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Date: 14 February 2022
Our ref: Overview & Scrutiny Panel/Supplementary Agenda
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OVERVIEW & SCRUTINY PANEL

17 FEBRUARY 2022

A meeting of the Overview & Scrutiny Panel will be held at **7.00 pm on Thursday, 17 February 2022** in the Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Membership:

Councillor Rev. S Piper (Chair); Councillors: Fellows (Vice-Chair), Austin, Boyd, Currie, Coleman-Cooke, Huxley, Keen, Pat Moore, Paul Moore, L Piper, Rattigan and Tomlinson

AGENDA

Item
No

Subject

5. **BIRCHINGTON NEIGHBOURHOOD PLAN - REGULATION 16 CONSULTATION - FORMAL RESPONSE FROM THANET DISTRICT COUNCIL** (Pages 3 - 12)



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Birchington Neighbourhood Plan - Regulation 16 consultation - Formal Response from Thanet District Council

Overview & Scrutiny Panel 17 February 2022

Report Author Adrian Verrall, Strategic Planning Manager

Portfolio Holder Councillor Ashbee, Leader of the Council

Status For Recommendation to Cabinet

Classification: Unrestricted

Key Decision Budget and Policy Framework

Previously considered by: N/A

Ward: Birchington North, Birchington South

Executive Summary:

The Council is currently running a public consultation (Regulation 16) on the Birchington Neighbourhood Plan. This is the last chance for comments to be made on the plan before it is examined by an Independent Examiner.

Officers are recommending that the Council submits a formal response to the consultation, as appended to this report.

Recommendation(s):

That OSP reviews the recommendations to Cabinet, including in Annex 1 to this report, and makes any comments for Cabinet to consider.

Corporate Implications

Financial and Value for Money

No costs directly associated with this report.

The Examination process itself will have costs, but these should be largely covered by the Neighbourhood Planning grants the Council receives from Central Government.

Legal

The current consultation and subsequent Examination are required under Regulations 16 and 17 of the Neighbourhood Planning (General) Regulations 2012.

Corporate

It is important that the Council meets its statutory duties in relation to Neighbourhood Plans. It is also important to ensure that emerging neighbourhood plans are in general conformity with the Council's adopted Local Plan.

Equality Act 2010 & Public Sector Equality Duty

The PSED is not engaged by the matters raised in this report.

CORPORATE PRIORITIES

This report relates to the following corporate priorities:

- Environment

1.0 Introduction and Background

- 1.1 Under the Localism Act 2011, local communities can produce Neighbourhood Plans, setting out policies on the development and use of land in their area. If the plans are adopted by the District Council they will have the same weight as other Development Plan documents for the District.
- 1.2 A Neighbourhood Plan is a community-led framework for guiding the future development and growth of an area. It may contain vision, aims, planning policies, proposals for improving the area or providing new facilities, or allocation of key sites for specific kinds of development. It may deal with a wide range of issues (like housing, employment, heritage and transport) or it may focus on one or two issues that are of particular importance in a local area.
- 1.3 The Birchington Neighbourhood Area (to which the neighbourhood plan relates) was designated on 8 December 2016 and comprises the area within the Parish Boundary.
- 1.4 Birchington Parish Council carried out a variety of consultation events before carrying out their first formal consultation (Reg14) between 8 September - 20 October 2021. The Council provided a formal response to that consultation - most of those comments were taken into account.
- 1.5 The Parish Council then submitted their proposed Neighbourhood Plan to the Council, along with their Consultation Statement, Basic Conditions Statement and Strategic Environmental Assessment and Habitats Regulations screening reports. The Council issued a statement confirming that the Parish Council had met the various legal requirements, and prepared and opened the Regulation 16 consultation which is currently ongoing until 24 February 2022.
- 1.6 This is the last opportunity for the Council to comment on the draft Neighbourhood Plan. All comments received at the Regulation 16 stage are passed to the Independent Examiner for their consideration as part of the examination process.
- 1.7 The Examiner will test whether or not the neighbourhood plan meets the 'Basic Conditions' which are:

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- Having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan
 - The making of the neighbourhood plan contributes to the achievement of sustainable development
 - The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)
 - The making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations
 - Prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan
- 1.8 Following the Examination, the Examiner will submit a report to the Council and the Parish Council, setting out the conclusions of the Examination, and recommending any modifications that need to be made to the neighbourhood plan in order for it to meet the Basic Conditions.
- 1.9 The Council then has to consider whether or not the modified Neighbourhood Plan meets the Basic Conditions and is appropriate for eventual adoption. If the Council considers further modifications are needed other than those recommended by the Examiner, those changes would require a further public consultation and possibly a second Examination. The Council reduces the risk of finding the plan unacceptable post Examination, by making a formal comment to this consultation.
- 1.10 The Council must issue a statement that it considers that the modified Neighbourhood Plan meets the Basic Conditions and can proceed to Referendum. Once that statement has been published, the Neighbourhood Plan becomes a material consideration in determining planning applications. The Council will then organise the referendum, and a vote of 51% or more in favour of the neighbourhood plan will bring it into force. It will then be reported to Full Council to be 'made' (adopted).
- 1.11 The recommended response is set out in Annex 1. The amendments to the draft Plan go some way to meeting the concerns previously raised. However, there are still some aspects of the draft Plan, and some new elements, that are of concern in terms of its relationship to the Local Plan (and national guidance) - it is considered that some elements of the Plan, as submitted, do not meet the Basic Conditions. The main areas of concern are as follows:
- Absence of a local list of Heritage Assets and a proposed amendment to bring policy in line with the NPPF
 - Requirement for 'assurance statements' from utility service providers considered unreasonable
 - Ambiguous wording relating to development in the countryside or overlooking the coast - amendment suggested
 - Absence of a clear identification of commercial areas referred to in policies
 - Objection to the proposed Green Wedges. The existing Green Wedges have been long established and protected by Local Plan policies since the 1980s. The proposed Green Wedges would undermine the Local Plan policy as they do not conform with the aims of Local Plan policy SP25 (Safeguarding the

Identity of Thanet's Settlements). This relates to the land marked 12, 27, 28 and 29 on the Green & Open Spaces map on p41 of the draft Neighbourhood Plan. The areas marked 7 and 10 are covered by the Local Plan Green Wedge designation. It should be noted that the areas of countryside to which this relates are already protected by virtue of general countryside policies, with the urban boundary drawn tightly around Birchington (including the strategic site allocated in the Local Plan). Not having a Green Wedge policy for these areas does not mean that these areas are suitable for new development. Please refer to the table in Annex 1 for a more detailed response.



3.0 Options

- 3.1
- 1) That the comments in Annex 1 of this report are agreed to be submitted as the Council's formal response to the Regulation 16 Consultation.
 - 2) That the comments are amended before being submitted as the Council's formal response to the Regulation 16 Consultation.
 - 3) That the Council does not respond to the Regulation 16 Consultation.

If the Council chooses not to respond to the Regulation 16 Consultation, there is a risk that additional modifications will be considered necessary after the Examination and the receipt of the Examiners Report. Option 3 is therefore not recommended.

Contact Officer: Adrian Verrall, Strategic Planning Manager

Reporting to: Bob Porter, Director of Housing & Planning

Annex List

Annex 1: Town and Country Planning (General) Regulations 2012: Consultation under Regulation 16: 13 January - 24 February 2022 - Birchington Draft Neighbourhood Plan - Formal Comments from Thanet District Council

Background Papers

Title: [Birchington Neighbourhood Plan](#)

Corporate Consultation

Finance: Chris Blundell (Director of Finance)

Legal: Estelle Culligan (Director of Law and Democracy)

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Annex 1

Town and Country Planning (General) Regulations 2012: Consultation under Regulation 16: 13 January - 24 February 2022

BIRCHINGTON DRAFT NEIGHBOURHOOD PLAN

Formal comments from Thanet District Council

Birchington Parish Council invited the Council to comment on the Neighbourhood Plan in the Regulation 14 consultation. The Council submitted a formal response, and many of those comments were taken into account.

It is very clear that a huge amount of time, thought and care has gone into the preparation of this document. It is well set out, easy to read and understand, and attractive with its photos, maps and other images. The quality of this draft Neighbourhood Plan shows the dedication and enthusiasm of all those involved.

The Council is in general support of this Neighbourhood Plan, however there are still some areas of concern, as set out in the Council's formal response to the Regulation 16 consultation.

Page/ Paragra ph/ Policy No.	Comment
Policy B4	<p>The first Clause of Policy B4 refers to the local list of heritage assets. Footnote 1 to paragraph 15 (p33) of the neighbourhood plan states that an indicative list of local heritage assets has been prepared but has not yet been subject to consultation or formally adopted, and has not been prepared under the guidance of Historic England. This part of the policy would be difficult to implement until this work has been carried out.</p> <p>Footnote 68 of the NPPF states that 'Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets'. The final clause of Policy B4 needs to clarify that the policy only applies to such assets. The following amendment is suggested:</p> <p>'.....or have any adverse impact on significant archaeological assets.....'</p>
Policy B8	<p>The first section of this policy would seek to replicate and add to the provisions within non-planning legislation (including the Water and Industry Act 1991 - in relation to the duties on water and sewerage companies), without any clear evidence as why this policy should be imposed above the requirements set out in national planning guidance and legislation. It is also not clear what an "assurance statement from utility service providers" would constitute, or whether it is possible to attain such a document at the planning stage</p>

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	<p>in the process (as opposed to at building control stage).</p> <p>Therefore as drafted this policy is not considered reasonable or sound.</p>
<p>Policy B10</p> <p>Page 41, paragraph 5</p>	<p>(Map on p118) The buildings should be excluded from the All Saints C of E Church Graveyard and Church House open space allocation.</p> <p>For clarification, the Quex Estate is not protected as a green space in the Local Plan. Policy E12 applies to Quex Park and supports farm diversification projects, tourism and leisure development. Policy E12 also identifies environmental issues within the site that need to be considered. A green space/open space designation would have the potential to sterilise the site, and unnecessarily constrain projects that would be considered acceptable under Policy E12.</p>
B12	<p>The policy, as written, implies that development in the countryside or overlooking the coast is acceptable in principle. The addition of the following wording would resolve this issue: ‘This policy should be implemented in conjunction with Policy SP24 (Development in the Countryside) of the Thanet Local Plan 2020’.</p>
B13	<p>The Council objects to the inclusion of the proposed new Green Wedges identified as sites 12, 27, 28 and 29 on the Green & Open Spaces map on p41 of the draft Neighbourhood Plan. The main function of the green wedge designation is to maintain settlement separation and individual identity as set out in para 3.12 of the Thanet Local Plan 2020. The Council does not consider that the areas identified in the draft Neighbourhood Plan can be justified on that basis. This designation should not be used to protect miscellaneous areas of land without clearly defined boundaries on the ground. Green wedge proposals should be underpinned by detailed survey work. The Green Wedges are not therefore consistent with the Local Plan designations, and are not in conformity with a key strategic policy of the adopted Local Plan. The District Council is of the view that the proposed Green Wedge designations would devalue the existing, long-standing Green Wedges and the strategic policy in the Local Plan.</p> <p>Green Wedges have been a consistent feature of planning policy in Thanet since the 1980s - the Thanet Urban Local Plan adopted in 1984 was the first formally adopted Local Plan to include a Green Wedge policy. The Green Wedge policy and boundaries have been supported by Local Plan Inspectors in all subsequent Local Plans adopted in 1998, 2006 and 2020. The Green Wedge policy has been tested at appeals, and largely supported in appeal decisions, highlighting the significance of the open countryside between the Thanet towns in providing visual relief between highly urbanised areas.</p> <p>The Green Wedges are distinct from other types of open space as they provide a link between the open countryside and land which penetrates into the urban areas. They form an important settlement separation function between the settlements of Birchington and Westgate, Margate and Broadstairs and Broadstairs and Ramsgate. They maintain the separation of the Thanet towns and prevent their coalescence, preserving their unique identities. The boundaries have changed between the different Local Plans to reflect changes in character and development.</p> <p>The Green Wedges proposed in the Birchington Neighbourhood Plan would not serve to ‘maintain physical separation and avoid coalescence of the towns, retaining their individual character and distinctiveness’ - as set out in adopted Local Plan policy SP25 as</p>

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	<p>one of the aims of the policy. Rather than providing an open area in between urban areas, they would form extensive areas of countryside between Birchington's urban area and the Parish boundary. This does not conform with the stated aims of Policy SP25 and would undermine the status and long standing strategic aims of the Green Wedge policy.</p> <p>Local Plan Policy SP24 - Development in the Countryside - applies to all areas outside of the urban and village confines and seeks to restrict development in the countryside. The introductory text to the policy acknowledges the vulnerability of Thanet's countryside because of its limited extent, the openness and flatness of the rural landscape and the proximity of the towns. The policy provides the exceptional criteria under which development in the countryside may be permitted.</p> <p>The areas proposed as new Green Wedges in the Birchington Neighbourhood Plan are also identified as having significant landscape importance under Policy SP26 - Landscape Character Areas. The areas are identified within the 'Central Thanet Undulating Farmland' Landscape Character Area Policy SP26 requires any development proposals to demonstrate how their location, scale, design and materials will conserve and enhance Thanet's local distinctiveness, including the gaps between Thanet's towns and villages.</p> <p>It is considered that these Local Plan policies provide sufficient protection to the areas being proposed as new Green Wedges.</p>
Para 8 on p51	No evidence has been provided to support the levels of Brownfield land available in Thanet. This paragraph should therefore be deleted.
Policy B21	Compliance with Local Plan policies and the viability of a proposed development are matters for Thanet District Council as Local Planning Authority. Delete the words ' to the Parish Council ' from the final sentence
Policies B25 and B26	The areas covered by '.....the commercial areas.....Minnis Road.....Canterbury Road.....and at Minnis' should be clearly defined to clarify the areas to which these policies apply.

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