

15. BRADWELL NEIGHBOURHOOD PLAN - ASSESSING LEGAL COMPLIANCE AND CONFORMITY WITH THE LOCAL DEVELOPMENT PLAN (AM)

Purpose of the report

1. To receive and assess the draft (31 December 2014) Bradwell Neighbourhood Plan submitted by Bradwell Parish Council.

Key issue

2. The Authority is responsible for determining whether the draft Bradwell Neighbourhood Plan (with supporting documents) complies with the criteria for a neighbourhood plan, and for initiating the subsequent phases: notification, public consultation and independent examination.

3. **Recommendation**

That Members determine:

- (i) **that the draft (31.12.14) Bradwell Neighbourhood Plan (with supporting documents) does comply with the criteria for a neighbourhood plan; and**
- (ii) **that following confirmation of these criteria that the Authority undertakes statutory notification, public consultation and examination of Bradwell Neighbourhood Plan; and**
- (iii) **alongside these processes consultation may be undertaken with Natural England, English Heritage and the Environment Agency with regard to the ‘Habitats Regulations Assessment screening statement’ and the ‘Strategic Environmental Assessment screening statement’;**

How does this contribute to our policies and legal obligations?

4. This is a legal obligation under the Localism Act 2011.
5. This proposal contributes to Corporate Objectives:
 3. Provide a high quality planning service to the community of the National Park that achieves national park purposes and that is responsive to and contributes to the debate on planning reform nationally and locally.
 - 5: Work with others in an integrated way to support local people to develop community facilities, local needs housing and services in ways that are sustainable and contribute to national park purposes.

Background

6. The draft (31.12.14) Bradwell Neighbourhood Plan (‘the Plan’) (Appendix One), the ‘consultation statement’ (Appendix 2) and the ‘basic conditions statement’ (Appendix 3) have been submitted to the Authority by Bradwell Parish Council. The Plan contains policies for the provision of local needs housing, employment sites, redevelopment of the Newburgh site, parking, communications infrastructure and provision of footpaths, cycleways, allotments and local green space.
7. In accordance with Neighbourhood Planning Regulations Part 5 (14) the parish council undertook statutory publication & consultation of the draft plan between 3 November

2014 and 15 December 2014.

8. A total of 104 organisations were contacted and asked for their comments, including:
- All residents and businesses in Bradwell
 - Land owners
 - Statutory Undertakers (Regulations para 1 of Schedule1)
 - Neighbouring parishes
 - Other Community stakeholders and interest groups
9. In total, 10 comments were received during statutory consultation and 12 changes made to the Neighbourhood Plan, five of which related to policy. No material changes arose following the review of policy that would require a second consultation.
10. Details of all the consultees, comments made and subsequent changes to the draft plan can be seen in Appendix 2 and 2a.
11. The Authority made a formal response to the consultation draft Plan covering the following issues:
- The risk of non-conformity with the Core Strategy with regard to the rationale for open market housing.
 - The risk of non-conformity with the Core Strategy with regard to housing and employment policies for the Newburgh site
 - The risk of non-conformity with the Core Strategy with regard to car parking
 - The need for clarification on the definitions of greenfield, brownfield and infill
 - The need for clarification in the policy justification for local needs housing and retention of employment generating uses
12. As a result of ongoing, positive collaborative work between the parish council and the Authority, amendments were made to address the Authority's concerns and these amended policies are contained in the 'examination draft' currently under consideration. (See Appendix 4 for core strategy conformity checklist).

Assessing whether the Plan meets the criteria for a Neighbourhood Plan

13. Where the Parish Council submits a plan proposal to the planning authority it must include:
- A map or statement identifying the area to which the plan relates;
 - The Consultation Statement;
 - The proposed Neighbourhood Development Plan; and
 - The Basic Conditions Statement.
 - Also where appropriate, the information to enable appropriate environmental assessments if required

These requirements have been met.

14. The planning authority can decline to consider a plan proposal if it is a 'repeat'. A repeat proposal occurs when:
1. the authority has refused the same or similar proposal within the previous two years; or
 2. A referendum relating to the proposal that is the same as, or similar, has been held and 50% or under of those voting, voted in favour; and the authority considers that there has been no significant change in national policy or local strategic policy since the refusal or referendum.

The proposal is not considered to be a repeat proposal.

15. Under paragraph 6 of the 1990 Town and Country Planning Act Schedule 4B, the planning authority must consider whether the submitted neighbourhood plan meets set criteria, and if they are not met, must refuse to take forward a plan proposal. The Authority must consider:
1. Whether the Parish Council is authorised to act
 2. Whether the proposal and accompanying documents:
 - a) comply with the rules for submission to the Authority
 - b) meet the definition of a Neighbourhood Development Plan
 - c) meet the scope of Neighbourhood Development Plan provisions
 3. Whether the Parish Council has undertaken the correct procedures in relation to consultation and publicity.
16. Taking each of these in turn:
1. A Parish Council is authorised to act in relation to a neighbourhood area if that area consists of, or includes the whole or any part of the area of the Council. (Town and Country Planning Act 1990 Schedule 9 61F). **Since the whole of Bradwell Parish was designated by the Authority as the Neighbourhood Area (designated by the Peak District National Park Authority on 8 March 2013) Bradwell Parish Council is authorised to act.**
17. 2a. The proposal and accompanying documents include all those listed in paragraph 9 of this report **so this condition has been met.**
- 2b. The definition of a Neighbourhood Development Plan (Planning and Compulsory Purchase Act 2004 as amended by the Localism Act Section 38A(2)) is ‘a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan’. **This condition has been met.**
- 2c. Provision that may be made by Neighbourhood Development Plans is set out in the 2004 Act Section 38B. A Plan must specify the period for which it is to have effect; may not include provision about development that is “excluded development” and may not relate to more than one neighbourhood area, or repeat an existing planning permission.
- “Excluded development” is defined in Section 61K of the 1990 Act. Excluded development is: development that consists of a County matter e.g. relating to minerals; any operation or class of operation relating to waste development; development falling within Annex 1 to Council Directive 85/337/EEC (Environmental Impact Assessment) e.g. oil refineries, power stations, radioactive waste disposal, motorways, airports, toxic and dangerous waste disposal.
18. 3. The Bradwell Neighbourhood Plan proposal specifies the period for which it is to have effect (2015 – 2030); does not include provision for excluded development and relates only to the designated Bradwell Neighbourhood Area.

The proposal is therefore considered to meet the scope of Neighbourhood Development Plan provisions.

Overall Assessment

It is considered that the submitted Bradwell Neighbourhood Plan has met the prescribed criteria and is therefore suitable to be taken forward to the statutory notification, public consultation and examination stages.

19. Regulation 14 stipulates that before submitting a plan proposal to the planning authority, the Parish Council should:
- (a) Publicise in a way that is likely to bring to the attention of people who live, work, or carry on business in the neighbourhood area, details of:
- The plan proposals;
 - Where and when the plan proposals can be inspected;
 - How to make representations; and
 - The date by which those representations must be received – not less than six weeks from when the draft proposal was first publicised.
- (b) Consult any consultation body referred to in Schedule 1 of the Regulations whose interests they consider may be affected by the plan proposals.
- (c) Send a copy of the plan proposals to the planning authority.
20. Bradwell Parish Council publicised its draft Neighbourhood Plan for a six week period between 3rd November 2014 and 15th December 2014. (See para 7 and Appendices 2 and 2a for details). The list of bodies consulted includes all those listed in Schedule 1 of the Neighbourhood Planning (General) Regulations 2012. The Authority also received a copy of the plan proposals.

In the light of the above, it is considered that the Parish Council has undertaken the correct procedures in relation to consultation and publicity.

21. **‘Basic Conditions’ check and Conformity with Core Strategy**

A neighbourhood plan must meet the ‘basic conditions’ required by paragraph 8 of schedule 4B to the Town and Country Planning Act 1990.

The responsibility to ensure that these conditions are met lies with the qualifying body (in this case Bradwell parish council), the planning authority and the examiner:

- It is the parish council’s responsibility to ensure that basic conditions are met, and to provide evidence of this in a ‘basic conditions statement’. (See Appendix 3)
- It is the responsibility of the planning authority to ensure that the plan complies with the rules for submission, i.e. to ensure that a basic conditions statement is submitted.
- It is the responsibility of the examiner to consider whether the draft plan meets the basic conditions and to recommend modifications to the plan if it does not.

22. The basic conditions are that a neighbourhood plan must:

- **have regard to national policy and guidance from the Secretary of State.** This is demonstrated in Appendix 3.
- **contribute to sustainable development.** This is demonstrated in Appendices 3 and 5.
- **be in general conformity with the strategic policy of the development plan for the area** (ie the core strategy). This is demonstrated in Appendices 3 and 4.
- **not breach, or be otherwise compatible with EU obligations.** This is

demonstrated in Appendix 5: Strategic Environmental Assessment Screening Statement and Appendix 6: Habitat Regulations Assessment Screening Statement. These screening statements – subject to consultation with Natural England, English Heritage and the Environment Agency – confirm that Bradwell neighbourhood plan is compatible with EU obligations.

23. Although the final decision with regard to conformity with basic conditions is for the examiner, it is important that the Authority is also satisfied; in particular that it is satisfied that the neighbourhood plan is in conformity with the core strategy. The consultation draft neighbourhood plan (a version previous to the version now under consideration) was not deemed to be in conformity. **The plan was amended (see paragraph 7 of this report, and Appendix 4) and the draft dated 31.12.14 now under consideration is deemed to be in conformity.**

24. Screening statements for the Strategic Environmental Assessment (SEA) and habitats Regulations Assessment are being sent to the three statutory consultation bodies: Natural England, Environment Agency and English Heritage, to determine whether full SEA or HRA of the neighbourhood plan is required. The screening statements have indicated that full SEA or HRA are not required but if the statutory consultation bodies disagree, an SEA and HRA will be undertaken prior to examination. The Authority's Core Strategy is already subject to a Sustainability Appraisal, which under the National Planning Policy Framework suggests assessment of policies in the neighbourhood plan does not need to be repeated.

25. **Procedure for taking the neighbourhood plan to referendum and adoption**

Action	Preferred date
Authority undertakes 6 week consultation	19.01.15 – 02.02.15
Authority notifies parish council that plan can go forward and publishes a 'decision statement'	02.02.15
Bradwell PC review and amend plan as result of any feedback from NPA consultation <i>NB – this is not a statutory requirement but it is likely that small amendments will continue to be made to the plan as a result of ongoing consultation and in order to ensure cohesiveness of the plan and the supporting text.</i>	
Authority appoints independent examiner	Beginning Feb 2015
Examination and examiners recommendation <i>(An examiner can recommend that the draft plan is submitted for referendum, that modifications are made and that the modified plan is submitted for referendum or that the proposal is refused.)</i>	Feb 2015
Authority makes request to Derbyshire Dales District Council (DDDC) to undertake referendum	On or before 25 th March 2015 (Cut-off date to ensure that referendum can take place on 7 th May)
Authority works with DDDC to ensure that the relevant documents are available during the referendum period	
Referendum <i>(The question to be asked is “do you want the Peak District National Park Authority to use the neighbourhood plan for Bradwell to help it decide planning applications in the neighbourhood area?)</i>	7 th May
Referendum results <i>(If a referendum results in more than half of those voting (ie 50% +1) voting in favour of the proposal the Authority must 'make' the neighbourhood development plan as soon as reasonably practical.)</i>	May 2015
Authority publicises the 'decision statement' (based on referendum result) and plan	May 2015

Are there any corporate implications members should be concerned about?

Financial

26. The main financial considerations will result from:

- (i) Staff time in giving 'advice and assistance' to the parish council and in managing the next steps of the process (notification, consultation, examination, referendum and 'making' the plan). Both of these are statutory duties imposed by the Localism Act.
- (ii) Cost of examination. This must be met by the Authority. If the Authority uses the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) the examination will cost £750 plus VAT per day (plus reasonable expenses). It is difficult to estimate how long the examination may take, however the cooperative and collaborative process adopted during plan preparation will ensure that there are no outstanding issues of conformity going into examination, which in turn should result in a relatively quick process without the need for a public hearing.

(NPIERS is a resource offered by a collaboration between Royal Institution of Chartered Surveyors (RICS), Planning Officers Society (POS), Royal Town

Planning Institute (RTPI), Action with Communities in Rural England (ACRE) and Locality. It supports the neighbourhood planning process by providing quick and easy access to impartial and highly qualified examiners on an 'as needed' basis).

(iii) Cost of referendum. The authority must meet these costs and work with the relevant authority (Derbyshire Dales District Council) to undertake the referendum. DDDC has advised the following indicative costs:

- Stand-alone election £1808.00 (on an date other than 7 May)
- Combined with one other election (eg parliamentary – this would be the maximum estimated cost for 7 May) £1013. This is the preferred option.
- Combined with two other elections (eg parliamentary and district/parish election) £780.00.

The funding structure for neighbourhood planning will continue for 2014/15, enabling authorities to draw grants of £5k for designating an area, £5k for publicising a plan prior to examination and £20k for successful completion of an examination.

Risk Management:

27. The steps that the Authority is taking, as described, to respond to the Localism Act, means that the risk around failing to meet government standards or legal obligations is low.

Sustainability:

28. Sustainability issues have been addressed in the report

Background papers (not previously published)

29. None.

Appendices

30. Appendix 1: Bradwell Neighbourhood Plan Examination Draft
Appendix 2: Consultation Statement
Appendix 2a: Consultation list
Appendix 2b: Consultation evidence and issues
Appendix 3: Basic Conditions Statement
Appendix 4: conformity checklist (Bradwell neighbourhood plan with Core Strategy)
Appendix 5: Strategic Environmental Assessment Screening Statement
Appendix 6: Habitat Regulations Assessment Screening Statement

Report Author, Job Title and Publication Date

31. Adele Metcalfe, Villages and Communities Officer, 8 January 2015