

# ARUN DISTRICT COUNCIL

## URGENT REPORT TO AND DECISION OF FULL COUNCIL ON 9 MARCH 2022

**SUBJECT: To 'Make' the Barnham and Eastergate Neighbourhood Development Plan (Review) 2019-2031**

**REPORT AUTHOR:** Donna Moles (Senior Planning Officer)  
**DATE:** 2 March 2022  
**EXTN:** 37697  
**PORTFOLIO AREA:** Planning Policy

### **EXECUTIVE SUMMARY:**

The Barnham and Eastergate Neighbourhood Development Plan 2019-2031 passed Examination in October 2021. The Examiner of this modified Plan concluded that the Plan passed the Examination and that the material modifications do not change the nature of the Plan and it does not require a Referendum so should proceed to be 'made'. This Item was originally due to be discussed at the Full Council meeting on 26 January 2022 but was withdrawn on legal advice as there were Judicial Review Proceedings challenging the Plan. At the time of writing the proceedings are in the process of being withdrawn by mutual consent but have not yet been formalised by the Court.

This 'making' of the plan will give it legal force and it will form part of the statutory Development Plan for that area. Consequently, decisions on planning applications in the neighbourhood area will need to be made in accordance with the Neighbourhood Development Plan, unless material considerations indicate otherwise.

Council is being asked to accept this item as an urgent item as the next meeting of Full Council is not until 11 May 2022 and will prejudice the determinations of pending planning applications.

### **RECOMMENDATIONS:**

#### **It is recommended to Full Council that:**

- 1) It 'makes' the Barnham and Eastergate Neighbourhood Development Plan 2019-2031 to take effect on a date to be decided by the Director of Place following the Consent Order to be made by the Administrative Court and it then becomes part of the Development Plan for Arun District Council.

## **1. BACKGROUND:**

- 1.1 The Localism Act, which received Royal Assent on November 15 2011, introduced new rights and powers to allow local communities to shape new development by coming together to prepare Neighbourhood Plans and Orders. Neighbourhood forums and Parish Councils can use new Neighbourhood Planning powers to establish general planning policies for the development and use of land in a neighbourhood. These are described legally as 'Neighbourhood Development Plans'. They must meet a number of conditions before they can be put to a community referendum and legally come into force. These conditions are to ensure plans are legally compliant and take account of wider policy considerations (e.g. national policy).
- 1.2 Under the Town and Country Planning Act 1990 (as amended), the Local Planning Authority has a statutory duty to assist communities in the preparation of Neighbourhood Development Plans and Orders and to take Plans through a process of examination and referendum. The Localism Act 2011 (Part 6 chapter 3) sets out the Local Planning Authority's responsibilities under Neighbourhood Planning.
- 1.3 The Barnham and Eastergate Neighbourhood Development Plan relates to the area that was designated by Arun District Council as a neighbourhood area on 29th November 2012. This area is coterminous with the Barnham and Eastergate Parish Council boundary that lies within the Arun District Council Local Planning Authority Area.
- 1.4 The Barnham and Eastergate Neighbourhood Development Plan was examined by Mr Christopher Lockhart-Mummery QC, who passed the Plan and recommended Arun District Council should, subject to the modifications in the Examination report, proceed to be 'made' by Arun District Council. Following this, all the Examiner's modifications were agreed by Barnham and Eastergate Parish Council and Arun District Council.

## **2. PROPOSAL(S):**

- 2.1 There are 3 types of modification which can be made to a neighbourhood plan or order. The process will depend on the degree of change which the modification involves:
  - Minor (non-material) modifications to a neighbourhood plan or order are those which would not materially affect the policies in the plan or permission granted by the order. These may include correcting errors, such as a reference to a supporting document, and would not require examination or a referendum.
  - Material modifications which do not change the nature of the plan or order would require examination but not a referendum. This might, for example, entail the addition of a design code that builds on a pre-existing design policy, or the addition of a site or sites which, subject to the decision of the independent examiner, are not so significant or substantial as to change the nature of the plan.

- Material modifications which do change the nature of the plan or order would require examination and a referendum. This might, for example, involve allocating significant new sites for development.

2.2 Whether modifications change the nature of the plan is a decision for the independent examiner. The examiner will consider the nature of the existing plan, alongside representations and the statements on the matter made by the qualifying body and the local planning authority. Where material modifications do not change the nature of the plan (and the examiner finds that the proposal meets the basic conditions or would with further modifications) a referendum is not required.

2.3 The Examiner concluded '*I have reached the clear conclusion that the proposed Modifications (whilst in most cases material) are not so significant or substantial as to change the nature of the NP. Policy H1 proposes three sites for housing, totalling 117 dwellings. This exceeds the LP non-strategic provision of 75 dwellings (although Site 3 (42 dwellings) has planning permission). Existing policy H1 contained provisions to meet the then emerging LP. Amended Policy H1 reflects the LP in its adopted form. This updating does not, in my view, change the nature of the Plan. In reaching this conclusion, I have compared the entire Made Plan with the entire NP2.*' '*I accordingly Recommend that ADC makes NP2 subject to the above further Modifications*'. (extracts from the examiner's report – paras 30 and 52 respectively).

### 3. OPTIONS:

1. To 'make' the Barnham and Eastergate Neighbourhood Development Plan 2019-2031 to become part of the Development Plan for Arun District Council.  
Or
2. To not 'make' the Barnham and Eastergate Neighbourhood Development Plan 2019-2031 which would not become part of the Development Plan for Arun District Council.

### 4. CONSULTATION:

Various rounds of consultation has been undertaken as part of the Neighbourhood Plan process.

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council	x	
Relevant District Ward Councillors	x	
Other groups/persons (please specify) The community, Statutory bodies and relevant stakeholders as per the regulations	x	
5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)	YES	NO
Financial		x
Legal	yes	
Human Rights/Equality Impact Assessment		x
Community Safety including Section 17 of Crime & Disorder Act		x

Sustainability		X
Asset Management/Property/Land		X
Technology		X
Other (please explain)		X

**6. IMPLICATIONS:**

Once 'made', the Barnham and Eastergate Neighbourhood Development Plan will become part of the Development Plan for the District and will be used by the Council when determining planning applications for this area.

**Legal**

Council is being asked to accept this item as an urgent item as the next meeting of Full Council is not until 11 May 2022 and will prejudice the determinations of pending planning applications. At the time of writing, the Council and a Developer is in the process of formalising a Consent Order to withdraw the Judicial Review proceedings which had caused the Plan to be withdrawn from the January Full Council meeting.

**7. REASON FOR THE DECISION:**

Arun District Council as the Local Planning Authority under section 61E(4) of the 1990 Act, needs to bring a Neighbourhood Development Plan into force.

**8. BACKGROUND PAPERS:**

The web link provides the full information for the Plan and background of the Plan [Barnham and Eastergate neighbourhood development plan 2 | Arun District Council](#)