

## **BRECKLAND COUNCIL**

### **Report of the Deputy Chief Executive to the Council – 17<sup>th</sup> December 2009**

#### **ADOPTION OF THE BRECKLAND CORE STRATEGY AND DEVELOPMENT CONTROL POLICIES DEVELOPMENT PLAN DOCUMENT 2001-2026**

##### **1. Purpose of Report**

- 1.1 This report proposes that the Council adopts its Core Strategy and Development Plan Document. This follows the recent conclusion of the Examination process that has culminated in an Independent Inspectors' Report determining that the preparation and content of the document, subject to some minor changes, is Sound. Upon adoption the document will form part of the up-to-date Development Plan for Breckland and in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 will be the starting point for the determination of planning applications. As a result a number of saved policies from the Adopted Breckland Local Plan will be superseded.

##### **2. Recommendations**

It is recommended that the Council:

- 2.1 Endorse Option 1 to adopt the Breckland Core Strategy and Development Control Policies Development Plan Document 2001-2026, with the amendments recommended in the Inspectors Report.

**Note:** In preparing this report, due regard has been had to equality of opportunity, human rights, prevention of crime and disorder, environmental and risk management considerations as appropriate. Relevant officers have been consulted in relation to any legal, financial or human resources implications and comments received are reflected in the report.

##### **3. Information, Issues and Options**

###### **3.1 Background**

- 3.1.1 After a lengthy process the Council is now in receipt of an Independent Inspectors Report that concludes that the Core Strategy and Development Control Policies Document as submitted is Sound subject to a number of minor changes. Members will recall that at a meeting of Council on 12 March 2009 it was agreed, following consideration of comments made in the pre-submission publication period (in January-February 2009), to submit the Core Strategy Document for Examination.
- 3.1.2 The document was submitted for Examination on 31 March 2009 and Breckland was appointed two independent Government Inspectors, Mr Philip Goodman and Mr Paul Crysell, to oversee the Examination process. A Pre-Hearing Meeting was held on 19 May 2009 at Elizabeth House, Dereham to enable the Inspectors to introduce themselves and explain the Examination process and clarify any procedural matters. As Members will recall, a number of representors on the document had expressed their right to be heard via formal Hearings held in public. The Hearings in public started on 30<sup>th</sup> June 2009 and concluded on 17<sup>th</sup> July 2009. The Hearings were held in Elizabeth House in Dereham, with the exception of place specific Hearings in Thetford and Attleborough. The willingness of the Inspectors to accommodate the Hearings in those communities most affected by the Document was appreciated by Community leaders and participants and has gone some way to enhancing confidence in the planning system in Breckland.

- 3.1.3 Immediately preceding and during the Hearings a number of minor changes to the document were put forward. Members should be reassured that significant changes would not have been considered or accepted by the Inspectors. These minor changes were either recommended by Officers to clarify the document (in agreement with Deputy Chief Executive and Executive Member for Planning as agreed by Council on 12 March 2009) or were suggested by participants or the Inspectors themselves. The full list of those minor changes endorsed by the Inspectors can be found and referenced at Annexes A and B of the Inspectors Report which is provided in the supporting information. As the Inspectors note, these changes do not seriously call into question the overall soundness of the document but are more in the way of necessary fine-tuning.
- 3.1.4 Following the Hearings in Public, the Schedule of changes suggested during the Hearings were subject to a further 6 week period of consultation from 27<sup>th</sup> July to 4<sup>th</sup> September. A total of 12 representations were received, entirely from parties that had attended the Hearing sessions. These representations were considered by the Inspectors when finalising their Report
- 3.1.5 The Inspectors Report on the Examination into the Breckland Core Strategy and Development Control Policies document received on 13<sup>th</sup> October 2009 concludes that the document is Sound. The overall conclusion in Section 7 of the Report recognises that the document is comprehensive and complex and will achieve the aims of sustainable development and the protection of a unique and locally distinct environment. Breckland is one of fewer than 50 of the 326 Local Planning Authorities in England to have a sound verdict on its Core Strategy. Less than 20 Local Planning Authorities also have a sound suite of Development Control policies. Breckland is also one of the first authorities to have a sound Core Strategy which fully reflects the latest requirements in the recently revised Planning Policy Statement 12 "Local Spatial Planning" on infrastructure delivery. Breckland is only the second authority in Norfolk and Suffolk to have a joint Core Strategy and Development Control policies document found sound. This puts the authority in a very strong position to manage development in its area and to finalise the Site Specific document and Area Action Plans
- 3.1.6 Members are reminded that the Inspectors Report in its entirety is binding on the Local Planning Authority. Unlike the previous Local Plan system, the Council cannot be selective on which parts of the Report it chooses to accept and nor is there scope for further modifications to the document. The option now available to the Council is to either accept or not, the Inspectors Report. Should the Council decide not to accept the Sound Report then the Council will in effect be directing the Authority to start the process again. This would be a first in England (as no other authority has rejected a Sound Inspectors Report) and is highly likely to result in both legal action against the authority and speculative applications in the ensuing uncertainty.

## **3.2 Main Issues Arising from the Inspectors Report**

- 3.2.1 This section of the Report highlights those issues that were considered by Council when agreeing to submit the Document for Examination and appraises Members of the Inspectors conclusions.

### **European Sites and Protected Species**

- 3.2.2 The issue of introducing 'buffer zones' extending 1500 metres beyond the boundary of those SPAs capable of accommodating Stone Curlews (the orange zone) and beyond significant clusters of breeding Stone Curlew on habitat outside of the SPA (the blue zone) was the focus of nearly three days debate at the Hearings. As

Members are aware the 1500 metre buffer zone does not prevent the Council from delivering its preferred spatial strategy however it does have significant local implications on directs of growth at Thetford and Watton and it will limit the amount of windfall development that can take place in the rural south-west of the District. The 1500 metre buffer is also a contributory factor for the de-selection of Weeting as a Local Service Centre for housing allocation.

- 3.2.3 The Inspectors heard evidence from the Council's appointed ecologists and expert evidence from Professor Rhys Green of Cambridge University (the national expert on Stone Curlews) and Dr Chris Gibson (Natural England's regional bird expert). They also heard evidence from local ecologists representing development interests in Brandon, Thetford and Weeting, including the Shadwell Estate.
- 3.2.4 The Inspectors have considered the Council's significant evidence base on the issue and the amendments to Core Policy 10: Natural Environment agreed by this Council result in an approach that is consistent with the relevant legislation. However, the Inspectors have readily accepted that there remains more to be known about the behaviour of Stone Curlews and the cause of the effect which results in the avoidance of nesting close to development. The Inspectors recognise that this hinders possible mitigation measures that might permit a less restrictive approach to development (paragraphs 3.215-3.217). On the other hand, the Inspectors conclude that they were not presented with any meaningful evidence to show that development within 1500metres will not adversely affect Stone Curlew populations. In this scenario, the Inspectors state that a precautionary approach must be followed and as such an amended Core Policy 10 and supporting text including the 1500 metre buffer is endorsed.
- 3.2.5 The Inspectors advocate at paragraph 3.224 that "urgent work" is now essential to enable a better understanding of interactions between Stone Curlews and human settlement. It is clear in paragraph 3.223 that the Inspectors are uneasy with the current balance between human needs and the fullest possible protection for identified species such as Stone Curlews. It may be possible through further work to develop practical and effective mitigation measures. Certainly without this work, the Inspectors concur with Natural England, that it will remain extremely difficult to overcome the presumption against development
- 3.2.6 There are references where the Inspectors intimate that further research on Stone Curlews could inform the ongoing Site Specific work and Thetford Area Action Plan. The Hearings were advised that work to unpick the cause of the effect regarding human settlement and avoidance by Stone Curlews would be a 2-3 year piece of research if it was to have appropriate validity. The work will be complex in order to decipher the effects associated with individual causes (cats, noise, dog-walking, lights, buildings) and the scope for related mitigation measures. The Local Planning Authority is advised that resources for such a piece of research will require a cross-boundary approach with the adjoining three authorities who similarly host Stone Curlew populations.

## **Thetford**

- 3.2.7 The overall development levels have been determined to be sound. Whilst the Inspectors have raised concern over the impact of the Stone Curlew buffer on limiting directions of growth and regeneration efforts for the town they have nonetheless endorsed a Strategic Urban Extension to the north of the town. They have concluded that this option is deliverable and that it is shown on the key diagram. The Inspectors have been clear that there are no benefits to extending development beyond the A11 and in particular the threatened coalescence of Croxton village
- 3.2.8 The Inspectors Report has a number of implications for the emerging Area Action Plan (AAP). It is clear that further work is still required on European Habitats as well as further strategic transport work. Additionally, the AAP will need to address the

concerns that an extension to the North and North-East of the town must compliment and be a factor in the imperative need to regenerate the town centre and estates to the south and west of the town.

### **Attleborough and Snetterton**

- 3.2.9 In respect of Attleborough, the Inspectors have again agreed the proposed development levels (4,000 homes and at least 2,000 jobs). The Inspectors agreed with the Council that Attleborough has long been held as a sustainable location for major growth given its location on the A11, the Norwich-Ely railway and relative lack of environmental constraints. The Inspectors state at paragraphs 4.27 – 4.30 that a substantial housing led scheme to the south of the town presents the only way to secure the delivery of a link road from the B1077 to the A11 thereby helping to relieve congestion in the town centre
- 3.2.10 The Hearings considered the timings and phased delivery of the proposed link road and in particular the agreed wording of Core Policy 4: Infrastructure which stated that the “release” of land to the south of Attleborough would only be considered following the completion of the link road. This drew criticism that the policy as drafted was unduly onerous and provided no guarantee to developers that development would be granted after the road was delivered. The policy was therefore considered unrealistic and undeliverable.
- 3.2.11 At this point in time there is no guarantee of public funding for the link road and therefore the development industry has the primary responsibility to deliver the road. On this basis it is recommended that the document as amended at the Hearings and endorsed by the Inspectors is sound and should be adopted. This will enable the Local Planning Authority to control the delivery of the road and associated housing through either the Area Action Plan process (as recommended by the Inspectors) or through the grant of planning permission.
- 3.2.12 As with Thetford, much remains to be addressed through an Area Action Plan, not least the issue of Waste Water treatment which presents an equally significant challenge for Attleborough as the road infrastructure. Added to this are the issues of energy supply and the lack of leisure facilities and green infrastructure. As with Thetford, further work will need to be done on detailed infrastructure planning including the options around developer tariffs.
- 3.2.13 The Inspectors have also concluded that Snetterton is deliverable and should remain in the Core Strategy as a strategic location for employment development despite concerns about energy supply. The Inspectors were confident that the efforts of the Council, and in particular the Economic Development team, meant there was a reasonable prospect of development coming forward at Snetterton in the next few years. Members should note that the contingency of releasing more employment land at Attleborough if Snetterton stalls remains in the Core Strategy

### **Local Service Centre Villages**

- 3.2.14 The Council’s approach to the identification and the principle of a two-tier strategy for Local Service Centres attracted few objections. However, in respect of Swanton Morley and Weeting there were detailed and significant objections to the particular approach taken to these two Local Service Centre communities. In the case of Swanton Morley, the Parish Council objected to the proposed allocation of 50 additional new homes to 2026, citing that the Council had not given appropriate consideration to the level of recent development and existing planning permissions in the village. This was debated at the Hearings in public and the Inspectors have concluded at paragraph 3.47 of the Report that there is little evidence to suggest that the Council’s analysis is significantly out of step with the opportunities and environmental constraints in each village. As a result the Inspectors have endorsed Swanton Morley’s allocation of 50 new homes but have advised that local details

need to be more rigorously examined and tested as part of the Site Specifics document. The Inspectors advice has been taken on board and the site specific proposals for Swanton Morley were considered by the LDF Task and Finish Group on 3<sup>rd</sup> November. The allocation of 50 homes for Swanton Morley is proposed to be split over two sites to address the environmental impact and enable a phased approach to the release of land.

3.2.15 In respect of Weeting the issue is indelibly linked to European Habitats and this is recognised by the Inspectors at paragraphs 3.45 and 3.46 of the Report. The Inspectors conclude that Weeting is, or could be, a sustainable Local Service Centre village. However, because of the precautionary need for the 1500 metre Stone Curlew buffer, in combination with flood risk, the historic environment and highways issues, there are no deliverable sites in the village. For this reason the Inspectors have endorsed its status as a Local Service Centre with no allocation for housing. However, they have reiterated that further research may identify further scope for mitigation together with location specific analysis and research. The Inspectors refer to the emerging Site Specifics document as providing an opportunity for resolution. The professional advice to the Local Planning Authority is that the Site Specifics document should not be delayed for further Stone Curlew research and that the issue be comprehensively addressed across the Breckland SPA with adjoining authorities and fed into future reviews of Core Strategy documents.

### **Rural Communities**

3.2.16 The Inspector has endorsed the overall Spatial Strategy and Core Policy 14. The Inspectors considered representations that criticised the Council's decision not to allocate more housing to those villages not identified as Local Service Centres. At paragraph 3.64 the Inspectors recognised the dilemma faced in a very rural District like Breckland. However, they concluded that a strategy that directed more housing to smaller villages will provide no guarantee of supporting rural services and is more likely to reinforce unsustainable commuting patterns.

### **Affordable Housing**

3.2.17 The consultation The threshold and viability of affordable housing provision is a key element of Core Strategy and Development Control documents. A number of recent legal cases (Blyth Valley and Wakefield) have criticised Local Planning Authorities for a lack of evidence in their LDFs on the affordable housing contributions. To reflect this, the Inspectors have addressed the issue in considerable detail (paragraphs 3.76 through to 3.103). The Inspectors conclude that in the case of Breckland there is a "...robust evidence base demonstrating a high level of need. This provides a clear demonstration of the need for a reduced site threshold of 5 dwellings or 0.17ha or larger and that a level of 40% of the total housing to be provided on sites is justified." The Inspectors were satisfied that the Council's policies provide a pragmatic approach on affordable housing provision (i.e. there is scope for negotiation on more marginal sites). The Inspectors gave consideration to the current credit crunch and a slower housing market and in their view concluded that the currently depressed housing market will only increase the need for affordable housing. This is in part because fewer properties are being built but also because house prices are unlikely to decrease further and as such remain beyond the means of a significant number of households in the District. Therefore the threshold and percentage in Policy DC4 was sound.

### **Other Amendments**

3.2.18 Members are advised that the Inspectors have made a number of necessary amendments to the document which they consider are necessary to make the document sound. In summary the principal amendments include:

- Policy DC14: removing the requirement for on-site renewable energy provision, thus allowing a more flexible approach to providing the 10% requirement on off-site locations
- Policy DC18: deleting this policy on Conversion of Historic Buildings and including the key parts of the policy in Policy DC17 on the Historic Environment
- Policy DC20: Delete policy on Highway Safety as it repeats policy elsewhere
- Policy DC22: Delete policy on Corridors of Movement as it repeats policy elsewhere, Corridors of Movement are identified and protected in Core Policy 13 'Accessibility'

## **Summary Conclusion**

3.2.19 As the Inspectors observed, the Core Strategy document is both comprehensive and complex. More importantly for the Council, the communities of Breckland and those who have a responsibility to deliver services and development, the Inspectors have found the document Sound thereby creating the certainty associated with an up-to-date spatial plan. A sound and adopted Core Strategy and Development Control policies will provide a new basis for determining planning applications through a clearer and more succinct document. This will have benefits for the quality of development in Breckland but also the quality and efficiency of planning decisions. Critically, a sound and adopted Core Strategy provides assurance to the Authority in taking forward and finalising its Area Action Plans and Site Specific documents.

3.2.20 The Inspectors make reference to the need to review and monitor the Core Strategy and Development Control Policies. Members will recall that the authority has a requirement under Section 35 of the Planning and Compulsory Purchase Act 2004 to prepare and submit an Annual Monitoring Report. It is through this process that the performance of the adopted document will be measured and the need for a whole or partial review identified

## **NEXT STEPS**

3.2.21 Subject to the decision of this Council the adoption date of this document will be 17<sup>th</sup> December 2009. At this point the document will have the fullest weight in the planning process and will formally become part of the Development Plan for Breckland for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004. As outlined on pages 139-140 of the Core Strategy a number of saved Adopted Local Plan policies will disappear leaving just a handful of site specific Local Plan policies to be replaced by the forthcoming Site Specifics document. To meet the regulatory requirements a notice of adoption will be made in the Eastern Daily Press and on-line. The notice of adoption will also include reference to the opportunity for legal challenge to the Council's decision. In the case of the LDF, parties will have 6 weeks from the date of adoption to register their intent for a judicial review of the Council's decision to adopt.

3.2.22 Following adoption, Capita Symonds will be arranging for a high quality final paper document to be prepared with the style and format to be agreed with the Local Planning Authority. An on-line version of the document will be made available almost immediately on the Breckland website and also uploaded onto the Planning Portal website. All statutory consultees and those who have registered an interest in the LDF will be notified of the adoption. The printed paper copies will be available in the new year and complimentary copies will be sent to all Councillors, Parish Councils via the Clerk and local libraries. It is intended to keep the print run limited in the interest of resources and the need to promote the Council's e-government and green agendas. A small quantity of paper copies of the document will be made available for sale to interested parties at a price to be agreed by the Local Planning Authority

## **Legislation**

3.2.23 The Council has now reached the final stages of preparing a Development Plan Document and following a decision to adopt, Capita Symonds will discharge the final legislative requirements associated with adoption of an LDF document. These are set out at Regulation 36 of the 2004 Local Development Document Regulations and include:

- Prepare an Adoption Statement
- Place the Document, the Adoption Statement and the Inspectors Report in Council Offices and local libraries and Customer Contact Centres and on the Council's website
- Publish a notice in the local press that the document has been adopted; and
- Notify the Secretary of State

3.2.24 The preparation to date has been in accordance with the Planning & Compulsory Purchase Act 2004 and the Planning Act 2008. Adherence has been given to the associated 2004 and 2008 Local Development Document Regulations. The Council has also adhered to the requirements of the Natural Environment and Rural Communities Act 2006 and Section 17 of the Crime and Disorder Act 1998. Observance has also given to European Habitats Directive, the Strategic Environmental Assessment Directive and the Water Framework Directive.

## **Sustainability Appraisal**

3.2.25 The Sustainability Appraisal Report (including the requirements of Strategic Environmental Assessment) has been updated to reflect the Inspectors Recommendations. Overall the minor changes endorsed by the Inspectors do not affect the overall sustainability of the document as they essentially fine-tune the submitted document. Nevertheless the issue has been considered and an updated Sustainability Appraisal Report (400 pages) is available to view on-line.

## **Habitats Regulation Assessment**

3.2.26 A Habitats Regulation Assessment was submitted and examined alongside the Document. The changes to the document are not so significant as to warrant additional Habitats Regulation Assessment work. The Council is advised that the document for adoption will not have a significantly adverse affect on European Habitats and protected species in Breckland.

## **Options**

3.3.1 There are two options available:

1. Adopt the Breckland Core Strategy and Development Control Policies Development Plan Document 2001-2026 as submitted, with the amendments recommended in the Inspectors Report.
2. Do not adopt the Breckland Core Strategy and Development Control Policies Development Plan Document 2001-2026, with the amendments recommended in the Inspectors Report and; agree to prepare a new or revised Core Strategy and Development Control Policies document for consultation and further examination to a timetable to be agreed by this Council in partnership with Capita Symonds.

### 3.4 Reasons for Recommendation(s)

3.4.1 The Council has reached the latter stages of preparing a Core Strategy and Development Control Policies document. Following Examination it has been found sound subject to a number of necessary fine-tuning amendments. As stated in this Report, the Inspectors Report is binding and the decision for the Council is to adopt the document or not. The Council is recommended to adopt the document in order to introduce an up-to-date planning framework for Breckland and to enable the remaining LDF documents to be finalised.

3.4.2 There are considerable risks and costs to the Council in not adopting the document. There are no procedural or technical justifications for not adopting a sound document. In this context the Council exposes itself to a judicial review of a decision not to adopt a sound document.

## 4. Risk and Financial Implications

### 4.1 Risk

4.1.1 The Risk Management questionnaire has been completed and this report does not require a risk assessment because the changes/issues covered by the recommendations are not significant in terms of risk.

### 4.2 Financial

4.2.1 None

## 5. Legal Implications

5.1 None.

## 6. Other Implications

- a) Equalities: There are no equalities implications.
- b) Section 17, Crime & Disorder Act 1998: None.
- c) Section 40, Natural Environment & Rural Communities Act 2006: None.
- d) Human Resources: None.
- e) Human Rights: None.
- f) Other: None

## 7. Alignment to Council Priorities

7.1 The Site Specific Policies and Proposals Document will contribute to the following Council Priorities:

- Building Safer and Stronger Communities
- Environment
- Prosperous Communities

## 8. Ward/Community Affected

8.1 Affects all Wards/ Parishes in Breckland .

## Background Papers

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### Key Decision Status (Executive Decisions only):

*This is a key decision as indicated on the Forward Plan.*

### Supporting documents

- Inspectors Report & Schedule of Minor Changes endorsed by the Inspectors
- Core Strategy & Development Control Policies Document including minor changes endorsed by the Inspectors
- Final Sustainability Appraisal Report including Strategic Environmental Assessment (Inspectors Recommendations)
- Submitted Proposals Map

*All supporting documents are available electronically via the following link :*

<http://www.breckland.gov.uk/brecklandcouncil/environment/planning/planningpolicy/ldf.htm>