

11. APPROVAL OF BRAMPTON NEIGHBOURHOOD PLAN TO SUBMIT FOR REFERENDUM (CW)

1. Purpose of the report

To consider the recommendations set out in the report by the independent examiner of Brampton Neighbourhood Plan and decide how to proceed.

Key Issues

The Authority has been working with North East Derbyshire District Council (NEDDC) to support Brampton Parish Council to write a Neighbourhood Plan for Brampton Neighbourhood Area, which straddles the boundary of the two planning authorities. NEDDC is the lead authority.

In accordance with Regulations an independent examination of the submission version of the Brampton Neighbourhood Plan has taken place and an Examiner's report has been submitted to NEDDC and the Authority. This decision will ensure that the Authority meets its legal requirements under paragraph 12 of schedule 4b of the Town and Country Planning Act 1990, to consider the Examiner's report and determine if Brampton Neighbourhood Plan should proceed to referendum. The same decision has been approved at NEDDC's Cabinet on 21st September 2023.

Appendix 1 sets out all of the examiner's proposed modifications, and an officer assessment and recommendation regarding whether to accept the proposed modification.

2. Recommendations(s)

That members, in accordance with paragraph 12 of Schedule 4B of the 1990 Town and Country Planning Act:

- **approve that following the inclusion of the Examiner's recommended modifications into the Plan (as set out in Appendix 1), the plan meets the basic conditions such that it can proceed to a referendum;**
- **approve publication of a formal Decision Statement detailing the Authority's response to the Examiner's recommendations (Appendix 2);**
- **determine that the referendum boundary will cover the designated Brampton Neighbourhood Area only.**

How does this contribute to our policies and legal obligations?

3. This is a legal obligation for the Authority and for North East Derbyshire District Council (NEDDC) under the Town and Country Planning Act 1990 (as modified). The same decision has been approved at NEDDC's Cabinet on 21 September 2023.
4. This process contributes to the emerging Authority Plan 2023-28 which aims for PDNP communities that are thriving and sustainable places, where all generations can live healthy and fulfilled lives.

Background Information

Process to date

5. The Brampton Neighbourhood Development Plan ('the Plan') relates to the area designated by North East Derbyshire District Council (on 22 June 2018) and the Peak District National Park Authority (on 13 July 2018). The draft plan and associated documents were submitted to NEDDC and PDNPA on 12 October 2022 and approved for Regulation 16 consultation and examination. The Regulation 16 consultation took place between 1 February and 16 May 2023.
6. An independent examiner, Nigel McGurk BSc (Hons) MCD MBA MRTPI ('the Examiner'), was appointed by NEDDC in consultation with the PDNPA and Brampton Parish Council. Examination of the plan took place between June and August 2023, and was conducted by written representations. The Examiner considered all the policies and the supporting text within the plan. The Examiner's final report was issued on 7 August 2023.
7. The role of the Examiner is to assess whether a Neighbourhood Plan meets 'basic conditions' and other matters set out in Paragraph 8 of Schedule 4b of the Town and Country Planning Act 1990 (as applied to Neighbourhood Plans by section 38a of the Planning and Compulsory Purchase Act 2004) and to recommend whether the plan should (with or without modifications) proceed to a referendum. Only a plan that meets each of the basic conditions can be put to referendum and made.
8. The 'basic conditions' for a Neighbourhood Plan are:
 - having regard to national policy, it is appropriate to make the plan;
 - the plan contributes to the achievement of sustainable development;
 - the plan is in general conformity with the strategic policies contained in the development plan for the local area;
 - the plan does not breach and is compatible with EU obligations;
 - the plan meets human rights requirements.
9. The Examiner must also consider whether the plan complies with provisions under sections 38a and 38b of the Planning and Compulsory Purchase Act 2004 (as amended). These are:
 - it has been prepared and submitted for examination by a qualifying body;
 - it has been prepared for an area that has been properly designated (under Section 61G of the Town and Country Planning Act 1990 (as amended));
 - 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.
10. The Examiner also considers whether the referendum boundary should be extended beyond the designated area should the plan proceed to referendum, and any other

prescribed matters.

11. In the report the examiner must make one of the following recommendations :
- the neighbourhood plan can proceed to a referendum on the basis it meets all the necessary legal requirements;
 - the neighbourhood plan can proceed to a referendum subject to modifications;
 - the neighbourhood plan should not proceed to a referendum on the basis it does not meet the necessary legal requirements.
12. The role of the two planning authorities is then to decide what action to take in response to the Examiner's report and recommendations, and to formalise this response by publishing a Decision Statement.

Consideration of the Examiner's report and proposed modifications

13. The Examiner summarises on page 3 of his report that the Brampton Neighbourhood Plan meets the basic conditions (as outlined above) and recommends that, subject to modifications, it should proceed to Referendum.
14. In his report the Examiner has provided specific modifications to policies and supporting text so that as modified, the plan meets basic conditions. Each of these modifications is set out in Appendix 1.
15. Representatives from Brampton Parish Council and officers from NEDDC and PDNPA have considered the proposed modifications and the reasons for them, and agree that the plan should be modified in accordance with the Examiner's recommendations. This consideration is also set out in Appendix 1.
16. The Strategic Environmental Assessment screening report and Habitats Regulations Assessment screening report undertaken on a Regulation 14 pre-submission version of the plan remain valid for the plan as modified in accordance with the examiner's recommendations. See Examiner report paragraph 44.
17. Subject to the Examiner's modifications being made, the plan meets the Basic Conditions set out in paragraph 8(2) of Schedule 4b of the Town and Country Planning Act 1990 (as amended), is compatible with Convention Rights, and meets the requirements of paragraph 8(1) of schedule 4b to the Town and Country Planning Act (as amended). It is recommended that the Authority accepts all of the Examiner's recommended modifications to the draft plan and that the modified plan proceeds to referendum.

Decision Statement

18. Regulation 18(2) states that the Authority must publish the actions which will be taken in response to the recommendations of the Examiner. This is known as a 'Decision Statement'. A draft Decision Statement is at Appendix 2. It is recommended that the Decision Statement is published on the Authority's website as soon as possible after this report is agreed and in such other manner as is likely to bring the plan to the attention of people who live, work or carry on business in the neighbourhood area in accordance with Regulation 18.

Referendum boundary

19. The referendum area must be, as a minimum, the Brampton Neighbourhood Area. If the planning authorities consider it appropriate, the area may be extended. In making a

report the Examiner is required to consider whether the referendum boundary should be extended, and the authorities must consider any Examiner recommendation in making their decision.

20. The Examiner makes his recommendation on the referendum boundary at paragraphs 169-171 in his report. He concludes that the referendum area should not be extended beyond the designated Neighbourhood Area.
21. For this reason, it is recommended that the boundary for the referendum should be the neighbourhood area boundary as formally designated on 13 July 2018.

Referendum

22. The Neighbourhood Planning (referendums) Regulations 2012 (as amended) require that the referendum is normally held within 56 days of the date on which the decision that the referendum must be held is made, unless the local authority and Parish Council agree that the referendum does not need to be held by that date.
23. Following the referendum, if more than 50% of those voting vote 'yes', then the plan must be 'made' within 8 weeks of the referendum. A further report to committee will be made at that stage.

Legal issues

24. The role of the Authority at this stage is to decide what action to take in response to the Examiner's report and any other prescribed matters. It is guided by Regulation 18 of the Neighbourhood Plan (general) Regulations 2012 (as amended). This states that before publishing its Decision Statement the council must consider the following.

1) **Whether to decline to consider a plan proposal under Paragraph 5 of Schedule 4b to the 1990 Act.**

There are no grounds to decline to consider the plan under paragraph 5. There are no previous plan proposal submissions or repeat proposals for this neighbourhood area. The Examiner also reached this conclusion, see examiner report paragraph 8.

2) **Whether there are reasons to refuse a plan proposal under Paragraph 6 of Schedule 4b to the 1990 Act.** Paragraph 6 says the Authority must consider:

- whether the qualifying body (Brampton Parish Council) is authorised to act in relation to the neighbourhood area concerned as a result of section 61F of the 1990 Act.

The plan has been produced by the Brampton Parish Council who are a qualifying body able to prepare a Neighbourhood Plan, in respect of the Neighbourhood Area (see Examiner report paragraph 7).

- whether the proposal by Brampton Neighbourhood Plan complies with provision made by or under that section, in this case the Planning and Compulsory Purchase Act 2004, Section 38b (1) , which says:

A neighbourhood development plan must specify the period for which it is to have effect. This is set out in the title of the plan. The period of the plan is 2017-2034 (see Examiner report paragraphs 16-18).

A neighbourhood development plan may not include provision about

development that is excluded development. *The plan does not contain any policies relating to excluded development. The Examiner refers to this in paragraph 26.*

A neighbourhood development plan may not relate to more than one neighbourhood area. *The plan does not relate to more than one neighbourhood area and there is no other neighbourhood development plan in place within this neighbourhood area (see Examiner report paragraph 8).*

3) What action to take in response to the recommendation of an examiner made in a report under Paragraph 10 of Schedule 4b to the 1990 Act (considered above), and what modifications, if any, they are to make to the draft plan under paragraph 12(6) of schedule 4b to the 1990 Act. Paragraph 12(6) sets out the modifications that the Examiner can recommend be made to a neighbourhood plan proposal. It also states that if the Authority can make modifications to a neighbourhood plan to enable that plan to meet the 'basic conditions' or for the purposes of correcting errors, then it must make those modifications rather than refuse a plan proposal. The Authority must consider, under part (d), whether there are any other modifications which are required to ensure the basic conditions are met, to ensure the plan is compatible with convention rights, to ensure the requirements of legislation are met, or to correct errors.

No other modifications, further to those recommended by the examiner, are necessary.

4) Whether to extend the area to which the referendum (or referendums are) to take place.

An extension to the referendum area is not required.

25. If the local authority is not satisfied that the plan meets the basic conditions, and/or is not compatible with Convention Rights or any other requirements of legislation are not met then they must refuse the plan.

There are no reasons to refuse the plan.

Are there any corporate implications members should be concerned about?

Financial:

26. There are implications for PDNPA staff time in assisting with making the modifications to the plan and publicising the decision statement. North East Derbyshire District Council will undertake the referendum and apply for the £20k 'extra burdens' payment once the plan is approved for referendum. This will be used to pay for the examination and referendum. If any of this funding remains unspent it will be split between the 2 planning authorities at a ratio to be agreed by the Heads of Planning.

Risk Management:

27. The steps that the Authority is taking to respond to the submission of Brampton Neighbourhood Plan means that the risk of failure to meet government standards or legal obligations is low.

Sustainability:

28. Sustainability issues are fully considered in the neighbourhood planning process

29. **Equality:**
Equality issues are fully considered in the neighbourhood planning process
30. **Background papers (not previously published)**
[Brampton Neighbourhood Plan Regulation 15 Draft Submission Version](#)
Brampton Neighbourhood Plan Examiners Report
31. **Appendices**
Appendix 1 - Neighbourhood Plan policies with recommended modifications
Appendix 2 - Decision Statement

Report Author, Job Title and Publication Date

Clare Wilkins, Communities Policy Planner, 28 September 2023