



CABINET: 12 September 2017

**EXECUTIVE OVERVIEW AND
SCRUTINY COMMITTEE:
28 September 2017**

Report of: Director of Development and Regeneration

Relevant Portfolio Holder: Councillor J Hodson

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**SUBJECT: BURSCOUGH PARISH NEIGHBOURHOOD PLAN REGULATION 14
PUBLIC CONSULTATION**

Wards affected: Burscough West, Burscough East and Scarisbrick (part of)

1.0 PURPOSE OF THE REPORT

1.1 To consider the Council's proposed response to being consulted by Burscough Parish Council on the draft Burscough Parish Neighbourhood Plan.

2.0 RECOMMENDATIONS TO CABINET

2.1 That, subject to 2.2 below, the proposed Council comments on the draft Neighbourhood Plan (provided at Appendix B) be approved as the Council's formal response to the Regulation 14 public consultation.

2.2 That authority is delegated to the Director of Development and Regeneration, in consultation with the Portfolio Holder for Planning, to make any necessary amendments to the Council's formal response following consideration of any agreed comments provided by the Executive Overview and Scrutiny Committee at its meeting on 28 September 2017.

2.3 That Call-In is not appropriate for this item as a report is being submitted to the next meeting of the Executive Overview and Scrutiny Committee on 28 September 2017.

3.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW AND SCRUTINY COMMITTEE

3.1 That the proposed comments on the draft Neighbourhood Plan (provided at Appendix B) be considered and any agreed comments be submitted to the Director of Development and Regeneration.

4.0 BACKGROUND

- 4.1 Neighbourhood planning is a way for communities to shape the future of the places where they live and work. It enables Parish Councils and Neighbourhood Forums to prepare planning policies, decide where they want new development, have their say in relation to design and indicate what infrastructure should be provided. The provisions for neighbourhood planning are set out in Part 6 of the Localism Act 2011 which amended the Town and Country Planning Act 1990. The Neighbourhood Planning (General) Regulations 2012 and subsequent amendments in 2015 and 2016 set out the detailed arrangements that Neighbourhood Planning needs to follow including the stages of preparing a neighbourhood plan. These have been supplemented by the Neighbourhood Planning Act 2017, which gained Royal Assent on 27 April and is progressively being brought into force.
- 4.2 The National Planning Policy Framework (NPPF) indicates that neighbourhood plans must be in general conformity with the strategic policies of the adopted Local Plan (in our case the West Lancashire Local Plan 2012-27) and should plan positively to support them. Importantly, neighbourhood plans should not promote less development than set out in the Local Plan or undermine its strategic policies. Once a neighbourhood plan is completed and brought into force it becomes part of the Development Plan for the area it covers, along with the Local Plan, meaning that it would be used in the determination of planning applications in that area and direct where future development takes place.
- 4.3 Formal public consultation is taking place upon the draft Burscough Parish Neighbourhood Plan between 11 August and 6 October 2017 and the draft Neighbourhood Plan and all the supporting evidence can be viewed at: <http://www.burscoughpc.co.uk/neighbourhood-plan.html>
- 4.4 This is currently the only neighbourhood plan in preparation in West Lancashire. Burscough Parish Council is responsible for preparing this plan and are referred to as the “qualifying body”. The local planning authority (LPA) has a statutory duty under Schedule 4B of the Town and Country Planning Act 1990 to support the Parish Council in the preparation of the plan (referred to as the duty to support). This requires the LPA to give advice or assistance, where appropriate, to facilitate the preparation of the Neighbourhood Plan.
- 4.5 At the start of the neighbourhood planning process the Regulations require the qualifying body to identify the area for which they intend to produce the Neighbourhood Plan. Following public consultation and consideration of comments from the community, West Lancashire Borough Council Cabinet approved the designated Burscough neighbourhood area on 11 November 2014. This area covers Burscough Parish which comprises Burscough West and Burscough East wards in entirety and part of Scarisbrick ward.
- 4.6 The Parish Council have subsequently been working on the preparation of the Neighbourhood Plan which requires them to gather information, develop proposals, engage with those in the area, identify and assess different options

and determine whether the plan is likely to have significant environmental effects. The Parish Council have engaged consultants Cass Associates and AECOM to assist in this process and have previously provided the Borough Council, as Local Planning Authority (LPA), with two confidential drafts of the Burscough Parish Neighbourhood Plan. Officers of the Council have subsequently met with representatives of the Parish Council and given advice to the Parish Council in writing in relation to the content of the draft Neighbourhood Plan and the evidence base used to inform the Plan as part of the "duty to support".

- 4.7 Whilst there is a general assumption that a neighbourhood plan is not likely to have a significant effect on a European habitats site, in this instance the Martin Mere Special Protection Area lies partly within the designated neighbourhood area. Given the presence of Martin Mere, in order to comply with European legislation the Borough Council produced a combined Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Opinion of an early draft of the neighbourhood plan and consulted upon it with Natural England, English Heritage and the Environment Agency. The conclusion of the Screening Opinion was that Strategic Environmental Assessment of the Neighbourhood Plan was required and that full HRA screening was needed. Subsequently, the Parish Council have engaged consultants, AECOM, to produce a SEA of the Neighbourhood Plan and views upon it are being sought as part of the current public consultation. The Borough Council also engaged consultants, Arcadis, to undertake the HRA Full Screening of the draft Neighbourhood Plan which concluded that none of the policies in the Plan were considered likely to have a significant effect on any European habitats site. This HRA Full Screening of the draft Neighbourhood Plan has recently been supplied to Natural England for their opinion.
- 4.8 The Neighbourhood Plan should contain policies that are deliverable and this requires them to be underpinned by robust evidence to support choices made whilst also engaging with landowners and infrastructure providers. Therefore, in addition to SEA and HRA, further evidence has been produced to inform the preparation of the plan. This includes the Big Burscough Survey that the Parish Council distributed to households in the Burscough parish area in April 2016 and which resulted in 501 responses. A Neighbourhood Steering Group was also set up and nine topic based theme groups established to look at specific issues such as housing, the village centre and industrial estates. The full list of evidence produced in connection with the Neighbourhood Plan is contained on the Parish Council's website.
- 4.9 As indicated at paragraph 4.3, in order to fulfil Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 (pre-submission consultation and publicity) formal public consultation upon the draft neighbourhood plan is taking place between 11 August and 6 October 2017. This stage of consultation is presently the responsibility of the Parish Council who have publicised it on their website and contacted statutory consultees, individuals and groups within the neighbourhood area. The Parish Council have been required to send a copy of the draft plan to the Borough Council as the LPA, to publicise it and to invite comments. The Borough Council therefore has the opportunity to submit representations to the Parish Council at this stage. The Parish Council will then consider all representations received, if necessary

amend the plan as a result and prepare a consultation statement before moving on to the next stage in the process.

- 4.10 The stages in the preparation of the Burscough Parish Neighbourhood Plan that have taken place or are currently taking place are therefore:

Stage 1: Defining the Neighbourhood Area

Stage 2: Preparing the Plan

Stage 3: Pre-submission publicity and consultation

Subsequent stages in preparation will be:

Stage 4: Submission of the Neighbourhood Plan to the local planning authority

Stage 5: Independent Examination

Stage 6: Referendum

Stage 7: "Making" the Neighbourhood Plan

- 4.11 Further details in relation to stages 4-7 are given under Section 6 'Next Steps' of this report including the Borough Council's responsibilities and options for progressing the Neighbourhood Plan. However, it is important to be aware that, when the Neighbourhood Plan is examined, the Examiner will be considering whether the Plan meets what are known as the "basic conditions", and so it is worth bearing these in mind as the draft Neighbourhood Plan is considered. The basic conditions that the Plan needs to meet are that it:

- has regard to national policies and advice;
- contributes to the achievement of sustainable development;
- is in general conformity with the strategic policies contained in the development plan for the area of the authority;
- does not breach, and is otherwise compatible with, EU obligations; and
- meets prescribed conditions and prescribed matters have been complied with.

5.0 THE NEIGHBOURHOOD PLAN PROPOSALS

- 5.1 The draft Burscough Parish Neighbourhood Plan (BPNP) covers the time period 2015 to 2027, which corresponds with the end of the adopted Local Plan period. The BPNP identifies issues and considerations for the neighbourhood area, a vision and objectives, a strategy, a key diagram, set of policies and sections dealing with plan delivery and implementation and plan monitoring and review. General conformity of neighbourhood plan policies with strategic and non-strategic policies of the adopted West Lancashire Local Plan (in the opinion of the Parish Council) are also considered. The BPNP contains 24 policies compared to the adopted West Lancashire Local Plan Development Plan Document's 26. Policies are grouped within 9 different topic areas which are: infrastructure, housing, employment, retail, visitor economy, transport, environment, design and community with a full list of policies being contained at Appendix A.
- 5.2 It is apparent that, in conjunction with their appointed consultant, Burscough Parish Council has put a significant amount of effort into the preparation of the draft BPNP and it looks to tackle a number of local issues. Infrastructure policies

seek to ensure that new development provides appropriate infrastructure including utilities and services. In this regard, surface and wastewater infrastructure capacity has been identified as a particularly important matter in the Parish. Employment Policy BPE1 looks to build upon the adopted Local Plan by setting criteria for uses to be permitted within the Burscough Industrial Estate in terms of design, highways and use class. Housing policies set a framework for new residential development within and outside the settlement boundary of Burscough and seek to facilitate the provision of an appropriate mix of house types and tenures. In terms of environment, a green space policy seeks to designate a Local Green Space (Richmond Park) in accordance with the National Planning Policy Framework as well as a suite of neighbourhood green spaces and give them strong policy protection from development. Two Opportunity Area policies, contained in the retail and community sections of the neighbourhood plan respectively, seek to establish a policy framework for future uses of sites at Lord Street (BPR2) and to the north and west of Station Approach / Bobby Langton Way (BPC2). These are the only site allocations that are additional to the adopted Local Plan; however, there are a number of site designations, for example the green space sites previously referred to that are additional to those of the Local Plan.

- 5.3 Whilst not containing planning policy, the Plan Delivery and Implementation section of the BPNP includes details of feasibility studies that the Parish Council will lobby to be undertaken in relation to large infrastructure projects. It includes increased capacity at New Lane WWTW and on the drainage and sewage infrastructure within the NPA; the electrification of the Ormskirk to Preston rail line; the provision of a pedestrian and cycle bridge over the canal adjacent to Heathfields; the provision of a pedestrian and cycle bridge over the Ormskirk to Preston rail line adjacent to Burscough Junction rail station; and the provision of a by-pass around the Burscough urban area. This section of the BPNP also indicates that the community wish to see land at Platts Lane Lakes developed into a country park. Given this section of the Neighbourhood Plan is not actual planning policy, the Borough Council does not need to raise significant concerns about this section.
- 5.4 However, where these aspirations of the Parish Council (referred to in paragraph 5.3 above) have been expressly included in some of the proposed planning policies, the proposed Borough Council comments do raise a concern about those policies, as such aspirations are not appropriate for inclusion in a planning policy as they are either not relevant to making a planning decision on an application and / or are not matters in the Parish Council's control and so should not be used to potentially restrict development consent.
- 5.5 In addition, the requirement for large scale proposals in the neighbourhood area of greater than 10 dwellings or in excess of 1,000 sq.m floorspace of non-residential development to present proposals to a Neighbourhood Design Review Panel (proposed in Policy BP11) is explained in this section. This requires applicants to produce an Infrastructure Delivery Statement under certain circumstances and would therefore need an amendment to the Borough Council's planning application validation checklist. The Parish Council also indicate that they intend to lobby for the appointment of a Burscough Town Centre Manager to develop a detailed strategy for the centre.

- 5.6 As referred to above, Borough Council officers have commented on previous drafts of the BPNP, focusing particularly on the proposed policies. Officer comments sought to identify where the Neighbourhood Plan policies were not complying with the basic conditions (especially where they are inconsistent with national policy and advice or strategic policies in the Local Plan). Unfortunately, the Parish Council have not taken on-board all those comments, although they did make amendments in response to some of the officer comments. As such, officers have some significant concerns about some of the policies in the draft BPNP and these will need to be raised formally through the public consultation process. Appendix B contains full details of the Council's proposed response to the draft BPNP including detailed comments in relation to policy content
- 5.7 Of the 24 policies in the draft BPNP, 19 can be supported by the Borough Council or supported subject to certain amendments, with those amendments generally relating to proposed policy wording that would not comply with the basic conditions and which the Parish Council could make without materially affecting the main thrust of the policy. However, there are five policies which officers would advise the Parish Council against including in the Neighbourhood Plan. Three of these are not needed at all either because they do not form planning policy, repeat existing national and / or local plan policy, or could be incorporated into another neighbourhood plan policy. The other two are infrastructure policies that should not be included in the neighbourhood plan as currently drafted, with the reason for this primarily being that they place requirements upon developers in terms of infrastructure provision which are the responsibility of statutory undertakers and which require betterment of infrastructure from developers that cannot be justified or legally required through planning. In particular, this issue relates to the foul water sewerage infrastructure, which is the responsibility of United Utilities, and is addressed by Policy BPI5, and to the requirement for an Infrastructure Delivery Statement in Policy BPI1.
- 5.8 It is essential that the concerns raised above, and which are detailed at Appendix B, are addressed because if the Parish Council continue as currently proposed and submit the Neighbourhood Plan to the Borough Council without addressing these concerns, it will not be compliant with the Local Plan or national policy and the Borough Council will be placed in the difficult position of having to reject the Neighbourhood Plan that has been submitted if it does not pass the Compliance Check (see 6.2 below) or, if it does pass the check, to proceed to Examination and voice our concerns to the Examiner in the hope that he/she will accept the concerns and address them.
- 5.9 It is vital these concerns are addressed as, once it has been through Examination, there are very limited options open to the Council to prevent the Neighbourhood Plan from moving forward to referendum and, once the Plan has been "made", policies within the Neighbourhood Plan take precedence in the area it covers over existing non-strategic policies of the adopted Local Plan, if those policies are in conflict. As such, if these concerns are not addressed through the preparation and examination of the Neighbourhood Plan (potentially leaving policies in the Plan that, in some cases, cannot be enforced) this would create difficulties for the Council in implementing those policies when making planning decisions. This could result in those decisions being subject to appeal

or judicial review and thus the Council would incur the costs associated with defending those decisions.

6.0 NEXT STEPS

6.1 Under the duty to support, the LPA is expected to continue to give proactive support to the Parish in their production of the Burscough Parish Neighbourhood Plan. Presently, this has entailed giving advice regarding the content of policies in earlier drafts of the Plan, sharing evidence, undertaking the SEA and HRA high level screening of the BPNP in house and commissioning consultants to undertake the full HRA Screening of the Plan. After submitting the Council's response to the current Regulation 14 public consultation, future Borough Council support will include the following.

Stage 4: Submission of the Neighbourhood Plan to the local planning authority.

6.2 The Parish Council submits the Plan along with other supporting documentation, including a consultation statement and a basic conditions statement to the Borough Council who undertake a compliance check with all relevant legislation and requirements. The compliance check primarily focuses on legal requirements. If the Plan satisfies this, the Borough Council must then publicise the Plan for a minimum of 6 weeks and invite representations, notify consultation bodies referred to in the consultation statement and (with agreement of the Parish Council) appoint an independent Examiner. There is also an opportunity for the LPA to formally respond again in relation to the content of the Neighbourhood Plan and this would then be considered by the Examiner at independent examination.

Stage 5: Independent Examination

6.3 The Borough Council submits the plan to the Examiner for examination which can take place by either written representations or hearing. The Examiner considers the Plan and then issues a report to the Parish Council and to the Borough Council, who must publish it. The Borough Council must consider the Examiner's report, and consider whether the Plan (as amended by the Examiner) meets legal requirements and the basic conditions and then produce a Decision Statement within 5 weeks of receipt of the Examiner's report.

6.4 In issuing the Decision Statement, there would appear to be the opportunity for the Borough Council to vary from an Examiner's individual recommendations, if necessary, due to the Borough Council being of the opinion that the Examiner's conclusions have not correctly considered the legal requirements or the basic conditions; however it would be advisable for the Council to seek legal opinion if that situation were to arise. If the Plan meets all requirements the LPA must subject it to a local referendum.

6.5 The legal requirements that the plan has to meet are:

- It is being submitted by a qualifying body.
- It sets out policies in relation to the development and use of land in the whole or any part of the neighbourhood area.
- It states the time period in which it is to have effect.
- The policies in the plan do not relate to excluded development, for example minerals and waste or nationally significant infrastructure projects.
- It does not relate to more than one neighbourhood area.

As discussed above, the basic conditions that the plan needs to meet are that it:

- Has regard to national policies and advice.
- Contributes to the achievement of sustainable development.
- Is in general conformity with the strategic policies contained in the development plan for the area of the authority.
- Does not breach, and is otherwise compatible with, EU obligations.
- Meets prescribed conditions and prescribed matters have been complied with. This means that the 'making' of the neighbourhood plan is not likely to have a significant effect on a European designated habitats site or European Offshore Marine site.

6.6 On the basis of the Regulation 14 version of the BPNP, officer's current view is that the plan would meet legal requirements but would have issues in meeting the first and third bullets of the basic conditions above.

6.7 In considering the Neighbourhood Plan the independent Examiner has the option of making one of three recommendations:

- That the plan should proceed to referendum on the basis that it meets all of the legal requirements;
- That the plan should proceed to referendum if modified; or
- That the plan should not proceed to referendum on the basis that it does not meet all of the legal requirements.

6.8 If the Examiner concludes that at this point the plan should proceed to referendum they must consider whether the area covered by the referendum should extend beyond the boundaries of the neighbourhood plan area.

6.9 The Neighbourhood Planning Act 2017 indicates that a local planning authority has to have regard to a 'post-examination', unmade neighbourhood plan as a material consideration in the determination of planning applications, and so once an Examiner has recommended that the Neighbourhood Plan should proceed to referendum in either of the first two recommendations provided above, the Borough Council would need to start having regard to the Plan in making planning decisions on planning applications.

Stage 6: Referendum

6.10 West Lancashire Borough Council would have to make arrangements for a referendum to take place within 56 days of the Decision Statement being agreed and published, publicise the referendum and then polling would take place and a result declared. Those entitled to vote upon whether the 'making' (see below) of

the plan should be supported are those entitled to vote in a local election and living in the neighbourhood area (or the extended referendum area as appropriate). The referendum would ask a simple question such as:

"Do you want West Lancashire Borough Council to use the Burscough Parish Neighbourhood Plan to help it decide planning applications in the neighbourhood area?"

Stage 7: 'Making' the Neighbourhood Plan

- 6.11 If the majority of those who vote in a referendum are in favour of the draft neighbourhood plan then the plan must be "made" (brought into legal force) by the Borough Council within 8 weeks of the date of the Referendum. The Neighbourhood Planning Act 2017 indicates that prior to a draft neighbourhood plan being 'made' after succeeding at referendum, it automatically forms part of the development plan, but it would not continue to do so if the Borough Council were to decide it should not be 'made'. However, there are limited circumstances where the Borough Council could decide not to make the Neighbourhood Plan, which are where it considers that the plan would breach, or otherwise be incompatible with, any EU or human rights obligations. The Borough Council is allowed to modify a neighbourhood plan that has been 'made' for the purpose of correcting errors. In that instance, the Parish Council would need to agree to any modifications.

7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 7.1 A Strategic Environmental Assessment has been undertaken on the draft plan which indicates that there would be largely positive effects and no negative effects from the policies it contains. There is no statutory requirement to undertake a Sustainability Appraisal in this instance. However, in order to meet the 'basic conditions' at the next stage of plan preparation (submission) it will need to be demonstrated that the plan contributes to the achievement of sustainable development. There would be no significant impact on crime and disorder.

8.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 8.1 The Borough Council's duty to support the preparation of the Burscough Parish Neighbourhood Plan will have financial and staff resource implications which are unable to be precisely defined at present. A total grant of £25,000 of funding is potentially available to the local authority from DCLG to enable fulfilling our statutory duty to support. However, £20,000 of this can only be claimed once the Neighbourhood Plan has been successfully examined and the date for a local referendum has been set. The Borough Council previously received the remaining £5,000 following the neighbourhood area designation in 2014.
- 8.2 Therefore, the Council must first incur significant costs for public consultation and the examination, at risk, and can only claim the remaining £20,000 if the Neighbourhood Plan is successful at examination and proceeds to a referendum. In addition, while the £25,000 might ultimately cover the costs of public

consultation and examination, it will not cover the costs of the Referendum or the officer resource utilised in supporting the preparation of the Plan. It is estimated that the Referendum (assuming it only covers the Parish of Burscough) would cost at least £18,000.

- 8.3 A further financial consideration is that, once a Neighbourhood Plan is "made", 25% of any CIL income received from applications determined after the Plan is made must be passed to the Parish Council, as opposed to the 15% that is currently passed to the Parish Council. Depending on the nature and size of applications that are granted after the Plan is made, this could mean a significant sum of CIL monies being redirected from strategic infrastructure (where funding decisions are made by the Borough Council) to local infrastructure in Burscough Parish (decided upon by the Parish Council).

9.0 RISK ASSESSMENT

- 9.1 This report seeks a decision in relation to the Borough Council's response to public consultation upon the draft Burscough Parish Neighbourhood Plan which has been produced by Burscough Parish Council. As such, it does not require a formal risk assessment and no changes have been made to risk registers.
- 9.2 However, there are clearly risks to the Council associated with the Neighbourhood Plan related to the financial implications of its preparation (covered in section 8.0 above) and in relation to the possibility that even after an Examination, certain policies or policy wording might remain in the Neighbourhood Plan that the Council is not supportive of but which would then form part of the Development Plan for the Borough and have to be used in planning decisions related to applications in the Parish of Burscough. While it would be hoped the Borough Council's major concerns (such as those relating to Policies BPI1 and BPI5) would be addressed by an Examiner, there is the risk that they may not be, and the Borough Council has limited abilities to remove those policies after examination and may incur significant legal costs having to deal with these policies.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is a direct impact on members of the public, employees, elected members and / or stakeholders. Therefore, an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report.

Appendices

Appendix A – List of Burscough Parish Neighbourhood Plan policies

Appendix B – Proposed West Lancashire Borough Council comments to be incorporated into a response to the Burscough Parish Neighbourhood Plan Regulation 14 public consultation

Appendix C – Equality Impact Assessment

Appendix D – Minute of Cabinet on 12 September 2017 [Executive Overview & Scrutiny Committee only]

APPENDIX A

LIST OF BURSCOUGH PARISH NEIGHBOURHOOD PLAN POLICIES

Infrastructure

- BPI 1: Infrastructure and Development
- BPI 2: Infrastructure Provision
- BPI 3: High Quality Communications Infrastructure
- BPI4: Sustainable Drainage System
- BPI5: Foul Water Sewerage System

Housing

- BPH1: New Residential Development
- BPH 2: Housing Mix

Employment

- BPE1: Burscough Industrial Estate

Retail

- BPR1: Burscough Centre
- BPR2: Lord Street Opportunity Area

Visitor Economy

- BPVE1: Visitor Economy

Transport

- BPT1: Transport and Development
- BPT2: Environmental Improvement Corridors
- BPT3: Car Parking
- BPT4: Sustainable Transport Routes

Environment

- BPEV1: Local Green Space
- BPEV2: Local Heritage Assets
- BPEV3: Neighbourhood Heritage Areas

Design

- BDP1: Development and Design Principles
- BPD2: Development and Accessibility Principles
- BPD3: Detailed Design Elements
- BPD4: Microgeneration

Community

- BPC1: Community Infrastructure
- BPC2: Community Hub Opportunity Area

