

# Brenchley and Matfield Neighbourhood Development Plan

For Full Council on 14 December 2022

## 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

**Report Author:** Freya Jackson, Planning Policy Officer

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

**Wards Affected:** Brenchley and Horsmonden ward

Approval Timetable	Date
Management Board	23 November 2022
Full Council	14 December 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 Brenchley and Matfield Neighbourhood Development Plan (BMNDP) to help in the determination of planning applications in the Parish Neighbourhood Area, this report recommends that the BMNDP be formally 'made' (adopted) and become part of the statutory Development Plan for the area with immediate effect.
2. The Brenchley and Matfield Neighbourhood Development Plan Decision Statement (post-Referendum) shown at **Appendix A** also be published; and
3. The Brenchley and Matfield Neighbourhood Development Plan Strategic Environmental Assessment (SEA) Adoption Statement also be drafted and published shortly after the NDP is 'made'.

# 1. Introduction and Background

- 1.1 The Brenchley and 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 Report presented to Cabinet on 22 September 2022 set out the independent examiner's recommendations and the proposed modifications to be made to the BMNDP, which were made with the involvement of Brenchley and Matfield Parish Council following receipt and consideration of the examiner's report. The following documents referred to in this report can be accessed via Item 17 of this Cabinet meeting at <https://democracy.tunbridgewells.gov.uk/ieListDocuments.aspx?CId=118&MId=5184&Ver=4>
- (pre-Referendum) Decision Statement
  - Table of Examiner's recommended Modifications
  - Draft Referendum version of the BMNDP
  - The Examiner's Report
- 1.3 It was agreed by Cabinet to note the examiner's report dated 20 June 2022 and the recommended modifications, the (pre-Referendum) Decision Statement and progress the BMNDP to referendum.
- 1.4 The version of the BMNDP that was subject to Referendum reflects subsequent discussions between the parish council and TWBC planning officers.

## Background to the Brenchley and Matfield Neighbourhood Development Plan (BMNDP)

- 1.5 Brenchley and Matfield Parish Council, as the Qualifying Body (QB), applied for Brenchley and Matfield Parish to be designated a Neighbourhood Area under Part 2 of the Neighbourhood Planning (General) Regulations 2012. The area was designated on 8 December 2017.
- 1.6 Following consultation on a draft (pre-submission) Plan, the BMNDP was submitted to the Borough Council in November 2021 under Regulation 15 of the relevant Regulations. The Borough Council then undertook formal consultation of the BMNDP and its supporting documents which were publicised, and representations were invited. The period of formal consultation ran from 29 November 2021 to 24 January 2022. Independent examination followed, conducted by written representations, and the Examiner, Mr. Andrew Ashcroft, published his final report on 20 June 2022, concluding that the BMNDP, 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.

- 1.7 On 22 September 2022, 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 BMNDP (the ‘Referendum’ version), agreed by the Brenchley and Matfield Parish Council (the Qualified Body) was published on the TWBC website. The ‘referendum area’ was determined to be Brenchley and Matfield Parish, to ensure the community has the final say on whether the neighbourhood plan comes into force or not.

## The Referendum

- 1.8 A Referendum was held on 10 November 2022. The referendum question was ‘Do you want Tunbridge Wells Borough Council to use the Neighbourhood Plan for Brenchley and Matfield to help it decide planning applications in the neighbourhood area?’ The designated neighbourhood area followed that of the Brenchley and Matfield parish boundary.
- 1.9 The results of the referendum were:
- Yes = 417 (87.42%)
- No = 58 (12.16%)
- Unmarked or Void = 2 (0.41%)
- Number of Votes = 477
- Turnout = 20.58%
- 1.10 It is therefore the case that the outcome of the referendum for the BMNDP is a positive one, it being endorsed to use the BMNDP to decide planning applications within the Parish of Brenchley and Matfield.
- 1.11 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).
- 1.12 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
- 1.13 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.
- 1.14 The Cabinet decision of 22 September 2022 included as part of resolution 4 that in the circumstances where the referendum result is positive, that the Brenchley and 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.

## Conclusion

- 1.15 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.
- 1.16 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.
- 1.17 Therefore, it is proposed that Full Council be recommended to formally 'make' the BMNDP with immediate effect, as per recommendations 1, 2, and 3 in this report.
- 1.18 The principal effect of this is that the BMNDP is now part of the statutory 'development plan' for the area (Brenchley and Matfield 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 consideration in the determination of planning applications in Brenchley and Matfield Parish.
- 1.19 The post-referendum decision to make the BMNDP (**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.

## 2. Appendices and Background Documents

Appendices:

- **Appendix A:** Brenchley and Matfield Neighbourhood Development Plan Decision Statement (post-Referendum)

## 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) – 11 November 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 – 11 November 2022

### C. Staffing

There are no staffing implications.

Anita Lynch, HR Manager – 15 November 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.

Carlos Hone, Head of Planning - 16 November 2022

## **E. Environment and Sustainability**

No environmental and sustainability implications are identified. Section 2 of the Basic Conditions Statement submitted with the Draft Brenchley and Matfield Neighbourhood Plan provides information to demonstrate how the Brenchley and Matfield Neighbourhood Plan is in Conformity with Sustainable Development, [https://tunbridgewells.gov.uk/data/assets/pdf\\_file/0019/405190/Basic-Conditions-Statement.pdf](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 BMNDP 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.

Carlos Hone, Head of Planning - 16 November 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 – 11 November 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 and Matfield Parish Council will be responsible for demonstrating due regard to this in the production of an NDP.

Abigayle Sankey, Corporate Governance Officer - 14 November 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 – 14 November 2022

## **I. Health and Safety**

No implications for Health and Safety.

Mike Catling, Corporate Health and Safety Advisor – 11 November 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 - 14 November 2022