

BIRCHINGTON DRAFT NEIGHBOURHOOD PLAN

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| Extraordinary Cabinet | 10 August 2023 |
| Report Author | Adrian Verrall (Strategic Planning Manager) |
| Portfolio Holder | Councillor Everitt, Leader of the Council and Cabinet Member for Strategy and Transformation |
| Status | For Decision |
| Classification: | Unrestricted |
| Key Decision | No - Policy Framework |
| Reasons for Key | N/A |
| Ward: | Birchington North, Birchington South |

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.

The Council designated the Birchington Neighbourhood Plan Area on 8 December 2016 in order that the Town Council could prepare a neighbourhood plan for that area.

Since then, Birchington Parish Council has prepared a neighbourhood plan. It has been formally submitted to the Council and examined by an independent Examiner. The Council has received the Examiner's report which includes recommendations for modifications to the neighbourhood plan, and recommends that it be subject to a referendum.

The Council now has to issue a Decision Statement as to whether or not it accepts the recommendations in the Examiners report, and, if not, what actions would be necessary. The Council also has to consider whether the draft Plan meets the "basic conditions" for a Neighbourhood Plan.

This report sets out relevant issues in the Examiner's report for Cabinet's decision which will also form the basis of the Decision Statement.

Recommendation(s):

- (1) That the draft Neighbourhood Plan be modified as set out in this report, and
- (2) That the Council issues a Decision Statement that it accepts the recommendations in the Examiners report, and the draft Neighbourhood Plan can proceed to referendum.

Corporate Implications

Financial and Value for Money

Referendum costs will be met from existing budgets. The Council receives Government grants at different stages of the neighbourhood plan process, which reimburse costs to a significant degree.

Legal

National legislation and national policies apply (see details below).

Risk Management

There are no risks associated with this report.

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, which relates to the Council's proposed response to the Examiner's report and recommendations in relation to the draft Birchington Neighbourhood Plan.

Corporate Priorities

This report relates to the following corporate priorities:

- *Environment*
- *Communities*

1.0 Introduction and Background

1.1 Birchington Parish Council have been progressing their Neighbourhood Plan. Part of the Neighbourhood Planning process is for the draft plan to be examined by an independent examiner to test whether or not the draft plan meets the 'basic conditions' and other procedural matters. The Plan was submitted to an Independent Examiner 2, and the Council and the Parish Council received the Examiner's report on 21 July 2023.

1.2 Thanet Council now has to take a decision, and publish that decision, on whether or not to accept the Examiner's report and recommendations and send the draft neighbourhood plan to referendum. This is the first stage in the Neighbourhood Plan process that the local authority formally assesses a neighbourhood plan.

- 1.3 It is considered that the draft Neighbourhood Plan, as amended by the Examiner's recommendations for modifications, is generally to be welcomed. TDC officers have supported the preparation of the draft NP (for example, with policy advice, and in carrying out the Strategic Environmental Assessment (SEA) scoping exercise required).

2.0 The Current Situation

- 2.1 The Neighbourhood Plan process is outlined below (as set out in the Council's Statement of Community Involvement) - we are currently at Stage 4 in the process:

Stage 1 - Neighbourhood Area Designation

The Town or Parish Council apply to the Council for a specific geographic area to be designated to which the Neighbourhood Plan will apply. In Thanet the Neighbourhood Area is usually the Parish or Town boundary, in which case the Council will designate the Neighbourhood Area.

Stage 2 - Preparing the Plan

Following the acceptance of a Neighbourhood Area, the Town or Parish Council undertakes evidence gathering and public engagement activities. This should allow as many people as possible, who will be impacted by the plan, to engage in the process. The Town or Parish Council then prepares, and consults on, a draft plan to reflect the outcomes of their local engagement (Regulation 14).

Stage 3 - Plan Submission

Under Regulation 15, the Neighbourhood Plan is submitted to the Council by the Town/Parish Council. The Plan is then publicised for a minimum of six weeks by the Council and representations are invited (Regulation 16). The Council will publish the consultation on the draft Neighbourhood Plan on its website and will publicise it within the plan area.

Stage 4 - Examination

The Council appoints an independent Examiner to undertake an examination of the proposed Neighbourhood Plan to assess whether the plan meets the basic conditions and other tests within the legislation, and to consider any comments which have been received. The Examiner may then recommend modifications to the Plan if required. The Examiner then provides their report to the Council who publish the report and take the decision on whether the Neighbourhood Plan meets the Basic Conditions and should proceed to referendum. The Council will publish its decision in a Decision Statement.

Stage 5 - Referendum

The community within the Neighbourhood Area (unless the Examiner considers it necessary to extend the referendum to other areas) are asked to vote for the Neighbourhood Plan in a Neighbourhood Planning Referendum organised by the Council. The Neighbourhood Plan must be considered favourably by over 50% of those who vote in order for the Council to adopt it.

Stage 6 - Adoption

Following a positive result at Referendum, the Neighbourhood Plan is then 'made' by the Council at a full Council meeting. The Neighbourhood Plan is then part of the District's Development Plan and used by the Council in determining planning applications.

Neighbourhood Plan Examination

2.2 The role of the Examiner is to recommend either:

- (a) that the neighbourhood plan is submitted to a referendum without changes; or
- (b) that modifications are made and that the modified neighbourhood plan is submitted to a referendum; or
- (c) that the neighbourhood plan does not proceed to a referendum on the basis that it does not meet the necessary legal requirements.

2.3 The scope of the examination is set out in Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990 (as amended) ('the 1990 Act'). The examiner must consider:

- Whether the plan meets the Basic Conditions;
- Whether the plan complies with provisions under s.38A and s.38B of the Planning and Compulsory Purchase Act 2004 (as amended) ('the 2004 Act'). These are:
 - it has been prepared and submitted for examination by a qualifying body, for an area that has been properly designated by the local planning authority;
 - it sets out policies in relation to the development and use of land;
 - it specifies the period during which it has effect;
 - it does not include provisions and policies for 'excluded development';
 - it is the only neighbourhood plan for the area and does not relate to land outside the designated neighbourhood area;
 - whether the referendum boundary should be extended beyond the designated area, should the plan proceed to referendum;and;
- Such matters as prescribed in the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the 2012 Regulations').

2.4 The 'Basic Conditions' are set out in Paragraph 8(2) of Schedule 4B to the 1990 Act. In order to meet the Basic Conditions, the neighbourhood plan must:

- have regard to national policies and advice contained in guidance issued by the Secretary of State;
 - contribute to the achievement of sustainable development;
 - be in general conformity with the strategic policies of the development plan for the area;
 - be compatible with and not breach European Union (EU) obligations;
- and;
- meet prescribed conditions and comply with prescribed matters.

2.5 It is at this point in the 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 require the local authority to propose any necessary modifications to a neighbourhood plan in order that it can meet the Basic Conditions.

2.6 The draft Neighbourhood Plan is generally supported - it has been positively prepared, and includes policies that generally conform with the emerging Local Plan. It is encouraging to see that the Parish Council has included policies which would be too detailed or too specific for the Local Plan, and has a good evidence base to support them.

2.7 As required by the Neighbourhood Planning Regulations, Birchington Parish Council carried out the Regulation 14 consultation, and the Council carried out the Regulation 16 consultation. The Council provided formal comments to both consultations, setting out any concerns about the Plan and whether or not it meets the Basic Conditions.

2.8 It is considered that some of the amendments made by the Parish Council following the Regulation 14 consultation, and the Proposed Modifications recommended by the Examiner have addressed these concerns.

2.9 The Council must issue a Decision Statement setting out whether or not the Neighbourhood Plan meets the Basic Conditions and proceed to Referendum. If the Neighbourhood Plan does meet the Basic Conditions and the Council issues a Decision Statement to say that it should proceed to Referendum, the draft Neighbourhood Plan then carries significant weight in the determination of planning applications once that Decision Notice has been issued.

2.10 It is considered that the Birchington Neighbourhood Plan, taken with the modifications set out in the Examiners Report (Annex 1) meets the Basic Conditions and the Neighbourhood Plan should proceed to referendum.

3.0 Options

3.1 Option 1 (recommended)

That Cabinet decides to issue a Decision Statement, that the Birchington Neighbourhood Plan, together with the Examiner's proposed Modifications in Annex 1, meets the Basic Conditions and should proceed to referendum.

Option 2 (not recommended)

That Cabinet decides to issue a Decision Statement that the Birchington Neighbourhood Plan does not meet the Basic Conditions, and proposes further modifications be made to the plan in order for it to do so. These modifications would then require a public consultation.

4.0 Next Steps

- 4.1 A referendum will be held and residents within the Birchington Neighbourhood Plan Area can vote for or against the adoption of the Neighbourhood Plan. If more than 50% of the votes are in favour of the Plan, it must then be formally 'made' (adopted) by Thanet District Council.

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Reporting to: Bob Porter (Director of Place)

Annex List

[Annex 1: Modifications to the Neighbourhood Plan as proposed by the Examiner](#)

Background Papers

[Birchington Neighbourhood Development Plan - Submission Version - 30 November 2021](#)

[Birchington Neighbourhood Plan Examiners Report 21/07/2023](#)

Corporate Consultation

Finance: Chris Blundell (Director of Corporate Services - Section 151)

Legal: Sameera Khan (Interim Head of Legal & Monitoring Officer)