

Conclusion of legal advice provided to Thanet District Council in relation to the Birchington Neighbourhood Plan

The Council requested legal advice regarding the issues concerning the Basic Conditions Statement submitted by the Parish Council and the subsequent process for the Examination to continue

Below is the conclusion of the advice provided to Thanet District Council by Cornerstone Barristers

SUMMARY OF ADVICE

In an email dated 5 October 2022 the Council set out three questions upon which our advice was sought. We answer them below, by way of summary and conclusion:

- “Whether the Neighbourhood Plan should be withdrawn by the Parish Council, or the examination process should be suspended or if the issues can be dealt with as part of the examination process and it can continue”

We do not think that the draft plan needs to be withdrawn. The key issues identified are with the BCS, not the plan itself. Whether or not a suspension is needed boils down to the question of whether further consultation would be required following any further work by the Parish Council on the BCS.

- “Whether or not the Basic Conditions Statement needs to be revised”

This to be more of a practical issue than a legal one. The examiner’s duty to determine whether the plan meets the basic conditions does not depend on the content or adequacy of the BCS, so in a strictly legal sense we do not think the BCS would need revising. However, there is clearly merit in doing so from a practical perspective - the BCS is the key piece of evidence the examiner will rely on to reach a view on the basic conditions, so if it is deficient that increases the risk of an adverse finding.

- “Whether or not any further consultation would be necessary”

There is room for argument as to whether an amended BCS would need to be subject to consultation, but we consider that further consultation would be the safest and fairest approach here. A failure to re-consult could conceivably provide an avenue for legal challenge by anyone who is opposed to the plan.