

**Meeting: Council**

**Date: 19 June 2019**

**Wards Affected:** Churston with Galmpton (part), Furzham with Summercombe, Goodrington with Roselands (part), St Peter's with St Mary's

**Report Title:** Brixham Peninsula Neighbourhood Plan Adoption

**Is the decision a key decision?** Yes

**When does the decision need to be implemented?** On or before 26 June 2019

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## 1. Proposal and Introduction

- 1.1 The Brixham Peninsula Neighbourhood Plan (the Plan) was considered by Full Council on Thursday 15<sup>th</sup> November 2018 following an independent public examination. The Council agreed that the Decision Statement (considered with the Plan) shall be adopted and published and that the Plan, with Modifications agreed by that Council set out in the Decision Statement, be submitted to a Referendum.
- 1.2 That Referendum was held on Thursday 2<sup>nd</sup> May 2019 and the Returning Officer announced on Friday 3<sup>rd</sup> May 2019 that the result was:

Yes	5,570 (89%)
No	693 (11%)
Turn-out	39.3%

Therefore more than half of those voting voted in favour of the plan and accordingly the Plan has become part of the Development Plan, alongside the Local Plan. Council must now consider whether to Make (adopt) the Plan.

- 1.3 Linked with the making of Neighbourhood Plans is a change in the proportion of Community Infrastructure Levy (CIL).

## 2. Reason for Proposal

- 2.1 The Plan has been through the relevant statutory process including:
- Area designation
  - Pre-submission consultation
  - Submission
  - Publication consultation

- Independent Examination
- Plan Proposal decision
- Referendum

The next stage is to 'make' the Plan as part of the Development Plan for Torbay.

- 2.2 In accordance with the Planning and Compulsory Purchase Act 2004 Council are required to make (which means to adopt) a Neighbourhood Development Plan if more than half of those voting at a Referendum have voted in favour of the Plan, and if so, must make the Plan as soon as reasonably practicable after the Referendum is held but no longer than eight weeks.
- 2.3 Planning law indicates that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. All explanatory and justification text will be a material consideration.
- 2.4 Council can only decide to refuse the Plan at this stage if it considers that the making of the Plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).
- 2.5 Since the decision was made by Council in November 2018 to approve the Plan with modifications in accordance with the decision statement, the policy document and maps were updated to reflect the agreed changes.
- 2.6 At this stage of the process, no further changes are permitted to the Plan beyond correcting typographical errors and clarifying the version of the Plan for consideration, in this case removing references to Referendum and inserting adopted with the relevant date. The final version of the Plan, as agreed with the Neighbourhood Forum, is in Appendix 1.
- 2.7 Following Council's decision in November 2018, it was necessary to ensure that the changes were compatible with the Habitats Directive. This required further consultation with Natural England. The final Habitats Regulations Assessment (HRA) (including Appropriate Assessment) (March 2019), as prepared by Council officers and agreed by Natural England, is included in Appendix 2. Further documents relating to this are available on the Council's website, linked under Background Documents.
- 2.8 Natural England are satisfied that the proposals meet the Directive and do not raise any objections. In any case, the Local Authority remains responsible for ensuring compliance as the competent authority and hence members considering the matter in this report.
- 2.9 The Appendix 2 HRA states that it relates to the Referendum version of the Brixham Peninsula Neighbourhood Plan. As the Referendum version of the plan was approved by the community, and there have been no substantive changes from the Referendum version to the final version in Appendix 1 (as noted in para 2.6) the existing HRA remains both relevant and appropriate.
- 2.10 The Council has a duty to support communities who are preparing Neighbourhood Plans. The Regulations detail the Council's responsibilities. The Plan has been independently examined and agreed by Council to meet the Basic Conditions; it has been endorsed by the community at Referendum and has otherwise complied

with all the legal requirements of plan production. It is considered that the Plan meets European legislation and is compatible with the European Convention on Human Rights within the meaning of the Human Rights Act 1998.

- 2.11 There are a number of approaches to the Meaningful (Neighbourhood) Portion of Community Infrastructure Levy (CIL) that could be implemented. What is fixed is that, when made, each of the Plan areas will be due 25% of CIL receipts arising from permissions granted after the Neighbourhood Plans have come into force. Without Plans the areas were due 15%. Within the Brixham Town Council administrative area, this funding will be managed by them, transferred from Torbay Council to the Town Council at appropriate times. Outside of their administrative area, and within the Paignton and Torquay Neighbourhood Areas Torbay Council will remain responsible but must spend the funding in consultation with the community.

### **3. Recommendation(s) / Proposed Decision**

- 3.1 That, following the outcome of the Referendum held on 2<sup>nd</sup> May 2019:
- 3.1.1 the Brixham Peninsula Neighbourhood Plan Habitats Regulations Assessment (Appropriate Assessment) set out in Appendix 2 to the submitted report be approved;
  - 3.1.2 the Brixham Peninsula Neighbourhood Plan set out in Appendix 1 to the submitted report is made, with this report and the record of this meeting collectively forming the required Decision Statement, in accordance with s.38A(4) of the Planning and Compulsory Purchase Act 2004 (as amended) and the Neighbourhood Planning (General) Regulations 2012 (as amended).

### **Appendices**

Appendix 1: Brixham Peninsula Neighbourhood Plan

Appendix 2: Brixham Peninsula Neighbourhood Plan Habitats Regulations Assessment (Appropriate Assessment)

### **Background Documents**

Further documents relating to the Neighbourhood Plan, including the plan documents 3-10, the submission, consultation and examination, as well as the Habitats Regulations Assessment (Appropriate Assessment) are available to view at [www.torbay.gov.uk/brixham-np](http://www.torbay.gov.uk/brixham-np)

<b>Section 1: Background Information</b>	

1.	<p><b>What is the proposal / issue?</b></p> <p>The matter for consideration is whether the Council should make (or adopt) the Neighbourhood Plan as part of the Development Plan for Torbay, or whether there are reasons (in accordance with legislation) not to do so.</p>
2.	<p><b>What is the current situation?</b></p> <p>In November 2018, Council approved the Torquay, Paignton and Brixham Peninsula Neighbourhood Plans for Referendum.</p> <p>Those Referendums were held on 2<sup>nd</sup> May 2019 at which all three were supported by more than 50% of those voting.</p> <p>The next step for Council is to confirm the making (or adoption) of the Plans into the Development Plan for Torbay. This decision must be made, in accordance with the Neighbourhood Planning Regulations unless the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).</p>
3.	<p><b>What options have been considered?</b></p> <p>Options in relation to the content of the Plans were considered in November 2018. At this stage the only option is whether or not to make the Neighbourhood Plan.</p> <p>Discussions with Natural England following the November 2018 Council decision were positive and the completed Habitats Regulations Assessment (Appropriate Assessment) is provided with this report. This assessment confirms that the Plans, as put to Referendum and supported by the community, are not in breach and are not incompatible with relevant EU obligations.</p> <p>Officers are satisfied that the Plans are also not in breach or otherwise incompatible with other EU obligations or any of the Convention rights.</p>
4.	<p><b>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</b></p> <p>The Neighbourhood Plan is in general conformity with the Local Plan and both set out various policies which support the Ambition, Principles and Targeted Actions of the Corporate Plan.</p>
5.	<p><b>How does this proposal contribute towards the Council's responsibilities as corporate parents?</b></p>

	<p>Various policies set out within the Neighbourhood Plan seek to positively address this.</p>
6.	<p><b>How does this proposal tackle deprivation?</b></p> <p>Various policies set out within the Neighbourhood Plan seek to positively address this.</p>
7.	<p><b>How does this proposal tackle inequalities?</b></p> <p>Various policies set out within the Neighbourhood Plan seek to positively address this.</p>
8.	<p><b>How does the proposal impact on people with learning disabilities?</b></p> <p>Various policies set out within the Neighbourhood Plan seek to positively address health and wellbeing.</p>
9.	<p><b>Who will be affected by this proposal and who do you need to consult with?</b></p> <p>All residents, employees, and visitors in Torbay will be affected by Neighbourhood Planning as it will impact directly on the 'Place'.</p>
10.	<p><b>How will you propose to consult?</b></p> <p>Consultations have been completed (firstly by the Neighbourhood Forums and secondly by the Council), prior to the Referendum.</p>

## Section 2: Implications and Impact Assessment

### 11. What are the financial and legal implications?

The direct financial implication of making the Neighbourhood Plan will be in respect of the Community Infrastructure Levy (CIL). All receipts for development in the Neighbourhood Area, in relation to applications approved after the making of the Plan, will contribute 25% rather than the existing 15%. This funding will need to be spent in consultation with the community.

The Plan forms part of the statutory Development Plan. The Council is required by law to make planning decisions in accordance with the Development Plan unless material considerations indicate otherwise. For clarity, any decisions that are then appealed by applicants will be for the Council to defend and any costs associated with this will lie with the Council.

### 12. What are the risks?

There is a risk of legal challenge if the decision is not implemented given the outcome of the Referendum which is, subject to the EU obligations and Convention rights, binding on the Council.

Council can only decide to refuse the Plan at this stage if it considers that the making of the Plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998).

### 13. Public Services Value (Social Value) Act 2012

Not applicable.

### 14. What evidence / data / research have you gathered in relation to this proposal?

The Neighbourhood Forum gathered data, alongside that gathered for the Local Plan, to support the content of the Neighbourhood Plan.

### 15. What are key findings from the consultation you have carried out?

The outcome of the Referendum on 2<sup>nd</sup> May 2019 was:

Yes	5,570 (89%)
No	693 (11%)
Turn-out	39.3%

Earlier consultations provided various responses which were considered between the submission consultation, through examination, and the November 2018 Council meeting.

<b>16.</b>	<b>Amendments to Proposal / Mitigating Actions</b>  No substantive changes have been made since the November 2018 Council meeting. Minor typographical and formatting errors have been corrected in agreement with the Neighbourhood Forum. References to the 'Referendum Version' have also been removed or updated to ensure the Plan set out in Appendix 1 is the final version for adoption.

## Equality Impacts

17.	<b>Identify the potential positive and negative impacts on specific groups</b>		
The below information is based upon that presented within the Strategic Environmental Assessment submitted with the Neighbourhood Plan.			
	<b>Positive Impact</b>	<b>Negative Impact &amp; Mitigating Actions</b>	<b>Neutral Impact</b>
Older or younger people	The BPNP presents policies aimed at residential development, including affordable housing to meet assessed housing needs arising locally (BH2); furthermore, the BPNP seeks to provide affordable housing at the same proportion as the Torbay Local Plan. BPNP seeks to ensure affordable housing is occupied by residents of the Peninsula whose needs are not met by the market (Policy BH2); This should assist both Older and Younger people in the Peninsula gain access to affordable housing if needed.	To ensure that affordable housing provision is not lost, Affordable Housing will be made available to the 'Torbay Housing Waiting List' where Peninsula Persons cannot be found. BH1 restricts affordable housing Commuted Payments to be spent in the Brixham Peninsula. However, these sums may be released to fund affordable housing in Torbay after 3 years.	
People with caring Responsibilities	The BPNP presents policies aimed at residential development, including affordable housing to meet assessed housing needs arising locally; furthermore, the BPNP seeks to provide affordable housing at the same proportion as the Torbay Local Plan. BPNP seeks to ensure affordable housing is allocated to residents of		



	<p>the Peninsula whose needs are not met by the market (Policy BH2); This should assist both older and younger people in the Peninsula gain access to affordable housing if needed. This would include those coming/returning to the area to care for dependents (parents or children who have lived in the Peninsula for 10 years) residents of the Peninsula.</p>		
<p>People with a disability</p>	<p>The policies of the BPNP will bring a range of benefits for the health and wellbeing for residents</p> <ul style="list-style-type: none"> <li>• Supporting the retention of health and social care facilities (Policy HW1);</li> <li>• Promoting housing for key workers (including healthcare workers (Policy BH2); Policy BH9 exception sites will support the provision of rural exception housing locally, including for people with a disability where they are needed.</li> </ul> <p>Policy J1 allows for Change of Employment Land for purpose built accommodation for disabled.</p>		<p>Neutral</p>
<p>Women or men</p>			<p>Neutral</p>
<p>People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i></p>	<p>The BPNP presents policies aimed at residential development, including affordable housing, to meet assessed housing needs arising locally; furthermore, the BPNP seeks to provide affordable</p>		

	housing at the same proportion as the Torbay Local Plan. BPNP allows for 'exception' sites meeting the Criteria in BH9.		
Religion or belief (including lack of belief)			Note: The BPNP contains a Policy supporting operational space for voluntary support organisations, and ensuring that new developments do not jeopardise the activities of these organisations (Policy HW2); This may include Religious buildings.
People who are lesbian, gay or bisexual			Neutral
People who are transgendered			Neutral
People who are in a marriage or civil partnership			Neutral
Women who are pregnant / on maternity leave			Neutral
Socio-economic impacts (Including impact on child poverty issues and deprivation)	The BPNP presents policies aimed at residential development, including affordable housing, to meet assessed housing needs arising locally; furthermore, the BPNP seeks to provide affordable housing at the same proportion as the Torbay Local Plan. BPNP seeks to ensure affordable housing is allocated to residents of the Peninsula whose needs are not met by the market (Policy BH2); This should assist both		

		Older and Younger people in the Peninsula gain access to affordable housing if needed. Including those returning to care for older, dependents residents of the Peninsula.		
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	<p>The policies of the BPNP will bring a range of benefits for the health and wellbeing for residents:</p> <ul style="list-style-type: none"> <li>• Protecting local green spaces (Policy E4) and open spaces of public value (Policy E5), Promoting cycling and walking (Policy T1);</li> <li>• Supporting the retention of health and social care facilities (Policy HW1);</li> <li>• Increasing the availability of outdoor recreation and play space (Policy S&amp;L1); and integrating sport and recreational facilities into new residential developments (S&amp;L3); and</li> <li>• Promoting recreational facilities in new developments (Policy S&amp;L2)</li> </ul>		
<b>18</b>	<b>Cumulative Impacts – Council wide</b> (proposed changes elsewhere which might worsen the impacts identified above)	<p>The assessment has concluded that the current version of the Brixham Peninsula Neighbourhood Plan is likely to lead to significant positive effects in relation to the ‘population and community’ and ‘health and wellbeing’ sustainability themes. These benefits largely relate to the carefully targeted spatial approach proposed by the current version of the Plan, and the focus on enhancing community provision in the Neighbourhood Plan area.</p> <p>The Plan sites within the strategic context of the Torbay Local Plan 2012-2030. This should allow for Torbay wide/strategic issues be considered/mitigated where necessary.</p>		
<b>19</b>	<b>Cumulative Impacts – Other public services</b> (proposed changes	Where changes are made across other public services, those with spatial implications similarly have to be in accordance with the policies of the adopted development plan. As a consequence, the development		

	elsewhere which might worsen the impacts identified above)	management process should help to reinforce the positive impacts of development and ensure mitigation of any harmful effects.
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