

Report to: **Executive**

Date: **7 March 2024**

Title: **Brixton Neighbourhood Plan Modification**

Portfolio Area: **Planning – Cllr Thomas Deputy Leader of the Council**

Wards Affected: **Wembury and Brixton**

Urgent Decision: **N** Approval and clearance obtained: **N**

Date next steps can be taken: Upon the expiry of the Scrutiny Call-in period (5.00 pm on Monday 18th March 2024).

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RECOMMENDATIONS

That the Executive:

- 1. RECEIVES the Examiner’s report for the Brixton Neighbourhood Plan Modification set out at Appendix A.**
- 2. CONSIDERS each of the recommendations made by the report and the reasons for them.**
- 3. AGREES that the Brixton Neighbourhood Plan as proposed to be modified meets the Basic Conditions and is compatible with the Convention Rights, subject to the amendments recommended by the Examiner.**
- 4. APPROVES the ‘making’ (adoption) of the Brixton Neighbourhood Plan modifications as recommended to be amended by the Examiner, (as set out in the full plan attached at Appendix B).**
- 5. AUTHORISES the Assistant Director Planning to publish the Decision Statement set out at Appendix C.**

Executive summary

- 1.1 Neighbourhood Plans are a community right introduced by the Localism Act 2011. They are the responsibility of Parish Councils (or Neighbourhood Forums if established in non-parished areas).
- 1.2 The Brixton Neighbourhood Plan area (the plan area) was designated by the District Council in June 2015. It corresponds with the Brixton parish boundary but excludes the area of the parish that is part of the Sherford new community.
- 1.3 The Brixton Neighbourhood Plan (BNP) was 'made' (adopted) by the Council in November 2019. Brixton Parish Council has proposed a modification to the BNP to extend the geographic coverage of the areas subject to Policy Env4 Green Corridor and Policy Env6 Brixton Open Gap (there are no changes to the wording of the policies).
- 1.4 The proposed modifications have been subject to consultation and independent examination. The examiner has recommended some further amendments (see Appendices A and B) which the Parish Council has accepted. The examiner has also considered whether in the context of the neighbourhood plan as a whole, the proposed modifications are so significant or substantial as to change the nature of the plan, so a referendum would be required. The examiner is recommending that the modifications can be made without the need for a referendum.
- 1.5 The Parish Council has resolved to accept the examiner's recommended amendments (see Appendix D). Once 'made' (adopted) by the local planning authority, the modified policies will become part of the Development Plan for the plan area alongside the Plymouth and South West Devon Joint Local Plan.

2. Background

- 2.1 The BNP modification has been prepared by Brixton Parish Council in accordance with the relevant legislation and regulations.
- 2.2 The BNP Area was designated in June 2015 under the Neighbourhood Planning Regulations 2012. The area covers the administrative boundary of the Parish of Brixton, excluding the area designated for the development of the Sherford new community. Following two periods of consultation under Reg.14 and Reg.16 and examination the BNP was 'made' on the 28th November 2019 (Minute 43/19 refers).
- 2.3 The intention of Policy Env4 is that the Green Corridor will be maintained for visual and ecological significance to protect against further urban expansion east of Plymouth along the A379, and to safeguard the individual identities of Brixton village and the hamlets of Chittleburn and Combe. The open spaces comprising the Green Corridor are integral to maintaining the rural character of these

communities. The expansion in coverage will help to clarify the importance of the green corridors running through Brixton village in particular at the western and eastern ends of the village and the stepping stones of strategic planting that contribute to the green setting of the village.

- 2.4 Policy Env6 Brixton Open Gap is intended to protect the rural character to the north and west of the village. The proposed modification to the defined area will provide a clearer policy of protection to the western side of the village which has recently been subjected to a significant amount of development pressure. The extension to the policy area will address continued pressure that adds substantially to the cumulative impact of development outside of the defined village settlement boundary, which would adversely impact on the social wellbeing and character of the village as defined in Policy Env6. It will support the policy's aim of retaining the character and individual identities of Brixton village and the hamlets of Chittleburn and Combe to ensure that future development does not erode these qualities.
- 2.5 The Parish Council strongly supports the proposed modifications to the Brixton Open Gap and Green Corridors by amendments to Env Map 3, which will strengthen the protection of the open landscape which contributes to the rural character and general wellbeing of the parish community.
- 2.6 Following the necessary community engagement and consultation (six-week public consultation at Reg.14 stage in December 2022 to January 2023) the modification proposal was submitted to the Council in accordance with Reg.15. The Council formally consulted on the proposed modification (under Reg.16) from 8th September to 20th October 2023. The plan then proceeded to examination which commenced in November 2023.
- 2.7 The examiner's final report was produced on 2nd January 2024 (see Appendix A). It provides an independent examination of the proposed modification of the BNP and its process of preparation. Council officers provided feed-back and fact checking to the examiner on the draft report.
- 2.8 The examiner's report sets out the examiner's recommended amendments. These are required to ensure the plan meets the Basic Conditions. The examiner's recommendations are set out in sections 4.12 and 4.13 of the report.
- 2.9 The examiner's report concludes that the proposed modifications to the BNP, if amended in line with her recommendations, meet all of the statutory requirements including the Basic Conditions and that, subject to the recommended amendments, it is appropriate for the Council to 'make' the modified BNP as proposed. The examiner concluded that the changes to the area covered by Policy Env4 and inclusion of the additional land within the Brixton Open Gap (Policy

Env6) are acceptable, subject to amendments to the policy wording.

- 2.10 The examiner also considered the other policies in the plan, checking their clarity and compliance with the Basic Conditions. The examiner has recommended modifications to several other policies – to reflect the requirements of the latest NPPF and recent caselaw, for clarity and to meet the Basic Conditions. The examiner also recommends that all references in the plan to the Area of Outstanding Natural Beauty be updated to reflect the re-titling of such areas to National Landscape.
- 2.11 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. A neighbourhood plan meets the Basic Conditions if:
 - a. Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan;
 - b. The making of the plan contributes to the achievement of sustainable development;
 - c. The making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority;
 - d. The making of the plan does not breach, and is otherwise compatible with, retained EU obligations, and;
 - e. Prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the plan.
- 2.12 Notwithstanding the examiner's report, the Council must be satisfied that the BNP as proposed to be modified meets the Basic Conditions and is compatible with the European Convention on Human Rights (ECHR) and other European Union Obligations, or would do so if modifications were made to it.
- 2.13 The European Convention on Human Rights (ECHR) and other European Union Obligations are considered as the Neighbourhood Plan is required to take cognisance of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC. A Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) screening exercise was undertaken. This concluded that a full SEA was not required for the plan modification as its provisions did not undermine environmental, habitats or species considerations. The examiner was satisfied with that conclusion.
- 2.14 Council officers have considered the proposed modifications to the BNP and the examiner's report with regard to the Basic Conditions, including conformity with the development plan and national policy.

Officers accept the examiner's reasoning for her proposed amendments, agree that the Basic Conditions have been satisfied, and confirm that the plan can proceed to be 'made' (adopted). Brixton Parish Council has considered the examiner's report and resolved to accept the examiner's proposed amendments in their entirety and to support the plan as modified going forward to adoption (see Appendix D).

- 2.15 As a modification to an existing neighbourhood plan, there are additional considerations that need to be applied by virtue of Schedule 2A of the Planning and Compulsory Purchase Act 2004. Paragraph 10 states that the examiner must first determine whether the modifications are so significant or substantial as to change the nature of the plan. Such a determination would have the effect of triggering the need for a referendum, if the modified plan passes examination. The examiner concluded that the modifications will not change the nature of the plan and that, therefore, a referendum will not be required.
- 2.16 If the Executive is satisfied that the BNP meets the Basic Conditions, the European Convention on Human Rights, and other European Union Obligations the plan as proposed to be modified can proceed to adoption.

3. Outcomes/outputs

- 3.1 If the recommendation to 'make' (adopt) the BNP as proposed to be modified is agreed, the Council must, as soon as possible, publish the Decision Statement (see Appendix C), details of where and when the Decision Statement may be inspected, and the examiner's report.
- 3.2 Once 'made' by the local planning authority, the modified Neighbourhood Plan becomes part of the Development Plan for the area and will be used alongside the local plan to determine planning applications.
- 3.3 A successful outcome for this Neighbourhood Plan will provide encouragement to the other parishes that are currently working on preparing or modifying a Neighbourhood Plan.

4. Options available and consideration of risk

- 4.1 Given the view of Council officers and their recommendation that the Neighbourhood Plan meets the relevant conditions, it is considered that the Neighbourhood Plan should continue through the process as proposed.
- 4.2 If the Executive does not agree, then the options are to propose such modifications as the Executive considers would enable the plan as modified to meet the relevant conditions and therefore still

proceed to adoption; or to agree to the modifications to the plan not being 'made'.

- 4.3 In terms of risk, this relates to the potential for challenge through a Judicial Review to the Executive's decision that the plan does or does not meet the Basic Conditions or is compatible with the European Convention on Human Rights.

5. Proposed Way Forward

- 5.1 It is recommended that the Executive agrees to 'make' (adopt) the Brixton Neighbourhood Plan modification as recommended to be amended by the examiner.

6. Implications

Implications	Relevant to proposals Y/N	Details are set out in this report.
Legal/Governance	Y	The decision to proceed to 'make' (adopt) a Neighbourhood Plan is the responsibility of the Council and/or its Executive. The Brixton Neighbourhood Plan proposed modification has followed the procedure in the Neighbourhood Planning (General) Regulations 2012 and can now be 'made' subject to the examiner's recommended amendments.
Financial implications to include reference to value for money	N	There are no financial implications. Neighbourhood Plans are supported through the Government grants program.
Risk	Y	There is a risk of legal challenge on the Neighbourhood Plan process.
Supporting Corporate Strategy	Y	The Council's role in the Neighbourhood Plan process is a statutory duty. Neighbourhood Plans assist in delivering key themes in the Better Lives for All 2021, including: Adapting & mitigating climate change and increasing biodiversity; Protecting, conserving and enhancing the built and natural environment; Stimulating a thriving economy.
Climate Change - Carbon / Biodiversity Impact	Y	The Brixton Neighbourhood Plan aligns with the Joint Local Plan and contains policies aimed at mitigating the effects of climate change and impacts upon biodiversity.

Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	The Neighbourhood Plan has assessed Equality and Diversity implications as part of its background evidence.
Safeguarding	N	None.
Community Safety, Crime and Disorder	N	No direct implications.
Health, Safety and Wellbeing	Y	Positive outcomes are anticipated from the making of the Neighbourhood Plan's proposed modification.
Other implications	N	None.

Supporting Information

Appendices:

Appendix A: Brixton Neighbourhood Plan proposed modifications

Examiner's report.

Appendix B: The full Brixton Neighbourhood Plan as proposed to be modified.

Appendix C: Regulation 19 Decision Statement.

Appendix D: E-mailed letter from Brixton Parish Council following its meeting on 31st January 2024.

Background Papers:

Background documents to the Brixton Neighbourhood Plan are on-line at:-

<https://www.neighbourhoodplanning.swdevon.gov.uk/brixton>