parish Councils and other local groups over the course of the past 18 months. This has encompassed written correspondence and briefings and evening discussion events/seminars. There has also been specific engagement with groups who have expressed an interest in using neighbourhood planning tools. Once the Neighbourhood Area has been designated, a dedicated Planning Policy Officer is assigned and provides technical advice and assistance to the Parish/ Town Council.

Background Papers

None.

Appendices

Appendix A – Original Table A (Appendix 1), Neighbourhood Plan Decision Making Process
Appendix B – Revised Table A, Neighbourhood Plan Decision Making Process

Contact for Further Information

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