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Borough Council of
**King's Lynn &
West Norfolk**



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Draft Burnham Market Neighbourhood Plan 2022-2036, submitted 22nd December 2022: Legal Check under Schedule 4B of the Town and Country Planning Act 1990

25 January 2023

FAO Caroline Boyden (Parish Clerk)

Dear Caroline

I write to you on behalf of the Borough Council of King's Lynn and West Norfolk (BCKLWN) to confirm our receipt of the submission version of your draft neighbourhood development plan (the Burnham Market Neighbourhood Plan 2022-2036), along with accompanying supporting documentation. Firstly, I would like to wholeheartedly congratulate Burnham Market Parish Council and the neighbourhood planning group on successfully reaching the submission stage (Regulation 15, The Neighbourhood Planning (General) Regulations 2012) of the neighbourhood planning process.

As you may be aware, under Paragraphs 5 and 6 of Schedule 4B of the Town and Country Planning Act (TCPA) 1990 there is now a requirement for BCKLWN, as the local planning authority, to undertake a check of the compliance of the plan along with its process to date. The relevant legal tests are set out in the 1990 TCPA and relevant sections of the Planning and Compulsory Purchase Act (PCPA) 2004. It is then an obligation of the local planning authority to issue a written statement clarifying the compliance (or otherwise) of the plan. Accordingly, this letter comprises the formal view of BCKLWN and recommends whether it should be submitted for independent examination.

At this stage it is not a duty of the local planning authority to consider the plan proposal against the 'basic conditions' tests set out under Paragraph 8(2) of the TCPA 1990 (this is the role of the independent examiner). Nevertheless, I can confirm that whilst BCKLWN is of the opinion that the draft Neighbourhood Plan is in conformity with most relevant national and local strategic policy it does however raise some matters of concern. There are some concerns about a potential lack of conformity to national

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policies regarding development densities and Local Green Space. Further detail is set out in the Council's initial review of the submission Neighbourhood Plan (Annex 1, below).

I note that your submissions also include the Basic Conditions Statement, which provides your detailed consideration of the plan submission against the requirements of the TCPA 1990 and the PCPA 2004. In a similar manner, I am pleased to confirm the following on behalf of BCKLWN:

- The plan **DOES** accord with all relevant provisions of the PCPA 2004 in that it: specifies a plan period; does not include any provision for excluded development; and does not relate to more than one neighbourhood area;
- The plan **DOES NOT** comprise a 'repeat proposal' as defined under Paragraph 5 of the TCPA 1990;
- The submission **DOES** comprise the relevant documentation required under Paragraph 1 of Schedule 4B of the TCPA 1990 and as prescribed by Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 ('the Regulations');
- The plan **DOES** comply with all other provisions under section 61E(2), 61J and 61L of the TCPA 1990.

Annex 1 below, provides an initial check of the contents of the Plan. This provides initial feedback as to where, in officers' professional opinion, the draft Plan could be challenged with reference to the Basic Conditions.

The next stage in the process is consultation on the Burnham Market Neighbourhood Plan 2022-2036, with reference to the Basic Conditions. This statutory consultation will be undertaken under Regulation 16 of the 2012 Neighbourhood Planning (General) Regulations, as amended.

The plan will then be made available for independent examination. The Regulation 16 consultation is anticipated to take place over a 6-week period during February/ March 2023. The Neighbourhood Plan, supporting submission documents and details of how to make representations to it will be published on BCKLWN's [Neighbourhood Planning](#) web page.

Alongside the Regulation 16 consultation we will begin the process for the appointment of an independent examiner for the Burnham Market Neighbourhood Plan. The appointed examiner will start the examination soon after the end of the Regulation 16 consultation in spring 2023.

Finally, on behalf of BCKLWN this letter represents the Council's formal view that the draft Burnham Market Neighbourhood Plan 2022-2036, complies with all relevant statutory requirements. Please do not hesitate to contact me if you have any further queries regarding the neighbourhood planning process from hereon.

Yours sincerely

Geoff Hall
Executive Director, Environment and Planning

Annex 1 – Burnham Market Neighbourhood Plan 2022-2036: Initial Submission Neighbourhood Plan check

Initial review of the submission version Neighbourhood Plan, to accompany Legal Check under Schedule 4B of the Town and Country Planning Act 1990.

Borough Council of King's Lynn and West Norfolk comments on Burnham Market Neighbourhood Plan 2022-2036 (submitted December 2022)		
Page No.	Item	Comment
	General/ overall comment	<p>Several policies (5, 6, 7, 8, 11, 12, 15) state that Development proposals “must...”. Use of the word “must” within development plan policies is generally inappropriate, as everything in a Plan policy is negotiable through the development management system, dependent upon development viability etc. It is not possible to require (“must provide” etc) something (e.g. item of local infrastructure) that is not obliged under legislation.</p> <p>Instead, the word “should” be used in place of “must”, which still gives the necessary leverage to the local planning authority in securing high quality/ sustainable development in determining planning applications.</p>
4-5	Introduction	Bullet points at paragraph 8 reflect Plan Vision – may be appropriate to specify this in the introductory text
6	Para 12	It may be helpful to specify that the Neighbourhood Plan is a statutory development plan document which, when adopted, will form part of the statutory development plan for the Borough of King's Lynn and West Norfolk, covering the area of Burnham Market Parish
6	Para 15	Emerging Local Plan Review dates revised, from 2016-2036, to 2021-2039 – may be appropriate to remove references to Plan dates for emerging Plan
11	Para 25	Suggested that Regulation 14 consultation dates could be specified in paragraph 25, for ease of reference
12	Para 26	Factual update – Local Plan Review submitted March 2022; anticipated adoption late 2023/ early 2024
14	Para 31	It may be helpful to explain that opportunities for expansion at Burnham Market are limited due to Area of Outstanding Natural Beauty (AONB) designation, cross referencing strategic (Core Strategy) Policy CS07
15	Para 38	There is some uncertainty about the form/ content of Policy LP31 in the emerging Local Plan Review, as this is likely to be subject to some changes as Main Modifications. It is probably better to replace the final sentence with a statement, along the lines of: “The Neighbourhood Plan will accord with Local Plan policies for managing development in the countryside, beyond the main built-up area”., or similar such wording.
22	Policy 2	<p>National eligibility criteria relate specifically to First Homes, so it is probably best to specify this within the Policy 2 text, for clarity: “In addition to the national eligibility criteria for First Homes, the following local eligibility criteria...”</p> <p>The local eligibility criteria, as specified, probably go beyond the scope of a development plan policy, instead relating to matters covered in a housing allocations policy. It may be better to specify the local eligibility criteria as an aspiration (e.g. within the supporting text).</p>

**Borough Council of King's Lynn and West Norfolk comments on
Burnham Market Neighbourhood Plan 2022-2036 (submitted December 2022)**

Page No.	Item	Comment
23	Para 59	Furnished Holiday Lets (FHLs)/ Second Homes (SHs) – unnecessary to repeat these definitions in the supporting text as these are already set out in the glossary
23-28	Para 59-79	Text/ information is very detailed/ descriptive – it may be better to move this supporting text/ detail into an appendix, with the supporting text setting out a 2-3 paragraph executive summary of local findings re FHLs/ SHs, case law etc
29	Policy 3	<p>3(2) – probably better to refer to the local planning authority, rather than Borough Council of King's Lynn and West Norfolk. This would ensure the Plan is future proofed.</p> <p>3(3) – Wording is overly negative. Instead, it is probably better to explain how proposals for changes of use to dwellinghouses could be safeguarded (i.e. by way of planning conditions and in the case of larger scale developments, S106 legal agreement) against future changes of use to FHLs. A good example of an effective policy is Holme Next The Sea Neighbourhood Plan Policy HNTS 18¹.</p> <p>The reference to changes of use to FHL not normally being acceptable are probably better included in the supporting text, to explain the purpose of Policy 3.</p>
31	Policy 4	<p>Replacement dwellings policies normally relate to residential development in countryside locations. If Policy 4 applies to redevelopment of brownfield sites within the existing built-up area, concerns are raised that this could be inconsistent with national policy (NPPF paragraph 125).</p> <p>NPPF paragraph 125a states that: “plans should contain policies to optimise the use of land in their area and meet as much of the identified need for housing as possible”. There are concerns that Policy 4, as submitted (which appears to include redevelopment of sites within the built-up area) could conflict with national policies on achieving appropriate densities.</p> <p>Final paragraph (re removal of permitted development rights) – may be appropriate for replacement dwellings, to ensure character of replacement dwelling is retained, but there may be concerns that this could be overly onerous and/ or (in practice) equate to designation of an Article 4 direction for the Neighbourhood Area.</p>
32	Policy 5	4 th paragraph – reference to ‘holiday accommodation’ – does this relate to both FHLs and SHs? If so, it may be appropriate to specify this, in the interests of clarity.

¹ https://www.west-norfolk.gov.uk/downloads/download/910/holme-next-the-sea_neighbourhood_plan_documents

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Burnham Market Neighbourhood Plan 2022-2036 (submitted December 2022)**

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39	Policy 6	<p>6(a) – Concerns are raised that a blanket approach to setting maximum densities could conflict with national policy (NPPF paragraph 125).</p> <p>The approach seeks to set maximum density standards for different character areas re overall densities. In principle this could work, but it may be appropriate to specify the range for each character area covered by criterion 6(a) within the policy text. It could also ensure that conflict with national policy could be minimised by restricting the application of this criterion to character areas that are most sensitive to urban cramming (e.g. historic core, as defined by the Conservation Area).</p> <p>6(b) – Final sentence is negatively worded. It would be better to state that: “Dormer windows will only be supported where these complement the heights and rooflines of other buildings within the streetscape”, or similar wording.</p> <p>6(h) – Criterion regarding property frontages – unclear how the 50% landscaping requirement could be enforced through the planning system?</p>
49	Policy 8	<p>There is no need to reference the 10% Biodiversity Net Gain (BNG) requirement within the policy text, as this is a legal requirement anyway. Instead, it is probably better to refer to “delivery of Biodiversity Net Gain in accordance with legal requirements”, which should ensure future-proofing for Policy 8. References to the 2021 Environment Act/ 10% requirement are probably better included within the supporting/ explanatory text.</p>
53-	Policy 9/ Figure 24	<p>Local Green Space (LGS) designations are implicitly intended to be made through Neighbourhood Plans (NPPF paragraphs 101-103). However, it should be borne in mind that individual site designations need to be made in accordance with national criteria (NPPF paragraph 102). We have the following concerns re individual site proposals:</p> <ul style="list-style-type: none"> • Site 6 – Burnham Westgate Hall Parkland – concerns that this could be concluded to be an “extensive tract of land”; i.e. designation as LGS could be contrary to NPPF paragraph 102c; • Site 7 – Creake Road Allotments <p>Allotments are not generally appropriate for designation as LGS, due to the character and operation of these sites. Allotments, by their nature, tend to be unkempt/ untidy in appearance, so it is unlikely that these could be “demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife” (NPPF paragraph 102b).</p> <p>Instead, allotments are better protected as community facilities, as Policy 13 already does. This allows for allotments to be relocated if the land in question is being proposed for an alternative use. Allotments (as other facilities) would also be protected under Policy DM 9 in the current Local Plan (2016 Site Allocations and Development Management Policies Plan).</p>
77	Figure 39	<p>It is not immediately obvious that the black lines/ markings shown on the map are Hedgerow Field Margins (reference map Key). The notation in the key may need to be amended, to show more clearly that the lines/ markings, are actually polygons showing Hedgerow Field Margins.</p>

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Page No.	Item	Comment
78	Policy 14	2 nd paragraph – Suggested wording changes, to strengthen policy: “Proposals to deliver or enhance the routes shown in Figures 38 and 39 will be supported.”
83	Policy 15	<p>Policy 15 is generally good and locally distinctive to Burnham Market Conservation Area.</p> <p>However, in the final paragraph/ section, this should probably refer to development schemes/ applications within the Conservation Area and Development Boundary, as it is probably unreasonable to expect an applicant to go to the expense of preparing detailed plans for a full application if the scheme is likely to be refused, “in principle”, in any event.</p>