

BRYNING WITH WARTON NEIGHBOURHOOD PLAN

Bryning with Warton Neighbourhood Plan Examination,
A Report to Fylde Borough Council

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1. Introduction

The Neighbourhood Plan

This Report provides the findings of the examination into the Bryning with Warton Neighbourhood Plan (referred to as the Neighbourhood Plan).

Neighbourhood planning provides communities with the power to establish their own policies to shape future development in and around where they live and work.

“Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.”

(Paragraph 183, National Planning Policy Framework)

The Neighbourhood Plan was produced by a Steering Group working on behalf of Bryning with Warton Parish Council. Bryning with Warton Parish Council is the *qualifying body* responsible for the production of this Neighbourhood Plan. This is in line with the aims and purposes of neighbourhood planning, as set out in the Localism Act (2011), the National Planning Policy Framework (2012) and Planning Practice Guidance (2014).

This Examiner’s Report provides a recommendation as to whether or not the Neighbourhood Plan should go forward to a Referendum. Were it to go to Referendum and achieve more than 50% of votes in favour, then the Plan would be *made* by Fylde Borough Council. The Neighbourhood Plan would then be used to determine planning applications and guide planning decisions in the Bryning with Warton Neighbourhood Area.

Role of the Independent Examiner

I was appointed by Fylde Borough Council, with the consent of the qualifying body, to conduct an examination and provide this Report as an Independent Examiner. I am independent of the qualifying body and the local authority. I do not have any interest in any land that may be affected by the Neighbourhood Plan and I possess appropriate qualifications and experience.

I am a chartered town planner and an experienced Independent Examiner of Neighbourhood Plans. I have extensive land, planning and development experience, gained across the public, private, partnership and community sectors.

As the Independent Examiner, I must make one of the following recommendations:

- a) that the Neighbourhood Plan should proceed to Referendum, on the basis that it meets all legal requirements;
- b) that the Neighbourhood Plan, as modified, should proceed to Referendum;
- c) that the Neighbourhood Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.

If recommending that the Neighbourhood Plan should go forward to Referendum, I must then consider whether or not the Referendum Area should extend beyond the Bryning with Warton Neighbourhood Area to which the Plan relates.

In examining the Plan, I am also required, under Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990, to check whether:

- the policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of Section 38A of the Planning and Compulsory Purchase Act (PCPA) 2004;
- the Neighbourhood Plan meets the requirements of Section 38B of the 2004 PCPA (the Plan must specify the period to which it has effect, must not include provision about development that is excluded development, and must not relate to more than one Neighbourhood Area);
- the Neighbourhood Plan has been prepared for an area that has been designated under Section 61G of the Localism Act and has been developed and submitted for examination by a qualifying body.

Subject to the content of this Report, I am satisfied that all of the above points have been met.

Neighbourhood Plan Period

A neighbourhood plan must specify the period during which it is to have effect. The Neighbourhood Plan is unclear in this regard.

There are various references to the Neighbourhood Plan providing policies up to the year 2030, but there is no clarity with regards the Neighbourhood Plan's start date. To add to the confusion, according to the Basic Conditions Statement:

"The proposed Neighbourhood Plan states the period for which it is to have effect. That period is from the Plan being made up to 2030 (the same period as the emerging Fylde Local Plan)" (Basic Conditions Statement, page 4).

However, the emerging Fylde Local Plan runs from 2011 to 2032.

As above, it is a requirement for a neighbourhood plan to specify its plan period. Given that there is a stated intention to cover the same period as the emerging Fylde Local Plan, I recommend:

- **Cover page, replace "2030" with "2011-2032"**
- **Page 16, replace "... - and that is up to 2030." with "... - consequently, the plan period for this Neighbourhood Plan is 2011 to 2032."**
- **Page 16, replace "...up to 2030." with "...between 2011 and 2032."**
- **Page 32, delete "2014 – 2030"**
- **Page 33, third line, delete "...to 2030"**
- **Page 47, 5th line, add "...Local Plan to 2032."**
- **Page 48, delete "(eg by using an end date of 2030)"**
- **Page 52, replace "2030" with "2032"**

Subject to the above recommendations, the Neighbourhood Plan satisfies the relevant requirement in this regard.

Public Hearing

According to the legislation, *when the Examiner considers it necessary* to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case, then a public hearing must be held.

However, the legislation establishes that it is a general rule that neighbourhood plan examinations should be held without a public hearing – by written representations only.

Further to consideration of all of the relevant information, I confirmed to Fylde Borough Council that I was satisfied that the Bryning with Warton Neighbourhood Plan could be examined without the need for a Public Hearing.

Public hearings are held at the discretion of the Examiner. The Examiner's role is simply to test the submitted neighbourhood plan against the Basic Conditions. I have done this and set out my recommendations in this Report. I am satisfied that there have been plentiful opportunities for people to have their say; and I am also satisfied that I have sufficient information to ensure adequate examination of the Neighbourhood Plan.

I refer to there being a substantial time gap between the Submission period and the Examination of the Neighbourhood Plan later in this Report. Given this, it is relevant to point out that public hearings for neighbourhood plans are entirely different to those for say, Local Plan examinations, or to public inquiries. When held, they simply support the process of the examination of the neighbourhood plan against the basic conditions. As above, I have found this to be unnecessary in the case of the Bryning with Warton Neighbourhood Plan.

I note that various detailed information relating to a planning application in the Neighbourhood Area has been provided. I have considered all relevant information as part of this examination and point out, again, that this Report comprises an examination of the Bryning with Warton Neighbourhood Plan against the basic conditions.

2. Basic Conditions and Development Plan Status

Basic Conditions

It is the role of the Independent Examiner to consider whether a neighbourhood plan meets the “basic conditions.” These were *set out in law*¹ following the Localism Act 2011. In order to meet the basic conditions, the Plan must:

- have regard to national policies and advice contained in guidance issued by the Secretary of State;
- contribute to the achievement of sustainable development;
- be in general conformity with the strategic policies of the development plan for the area;
- not breach and is otherwise compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations.

I have examined the Neighbourhood Plan against the basic conditions.

The wording of the basic conditions is the result of careful consideration and paraphrasing can result in mistakes and/or incorrect interpretation of them. Given this, I recommend:

- **Page 11, line 5, delete sentence and replace with “*These policies have regard to national policies and advice and are in general conformity with the strategic policies of the Fylde Local Plan (2005).*”**
- **Page 15, line 4, change to “...must *have regard to national policy and advice and be in general...policies of the development plan, in this case, the Fylde Local Plan (2005).*”**
- **Page 15, line 7, change to “...must be *compatible with European Union obligations and the European Convention on Human Rights.*” (For clarity, delete rest of paragraph).**
- **Page 15, line 10, change to “...must also *contribute to the achievement of sustainable development and a Sustainability...document.*”**

¹ Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990.

- **Page 16, first paragraph, change to “...with the strategic *policies of the adopted Local Plan and it is also good practice to take account of emerging planning policy and supporting information, where appropriate. In this regard, it is confirmed that the Neighbourhood Plan has taken into account information relating to the emerging Fylde Local Plan (2011-2032).*” (for clarity, delete rest of paragraph)**

A Basic Conditions Statement was submitted alongside the Neighbourhood Plan. This sets out how, in the Parish Council’s opinion, the Neighbourhood Plan meets the basic conditions.

European Convention on Human Rights (ECHR) Obligations

I am satisfied that the Neighbourhood Plan has regard to fundamental rights and freedoms guaranteed under the ECHR and complies with the Human Rights Act 1998 and there is no substantive evidence to the contrary.

European Union (EU) Obligations

There is no legal requirement for a neighbourhood plan to have a sustainability appraisal. However, a qualifying body must demonstrate how its plan or order will contribute to achieving sustainable development. Planning Practice Guidance² considers that a sustainability appraisal may be a useful way of doing this.

A Sustainability Appraisal has been produced and submitted alongside the Neighbourhood Plan. It assesses the economic, social and environmental impacts of the Neighbourhood Plan and identifies potential negative effects and appropriate mitigation measures. The Sustainability Appraisal states that *“it incorporates the legal requirements of the Strategic Environmental Directive.”*

Taking the above into account, I am satisfied that the Sustainability Appraisal provides some evidence to demonstrate how the Neighbourhood Plan will contribute to the achievement of sustainable development.

However, simply undertaking a Sustainability Appraisal does not, in itself, necessarily mean that a neighbourhood plan is compatible with European Obligations. In this regard, I am mindful that Fylde Borough Council and Natural England, amongst others, have expressed concerns relating to doubts over whether the Neighbourhood Plan is likely to have significant environmental effects.

In relation to the above, Planning Practice Guidance states that:

“Draft neighbourhood plan proposals should be assessed to determine whether the plan is likely to have significant environmental effects.” (Paragraph 027).

National advice recognises that a neighbourhood plan may only be likely to have significant environmental effects *“in some limited circumstances.”* Consequently, it is reasonable to infer that, in many circumstances, a neighbourhood plan will not lead to any significant environmental effects.

² Strategic environmental assessment and sustainability appraisal. Paragraph 026, Planning Practice Guidance 2014.

However, the Neighbourhood Area seeks to allocate land for development within a highly sensitive environment, which includes the Ribble and Alt Estuaries Special Protection Area and Ramsar. As these comprise two European sites, it is important to consider any likely significant effects on them that might arise from the Neighbourhood Plan.

The very presence of European sites within the Neighbourhood Area means that there is a real possibility that the Neighbourhood Plan, which allocates land for development, could have likely significant effects upon them.

If the implementation of the Neighbourhood Plan may lead to likely negative significant effects on protected European sites, then a Habitats Regulations Assessment (HRA) is required.

In establishing that a draft neighbourhood plan “*should be assessed*” to decide whether it might have significant environmental effects, Planning Practice Guidance refers to the need to consult environmental assessment consultation bodies. In responding to consultation on the draft plan (referred to later in this Report, in the Consultation section), Natural England pointed out that screening should be undertaken where there is any doubt about the effects on European sites. Further, in its Submission stage representation to the Neighbourhood Plan, Natural England stated:

“...you need to be confident that any proposals in accordance with the Neighbourhood Plan will not result in a likely significant effect on a European site...a Neighbourhood Plan cannot progress if it would result in a likely significant effect on any European site...A screening exercise should be undertaken if there is any doubt about the effects of the Plan on European sites...” (Natural England, 27/11/14).

In respect of European sites, the Sustainability Appraisal and the Neighbourhood Plan itself (on page 20), states that a Habitat Regulations Assessment “*has already been undertaken for Fylde’s Local Plan Preferred Option*” and that the Neighbourhood Plan’s policies “*have had regard to the emerging planning policy in the Fylde Local Plan Preferred Option and do not have any identifiable impact on European sites.*”

Whilst I note this, it is relevant to point out that the basic conditions do not refer to any need to “*have regard*” to emerging planning policy. Furthermore, and crucially, the emerging Fylde Local Plan is simply that. It is not an adopted document and it has not yet reached a stage whereby its policies and supporting evidence have undergone rigorous examination. I also note that the HRA screening for the emerging Local Plan led to requirements, from Natural England, for further actions.

Taking this into account, it appears to me, that it is inappropriate in such an environmentally sensitive area as Bryning with Warton, for the Neighbourhood Plan to place reliance on supporting evidence for emerging local policy in respect of demonstrating compatibility with European obligations.

In this regard, I note that the ultimate responsibility for determining whether or not a draft neighbourhood plan meets European obligations lies with the local authority, which must decide whether a neighbourhood plan is compatible with EU obligations (including obligations under the Strategic Environmental Assessment Directive) when it takes the decision on whether a neighbourhood plan should progress to Referendum; and when it takes the decision on whether or not to make a neighbourhood plan.

“The local planning authority must decide whether the draft neighbourhood plan is compatible with EU regulations.” (Planning Practice Guidance³)

Fylde Borough Council has expressed with regards the Neighbourhood Plan being compatible with EU regulations. On the 13th August 2014, during the draft plan consultation period, Fylde Borough Council wrote to Bryning with Warton Parish Council, stating:

“To assess whether the NP may have a significant environmental effect, its scope should be assessed, and the LPA can provide a screening opinion...on whether a SEA is required. As part of the LPA determining whether the proposals are likely to have a significant environmental effect, the LPA are expected to consult the three statutory consultation bodies...If the LPA determines the plan is unlikely to have a significant environmental effect, and therefore does not require an environmental assessment, the LPA will provide a screening assessment with reasons for its determination. A copy of this statement provided to the NPSG could then be made available to the Independent Examiner and form part of the evidence base for basic conditions statement required at submission stage...”

There is no such statement before me and no substantive evidence to demonstrate that the local authority is satisfied that the Neighbourhood Plan is compatible with EU obligations. Mindful of some of the recommendations I go on to make in this Examiner’s Report, it is appropriate to note that Fylde Borough Council acted positively and proactively in seeking to provide the qualifying body with clear and unambiguous advice in the above regard.

Taking all of the above into account, I find that there is considerable doubt over whether or not the Neighbourhood Plan will have likely significant environmental effects on European sites. I cannot conclude with any degree of certainty that the Neighbourhood Plan will have no likely significant environmental effects. Consequently, I cannot conclude that the Neighbourhood Plan does not breach and is otherwise compatible with EU obligations. There is conflict with the basic conditions.

³ (Paragraph Reference: 11-031-20150209)

Whilst there is some evidence to demonstrate that efforts have been made in respect of demonstrating compatibility with EU obligations - for example, through the information contained within the Sustainability Appraisal - there still remains a significant element of doubt with regards whether or not the Neighbourhood Plan will have likely significant environmental effects.

In this regard, I am particularly mindful that the Neighbourhood Plan seeks to allocate land for development. Taking the above into account, it does so without an appropriate degree of certainty, as a consequence of failing to meet the basic conditions.

Policy BWH1 presents a requirement for each housing allocation to demonstrate that there will be *“no adverse impact on a designated European site.”* If development would result in an adverse impact on a designated European site, then it could not go ahead. Given the absence of certainty in this regard, there is a possibility that the Neighbourhood Plan is seeking to allocate land despite there being a risk of it being incapable of development. This is inappropriate.

Taking all of the above into account, I can only conclude that there is no certainty that that part of the Neighbourhood Plan that allocates land would be compatible with European Union obligations.

I recommend the following:

- **Delete policies BWH1 and BWH2, which allocate land and relate directly to proposed land allocations, respectively**
- **Delete “Housing” bullet point on page 53**
- **Delete pages 54 to 66, inclusive of all Figures and text**

I recognise that these recommendations will fundamentally alter the content of the Bryning with Warton Neighbourhood Plan. However, they should come as little surprise, not least given the clear recommendations by statutory bodies.

I also note that there has been a considerable time period between the Submission of the Neighbourhood Plan and its examination. During this time, Fylde Borough Council undertook a draft *“Initial Review of Sustainability Appraisal”* (December 2014) and a subsequent *“Initial Review of Sustainability Appraisal”* (February 2015).

Both of these documents highlighted the uncertainty with regards significant environmental effects and included the following recommendation to Bryning with Warton Parish Council:

“It is recommended that the Parish Council obtains an SEA Screening Opinion from Fylde Borough Council (in consultation with the statutory environmental bodies)...”

Whilst I acknowledge the appropriate and ongoing proactive approach of the local planning authority, no such SEA Screening Opinion was obtained.

However, my recommendations above, which would lead to the deletion of the housing land allocations in the Neighbourhood Plan, do not mean that, suddenly, the whole of the Neighbourhood Area can be developed with housing. They simply mean that housing land allocations do not form part of the Neighbourhood Plan.

I refer above to the emerging Fylde Local Plan. Once adopted, this document will provide the housing land allocations for the Borough, including the Neighbourhood Area, up to 2032.

3. Background Documents and Bryning with Warton Neighbourhood Area

Background Documents

In undertaking this examination, I have considered various information, in addition to the Bryning with Warton Neighbourhood Plan. This has included:

- National Planning Policy Framework (The Framework) (2012)
- Planning Practice Guidance (2014)
- Town and Country Planning Act 1990 (as amended)
- The Localism Act (2011)
- The Neighbourhood Plan Regulations (2012) (as amended)
- Fylde Local Plan (As Altered) (Oct 2005) (Fylde Borough Local Plan (2005))
- Documents relating to the emerging Fylde Local Plan (2011-2032)
- Basic Conditions Statement
- Consultation Statement
- Sustainability Appraisal
- Sustainability Appraisal Scoping Report and Baseline
- Evidence Base Report

Also:

- Representations received

In addition, I spent an unaccompanied day visiting the Bryning with Warton Neighbourhood Area.

Bryning with Warton Neighbourhood Area

A plan showing the boundary of the Bryning with Warton Neighbourhood Area is provided on page 14 of the Neighbourhood Plan.

Further to an application made by Bryning with Warton Parish Council, Fylde Borough Council approved the designation of Bryning with Warton as a Neighbourhood Area on 4th October 2013.

This satisfied a requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended).

4. Public Consultation

Introduction

As land use plans, the policies of neighbourhood plans form part of the basis for planning and development control decisions. Legislation requires the production of neighbourhood plans to be supported by public consultation.

Successful public consultation enables a neighbourhood plan to reflect the needs, views and priorities of the local community. It can create a sense of public ownership, help achieve consensus and provide the foundations for a 'Yes' vote at Referendum.

Bryning with Warton Neighbourhood Plan Consultation

Bryning with Warton Parish Council submitted a Consultation Statement to Fylde Borough Council in line with legislative requirements. As required by the neighbourhood planning *regulations*⁴, this sets out who was consulted and how, together with the outcome of the consultation. I note that the introductory section to the Neighbourhood Plan also refers to the consultation process.

In November 2013, Bryning with Warton Parish Council established a Steering Group, guided by a constitution, to lead on plan-making. The Steering Group comprised Parish Councillors and residents, including landowners and business owners.

All Steering Group meetings were advertised and open to the public. They were held frequently, between one and three times per month, between November 2013 and September 2014.

Further to an advertising campaign, a Launch Event was held in April 2014. This comprised a drop-in at the Village Hall. Parish Councillors and Fylde Borough Council officers were on hand for discussion and a graffiti wall, question and answer sheets, a "wish tree" for children, and general information relating to the neighbourhood planning process was made available. Around 400 people attended the event and comments made were recorded and taken into account.

Three weeks after the Launch Event, leaflets were distributed to update the local community on the key issues that had emerged, as well as to remind people that the Steering Group meetings were open to the public.

⁴Neighbourhood Planning (General) Regulations 2012.

Further to production of the draft plan, a “Special Parish Meeting” was held in July 2014, at which the Steering Group gave a presentation, followed by a question and answer session. Around 300 people attended and comments were taken into account.

The six week consultation stage, during July and August 2014, was supported by a drop-in consultation event, held in the Village Hall and attended by around 100 people. Steering Group members were available to answer questions and consultation response forms were made available to complete and hand in on the day.

Letters and emails were sent to local businesses and community organisations, encouraging responses to the consultation stage. Hard copies of the draft plan and supporting documents were placed in a variety of locations and were also available directly from the Parish Council. Around 180 representations and comments were received from more than 100 organisations and individuals.

It is clear from the evidence provided that the whole plan-making process was widely advertised and that people and organisations were provided with plenty of opportunities to have their say and that views were proactively sought. As well as frequent, open Steering Group meetings, views were sought via social media, email and door-to-door leaflet drops. To publicise the process, innovative methods, including car window stickers, were used, along with posters, advertising boards, large banners and numerous press articles in the Lytham St Annes Express and the Blackpool Gazette.

The Consultation Statement demonstrates that consultation was well-publicised and the reporting process was transparent. There is a significant volume of evidence to show that the Neighbourhood Plan reflects the views of local people.

Taking everything into account, I am satisfied that the consultation process was comprehensive and robust.

5. The Neighbourhood Plan – Introductory Section

Where modifications are recommended, they are presented as bullet points and highlighted in bold print, with any proposed new wording in *italics*.

The policies of the Neighbourhood Plan are considered against the basic conditions in Chapter 6 of this Examiner’s Report. I have also considered the Introductory Section of the Neighbourhood Plan and set out recommendations below that are aimed at making it a clear and user-friendly document.

As a general comment, the use of a landscape rather than portrait orientation renders the Neighbourhood Plan somewhat unwieldy. When combined with the large font, I find that it is a relatively difficult document to navigate. However, this is simply a personal view based and I do not make any recommendations in this regard.

I do, however, make a recommendation with regards the cover page and subsequent references to the plan period earlier in this Report. Also, there is no longer any requirement for the yellow box on the cover page and I recommend:

- **Cover page, delete the yellow box and the text within it**

The first section of the Neighbourhood Plan, pages 2-4, contains information that is out of date. I recommend:

- **Delete pages 2 - 4**

Taking into account earlier advice in this Report, some changes to the Contents pages are required. The third change recommended below recognises that the Neighbourhood Plan has passed the consultation stage. I recommend:

- **Bullet 1.6, delete “...and Habitat Regulations Assessment.”**
- **Delete “4.2 Housing [54]”**
- **Delete “SECTION 7: HOW TO COMMENT ON THIS DOCUMENT [105]”**

To bring the Preface and subsequent section up to date, I recommend:

- **Page 8, line 1, replace “The Submission...” with “*The...*”**
- **Page 10, delete “Section 7...document”**

I make a recommendation regarding a change to Page 11 of the Neighbourhood Plan earlier in this Report. Taking into account the recommended deletion of the land allocation-related Policies, I also recommend:

- **Page 12, change first paragraph to “...with the opportunity to *have more control over development, for the benefit of the local community.*”**
- **Page 12, second paragraph, delete and replace with “*The Neighbourhood Plan, when made, will form part of the development plan. The Neighbourhood Plan aims to preserve those things that make Bryning with Warton special.*”**
- **Page 12, delete third paragraph**

Neighbourhood Plans can be produced by any Qualifying Body and are not just limited to Parish Councils. Taking this into account, I recommend:

- **Page 15, change first paragraph to “...*Act 2012 as part of the...communities. In using this power, Qualifying Bodies – such as Bryning with Warton Parish Council – need to follow some fundamental principles.*”**

I make a number of recommendations relating to the basic conditions referred to on pages 15 and 16, earlier in this Report. The final paragraph on page 16 does not quite reflect the process and I recommend:

- **Change last paragraph on page 16 to “...*Borough Council, any relevant Policies within the Neighbourhood Plan must be taken into account insofar as any planning application for development in the Neighbourhood Area.*”**

Taking earlier recommendations into account, I recommend:

- **Page 17, delete first bullet point**

Also, Page 17 provides a reference to Lancashire County Council. I find that this is potentially confusing, as it introduces a reference to education, which is not a land use planning matter controlled by the Neighbourhood Plan, but it does not refer to any other matters not controlled by the document. Further, it is neither the case, and nor is it for the Neighbourhood Plan to state, that Lancashire County Council “*will address any education needs.*” I recommend:

- **Delete final sentence on page 17**

The diagram on Page 18 is helpful. To prevent it appearing out-of-date, I recommend:

- **Page 18, remove “We are here” from diagram and replace red background colour with blue**

I recommend a change to the title on page 19 earlier. Taking earlier comments into account, I also recommend:

- **Pages 19 to 20, end section 1.6 after the first sentence and delete all remaining text (from “There is a network...not required for this Plan.”)**

Pages 21 to 31, inclusive, provide interesting and relevant background information distinctive to the Neighbourhood Area. No changes are recommended.

Notwithstanding the recommendations above, I see no harm in the Neighbourhood Plan setting out all of the communities concerns, as it does, in sections 2.1 and 2.2, “Key Issues” and “Vision and Core Objectives.” It is a fact that the community has expressed concerns with regards housing development within the Neighbourhood Area and it is therefore relevant to include reference to these concerns in the Neighbourhood Plan, whether or not the document includes directly related Policies.

For consistency, I recommend:

- **Page 41, line four, delete “...15-20 years...”**

The Objectives use the term “*ensure*.” This raises concerns, as, for example, the Neighbourhood Plan cannot ensure that all new development will ensure green buffers or new focal points. Such things would not even be relevant to many forms of development. Objectives are not the same as Policies. As worded, these Objectives set unrealistic and unachievable aims. Taking this and other factors into account, I recommend:

- **Objective 1, change to “*To accommodate development in a manner that preserves rural character.*”**
- **Objective 2, change to “*For new development to integrate with existing and be of benefit to the community.*”**
- **Objective 3, change to “*For new development to respect...buildings.*”**
- **Objective 4, change to “*For new development to have appropriate green buffers to...Warton.*”**
- **Objective 5, change to “*For new development to provide...environment, where appropriate.*”**

I note that the final Objective contributes to the achievement of sustainable development and do not recommend any change to it.

Part of Section 3.2 is out-of-date. I make a recommendation with regards the first paragraph on page 47 earlier in this Report. I also recommend:

- Page 47, delete “The Local Plan has not been...early 2015.”
- Page 47, 9th line, change to “*The Revised Preferred Option...*”
- Page 47, change reference at end of page to “*(para 7.11 Revised Preferred Option)*”
- Delete second paragraph on page 48, which doesn’t make sense and reads partly as an advertisement.

Section 3.3 has much potential for confusion. By use of the phrase “*Bryton with Warton’s community must,*” it implies that there is some legislative requirement for a community to produce a Neighbourhood Plan, which is not the case. The section goes on to set out matters that have, to a large degree, already been set out earlier in the Neighbourhood Plan. Consequently, section 3.3 appears unnecessarily repetitive.

I recommend:

- Delete section 3.3 and remove reference to it from the Contents page

6. The Neighbourhood Plan – Neighbourhood Plan Policies

I note that the Policies within this section are easily distinguishable from the supporting text, to the benefit of clarity and presentation.

I make a recommendation with regards the reference to the plan period on page 52 earlier in this Report. Given the recommendations above, I also recommend:

- **Page 52, delete “Development of policies that aim...settlement.”**

I make a recommendation with regards the fifth bullet point on page 53, and with regards pages 54 to 66 inclusive, earlier in this Report.

Employment

Policy BWE1: Promoting Employment Growth

Paragraph 18 of the Framework sets out a commitment to securing economic growth. Generally, Policy BWE1 has regard to this.

However, the Policy states that certain forms of development “*will be permitted.*” Such an approach runs the risk of pre-determining an application without taking relevant factors into account. Further, the approach set out would permit employment related development regardless of its impact on local character. This would conflict with the Framework, which seeks to protect local character, as well as with other Policies of the Neighbourhood Plan, including Policy BWNE2.

Taking the above into account, I note that even *supporting* rather than permitting such development would result in conflict with the basic conditions.

The second part of the Policy appears equally, or even more permissive. It effectively seeks to provide a blanket permission for any employment-creating development that supports rural diversification, or re-uses or converts existing buildings without substantially reconstructing or extending them. Such an approach could result in development in the rural area that fails to take into account factors such as local character or residential amenity.

Whilst the Policy goes on to set out requirements relating to homeworking, I note that homeworking does not necessarily require planning permission.

The final part of Policy BWE1 refers to a matter that is outside the control of the Neighbourhood Plan and which requires “*the co-operation*” of another body. Consequently, there is no substantive evidence that the Neighbourhood Plan can deliver or control this part of Policy BWE1.

In addition, I am mindful that Lancashire County Council has submitted a concise representation in respect of Policy BWE1 being contrary to the purpose of the Lancashire Enterprise Zone, designated in 2011. Lancashire County Council points out that the proposed allocation in Policy BWE1 would be contrary to the recognised strategic economic role of the site and the need to plan positively for it. There is no substantive evidence to the contrary.

In addition, Lancashire Enterprise Partnership, the “*other body*” referred to in Policy BWE1, has submitted an objection on the basis of the Policy being contrary to the purpose of the Enterprise Zone.

Whilst the supporting text refers to Warton having “*no available industrial or warehouse space,*” no detailed justification is provided for an approach that would be contrary to the purpose and role of an existing Enterprise Zone. I note that Policy BWE1 doesn’t seek to address its identified absence of generally available employment land by seeking to allocate such.

Taking all of the above into account, I find that Policy BWE1 fails to meet the basic conditions. I recommend:

- **Delete Policy BWE1**
- **Delete “Background/Justification” on pages 68 and 69 from the beginning to “...may not qualify for the Zone benefits.”**

Policy BWE2: Protecting Existing Employment

Policy BWE2 seeks to protect existing large employment sites for B1, B2 and B8 employment uses throughout the plan period. This has regard to Policy EMP2 of the Fylde Borough Local Plan (2005), which seeks to retain identified employment land.

The Neighbourhood Plan provides evidence to demonstrate that large employment sites in the Neighbourhood Area, including those occupied by BAE Systems and the Land Registry, are of local and regional importance. Further, whilst national policy seeks to prevent the long-term protection of employment sites where there is no reasonable prospect of a site being used for that purpose (Para 22, the Framework), there is no evidence to demonstrate that any of the larger employment sites in the Neighbourhood Area have no reasonable prospect of being used for employment.

However, I am mindful that by seeking to apply blanket protection for B1, B2 and B8 uses only, the Neighbourhood Plan would necessarily prevent any other form of development from coming forward, whether or not it could be demonstrated to be sustainable.

It could well be that circumstances change over the plan period such that any one of the large sites may become unviable for employment use in their current form and I am mindful that the Framework seeks to support an economy fit for the 21st Century:

“Policies should be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances” (Paragraph 21).

As worded, Policy BWE2 may preclude any such flexibility or rapid response.

The second part of Policy BWE2 refers to “*smaller sites*” but does not define what these comprise. As worded, the Policy suggests that every employment site other than those identified as large sites will be protected for employment use.

Taking the above into account, the second part of Policy BWE2 does not provide decision makers with a clear indication of how to respond to a development proposal and may prevent sustainable development from coming forward. It does not provide for the flexibility required by the Framework.

Taking this into account, I recommend:

- **Policy BWE2, change first sentence to “...B2 and B8], *unless it can be demonstrated that the land is no longer viable for employment use and that there is no demand for such a use.*”**

- **Ensure that the Site boundaries shown on Figure 8 are correct and up-to-date. For example, Figure 8 shows land with planning permission for residential development as “protected employment” land**
- **Policy BWE2, delete second sentence**

Taking into account the recommendation under Policy BWE1, above, with regards the supporting text, I also recommend:

- **Supporting text, before “Through multi-agency...” add “*The Parish Council is supportive of local employment.*”**

Transport and Infrastructure

Policy BWT1: Sustainable Transport

Policy BWT1 places a requirement on another body to undertake something that does not comprise a land use planning policy matter that the Neighbourhood Plan can control. I recommend:

- **Delete Policy BWT1: Sustainable Transport**

However, further to consideration of the evidence and in acknowledgement of local concerns about transport matters and Bryning with Warton Parish Council's keenness to work with other bodies in this regard, I recommend:

- **Create a new *"Community Action: Sustainable Transport. Bryning with Warton Parish Council will work with other bodies to address matters relating to sustainable transport."***
- **Change supporting text to *"...Masterplan. The Parish Council will work together...appropriate routes."***

Policy BWT2: To Promote the Development of Key Gateways

Policy BWT2 does not provide any indication as to what “*improved access for all transport users*” actually means, or why this relates to the enhancement and improvement of “*key gateways*.”

Furthermore, the Policy simply provides a list of roads. It does not set out precisely what “*key gateways*” comprise. Whilst I note that Figure 7, which I recommend for deletion, indicates “*key gateway roundabouts*,” Policy BTW2 does not refer to roundabouts.

In addition to the above, no indication is given as to what the “*opportunities*” for enhancing and improving undefined gateways might comprise. Further, no indication is provided as to what kind of development would be appropriate, or inappropriate, at the undefined “*gateways*.”

Taking all of the above into account, Policy BWT2 is vague and imprecise. Also, the supporting text does not appear to relate directly to the Policy, but refers to constraints on the highway network and other unrelated matters.

I recommend:

- **Delete Policy BWT2**
- **Delete title “Background/Justification”**

To some degree, the supporting text under Policy BWT2 relates to the text supporting Policy BWT1 and the only changes recommended in this regard are:

- **Page 74, fourth line down, change to “...Council Revised Preferred Option policy...”**
- **Page 74, delete final paragraph (having regard to other recommendations in this Report)**

Local and Community Services

Policy BWLC1: Shops and Services

Policy BWLC1 defines a “*Principal Village Centre*” and subject to the recommendations below, supports the protection and provision of retail uses within it.

This approach has regard to Chapter 8 of the Framework, “*Promoting healthy communities*,” which requires policies to plan positively for the provision of community facilities, such as local shops and other local services “*to enhance the sustainability of communities and residential environments*” (Paragraph 70).

For clarity, it would be helpful if the Policy used the same term as the Framework - “*local services*” rather than the more general “*services*” and I address this point in the recommendations below.

The Policy states that “*development will be permitted.*” As set out earlier in this Report, such an approach runs the risk of pre-determining a planning application without taking relevant factors into account. Also, the Policy states that “*the shopping and service area will be maintained.*” No indication is provided with regards who will undertake maintenance, on what basis and why this is a land use planning policy matter relevant to the Neighbourhood Plan. However, I note that the Policy seeks to protect the village centre and I make a recommendation below that provides more clarity in this regard than does the use of the word “*maintained.*”

Part 2 of the Policy is confusingly worded. It begins with a reference to proposals for a non-retail or non-service use and ends with a reference to change of use. The simpler approach recommended below could more effectively meet the aims of the Policy in this regard. The recommendations also address the use of “*permitted*” in the final part of the Policy. Whilst no definition of an “*accessible location*” is provided, it appears reasonable to conclude that any location within the settlement will be reasonably accessible and there is no evidence to the contrary.

I recommend:

- **Policy BWLC1, delete parts 1 and 2 and replace with “*Within the defined Principal Village Centre (Figure 9), the development of new shopping and local service facilities will be supported. Proposals for the change of use of an existing shop or local service use, to a non-shopping or non-local service use, will only be supported if it is demonstrated, further to a minimum six month period of active marketing, that the existing use is no longer viable.*”**

- **Policy BWLC1, change part 3 to “Proposals for local needs retail or local service uses will be supported within the settlement boundary, subject to it being demonstrated that development would not harm local character, residential amenity or highway safety.”**

Subject to these recommendations, Policy BWLC1 contributes to the achievement of sustainable development and meets the basic conditions.

Policy BWLC2: Community, Leisure Facilities and Open Spaces

Policy BWLC2 seeks to address a number of matters. It opens with a permissive approach to the provision of community and leisure facilities, although leisure facilities are undefined and no indication of what an *“integrated parish-wide community facility”* might comprise is provided. Notwithstanding this and earlier comments with regards use of the term *“permitted,”* the general approach has regard to Chapter 8 of the Framework, *“Promoting healthy communities,”* which promotes *“opportunities for meetings between members of the community”* (Paragraph 69) and supports the provision of *“community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services...”* (Paragraph 70).

The second part of Policy BWLC2 refers to a land allocation, the deletion of which is recommended earlier in this Report.

Policy BWLC2 then seeks to protect open spaces. However, no clarity or justification is provided setting out the policy basis by which the Neighbourhood Plan is seeking to protect open spaces. Further no indication is provided with regards what the proposed protection would mean in practice.

However, further to consideration of all of the information before me, there is evidence to demonstrate that some of the open spaces shown on Figure 10 are demonstrably special to the local community.

Site P1 has sporting and recreational significance; and Sites P6 and P7 are significant community resources, being allotments. With regards the other sites, there is little evidence to demonstrate that they are demonstrably special to the local community, or that they have particular local significance.

The Framework enables local communities to identify, for special protection, green areas of particular importance to them. Paragraph 76 states that

“By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances.”

Local Green Space is a restrictive and significant policy designation. The Framework requires the managing of development within Local Green Space to be consistent with policy for Green Belts. Effectively, Local Green Spaces, once designated, provide protection that is comparable to that for Green Belt land. Notably, the Framework is explicit in stating that

“The Local Green Space designation will not be appropriate for most green areas or open space.” (Para 77)

Consequently, when designating Local Green Space, plan-makers should demonstrate that the requirements for its designation are met in full. These requirements are that the green space is in reasonably close proximity to the community it serves; it is demonstrably special to a local community and holds a particular local significance; and it is local in character and is not an extensive tract of land. Furthermore, identifying Local Green Space must be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.

I have considered each of the open spaces identified in Figure 10 and referred to in Policy BWLC2 against the criteria for Local Green Space. I find that sites P1, P6 and P7 meet these criteria. Sites P2, P3, P4 and P5 do not meet the criteria. I therefore recommend, below, that sites P1, P6 and P7 be designated as Local Green Space. This will afford protection, having regard to national policy.

There is insufficient evidence to demonstrate that designating sites P2, P3, P4 and P5 as Local Green Space would meet the basic conditions.

I note that Figure 10 is insufficient with regards providing precise and clearly identifiable boundaries for land use planning purposes. I address this in the recommendations below.

The final part of Policy BWLC2 refers to Figure 11. There is no Figure 11 in the Neighbourhood Plan. I note that a number of general “buffer zones” are identified, although not precisely defined, on Figure 7, the deletion of which is recommended earlier in this Report. Further, I note that this part of the Policy states that “*new walking and cycling routes must be incorporated.*” No indication is provided with regards who will provide these routes, on what basis, or even whether such routes can be created.

Further, there is nothing to demonstrate that the above requirement would, in all cases, be necessary to make development acceptable in planning terms, be directly related to development, or be fairly and reasonably related in scale and kind to development. Consequently, I find that the approach set out would fail to have regard to Paragraph 204 of the Framework.

There is insufficient information, evidence or justification to support the requirements set out in the final paragraph of Policy BWLC2. There is no substantive evidence to demonstrate that this part of the Policy would contribute to the achievement of sustainable development, but it could prevent sustainable development from coming forward.

Taking all of the above into account, I recommend:

- **Policy BWLC2, change opening sentence to “...improve *and/or provide centrally located community facilities will be supported.*”**

- Policy BWLC2, delete “Warton West...combined site.”
- Policy BWLC2, delete remainder of Policy and replace with “*Local Green Space is designated at the three sites P1, P2 and P3, as shown on the supporting plans below. Development of Local Green Space is not permitted, other than in very special circumstances.*”
- Delete Figure 10. Provide three new plans, showing the precise boundaries of each designated area of Local Green Space. In the title for each of these plans, provide a name, related to the location, for each of P1, P2 and P3.
- For clarity, designations P1, P2 and P3 relate to P1, P6 and P7 in the submission document.
- Delete “(see Figure 11)” on page 81

NB, the use of the term “permitted” reflects the level of protection afforded to Local Green Space by the Framework.

Subject to the recommendations above, Policy BWLC2 meets the basic conditions.

Environment

Policy BWNE1: Protecting and Enhancing Local Wildlife and Habitats

Paragraph 109 of the Framework states that:

“The Planning system should contribute to and enhance the natural and local environment...”

It goes on to promote the provision of net gains in biodiversity, where possible, *“by establishing coherent, ecological networks that are more resilient to current and future pressures.”*

Generally, Policy BWNE1 seeks to contribute to and enhance the natural and local environment and thus has regard to national policy.

As worded, the opening sentence of the Policy requires all development proposals to demonstrate assessment of local wildlife and habitats. This is unlikely to be a relevant consideration for many development proposals, such as the majority of household extensions. This is addressed in the recommendations below.

The second part of the Policy places a requirement on all development to *“seek to incorporate”* an extensive list of things, *“where appropriate.”* No indication is provided as to when the incorporation of any, or all, of the long list of things will be appropriate and consequently, this part of the Policy lacks clarity.

Furthermore, the list provided includes requirements that lack justification and raise questions over matters such as viability and deliverability. For example, the first bullet point requires the enhancement of coastal features, watercourses and mature trees, amongst other things. No indication is provided as to how development can enhance such things, or why it would be appropriate to do so.

With regards the second bullet point, it is not clear in what circumstances it will be appropriate or possible for a development to create linkages between open spaces and habitats by using existing watercourses. The third bullet point refers to something that does not exist and it is not clear when the fourth bullet point would be appropriate, viable or deliverable. The final bullet point refers to the preservation of land that is already protected and further, does not provide any justification for say, existing Local Green Space, being *“incorporated”* into development.

Notwithstanding all of the above, from consideration of the evidence, it is clear that the community is supportive of the protection and enhancement of local wildlife and habitats, and the enhancement of public rights of way. I make a recommendation below with regards this latter point, having regard to Paragraph 75 of the Framework, which requires planning policies to “*protect and enhance public rights of way and access.*”

Taking all of the above into account, I recommend:

- **Policy BWNE1, change first sentence to “*Development proposals that impact on local wildlife and habitats should demonstrate how biodiversity will be protected and enhanced. Development should retain and where possible, enhance, existing coastal features, watercourses, wetlands, ponds, mature native trees and hedgerows. The creation of new habitats, new linkages between open spaces and habitats and/or improvements to the existing public rights of way network will be supported.*”**

Subject to the above, Policy BWNE1 contributes to the achievement of sustainable development and meets the basic conditions.

Policy BWNE2: Protecting and Enhancing Local Character and Landscape

Fylde Borough Local Plan (2005) sets out a number of policies, including Policies EP10, EP11 and EP12, to protect the distinctive character and landscape of the area. In addition, the Framework promotes the conservation and enhancement of the natural environment (Chapter 11) and considers the recognition of *“the intrinsic character and beauty of the countryside”* to form a core planning principle (Paragraph 17).

Subject to the comments and subsequent recommendations below, Policy BWNE2 is in general conformity with the strategic policies of the Fylde Local Plan (2005) and has regard to national policy.

As worded, Policy BWNE2 places an unduly onerous burden on all development proposals. It will not be relevant or appropriate for many development proposals to demonstrate that all of the requirements set out in the Policy have been met. For example, there is no reason why a household extension should *“enhance the distinctive character and countryside setting of the rural landscape”* or incorporate buffer zones. Further, the Policy does not define what is meant by *“grain”* and this would add a confusing element to the requirements of Design and Access statements.

The Policy requires proposals to demonstrate that they reflect *“existing local settlement patterns and the predominant rural character”* of the area. The Neighbourhood Area is both urban and rural and no indication is provided as to how a development proposal can reflect both of these things at the same time, or why such an approach would be appropriate.

In the same vein, it is not clear how all development proposals, for example those entirely within the urban area, can *“enhance the distinctive character and countryside setting of the rural landscape”* Also, no indication is provided of what materials that complement *“the character of the surrounding area”* might comprise and a general requirement for development to *“enhance”* its setting is onerous and goes well beyond the requirements of national or local strategic policy.

Notwithstanding the above, the Policy seeks to promote local distinctiveness. Such an approach has regard to Paragraph 56 of the Framework, which recognises good design as:

“...a key aspect of sustainable development, indivisible from good planning...”

I recommend:

- **Delete Policy BWNE2, replace with *“Development proposals should demonstrate good design, respect local character and where possible, reinforce local distinctiveness.”***

The justification to Policies BWNE1 and BWNE2 does not directly relate to the Policies themselves. However, subject to the recommendation below, it provides interesting background information, together with useful plans.

- **Justification, Page 83, delete “...and enhancement” (which is not the case)**
- **Page 84, change “Figure 12” to “Figure 11” (text and plan title)**
- **Page 85, delete sentence referring to “Figure 13” (which doesn’t exist)**

Policy BWNE3: Design to Reduce Surface Water Run Off

Chapter 10 of the Framework, *“Meeting the challenge of climate change, flooding and coastal change,”* requires new development to be planned to avoid increased vulnerability to the range of impacts arising from climate change, including flood risk.

In seeking to address flood risk, Policy BWNE3 generally has regard to national policy. However, no substantive evidence is provided to justify the Policy’s requirement for all new development to be designed to *“maximise the retention of surface water on the development site.”* There are all kinds of ways in which sustainable urban drainage systems can manage flood risk and without detailed evidence or justification, it is inappropriate to impose a specific approach on what could comprise widely varying development, the specific circumstances relating to which are unknown.

The Policy goes on to set out various requirements. Such an approach fails to recognise that every development is likely to have its own specific circumstances and that a one size fits all approach may be inappropriate. However, generally, support for the provision of the features referred to, where appropriate, has regard to national policy’s requirement to avoid, where possible, flood risk to people and property.

I recommend:

- **Policy BWNE3, delete first sentence and change second sentence to *“The provision of sustainable urban drainage systems (SuDS) will be supported.”***
- **Replace lines three to five with *“Where appropriate, the design of new buildings...storage facilities; and water attenuation facilities such as...should be provided.”* Retain final three sentences.**

The Neighbourhood Plan: Other Matters

Taking the recommendations above into account, I recommend:

- **Section 5, title, replace “Implementatio” with “*Implementation*”**
- **Page 90, delete “Housing...community”**
- **Page 91, delete “Policy BWE1 and...”**
- **Page 91, delete “*Policy BWT1 and BWT2*”**
- **Page 93, replace “...the next 15 years.” with “*the plan period.*”**
- **Delete “Section 7” and top of page 9, change to “*The Plan is divided into 6 sections*”**

I don't recommend any changes in respect of the paragraph on page 94, as there is nothing preventing plan-making from commencing at any time.

The Glossary, whilst generally useful, is quite long, is subject to being over-taken by events and contains a number of subjective definitions. Its inclusion is a matter for the plan-makers, but I note that it would make the Neighbourhood Plan a more concise document if it was removed.

8. Summary

I have recommended a number of modifications further to consideration of the Bryning with Warton Neighbourhood Plan against the basic conditions.

Subject to these modifications, the Bryning with Warton Neighbourhood Plan

- has regard to national policies and advice contained in guidance issued by the Secretary of State;
- contributes to the achievement of sustainable development;
- is in general conformity with the strategic policies of the development plan for the area;
- does not breach, and is compatible with European Union obligations and the European Convention of Human Rights.

Taking the above into account, I find that the Bryning with Warton Neighbourhood Plan meets the basic conditions. I have already noted above that the Plan meets paragraph 8(1) requirements.

9. Referendum

I recommend to Fylde Borough Council that, subject to the modifications proposed, the **Bryning with Warton Neighbourhood Plan should proceed to a Referendum.**

Referendum Area

Neighbourhood Plan Area - I am required to consider whether the Referendum Area should be extended beyond the Bryning with Warton Neighbourhood Area.

I consider the Neighbourhood Area to be appropriate and there is no substantive evidence to demonstrate that this is not the case. Consequently, I recommend that the Plan should proceed to a Referendum based on the Bryning with Warton Neighbourhood Area approved by Fylde Borough Council on 4th October 2013.

Nigel McGurk, April 2016
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