

The sequence of events in terms of the evolution of that (Swanton Morley) neighbourhood plan policy, the respective examiners' comments on it and the reasoning for its eventual inclusion in the made plan as set out in the Council's Decision Statement (March 2021).

Key - Heading dates in *italic bold* relate to changes to the Housing 'Allocation policy'.

- **Jan-Feb 2017 - The Pre-submission Consultation (Reg.14) was held.**

This was the first time that Policy 4 Local Lettings was seen by Breckland Council.

https://www.breckland.gov.uk/media/9206/SMNP-Reg-14-version/pdf/Swanton_Morley_Neighbourhood_Plan.pdf?m=637339377627670000 (see page 43).

- **In its response to the Consultation**, the Council indicated that there was particular concern that this policy should be deleted as the Housing Team believed it prevented the Local Authority from complying with legal requirements, as well as being in conflict with the adopted Development Plan.

<http://democracy.breckland.gov.uk/documents/s42215/SMNP%20Reg%2014%20-%20Final%20Breckland%20Comments%20-%20Call%20in%20version%20sent%20-%20amended.pdf> (see page 6 &7, re p40, Policy 4 Local Lettings).

- **July-Sept 2017 - The Submission Consultation (Reg.16) was held.**

https://www.breckland.gov.uk/media/3691/Swanton-Morley-Neighbourhood-Plan/pdf/1.0_SMNP_Draft_Examination_v2.2.pdf?m=637339377681670000 (see page 44).

- **In its response to this Consultation**, the Council repeated its concerns and for the need for this policy to be deleted (see page 6, re p40, Policy 4 Local Lettings).

http://democracy.breckland.gov.uk/documents/s44623/D28_17_SMNP%20Reg%2016%20-%20Final%20Breckland%20Reps%20-%20Appendix%20A%20210817.pdf

- **Jan 2018 - The Independent Examiner issued their report.** With regard to Policy 4, it stated that *"The Policy is not a land-use planning policy and, indeed, has no basis in planning law (para 4.34)"*. It was argued that the policy fails to consider certain categories of people as required by S166A (3), Part 6, Housing Act 1996. It was also considered not to be compliant with the strategic policy in the Core Strategy (Policy DC 4), found in the previous adopted LDF. The Examiners proposed modification was that *"The Policy and its supporting text at paragraphs 6.60 – 6.77, and related appendices 6 and 8 should be deleted in their entirety (PM8)*.

https://www.breckland.gov.uk/media/9205/SMNP-Independent-Examiners-Report/pdf/Swanton_Morley_Final_Report.pdf?m=637339377665870000 (see pages 16 & 17).

- **Feb 2018 - Breckland Council met with the Parish Council** regarding the Parishes concerns with a number of recommendations within the Examiners Report. In relation to Policy 4, the Parish provided a couple of examples of other Neighbourhood Plans that had included a local connection policy (Woodcote and Allendale).

Housing staff subsequently considered these examples and considered that they were not applicable to Breckland as its Allocations policy did not have a section that addressed 'local needs'.

- **Sept 2018 - In Breckland Council's response to the 1st Examiners report**, in the 'Decision Statement' it confirmed it did not support the proposed modification to Policy 4 (PM8). As a result of further discussions with the Parish Council it was agreed to amend this and other policies which would need to be subject to a further 'Modification Consultation'.

It outlined that in relation to Policy 4 it would *“Amend the policy to remove reference to section 106 agreements and the Council’s Housing Register. Focusing the criteria on the types of resident’s local connection to those in the parish. Also including new policy concerning the approach to be taken if there is no one eligible with a local connection, as well as the considerations to be account of when deciding on the amount and mix of housing”* (see Decision Statement, page 2, 3. MODIFICATIONS, Policy 4: Housing for the Local Community (Local Lettings)).

The reason for this was outlined in the ‘Decision report’ in Appendix A, where it concluded that *“Having sought legal advice, the Council considered that the examiner could have concluded that the policy was a land-use policy”* and that the housing allocations policy would need to be amended.

Also it further stated that *“The Council’s Housing Allocations policy has been amended including relevant consultation to provide the ability for the District Council to support the inclusion of Local Lettings Policies”*.

It concluded that *“As such, the principle of a Local Lettings Policy consistent with the Council’s Housing Allocations policy is acceptable to the Council. Therefore, in light of this new fact the deletion of the policy would not be necessary to make the plan meet the basic conditions. However, in order to ensure the policy is effective, it would need to be modified to meet those conditions”* (see Appendix A, pages 6-9, PM8 Pages 42-44).

N.B. The ‘legal advice’ provided related to the housing allocations policy advice.

<https://www.breckland.gov.uk/article/10415/Decision-on-Swanton-Morley-Examiners-Report> (Webpage for the Decision Statement, Decision Report and Appendix A).

- **Dec 2018 - Legal Advice Note - Housing Allocations Policy and Local Connections.**

This advice was summarised for the Overview and Scrutiny Commission held on 31st Jan 2019.

- That any amendment to the council’s allocations policy, be it on this or other matters, carries with it a degree of risk of successful challenge.
- That the likelihood of a challenge being successful is dependent largely upon the amount to which any discrimination which may occur as a result of any policy can be justified as serving a ‘legitimate aim’, whilst also being ‘proportionate’.
- That as the proposed policy amendment would only apply in limited circumstances, as a means of supporting the delivery of evidence-backed policies within a neighbourhood plan (i.e. the delivery of affordable housing to meet locally identified need), the proposed policy amendment carries with it a lower risk of successful challenge from any individual naturally disadvantaged by the policy.
- That if the policy applied all parishes in the district regardless of whether a neighbourhood plan is in place, it is more likely to be considered by the courts as not being ‘proportionate’, and would therefore give rise to a higher risk of challenge from any individual disadvantaged by such a policy.
- That should the authority wish to develop a policy approach which is wider and far reaching than the policy approach proposed through the amendment set out within this report, that counsel’s advice be sought as a means of understanding the level and type of evidence needed to justify such a policy.

(see link for below for Cabinet Meeting for full Legal Advice Note).

- **Jan 2019 - A ‘Modification Consultation’ was held on the Plan.** This included the changes referred to above, to Policy 4.

N.B. Breckland Council did not make any comments on this consultation.

https://www.breckland.gov.uk/media/11342/SMNP-Modification-Consultation-Report/pdf/SMNP_Modification_Consultation_Report.pdf?m=637339377668770000 (see page 6 & 7).

- **Feb 2019 - Cabinet Meeting** - a report concerning a proposed amendment to the council's Housing 'Allocations Policy'. This concerned where Parishes wanted affordable housing to be allocated on the basis of a 'local connection' but needed to be balance this against the legal requirement to prioritise housing for those in the highest need in the district, as well as having evidence to justify a different approach. It was agreed that *"100% allocation of affordable housing for any additional housing (to the Local Plan) within the Neighbourhood Plan be allocated to those with housing need in the Parish for an indefinite period..."* and that the amendment would be subject to public consultation.

<http://democracy.breckland.gov.uk/documents/b12150/Cabinet%20Supplement%2005th-Feb-2019%2009.30%20Cabinet.pdf?T=9> (see page 106 for the Report, page 214 for amended allocations policy and page 215-17 for Legal Advice Note).

<http://democracy.breckland.gov.uk/documents/g4253/Printed%20minutes%2005th-Feb-2019%2009.30%20Cabinet.pdf?T=1> (see pages 1-3 for the minutes of the meeting).

- **April 2019 - Delegated decision** - The amendments to the Housing Allocation Policy that made provision for a local lettings policy that could be referred to in emerging Neighbourhood Plans was agreed.

<http://democracy.breckland.gov.uk/ieDecisionDetails.aspx?Id=1799>

- **September 2019 - A 2nd Examiners Report was issued in relation to the Modification Consultation.** The Examiner stated that *"Allocating social housing is a matter for housing management and is not generally regarded as a land use planning matter, but requirements can be managed by a legal agreement linked to development"*. He further clarified that *"...I have been advised by BDC following correspondence with SMPC that BDC's Housing Allocations Policy has continued to evolve which now allows for local lettings policy to be applied to affordable housing in Breckland"* (para 5.43). Subject to some further proposed modifications he allowed Policy 4 to be retained as a result of changes to the Breckland Housing Allocation Policy. This allowed a 'local lettings' approach to be applied to sites over and above those already allocated in the Local Plan (para 5.48).

(See 2nd Examiner Report and both Appendix F documents in the attached email - pages 27 to 31 is the assessment of Policy 4; page 66 (Appendix D) has the proposed amended Policy 4 showing the 'tracked change's; and on page 77 the clean' version).

- **In Breckland Council's further response** to the final 2nd Examiners report, the 'Decision Statement' confirmed that that all the recommendations made by the examiner were accepted. The reason for this was outlined in the 'Decision report', in Appendix A, where it states that it *"Agree(ed) that the Modifications add further certainty regarding how the policy will be delivered."* <https://www.breckland.gov.uk/swanton-morley-examiners-report> (webpage for the Decision Statement, Decision Report and Appendix A - see page 4, Policy 4: Housing for the Local Community (Local Lettings) Appendix A).

- **November/December 2019 - A Referendum** was held on the 14th November and as a result of a 'Yes' vote (84.5%) the Plan was 'made' on the 6th December 2019.

Please note: that the housing 'Allocations policy' referred to above has been amended and the latest version was sent to you as requested on the 17/02/202.