

# FULL COUNCIL 23 February 2022

## Benenden Neighbourhood Development Plan

### Summary

**Lead Member:** Councillor Alan McDermott, Portfolio Holder of Planning and Transportation

**Lead Director:** Lee Colyer, Director of Finance, Policy and Development (s151 Officer)

**Head of Service:** Stephen Baughen, Head of Planning

**Report Author:** Deborah Dixon, Principal Planning Policy Officer

**Classification:** Public document (non-exempt)

**Wards Affected:** Benenden & Cranbrook Ward

Approval Timetable	Date
Management Board	9 February 2022
Planning & Transportation CAB	n/a
Cabinet	n/a
Full Council	23 February 2022

### Recommendations

This report makes the following recommendations to Full Council:

1. Following a favourable local Referendum result in relation to the use of the Benenden Neighbourhood Development Plan (BNDP) to help in the determination of planning applications in the Parish Neighbourhood Area, this report recommends that the BNDP be formally 'made' (adopted) and become part of the statutory Development Plan for the area with immediate effect;
2. The Benenden Neighbourhood Development Plan Decision Statement (post-Referendum) shown at **Appendix A** also be published; and

3. The Benenden Neighbourhood Development Plan SEA Adoption Statement also be drafted and published shortly after the NDP is 'made'.

# 1. Introduction and Background

- 1.1 The Benenden Neighbourhood Development Plan (BNDP) has been successful at examination, with the independent examiner recommending that the BNDP should proceed to referendum, subject to a number of recommended modifications.
- 1.2 The Report presented to Cabinet on 2 December 2021 set out the independent examiner's recommendations and the proposed modifications to be made to the BNDP, which were made with the involvement of Benenden Parish Council following receipt and consideration of the examiner's report. The following documents referred to in this report can be accessed via Item 18 of this Cabinet meeting at <https://democracy.tunbridgewells.gov.uk/ieListDocuments.aspx?CId=118&MId=4957&Ver=4>
- (pre-Referendum) Decision Statement
  - Draft Referendum version of the BNDP  
(note, any changes subsequently made to this version of the BNDP are presentational only to ensure the final version is fully compatible with the requirements of the new accessibility regulations (The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018) that came into force for public sector bodies on 23 September 2018)
  - The Examiner's Report
- 1.3 It was agreed by Cabinet to note the examiner's report dated 31 August 2021 and the recommended modifications, the (pre-Referendum) Decision Statement and progress the BNDP to referendum.
- 1.4 The Cabinet decision included the resolution in the circumstances where the referendum result is positive, that the BNDP can, post-referendum, go to Management Board, and then directly to be considered at the TWBC Full Council, with a recommendation for it to be 'made' (adopted).
- 1.5 The version of the BNDP that was subject to Referendum reflects subsequent discussions between the parish council and TWBC planning officers.

# Background to the Benenden Neighbourhood Development Plan (BNDP)

- 1.6 Benenden Parish Council, as the Qualifying Body (QB), applied for Benenden Parish to be designated a Neighbourhood Area under Part 2 of the Neighbourhood Planning (General) Regulations 2012. The area was designated on 31 August 2017.
- 1.7 Following consultation on a draft (pre-submission) Plan, the BNDP was submitted to the Borough Council in October 2020 under Regulation 15 of the relevant Regulations. The Borough Council then undertook formal consultation of the BNDP and its supporting documents which were publicised and representations were invited. The period of formal consultation ran from 30 October to 11 December 2020. Independent examination followed, which included a one day hearing session, and the Examiner, Mr. John Slater, published his final report in August 2021, concluding that the BNDP, subject to certain modifications proposed in his report, did meet the basic conditions as set out in legislation and is compatible with Schedule 4B of the Town and Country Planning Act 1990 and could therefore proceed to local referendum.
- 1.8 On 2 December 2021, Cabinet resolved that the Neighbourhood Plan – Submission Plan (as amended in line with the Examiner’s proposed modifications) should proceed to local Referendum. This decision and a revised version of the BNDP, agreed by the Benenden Parish Council (the QB) was published on the TWBC website. The ‘referendum area’ was determined to be Benenden Parish, plus seven addresses identified by the examiner located adjacent to the Benenden Hospital site falling within Biddenden Parish (Ashford Borough Council) to ensure the community has the final say on whether the neighbourhood plan comes into force or not.

## 2. The Referendum

- 2.1 A Referendum was held on 3 February 2022. The referendum question was ‘*Do you want Tunbridge Wells Borough Council to use the Neighbourhood Plan for Benenden to help it decide planning applications in the neighbourhood area?*’ The designated neighbourhood area followed that of the Benenden parish boundary.
- 2.2 The results of the referendum were:
- Yes = 665 (80.41%)
- No = 161 (19.46%)
- Unmarked or Void = 1 (0.12%)
- Number of Votes = 827

Turnout = 56.3%

- 2.3 It is therefore the case that the outcome of the referendum for the BNDP is a positive one, it being endorsed to use the BNDP to decide planning applications within the Parish of Benenden.
- 2.4 Planning Practice Guidance (PPG) sets out at <https://www.gov.uk/guidance/neighbourhood-planning--2> that a neighbourhood plan comes into force as part of the statutory development plan once it has been approved at referendum (that is, more than 50% of the votes cast being in favour of the draft neighbourhood plan).
- 2.5 It is the case that in these circumstances the neighbourhood plan must be made by the local planning authority (that is the neighbourhood plan is adopted). There are narrow circumstances where the local planning authority is not required to make the neighbourhood plan. These are where it considers that the making of the neighbourhood plan would breach, or otherwise be incompatible with, any EU or human rights obligations (see section 61E(8) of the Town and Country Planning Act 1990 Act as amended). Paragraph: 064 Reference ID: 41-064-20170728
- 2.6 It is concluded that the Plan, including its preparation, does not breach and would not otherwise be incompatible with any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998). This includes compliance with the basic condition regarding compliance with the Habitat Regulations.
- 2.7 The Cabinet decision of 2 December 2021 included as part of resolution 4 that in the circumstances where the referendum result is positive, then the Benenden Neighbourhood Development Plan can, post-referendum, go firstly to Management Board then directly to be considered at the TWBC Full Council, with a recommendation for it to be 'made'(adopted), therefore removing the other committee meetings (Planning and Transportation Cabinet Advisory Board, and Cabinet) from the post-referendum/second half of the process.

### 3. Conclusion

- 3.1 Paragraph 38A(4)(a) of the Planning and Compulsory Purchase Act 2004 requires the Council to 'make' a Neighbourhood Plan if more than half of those voting in a referendum have voted in favour of the Plan being used to help to decide planning applications in the area. This needs to be achieved within eight weeks of the referendum result.
- 3.2 The Council has also assessed and concluded that the Plan, including its preparation, does not breach and would not otherwise be incompatible with any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998). This includes compliance with the basic condition regarding compliance with the Habitat Regulations.

- 3.3 Therefore, it is proposed that Full Council be recommended to formally ‘make’ the BNDP with immediate effect.
- 3.4 The principal effect of this is that the BNDP is now part of the statutory ‘development plan’ for the area (Benenden Parish) after a positive referendum pursuant to s38 (3A) of the Planning and Compulsory Purchase Act 2004, <https://www.legislation.gov.uk/ukpga/2004/5/contents>. This means it is now a material planning consideration in the determination of planning applications in Benenden Parish.
- 3.5 The post-referendum decision to make the BNDP (**Appendix A**) will need to be publicised and notified to those who had asked to be advised. A statement setting out how environmental considerations (the SEA Adoption Statement) have been integrated into the Plan also needs to be published and consultees informed.

## 4. Appendices and Background Documents

Appendices:

- **Appendix A:** Benenden Neighbourhood Development Plan Decision Statement (post-Referendum)

## 5. Cross Cutting Issues

### A. Legal (including the Human Rights Act)

Accepting the recommendations in this report will fulfil the Council's duties under the Town and Country Planning Act 1990, as amended by the Localism Act 2011, the Housing and Planning Act 2016, and the Neighbourhood Planning Act 2017. The recommendations also comply with the Neighbourhood Planning (General) Regulations 2012 as amended.

Cheryl Parks, Mid Kent Legal Services (Planning) 4 February 2022

### B. Finance and Other Resources

There is no associated cost beyond those factored into the budget of Planning Services in organising the independent examination and meeting the independent examiner's invoiced costs. Tunbridge Wells Borough Council can claim **£20,000** from the government (Department for Levelling Up, Housing and Communities, DLUHC) 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. The referendum will be carried out by the borough council.

A claim for £20,000 has been made to the DLUHC by TWBC

Jane Fineman, Head of Finance, Procurement and Parking 4 February 2022

### C. Staffing

There are no staffing implications.

Anita Lynch, HR Manager 4 February 2022

### D. Risk Management

All risks associated with this report are within the Council's current risk appetite and managed in accordance with its risk management strategy.

Stephen Baughen, Head of Planning 4 February 2022

## **E. Environment and Sustainability**

No environmental and sustainability implications are identified. Section 3 of the Basic Conditions Statement submitted with the Draft Benenden Neighbourhood Plan provides information to demonstrate how the Benenden Neighbourhood Plan is in Conformity with Sustainable Development, [https://tunbridgewells.gov.uk/\\_data/assets/pdf\\_file/0010/375445/03\\_IA2\\_Basic-Conditions-Statement.pdf](https://tunbridgewells.gov.uk/_data/assets/pdf_file/0010/375445/03_IA2_Basic-Conditions-Statement.pdf) and one of the roles of the independent examiner has been to consider whether the plan contributes to the achievement of sustainable development.

The BNDP comes into force as part of the statutory development plan once it has been approved at referendum and forms part of the borough's development plan, to be read alongside the Local Plan which contains policies to support the climate and biodiversity emergency.

Stephen Baughen, Head of Planning 4 February 2022

## **F. Community Safety**

No community safety issues arise as a result of this report

Section 17, Crime and Disorder Act 1998

Terry Hughes, Community Safety Manager 4 February 2022

## **G. Equalities**

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users. Furthermore, the Public Sector Equality Duty applies to parish councils: Benenden Parish Council will be responsible for demonstrating due regard to this in the production of an NDP.

Abigayle Sankey, Corporate Governance Officer 4 February 2022

## **H. Data Protection**

Representations made to the Regulation 16 consultation cannot be treated in confidence. Regulation 22 and 35 of the Town and Country Planning (Local Development) (England) Regulations 2012, as amended, require copies of all representations to be made publicly available. The Council will publish names and associated representations on its website but will not publish personal information such as telephone numbers, emails or private addresses. All representations will be forwarded for consideration by the person appointed to carry out an examination of the Plan.

There is no identified risk to individuals' interests under the General Data Protection Regulation.



Article 5, General Data Protection Regulation 2016

Jane Clarke, Head of Policy and Governance 4 February 2022

## **I. Health and Safety**

No implications for Health and Safety.

Mike Catling, Corporate Health and Safety Advisor 4 February 2022

## **J. Health and Wellbeing**

No implications on any social, economic and environmental factors which impact on people's health and wellbeing.

Rebecca Bowers, Health Improvement Team 4 February 2022