

**North East Derbyshire District Council**

**Cabinet**

**21 September 2023**

**Decision on the Brampton Parish Neighbourhood Plan**

**Report of the Cabinet Member for Environment & Planning**

**Classification:** This report is public

**Report By:** Helen Fairfax – Planning Policy and Environment Manager

**Contact Officer:** As Above

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**PURPOSE**

- To advise Members on the proposed Brampton Parish Neighbourhood Plan, and the findings of the independent Examiner.
- To consider the recommended modifications of the Examiner of the Brampton Parish Neighbourhood Plan and make a decision on how to proceed.
- To secure authorisation that following a successful referendum, if more than half of those voting in the referendum vote in favour of the Brampton Parish Neighbourhood Plan, then the Neighbourhood Plan is brought into effect ('Made').

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**RECOMMENDATIONS**

1. That the Examiner's report and recommended modifications to the Plan as set out in the Decision Statement at **Appendix 1** are accepted in their entirety and the Plan, as amended, is taken forward to a referendum within the Parish as outlined in this report.
2. That Cabinet delegates authority to the Assistant Director of Planning in consultation with the Leader and Portfolio Holder for Environment that following a successful referendum, if more than half of those voting in the referendum vote in favour of the Neighbourhood Plan, then the Neighbourhood Plan is brought into effect ('Made').

Approved by the Portfolio Holder – Cllr Pickering, Cabinet Member for NEDDC

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**IMPLICATIONS**

**Finance and Risk:** Yes  No

**Details:** The costs of the Examination and Referendum are the responsibility of the Local Planning Authority (LPA). However, LPA's are able to claim up to £20,000 once they have

set a date for a referendum following a successful examination where a neighbourhood plan has not previously been made for that area, as is the case in Brampton Parish. It is expected that this funding will be sufficient to cover expenditure incurred in relation to the Examiner's fees and the holding of the referendum. The Electoral Services Team is looking at the likely current costs of the referendum and will supply these when known. A claim for payment will need to be made for any activity that has taken place during the relevant financial year, i.e. 2022/23, at a time determined by the Department for Levelling Up, Housing and Communities.

On Behalf of the Section 151 Officer

**Legal (including Data Protection):** Yes  No

**Details:** As detailed in the report at paragraphs 2.5 – 2.8.

On Behalf of the Solicitor to the Council

**Staffing:** Yes  No

**Details:** Work on Neighbourhood Plans is currently accommodated within existing staffing resources.

On behalf of the Head of Paid Service

## DECISION INFORMATION

Decision Information	
<p><b>Is the decision a Key Decision?</b>            A Key Decision is an executive decision which has a significant impact on two or more District wards, or which results in income or expenditure to the Council above the following thresholds:</p> <p><b>NEDDC:</b>  <b>Revenue - £100,000</b> <input type="checkbox"/> <b>Capital - £250,000</b> <input type="checkbox"/>  <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p><b>Is the decision subject to Call-In?</b>            (Only Key Decisions are subject to Call-In)</p>	No
<p><b>District Wards Significantly Affected</b></p>	Brampton
<p><b>Consultation:</b>  <b>Leader / Deputy Leader</b> <input type="checkbox"/> <b>Cabinet</b> <input type="checkbox"/>  <b>SMT</b> <input type="checkbox"/> <b>Relevant Service Manager</b> <input checked="" type="checkbox"/>  <b>Members</b> <input checked="" type="checkbox"/> <b>Public</b> <input checked="" type="checkbox"/> <b>Other</b> <input checked="" type="checkbox"/></p>	Consultation with residents, businesses and other bodies with an interest in the Parish has been an integral part of the process in line with regulations.

**Links to Council Plan priorities, including Climate Change, Equalities, and Economics and Health implications.**

All

## REPORT DETAILS

### 1. Background

- 1.1 On 1 December 2017 Brampton Parish Council submitted an application to both North East Derbyshire District Council and the Peak District National Park Authority for the designation of the Parish as a Neighbourhood Area. The Parish of Brampton was duly designated as the Brampton Neighbourhood Area by North East Derbyshire District Council on 22 June 2018 and by the Peak District National Park Authority on 13 July 2018. Following this, Brampton Neighbourhood Plan Steering Group prepared a draft version of Brampton Parish Neighbourhood Plan ('the Plan') and consulted on the draft Plan for 6 weeks ending on 7 February 2022.
- 1.2 The Submission version of the Neighbourhood Plan for Brampton was completed and submitted to the District Council on 12 October 2022. The District Council accepted the Plan was legally compliant and held a 6-week consultation period ending on 16 March 2023.
- 1.3 The District Council as Local Planning Authority made formal comments on the submitted Plan concluding that overall, the draft Plan was well presented, and in the main, scoped appropriately, dealing with relevant local issues, relying on surveys from the local populace to highlight local concerns, and create the policies and objectives of the plan. There were, however, some areas where changes were needed to be compliant with regulations in general and to be in conformity with the Local Plan.
- 1.4 Following liaison with the Parish Council, Nigel McGurk, Erimax Planning, was appointed as Independent Examiner. He undertook the examination of the Submission version of the Plan from June to August 2023. The Examiner's Report into the Plan was issued on 7 August 2023. Details of the Plan preparation and Examiners Report are available on the Council's Neighbourhood Planning page: <https://www.ne-derbyshire.gov.uk/index.php/neighbourhood-planning>.
- 1.5 In accordance with the Neighbourhood Planning (General) Regulations 2012, (Regulation 17a), the District Council has 5 weeks to decide what action to take in response to each recommendation made by the Examiner in their report, unless an alternative date is agreed with the Parish Council. In this case, Brampton Parish Council has agreed to the matter being referred to this meeting of the Council's Cabinet.

### 2. Details of Proposal

#### Examiners Report

- 2.1 The Examiner's Report into the Plan was received by the Council on 7 August 2023. The Examiner states in his overall finding that *"I recommend to the North East Derbyshire District Council that, subject to the recommended modifications, the Brampton Neighbourhood Plan should proceed to a Referendum.*
- 2.2 With regards to the Plan's policies the Examiner recommends 59 modifications to the Submission Version of the Plan. This includes the deletion of one Policy (B11: Assets of Community Value) and replacing it with a Parish Action, and amendments to all

the remaining policies in the interests of clarity, conformity with national policies and deliverability. These modifications are included in the schedule at Appendix 1, with some of the more significant changes explained in more detail below.

- 2.3 With regards to Local Plan Policy the Examiner considers that the Neighbourhood Plan must be in general conformity with the strategic policies of both the NED Local Plan 2014-34 and the PDNPA Core Strategy Development Plan Document (2011).

### **Examiners conclusions over consultation**

- 2.4 The Examiner notes the key stages of the consultation undertaken. These comprise pre-submission consultation undertaken by the Parish Council during the plan preparation and at draft Plan stage; consultation by the District Council on the Submission version of the Plan with representations from 14 different parties received.
- 2.5 The Examiner concludes: “...I am satisfied that the consultation process for the Brampton Neighbourhood Plan was robust and that it complied with the neighbourhood planning regulations...”

### **Examiner’s recommendations**

- 2.6 The Examiner recommends modifications to the Plan, including agreement with the majority of the comments made by the District Council. He considered the Plan against Basic Conditions that it needs to meet, in particular whether individual policies have regard to national policy (including the NPPF), and whether they are in general conformity with the strategic policies in the North East Derbyshire Local Plan and Peak District National Park Planning Authority Core Strategy. Many of his recommendations were in order to provide an appropriate and deliverable basis for the determination of a planning application and to provide clearer instruction and guidance.
- 2.7 This report highlights the most significant modifications of the 59 recommended by the Examiner. They are summarised below:
- 2.7.1 Policy B1: Respecting and Enhancing Distinctive Views - Policy B1 seeks to ensure that development respects locally important and distinctive views (24 in total). In his report, the Examiner considers that the Policy adopts a more onerous approach than that set out in National Policy by requiring that developments don’t just respect views but also enhance them. He goes on to state that the distinctive views identified are not precise or specific and are open to wide interpretation, such that it is not clear how “*enhancement*” might be judged, who by and on what basis. The Examiner therefore recommends that the policy should be reworded and references to enhancement should be removed.
- 2.7.2 Policy B2: Local Green Space – Policy B2 identifies areas of green space of particular importance to the Brampton community and designates them for special protection. The Examiner considers that there is no plan that clearly distinguishes boundaries for all the designated Local Green Space (LGS) areas. This is contrary to National Policy, which affords protection to LGS designation that is comparable to that for Green Belt land. Given the importance of the designation, LGS boundaries must be precise and clearly

identifiable. The Examiner therefore recommends that a new plan (or plans) should be provided showing the boundaries of each LGS.

The Examiner does not believe that there is enough substantive information to support the designation of Site 8 (Bradshaw Lane) as an LGS and recommends it be deleted. He also considers that the boundaries for Site 1 (Cutthorpe/Four Lane Ends) should be changed to just cover the flowerbed excluding the highway land.

- 2.7.3 Policy B3: Nature Conservation and Biodiversity - Policy B3 seeks to protect and enhance biodiversity. Policy B3 is worded in a way that supports any form of development, so long as it conserves and enhances biodiversity. In the absence of evidence to the contrary, the Examiner considers that such an approach could give rise to inadvertent support for inappropriate forms of development and consequently, runs the risk of the Neighbourhood Plan failing to contribute to the achievement of sustainable development. The Examiner has recommended the wording of the policy be changed to *“Development should conserve and enhance biodiversity. The enhancement of designated and other local wildlife sites will be supported.”*
- 2.7.4 Policy B4: Dark Skies - Policy B4 seeks to protect the Neighbourhood Area from development incompatible with the area’s dark skies. The Examiner recognises that Dark skies can comprise an important aspect of the countryside and especially, of National Parks. However, the Examiner also notes that most forms of external lighting do not require planning permission, and in the absence of any additional information the Examiner does not believe it is clear how the detailed requirements of Policy B4 are deliverable. Consequently, the Examiner suggests that the policy wording be deleted and replaced with *“Development proposals should seek to minimise light spillage through good design and the avoidance of lighting that results in the loss of night-time dark skies.”*
- 2.7.5 Policy B5: Noisy Sports - Policy B5 seeks to control “noisy sports”. The Examiner considers that “noisy sports” is a subjective term and that the supporting text in the Plan is vague in respect of precisely what noisy sports comprise and is therefore, contrary to Paragraph 16 of the National Planning Policy Framework. The Examiner recommends that the wording of the policy be deleted and replaced with *“Development proposals must respect the tranquillity of the countryside and the amenity of neighbouring uses, with regards to noise and disturbance and highway safety. Proposals for noise-generating sport and recreational uses in the countryside should demonstrate how noise and disturbance will be mitigated.”*
- 2.7.6 Policy B6: Housing Mix - Policy B6 does not allocate housing land but seeks to require new housing development to support the provision of new homes that meet the needs of the Neighbourhood Area. In general terms the Examiner considers that the Policy has regard to National Policy. However, whilst the supporting text to Policy B6 indicates a local need for smaller two-bedroomed houses, the Neighbourhood Plan does not allocate land for any such development or provide detailed information in respect of how or where such development might be delivered on sites in the Neighbourhood Area. Consequently, as set out, Policy B6 requires all housing development to

provide for a mix of housing types and sizes, without any evidence to demonstrate that this is a deliverable requirement.

- 2.7.7 Taking the above into account the Examiner has recommended that the policy wording be deleted and replaced with *“New housing development should demonstrate how it has taken account of up to date local housing need information including the Brampton Parish Housing Needs and Characteristics Study 2019 (or as updated).”*
- 2.7.8 Furthermore, the Neighbourhood Plan does not include an affordable housing policy and does not include a rural exceptions policy. Much of the supporting text in paras 117-126 is set out as though it supports an affordable housing policy. The Examiner considers that the supporting text is both confusing and unnecessary and so recommends that paragraphs 117-126 be deleted.
- 2.7.9 Policy B7: Brampton Parish Character Buildings of Local Interest - Policy B7 identifies a number of non-designated heritage assets in Cutthorpe, designating them as Parish Character Buildings of Local Heritage Interest.
- 2.7.10 The Policy refers to *“important views”* in relation to heritage assets but does not provide precise information in respect of what these might be. The Policy also includes a general requirement for development to take account of local styles, materials and details without clarifying whether this relates specifically to the development of, or in the setting of, the Character Buildings, or to development in general. The Examiner does not consider this part of the policy to be clear. Furthermore, the Policy goes beyond the requirements of national policy in respect of non-designated heritage assets, without any justification.
- 2.7.11 To address these issues the Examiner has recommended that the first sentence of the policy be kept, but that second, third and fourth sentences be deleted and replaced with: *“Any development proposal affecting a heritage asset must demonstrate how it has considered the character and setting of the asset, including consideration of local vernacular and materials. Proposals involving harm to, or the loss of a Brampton Parish Character Building of Local Heritage Interest must set out the scale of any such harm or loss alongside the benefits of the proposal.”*
- 2.7.12 Policy B8: Promoting Sustainable High Quality Design - Policy B8 seeks to ensure that new development is of a high design quality and in this way the Examiner considers that it has regard to national policy and is in general conformity with local strategic planning policy.
- 2.7.13 Policy B8 sets out a requirement for all development to enhance the scale, density, character, layout and access of existing surrounding buildings and landscape. No evidence is provided to demonstrate that such a requirement is deliverable. The Examiner considers much of the text in the policy to be ambiguous and does not think the supporting text in the Plan provides any indication of when design criteria may or may not be relevant or what the impact of views to or from a Conservation Area comprises. The Examiner therefore recommends deleting the opening paragraph and replacing the wording with: *“All new development in Brampton must be of high quality design and must respect local character and local distinctiveness. Development proposals should consider opportunities to:”* and changing the wording of

criteria a, e, f, g and h, to improve clarity and remove ambiguous wording. And suggests the last sentence in the policy be deleted, and that the title of the policy be changed to “*Promoting High Quality and Distinctive Design*”.

- 2.7.14 Policy B9: Protecting, Conserving and Enhancing Dry Stone Walls - Policy B9 seeks to protect Brampton’s distinctive traditional dry stone walls. To achieve this the policy introduces a requirement for design proposals to be re-designed, as opposed to providing a land use planning policy framework for development. The Examiner considers that the policy as written is not deliverable. To address this, the Examiner has recommended that the policy wording be deleted and replaced with “*Development should not result in the loss of, or harm to, traditional dry stone walls. The conservation and/or enhancement of traditional dry stone walls will be supported.*”
- 2.7.15 Policy B10: Protection and Enhancement of Important Community Facilities - Policy B10 identifies important local community facilities and seeks to prevent their unnecessary loss. The Examiner considers this policy to be ambiguously worded, unsupported by detailed information and open to wide interpretation. The Examiner also consider that the Policy appears to unduly restrict the scope for the provision of community facilities, which would be contrary to National Policy which requires policies to be positively prepared. Furthermore, the Examiner considers the policy undeliverable as written due to the references to “*small-scale*” proposals. No indication is provided in the Plan of what “*small-scale*” might comprise. The Examiner recommends changes to address these issues.
- 2.7.16 Policy B11: Assets of Community Value - There are two Assets of Community Value (ACVs) in the Neighbourhood Area, these are also listed in Policy B10 and are already protected from harm and loss by its provisions. The Examiner considers that Policy B11 does not serve a clear purpose, and duplicates the protections already delivered by Policy B10 and so does not meet the basic conditions. Taking this into account, the Examiner has recommended that Policy B11 be deleted and made into Parish Action 2.
- 2.7.17 Policy B12: Broadband and Other Telecommunications Provision - Policy B12 seeks to promote development that supports the provision and enhancement of broadband. As worded, the Policy refers to encouraging “*small scale development proposals*” without indicating how such encouragement might take place and what small scale development comprises. The Examiner considers the policy to be vague and unclear in this respect and so recommends that the wording of Policy B12 be changed to “*The development of enhanced broadband and other telecommunications equipment will be supported where such provision is sympathetically located and designed.*”
- 2.7.18 Policy B13: Highway and Pedestrian Safety - Policy B13 seeks to ensure that development does not result in harm to highway safety. The Policy sets out a requirement for all development to demonstrate various things without any supporting evidence to demonstrate that such a requirement meets the national tests for planning obligations as set out in Paragraph 57 of the NPPF.
- 2.7.19 The Examiner considers the second part of Policy B13 to unclear as it appears to support any form of development subject to improving localised issues of vehicular and pedestrian safety and movement and subject to highway designs

being appropriately located and not harming local character. In the absence of information to the contrary, it appears that such an approach could result in inadvertent support for inappropriate forms of development and place an obstacle in the way of the Neighbourhood Plan contributing to the achievement of sustainable development. To address these issues, the Examiner recommends that the policy wording be replaced with *“Development must not harm highway safety and development in Cutthorpe village should not result in the loss of existing car parking provision.”*

2.7.20 Policy B14: Footpaths, Cycle Paths and Bridleways - Policy B14 seeks to protect and improve public rights of way and in this respect, it has regard to national policy. The Policy seeks to give priority to footpaths, cycleways and bridleways that extend and join the existing network. However, there is no supporting information in the Plan or supporting documents setting out how such prioritisation will take place, and so this part of the Policy does not provide a decision maker with a clear indication of how to react to a development proposal. The Examiner does not consider this part of the policy to be deliverable and so has suggested that the sentence *“Priority will be given to those that extend and join the existing network”* should be deleted from the policy.

2.7.21 Policy B15: Ultra-Low Emissions Vehicle Infrastructure - Policy B15 supports the development of e-vehicle charging points and has regard to national policy. The Policy is worded in such a way that it supports any form of development so long as it provides e-vehicle charging points. The Examiner considers that this could result in inadvertent support for inappropriate forms of development, placing an obstacle in the way of the Neighbourhood Plan contributing to the achievement of sustainable development. Furthermore, the Examiner consider that there is no information in the Neighbourhood Plan in respect of what *“sympathetically located and designed”* charging points as detailed in the policy might comprise. To address this issue, the Examiner has recommended the wording of the policy be changed to *“The development of charging points for Ultra-Low Emission Vehicles and e-bikes will be supported.”*

2.7.22 The Examiner’s Report concludes that the Submitted Plan meets each basic condition and human rights obligations, specifically:

- 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, European Union (EU) obligations; and

- the making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site, either alone or in combination with other plans or projects.

2.2 The Examiner to conclude: *“I recommend to the North East Derbyshire District Council that, subject to the recommended modifications, the Brampton Parish Neighbourhood Plan should proceed to a Referendum.”*

### **The Council’s Decision**

2.3 The Neighbourhood Planning (General) Regulations 2012 set out that if the District Council agrees to the recommendations of this report, it has to publish a ‘Decision Statement’ on the Plan. This must set out the Council’s decision on the Neighbourhood Plan and the reasons for making that decision. It is normal practice for the date of the Referendum to be specified in the decision statement. The proposed decision statement is contained within **Appendix 1**.

2.4 All the changes recommended by the Examiner are agreed by the District Council and are set out in the schedule attached to the Decision Statement. The schedule lists the Examiner’s recommendations and the Council’s response, which is agreement in all cases. The Examiner’s recommendation will be incorporated into a Referendum Version Brampton Neighbourhood Plan, along with any consequential amendments. The schedule and the referendum version Plan will be publicised prior to the referendum. Changes have yet to be applied to a version of the Plan as produced by the Parish Council. This will be done once (and if) a Final Plan is required.

### **Referendum Arrangements**

2.5 The date for the Referendum is provisionally set for **9 November 2023**. The Information Statement, the Referendum version of the Plan and other relevant documents will be put on the Council’s website at least 28 working days (i.e. excluding Saturdays, Sundays and Public Holidays) before the chosen date. The Council will also need to ensure that the publication of the ‘Notice of Referendum’ takes place at least 25 working days before the referendum.

2.6 The Referendum will follow a similar format to an election. All Local Government electors registered to vote within the Neighbourhood Area will be given the opportunity to vote in the Referendum and will be sent polling cards, setting out their polling method. Electors will be issued with a ballot paper with the question ‘Do you want North East Derbyshire District Council to use the Neighbourhood Plan for Brampton to help it decide planning applications in the neighbourhood area?’ Residents will be given the opportunity to vote ‘yes’ or ‘no’.

2.7 If more than 50% of those voting in the referendum vote ‘yes’ then the District Council, as Local Planning Authority is required to adopt the plan as part of the development plan for North East Derbyshire. If the result of the Referendum is ‘no’, then nothing further happens. Brampton Parish Council will then decide if it wishes to make changes and re-submit an amended Plan.

## **'Making' the Plan**

2.8 If electors vote in favour of the Plan, then the Neighbourhood Plan will immediately be included in the Development Plan for the area and will be given weight when applications for planning permission are determined. Nevertheless, the Plan has to be formally 'made' by the District Council. It is proposed here that Cabinet delegates authority to the Assistant Director of Planning in consultation with the Leader and Portfolio Holder for Environment to formally 'make' the Neighbourhood Plan soon after a successful referendum unless there is any legal reason to prevent this. Once this happens a Final version of the Plan will be produced.

### **3. Reasons for Recommendation**

3.1 The Brampton Neighbourhood Plan has been subject to examination by an independent examiner. The Examiner's view is that subject to specified modifications the Plan meets the Basic Conditions and other relevant legal requirements.

3.2 Officers have considered each of the recommendations made in the Examiner's report (see the Council's Decision Statement attached at Appendix 1) and agrees with the Examiner's findings in all cases.

3.3 It is considered that, subject to the modifications set out in the Decision Statement the Draft Neighbourhood Plan will meet the legal requirements and basic conditions as set out in legislation. The modifications do not fundamentally alter the main aims of the Plan and do not compromise the strategic policies in the North East Derbyshire Local Plan or the Peak District National Park Planning Authority's Core Strategy. Therefore, the Plan should proceed to Referendum.

### **4. Alternative Options and Reasons for Rejection**

4.1 An alternative option would be to reject the Examiners recommendations, but only if there is good reason to do so. The Examiner's recommendations align with Officers' views and as such there does not appear to be any justification for not making the Plan, subject to a positive outcome at Referendum.

## **DOCUMENT INFORMATION**

<b>Appendix No</b>	<b>Title</b>
1	Decision Statement on the Brampton Parish Neighbourhood Plan
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet you must provide copies of the background papers)	
None	