

CABINET

22 AUGUST 2012

REPORT OF THE PLANNING PORTFOLIO HOLDER

A.1 THE TENDRING DISTRICT LOCAL PLAN: PROPOSED SUBMISSION DRAFT

(Report prepared by Gary Guiver)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For the Cabinet to consider the Community Leadership and Partnership Committee's comments on the proposed content of the 'The Tendring District Local Plan: Proposed Submission Draft (2012)' and 'Draft Indicative Policies Maps'; agree any necessary changes in light of those comments; and recommend the documents (with any amendments) for consideration and approval by Full Council to then allow them to be published for consultation with the public.

EXECUTIVE SUMMARY

All Local Planning Authorities are required to have, and keep up to date, a Local Plan to guide development in their area. The government, in its National Planning Policy Framework (published 27th March 2012) sees the Local Plan as the key to delivering sustainable development that reflects the vision and aspiration of local communities and, by implication, the tool for local authorities to resist inappropriate development proposals in their area.

The Local Plan will support the long term development of the district, help to facilitate economic growth and employment opportunities, protect the environment, ensure new homes are of high quality dimensions, layout and design and address other long-term issues, including deprivation.

The Council's existing Local Plan that was adopted in 2007 was only designed to last until 2011 and is consequently out of date and does not reflect the expectations of the current government and the requirements of the new national policies. The government is allowing Councils to continue using their existing outdated Local Plans until 27th March 2013 but, by then, will expect all Councils in this position to have prepared a new-style plan which reflects the thrust of national policy. Authorities without an up-to-date Local Plan from that date will only be able to rely on the National Planning Policy Framework as guidance for use in determining planning applications, leaving them vulnerable to unwanted developments and powerless to ensure development addresses locally-specific requirements.

To ensure the Council fulfils its legal obligations and avoids the above scenario, officers have been engaged in preparing a new Local Plan for the district which not only reflects locally-prepared technical evidence, but also reflects the results of extensive public consultation with Tendring residents, and discussions with District Councillors, Town and Parish Councils, partner organisations such as Essex County Council and the Environment Agency, developers and landowners.

The content of this draft Local Plan marks a radical change in approach from the proposals in the Core Strategy and Development Policies Document that was published for consultation in October 2010 and which attracted considerable public objection. This Local Plan not only reflects the current government's wish to see localism and community engagement at the heart of decision making, it addresses public concerns about matching housing development with jobs, seeks to distribute housing growth more fairly across the different parts of our district and includes innovative policies for ensuring future housing developments deliver the type and quality of homes that current and future generations of Tendring residents will aspire to live in.

This Local Plan is a very clear demonstration that this Council does listen, and take on board the concerns of its residents but, at the same time, is prepared to make the difficult decisions to tackle the significant economic, social and environmental challenges that will affect our district now and in the future.

The Local Plan documents were first considered by the Cabinet on 18th July 2012 and then forwarded to the Community Leadership and Partnership Committee for comments. The comments raised by that committee on 13th August 2012 form part of this report.

Since the publication of these documents for the 18th July Cabinet meeting, officers have taken the opportunity to undertake further proof-reading and make any necessary minor factual, typographical and cartographical corrections. These include corrections to certain statistics following the publication of some 2011 Census data.

RECOMMENDATION

- a) **That the Cabinet considers the comments raised by the Community Leadership and Partnership Committee on the 13th August 2012;**
- b) **That the Cabinet considers the need to make any changes to the proposed content of the 'Tendring District Local Plan – Proposed Submission Draft (2012)' and 'Draft Indicative Policies Maps' (The Draft Local Plan) in light of the Community Leadership and Partnership Committee's comments;**
- c) **That the Cabinet agrees any changes and recommends the revised version of the Draft Local Plan for Full Council approval to allow public consultation in accordance with Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING CORPORATE GOALS

Achieving affordable excellence: This Local Plan will provide the basis for generating funding for infrastructure through a Community Infrastructure Levy (CIL), will result in the grant of 'New Homes Bonus' to the Council for every new home that is created and provides greater scope for private investors to make positive changes in some of our deprived areas such as Jaywick and Walton-on-the-Naze.

Continuing to improve public perception and reputation: This Local Plan reflects the results of three rounds of public consultation and considerable discussions with elected representatives of our communities. It demonstrates very clearly that the Council does listen to the views of its residents and takes those views seriously.

Helping children and adults to achieve their full potential: This Local Plan includes a number of policies designed to help future generations achieve their potential. These include policies aimed at delivering local housing that people will aspire to live in, policies to support schools and other educational establishments in improving their facilities, policies aimed at maximising local training and employment opportunities and policies aimed at improving the general environment in which our children and young people will grow up in.

Addressing deprivation: The Local Plan identifies 'Priority Areas for Regeneration' in central Clacton, southern Jaywick, Dovercourt, Harwich and Walton-on-the-Naze – areas that will benefit from investment and economic development. The policies for southern Jaywick, in particular, are radically different from what has been proposed in the past – giving people more freedom to improve their properties and more scope for developers to introduce innovative standards of housing quality, design and flood resilience. These measures have the potential to deliver more positive improvements in the area than the restrictive planning policies of the past and will help to address the issues of deprivation at a time when public funding is extremely scarce.

Local housing for local people: This Local Plan contains policies that are specifically aimed at helping to deliver local housing for local people. As well as pushing for 'aspirational housing' and 'family housing' to promote prosperity and family life, the Local Plan aims to deliver new Council Housing for local working people on lower incomes who cannot afford to buy or rent housing on the open market. Policies in the Local Plan also require new housing to meet minimum internal and garden space standards aimed at providing a good quality of life for future occupiers.

Coastal opportunities and protection: This Local Plan recognises both the importance of our coastline for the local economy and the quality of life for our residents, but also the threats of flooding and coastal erosion that affect local residents and businesses. The plan makes realistic assumptions about the threat posed as a result of global climate change and balances these against the need to generate economic growth and tackle deprivation, particularly in areas like Jaywick and Walton-on-the-Naze. The plan also contains a policy that could enable certain coastal defence works, for which there is no public funding, to be delivered through private funding as a result of residential 'enabling development'.

RESOURCES AND RISK

Resources: This Local Plan has been prepared by the Council's Planning Policy Team under the leadership of the new Planning Policy Manager. The costs involved in preparing evidence, printing documents, publicity and examination will be met through the agreed 'LDF Budget'.

Risks associated with not approving this Local Plan: If the Council fails to have a new Local Plan in place on 27th March 2013, the 2007 Adopted Local Plan will be considered truly out of date and the provisions in paragraph 14 of the National Planning Policy will apply. These talk about a 'presumption in favour of sustainable development' which, for decision taking, means:

- Approving development proposals that accord with the development plan without delay;

and

- Where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or
 - specific policies in the National Planning Policy Framework indicate development should be restricted.

Relying solely on the policies in the National Planning Policy Framework leaves the district highly vulnerable to speculative and unwanted development proposals and leaves the Council powerless to influence detailed factors such as housing mix, development standards and other locally-important issues.

The more advanced the new Local Plan is, in terms of its stage of preparation (e.g. publication, consultation, submission to the secretary of state, examination and final adoption) by 27th March 2013, the better – because the plan can carry more weight (see section on ‘Legal Status of the Draft Local Plan’ below).

If the Council chooses not to approve the Draft Local Plan, the delay that would result from having to prepare a revised version for the Council’s consideration at a later date will increase the risk that:

- a) at worst, there will be no agreed Local Plan in place at all by 27th March 2013 and planning decisions will be based on the government’s ‘presumption in favour of sustainable development’ explained above; or
- b) at best, the Local Plan would only be at a very early stage of preparation and may not yet have been the subject of public consultation or submission to the Secretary of State - therefore planning decisions taken in accordance with the Draft Local Plan will undoubtedly be challenged on appeal.

Risks associated with approving this Local Plan: The strategy for housing growth and the housing policies in the Draft Local Plan are radically different to those that were the subject of consultation in the 2010 Core Strategy. Reducing the length of the plan period, more than halving of housing development proposed for Clacton and introducing stricter policies on housing mix and space standards will almost certainly attract strong objections from aggrieved landowners and developers, some of whom have invested considerable time and financial resources in promoting their developments to the Council. Their objections will undoubtedly be the subject of debate at the examination and the Council must be prepared that the Independent Planning Inspector may not agree with all the changes the Council has made and may recommend alterations or, at worse, declare the Local Plan to be unsound.

Some aggrieved landowners and developers may also choose to submit planning applications for development their sites in advance the Local Plan being finally adopted with a view of having their application considered by an Inspector on appeal.

LEGAL

Legislation: Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 state that applications for planning permission must be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The statutory 'development plan' for Tendring, as it stands, comprises the 2007 Adopted Local Plan and the East of England Plan – the Regional Spatial Strategy (RSS14).

Because the government proposes to abolish Regional Spatial Strategies and require that all 'Local Plans' conform with the new National Planning Policy Framework by 27th March 2013, the Council must take appropriate action to ensure a new Local Plan has been prepared and that therefore a 'development plan' is in place.

Regulations: The Local Plan must be prepared, consulted upon and examined in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012. At the examination, the Independent Planning Inspector will need to be content that these regulations have been followed and that the scope for any legal challenges have been minimised. Regulations 19 and 20 require the Local Plan to be published for consultation prior to being submitted to the Secretary of State for examination.

Examination: Alongside the legal and regulatory requirements, the Local Plan will eventually be judged through an examination, by a Planning Inspector, against the following policy tests, as set out by the government in the National Planning Policy Framework. The Local Plan must be:

- "Positively Prepared" – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- "Justified" – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- "Effective" – the plan should be deliverable over its plan period and based on effective joint working on cross-boundary strategic priorities; and
- "Consistent with national policy" – the plan should enable the delivery of sustainable development in accordance with the policies in the National Planning Policy Framework

It is important to ensure the Local Plan meets these tests because following the examination, the Planning Inspector will make one of three recommendations to the Council. Either: 1 the Local Plan is 'sound' and the Council can proceed to formally adopt it; 2 the Local Plan can be considered sound subject to making some changes; or 3 the Local Plan is 'unsound' and cannot proceed to adoption.

The Council will be able to choose whether or not the Inspector should be given the power to suggest ways the Draft Local Plan could be amended to address any concerns, or whether they simply highlight the areas of concern and leave it to the Council to decide what changes need to be made.

Legal Status of the Draft Local Plan: Until 27th March 2013, the Local Plan that was adopted by the Council in December 2007 will remain in force as the principle source of planning policy against which planning applications will be judged.

However, on its publication the Draft Local Plan will also carry a degree of weight as a material planning consideration alongside the 2007 adopted plan and the Council can choose to attach greater weight to the emerging policies where they better reflect the objectives of the Council and the requirements of national policy. Following public consultation, the Draft Local Plan will carry an even greater degree of weight because we will know which policies and proposals have received objections. Those policies with relatively few objections can carry more weight.

From 27th March 2013, the Draft Local Plan will become the principle source of planning policy. However, being a draft, planning decisions taken in accordance with this Local Plan will potentially be challenged, on appeal, by aggrieved applicants. The more advanced the Draft Local Plan is, in terms of the various stages of preparation, the lower the likelihood of Council decisions being overturned by a Planning Inspector on appeal.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities /Area or Ward affected / Consultation/Public Engagement.

Crime and Disorder: The policies and proposals in this Local Plan aimed at delivering quality homes, more traditional housing layouts, tackling over-concentrations of Houses in Multiple Occupation (HMO's) and taking a more flexible approach to allow economic development and job creation will help, alongside non-planning measures, to tackle crime and disorder.

Equality and Diversity: An Equality Impact Assessment of this Local Plan has been carried out.

Health Inequalities: The policies and proposals in this Local Plan aimed at delivering green infrastructure and providing quality new homes, job opportunities and community facilities will all assist in tackling the district's health problems.

Area or Ward affected: All wards.

Consultation/Public Engagement: This Local Plan has been informed by comments received during three previous rounds of public consultation:

- 800 comments received in 2009 in response to the Core Strategy Issues and Possible Options Document;
- 1,500 comments received in 2010 in response to the Core Strategy and Development Policies Document; and
- 1,400 comments received in 2011 in response to the consultation on Housing Development in Tendring.

Officers are currently preparing separate reports that summarise the results of the above

consultation exercises and explain how the comments have informed the content of the draft Local Plan. These will be published as technical documents in support of the Local Plan at the same time as the plan is published for consultation.

The draft Local Plan will itself need to be published for public consultation so that interested parties have an opportunity to comment on the policies and proposals before the plan is submitted to the Secretary of State. At this stage, rather than inviting objections, the Council should be looking to generate public support for the Local Plan because further delay will put the district at greater risk of unwanted and harmful developments.

People that wish to object will be allowed to do so, but unless their objection demonstrates that the Draft Local Plan fails the government requirements to be 'positively prepared', 'justified', 'effective' and 'consistent with national policy' (explained above), their objection is unlikely to result in any further changes. With this in mind, Councillors will need to accept that it will not be possible to please everyone in the district and in their individual wards, but that the Council has genuinely gone much further over the last three years than most local authorities in obtaining the views of local people and genuinely taking those views on board in preparing its Local Plan.

The public consultation exercise will be carried out in line with the Town and Country Planning (Local Planning) (England) Regulations 2012 with regard to the Council's 2008 Statement of Community Involvement.

PART 3 – SUPPORTING INFORMATION

COMMENTS OF THE COMMUNITY LEADERSHIP AND PARTNERSHIP COMMITTEE

The Cabinet first considered the content of the Draft Local Plan on 18th July 2012 and, at that meeting, the following was resolved:

- (a) That the Cabinet approves the Draft Tendring District Local Plan, proposed submissions Draft 2012.*
- (b) That the Community Leadership and Partnerships Committee is asked to consider that draft and provide comments.*
- (c) That Cabinet requests a further statement to be written and submitted with the draft plan to the appropriate overview and scrutiny committee that highlights and underpins our commitment to maximising regeneration opportunities and ensures our District Plan can appropriately maximise our ability to enabling opportunities through flexibility.*
- (d) That Cabinet asks the appropriate overview and scrutiny committee to consider the wording of Policy PEO17 to ensure that the policy enables the spirit and ambition of the policy to be delivered without fear of exploitation.*

In response to resolution (c) from the 18th July 2012 Cabinet meeting, officers produced a statement highlighting and underpinning the Council's commitment to maximising regeneration opportunities as requested. This formed part of the documentation considered by Community Leadership and Partnership Committee on 13th August 2012.

On 13th August 2012, the Community Leadership and Partnership Committee considered the content of the Draft Local Plan and made the following comments:

- The Draft Local Plan does not acknowledge the fact that part of the Clacton settlement as shown on the relevant Draft Proposals Map (incorporating the Holiday Parks at Seawick and St. Osyth Beach) actually falls within the Parish of St. Osyth.
- The Draft Local Plan defines 'Row Heath' as a smaller rural settlement in Policy SD4 but this is, in fact, one part of a wider settlement known locally as 'Chisbon Heath', the centre of which is actually located further south at the junctions of Highbirch Road, Frowick Lane, Heath Road and Clay Lane. This central part of Chisbon Heath should be included as the defined settlement in the Local Plan, not Row Heath.
- The Draft Proposals Maps do not show the range of policy notations that provide protection for the area between the defined settlements of St. Osyth and Point Clear (comprising Mill Street, Mill Dam Lake and St. Osyth Creek). This area must continue to be afforded strong protection in the Local Plan.
- The Draft Proposals Maps only show proposed Settlement Development Boundaries, Town Centre Boundaries and the location of the main housing, employment and mixed use sites. There are many other designations that have not been shown on these maps that, it is stated in the report to Cabinet on 18th July 2012, will be shown on the final maps to be published for consultation. Without information on these other designations, it will be difficult for Councillors to give proper consideration to, and thereafter approve, the Local Plan.
- A 6% increase in housing stock at Point Clear would represent 51 new dwellings for that area. Firstly, any additional development at Point Clear would result in further traffic passing through the crossroads between Colchester Road, The Bury, Spring Road and Clacton Road. With limited visibility, this is a dangerous junction and St. Osyth Parish Council will object to any proposals that will increase traffic flows through it. Secondly, from looking at the Draft Proposals Map for Point Clear, there are no obvious areas of land within the proposed Settlement Development Boundary that could practically accommodate 51 dwellings.
- The proposed 6% increase in housing stock in all parts of the district does not take historic rates of housing development into account. In the 2010 Core Strategy document, it was proposed that St. Osyth would receive no planned housing development in recognition of the high level of development that had taken place in the parish over the previous decade. Historic rates of development should have a bearing on the future growth proposed for different towns and villages.
- The implementation of criterion a) of Policy COS10 (Regeneration in Brooklands Grasslands and the Village, Jaywick) might be impossible because, in many instances, the replacement of an existing bungalow with a two-storey property with no habitable accommodation on the ground floor will result in cramped accommodation on upper levels that will not be able to achieve the minimum internal standards set out in Policy PEO4 and associated Appendix 2. Consideration should be given to allowing living rooms and dining rooms on the ground floor but still requiring bedrooms to be located on upper floors.

- The Draft Local Plan ought to contain 'indicative dwelling numbers' to give a rough idea of how many new homes are likely to be delivered on each of the allocated housing sites. This will aid members' consideration of the plan and the public understanding of the proposals when they are published for consultation.
- Policy COS12 (Development at Rouses Farm, Jaywick Lane) criteria b) and c) require the provision of a purpose-built medical centre either on the development site or an equivalent facility provided within the wider 'West Clacton sub-area'. This policy would be improved if it required such an equivalent facility in the wider sub-area to be within a certain distance of the site to ensure it is easily accessible to the expanding community. This approach should also apply to other similar policies in the Local Plan that may allow facilities to be provided off site.
- Land East of Pond Hall Farm (allocated for development through Policy HAD4) is a poor site for development because the northern portion of the land along with land on the other side of the A120 is within the floodplain and is often waterlogged. There is also no suitable access point onto the A120.
- The Draft Local Plan should contain a more substantial section on the role of railways in the district to be more in proportion with the amount of commentary relating to roads.
- The Draft Local Plan should ensure that new housing developments are built with transport provision in mind – particularly access to public transport.
- Given the importance of the Local Plan and the time limits to get a new plan in place, the Cabinet should review the schedule to ensure the Council is given sufficient time to consider and debate the document.

The Committee then considered the content of the 'statement highlighting and underpinning the commitment to maximising regeneration opportunities'. The following comments were made:

- The development of land at Horsley Cross or elsewhere along the A120 corridor for employment purposes should be considered as part of the Local Plan rather than relying predominantly on the current range of 'preferred' employment sites that were included in the last Local Plan and which failed to attract developer interest.
- Councillors should be provided with details of any sites that have been submitted to the Council for consideration as alternatives to the preferred employment sites in the Draft Local Plan.
- Councillors should also review the reasons why the Planning Inspector and the Secretary of State chose to refuse the 2006 planning application for development at Horsley Cross and consider whether these reasons would still apply today.
- The statement should acknowledge that it is for the benefit of residents.

The Committee finally considered Policy PEO17 to ensure that the policy enables the spirit and ambition of the policy to be delivered without fear of exploitation. The consensus was that, when

considered in context against other policies in the plan, the policy was sound. It was suggested that the policy would be improved if it were made clear that as well as preventing an annex from being sold, legally, as a separate dwelling, it would also prevent it being let as a separate dwelling.

MINOR CORRECTIONS TO TEXT AND MAPS

Since the Draft Local Plan was first considered by the Cabinet on 18th July 2012, officers have taken all reasonable opportunities to make necessary minor corrections and consequential changes to the content of the documents to ensure they are correct, accurate and up to date. These include any typographical errors, minor cartographical errors, the updating of statistics (particularly relevant since the publication of some 2011 Census data) and minor improvements to policy wording. None of these changes affect the thrust or meaning of any policies or proposals in the Draft Local Plan.