

STROUD DISTRICT COUNCIL

ENVIRONMENT COMMITTEE

THURSDAY, 21 MARCH 2024

Report Title	Brimscombe and Thrupp Neighbourhood Development Plan: Progress to Referendum
Purpose of Report	To inform councillors of progress regarding the Brimscombe and Thrupp Neighbourhood Development Plan (BTNDP) and progress to referendum following the recommendations laid out in the Examiner's Report.
Decision(s)	The Committee RESOLVES: a) to accept all recommended modifications of the Examiner's Report (Appendix A); b) that the Brimscombe and Thrupp Neighbourhood Development Plan, as modified, meets the basic conditions, is compatible with the Convention rights, complies with the definition of a neighbourhood development plan (NDP) and the provisions that can be made by a NDP; c) to take all appropriate actions to progress the Brimscombe and Thrupp Neighbourhood Development Plan to referendum in May 2024.
Consultation and Feedback	<p>The BTNDP has been through two statutory consultations. Brimscombe and Thrupp Parish Council undertook a pre-submission consultation (Regulation 14) from 15th October to 30th November 2021 and the Council undertook a post-submission consultation (Regulation 16) from 6th September to 18th October 2023. Both consultations lasted no less than the six weeks as required by the regulations.</p> <p>Brimscombe and Thrupp Parish Council considered the comments received during the Regulation 14 consultation and made changes to the plan. The comments received during the Council's Regulation 16 consultation were provided to the examiner of the plan who considered them during the examination.</p>
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Options	Option 1 - Make modifications to the BTNDP in accordance with the examiner's recommendations			
	This is the option promoted by this report. It consists of accepting the recommendations made in the neighbourhood plan examination report, determining that the BTNDP meets the basic conditions and all legal requirements and should therefore proceed to a referendum. This approach is considered to be the best option for progressing the plan prepared by the community without any unnecessary delay in the decision making process.			
	Option 2 – Make a decision that differs from the examiner's recommendation			
	If the Council were to propose a decision that differs from the examiner's recommendation, the Council is required to: <ol style="list-style-type: none"> 1. notify all those identified on the consultation statement of the town council and invite representations, during a period of six weeks, 2. refer the issue to a further independent examination if appropriate. 			
	Option 3 - Refuse the Plan			
	The Council can decide that it is not satisfied with the plan proposal with respect to meeting basic conditions, compatibility with Convention rights, definition and provisions of the NDP even if modified. Without robust grounds, which are not considered to be present in this case, refusing to take the plan to a referendum could leave the Council vulnerable to a legal challenge.			
Background Papers	N/A			
Appendices	Appendix A – Examiner's Report			
Implications (further details at the end of the report)	Financial	Legal	Equality	Environmental
	Yes	Yes	No	Yes

1. Background

- 1.1 Neighbourhood planning was introduced through the Localism Act 2011. New powers allowed qualifying bodies (parish or town councils) to produce NDPs. NDPs allow communities to set planning policies for their area.
- 1.2 Once adopted, NDPs join the adopted Local Plan in the Council's Development Plan. They must be considered when planning decisions are made, along with the Local Plan and national planning policy.
- 1.3 Following an update to Neighbourhood Planning guidance in response to the COVID-19 pandemic, the plan will now carry significant weight in decision making if approved to proceed to referendum.

- 1.4 Producing a NDP allows parish and town councils to increase the amount of Community Infrastructure Levy (CIL) funds they receive from developments within their area from 15% to 25%.
- 1.5 NDPs must be examined by a suitably qualified independent person, appointed by the Council and agreed by the qualifying body (Town/Parish Council). Neighbourhood plans must also pass a referendum of local voters by a simple majority. If a plan passes referendum, the Council must make (adopt) it, unless it breaches EU obligations or human rights legislation.
- 1.6 For the background papers and associated documents associated with this NDP can be found on our [website](#).

2. Brimscombe and Thrupp Neighbourhood Development Plan and Examination

- 2.1 The Brimscombe and Thrupp Neighbourhood Area was designated by resolution of the Council's Environment Committee on 22nd February 2016.
- 2.2 On 11th March 2021 Brimscombe & Thrupp Parish Council applied for an amendment to the designated Neighbourhood Area boundary to reflect changes to the Brimscombe and Thrupp Parish Boundary in May 2020. A 6 week consultation on this proposal took place from 9th April to 21st May 2021. Following the consultation period the new boundary was applied.
- 2.3 The BTNDP was led by Brimscombe and Thrupp Parish Council ('the qualifying body').
- 2.4 A submission version of the BTNDP was accepted by the Council on 3rd August 2023, under regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended) ('the regulations'). As prescribed by 'the regulations', the Council consulted on the plan for six weeks and arranged for the plan to be examined.
- 2.5 The Council appointed John Slater MRTPI as independent examiner of the BTNDP.
- 2.6 The examination concludes once the Examiner's Report is received by the Council. The Examiner's Report contains a recommendation of whether the BTNDP, with or without modifications, should proceed to a referendum.
- 2.7 The examiner's findings, including recommendations and the reasons for them, are set out in the Examiner's Report (Appendix A). The examiner only makes recommendations necessary to make the Plan, meet the basic conditions and other legal requirements.
- 2.8 The recommended modifications to the BTNDP are set out throughout the Examiner's Report (Appendix A).

3. Consideration and Next Steps

- 3.1 Following the completion of the examination, the Council is required to consider each of the examiner's recommendations and the reasons for them and decide what action to take in response to each. Officers have reviewed the Examiner's Report and agree with all the recommendations and the reasons for them.
- 3.2 The Council is required to consider whether the draft BTNDP meets the basic conditions, is compatible with the Convention rights and complies with the definition of an NDP and the provisions that can be made by a NDP or can do so as modified.
- 3.3 Officer's have carefully considered the BTNDP and the Examiner's report and consider that:

- 3.3.1 The BTNDP, as modified by the Examiner's recommendations, has had regard to national policies and advice contained in guidance issued by the Secretary of State. The BTNDP has been assessed against the National Planning Policy Framework and national Planning Practice Guidance and modifications proposed to comply with national policy.
- 3.3.2 The BTNDP, as modified by the Examiner's recommendations, contributes to the achievement of sustainable development. The BTNDP has been subject to sustainability assessment that identifies the plan will have an overall positive effect.
- 3.3.3 The BTNDP, as modified by the Examiner's recommendations, is in general conformity with the strategic policies contained in the development plan as a whole for the area. The BTNDP has been assessed against the adopted Stroud District Local Plan and modifications proposed to ensure the BTNDP does not become out-of-date in the context of a review of strategic policies in the Local Plan.
- 3.3.4 The BTNDP, as modified by the Examiner's recommendations, would not breach, and be otherwise incompatible with EU obligations. The Examiner's assessment has involved considering the following Directives: the Strategic Environmental Assessment Directive (2001/42/EC); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); and the Water Framework Directive (2000/60/EC). In addition, no issue arises in respect of equality under general principles of EU law or any EU equality directive. The Council issued a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Determination in September 2022, which confirmed to Brimscombe and Thrupp Parish Council that a SEA and a full HRA were not required on the BTNDP.
- 3.3.5 The BTNDP, as modified by the Examiner's recommendations, would not give rise to significant environmental effects on European sites and European offshore marine sites. The Council issued a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Determination in September 2022, which confirmed to Brimscombe and Thrupp Parish Council that a SEA and a full HRA were not required on the BTNDP.
- 3.3.6 The BTNDP, as modified by the Examiner's recommendations, is in all respects fully compatible with Convention rights contained in the Human Rights Act 1988. The Examiner considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. Nothing in his examination of the Draft BTNDP indicated any breach of a Convention right. There has been full and adequate opportunity for all interested parties to take part in the preparation of the Plan and to make their comments known.
- 3.3.7 The BTNDP, as modified by the Examiner's recommendations, complies with the definition of an NDP and the provisions that can be made by a NDP. The BTNDP sets out policies in relation to the development and use of land in the whole of the neighbourhood area; it specifies the period for which it is to have effect; it does not include provision about development that is 'excluded development' and does not relate to more than one neighbourhood area or repeat an existing planning permission.

- 3.4 Subject to consideration at the meeting, members are asked to authorise officers to make the modifications specified in the Examiner's Report and progress the modified version of the plan to a referendum.
- 3.5 The neighbourhood area matches the civic boundary of Brimscombe and Thrupp Parish; officers recommend that the referendum area should remain that of the Brimscombe and Thrupp Neighbourhood Area, as designated by the Council on 22nd February 2016. However, the Council cannot make a decision that differs from the examiners' recommendations about the referendum area.
- 3.6 The Council must publish a statement setting out its decision and the reason for making it. The qualifying body will need to modify the plan and produce a final version for the referendum.
- 3.7 The Council must hold a referendum within 56 working days from the date that the decision to take the plan forward to a referendum is published. In consultation with the Council's returning officer and elections department, May 2024 has been identified as the suitable date for holding a referendum.
- 3.8 If the plan passes referendum, the Council is required to make (adopt) it unless it breaches EU or Human Rights legislation. The Council's scheme of delegation does not delegate this decision to officers or the Environment Committee, so the decision to make the plan will be made by full Council. This decision is expected to take place in July 2024. The plan cannot be modified at that stage.

4. Implications

4.1 Financial Implications

There are no direct financial implications arising from this recommendation. Not to accept the recommendations could lead to costs associated with legal challenge.

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4.2 Legal Implications

Following the independent examination of the neighbourhood plan and after the examiner's report has been received, the Council must come to its formal view on whether the draft neighbourhood plan meets the 'basic conditions'. Only a draft neighbourhood plan that meets each of the basic conditions can be put to a referendum and be made. The basic conditions are set out in [Paragraph 8\(2\) of Schedule 4B to the Town and Country Planning Act 1990](#) as applied to neighbourhood plans by Section 38A of the Planning and Compulsory Purchase Act 2004. These are:

- a. Having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan. This includes the NPPF.
- b. The making of the neighbourhood plan contributes to the achievement of sustainable development. The plan should contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset.
- c. The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the Council's area.

- d. The making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations. There are 4 Directives that may be of particular relevance to neighbourhood planning namely, the Strategic Environmental Assessment (SEA) Directive, the Environmental Impact Assessment (EIA) Directive, the Habitats Directive and the Wild Birds Directive
- e. Prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan. These include not breaching the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017, which set out the habitat regulation assessment process for land use plans, including consideration of the effect on habitats sites.

The Council must consider the examiner's report to ensure that the neighbourhood plan meets the basic conditions and to determine whether or not it should proceed to referendum, with or without modifications. Unless otherwise agreed with the qualifying body, this decision must be made within 5 weeks of the Council receiving the examiner's report.

If the Council decides that the neighbourhood plan meets the basis conditions or would meet those conditions if modifications were made to the plan (whether or not recommended by the examiner) then a referendum must be held.

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4.3 Equality Implications

As part of the Examination process the plan was found to meet the Basic Conditions as set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. A requirement of meeting these conditions is that the plan must be compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations.

No Equality Impact Assessment has been carried out.

4.4 Environmental Implications

The Neighbourhood Plan General Regulations 2015 require a qualifying body either to submit an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 or a statement of reasons why an environmental report is not required. In order to comply with this requirement, Stroud District Council (SDC) undertook a screening exercise in November 2019 on the need or otherwise for a Strategic Environmental Assessment (SEA) to be prepared for the Plan. As a result of this process SDC concluded that the Plan is not likely to have any significant effects on the environment and accordingly would not require an SEA.

SDC also prepared a Habitats Regulations Assessment (HRA) of the Plan. It concludes that the neighbourhood plan will not give rise to likely significant effects on European sites,

either alone or in combination with other plans or projects, and that Appropriate Assessment is not required.

As part of the Examination process the plan was found to meet the Basic Conditions as set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. A requirement of meeting these conditions is that the plan must contribute to the achievement of sustainable development and not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 (7).