

Delegated Portfolio Holder Decision: TWBC Representations to the Regulation 16 consultation on the draft Benenden Neighbourhood Plan

For Councillor Alan McDermott on 11 December 2020

Summary

Lead Member: Councillor Alan McDermott

Lead Director: Lee Colyer

Head of Service: Stephen Baughen

Report Author: Deborah Dixon, Principal Planning Policy Officer

Classification: Public document (non-exempt)

Wards Affected: Benenden & Cranbrook

Approval Timetable	Date
Portfolio Holder	By 11 December 2020
Report Published	11 December 2020
Decision due not before	21 December 2020

Recommendations

Officer recommendations as supported by the Portfolio Holder:

1. That these be submitted as the Borough Council's representations to the Regulation 16 consultation on the draft Benenden Neighbourhood Plan (presented in Appendix 1).

1. Introduction and Background

- 1.1 This report refers to the Benenden Neighbourhood Development Plan Regulation 16 draft for consultation, that can be accessed on-line at <https://www.tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/benenden>
- 1.2 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.
- 1.3 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 https://www.legislation.gov.uk/ukxi/2012/637/pdfs/ukxi_20120637_en.pdf, and The Neighbourhood Planning Act 2017 <https://www.legislation.gov.uk/ukpga/2017/20/part/1/crossheading/neighbourhood-planning/enacted>, as amended.
- 1.4 Policies in neighbourhood plans need to be in general conformity with the strategic policies of the borough council, as well as having regard to the National Planning Policy Framework (NPPF) and any other relevant legislation.

Preparation of a Neighbourhood Plan

- 1.5 The preparation of a neighbourhood plan broadly follows that of a Local Plan. The Benenden Neighbourhood Plan has identified the key issues to be addressed within its neighbourhood plan, and the Strategic Approach sets out the main aims and objectives that the Plan seeks to deliver through policies in the neighbourhood plan. This process has been informed by consultation with the local community and supported by an evidence base. There has also been regular ongoing support and advice provided by TWBC planning and specialist officers.
- 1.6 A 'pre-submission' version of the neighbourhood plan (the Regulation 14 stage) was prepared and a Regulation 14 public consultation on this document carried out by Benenden Parish Council during August/October 2019.

- 1.7 Full details of the consultations and engagement with the public that were carried out in the preparation of the Benenden Neighbourhood Plan are provided by the Consultation Statement prepared to support the neighbourhood plan
https://www.tunbridgewells.gov.uk/data/assets/pdf_file/0009/375444/02_IA1_Consultation-Statement.pdf
- 1.8 Following consideration of the Regulation 14 consultation responses, taking account of the issues raised and making any appropriate amendments in the light of the responses, a final draft 'submission' version of the plan was prepared and submitted, along with other necessary documentation, to the borough council in early October 2020. A formal 6 weeks' consultation is currently being carried out by TWBC, running from 30th October to 11th December 2020.
- 1.9 Full details of the consultation are available at
<https://www.tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/benenden>.
- 1.10 Neighbourhood plans must meet certain 'basic conditions' before they can come into force. These are tested through the independent examination, before a neighbourhood plan may proceed to referendum.
- 1.11 The Regulations state that a neighbourhood plan will be considered to have met the basic conditions if:
- having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan;
 - the making of the neighbourhood plan contributes to the achievement of sustainable development;
 - the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);
 - the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations. (Note: these obligations remain despite UK departure from EU, unless specifically revised or removed by the UK Parliament).
- 1.12 Neighbourhood plans, when finally approved (and then referred to as a 'made' neighbourhood plan), become part of the development plan for the borough, which means that they are a key document in the determination of planning applications in that area (that is, in this instance, Benenden Parish).

2. Representations to be made by TWBC to the Regulation 16 consultation being carried out on the Benenden Neighbourhood Plan

- 2.1 It is a requirement of the Neighbourhood Planning Regulations that a neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority.
- 2.2 The representations to be made by TWBC to the Regulation 16 consultation (presented in Appendix 1) have concentrated on addressing this requirement. However, some comments from specialist officers are also considered appropriate to include with the representations as they provide advice on matters to ensure policies are robust and can achieve what is intended.
- 2.3 These representations from TWBC, once formally approved by the Borough Council through this Delegated Portfolio-holder Decision, will then be submitted to the Regulation 16 consultation for the Benenden Neighbourhood Plan.

General Conformity of the Benenden Neighbourhood Plan with the strategic policies contained in the development plan for Tunbridge Wells Borough

- 2.4 The Benenden Neighbourhood Plan 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

The Benenden Neighbourhood Plan also needs to be in general conformity with national planning policy as set out in the National Planning Policy Framework (NPPF) 2019.

- 2.5 **Local Plan 2006:** since its adoption some changes have been made to the Local Plan as a result of the 'saving' of policies in March 2009, the adoption of the Core Strategy in June 2010 and the adoption of the Site Allocations Local Plan in July 2016. As a result, some policies have been removed from the Local Plan as they are no longer valid. An updated list of Local Plan 2006 saved policies can be viewed at https://www.tunbridgewells.gov.uk/_data/assets/pdf_file/0006/343347/Local-Plan-2006-Remaining-Saved-Policies-at-2016.pdf
- 2.6 **Core Strategy 2010:** The Core Strategy provides the overarching principles of by which the essential development needs of the Borough for the period 2010 – 2026 are to be delivered. The key decisions about how much development would

happen in the Borough and where and when it will take place for this period, are made in the Core Strategy.

2.7 The Core Strategy provides:

A spatial vision of how the borough should develop strategic objectives for development in the borough, setting out the main issues to be addressed
A delivery strategy setting out how much development will take place and where, when and by what means it will be delivered

2.8 **The Site Allocations Local Plan 2016** is one of a suite of planning policy documents that together comprise the Development Plan for the borough and which guide future development needs. It sets out the specific sites that the Council believes should be developed in order to meet the levels of growth set out in the adopted Core Strategy.

2.9 **The Kent Minerals and Waste Local Plan (KMWLP) 2013-2030** was originally adopted by Kent County Council (KCC) in July 2016 and has been subject to an Early Partial Review of certain waste management capacity requirement and mineral and waste safeguarding policies. The plan was adopted in its modified form in September 2020. There are no strategic policies in this plan that affect the site allocations proposed by Benenden Neighbourhood Plan.

Commentary

Adopted Development Plan

2.10 **Local Plan 2006:** Saved Policy LBD1 Limits to Built Development is considered to be a strategic policy that is relevant for consideration by TWBC when making representations to the Benenden Neighbourhood Plan Regulation 16 consultation. Policy LBD1 states that *'Outside the Limits to Built Development, as defined on the Proposals Map, development will only be permitted where it would be in accordance with all relevant policies contained in this Local Plan and the Kent Structure Plan 1996 and the Kent & Medway Structure Plan 2006 rural settlement and countryside policies'*.

2.11 Note: Although Structure Plans have no formal status in the current planning system, Policy LBD1 remains a strategic policy statement within the development plan for Tunbridge Wells Borough for future development and land-use planning.

2.12 Note: Site Allocations Local Plan Policy AL/STR 1 Limits to Built Development states that *'the extent of the Limits to Built Development is defined on the saved Local Plan Proposals Map for the villages and defined spatially on the individual settlement Proposals Maps accompanying this Site Allocations Local Plan in relation to Royal Tunbridge Wells and Southborough, Paddock Wood, Cranbrook and Hawkhurst. The saved policies of the Local Plan will continue to be relevant in considering details of the appropriate uses inside, and outside of, these defined areas until such time as they are updated and superseded by the Core Strategy Review (Local Plan)'.*

2.13 It is therefore the case that Local Plan (2006) Policy LBD1 remains a saved policy for Benenden Parish, being relevant for the borough's villages and rural settlements (not including Cranbrook or Hawkhurst).

2.14 **The Core Strategy** policies that are considered to be relevant for consideration by TWBC when making representations to the Benenden Neighbourhood Plan Regulation 16 consultation are:

- Core Policy 1: Delivery of Development
- Core Policy 2: Green Belt
- Core Policy 3: Transport Infrastructure
- Core Policy 4: Environment
- Core Policy 5: Sustainable Design and Construction
- Core Policy 6: Housing Provision
- Core Policy 7: Employment Provision
- Core Policy 8: Retail, Leisure and Community Facilities Provision
- Core Policy 14: Development in the Villages and Rural Areas.

2.15 Core Policy 14 Development in the Villages and Rural Areas (within which the parish of Benenden falls) sets out a strategy for the villages that promotes a sustainable economy while maintaining and enhancing their distinctive character and environment and also that of the surrounding countryside. The main aims and objectives of Core Policy 14 are:

- To generally restrict development to sites within the LBD of the villages
- To enhance village centres to provide a focus for communities, to resist the loss of local services and encourage the development of community facilities
- To meet local needs for affordable housing
- To strengthen the rural economy, including opportunities for re-use of redundant rural buildings for employment uses. Also encouragement of land-based uses and tourism.
- To conserve and enhance buildings and areas of historic and environmental importance, and to maintain the distinctive landscape character and quality of the countryside
- To encourage the use of non-motorised modes of transport between rural settlements and with rural areas

2.16 Core Strategy Core Policy 14 identified that approximately 360 net additional dwellings would be delivered in the villages and rural areas on sites for the period 2006 to 2026, to be allocated and released in the Site Allocations Local Plan.

2.17 **The Site Allocations Local Plan** did not include any site allocation policies or other strategic policies relevant for Benenden Parish. Paragraph 8.6 in Chapter 8 Villages and Rural Areas explains that monitoring of housing completions, carried out regularly by the Borough Council, had indicated that the overall target for the villages and rural areas in the Core Strategy of 360 net additional dwellings to 2026 had been met. The Council would continue to actively promote the delivery of local needs housing and the affordable housing delivered would therefore be in addition to the target set for the rural areas. Rural exception housing would only be delivered when a specific local need has been identified.

Emerging Local Plan Conclusion

- 2.18 A new Local Plan for the borough is currently being prepared. A consultation on the Draft Local Plan was carried out in September/November 2019 (Regulation 18). It is the case that the preparation of the Benenden Neighbourhood Plan has been during the period when the Draft Local Plan for the borough has been in the public domain, the initial consultation on the Neighbourhood Plan being carried out in August/October 2019.
- 2.19 The next stage in the preparation of the Local Plan is to carry out a Regulation 19 consultation on the Pre-Submission Local Plan that is anticipated to be carried out during March/April 2021. This document is not yet in the public domain, However it will be available for viewing on the Borough Council's website from New Year's Eve 2020 when it will be appended to the report being presented to the Planning and Transportation Cabinet Advisory Board on 11 January 2021 as the Pre-Submission Local Plan enters the Committee cycle ahead of publication in March 2021.

Conclusion

- 2.20 During the preparation of the Benenden Neighbourhood Plan, planning and specialist officers have provided guidance and support to the group of individuals preparing the neighbourhood plan. At the Regulation 14 consultation stage, a detailed response was provided by officers that included advice about how policy approaches could be further improved.
- 2.21 The Basic Conditions for Benenden Neighbourhood Plan includes analysis on how the neighbourhood plan is in conformity with the Regulation 18 Draft Local Plan as well as the current Development Plan documents.
- 2.22 Benenden Neighbourhood Plan proposes to allocate four sites for development; the approach taken towards these site allocations in the neighbourhood plan are broadly the same as the approach being taken by site allocation policies for Benenden Parish in the Pre-Submission Local Plan.
- 2.23 A comment has been included on the responses to be made by the borough on the Benenden Neighbourhood Plan to advise of proposed additional wording to policy criterion for Policy SSP3 Land at Benenden Hospital, South of Goddards Green Road, East End – South East Quadrant (SEQ), to reflect an amendment in the Pre-Submission Local Plan. This additional wording to the policy criteria has been discussed with the Benenden Neighbourhood Plan group.
- 2.24 It is considered that the policies included in the Benenden Neighbourhood Plan are in general conformity with the strategic policies contained in the adopted development plan for Tunbridge Wells Borough. They are also in general conformity with the emerging Local Plan, which once adopted will form part of the Development Plan and will supersede the Site Allocations Local Plan 2016; the Core Strategy 2010 and the saved policies of the Local Plan 2006.

3. The next stage in the preparation of the Benenden Neighbourhood Plan following the Regulation 16 consultation

- 3.1 Neighbourhood plans are subject to an Independent Examination. The borough council will appoint an independent examiner (with the agreement of Benenden Parish Council), and this process has been commenced by TWBC officers.
- 3.2 Normally, the independent examination will be conducted by written representations. However, if necessary, the examiner may invite interested parties to a public hearing to present their comments.
- 3.3 The independent examiner will consider whether the proposed neighbourhood plan meets the basic conditions and other requirements set out by law.
- 3.4 The examiner reports to both the borough council and Benenden Parish Council (the 'qualifying body'). The borough council must formally consider the report. If it accepts the examiner's report, Democratic Services will arrange for a local referendum to be held to ensure that the community has the final say on whether the neighbourhood plan comes into force or not.
- 3.5 If more than 50% of those voting in the referendum vote 'yes', then the neighbourhood plan will be presented to the Full Council of the Tunbridge Wells Borough Council and if accepted it then becomes part of the development plan for Benenden parish.

4. Options Considered

- 4.1 Option A): 'not submitting TWBC representations to the Regulation 16 consultation, the 'do nothing scenario'': This option would involve the borough council not continuing to provide the advice and guidance that has been available for the neighbourhood plan group during the preparation of the draft Benenden Neighbourhood Plan.
- 4.2 There is a legal requirement for local authorities to provide support for those preparing neighbourhood plans. The local planning authority should take a proactive and positive approach, working collaboratively with a neighbourhood planning body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination.
- 4.3 Planning and specialist officers have been available, wherever possible, particularly in relation to helping to understand the TWBC Local Plan context and

drafting policies, to provide advice and guidance to the Benenden Neighbourhood Plan group.

- 4.4 Option B): 'submit alternative representations to the Regulation 16 consultation': the representations presented in Appendix 1 that it is proposed to submit to the Regulation 16 consultation on the draft Benenden Neighbourhood Plan reflect advice and comments from a range of TWBC professional officers in the planning department. This option would require additional liaison and discussion with these officers.
- 4.5 Option C):'to endorse the proposed representations to the Regulation 16 consultation': this option would enable the borough council to continue to provide advice and guidance to the Benenden Neighbourhood Plan group.

5. Preferred Option and Reason

- 5.1 The preferred option, Option C): 'to endorse the proposed representations to the Regulation 16 consultation' as this would enable the borough council to continue to provide advice and guidance to the Benenden Neighbourhood Plan group.
- 5.2 It is considered that the policies contained in the Benenden Neighbourhood Plan are in general conformity with the strategic policies contained in the development plan for Tunbridge Wells Borough.

6. Consultation on Options

- 6.1 n/a

Recommendation from Cabinet Advisory Board

- 6.2 n/a

7. Implementation

- 7.1 The TWBC representations to the Regulation 16 consultation on the draft Benenden Neighbourhood Plan, set out in Appendix A, will be submitted using the on-line response form on the consultation webpages <https://www.tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/benenden>

8. Appendices and Background Documents

Appendices:

- Appendix A: TWBC Representations to the Regulation 16 consultation on the draft Benenden Neighbourhood Plan

Exempt appendices (if any): n/a

Background Papers:

- Draft Benenden Neighbourhood Development Plan Regulation 16 for consultation <https://www.tunbridgewells.gov.uk/planning/planning-policy/neighbourhood-plans/benenden>

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) 10th December 2020

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 (Ministry of Housing, Communities and Local Government) 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 10th December 2020

C. Staffing

There are no staffing implications.

Anita Lynch, HR Manager 10th December 2020

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 10th December 2020

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://www.tunbridgewells.gov.uk/data/assets/pdf_file/0010/375445/03_IA2_Basic-Conditions-Statement.pdf and one of the roles of the independent examiner will be considering whether the plan contributes to the achievement of sustainable development.

Section 40, National Environment and Rural Communities Act 2006

40(1) Every public authority must, in exercising its functions have regard so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.

Section 85, Countryside and Rights of Way Act 2000

85(1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

Karin Grey, Sustainability Manager 3rd December 2020

F. Community Safety

No community safety issues arise as a result of this report

Section 17, Crime and Disorder Act 1998

17(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Terry Hughes, Community Safety Manager 2nd December 2020

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 a NDP.

Section 149, Equality Act 2010

149(1) A public authority must, in the exercise of its functions, have due regard to the need to –

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Abigayle Sankey, Corporate Governance Officer 4th December 2020

H. Data Protection

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

Article 5, General Data Protection Regulation 2016

1. Personal data shall be:
 - (a) processed lawfully, fairly and in a transparent manner in relation to the data subject;
 - (b) collected for specific, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
 - (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
 - (d) accurate and, where necessary, kept up to date;
 - (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;
 - (f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

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

The Council is committed to ensuring that privacy is protected and will only use and store the personal data collected through the consultations in line with the General Data Protection Regulations 2016 and the Data Protection Act 2018.

Jane Clarke, Head of Policy and Governance 4th December 2020

I. Health and Safety

No implications for Health and Safety.

J. Health and Wellbeing

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

- 1. Areas of deprivation: Will the proposal have an impact (positive or negative) on those living in areas of deprivation within the borough (40% most deprived in the country). These are Sherwood, Southborough and High Brooms, Broadwater and Rusthall.*
- 2. Healthier lifestyle opportunities: Will residents be more or less able to make healthier lifestyle choices such as physical activity (e.g. active travel, access to green spaces or access to leisure facilities), healthy eating (e.g. proximity or access to take away shops, allotments, food stores) and being smokefree*
- 3. Social and Community networks: Will the proposal make it easier for people to interact with one another e.g. encouraging community engagement*
- 4. Living and Working Conditions: does to proposal improve work or home environments, increase job, education or training opportunities, improve access to health services or housing*
- 5. General Socioeconomic, cultural and environmental conditions: Are there any other factors that may impact the above*

Rebecca Bowers, Health Improvement Team Leader 7th December 2020