

Report of the Strategic Director Place to the meeting of Executive to be held on 6th February 2018.

AX

Subject: Burley in Wharfedale Neighbourhood Development Plan

Summary statement:

The first part of this report concerns the Burley in Wharfedale Neighbourhood Development Plan which has been prepared by the Parish Council. The Plan and has now been subject to an examination by Andrew S Freeman and his report confirms that the Plan, subject to the incorporation of a number of modifications, meets the Government's Basic Conditions. He has therefore recommended that the Plan proceeds to local referendum. The report recommends that the Council agree to all barring one of the proposed modifications and that the resultant modified plan proceeds to referendum which would take place on the 3rd May in conjunction with the local council elections.

The second part of the Plan relates the Council's Governance arrangements for decision making on Neighbourhood Plans. It proposes that the requirement to consult the relevant Area Committee on the examiner's report and the decision to move to referendum is removed.

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Portfolio:

Regeneration, Planning and Transport

Overview & Scrutiny Area:

Regeneration & Economy

1. SUMMARY

- 1.1. The first part of this report concerns the Burley in Wharfedale Neighbourhood Development Plan which has been prepared by the Parish Council. The Plan has been in development for several years and has been subject to extensive community consultation. The Parish Council have received input and assistance from officers of the Planning Service. The Plan and its preparation has also now been subject to an examination by Andrew S Freeman and his report confirms that the Plan has met all relevant legal requirements and that, subject to the incorporation of a number of modifications, it meets the Government's Basic Conditions (one of which is that it is in general conformity with the strategic policies of the development plan for the area). He has therefore recommended that the Plan proceeds to local referendum.
- 1.2. This report recommends that the Council agree to all barring one of the proposed modifications and that the resultant modified plan proceeds to referendum which would take place on the 3rd May in conjunction with the local council elections. Subject to the achievement of a simple majority in favour, the Plan would then be 'made' which would mean that it would become part of the statutory development plan for the District alongside the Local Plan being prepared by this Council. It would then be used to inform the decisions which the Council makes when determining planning applications within the area covered by the Neighbourhood Plan.
- 1.3. The second part of the report relates to the Council's Governance arrangements for decision making on Neighbourhood Plans. It proposes that the requirement to consult the relevant Area Committee on the examiner's report and the decision to move to referendum is removed. This requirement was part of the governance arrangements agreed by the Executive in the report of October 9th 2012 when Neighbourhood Planning was in its infancy and before any plans had been produced in the District.
- 1.4. The suggested change is proposed partly because practical experience and of how the Government regulations and guidance have been interpreted by examiners and the courts since the introduction of Neighbourhood Planning has shown that once an examiner has issued a report there is little scope for Councils to pursue alternative options i.e. the point at which the content of the Plan can be influenced is much earlier at Regulation 14 and 15 stages. The change also reflects the fact that those earlier regulation consultations already involve extensive community engagement carried out at Regulation 14 by the qualifying body (the Parish Council) and at Regulation 16 by the Council.

2. BACKGROUND

- 2.1. Burley in Wharfedale Parish Council have prepared a Neighbourhood Plan following the process and requirements as set out in the Town and Country Planning Act 1990 (as amended by the Localism Act 2011), and the Neighbourhood Planning (General) Regulations 2012, as amended in 2015 and 2016.
- 2.2. The Localism Act 2011 devolves planning powers to Town and Parish Councils or designated Neighbourhood Forums to lead on the preparation of Neighbourhood

Development Plans (NDPs) for their area. These powers provide local communities with the opportunity to take responsibility and accountability to shape development and growth in their areas.

- 2.3. Neighbourhood planning tools can only be used by relevant qualifying bodies authorised to act in relation to a neighbourhood area. Burley Parish Council submitted a formal Neighbourhood Area application to the Council on 29th November 2012 for the purpose of producing a Neighbourhood Development Plan that covered the whole parish area. The application was approved by the Executive Committee on 5th November 2013, following a period of public consultation.
- 2.4. Neighbourhood Plans cannot be used to stop development and should not promote less development than set out in the Council's Local Plan or undermine its strategic policies. Neighbourhood Plans cannot deal with strategic planning matters and cannot make changes to green belt boundaries.
- 2.5. The content of such plans will be decided by the local community, as will the decision to prepare the plan. The plan can be a means of setting out more detailed policies for their community over and above the Local Plan, to start to shape the choices over the use of land and the designation of land for housing, employment, community uses. Neighbourhood Development Plans should only cover land use planning issues.
- 2.6. The Burley in Wharfedale Neighbourhood Plan sets out the key issues and vision for the local area which are then incorporated into a set of objectives. These objectives concern the conservation of the area's character and identity, supporting local needs for homes and for local businesses, promoting sustainable car parking in accessible locations, protecting and enhancing open spaces, increasing access by foot and by cycle, and supporting education, health and community facilities. Policies are then included to meet the objectives including the identification and protection of important local greenspaces. The Parish Council decided not to seek to allocate sites for development within the Neighbourhood Plan. Any new sites for housing, employment, or community facilities / infrastructure (either within the current settlement boundary or via changes to the green belt) will therefore be considered within the Council's Allocations Development Plan Document.
- 2.7. As indicated above the process for preparing the Neighbourhood Plan is following the requirements set out in legislation, associated regulations and Government guidance. This involves informal development and evidence gathering followed by two extensive stages of engagement and consultation. The first consultation stage under Regulation 14 is carried out by the qualifying body itself, the plan is then amended as appropriate in the light of those representations and submitted to the Council who then publish the revised plan for formal consultation under Regulation 16.
- 2.8. As can be seen above, although a Neighbourhood Plan is produced by the local Parish / qualifying body there is also a significant role for the Council. In addition to a general legal duty to support qualifying bodies (usually by the provision of advice and feedback, sharing of information and evidence etc), this Council is required to issue the draft plan for regulation 16 consultation, organise and fund an independent examination of the plan, organise and fund a referendum (assuming the examination finds that the plan meets legal requirements and a number of

Government defined 'basic conditions').

- 2.9. In the case of the Burley Neighbourhood Development Plan, it's preparation and development took place throughout 2014 and 2015 with consultation events held by the Parish Council in March and October of 2014. Council officers were given the opportunity to comment on a number of working drafts. The Regulation 14 Draft was subject to consultation for 6 weeks in September 2016. A revised plan was then submitted to the Council who issued it for Regulation 16 consultation in June 2017. 36 representations were received. The submission plan is included at Appendix 1 to this report.
- 2.10. Given the importance of a Neighbourhood Plan, both to local communities in achieving their goals and aspirations and it's importance to the Council as that plan becomes part of the statutory development plan for the area, officers have worked extensively with the Parish Council in order to remove or amend elements which were considered to be in conflict with the Core Strategy (adopted July 2017) and to improve the clarity and wording of policies to ensure that they can be interpreted and used effectively by the Council when considering planning applications. Policies and text which reflected earlier versions of the Core Strategy i.e. before the Core Strategy upgraded Burley to a Local Growth Centre and increased the number of homes to be provided have been removed or amended and the examiner has suggested further modifications to achieve full consistency with the Core Strategy. The Parish Council has worked constructively with the Council during this process.
- 2.11. The Council engaged Andrew Freeman to carry out the examination of the Neighbourhood Plan in line with Regulation 17 of the Neighbourhood Planning (General) Regulations 2012. The Independent Examination of the Plan took place in October 2017 and the final report was issued at the end of November 2017. It is the role of the Examiner to ensure that the Plan meets the basic conditions and complies with the relevant legislation. In order to meet those 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;
 - meet prescribed conditions and comply with prescribed matters; and
 - should not be likely to have a significant effect on a European Site (as defined in the Conservation of Habitats and Species Regulations 2017) or a European Offshore Marine Site (as defined in the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007), either alone or in combination with other plans or projects.
- 2.12. The Examiner recommended that, subject to a number of modifications, the Plan should proceed to Local Referendum. The Examiner's report is included at Appendix 2 and this includes 2 schedules of amendments, the first being 15 changes required to ensure that the Plan meets the basic conditions and a further 17 changes to correct errors and improve clarity and accuracy.

- 2.13. As the significant issues and problems identified by the Council had previously been resolved the Council did not make any formal objections to the Plan at Regulation 16 stage. It did however make a number of observations on how different parts of the text of the Plan could be amended and clarified and many of these suggestions have been reflected in the Examiner's report.
- 2.14. The Council's officers have considered the Examiner's report and consider that it is a thorough and professional assessment of the Plan and the issues raised by respondents. The conclusions made are reasonable and justified and officers consider that all but one of the suggested amendments should be made.
- 2.15. The amendment which officers recommend should not be made is PM8 which relates to Neighbourhood Plan Policy BW5 which concerns the mix and type of housing. The policy is among other things seeking to ensure that housing schemes provide a range of housing types and sizes so that new supply meets need and demand and the supporting text explains that this reflects the Core Strategy Policy HO8 and the Strategic Housing Market Assessment (SHMA). The amendment proposed by the Examiner is to increase the site size threshold at which the policy would apply to 11 units from 10 units. During the examination the reasons given by the Examiner for the change related to a lack of evidence provided by the Parish Council and the need for general conformity with the development plan and the achievement of sustainable development. However, these reasons are not valid. Firstly the Core Strategy itself sets the site size threshold at 10 dwellings, not 11, and this was justified by the evidence collected by the Council in its preparation of the Core Strategy including the SHMA. The Examiner's change is therefore not needed to ensure conformity and would itself if implemented result in the Policy being in conflict with Core Strategy Policy HO8. Moreover the suggested change makes no sense in sustainability terms. It would reduce the number of schemes for which the requirement to secure a mix of housing would be required and would thus reduce the impact of the Policy and the underlying goals being sought by the Parish Council. By reducing the number of schemes where a mix of housing is required it would also be reducing the Neighbourhood Plan effectiveness in securing sustainable development.
- 2.16. It is therefore suggested that the Neighbourhood Plan proceeds to referendum on the 3rd May in line with the changes set out in the Examiner's Report except in respect to his recommended change PM8. The referendum would be organised by the Council's elections unit and would apply to the area covered by the Neighbourhood Plan which is the whole of the Burley in Wharfedale Parish. The Examiner has confirmed and recommended that the referendum should cover this area and that there are no reasons to extend the referendum to areas beyond that covered by the Neighbourhood Plan.
- 2.17. If members accept this recommendation a decision statement would be issued to that effect and preparations for the referendum would commence. Assuming a yes vote the agreed Governance arrangements would mean that the Assistant Director in consultation with the Portfolio Holder would decide whether to make the Plan. In the event of a yes vote the Council are required in law to make the Plan unless it considers that this would breach or be incompatible with any EU obligation or any Convention Rights. Therefore subject to a simple majority in favour of the Plan, the Plan would become 'made' which means it would become a part of the statutory development plan for the Neighbourhood Plan area.

- 2.18. The second matter which this report concerns relates to the Council's Governance arrangements for decision making on Neighbourhood Plans. It proposes that the requirement to consult the relevant Area Committee on the Examiner's Report and the decision to move to referendum is removed. This requirement was part of the governance arrangements first agreed by the Executive in the report of 9th October 2012 when Neighbourhood Planning was in its infancy and before any plans had been produced in the District.
- 2.19. The suggested change is proposed because of practical experience of how the Government regulations and guidance have been interpreted by examiners and the courts since the introduction of Neighbourhood Planning, which has shown that once an examiner has issued a report there is little scope for Council's to pursue alternative options i.e. the point at which the content of the Plan can be influenced is much earlier at Regulation 14 and 15 stages. The change also reflects the fact that those earlier regulation consultations already involve extensive community engagement carried out at regulation 14 by the qualifying body (the Parish Council) and at Regulation 16 by the Council. Recent guidance and Regulations have also sought to speed up neighbourhood plan process especially at the later stages including examination and referendum and limit discretion.

3. OTHER CONSIDERATIONS

- 3.1. Once 'made' the Burley in Wharfedale Neighbourhood Plan will ensure that planning decisions which are taken more fully reflect the priorities and aspirations of the local community. It will contribute to the achievement of well-designed quality developments. The making of the Plan will allow the Parish Council to secure 25% of any Community Infrastructure Levy payments for qualifying developments such as new homes and this money will be able to be spent on local priorities and infrastructure by the Parish.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1. There are potentially significant financial and resource implications from the discharge of the duties under the Localism Act and these have been outlined in earlier reports to the Council's Executive including that of the 9th October 2012.
- 4.2. With regards to the current Burley Neighbourhood Plan the Council would be required to pay for the holding of the local referendum, however the carrying out of the referendum in conjunction with the Local Council elections on the 3rd of May appears the most efficient use of resources. The Government have made funding in the form of payments available to Council's were Neighbourhood Plans reach specified stages. Should the Neighbourhood Plan be approved at referendum and be subsequently 'made' the Council would be able to claim for a payment of £20,000 later in the year.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1. The report sets out the implications of the recommendations being approved including the associated costs of holding a referendum.

- 5.2. The main risks are that the Plan may not receive more than 50% yes votes in the referendum and that the plan is subject to a legal challenge / review.
- 5.3. The Neighbourhood Plan has been prepared in line with the legal and regulatory framework and in line with the governance arrangements agreed in the 9 October 2012 Executive Report as revised in this report in Appendix 3.

6. LEGAL APPRAISAL

- 6.1. The legal requirements associated with neighbourhood Planning as they apply to both the Local Planning Authority and the qualifying body are set out in the report above. The Neighbourhood Plan has been prepared in line with Town and Country Planning Act 1990 (as amended by the Localism Act 2011), and the Neighbourhood Planning (General) Regulations 2012, as amended in 2015 and 2016.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

Both the qualifying body and Bradford Council have carried out extensive consultation and engagement with the local community and followed all legal procedures and Government regulations in preparing the plan. The Qualifying body have carried out an equality impact assessment of the Plan and have produced policies and proposals which will improve the quality of development for the local community. The Plan's policies reflect National Planning Policy and the Core Strategy which have themselves been subject to equalities impact assessments.

7.2 SUSTAINABILITY IMPLICATIONS

The basic conditions to which the Neighbourhood Plan must comply with have been met and this includes a requirement that the plan is in general conformity with the Core Strategy (which itself is subject to sustainability appraisal) and that it contributes to the achievement of sustainable development.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

All Neighbourhood Plans have to reflect national and local policies which promote sustainable development and seek to minimise the impacts of climate change. The plan includes policies to protect and improve green infrastructure, open spaces and allotments. Objective 7 of the Neighbourhood Plan is 'to improve quality of life and adapt to a changing climate by increasing access to the natural environment.'

7.4 COMMUNITY SAFETY IMPLICATIONS

There are no community safety implications.

7.5 HUMAN RIGHTS ACT

The Neighbourhood Plan has been prepared and consulted upon in accordance with relevant planning legislation and Government regulations. The Neighbourhood Plan has been subject to extensive consultation over an extended period and at multiple stages. Those who had concerns about the content of the Plan had the right to make representations and those were fully considered by the Examiner.

7.6 TRADE UNION

There are no trade union implications

7.7 WARD IMPLICATIONS

The Neighbourhood Plan related specifically to the Burley in Wharfedale Parish and the policies and proposals are described in the report above and set out in the plan which is attached as an appendix.

8. NOT FOR PUBLICATION DOCUMENTS

None

9. OPTIONS

The Executive is requested to consider the recommendations of the Examiner Report. The Options are:

- Option 1 – in accordance with the guidance in this report to approve the modifications recommended by the examiner with the exception of modification PM8 and approve the amended plan to be subject to a local referendum;
- Option 2 – to approve all the modifications that the Examiner has suggested and submit the resulting amended plan to a local referendum; however there are sound reasons not to follow this option as modification PM8 would result in a policy which would conflict with both the Core Strategy and the sustainable development goals of the Council and the qualifying body;

The Executive are recommended to follow Option 1 for the reasons set out above.

The Executive is requested to agree to an amendment to the Governance arrangements for Neighbourhood Plan decision making.

- Option 1 – remove the requirement to consult the relevant area committee at this stage in the process (considerations of Examiner's Report and submission to Referendum). This is recommended as there is very limited scope for change at this stage in the plan preparation process;
- Option 2 – maintain the current arrangements however this is not recommended as it would imply a level of influence over the content of plans and an ability to change them which in reality does not exist once a plan has been endorsed in an Examiner's Report. It would also potentially delay consideration of

Examiners Report and submission to referendum.

The Executive are recommended to follow Option 1 for the reasons set out above.

10. RECOMMENDATIONS

- 10.1 It is **recommended** that the Executive agree that the submitted Burley in Wharfedale Neighbourhood Plan (Appendix 1) is subject to modifications numbers PM1 to PM7 and PM9 to PM32 as set out in the Examiner's Report (Appendix 2) and that it is then subject to a local referendum on the 3rd May 2018 again in line with the Examiner's Report.
- 10.2 It is **recommended** that the Governance arrangements for decision making for Neighbourhood plans are amended as set out in this report removing the requirement to consult the relevant Area Committee on the Examiner's Report.

11. APPENDICES

- Appendix 1 – The Burley in Wharfedale Neighbourhood Plan – Submission Draft
- Appendix 2 – Burley in Wharfedale Neighbourhood Plan – Examiners Report
- Appendix 3 – Revised Governance Arrangements

12. BACKGROUND DOCUMENTS

None

**APPENDIX 1- BURLEY IN WHARFEDALE NEIGHOBURHOOD PLAN – SUBMISSION
DRAFT**

APPENDIX 2 – BURLEY IN WHARFEDALE NEIGHBOURHOOD PLAN – EXAMINERS REPORT

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Appendix 3 – REVISED GOVERNANCE ARRANGEMENTS

The proposed revised governance arrangements are as below

	Stage	Consultation	Decision
Neighbourhood Plan	Draft received by Council, and published for	Portfolio Holder	Assistant Director PTH
	Submit for independent examination	Portfolio Holder	Assistant Director PTH
	Receipt of independent persons report and decision on plan and move to referendum		Executive
	Make the plan	Portfolio Holder	Assistant Director PTH