

Subject:	Designation of Business/Neighbourhood Area and Neighbourhood Forum – Brighton Marina		
Date of Meeting:	Economic Development & Culture Committee 15 January 2015		
Report of:	Executive Director Environment, Development & Housing		
Contact Officer:	Name:	Rebecca Fry	Tel: 29-3773
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Ward(s) affected:	Rottingdean Coastal		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The purpose of this report is to determine two neighbourhood planning applications. One relates to the designation of Brighton Marina as a Business Neighbourhood Area. The other application is linked to the area application and relates to the designation of the neighbourhood forum for Brighton Marina. These designations are part of the neighbourhood planning provisions introduced by the Localism Act 2011. Once designated they will enable the forum to prepare a neighbourhood development plan for the area.

2. RECOMMENDATIONS:

- 2.1 That the committee approve the designation of a Brighton Marina Business Neighbourhood Area as a business area neighbourhood area within the meaning of the Town and Country Planning Act 1990 the extent of which Area is delineated on the map forming appendix 1 to this report.
- 2.2 That the committee approve the designation of the Brighton Marina Neighbourhood Forum as a neighbourhood forum within the meaning of the Town and Country Planning Act 1990.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Through the Localism Act 2011, which introduced “neighbourhood planning”, the Government is seeking to give local communities more power to influence the future of the places in which they live. A key element of neighbourhood planning is the ability to produce neighbourhood development plans (to be referred to as neighbourhood plans in this report).
- 3.2 Neighbourhood planning is optional, however if a neighbourhood plan is prepared it must comply with national policy and be in general conformity with the strategic policies of the development plan (eg the Brighton & Hove Local Plan / City Plan). They must therefore contribute to the achievement of sustainable development. A neighbourhood plan enables a community to set out planning

policies in relation to the development and use of land in a particular neighbourhood area. Once adopted, a neighbourhood plan will be used by the Local Planning Authority, together with its development plan (eg the Local Plan / City Plan), to help determine planning applications for the neighbourhood plan area. In order to have such influence in the planning system neighbourhood plans must go through a statutory process. Only designated bodies that meet specified requirements (or a Parish Council) can produce a neighbourhood plan for a designated area.

- 3.3 One of the first stages in producing a neighbourhood plan is to designate the neighbourhood area. An application for designation must be submitted to the local planning authority by a relevant body, (a parish council or a neighbourhood forum). The neighbourhood forum must be designated in accordance with the relevant legislation.
- 3.4 The Local Planning Authority determines whether or not a proposed neighbourhood area is an appropriate area for designation. In general a proposed area should be considered appropriate except where it overlaps with another neighbourhood area or has been submitted by a non qualifying body. Where an area is not considered appropriate the Local Planning Authority must seek to secure that some or all of the specified area applied for forms part of one or more neighbourhood areas (the Local Planning Authority has powers to modify existing neighbourhood area designations).
- 3.5 Whenever a local planning authority exercises powers to designate an area as a neighbourhood area, consideration must be given as to whether the authority should designate the area concerned as a business area. Designation as a business area can only be agreed if the authority considers that the area is wholly or predominantly business in nature.
- 3.6 In order for a local planning authority to designate a neighbourhood forum the authority must be satisfied that the neighbourhood forum meets certain statutory criteria. These are set out in section 61F (5) of the Town and Country Planning Act 1990 and are as follows:
 - That the forum is established for the express purpose of promoting or improving the social, economic and environmental wellbeing of an area that consists of or includes the neighbourhood area concerned;
 - The forum's membership must be open to individuals who live or work in the neighbourhood area and to councillors any of whose ward falls within the area;
 - The forum must have at least 21 members each of whom lives, works or is a councillor in the area;
 - The forum must have a written constitution
- 3.7 In addition to the above, when determining an application for a neighbourhood forum the Local Planning Authority must have regard to the desirability of designating a forum that:
 - Has taken reasonable steps to secure membership that includes at least one person from each of the three aforementioned groups;

- Has membership drawn from different places in the area and from different sections of the community in the area; and,
 - Whose purpose reflects the character of the area.
- 3.8 Only one forum can be designated for a neighbourhood area. A forum designation ceases after 5 years.
- 3.9 The Government sets out the benefits of neighbourhood planning in a respective Impact Assessment (DCLG, March 2012). It states “The empowerment of neighbourhood communities will lead to community ownership of plans and plans that better reflect the wishes of local communities. It is hoped that this will lead to behavioural change in such a way as to make local communities more predisposed to accept development. As a result, it is anticipated that greater community engagement, coupled with an appropriate sharing in the benefits (including financial benefits) of development, could lead to an increase in development..... that is in-line with local needs” It is also considered it will create greater certainty for applicants and reduce the number of planning appeals.

4. The Proposal

- 4.1 The Brighton Marina Neighbourhood Area and Forum applications were submitted in September 2014. The geographical area proposed is the same as the area defined in the Brighton Marina Act. It is bounded by the cliffs to the north and the harbour arms to the south, east and west where it is also bounded by the access road. Appendix 1 shows the extent of the area delineated on a map.
- 4.2 The applicant has indicated they consider the neighbourhood area should be designated a business area.
- 4.3 **Area Application** - The determination of a neighbourhood area application should be judged on the appropriateness of the proposed area / boundary, compliance with legislation and take into account the representations received during the consultation period with regard also given to forum membership (whilst forum membership is continually evolving and thus subject to change it is considered appropriate to have regard to the membership information submitted because it helps to indicate a level of support). National Planning Practice Guidance (NPPG) makes clear neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their area. The NPPG provides guidance on designating neighbourhood areas and what could be considered when deciding boundaries (please see Appendix 2).
- 4.4 The informal view from DCLG in respect of designating a different area to that applied for is as follows: “A local planning authority must designate a neighbourhood area if it receives a valid application and some or all of the area has not yet been designated. While planning guidance encourages local planning authorities to aim to designate the area applied for, the courts (Daws Hill case) have confirmed that the discretion that primary legislation gives to local planning authorities to refuse to designate the area applied for if they consider the area is not appropriate is a broad discretion as long as it is exercised rationally.”

4.5 **Forum application** - The determination of a neighbourhood forum must include confirmation that the forum complies with the statutory criteria set out in paragraph 3.6 above and regard should be given to the desirable factors as detailed in paragraph 3.7 above. Only one forum can be designated for a neighbourhood area (which cannot overlap with another neighbourhood area). Determination cannot take into account financial implications. To accord with the purposes/objectives of localism and legislation, forum membership can only include residents, workers and elected members from within the neighbourhood area (for example, a forum cannot be made up of and thus dominated by members from outside the area) . The designation of the Forum is therefore dependent upon the boundaries of the neighbourhood area to be designated.

4.6 It should be noted that the designation of a neighbourhood area and forum alone will not affect planning decisions. It will however enable the designated forum to prepare a Neighbourhood Plan which, subject to meeting certain requirements, will carry similar planning weight as the adopted Local Plan.

5. COMMUNITY ENGAGEMENT & CONSULTATION

5.1 Prior to the submission of the applications, the respective forum endeavoured to engage the local community via various methods but most notably a newsletter.

5.2 Upon receipt of an application for the designation of a neighbourhood area and an application for the designation of a neighbourhood forum the City Council is required to publicise the proposed designation for a minimum of 6 weeks.

5.3 The Brighton Marina neighbourhood area and forum applications were publicised for the minimum 6 week period. The applications were advertised on the City Council's website from 2 October 2014 to 13 November 2014. In addition to this 24 notices were displayed within the area. People and bodies on the email circulation list for the weekly planning application list were notified of the applications. Prior to the closing date key respondents to the City Plan proposals for this area were also notified as a follow up to the site notices. Twenty three internal council teams were also consulted. The publicity arrangements complied with the Neighbourhood Planning (General) Regulations 2012

5.4 **Consultation responses** : There were in total 16 respondents to the Brighton Marina neighbourhood area and forum applications (please see Appendix 3 for a summary of responses). Copies of responses received can be found in the application folders.

5.5 **Forum membership** : According to information submitted by the forum, Brighton Marina Neighbourhood Forum has 26 members spread throughout the area. This is broken down as follows:

- Resident (13) 50%
- Worker (11) 42%
- Councillor (2) 8%

- 18-34 23%
- 35-50 27%
- Over 50 50%

- Female 38%

6. ANALYSIS & CONSIDERATION OF OPTIONS

- 6.1 The appropriateness of the proposed area and its boundary need to be considered first because if amendments are to be sought the make up of the forum is also likely to need amending.
- 6.2 This is a statutory procedure and non designation or the seeking of an alternative boundary without justification could lead to legal challenges. As raised in 3.4 and 4.4 above the city council must designate some or all of the area applied for. Paragraph 4.3 above and Appendix 2 set out the key factors that should be taken into consideration.
- 6.3 Defining appropriate boundaries for a neighbourhood area within urban areas is not straightforward. People within the same street are likely to define their neighbourhood differently based on a number of factors such as where they shop, work and whether they have children or not (e.g. familiarity with local schools and open spaces). Urban neighbourhood boundaries are therefore unlikely to follow clear widely recognisable boundaries for all people within an area in respect of all relevant factors such as geographical, social, cultural, community etc. However, in respect of the Marina there are a number of features which make this area distinct.
- 6.4 In respect of the guidance provided in the NPPG (please Appendix 2 for relevant extract) the Marina benefits from a number of elements including: being part of a coherent estate; having relatively distinct physical appearance and characteristics; a defined natural boundary by virtue of infrastructure and physical features (for example the Marina sea wall, access ramps and cliff).
- 6.5 However 12 respondents indicated they did not think the boundary of the proposed area to be appropriate. This should therefore be balanced and considered against the 3 respondents who did feel the boundary to be appropriate and the 26 members of the forum who seek the designation of this area.
- 6.6 Whilst there could be some merit in an extended area, as suggested by some respondents, to align with the City Plan development area DA2 or to include areas outside the Marina which may be affected by development within the Marina it is considered the proposed boundary is distinct and easily defined and there is no overriding support for an amended boundary.
- 6.7 The impact of development in a designated area will not be confined within the boundaries. Neighbourhood plans are subject to public consultation, an independent examination and a referendum. It is therefore imperative the Forum not only engage people from within its area but also adjoining areas and take into account all representations, in forming its neighbourhood plan. It is likely, especially where significant development is proposed, that the referendum area will be extended beyond the neighbourhood area. It is important, therefore, that the opinions of people in adjoining areas are incorporated into the plan-making process so that the plan can receive wide support as it passes through

examination and referendum. The Forum will therefore need to work with residents, businesses and berth holders within and in areas adjoining its neighbourhood area in order to consider and incorporate respective views when drafting its neighbourhood plan.

6.8 When all relevant factors are taken into account, including the community response and submitted forum membership data, it is considered reasonable and rational to accept the submitted neighbourhood area as being appropriate.

6.9 **Business Area status**

Under section 61H of the 1990 Act whenever a local planning authority exercises powers under section 61G to designate an area as a neighbourhood area, consideration must be given as to whether the authority should designate the area concerned as a business area. Designation as a business area can only be done if the authority considers that the area is wholly or predominantly business in nature [section 61H(3)]. In respect of this application the submitting body, which is currently detailed to have 26 members, seeks business area designation. There are 13 respondents who do not feel the area should be designated a business area.

6.10 There are a number of dwellings at the Marina however there is a significant element of business. It is currently designated a District Centre in the adopted Local Plan. Whilst the City Plan Proposed Modifications seek to alter this designation in response to the Inspector's comments, the modifications recognise it is still a retail destination. In addition to the currently designated retail area there are a number of business operations including a multi-screen cinema, Casino, bowling alley, Health and Fitness Club, fishing and tour boats and a boatyard. The Marina is a private estate and thus in effect operated as a commercial venture.

6.11 Whilst additional dwellings are proposed in the emerging City Plan and one development site is in the early stages of commencement it is considered reasonable to consider the nature of the Marina at this moment in time. In effect the difference between a business area and one that is not a business area is that in addition to the normal 'residents' referendum on the neighbourhood plan there is also a 'business' referendum. Should the outcome of the two referendums differ it is for the local authority to decide whether to make a neighbourhood plan (or order), a decision which would not be made lightly. On balance it is felt reasonable to consider the Marina to be predominantly business in nature especially in view that this should not prejudice the residents but to fail to do so would prejudice the workers/businesses within the area. The specified area is therefore considered to meet the requirements and should be designated as a business area.

6.12 **Name of Neighbourhood Area:**

Legislation makes provision for the designation of a neighbourhood area which may also be designated a business area should the neighbourhood area be considered to be wholly or predominantly business in nature. A business area designation can only occur when a neighbourhood area is designated. It is therefore considered that should the neighbourhood area be designated a business area that this be clear in the name and the title should be "Brighton Marina Business Neighbourhood Area".

6.13 Forum Application and Designation:

The Forum application has more than the required 21 members, membership is open to people who live, work or is a councillor in the area, it has a written constitution and the application form confirms the forum has been established for the express purpose of promoting and improving the social, economic and environmental wellbeing of Brighton Marina. Whilst one respondent queries the wording in the constitution on the basis it appears to favour residents over workers, the constitution makes clear the forum “shall promote and improve the social, economic and environmental well being of the area”. It is considered the purpose of the Forum detailed in the constitution is acceptable and is not considered to conflict with the aims of the strategic DA2 policy in the emerging City Plan with which a neighbourhood plan must accord, especially with the designation of the area as a business area. The forum application is therefore considered to meet the requirements set out in paragraph 3.6.

6.14 Some respondents considered the forum fails to meet some of the desirable factors that a local authority must have regard to, which are set out in paragraph 3.7. The respondents consider the forum is not appropriately representative of the area primarily by way of : age profile and proportion of workers versus residents. The application included confidential information about forum membership, in addition to that required by legislation, to help inform the recommendation in respect of the forum application. The forum has secured membership from all three specified groups (residents, workers and Councillors in the area) and has a range of ages and gender. Membership appears to be well spread throughout the area. It is therefore considered the forum has endeavoured to address the desirable factors.

6.15 Whilst one respondent suggests the forum’s meeting will be held at times that will not be convenient for residents who work, based on the information provided in the constitution it is not considered that meetings to “normally be held on weekdays and start between 14.00 and 20.00” is unduly restrictive such that this should result in the refusal of forum designation. The forum is open to all the required groups within the area and thus meeting times and proxy voting is for the forum to determine as considered convenient. Another respondent raises concern over the inability for berth holders to become members of the forum if they are not a resident, worker or Councillor within the area. Whilst this is evident in the constitution it is considered this accords with the requirements detailed in the Localism Act 2011. For the reasons detailed in paragraph 6.7 this does not and should not preclude berth holders from being involved in the preparation of a neighbourhood plan.

6.16 When all relevant factors are taken into account, including the community response and submitted forum membership data, it is considered reasonable and rational to accept the submitted neighbourhood forum as being appropriate.

7. CONCLUSION:

7.1 After considering all relevant factors the committee is recommended to approve the designation of the Brighton Marina Business Neighbourhood Area as delineated in appendix 1 and to approve the designation of the Brighton Marina Neighbourhood Forum.

8. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 8.1 It is anticipated that costs will be incurred within the Planning revenue budget to provide support and advice to communities wishing to undertake neighbourhood plans, consultation, publication of neighbourhood plans, examinations and any other steps that may be needed for the neighbourhood plan to come into legal force, including referendums.
- 8.2 DCLG funding is available to Local Planning Authorities in the 2014/15 financial year of up to £30,000 per neighbourhood plan in recognition of the costs to the council outlined above. This amount is payable to the council in stages depending on requirements being met. It is currently unclear if this funding will be available after the 2014/15 financial year.
- 8.3 The DCLG impact assessment estimates costs to local planning authorities of between £20k and £86k per plan with more plans being towards the lower end of the range. It is therefore possible that the funding available will not be sufficient to cover the costs of supporting this process. In addition the DCLG estimate that the cost of keeping the plan under review would be 70% of the original cost, every ten years. If costs arise which cannot be met from the DCLG funding or managed within the existing Planning budgets then additional funding will need to be identified.

Finance Officer Consulted: Steven Bedford

Date: 03/12/14

Legal Implications:

- 8.4 The legislative background to neighbourhood planning, including the considerations to be taken into account by the local planning authority when determining applications for the designation of neighbourhood areas and neighbourhood forums, is set out in the body of the report.

There are no adverse human rights implications to draw to Members' attention.

Lawyer Consulted:

Name Hilary Woodward

Date: 10/12/14

Equalities Implications:

- 8.5 There are no identified equalities implications arising from this report. The designation of a Neighbourhood Area and/or Forum by themselves does not give rise for a need to carry out an Equality Impact Assessment. Whilst it enables the production of a Neighbourhood Development Plan the effects of which will be assessed when any such plan is determined. (Issues regarding membership of the Forum are addressed at Paragraph 6.14 Above)

Sustainability Implications:

- 8.6 There are no implications arising from this report. The designation of a Neighbourhood Area and/or Forum by themselves does not have sustainability implications. Whilst it enables the production of a Neighbourhood Development Plan the effects of this will be assessed when any such plan is determined.

Any Other Significant Implications:

8.7 Corporate / Citywide Implications:

This is a statutory procedure enabling a local community to take advantage of the non compulsory Neighbourhood Planning system. The city council has a duty to support communities wishing to undertake Neighbourhood Planning, the principle of which is considered to be consistent with the council's priorities. It is also consistent with the objectives of the Sustainable Community Strategy and Neighbourhood Decision Making. The emerging City Plan makes clear support will be given to communities for neighbourhood planning, reflecting the council's aspirations and the new statutory duties. The designation of a Neighbourhood Area and/or Forum by themselves is not felt to affect other services, agencies and the city as a whole. Whilst it enables the production of a Neighbourhood Development Plan the effects of which will be assessed when any such plan is determined.

SUPPORTING DOCUMENTATION

Appendices:

1. Brighton Marina Business Neighbourhood Area
2. National Planning Practice Guidance Extract re Designating Neighbourhood Areas
3. Brighton Marina Neighbourhood Area and Forum Applications – Consultation Responses : Summaries

Documents in Members' Rooms

None

Background Documents

1. The Localism Act 2011
2. The Neighbourhood Planning (General) Regulations 2012
3. Localism Act : Neighbourhood Plans and Community Right to Build – Impact Assessment (DCLG, March 2012)

Brighton Marina Business Neighbourhood Area