

Brighton & Hove City Council

Council

Agenda Item 46

Subject: Brighton Marina Neighbourhood Plan – Decision Statement

Date of meeting: 24 October 2024

Report of: Corporate Director City Services

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Ward(s) affected: Whitehawk & Marina

For general release

1. Purpose of the report and policy context

- 1.1 The examination into the Brighton Marina Neighbourhood Plan has now been completed and the Examiner's report has been published. Subject to several modifications, the Examiner recommends that the Plan can proceed to two local referendums.
- 1.2 This is the third Neighbourhood Plan in the city to have reached this final stage. The Council must now publish a Decision Statement setting out what actions it intends to take in response to each of the examiner's recommendations. A proposed Decision Statement is included at Appendix 1 of this report. All proposed modifications have been discussed with and agreed by the Brighton Marina Forum.
- 1.3 Members are therefore asked to agree the Examiner's recommendations for modifications to the Neighbourhood Plan and publish the Council's Decision Statement. As the Neighbourhood Area is designated as a Business Area, the amended Plan will then be subject to two local referendums (one for local residents and one for local businesses) to be held within the Brighton Marina Neighbourhood Area.

2. Recommendations

That Council agrees to:

- 2.1 Determine that the Marina Neighbourhood Plan be modified according to the recommendations in the independent examiner's report and as set out in the attached Decision Statement (Appendix 1) and that the Decision Statement be published.
- 2.2 To approve the examiner's recommendation that the Neighbourhood Plan now proceed to two local referendums. The referendum area is the Brighton Marina Neighbourhood Area.

- 2.3 In the event that more than 50% of residents and 50% of businesses vote to support the Neighbourhood Plan in the two referendums, that the Council formally 'makes' the Brighton Marina Neighbourhood Plan.

3. Context and background information

The Neighbourhood Plan examination

- 3.1 Brighton Marina Neighbourhood Forum submitted their draft Neighbourhood Plan to the council in November 2023. The council published the draft Neighbourhood Plan and supporting documents for public consultation in accordance with Regulation 16 of the Neighbourhood Planning Regulations over a 6-week period from 5 February to 18 March 2024.
- 3.2 The then Culture, Heritage, Sport, Tourism & Economic Development Committee on 18 April 2024 agreed council officer comments in response to the Regulation 16 consultation and that the draft plan should be submitted for examination. Council officers then appointed a neighbourhood plan examiner and the Brighton Marina Neighbourhood Plan examination commenced on 20 May 2024.
- 3.3 The role of the Neighbourhood Plan examiner is to assess whether the Neighbourhood Plan meets certain legal requirements known as 'Basic Conditions'. These state that Neighbourhood Plans should:
- i) Have regard to national policies and advice contained in guidance issued by the Secretary of State;*
 - ii) Contribute to the achievement of sustainable development,*
 - iii) Be in general conformity with the strategic policies contained in the development plan for the area (i.e. the City Plan); and*
 - iv) Not breach, and otherwise be compatible with, EU obligations.*
- 3.4 The Examiner's initial assessment of the Plan identified several matters seeking further clarification and information. These matters concerned points of clarification regarding the council's Local Development Scheme and also the date of adoption of the City Plan Part Two. The Examiner also asked the Forum to clarify how they had addressed comments from the City Council at the Draft Plan Regulation 14 consultation stage in their revised submission plan. Full details are contained within the Examiner's Report and are set out as part of the Decision Statement. The City Council and Marina Forum responded jointly on these matters.
- 3.5 The examiner issued his final report on 15 August 2024, and this has been published on the Council's website. The report concludes that, subject to several recommended modifications, the Brighton Marina Neighbourhood Plan meets the Basic Conditions and can proceed to two referendums.
- 3.6 The plan is subject to two referendums, one for businesses and one for residents due to the Neighbourhood Area's designation as a 'business area'. For business areas, a 'yes' vote of more than 50% is required in both the residential and business referendums. If there is a different result from the

business referendum and the residential referendum, the local planning authority will decide whether to bring the plan into force.

- 3.7 The examiner is also required to consider what is the appropriate referendum area if the Council decides that the Plan should proceed to that stage. In his report, he concludes that the referendum's area should not extend beyond the designated area to which the plan relates.

Brighton Marina Plan Content

- 3.8 The Marina Neighbourhood Plan addresses a Plan period from 2023 to 2030. The Plan seeks to introduce policies that will achieve higher standards of development within the Marina, as evident through the Plan's Vision and Objectives.
- 3.9 The draft Plan contains eight policies (Policies BM1-BM8), which address Design; Public Realm/Open Spaces; Connectivity; Residential Development; Natural Environment/Marine Wildlife; Cafés, Restaurants, Retail Facilities and Other Commercial Facilities; Energy Use, Waste Minimisation and Recycling; and Community Facilities. The aim of policies is to achieve high quality design and improved outcomes from development in terms of public realm, open spaces and better connectivity and accessibility for all users at the Marina area

Council actions – next steps

- 3.10 The Council must publish a Decision Statement setting out what actions it determines to take in response to each of the examiner's recommendations. Appendix 1 of this report sets out the proposed Decision Statement with each of the examiner's recommended modifications to the Plan along with his reasons. It addresses each of the examiner's recommendations. The examiner's proposed modifications have been discussed and agreed with Brighton Marina Forum.
- 3.11 The Council must also decide whether to send the Plan, as modified to two local referendums and to agree the examiner's recommendations about the referendum area. In accordance with the relevant legislation, the two referendums must be held within a period of 84 days from the Council's decision (excluding Saturdays, Sundays, bank holidays, Christmas Eve, Christmas Day¹).
- 3.12 If the Neighbourhood Plan is supported by more than 50% of those voting in both the business and resident referendums, it then comes into force as part of the statutory development plan for the Brighton Marina Neighbourhood Area and it will be used alongside the adopted City Plan to make planning decisions. The Neighbourhood Plan must be formally 'made' (i.e., adopted) by the Council within a further 8 weeks of both referendum dates. If there is a different result from the business referendum and the residential referendum, the council must then decide whether to bring the plan into

¹ [The Neighbourhood Planning \(Referendums\) \(Amendment\) Regulations 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

force. In this event a further report would be brought to Full Council to make a decision.

- 3.13 Appendix 2 presents a tracked changes update of the Neighbourhood Plan highlighting all the modifications recommended by the Examiner and the updates to the supporting text agreed between the Council and the Marina Forum. Appendix 3 shows these amendments accepted as the final 'Referendum Version' of the Neighbourhood Plan.
- 3.14 The implication of the Neighbourhood Plan being 'made' is that it will then form part of the statutory development plan for the Neighbourhood Area and be used to determine planning applications for those within the Marina area.

4. Analysis and consideration of alternative options

- 4.1 The Council is not bound by the Examiner's recommendations and is able to make a decision which differs from that recommended by the Examiner. The Council is required by the legislation to make its own decision regarding whether the draft neighbourhood plan meets or could meet, following modification, the basic conditions and legal requirements.
- 4.2 The Council could decide that the plan does not meet the basic conditions and legal requirements and cannot be modified to do so. This is not considered to be a practical option, as the examiner's recommendation is clear that the plan meets the legal requirements and can be modified to meet these requirements. The Neighbourhood Forum have also accepted these recommendations.
- 4.3 The Council could decide that the plan meets the basic conditions and legal requirements without the need for the modifications recommended by the examiner. This is also not considered a possible option. The examiner has set out clear reasoning for why the modifications are necessary. Several of the recommendations are small changes that ensure the plan is clear and consistent with national planning policy and the City Plan. In other instances, changes to the plan directly address elements of the plan that council officers had already identified as requiring modification at the Regulation 16 consultation.
- 4.4 While the Council is not bound by the Inspector's recommendations, a failure to accept them without good reason runs the risk of legal challenge and/or intervention by the Secretary of State.
- 4.5 If the Council wishes to depart from any of the Examiner's recommendations it must notify relevant people and invite representations. Any representations must be submitted within six weeks of the Council inviting representations. It is also possible for the Neighbourhood Forum to request intervention from the Secretary of State. Once the consultation is complete, the Council may then refer the issue(s) to further independent examination if it considers it appropriate. The Council must issue its final decision within five weeks. The Neighbourhood Plan would then be revised and sent to referendum.

- 4.6 If the plan only gathers majority support at one referendum, the council must then decide if the plan should be made (i.e. adopted). National Planning Policy Guidance suggest that councils are advised to set out its decision-making criteria in this scenario in advance of the referendum taking place.
- 4.7 In such circumstances the council would take into consideration the following factors:
- how close the result is in each referendum (i.e. did one referendum have a much larger majority voting one way than the other); and
 - the level of turnout in each referendum (i.e. percentage of eligible voters who voted in the relevant referendum).

5. Community engagement and consultation

- 5.1 The Neighbourhood Planning Regulations do not make any provision for public consultation on modifications to the Plan recommended by the examiner which the Council is minded to accept. As noted above, the Council is required to undertake public consultation if it wishes to depart from the examiner's recommendations.
- 5.2 Community engagement and consultation has been undertaken at earlier stage of the Neighbourhood Plan preparation process. Community engagement was undertaken by the Neighbourhood Forum in preparing the Plan.
- 5.3 Full details of the consultation and community engagement undertaken by the Neighbourhood Forum were set out in a Consultation Statement and its Appendices 1-12 which was submitted to the Council and formed one of the supporting documents to the Neighbourhood Plan.
- 5.4 The preparation of the Plan began in June 2017 with the formation of a Neighbourhood Plan Steering Group. Initial efforts focused on creating a Vision Statement, adopted in September 2018, followed by the appointment of a planning consultant in November 2018. A Community Survey conducted from September to October 2019 gathered input from 150 respondents. The draft Plan was further developed in 2020 and 2021, and underwent SEA and HRA screening by the City Council in early 2022
- 5.5 The draft Plan underwent Regulation 14 consultation from November 2022 to January 2023, receiving 46 responses. After incorporating feedback, the Plan was submitted to the City Council in November 2023 and underwent further consultation under Regulation 16 in early 2024, receiving 51 responses before being examined. The draft Plan and supporting documents were published on the Council website, an email was sent to all consultees on the Planning Policy database (which includes the national statutory bodies and a wide range of local stakeholders) and all city councillors were informed. In addition, the Neighbourhood Forum were requested to email all consultees who had commented on the Plan at the earlier Regulation 14 stage (as is specifically required by the Regulations).

6. Conclusion

- 6.1 The Brighton Marina Neighbourhood Plan has taken several years to reach this stage but is now nearing its conclusion. The Neighbourhood Forum is to be commended on all its hard work on reaching this stage.
- 6.2 Overall, the examiner considers that the Plan as modified will meet the required 'Basic Conditions' and make a positive contribution to sustainable development, promoting economic growth, supporting social wellbeing, whilst conserving the natural and historic environment within the Neighbourhood Plan area.
- 6.3 Members are therefore recommended to agree all the modifications to the Plan as set out in the examiner's report and to approve his recommendation that the Neighbourhood Plan proceed to the two local referendums subject to the modifications set out in the Council's Decision Statement.
- 6.4 If the results of both the referendums are over 50% in favour of the Neighbourhood Plan, it is recommended that Members agree that the Neighbourhood Plan is thereafter formally made and adopted by the Council.

7. Financial implications

- 7.1 There are no direct financial implications from the recommendations of this report. The Neighbourhood Plan referendum will be organised and administered by the City Council's Electoral Services team with costs of the referendum charged to planning services. The Council is entitled to claim £20,000 from the Government (Ministry of Housing, Communities and Local Government) once it has set a date for the referendums to cover the costs charged to planning. Any significant variations to budget will be reported as part of the council's monthly budget monitoring process.

Name of finance officer consulted: John Lack Date consulted: 19/09/24

8. Legal implications

- 8.1 The designation of Neighbourhood Areas, Forums, and the making of Neighbourhood Plans, are governed by the sections within the Planning and Compulsory Purchase Act 2004, and the Town and Country Planning Act the Neighbourhood Planning (General) Regulations 2012 (as amended). It is a requirement of Regulation 18(2)(a) of the Neighbourhood Planning Regulations 2012 (as amended) that local authorities publish a Decision Statement setting out how they intend to respond to an examiner's recommendations.
- 8.2 If supported at referendum, the Brighton Marina Neighbourhood Plan will become part of the statutory Development Plan and its policies will be used alongside those in the adopted City Plan.

- 8.3 Following a vote of over 50% for both referendums in favour of the Neighbourhood Plan, local authorities are required to publish a Decision Statement explaining the Council's decision and its reasons to formally 'make' (i.e. adopt) the Neighbourhood Plan.
- 8.4 If the result of the two referendums are that only one votes in favour of the Plan (over 50%), the Council will need to make a decision as to whether to adopt the Plan and give reasons. This would be the subject of a further report to Full Council.
- 8.5 Adoption of the Neighbourhood Plan will be done via an Adoption Statement published on the council's website which will publicise the referendum results, and pursuant to Regulations 20 of the Neighbourhood Planning (General) Regulations 2012 formally confirm the 'making' of the Brighton Marina Neighbourhood Plan. The Council will also contact all relevant stakeholders to inform them that the Plan has been made.

Name of lawyer consulted: Katie Kam Date consulted 16/09/24:

9. Equalities implications

- 9.1 The Equality Act 2010 places a duty on all public authorities in the exercise of their functions to have regard to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations between persons who have a "protected characteristic" and those who do not. This duty applies to the Council when taking formal decisions about the neighbourhood plan process.
- 9.2 The Neighbourhood Plan has been prepared through an extensive process of local community engagement which is set out in detail in the Forum's Consultation Statement (which was submitted alongside the draft Plan) and is summarised in section 5 above. The Plan is also required to be in general conformity with the City Plan (which has been subject to Equalities Impact Assessment). As part of the submission of the plan to the council, the Neighbourhood Forum also submitted their own Equalities Impact Assessment (see background document 3 to this report).

10. Sustainability implications

- 10.1 The purpose of the planning system is to contribute to the achievement of sustainable development and one of the 'Basic Conditions' against which neighbourhood plans are tested is that they should contribute to this.
- 10.2 To meet UK environmental regulations, the draft Plan was screened for Strategic Environmental Assessment (SEA) and Habitats Regulation Assessment (HRA) by the City Council in a document dated April 2022. The Screening Report concludes that the Plan is unlikely to give rise to significant environmental effects and therefore that SEA is not required. The Environment Agency, Historic England and Natural England were consulted on the draft Screening Report during March 2022, and they each concluded that the preparation of a SEA is not required. The examiner concludes that

the Plan has been prepared with regard to achieving the principles of delivering sustainable development as identified in the Basic Conditions Statement and, subject to his recommended modifications and if approved at referendum, would assist in delivering sustainable development within the Neighbourhood Area.

Supporting Documentation

1. Appendices

1. Brighton Marina Neighbourhood Plan – Council Decision Statement
2. Brighton Marina Neighbourhood Plan 2023-2030: Submission Draft showing proposed modifications as tracked changes.
3. Brighton Marina Neighbourhood Plan 2023-2030: Referendum Version

2. Background documents

1. Brighton Marina Examiners Report – 15 August 2024 <https://www.brighton-hove.gov.uk/sites/default/files/2024-08/Brighton%20Marina%20NDP%20Examiner%20Report%20150824.pdf>
2. Brighton Marina Consultation Statement - 2023
https://www.bmnf.org.uk/files/ugd/f3b05a_d995610e21ce4948aa134e23878ff0bd.pdf
3. Brighton Marina Equalities Impact Assessment
https://www.bmnf.org.uk/files/ugd/f3b05a_20c6b6b119a3474686dde8b8981d576d.pdf