

North East Derbyshire District Council

Cabinet

11 July 2019

Decision and Referendum on Brackenfield Neighbourhood Plan

Report of Councillor Charlotte Cupit, Portfolio Holder for Environment & Climate Change

This report is public

Purpose of the Report

- To consider the recommended modifications of the Examiner of the Brackenfield Neighbourhood Plan and make a decision on how to proceed.
- The report recommends that the Examiner's report and his recommended modifications to the Plan are accepted in their entirety and the Plan, as amended, is taken forward to a referendum within the Parish.
- Approval is sought to authorise that following a successful referendum, if more than half of those voting in the referendum vote in favour of the Brackenfield Neighbourhood Plan, then the Neighbourhood Plan is brought into effect ('Made').

1 Report Details

Background

- 1.1 On 28 March 2017 Brackenfield Parish Council submitted an application to North East Derbyshire District Council for the designation of the Parish as a Neighbourhood Area. After confirmation of its designation in June 2017 the Neighbourhood Plan Steering Group prepared a draft version of Brackenfield Neighbourhood Plan ('the Plan') and consulted on the draft Plan from September to November 2018.
- 1.2 In January 2019, the Parish Council submitted the draft Plan to the District Council which held a 6 week consultation period ending on 12 April 2019.
- 1.3 The District Council as Local Planning Authority made formal comments on the submitted Plan concluding that the draft Plan is well presented, is scoped appropriately, deals with relevant local issues; and, leaves more strategic matters, to the Local Plan. In the main, policies are consistent, well-evidenced and clear. The supporting documents are a particularly valuable resource.
- 1.4 Following liaison with the Parish Council, Mr Christopher Edward Collison, Planning and Management Ltd, was appointed as Independent Examiner who undertook the examination of the Submission version of the Plan in May/ June 2019. Details of the Plan preparation are available on the Council's Neighbourhood Planning page: <https://www.ne-derbyshire.gov.uk/index.php/neighbourhood-planning>.

Issues for Consideration

Examiners Report

- 1.5 The Examiner's Report into the Plan was received by both the Parish Council and the District Council on 12 June 2019. The Examiner's report is available online on the Council's web site (see footnote¹). Having taken into account written representations the Examiner states in his overall finding that *"subject to specified modifications the Neighbourhood Plan meets the Basic Conditions and other requirements. It is recommended the Neighbourhood Plan should proceed to a local referendum based on the plan area."*
- 1.6 With regards to the Plan's policies the Examiner recommends 15 modifications to the Submission Version of the Plan. These modifications are laid out in more detail below. The Examiner recommends that three policies need to be replaced and that all the remaining policies need some form of amendments.
- 1.7 For most of these policies, the Examiner states that they are without a consequence and recommends that the wording "to be supported" needs to be included. He also states that some wording, e.g. "should be" does not provide a basis for the determination of a planning application and some terms are not precise enough, for example "disproportionate extensions" in policy REE1.
- 1.8 With regards to the Local Plan the Examiner states that *"in order to satisfy the basic conditions, the Neighbourhood Plan must be in general conformity with the strategic policies of the Development Plan (which is the 2005 adopted Local Plan). The emerging North East Derbyshire Local Plan 2014-2034 is not part of the Development Plan and this requirement does not apply in respect of that."*

Examiners conclusions over consultation

- 1.9 The Examiner highlights in his report a number of key stages of the consultation undertaken. These comprise 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 19 different parties received.
- 1.10 The Examiner concludes that the *"the Consultation Statement and Evidence Base include information in respect of each of the requirements set out in the Regulations. I am satisfied the requirements have been met. It is evident the Neighbourhood Plan Steering Group has taken great care to ensure stakeholders have had full opportunity to influence the general nature, and specific policies, of the Neighbourhood Plan."*

Examiner's recommendations

- 1.11 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 saved policies of the 2005 adopted Local Plan. He considered

¹ Link to the Brackenfield Examiner's Report:

www.ne-derbyshire.gov.uk/.../Brackenfield_NDP_Report_of_Independent_Examination_120619.pdf

that the emerging Local Plan should have no impact on the Neighbourhood Plan in terms of conformity or potential duplication of policies. Many of his recommendations were in order to provide an appropriate basis for the determination of a planning application and provide clearer instruction and guidance. He has recommended some textual amendments which District Council officers will need to provide. Its main recommendations are summarised below:

- 1.12 Character and Heritage: To protect and enhance local character and heritage the Plan comprises four different policies. Whilst the Examiner believes that both Policy CH1 (Protecting the Countryside and Landscape) and Policy CH2 (Protecting Local Character and Distinctiveness) are relevant to the Plan and provide an additional level of detail, they need either to be replaced or re-worded. The Examiner agrees with some of the District Council's suggested amendments but finds that further modifications relating to important woodlands, trees and hedgerows as well as important views are needed.
- 1.13 Policy CH3 seeks to identify and to protect local heritage assets. The District Council submitted that the Policy would be strengthened by listing the buildings HA1 – HA12 within the policy itself and by cross referencing to a map which identifies the location of these Locally Valued Heritage Assets. The Examiner agrees and recommends a modification. The Examiner also recommends modifications to the supporting text, appendices and Section 5 of the Plan (projects to support the aim of the Plan).
- 1.14 With regards to Policy CH4 (Protecting and Enhancing Archaeological Sites) the District Council raised concerns that this policy may result in duplication but the Examiner supports the Parish Council and concludes that Policy CH4 does provide an additional level of detail or distinct local approach to that set out in the policies of the existing Local Plan.
- 1.15 Natural Environment: The plan comprises in total four policies relating to the Natural Environment. Policy NE1 seeks to protect and enhance biodiversity. Whilst the District Council raised concerns regarding the wording of the policy and other issues, the Parish Council pointed out that the Locally Important Ecological Sites have been identified in consultation with Derbyshire Wildlife Trust. The Examiner recommended to include the names of those sites in the policy to improve clarity for Plan users.
- 1.16 Policy NE4 seeks to designate Brackenfield Green and Holy Trinity churchyard as Local Green Spaces. The District Council stated that the supporting text should include reference to the Holy Trinity churchyard. The Examiner recommends modifications in this respect and other technical aspects.
- 1.17 Housing: Policy H1 is the only policy relating to housing and seeks to establish conditional support for small scale infill housing development. The District Council stated that this policy is consistent with emerging Local Plan Policy SS8. Brackenfield is a level 4 settlement where development is restricted to minor infill development (allocated by Neighbourhood Plans) to help meet local needs for housing. The Examiner recommends minor modifications to this policy.
- 1.18 Health and Well-being: The Plan comprises four policies which cover health and well-being. With regards to Policy HW1 (Protection and enhancement of community facilities) the District Council believes that this policy duplicates emerging Local Plan policies ID4 and ID5 (Social Infrastructure) and suggests that a map identifying the location of the community facilities should be included. The Examiner finds that Policy

HW1 provides an additional level of detail and recommends a modification so that the named community facilities are identified on a map.

- 1.19 In terms of Policy HW2 (Assets of Community Value) this policy seeks to supplement the community right to bid by not supporting a change of use that would result in loss of an Asset of Community Value. The Examiner considers that the more restrictive approach than that in Policy HW1 is not sufficiently justified and does not have sufficient regard for attention to viability as required by the NPPF. The Examiner recommends therefore a modification in this respect so that the policy has sufficient regard for national policy.
- 1.20 Regarding Policy HW3 (Road safety measures) the District Council raised concerns that the policy is contrary to draft Local Plan Policies ID2 and ID3 (Sustainable Travel) and the second paragraph could be more suitably worded. The Parish Council however referred to the NPPF which states that *“development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”* The Examiner agreed with the Parish Council in this regard but recommended to replace Policy HW3 with a re-worded policy.
- 1.21 The Examiner has also made a recommendation in the Annex of his report where minor corrections to the Plan are necessary.
- 1.22 The Examiner is satisfied that the Plan is compatible with the European Convention on Human Rights in particular with regards to Article 6 (1) (fairness); Article 8 (privacy); Article 14 (discrimination); and Article 1 of the first Protocol (property). Subject to the recommended modifications, the Plan meets all the Statutory Requirements set out in paragraph 8 (1) of Schedule 4B of the Town and Country Planning Act 1990 and meets the Basic Conditions.
- 1.23 In his conclusions the Examiner states the following:
 - *“I recommend to North East Derbyshire District Council that the Brackenfield Neighbourhood Development Plan for the plan period up to 2034 should, subject to the modifications I have put forward, be submitted to referendum.”*
 - *“I recommend that the Neighbourhood Plan should proceed to a referendum based on the area that was designated by North East Derbyshire District Council as a Neighbourhood Area on 20 June 2017.”*

The Council’s Decision

- 1.24 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. The District Council has also received confirmation from the Neighbourhood Plan Steering Group that it considers the report is fair and considered. It is normal practice for the date of the Referendum to be specified in the Decision statement. The proposed decision statement, which includes the Examiner’s amendments, is contained within **Appendix 1**.
- 1.25 All the changes recommended by the Examiner are agreed by the District Council and listed in a 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 amendments to be made in order to produce the Referendum Version Brackenfield Neighbourhood Plan will comply with those examiner's recommendations, but they have yet to be applied to the Plan. The recommended changes to the Plan will be made in line with the schedule. The final schedule and referendum version Plan will be published prior to the referendum.

Referendum Arrangements

- 1.26 The date for the Referendum is provisionally set for **5th September 2019**. However, this provisional date would require most of the election's processes to be carried out over the holiday period (including the required publicity). The Regulations allow for a later date to be agreed between the District Council and the Parish Council so it is possible for the date to be moved further into September, to improve engagement and turn out of the electorate. The Parish has indicated that the 5th September is satisfactory but has been asked whether a later date would be their preference. The Parish Council intends to promote the Plan and referendum at a Parish community event on Sunday 14th July, so certainty regarding the referendum date is important. Their view regarding a later date will be verbally reported to Cabinet. It is also important to note that the referendum is additional to the Council's Electoral Services Team's expected workloads and during the annual canvas period; the 5th September can be accommodated in that regard.
- 1.27 The Information Statement, the final version of the Plan and other relevant documents must be on the Council's website at least 28 working days (i.e. excluding Saturdays, Sundays and Public Holidays) before that 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. This would require that the notice is published by 31 July 2019 and the Statement by 29th July if the referendum were held on 5th September. The detailed requirements in respect of the referendum process are set out in the Neighbourhood Planning (Referendums) Regulations 2012 (as amended). The Information Statement is published by the Planning Policy team, the Notice of Referendum by the Elections team.
- 1.28 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 Brackenfield to help it decide planning applications in the neighbourhood area?'* Residents will be given the opportunity to vote 'yes' or 'no'.
- 1.29 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. Brackenfield Parish Council would then have to decide if it wishes to make changes and re-submit an amended Plan.

'Making' the Plan

- 1.30 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 Chief Executive 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.

2 Conclusions and Reasons for Recommendation

- 2.1 The Brackenfield 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.
- 2.2 The Council must consider each of the recommendations made in the Examiner's report and decide what action to take in response. The Council's Decision Statement (attached at Appendix 1) sets out the Examiner's recommended modifications and a proposed Council decision in respect of each of them. The Council does not propose to amend any of the examiner's recommendations.
- 2.3 It is considered that, subject to the modifications set out in the Decision Statement being made, 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 emerging Local Plan, and it is therefore recommended that they are applied to the Referendum version of the Brackenfield Neighbourhood Plan.
- 2.4 The next step is for the Referendum version of the Brackenfield Neighbourhood Plan to proceed to referendum. To meet the requirements of the Localism Act 2011, a referendum which poses the question '*Do you want North East Derbyshire District Council to use the Neighbourhood Plan for Brackenfield to help it decide planning applications in the neighbourhood area?*' will be held in the Parish of Brackenfield with a provisional date of **Thursday, 5th September 2019**.

3 Consultation and Equality Impact

- 3.1 Consultation with residents, businesses and other bodies with an interest in the Parish has been an integral part of the process from before the initial drafting of the Plan. A consultation statement is required of the Parish, which describes the consultations that have taken place. It has been examined both by the District Council, in order to establish that the Plan accords with relevant regulations, and the Examiner. Formal consultation has taken place at two stages; for the Parish's Draft Plan and for the Submitted Plan. The next step will be the Referendum of all Parish residents, which is an important part of the legislative framework specifically identified in the Action Plan within the Localism Bill: neighbourhood plans.
- 3.2 There is no requirement for an equality impact assessment of an individual Neighbourhood Plan.

4 Alternative Options and Reasons for Rejection

- 4.1 An alternative option would be to reject some of the Examiners amendments or introduce some of the District Council's own amendments. The Examiner's recommendations generally align with the District Council's Planning Officers' views, and do not compromise the emerging Local Plan. Consequently neither of these are necessary in order to produce a Plan that meets the basic conditions.

5 Implications

5.1 Finance and Risk Implications

5.1.1 From April 2017, local planning authorities (LPAs) have been 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. A claim for payment will need to be made for any activity that has taken place during the relevant financial year, i.e. 2019/20, at a time yet to be determined by MHCLG. The costs of the Examination and Referendum are the responsibility of the Local Planning Authority.

5.2 Legal Implications including Data Protection

5.2.1 As set out in the report at paragraphs 1.11 – 1.23.

5.2.2 Regulation 2A of the Neighbourhood Planning (Referendums)(Amendment) Regulations 2016 provides for the District Council and the Parish Council to agree a date for the referendum outside the statutory period. It is proposed that this approach is taken to allow the referendum date to be beyond the 5th September, should the Parish Council indicate a preference for a later date.

5.3 Human Resources Implications

5.3.1 The planning support for current NPs has demanded a significant amount of officer time equivalent to 1 FTE for the period of its preparation, this is currently being accommodated within existing staffing arrangements. The Council's Electoral Services Team will also be required to carry out the referendum which is additional to their expected workloads and during the annual canvas period.

5.3.2 Going forward if there are further requirements to administer neighbourhood plans then it is likely to be necessary to review the resources needed.

6 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 the District approaches the Parish Council to consider a referendum date of 5th September 2019, or agree a later date in compliance with the Regulations quoted above.
- (3) That Cabinet delegates authority to the Chief Executive 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 relative Neighbourhood Plan, then the Neighbourhood Plan is brought into effect ('Made').

7 Decision Information

<p>Is the decision a Key Decision? 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: BDC: Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> Please indicate which threshold applies</p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>Has the relevant Portfolio Holder been informed</p>	Yes
<p>District Wards Affected</p>	Brackenfield
<p>Links to Corporate Plan priorities or Policy Framework</p>	All

8 Document Information

Appendix No	Title
1	Decision Statement on the Brackenfield Neighbourhood Plan, including schedule of recommendations and changes
<p>Background Papers (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 (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
None	
Report Author	Contact Number
Helen Fairfax Planning Policy Manager	7168