

CABINET 22nd September 2022

Brenchley & Matfield Neighbourhood Development Plan

Summary

Lead Member: Councillor Hugo Pound, Portfolio Holder of Planning and Transportation

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

Head of Service: Carlos Hone, Head of Planning

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Classification: Public document (non-exempt)

Wards Affected: Brenchley and Horsmonden

Approval Timetable	Date
Management Board	24 August 2022
Planning & Transportation CAB	5 September 2022
Cabinet	22 September 2022

Recommendations

This report makes the following recommendations to Cabinet:

1. That the independent examiner's Report on the Brenchley & Matfield Neighbourhood Development Plan (BMNDP) received on 20 June 2022 at **Appendix A** be noted and published.
2. That the BMNDP be modified in part as set out in **Appendix B**, according to the examiner's recommendations, following discussion with Brenchley & Matfield Parish Council.
3. That Cabinet agrees the publication of the Decision Statement at **Appendix C** and decides to progress the BMNDP as set out at **Appendix D** to referendum, to ensure the community has the final say on whether the neighbourhood plan comes into force or not. The referendum area is that of the Neighbourhood Area

i.e., Brenchley & Matfield Parish. Please note for Planning & Transportation Cabinet Advisory Board that Appendix D is only draft at this stage, as officers require more time to confirm the changes within the referendum version of the plan, however it will be finalised by Cabinet.

4. That Cabinet recommends to Council that in the event that the referendum result on the BMNDP is positive with more than 50% of the vote, the Council formally makes the BMNDP as set out in Appendix D which will be subsequently considered at the next Full Council post-referendum¹, so that it has effect as part of the statutory Development Plan for the Neighbourhood Area (Brenchley & Matfield Parish).
5. The referendum will be held on 10 November 2022, and if passed will then go through to Full Council on 14 December 2022. TWBC Planning has been in contact with the TWBC Elections team to start arrangements for the referendum.

¹ Subject to report lead in times.

1. Introduction and Background

- 1.1 The Brenchley & Matfield Neighbourhood Development Plan (BMNDP) has been successful at examination, with the independent examiner recommending that the BMNDP should proceed to referendum, subject to a number of recommended modifications.
- 1.2 The borough council as the Local Planning Authority is responsible for deciding what action to take in response to the examiner's recommendations. This report sets out the recommendations and the proposed amendments to be made to the BMNDP, which have been made with the involvement of Brenchley & Matfield Parish following receipt and consideration of the examiner's report.
- 1.3 The examiner's recommendations in respect of a neighbourhood development plan (NDP) are different to those made by inspectors when considering local plans. Whilst neither set of recommendations is binding, in the case of a NDP instead of the requirement of meeting the test of 'soundness' a NDP must meet a 'Basic Conditions' test, providing more scope for interpretation. Whereas a borough/district/county council's acceptance of the inspector's recommendations in a local plan are necessary for soundness, in the case of the examiner's recommendations on a NDP, these are open to alternative modification so long as those modifications still result in the NDP meeting the 'Basic Conditions' test.
- 1.4 A brief overview of the neighbourhood planning process is set out in the following section of this report.

Background to Neighbourhood Planning

- 1.5 Details of the neighbourhood planning process can be accessed on the TWBC webpages
<https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans>
- 1.6 The production of a neighbourhood development plan (or neighbourhood plan, as they are more commonly known) is the means by which a local community can take responsibility for land use planning in their area, potentially covering matters such as the location of houses, shops and community facilities, the setting of design standards for new development, or the identification and conservation of local heritage assets and green spaces.
- 1.7 Neighbourhood plans, when finally approved (and then referred to as a 'made' neighbourhood plan), become part of the development plan for the area to which they geographically apply (which in the case of this neighbourhood plan is

Brenchley & Matfield parish), which means that they are a key document in the determination of planning applications in that area.

- 1.8 The legal context for preparation of neighbourhood plans is provided by the Localism Act 2011
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5959/1896534.pdf, the Neighbourhood Planning Regulations 2012 (as amended)
https://www.legislation.gov.uk/ukxi/2012/637/pdfs/ukxi_20120637_en.pdf, and The Neighbourhood Planning Act 2017 (as amended)
<https://www.legislation.gov.uk/ukpga/2017/20/part/1/crossheading/neighbourhood-planning/enacted>.
- 1.9 Policies in neighbourhood plans need to be in general conformity with the strategic policies of the local plan, as well as having regard to the National Planning Policy Framework (NPPF) and any other relevant legislation.
- 1.10 The borough council has a statutory duty to assist communities during the preparation of NDPs and to take these plans through a process of examination and referendum. There are four 'made' NDPs within the borough (for Hawkhurst Parish, Lamberhurst Parish, Goudhurst Parish and Benenden Parish) and currently six NDPs being prepared for parish and town councils including Brenchley & Matfield.

2. Preparation of the Brenchley & Matfield Neighbourhood Development Plan (BMNDP)

- 2.1 The BMNDP has been subject to the regulatory stages required under the Localism Act 2011 and the Neighbourhood Planning (General) Regulations 2012 (as amended). Details of the BMNDP progression from designation to its current stage can be found on the TWBC webpages
<https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/brenchley-and-matfield>
- 2.2 The BMNDP has been prepared for a designated Neighbourhood Area, which follows the Brenchley & Matfield parish boundary and will have a plan period from 2020 to 2038. The neighbourhood area was designated by the borough council on 8 December 2017. Plan preparation by the parish council commenced shortly after this date.
- 2.3 TWBC officers have met with representatives of the parish council on a regular basis throughout the preparation of the BMNDP to provide advice and support and have made comments at key stages. The parish council carried out a pre-submission consultation on a draft BMNDP (Regulation 14 consultation) between 17 May to 26 June 2021. At this consultation stage, a detailed response was provided by TWBC officers that included comments about how policies could be improved.

- 2.4 The submitted version of the BMNDP was published and consulted on by the borough council from 29 November 2021 to 24 January 2022. Details can be found on the borough council webpages <https://tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/brenchley-and-matfield> as well as on the Brenchley & Matfield Parish Council website.
- 2.5 The BMNDP (submission plan) which was consulted upon can be found here - https://tunbridgewells.gov.uk/data/assets/pdf_file/0009/405189/Brenchley-and-Matfield-Neighbourhood-Plan-submission-plan.pdf
- 2.6 Comments were made by TWBC to this consultation in the form of a Delegated Portfolio Holder Report dated 20 January 2022, found here <https://democracy.tunbridgewells.gov.uk/documents/s59325/BMNDP%20PHR.pdf>.
- 2.7 The BMNDP includes policies relating to the landscape and environment, design and built environment, housing, business and the local economy, and transport and infrastructure. The BMNDP is supported by a local evidence base.
- 2.8 Mr Andrew Ashcroft MRTPI was appointed as the independent examiner by the borough council with the agreement of the parish council and the examination commenced in January 2022. The examiner was appointed to assess whether the BMNDP met certain statutory requirements for NDPs, known as the 'Basic Conditions'.
- 2.9 These state that NDPs should:
- 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 contained in the development plan for the area;
 - not breach, and is otherwise compatible with, EU obligations (including Human Rights Act); and
 - not breach requirements of the Conservation of Habitats and Species Regulations.
- 2.10 One of the considerations in addressing these matters is whether the Plan policies support sustainable development and the three overarching objectives of the planning system (economic, social and environmental) including ensuring 'a sufficient number and range of homes can be provided to meet the needs of present and future generations' (para 8 of the National Planning Policy Framework, NPPF – 2019/2021). In addition, para 13 of the NPPF states that neighbourhood plans should support the strategic development needs as set out in the Local Plan.

- 2.11 Following site visits, the Examiner prepared a document entitled Examiner's Clarification Notes, dated 15 February 2022, seeking clarification on a number of matters, which was sent to both the Parish Council and Tunbridge Wells Borough Council. The Parish Council and Tunbridge Wells Borough Council responded to the Clarification Notes accordingly, and following receipt of these, the Examiner issued his final report on 20 June 2022, which is attached at Appendix A.
- 2.12 The BMNDP has been successful at examination, with the independent examiner recommending that the Plan should proceed to referendum, subject to a number of recommended modifications. These modifications are required to ensure the BMNDP meets the basic conditions. The summary table presented in Appendix B sets out the proposed changes identified by the examiner, with a commentary that provides a background for the proposed changes.
- 2.13 This amended BMNDP, incorporating all the modifications as shown at Appendix D, will be the version that is considered by the borough council prior to referendum and will be the version subject to referendum. This will be known as the Referendum BMNDP. Please note at this stage that the plan at Appendix D is draft, however will be confirmed by Cabinet.
- 2.14 Regulation 18 of the Neighbourhood Planning (General) Regulations 2012 (as amended) requires the local planning authority to outline what action to take in response to the recommendations of an examiner following the formal examination. The Regulations provide that where the council disagrees with the examiner's report it can make alternative modifications, subject to re-consultation and potentially a further Examination.
- 2.15 The table set out at Appendix B to this report presents the modifications identified as being necessary by the examiner, with a commentary to provide a background for each proposed modification. As recommended by the examiner, the BMNDP group has considered the changes, and discussed with TWBC officers as necessary. All modifications were accepted by the BMNDP group.
- 2.16 The final draft version (known as the Referendum version) of the BMNDP, incorporating the modifications, as well as a number of presentational changes is the subject of this report, is attached at Appendix D.
- 2.17 Please note there may be some further minor presentational changes made post-Cabinet to ensure the BMNDP fully complies 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.

General Conformity of the Brenchley & Matfield Neighbourhood Development Plan with the strategic policies contained in the development plan for Tunbridge Wells borough

- 2.18 It is the case that the BMNDP has been prepared with reference to the current adopted development plan for the borough. The BMNDP needs to be in general conformity with strategic policies contained in the development plan for Tunbridge Wells Borough. At this time, this requirement relates to strategic policies contained in the following planning documents adopted by Tunbridge Wells Borough Council:
- Saved policies in the Tunbridge Wells Borough Council Local Plan 2006;
 - Tunbridge Wells Core Strategy Development Plan Document 2010;
 - Tunbridge Wells Borough Council Site Allocations Local Plan 2016;
 - Kent Minerals and Waste Local Plan 2013 to 2030.
- 2.19 The BMNDP also needs to be in general conformity with national planning policy as set out in the National Planning Policy Framework (NPPF) 2021 – the BMNDP was prepared against this version of the NPPF 2021.
- 2.20 In considering the Basic Conditions for the BMNDP consideration was made to how the neighbourhood plan is in conformity with the Regulation 19 Pre-Submission Local Plan, as well as the current development plan documents. It is considered that the policies included in the BMNDP are in general conformity with the strategic policies contained in the adopted development plan for Tunbridge Wells Borough.
- 2.21 The examiner’s overall conclusion is that the BMNDP, apart from where noted in the Final Report commentary on individual policies, meets the basic conditions and remains fundamentally unchanged in its role and purpose. The draft referendum version of the BMNDP, at Appendix D, includes the changes required by the independent examiner as set out in the final report at Appendix A.

3. Independent examiner’s report to the local planning authority and qualifying body

- 3.1 The independent examiner has concluded that the BMNDP, if amended in line with his recommendations, meets all the statutory requirements including the

basic conditions test and that it is appropriate, if successful at referendum, that the BMNDP, as amended, be made.

- 3.2 He has therefore recommended to Tunbridge Wells Borough Council that the BMNDP, as modified by his recommendations, should proceed, in due course, to referendum. The independent examiner also recommends that the referendum area should be that of the neighbourhood area i.e., Brenchley & Matfield Parish.
- 3.3 The table in Appendix B lists the modifications.

Commentary on Independent Examiner's Report for the BMNDP:

- 3.4 The Examiner's Report, attached at Appendix A, sets out the findings of the independent examination of the BMNDP, determining whether or not the Plan meets the basic conditions and other statutory requirements, and recommending whether the Plan should proceed to referendum.
- 3.5 A summary of the recommended modifications put forward by the Examiner is presented at Appendix B. The majority of the recommended modifications relate to matters of clarity and precision and are designed to ensure that the Plan fully accords with national policy. Several policies are recommended to be deleted, as they comment that the types of development concerned should accord with other policies in the Plan. However this is not considered necessary on a policy-by-policy basis as the Neighbourhood Plan should be read as a whole and, once 'made', will form part of the development plan for the area. In other cases, some policies departed from the approach of the emerging TWBC Local Plan, and therefore modifications are recommended to ensure the policies within the Plan relate to the emerging Local Plan.
- 3.6 Having considered all of the policies in the Plan, and made recommended modifications based on these, the Examiner found the Plan to meet the basic conditions, and therefore able to proceed to the referendum. The Plan was found to be distinctive in addressing a specific set of issues that were identified by the wider community, and that despite the recommended modifications, the Plan remains fundamentally unchanged in its role and purpose.

Next Steps

- 3.7 The recommended modifications are reflected in the amended draft final version of the BMNDP that will be subject to referendum presented in Appendix D. It should be noted that the referendum version of the BNDP may have some minor presentational amendments to ensure it complies with the requirements of the accessibility regulations that came into force for public sector bodies on 23 September 2018 (The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018
<https://www.legislation.gov.uk/ukxi/2018/952/contents/made>)

- 3.8 The Regulations state that a Local Planning Authority must publish what action will be taken in response to the recommendations of an examiner. This is known as the 'Decision Statement' and is presented in Appendix C.
- 3.9 Subject to the Cabinet decision on the recommendations in this report, the borough council will arrange for a local referendum to be held to ensure that the local community has the final say on whether the BMNDP comes into force or not.
- 3.10 Planning legislation at s38 (3A) of the Planning and Compulsory Purchase Act 2004, <https://www.legislation.gov.uk/ukpga/2004/5/contents>, supported by Planning Practice Guidance (PPG) sets out at <https://www.gov.uk/guidance/neighbourhood-planning--2> requires 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).
- 3.11 The principal effect of this is that the BMNDP will become part of the statutory 'development plan' for the area after a positive referendum. The local planning authority (that is TWBC) must formally make the neighbourhood plan within 8 weeks of the positive referendum outcome.
- 3.12 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
- 3.13 It is therefore requested that the Cabinet decision includes as part of resolution 4 that in the circumstances where the referendum result is positive, then the Brenchley & Matfield 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.

4. Options Considered

Option 1: Note the examiner's report dated 20 June 2022 and the recommended amendments, agree the Decision Statement and progress the Brenchley & Matfield Neighbourhood Development Plan to referendum.

- 4.1 The Examiner congratulates Brenchley & Matfield Parish Council on producing a locally distinctive neighbourhood plan, stating that the Plan "is distinctive in addressing a specific set of issues that have been identified and refined by the

wider community” and that it should, “subject to the incorporation of the modifications set out in this report that the Brenchley and Matfield Neighbourhood Development Plan...proceed to referendum.”

Option 2: Note the examiner’s report dated 20 June 2022 and the recommended amendments, but do not agree the Decision Statement and do not progress the Brenchley & Matfield Neighbourhood Development Plan to referendum.

4.2 As already noted, the examiner’s report is largely positive, and it is considered that the plan remains fundamentally unchanged in its role and purpose.

5. Preferred Option and Reason

5.1 The preferred option is **Option 1:** note the examiner’s report dated 20 June 2022 and the recommended amendments, agree the Decision Statement, and progress the Brenchley & Matfield Neighbourhood Development Plan to referendum.

5.2 This option reflects the outcome of the independent examination, the examiner’s report praising the approach taken in the BMNDP and which clearly sets out to achieve sustainable development. The relatively small number of amendments proposed by the examiner have been considered and accepted by the Brenchley & Matfield Parish Council. The version of the BMNDP that will be subject to Referendum at Appendix D reflects this.

6. Consultation on Options

6.1 If agreed by Cabinet, the Decision Statement set out in Appendix C be agreed and progress the amended Brenchley & Matfield Neighbourhood Development Plan presented in Appendix D to referendum. Option 1 above refers.

7. Implementation

7.1 If the report recommendations are agreed by Cabinet, the Brenchley & Matfield Neighbourhood Development Plan will then proceed to Referendum scheduled for 10 November 2022. If successful at referendum, the Brenchley & Matfield Neighbourhood Plan becomes part of the Development Plan for Brenchley & Matfield parish and will be a material consideration in future planning decisions in the parish. The BMNDP will be taken to Full Council on 14 December 2022 to be formally ‘made’ by the Council.

8. Appendices and Background Documents

Appendices:

- **Appendix A:** Independent Examiner's Report to the Brenchley & Matfield Neighbourhood Development Plan
- **Appendix B:** Table of changes made to the submission version of the Brenchley & Matfield Neighbourhood Development Plan to reflect amendments suggested by the Independent Examiner
- **Appendix C:** Brenchley & Matfield Neighbourhood Development Plan Decision Statement
- **Appendix D:** Draft version of the Brenchley & Matfield Neighbourhood Development Plan that will be subject to Referendum

Background Papers:

Submission version of the Brenchley & Matfield Neighbourhood Development Plan consulted on 29 November 2021 to 24 January 2022, and subject to independent examination

https://tunbridgewells.gov.uk/_data/assets/pdf_file/0009/405189/Brenchley-and-Matfield-Neighbourhood-Plan-submission-plan.pdf

9. 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) 17 August 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 & Communities) 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.

Jane Fineman, Head of Finance, Procurement and Parking 16 August 2022

C. Staffing

There are no staffing implications.

Anita Lynch, HR Manager

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.

Carlos Hone, Head of Planning 19 August 2022

E. Environment and Sustainability

No environmental and sustainability implications are identified. Section 4 of the Basic Conditions Statement submitted with the Submission Brenchley & Matfield Neighbourhood

Plan provides information to demonstrate how the Brenchley & Matfield Neighbourhood Plan is in Conformity with Sustainable Development, https://tunbridgewells.gov.uk/__data/assets/pdf_file/0019/405190/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 (when 'made') will form part of the borough's development plan, to be read alongside the Local Plan which contains policies to support the climate and biodiversity emergency.

Carlos Hone, Head of Planning 19 August 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 15 August 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: Brenchley & Matfield Parish Council will be responsible for demonstrating due regard to this in the production of an NDP.

Abigayle Sankey, Corporate Governance Officer 18 August 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 17 August 2022

I. Health and Safety

No implications for Health and Safety.

Gary Stevenson, Head of Housing, Health and Environment 25 August 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 19 August 2022