

## **Report to Breckland Council**

**by Janet Wilson BA, BTP, MRTPI, DMS**

an Inspector appointed by the Secretary of State

Date: 29 August 2023

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Planning and Compulsory Purchase Act 2004 (as amended) Section 20

## **Report on the Examination of the Partial Review of the Breckland Local Plan**

The Plan was submitted for examination on 29 November 2022

The examination hearing was held on 18 April 2023

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## Abbreviations used in this report

|                  |   |
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| 2004 Act         | Planning and Compulsory Purchase Act 2004                                 |
| 2012 Regulations | The Town and Country Planning (Local Planning) (England) Regulations 2012 |
| DtC              | Duty to Co-operate  |
| Framework        | The National Planning Policy Framework (2021)                             |
| HLS              | Housing Land Supply   |
| HRA              | Habitats Regulations Assessment   |
| IA               | Integrated Assessment   |
| LDS              | Local Development Scheme  |
| LHN              | Local Housing Need  |
| LPA              | Local Planning Authority  |
| MM               | Main Modification   |
| Partial Review   | Breckland Local Plan Partial Review                                       |
| PPG              | Planning Practice Guidance  |
| SAC              | Special Area of Conservation  |
| SOCG             | Statement of Common Ground  |

## **Non-Technical Summary**

The Partial Review updates Policy INF03 of the Breckland Local Plan by removing the requirement for a more detailed review of four policies. They relate to housing provision, accommodation for gypsies and travellers, technical housing standards and the economic strategy.

In summary, the report concludes that the Partial Review provides an appropriate basis for the ongoing planning of the Breckland District.

## Introduction

1. This report contains my assessment of the Partial Review in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is compliant with the legal requirements and whether it is sound. The National Planning Policy Framework 2021 (the Framework) in paragraph 35 makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The Breckland Local Plan Partial Review, submitted in November 2022, is the basis for my examination. It is the same document as was published for consultation in September 2022.

## Policies Map

3. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. However, there are no alterations proposed in this Partial Review which would require any alteration to the policies map and consequently it has not been the subject of consideration.

## Context of the Partial Review

4. The Breckland Local Plan was adopted in 2019. Policy INF 03 includes a requirement for the Council to conduct an immediate partial review of the Plan with regard to housing, non-travelling gypsy and travellers, accessibility standards (by reviewing the technical design standards) and economic development. This was required to be submitted for examination 3 years after the date of the Local Plan adoption, or November 2022, whichever came first. In the event that the Partial Review was not submitted for examination, Policy INF 03 states that the relevant policies would be 'out of date' for decision-making purposes.
5. The Partial Review submitted for examination seeks to update Policy INF 03 by deleting this requirement, in favour of the production of a full Local Plan due to be submitted by the end of 2024. Accordingly, the main issue is whether the circumstances outlined in the Council's Regulation 22 (1) (c) consultation statement validate and justify that approach. The consequences of it would be to delay the consideration of the four policy topics and address them through a full Local Plan in due course.

## Public Sector Equality Duty

6. I have had due regard to the aims expressed in S149(1) of the Equality Act 2010. This has included my consideration of the need for positive provision to be made to accommodate the needs of the non-travelling members of the gypsy and traveller community, in particular those who no longer wish to travel, and separately the need for accessible and adaptable housing by reviewing the technical design standards for new homes.

## Assessment of Duty to Co-operate

7. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation. The Framework makes clear that strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans<sup>1</sup>. Paragraph 26 states that 'Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere'.
8. In respect of the duty to co-operate (DtC) the Council has supplied as appendices to its hearing statements a series of statements of common ground (SOCGs) with neighbouring planning authorities. No matters of strategic importance have been identified that require further action or engagement at this stage. It is also clear from those statements, and the Regulation 22 (1) (c) statement, that discussions with neighbouring councils are ongoing in relation to the Full Update of the plan, and that joint commissioning of work on the effects of nutrients on water quality is being pursued collaboratively.
9. I am therefore satisfied in respect of the scope of the Partial Review that, where necessary, the Council has engaged constructively, actively and on an on-going basis but that no matters of strategic importance have been identified in relation to the subject matter of the Partial Review. Therefore, for the purposes of this Partial Review the DtC is satisfied.

## Assessment of Other Aspects of Legal Compliance

10. Regulation 19 requires the Local Planning Authority (LPA) to make a copy of the proposed plan and a statement of the representations procedure available to the persons specified before submitting the plan to the Secretary of State. Any person is entitled to make representations about the proposed plan, and I am required to consider any representations made as a result of the Regulation 19 publication.

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<sup>1</sup> Paragraph 25 of the Framework

11. The Council undertook two rounds of consultation in the summer of 2022, both of which were publicised as Regulation 19 consultations. The Council set out in its Regulation 22 (1) (c) statement that it undertook the second Regulation 19 consultation following the receipt of representations which queried whether the correct legal process had been followed. The Council had sought legal advice, the outcome of which was that the process being undertaken by the Council may not fully meet the requirements of Regulation 18. As a result, they undertook the second Regulation 19 consultation and renamed the first one as a Regulation 18. In summary, the two consultations were carried out on the same basis.
12. Whilst concerns were raised in response to the first Regulation 19, arguing that there were legal compliance failures as alternative options had not been pursued, presented, or tested, it is important to note that there is no requirement under Regulation 18 (or 19) to produce or test alternative options.
13. Importantly there is a clear difference between Regulations 18 and 19. Regulation 18 relates to the preparation of a plan and requires the LPA to consult certain bodies on the subject of the local plan it is about to prepare and to invite them to make representations about what a local plan on that subject ought to contain. It is designed to enable consultees to input into the preparation of the plan at a time before the proposals are finalised and the LPA are obliged to take into account responses when preparing their plan. Regulation 19 requires the publication of the proposed plan with an opportunity for comments to be made to the appointed Inspector for the examination. In other words, Regulation 18 comments should input into, and shape the plan which is then submitted for examination.
14. Bearing in mind the very narrow and focused nature of the Partial Update, it is significant that no tangible harms were identified as a result of the Councils' approach to their Partial Review consultations.
15. The options considered by the Council in June 2020 included:
  - the submission of a Partial Review by November 2022.
  - the submission of a full review by the same date.
  - to complete a full review by November 2024.
  - to commence a full review with a target date of adoption by November 2024 and concurrently incorporate a subset review of the INF 03 policies.
  - to submit a Partial Review by 2022 and consecutively undertake a full review by November 2024.
  - to submit an updated plan by November 2022 and to undertake a full review within 5 years from the adoption of the updated plan.
16. It is worth emphasising that consultation on the Plan was carried out in compliance with the Council's Statement of Community Involvement. Crucially, there would have been no prejudice to the parties involved such that the outcome likely would have been the same. Whilst I consider that the absolute letter and purpose of Regulation 18 has not been fulfilled, the alternative

approach taken by the Council to reframe the second consultation was reasonable, pragmatic, and proportionate given the circumstances. Consequently, in my view, there has been no procedural unfairness and as such, this irregularity should not present an impediment to the examination proceeding to a conclusion.

17. Local Plans are required to be subject to a Strategic Environmental Assessment incorporating a Sustainability Appraisal and a Habitats Regulations Assessment (HRA) to consider the impact of the policies and proposals of the Local Plan on sites of European significance designated for species and habitats, Special Areas of Conservation (SAC), or birds within Special Protection Areas. There are designated areas within the Breckland District which are part of The Brecks, an area designated as a SAC and which spans 370 square miles across Norfolk and Suffolk and is one of the driest parts of Britain. It encompasses forest, open heathland and agricultural land which are home to many unique and distinctive birds, plants, and animals.
18. The purpose of an HRA, is to determine if policies would have any significant effects on internationally important nature conservation sites and, if so, suggest ways in which the impacts could be mitigated. However, as the amended Policy INF 03 is not site specific it did not necessitate an HRA at the Partial Review stage.
19. Whilst no HRA or Appropriate Assessment was undertaken, the Partial Review was accompanied by an Integrated Assessment<sup>2</sup> (IA) which evaluates the options considered by the Council. That report assessed the potential sustainability effects of the Partial Review as well as its potential health and equality impacts. Given that the alteration to INF 03 does not seek to allocate any new sites or alter any existing sites in the Breckland Plan area, the IA concludes that, as the amendment is limited to a single policy, there are “*no notable cumulative effects.*”
20. Notwithstanding this, the importance of HRAs is acknowledged and is to be addressed by the Council within the full update of the Breckland Local Plan.
21. The Partial Review, bearing in mind that it is an alteration relating only to the timing of the submission of the full update, does not give effect to any development proposals or planning strategies or alterations to those in the Breckland Plan. Given the scope of the Partial Review it does not, at this point, require consideration of the contribution to, the mitigation of, or adaptation to, climate change.

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<sup>2</sup> (July 2022 and edited September 2022) LPRPUSUB007 – Submission Document



22. Except for the issues related to compliance with Regulation 18 referred to above, the Plan complies with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

## **Assessment of Soundness**

### *Scope of this examination*

23. The fundamental issue before me is that the wording set out by the Council is both focused and extremely specific, relating only to the timing of a full update of the Breckland Local Plan and its submission for examination by December 2024. The changes to Policy INF 03 remove the requirement for an immediate review of four subject areas identified at the point of adoption of the 2019 Local Plan. These matters are now intended for inclusion in the full new Local Plan.
24. In detail the policy references which have been removed concern the following: housing policy HOU 01; that relating to non-travelling gypsy and traveller provision in Policy HOU 08; technical housing standards covered by Policy HOU 10; and the effect of the A47 dualling on the Plans' economic strategy within Policy EC 01. Critically, updating or otherwise amending the content of these policies forms no part of the purpose of the Partial Review. Consequently, although I am required to consider the soundness of deleting any references to these policies, the substance and requirements of those policies themselves are not within the scope of this examination.

## **Main Issue**

25. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings, I have identified a single main issue upon which the soundness of this partial review depends. This report deals with that issue. It does not respond to every point or issue raised by representors.

## **Is the revised wording to Policy INF 03 (Local Plan Policy Review), including the deletions, justified and effective?**

26. As set out above, the examination focuses on a single functional purpose, being to address the timing of the full update. The substantive content of INF 03 would effectively be subsumed into the full update of the Breckland Plan to be submitted for examination by the end of 2024.
27. The constraints which have influenced the Council in deciding not to progress the Partial Review in full are set out in the Regulation 22 (1) (c) statement. Some of the issues identified are not unique to Breckland, they have affected Councils across the country and have not universally prevented the progress of plan preparation. Nonetheless, the impact of the collective changes which have

faced Breckland Council provide clear and convincing justification as to why the Partial Review did not proceed as originally envisaged. It demonstrates the Council's pragmatic and proportionate approach to dealing with the issues, an approach which it has set out in its Local Development Scheme (LDS) 2022.

### **Topic Areas - assessment of policy threads**

The deletion of the four individual policy threads is considered below, this is in the context that the substantive content of all four policies referred to are not before the examination for consideration.

#### **Policy HOU 01 - Housing**

28. The Plan as adopted contains a mechanism requiring an early review. Insofar as housing is concerned, this was included because of an expected increase in the local housing need figure as calculated using the standard methodology. However, the latest figures indicate that this change would only result in an increase of 49 dwellings per annum compared with the housing requirement in the adopted Plan. The Council has also identified that it can currently identify sites sufficient to provide at least 5 years' worth of housing land against the higher housing requirement, has exceeded the delivery requirements in the Housing Delivery Test and has already embarked on its full review of the plan which is intended for submission at the end of 2024. Taking these factors together the approach to conducting a full local plan, rather than updating Policy HOU 01 now, is a justified and appropriate strategy for the area.
29. At the hearing session, the Council suggested modifying Policy INF 03 further with the effect being to emphasise the areas of work to which the full update must have regard and the consequences. However, this is not necessary for soundness. Moreover, the revised text offered would have the effect of changing the substantive content of Policy HOU 01 which identifies a figure of 612 dwellings per annum. In short, its effect would be to replace the OAN derived figure (612) with that derived from the Standard Method - Local Housing Need (LHN) figure (adjusted for affordability) (661). This would create an internal conflict between that wording and that in the adopted plan (2019).
30. In addition, as the detail of HOU 01 is not before this examination, it is not open to me to make such a change. I do not have the latitude to impose alternative wording which would substantively alter the housing figures within HOU 01 either directly or indirectly. Moreover, paragraph 74 of the Framework requires Local Planning Authorities to provide five years supply "...against their housing requirement set out in adopted strategic policies" and this gives further weight to the inability to change any housing figure without a full review of HOU 01. This is more appropriately dealt with by the full update of the plan. In any event the full update would have to address the detailed housing issues as a matter of course, and I see no soundness reason for the reintroduction of the policy references by way of a Main Modification (MM) to the Partial Review.

31. Contrary to some suggestions, I see no reason to reintroduce text stating that the housing requirement in Policy HOU 01 would be out of date should the full update not be submitted for examination by December 2024. Nor is it necessary to require that the Council should use the standard method housing figure between now and the adoption of the new full Local Plan for the purposes of calculating its five-year HLS figure. Using the standard method figure for this purpose would, as mentioned above, create internal conflict with Policy HOU 01. In any event the detail of the policy is not part of the examination and changing the housing requirement could only be achieved by a separate update of the plan. It is not therefore required to achieve soundness in relation to the Partial Review.
32. Some argue that the revised Policy INF 03 should also include a strict timescale for the submission of the full Local Plan. Whilst I can understand that the Council sought to reassure the examination that they will fulfil their commitments, it does not automatically follow that the housing requirement would be out of date on 1 Jan 2025. This will be a matter to be determined at that time and not at this point. Therefore, such a change is not necessary to achieve soundness of the Partial Review.
33. I have set out above the pitfalls of seeking to employ an alternative housing figure now. At the point the adopted Breckland Plan reaches its fifth anniversary there would be automatic implications for a change in the assessment of the level of housing need arising from LHN being calculated by the standard method. From that point on, until the full updated plan is in place, all decision makers would need to exercise a planning judgement as to whether policies are, or are not, out of date and this would operate within the context of the Council's five-year HLS figures at that time. To duplicate these requirements either fully or partially within Policy INF 03 when these policy mechanisms would be in force in any event, would neither be justified nor effective and is not required for soundness.
34. In reaching these findings I have borne in mind the following: a) the limitations of the policy wording in the first instance (INF 03); b) the commitment given to the full review and the progress made with it; c) the positive progress in respect of housing delivery and the ongoing ability to demonstrate a five-year HLS; and d) the fact that the concerns raised by the 2019 Inspector's report about housing need have not been as severe as first anticipated.

### **Policy HOU 08 - Provision for Travellers and Travelling Show people**

35. Whilst equally the detail of Policy HOU 08 is not before me for examination, I am mindful of the Inspector's concerns in 2019 that provision should be made for non-travelling gypsy and travellers, with the plan identifying suitable provision to meet that need. In practice the Council will be obliged to consider any such applications against the criteria set out in Policy HOU 08 and in the

context of the Case Law arising from the Smith Judgement<sup>3</sup> as well as the Planning Policy for Traveller Sites<sup>4</sup>. Moreover, the Inspector's 2019 report at paragraph 195 indicates that "Furthermore, a change is required to Policy HOU 08 to make clear that until the immediate/early review of the Plan is completed additional pitches for non-travelling gypsy and travellers will be considered in accordance with the criteria of Policy HOU 08, having regard to the need identified in the GTANA." This situation would prevail until a new Plan is adopted.

36. There is already a mechanism in place to consider planning applications against criteria within Policy HOU 08 until the full plan is updated and there is nothing before me to suggest otherwise. In any event these matters are more properly and effectively dealt with as part of the full update of the plan and the removal of this policy thread from INF 03 is justified.

### **Policy HOU 10 - Technical Design Standards for New Homes**

37. The review of matters relating to Policy HOU 10 arose as information was missing from the supporting viability assessment, thus meaning there was a need for the Council to provide robust evidence to justify the thresholds for accessible and adaptable dwellings. These are matters which will be integral to the assessments in the full update of the plan as they are inextricably linked to other parts of the plan. Consequently, these matters would be more properly and effectively dealt with as part of the full update of the plan and the removal of this policy thread from INF 03 is justified.

### **Policy EC 01 – Economic Development (A47 Dualling)**

38. The purpose of this policy sets out the strategy for the economic development sites within the area. The Council accepted in 2019 that the employment studies had not taken into account the impact of the dualling of the A47 and the effect that this could have on the economic strategy for the area. The A47 dualling project, whilst progressing through its consenting regimes, is currently awaiting the outcome of legal process and is therefore a matter which will most appropriately be considered as part of the full update of the plan. Therefore, the removal of this policy thread from INF 03 is justified.

### **Further alterations to Policy INF 03**

39. The matter of how precisely the Council should be held to account should their submission of the full plan fail to materialise by the end of 2024 is a legitimate concern. Unquestionably the 18-month timetable between now and December

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<sup>3</sup> The Court of Appeal issued the Smith v SSLUHC & Ors [2022] EWCA Civ 1391 judgment (dated 31st October 2022)

<sup>4</sup> DCLG Planning policy for traveller sites ISBN: 978-1-4098- 4670-3

2024 presents an ambitious and challenging deadline to undertake the remaining steps to complete a full update of the plan. The Council have made clear that they have taken significant steps to establish the evidence base needed to plan for their housing need and other requirements. Moreover, the Breckland LDS details a tight timetable programme which, with diligence, could be achieved. Meeting the commitments set out in its own LDS is a matter for the Council. There is no compelling evidence before me to demonstrate that, as a responsible public authority, the Council will not meet that timetable. In any event, there are other regulatory requirements which need to be met.

## **Conclusion**

40. Taking all the above factors into account the deletions from Policy INF 03 in respect of Policies HOU 01, HOU 08, HOU 10 and EC 01 to incorporate the review into the full update of the Breckland Plan is logical, pragmatic, proportionate, and reasonable given the circumstances which now prevail. The deletion of the text from Policy INF 03, under these particular and specific circumstances, is justified and effective.

## **Overall Conclusion and Recommendation**

41. In accordance with Section 20(7) of the 2004 Act I recommend that the Partial Review is adopted on the basis that the DtC has been met and the Plan satisfies the requirements referred to in Section 20(5) (a) of the 2004 Act and is sound. It is capable of being adopted without change and no MMs are recommended in this report. My report sets out the reasons that have led to this recommendation.

*Janet Wilson*

Examination Inspector