

## BRECKLAND DISTRICT COUNCIL

**Report of:** Cllr Gordon Bambridge - Executive Member for Growth

**To:** Council – 6<sup>th</sup> December 2018

**Author:** Phil Mileham – Strategic Planning Manager  
Sarah Robertson – Principal Planning Policy Officer

**Subject:** Local Plan – Main Modifications

**Purpose:** To consider the Main Modifications requested by the Inspector during the Local Plan Examination in Public to date.

**Recommendation(s):** It is recommended that Members consider contents of this report and Council endorse option 1a which is to accept the modifications and continue with the main modifications consultation.

### 1.0 BACKGROUND

- 1.1 As Members will be aware, the Council agreed to sign-off the proposed Submission version of the Local Plan on 27<sup>th</sup> July 2017 for its final pre-submission publication (6 week consultation) and submission for Examination in Public.
- 1.2 The Plan was submitted to the Secretary of State for Examination on 30<sup>th</sup> November 2017. The purpose of the examination is for the government appointed Inspector to establish the soundness of the plan (i.e. to ensure that it is positively prepared, effective, justified and in accordance with National Planning Policy). Members are reminded that the Examination formally commences on the day that the Plan is submitted and only concludes with the issue of the final report. As such, the Examination remains 'live' at this time.
- 1.3 As part of the recommendation to Council in July 2017, Members delegated to the Strategic Planning Manager in consultation with the Leader and Executive Member for Growth the ability to agree amendments to the Local Plan arising during the Examination in Public. In light of the progress of the examination to date and the nature of the Inspector's modifications, it is considered appropriate to refer the matters back to Council for consideration.
- 1.4 The examination of the Local Plan has currently been ongoing for 12 months, and will continue until the Inspector has released his final written report. Subject to the consideration of this report, the current timetable would include a main modification consultation in January-February 2019, followed by the Inspectors report released potentially in April 2019 and the Council adopting the Local Plan in June 2019.

#### **Main Modifications to the Plan**

- 1.5 As part of the examination, and at the request of the Council, the Inspector is able to make modifications to the plan in order to make it sound. It is common practice for plans to be subject to main modifications during the examination process, and consultation would take place only on these changes. The Council requested this occurred at the start of the

hearing sessions. The Council is not able to choose which elements of the plan modifications should be made on. If the Council does not allow the Inspector to make modifications to the plan, this would result in the plan being found unsound. If the Inspector finds the plan unsound, his only option will be to direct the Council not to adopt the plan. It should be noted that the Council did not specifically invite the Inspector to make main modifications to Policies HOU4 or HOU5.

- 1.6 Following the hearing sessions, the Council will then consult on the proposed modifications for a six week period followed by the Inspector issuing his report into the soundness. Officers could expect that these modifications may cause significant representations by certain affected communities. It is only once the Inspector has issued his report finding it sound, that a plan may be adopted.
- 1.7 There have been a significant number of other changes requested to the Plan during the Examination so far; however, many of these have not altered the strategic direction of the policies that members agreed and in many cases are useful additions or clarifications to policies.
- 1.8 Following the close of the hearing sessions on 16<sup>th</sup> September, the Inspector wrote to the Council on 6<sup>th</sup> November setting out additional modifications to the Plan in addition to those which had been agreed through the hearing sessions. It is as a result of the modifications set out within this letter that necessitate Council's consideration. The modifications are set out in more detail in the following section of this report. A comprehensive schedule of main modifications is included at Appendix A. Further to this, legal advice has been sought from Counsel to consider the implications of the modifications. Further planning legal advice has also been obtained in order to assist with the assessment of the options presented in section 2 of this report.

### **Implications of Key Inspectors Changes on the Plan**

- 1.9 Members' attention is drawn to a number of key modifications to the plan proposed by the Inspector. These are:
  - a. Changes to the housing trajectory including the use of the Sedgefield methodology;
  - b. Amendments to rural housing policies HOU04 and HOU05;
  - c. An early review of policies in relation to housing and employment land supply.
- 1.10 The implications can be summarised in the following paragraphs.
- 1.11 **Changes to the housing trajectory** – In order for the Local Plan to be found sound it must be able to demonstrate a five year supply of housing land. The view of the Inspector is that the proposed Breckland Local Plan is able to demonstrate a five year housing land supply. However, the Inspector has raised concerns with delivery rates later in the plan period predominantly from the sustainable urban extensions. The policy had proposed a stepped housing trajectory, which would have allowed a lower delivery rate in the first years of the plan, followed by higher delivery later in the plan period to take into account the gradual increasing in delivery rates due to infrastructure requirements of major sites. The Inspector has indicated that a modification will be required to remove the stepped trajectory as he did not consider it justified. This will place more pressure on early delivery.

- 1.12 In relation to how land supply is calculated, the Inspector has concluded that the plan trajectory should be calculated using the Sedgefield methodology. This approach essentially requires any shortfall in housing delivery from the start of the plan period to be made up in the next 5 year period. The alternative methodology known as the Liverpool Method, spreads any shortfall across the remainder of the plan (i.e. by 2036). The impact of the Inspectors conclusion is that the Council will be able to demonstrate a five year land supply figure on adoption of the plan; however, the overall figure will be lower as the annual dwelling requirement increases because the backlog has to be addressed sooner. This will also places more pressure on early delivery.
- 1.13 **Changes to the rural housing policies** – The Inspectors letter indicates that a number of changes will be required to policies HOU04 and HOU05. These are the policies relating to housing development in the most rural settlements. The Inspectors letter sets out the following changes to these policies: *‘In terms of Policy HOU04 and HOU05, please can the Council draft modifications to remove the 5 and 3 dwelling limits from the policies respectively, as well as criterion 3 of Policy HOU04.’*
- 1.14 Without a cap on the number of dwellings which can come forward under a single application, there is the potential that larger sites and higher housing numbers will come forward within the rural settlements, contrary to the original intentions of the policy. However, the policies do still contain a number of criteria which will limit the level of development. Policy HOU04 sets out that development should not result in an increase of development by more than 5% of the settlement. Whilst Policy HOU05 does not contain a cap on the level of development the policy wording will effectively still limit the size of developments coming forward. It sets out requirements for developments to be:
- Sensitive infilling;
  - Rounding off of a cluster of dwellings with access to an existing highway;
  - Appropriate scale and design to the settlement;
  - Enhancement of the historic nature and connectivity of communities.
- 1.15 Policy HOU05 also requires applications to not:
- Harm or undermining a visually important gap that contributes to the character and distinctiveness of the rural scene;
  - Apply to farmsteads or sporadic small scale groups of dwellings.
- 1.16 **Early review of the Local Plan** - The Inspector has also requested an early review trigger on three key areas of the plan; housing numbers, employment policies and gypsies and travellers. He has requested the review be commenced immediately following the adoption of the plan and submitted by June 2022. Should the Council not do so, those policies would become out of date and the provisions of the National Planning Policy Framework would take precedence.
- 1.17 It should be noted that recommending an early review of Local Plan policies is not an uncommon practice, however due to the nature of the policies which are required to be reviewed, this would, in essence, result in a whole plan review due to the knock on effects on to other policy areas (e.g. retail requirements etc).

## **The role of an up to date Local Plan**

- 1.18 As set out in the preceding paragraphs, there are a number of implications in relation to the modifications the Inspector is proposing. An up to date Local Plan represents an opportunity for a local authority's planning objectives to be met based on current evidence and need. Without an up to date plan applications will be measured against the National Planning Policy Framework (NPPF) where policies are out of date, with limited weight afforded to the old policies contained in the existing Local Plan. This undermines the Council's ability to determine applications in line with its own policies and objectives.
- 1.19 A key implication of the modifications is that the five year housing land supply position may be challenging to maintain. Members will be aware that when a Council is unable to demonstrate a five year housing land supply, the policies in relation to the supply of housing are considered to be out of date. Housing is only one element of local planning. Any policies found to be "out of date" when compared to the NPPF would attract less weight, undermining the Council's objectives in terms of employment, economic development, conservation etc. It is Officers professional opinion that an up to date plan without a five year supply would still be up to date in other respects and would be beneficial to a plan which is out of date from multiple aspects which would be the case if the authority sought to rely on the Core Strategy (2009) rather than adopt the Local Plan (2019). Having a newly adopted Local Plan would provide for a policy set that can be afforded greater weight in day-to-day decision taking than an out of date Core Strategy when used for the purposes of Planning Committee.

## **OPTIONS**

- 2.1 In order to move forward with the Local Plan, there are essentially three options available to Members:
- 2.2 **Option 1a: Accept the modifications and continue with Main Modifications Consultation (recommended)**  
This option would see the Council accept the Inspector's modifications and continue to progress the Local Plan in accordance with the agreed timetable. The Council would consult on the main modifications in January and February 2019. The Inspector's Report is then expected in April 2019 and adoption could therefore occur in June.
- 2.3 **Benefits:** The benefits of this approach are that the Council will continue to progress the Local Plan examination at pace in order to adopt an up-to-date Local Plan which will provide a five year housing land supply. Adoption of the plan will provide certainty over the Council's strategy for the District, allocated sites will be able to be incorporated into the five year housing land supply, and it will also aid delivery on allocated sites. There is a need to ensure additional allocations are identified as those contained in the current LDF Site Allocations document for residential development all have the benefit of planning permission and a number have been developed. Furthermore, the policies in the plan will be able to be used for determining planning applications. A number of policies will provide greater certainty in day-to-day planning decision making including Affordable Housing, open space and Design.

- 2.4 **Risks:** A key risk associated with this option is the ability to deliver a review of the Local Plan in accordance with the timeline recommended by the Inspector. Producing a plan for submission by June 2022 would result in a regulatory minimum level of public consultation and engagement. There are also concerns on the ability producing the evidence base in the timescales proposed, some of which would require being completed with other local authority partners.
- 2.5 The modifications proposed to Policies HOU04 and HOU05 also represent a risk, as there is potential that these settlements could receive higher levels growth than originally intended. The Local Plan seeks to ensure housing delivery occurs in the most sustainable locations, in accordance with the principles of the NPPF, and the settlement hierarchy has been developed on this basis. However as set out in paragraphs 1.14 and 1.15 of this report, there are a number of criteria retained within the policies which will still restrict the level of development which can occur. Whilst the removal of the cap on the number of dwellings per application has the potential to see larger developments coming forward under HOU05 settlements than originally envisaged, the settlement hierarchy still seeks to direct larger scale development to the Market towns, Local Service centre villages and those villages with boundaries.
- 2.6 **Option 1b: Seek to re-open hearing sessions**  
This option seeks to ask the Inspector to re-open the hearing sessions to allow a fuller discussion to take place on his proposed modifications to the rural housing policies. However, this option is solely at the discretion of the Inspector.
- 2.7 **Benefits:** Should the Inspector agree to this approach it would allow for further dialogue in relation to the modifications to HOU4 and HOU5 or exploration of the modifications which may ultimately lead to some minor changes to the recommended modifications or supporting text.
- 2.8 **Risks:** Counsel's advice confirms that there is no guarantee that the Inspector would agree to re-open the hearings, and Counsel considers it unlikely the Inspector would agree to do so. This would potentially leave only option 1 or 2 then available. As set out at paragraph 1.5, Counsel's advice confirms that it is not at the Council's discretion to pick which main modifications it wishes to be taken into account. The Council must choose to either accept all of the main modifications, or the Inspector will find the plan unsound. The Inspector has provided modifications to the plan which he considers necessary to make the plan sound. There is no new evidence for the Inspector to consider in relation to Policies HOU 04 and HOU 05 and the Council has already presented a robust case for the inclusion of these policies through written statements and the oral hearing sessions.
- 2.9 Endorsing this option would further delay the examination, and the subsequent issue of his report. Delays to the examination may mean that evidence to support other policies in the plan becomes out of date. For instance, the Inspector has already asked for additional information in relation to housing numbers due to the release in September of the 2016 household projections. The availability of the Inspector to conclude our examination is not in the Councils control and there is no certainty over the length of delay to the timetable at this point. The risk of extending the examination is that parts of the Local Plan will start to

become out of date which present a risk to the examination of the plan. Further hearing sessions also present a further cost to the Council.

**2.10 Option 2: Do not accept modifications and withdraw the Local Plan (not recommended)**

This option would see the Council withdraw the Local Plan from the examination, ultimately halting the production of the plan. The option would allow the Council to go back to Regulation 18 stage and prepare a plan again.

**2.11 Benefits:** It would allow the Council additional time to prepare a revised Local Plan, not in conformity with the Inspectors proposed submission deadline of June 2022. The Council would not have to accept the Inspectors modifications, but those policies would not be in use.

**2.12 Risks:** Withdrawing the plan, would mean that the policies for determining planning applications would remain as the adopted Core Strategy, Site Allocations and Thetford Area Action Plan documents and where these are deemed to be out of date, national policy would apply. The existing suite of local planning documents (with the exception of the Thetford Area Action Plan) were all adopted prior to the publication of the NPPF in 2012. The second iteration of the NPPF has now been published. All local planning policies need to be assessed against their level of conformity with the NPPF. Policies adopted prior to the NPPF are therefore more likely to be out of date as they were developed under a previous national planning framework. This would mean that in determining planning applications, there would be a greater reliance on national policies, which would not be as reflective of local circumstances as the Local Plan. The Council should also bear in mind that over time as more policies in the plan become out of date the risk of the Secretary of State exercising its powers of intervention increase.

**2.13** The Council would also not be able to demonstrate a five year housing land supply, therefore the Core Strategy policies relating to the supply of housing would be considered out of date. There would be no easy or quick way to increase housing delivery without the inclusion of the housing allocations from the new Local Plan.

**2.14** The majority of Local Plan policies as submitted are considered to be sound and in conformity with national policy, subject to the main modifications. This approach would prevent their use in determining planning applications. Withdrawal of the plan may cause reputational harm to the Council, particularly in light of the cost of production over a 5 year period, including examination, as could the continued challenge of securing a 5 year housing land supply.

### **3.0 REASONS FOR RECOMMENDATION(S)**

**3.1** It is recommended that Members endorse option 1a to accept the Inspector's modifications and continue to progress with the main modification consultation. Endorsing Option 1a will enable the authority to move towards the adoption of the plan. An adopted plan will secure a five year housing land supply for the District and planning applications will be determined

in accordance with the development plan. In addition, adopting the Local Plan will ensure that the Council has a NPPF compliant Local Plan.

- 3.2 Endorsing option 1b provides no guarantee of an alternative outcome as it is not in the Council's gift, whilst option 2 is not recommended as a fall-back position, as this would result in reliance on policies that are dated, as well as not allowing the ability for new sites to form part of the Council's housing land supply. A new plan is likely to take a number of years to be produced during which time it is unlikely that the Council would be able to identify a housing land supply. Preparing a new Plan with similar levels of consultation than has been undertaken for this plan would take a number of years, during which time land supply would be met through continued ad hoc development coming forward under the provisions of the NPPF rather than through a plan-led approach. Option 2 would also result in reputational harm being caused to the Council.

#### **4.0 EXPECTED BENEFITS**

- 4.1 Endorsement of option 1a would see the Council adopt the Local Plan at the soonest opportunity, the benefits of this approach are set out fully within paragraph 2.3. They include having up to date local planning policies which accord with national planning policy and also having a five year housing land supply.

#### **5.0 IMPLICATIONS**

- 5.1 In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

##### **5.2 Constitution & Legal**

- 5.2.1 Legal advice has been sought from Counsel in relation to the way forward for the Breckland Local Plan. This has concluded that there is no prospect whatever of the council being able to take effective legal proceedings to challenge the proposed main modifications. Legal challenge to the modifications may only occur if an error of law has occurred. The Counsel advice has clearly set out that the main modifications are reasonable in a legal sense in order to ensure that the Local Plan conforms to established legal principles, and national policy and guidance. As set out within the main body of this report, Counsel has advised that the Council has the following options in relation to the main modifications:

- To request that the proposed MM's be made, carry out public consultation on them, and following the Inspector's recommendation to adopt the Plan with the modifications, thereafter to adopt it.
- To reject the MM's, in which case the Local Plan – as a whole - cannot be adopted. The Council could not adopt the Plan with the omission of these policies.

Accordingly, the whole Local Plan will fail, and would have to be withdrawn under section 22 of the Planning and Compulsory Purchase Act 2004.

### 5.3 Corporate Priorities

5.3.1 The Local Plan aligns to the following corporate priorities:

- Supporting Breckland to develop and thrive
- Developing the local economy to be vibrant with continued growth
- Enabling stronger, more independent communities

### 5.4 Reputation

5.4.1 Option 2 withdrawal of the Local Plan may result in reputational damage to the Council due to a failure to progress a plan that could have been made sound through a series of main modifications.

### 5.5 Stakeholders / Consultation / Timescales

5.5.1 If Members agree to endorse option 1, the main modifications on the Local Plan would be subject to a six week consultation period. The consultation period would be open to the public and stakeholders and provide an opportunity for comment on the soundness of changes to the plan. Representations received during this period would go to the Inspector for his consideration of his final report into the soundness of the plan.

## 6.0 WARDS/COMMUNITIES AFFECTED

6.1 All wards in Breckland are affected by the Local Plan

## 7.0 ACRONYMS

7.1 LDF – Local Development Framework

7.2 NPPF – National Planning Policy Framework

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Background papers:- [See The Committee Report Guide for guidance on how to complete this section](#)

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### Lead Contact Officer

Name and Post: Phil Mileham – Strategic Planning Manager  
Telephone Number: 01362 656803  
Email: phil.mileham@breckland-sholland.gov.uk

**Key Decision:** Yes

**Exempt Decision:** No

**This report refers to a Mandatory Service**

### Appendices attached to this report:

Appendix A Schedule of Main Modifications