

Proposed Council Modifications to draft Broadstairs & St Peters Neighbourhood Plan

Cabinet	16th December 2019
Report Author	Tim Willis, Deputy Chief Executive
Portfolio Holder	Leader of the Council and Planning Policy Portfolio holder
Status	For Decision
Classification:	Unrestricted
Key Decision	No - Policy Framework
Reasons for Key	N/A
Previously Considered by	Cabinet - 25th July 2019
Ward:	Beacon Road, Kingsgate, Bradstowe, St Peters, Viking

Executive Summary:

Under the Localism Act 2011, Neighbourhood Plans can be prepared by local communities and are led by Town or Parish Councils or a Neighbourhood Forum in areas which do not have a Town or Parish Council. If Thanet Council adopt a neighbourhood plan it would have the same significance as other Development Plan Documents (eg the Local Plan) for the district.

Broadstairs & St Peters Town Council have prepared a neighbourhood plan which has been examined by an independent Examiner, and the Council has received the Examiners report.

The draft Neighbourhood Plan includes two proposed Local Green Spaces that the Council had already rejected as being unsuitable for designation as they had been previously submitted through the Local Plan process. One of the sites proposed for a Local Green Space is also subject of a current planning application for 24 houses. A decision by the Council for the draft neighbourhood plan to proceed to referendum with these sites included could result in Judicial Review.

On 25th July 2019, Cabinet resolved to issue the decision that the draft neighbourhood plan should not proceed to referendum and that the Council should carry out a six week consultation proposing modifications to remove the two Local Green Spaces from the neighbourhood plan.

This report sets out the results of the consultation and discusses potential ways forward for the neighbourhood plan to proceed to referendum for Cabinet's decision.

Recommendation(s):

- (1) That the Examiner's Proposed Modifications be accepted except insofar as they relate to the two sites referred to in this report; and
- (2) That the draft neighbourhood plan be referred back to Examination for evaluation as to whether or not the two Local Green Spaces should be allocated, and subsequently to proceed to referendum on that basis.

CORPORATE IMPLICATIONS

Financial and Value for Money	Limited costs associated with a further Examination from existing budget								
Legal	National legislation and national policies apply, including the National Planning Policy Framework (NPPF) and the localism Act 2011 (in respect of the Neighbourhood Plan). Guidance states that it is important that draft Neighbourhood Plans are aligned as closely as possible to the development of the Local Plan. The risk of judicial review in misusing the designation of Local Green Spaces is set out clearly below.								
Corporate	It is important that the Local Planning Authority consider the Examiner's recommendations and the "basic conditions" fully, as the decision on the draft Neighbourhood Plan may be subject to Judicial Review.								
Equality Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td> </tr> <tr> <td style="width: 80%;">Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td> <td style="width: 20%;"></td> </tr> <tr> <td>Advance equality of opportunity between people who share a protected characteristic and people who do not share it</td> <td></td> </tr> <tr> <td>Foster good relations between people who share a protected characteristic and people who do not share it.</td> <td></td> </tr> </table> <p>The Local Planning Authority's role in the Neighbourhood Plan process does not engage the PSED.</p>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,		Advance equality of opportunity between people who share a protected characteristic and people who do not share it		Foster good relations between people who share a protected characteristic and people who do not share it.	
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CORPORATE PRIORITIES (tick those relevant) ✓

Growth	
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Environment	
Communities	✓

1.0 Introduction and Background

- 1.1 Under the Localism Act 2011, Neighbourhood Plans can be prepared by local communities and are led by Town or Parish Councils or a Neighbourhood Forum in areas which do not have a Town or Parish Council. If Thanet Council adopt a neighbourhood plan it would have the same significance as other Development Plan Documents (eg the Local Plan) for the district.
- 1.2 On 18th June 2015, Cabinet resolved to approve a neighbourhood plan area for Broadstairs & St Peters in order that the Town Council could prepare a neighbourhood plan for that area.
- 1.3 Since then, Broadstairs & St Peters Town Council have prepared a neighbourhood plan. It has been formally submitted to the Council and examined by an independent Examiner. The Council has received the Examiners report which includes recommendations for modifications to the neighbourhood plan to enable it to meet the necessary requirements, and recommends that it be subject to a referendum.
- 1.4 However, at a Cabinet meeting on 25th July 2019, the decision was made to propose additional modifications to the draft neighbourhood plan so that it meets the 'Basic Conditions'.
- 1.5 Two sites proposed for allocation in the Neighbourhood Plan as Local Green Spaces (LGS) were also submitted as part of the Local Plan process and were not considered suitable for LGS allocation. It is a statutory requirement that a neighbourhood plan conforms to the strategic policies of the Local Plan. There is no requirement to conform to the strategic policies of a yet to be adopted local plan (notwithstanding that the draft Thanet Local Plan is at a very advanced stage). The current development plan is silent on the issue of LGS and its housing policies are out of date. However, it is considered that the allocation of these sites in the Neighbourhood Plan would be contrary to the Council's Local Plan evidence base and, taking this into account, would be contrary to Government guidance in the National Planning Policy Framework. Although one of the sites concerned is also allocated for residential development in the emerging Local Plan and is currently the subject of a planning application, these factors have no direct bearing on the issue of whether the proposed LGS allocations meet Government Guidance.
- 1.6 The Council has consulted on proposed modifications to the Neighbourhood Plan to delete these two LGS allocations, which, together with the changes suggested by the Examiner, would then enable the Neighbourhood Plan to meet the Basic Conditions and proceed to referendum. The consultation ran for a period of 6 weeks from 20th September until 1st November 2019.

2.0 The Current Situation

- 2.1 The Local Green Spaces proposed to be deleted from the Neighbourhood Plan are located at Fairfield Road/Rumfields Road and Reading Street. These sites were

submitted during the Councils Local Plan process and rejected as being suitable for allocation as Local Green spaces in the Local Plan.

- 2.2 The NPPF states that policies for managing development within sites designated as Local Green Spaces should be consistent with those for Green Belts (para 101) - the NPPF states that *'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances'* (para 143).
- 2.3 The NPPF 2012 applies in this case (although the equivalent guidance in the 2019 NPPF at para 100 is in very similar terms). Para 77 provides as follows.

77. The Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:

- where the green space is in reasonably close proximity to the community it serves
- **where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife**
- where the green area concerned is local in character and is not an extensive tract of land

The assessment criteria set out in the NPPF applies to LGS regardless of whether they are assessed and allocated in a Local Plan or a neighbourhood plan.

- 2.4 The Fairfield Road/Rumfields Road site was submitted to the Council during the Local Plan process under a slightly different name of 'Cross-roads of Fairfield Road and Bromstone Road'. The Council did not include this site for allocation in the Local Plan as a Local Green Space for the following reason: *'Possibly highway land on a busy roundabout. Site does not meet the NPPF criteria for designation'*.
- 2.5 The site at Reading Street was also submitted at this stage and was not considered suitable for allocation in the Local Plan for the following reason: *'Site is part of the grass verge adjacent to the highway. Site does not meet the NPPF criteria for designation'*.
- 2.6 The Examiner's conclusions in relation to these sites and their suitability to be LGS is set out here:

"Policy BSP5 (Designation of Local Green Spaces (LGS)) – this policy proposes the designation of 18 Local Green Spaces, which are listed at Appendix 2 to the Plan each with their address, postcode and/or grid reference and description. A Local Green Space background document (July 2018) sets out the methodology for the selection of the proposed Local Green Spaces, and I am satisfied that a rigorous approach has been taken in accordance with the principles outlined in Section 8 of the NPPF and the PPG⁶. I am also satisfied that each of the proposed sites meets the specific criteria set out in paragraph 77 of the NPPF for designation as a Local Green Space. However, I do consider that a map showing the location of the 18 Local Green Spaces is necessary within the Plan, acknowledging that detailed mapping of each site is available on the Town Council's web-site. I therefore recommend that a new

map be included within the main body of the Plan alongside Policy BSP5 showing the location of the 18 Local Green Spaces, and that this map be also referenced within the text of the policy. Accordingly, I recommend proposed modification **PM6** to address this matter”.

There is no explanation given as to why and in what way, in his view, these sites fulfil the above stated criteria of the NPPF.

Responses to Public Consultation and Council comment

- 2.7 The Council’s consultation on the deletion of these two sites received 94 responses - 84 objected to the proposed modifications to delete the sites, 2 were in support and 8 were general comments neither objecting nor supporting. 14 objections related specifically to the current planning application (others referred to proposed developments but did not make specific reference to the planning application). The representations can be seen [https://consult.thanet.gov.uk/consult.ti/BSPNPMODS/consultationHome\[\]](https://consult.thanet.gov.uk/consult.ti/BSPNPMODS/consultationHome[])
- 2.8 The majority of comments related to the Reading Street site and listed the following reasons for retaining it as a LGS:
- The LGS designations were accepted by the Independent Examiner, TDC should have commented earlier and should accept the Examiners report and recommendations
 - The green space is an important characteristic of the village
 - The memorial benches are widely used by residents and visitors
 - The post box is often used and only one available since the post office closed
 - People make regular use of the dog poo bin
 - The area is used for community uses, eg the siting of the Christmas tree and carol singing
- Fewer objections related to the Rumfields Road site but included:
- Open space needs to be retained for highway safety reasons
 - The footpath through the site is safer than the tarmac footpath
- 2.9 The draft Broadstairs & St Peters Neighbourhood Plan has undergone various consultations by the Town Council, and Thanet Council, as part of the Neighbourhood Plan process. The most recent consultation was carried out by Thanet Council prior to the submission of the draft neighbourhood plan for Examination. At that time the Council submitted informal comments to the Town Council which included concerns that some of the Local Green Spaces proposed did not meet the criteria set out in the NPPF.
- 2.10 The draft Neighbourhood Plan has now undergone independent examination, and it is at this point in the Neighbourhood Plan process (and the first formal point in the process) that the Council must come to a formal view about whether the draft neighbourhood plan meets the Basic Conditions. Regulation 18 of the Neighbourhood Planning Regulations 2012 (as amended) and Schedule 4B of the Town and Country Planning Act 1990 requires the local authority to propose any necessary modifications

to a neighbourhood plan in order that it can meet the Basic Conditions. The Council is therefore carrying out its statutory duties in proposing modifications to the draft Neighbourhood Plan.

2.11 The Basic Conditions are set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. The Basic Conditions are:

- a. having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order (or neighbourhood plan).
- b. having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order. This applies only to Orders.
- c. having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order. This applies only to Orders.
- d. the making of the order (or neighbourhood plan) contributes to the achievement of sustainable development.
- e. the making of the order (or 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).
- f. the making of the order (or neighbourhood plan) does not breach, and is otherwise compatible with, EU obligations.
- g. prescribed conditions are met in relation to the Order (or plan) and prescribed matters have been complied with in connection with the proposal for the order (or neighbourhood plan).

2.12 As stated above, the Examiner's report states that he is satisfied that the proposed Local Green Spaces meet the criteria set out in the NPPF, but has not provided any cogent reasons as to why and how the specific criteria in the NPPF have been met, thus meeting the first of the Basic Conditions.

2.13 It is clear from the public consultation that there is a high level of community feeling regarding the Reading Street site and that the land and the facilities are valued. This is not disputed. However, this is not the same as meeting the LGS criteria set out in the NPPF that Local Green Spaces should hold particular significance in terms of their 'beauty, historic significance, recreational value, tranquility or richness of wildlife' to warrant designation.

2.14 No additional evidence has been submitted in response to the recent consultation to demonstrate how the two LGS proposals meet these criteria. Responses to the consultation were received from both Historic England and Natural England stating that they had no specific comment to make on the proposed modifications to remove

the two sites from LGS designation, which suggests that they do not hold any particular significance in terms of historic significance or richness of wildlife.

- 2.15 Of the two supporting comments, one did not elaborate, the other supported the Council's proposed modifications relating to the Reading Street site due to the lack of justification for the designation of the site as a Local Green Space and that it would not conform to national and local policies.
- 2.16 The supporting comment was submitted on behalf of the applicant of the current planning application for the erection of 24 houses at the Reading Street site. It states that the land does not meet the LGS criteria in the NPPF, and that the proposed development incorporates significant areas of open space both adjacent to Reading Street and within the development itself, and that conditions would be agreed (if planning permission is granted) to enable the benches, flower beds, post box and other existing paraphernalia to be relocated to a new highway verge created by the development.
- 2.17 The Examiner does not appear to have considered the proposed residential allocation on the Reading Street site. In the Examiners report, the first proposed modification (PM1) states that the Neighbourhood Plan should seek to align with the emerging Thanet Local Plan.

As part of his Examination, the Examiner asked the following question:

"Question 1: Re. Paragraph 8.1.1 (Housing) This paragraph states, inter alia, that "To ensure a fair and open approach to housing provision in the Neighbourhood Area, this NDP supports housing provision being planned and delivered at the district Local Plan level through allocation of suitable sites and "windfall" housing development policies". The Plan contains no further information relating to planned residential developments up to 2031. In the context of the emerging Thanet Local Plan 2031, I shall need further information on the prospective Local Plan housing site allocations that fall within, or within close proximity to, the designated Neighbourhood Plan Area. I shall require this information in order to be able to assess whether a number of policies in the Plan, including Policies BSP1, BSP2, BSP4, BSP7 and BSP8, are consistent and compatible with any prospective residential developments that may be planned. I therefore invite the District Council and the Qualifying Body to provide me with a Note setting out the presently identified prospective Local Plan Housing Site allocations within the Neighbourhood Plan area and within close proximity to it. I also request a Map at an appropriate scale identifying the allocation site boundaries."

In making this request, he did not reference the Local Green Space Policy (BSP5) for assessing its compatibility with prospective residential developments and did not make any reference to the Reading Street site being allocated for residential development in the emerging Local Plan in his report.

Judicial Review

- 2.18 Paragraph 76 of the NPPF 2012 states that '*Designating land as Local Green Space should be consistent with the local planning of sustainable development and*

complement investment in sufficient homes, jobs and other essential services'.....'and should be capable of enduring beyond the end of the plan period'.

- 2.19 The Planning Practice Guidance that accompanies the NPPF states that *'.....plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making'*, and *'Local Green Space designation will rarely be appropriate where the land has planning permission for development. Exceptions could be where the development would be compatible with the reasons for designation or where planning permission is no longer capable of being implemented'*. The site has had a previous planning permission, but there is no current planning permission for development.
- 2.20 This is put more simply in the Locality 'Toolkit - Neighbourhood Planning - Local Green Spaces' which states *'Care is required to ensure that green space policies are not being misused, for example through making designations to stop development, rather than to ensure proper green space provision.....Existing or proposed site allocations (eg in a local plan) or valid planning permissions for a site should be identified. Either of these is likely to exclude that site from consideration as Local Green Space.'*
- 2.21 A recent High Court judgement (Neutral Citation Number: [2019] EWCH 2633 (QB)) (Case No: QB2019001302) ordered Mendip District Council to cancel a referendum on the Norton St Philip Neighbourhood Plan on the appropriateness of Local Green Space designations in the neighbourhood plan. The grounds for this were that:
- 1) The Council failed to have regard to the requirement that Local Green Spaces should be *'capable of enduring beyond the end of the plan period'*
 - 2) The Council failed to have regard to the NPPF requirements that Local Green Space designations should be consistent with the local planning of sustainable development
 - 3) The Council failed to understand the tests for designation as set out in the NPPF, quoting from the Local Plan Inspector's interim note to the Council that *'...the bar for LGS designation is set at a very high level. I therefore consider that it is clear from national policy that LGS designation should be the exception rather than the rule....'**I recognise that many if not all the proposed LGS designations are important to local communities; but this is a lower bar than being 'special' and of 'particular local significance'*
- 2.22 Mendip Council had made the decision to accept the Examiners recommendations and that the neighbourhood plan met the basic conditions without further modifications. The risk of Thanet Council doing this and leaving the decision open to Judicial Review was highlighted in the Council's Cabinet report of 25th July.
- 2.23 Given that the Reading Street site is allocated for residential development in the Local Plan, and has a current planning application, there is a risk of Judicial Review if the Council proceeds to referendum with the neighbourhood plan, without making the modifications to delete the two LGS. In any event, it is appropriate first to seek the

Independent Examiner’s clarification and reasons for finding that the allocations meet the basic conditions and conform to national policy.

Progressing the Neighbourhood Plan to Referendum

- 2.24 In order for the neighbourhood plan to progress to referendum, the Council is required to consider each of the recommendations in the Examiners report. It would then be recommended that the draft Neighbourhood Plan, along with the accepted recommendations, would be progressed to referendum, and ‘made’ by the Council if the referendum result is in favour of the neighbourhood plan.

The Inspectors recommendations and Council’s consideration is in Annex 1 of this report

3.0 Options

- 3.1 It is recommended that Cabinet agree the Examiners modifications to the Broadstairs & St Peters Neighbourhood Plan as set out in Annex 1 to this report, except insofar as they relate to the identification of the two sites the subject of this report. In addition to pursue one of the two following options:

- 3.2 Option 1 (Recommended)** Because of the volume of responses objecting to the Council’s proposed modifications to the neighbourhood plan, and the complexities of the various issues and other considerations involved, it is considered appropriate that this is referred back to Examination for further independent evaluation.

After receiving the report on the further Examination, the Council would progress the Broadstairs Neighbourhood Plan to referendum, taking into account the recommendations from that report, and the recommendations in the original Examiners report.

- 3.3 Option 2 (not Recommended)** That the Proposed modifications are not taken forward and the draft Neighbourhood Plan, as amended by the Examiners modifications, is progressed to referendum. This could potentially leave the decision open to Judicial Review, on the basis that the required clarification or reconsideration of the proposed allocations is necessary to ensure that the draft Plan meets the “basic conditions”.

Contact Officer:	Adrian Verrall, Strategic Planning Manager
Reporting to:	Bob Porter, Head of Housing & Planning

Annex List

Annex 1	Examiners Modifications and Council response
Annex 2	BSPNP LGS maps

Background Papers

Title	Details of where to access copy
Draft Broadstairs and St Peter's Neighbourhood Plan	https://www.broadstairs.gov.uk/_UserFiles/Files/NeighbourhoodPlan/Regulation%2016%20NDP-compressed.pdf
Examiner's report	https://www.broadstairs.gov.uk/_UserFiles/Files/NeighbourhoodPlan/Final%20Examiners%20Report.pdf
Thanet District Council - Local Green Space Report	https://www.thanet.gov.uk/wp-content/uploads/2018/08/LGS-full-report-plus-appendix-2-reduced-for-web.pdf

Corporate Consultation

Finance	Matthew Sanham, Financial Services Manager
Legal	Estelle Culligan, Head of Legal and Democratic Services