

PLANNING POLICY AND LOCAL PLAN COMMITTEE
30 September 2020

REPORT OF THE CORPORATE DIRECTOR: PLACE AND ECONOMY

A3 – SECTION 2 LOCAL PLAN: PREPARATIONS FOR EXAMINATION HEARINGS

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PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To provide an update on preparations for the Examination of Section 2 of the Council's emerging Local Plan following initial advice from the recently appointed Planning Inspectors.

EXECUTIVE SUMMARY

Key Points

- The Inspector's Modifications to the Section 1 Local Plan are currently out of public consultation and so attention now begins to turn to the Examination of Section 2.
- Two different Inspectors have been appointed to oversee the Examination of each of Tendring, Braintree and Colchester's Section 2 Local Plans.
- The Inspectors have issued some initial advice to Officers and have requested information that will enable them to consider the potential timetable for the examination and the key issues that might need to be covered.
- They have also asked the Council to prepare for the possibility of examination hearings being carried out face to face, virtually or a combination of the two – depending on the status of COVID-19 restrictions in place at the time.
- It is anticipated that examination hearings will take place in early 2021 to allow time for the Section 1 Local Plan process to be completed and for preparations for Section 2 to progress.

Background

Before a Local Plan can be formally adopted by a Council, it must be 'examined' by a government-appointed Inspector whose job it is to check that 1) the plan has been prepared in line with various legal requirements and 2) that the policies and proposals in the plan comply with the 'tests of soundness' contained within the National Planning Policy Framework (NPPF).

Section 1 of the submitted Local Plan containing strategic policies and proposals for North Essex ('the Section 1 Plan') has been examined by the Inspector and his recommended 'Main Modifications' to the plan are currently the subject of public consultation, with a deadline for comments of 9th October 2020.

Whilst the North Essex Authorities still await the Inspector's final conclusions on the soundness of the Section 1 Local Plan (once he has considered any further comments), the Section 1 Plan has progressed to a sufficiently advanced stage of the process to begin preparations for the examination of the authorities' individual 'Section 2' Local Plans containing more specific local policies and proposals relevant only to their individual area.

Two different Inspectors (Mr. Jameson Bridgwater and Ms. Anne Jordan) have been appointed by the Secretary of State to conduct the examination of all three Section 2 Local Plans. On 20 August 2020, they issued advice on how to approach the examination process and your Officers have been undertaking work in line with their advice. The work being carried out includes the following:

- A new set of pages on the Council's website are being prepared, dedicated specifically to the Section 2 Examination and in a format that is broadly consistent with that of Colchester and Braintree.
- An up to date library of all the evidence the Council will be relying on for the examination is being organised; with the documents arranged to correspond with the structure and policy order of the plan and placed on the new webpages. This will include the new Employment Land Review, updates to the Council's Retail Study and the latest Strategic Housing Land Availability Assessment (SHLAA).
- Copies of all the relevant representations received in response to the Local Plan consultation in 2017 are being arranged to correspond with the structure and policy order of the plan and will also be placed on the new webpages.
- A comprehensive set of schedules is being compiled that will 1) summarise the various comments raised by different stakeholders; 2) provide a brief response to the points raised; and 3) set out any suggested amendments to the plan aimed at addressing objections or otherwise updating, improving or correcting the plan. These will include the suggested amendments considered and agreed by the Committee in recent meetings.
- A shorter schedule will be prepared to identify the 'key issues' arising from the representations which might, or might not, become the focus of the examination hearings.
- A 'Topic Paper' on 'Consequential Changes' identifying 1) any issues arising from the Inspector's Main Modifications to the Section 1 Plan that might require changes to Section 2; and 2) any issues or arising from changes in national legislation, policy or other guidance that

might have a bearing on the soundness of the plan. This is a specific request of the Inspectors which Officers are aiming to submit by the end of September 2020.

- A Topic Paper on 'Housing' that, on the Inspectors' specific advice, addresses the following specific matters:
 - Whether the plan provides an adequate supply of land to meet the housing requirement (as identified within Part 1 as Modified) over the plan period.
 - Whether the plan will provide a five-year supply of deliverable sites from its date of adoption.
 - Whether the plan will make appropriate provision for affordable housing, accommodation for gypsies and travellers, accessible and adaptable housing, and housing to meet the needs of particular groups, such as (for example) disabled people, older people, and students.

Again, this will be submitted to the Inspectors by the end of September 2020.

- A series of 'additional topic papers' are also being considered to deal with any specific 'key issues' that are likely to require particular consideration as part of the examination process. Key issues are likely to include Employment Land, Retail and Town Centre Policies, Strategic Green Gaps and the Hartley Gardens and Oakwood Park developments proposed for the edge of Clacton.

The Inspectors have acknowledged that circumstances will have changed in the three years since the Local Plan was submitted, particularly in regards to sites that have obtained planning permission. For Tendring, grants of planning permission have strengthened the Council's housing land position considerably – to the extent that the Local Plan now over-allocates by around 1,600 homes (as reported to the Committee at the meeting of 8th June 2020). Officers consider that the substantial changes in the housing land position and grants of planning permission in the last three years will have addressed a large proportion of the objections received in 2017 and might allow for a relatively short and uncontentious examination process – although it will be the Inspectors who ultimately decide the programme for the examination and the key issues for debate.

Officers will continue to liaise with the Inspectors, via the appointed Programme Officer, on the scope and programme for the examination. If the Inspectors require any further work ahead of the examination hearings, Officers will endeavour to undertake that work in a timely manner to enable the plan to progress positively and for the examination process to run as smooth as possible.

Once the above tasks and any additional requested work have been completed and reported to the Inspectors, they will advise on the 'Matters, Issues and Questions' (MIQs) that will form the basis of the examination hearings and will determine the programme for hearings, the topics for discussion and who will be invited to participate. Officers will keep the Committee updated on progress as and when required.

For information, the most recent exchange of correspondence between the Inspectors and the Council's Assistant Director for Strategic Planning and Place are attached as Appendices 1 and 2.

RECOMMENDATION

That the Planning Policy and Local Plan Committee notes the preparations being made for the examination of Section 2 of the emerging Local Plan.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The preparation of a new Local Plan and completion of the examination process is a high priority of the Council to ensure that an up-to-date statutory development plan is put in place. The Local Plan will provide the framework for 'Place Shaping' and making provision for both the jobs and homes needed in the district and projects aimed at addressing deprivation and the need for rejuvenation in priority areas.

RESOURCES AND RISK

The examination of the Section 2 will be led by the Planning Inspectors, albeit funded through the Council's LDF/Local Plan budgets. The work required from the Council in preparation for the examination will be undertaken by the Strategic Planning and Place team under the leadership of the new Assistant Director, utilising the above budgets and the assistance of specialist consultants or legal representation as required.

The biggest risk to the examination of the Section 2 Plan will be if the Inspector for Section 1 makes any further modifications that affect either housing or employment land targets. The Inspector has invited comments from interested parties on whether or not government household projections published in June 2020 affect, in any way, the soundness of the housing targets in the Local Plan – however the North Essex Authorities have already submitted evidence to the Inspector, from expert consultants, explaining that the new projections do not affect the figures for Tendring.

When the Inspectors for Section 2 begin to feedback their views on the programme for the examination, a clearer picture of the resource requirements and potential risks will emerge – which will be reported to Members as appropriate.

LEGAL

The planning legislation and the National Planning Policy Framework (NPPF) (both the 2012 version applicable to this Local Plan and the new 2019 version) place Local Plans at the heart of the planning system, so it is essential that they are in place and kept up to date. The NPPF expects Local Plans

to set out a vision and a framework for the future development of the area, addressing the needs and opportunities in relation to housing, the economy, community facilities and infrastructure – as well as a basis for safeguarding the environment.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended) 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 is the 2007 Adopted Local Plan. However, the policies and proposals in the Adopted Local Plan are increasingly out of date. The NPPF states that where the development plan is out of date permission should be granted for sustainable development unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits or other policies indicate otherwise. It is therefore important to progress the emerging Local Plan through the remaining stages of the plan making process and ensure it meets the requirements of national planning policy so it can become the new statutory development plan and be relied upon by the Council acting as the Local Planning Authority.

Section 33A of the Planning and Compulsory Purchase Act 2004, as amended ("2004 Act") places a legal duty upon local authorities and other public bodies to engage constructively, actively and on an on-going basis to maximise the effectiveness of Local Plan preparation, this is known as the 'Duty to Cooperate' on strategic matters of cross-boundary significance, which includes housing supply. Before a Planning Inspector can begin the process of examining a Local Plan, they need to be satisfied that the local authority has demonstrated it has done everything it can to ensure effective cooperation with neighbouring authorities and other partner organisations and has sought to resolve, as far as is possible, any cross-boundary planning issues. The Inspector for Section 1 of the Local Plan has already confirmed that the relevant authorities have, to date, met with this legal duty, so it is hoped that matters of cooperation will not need to be revisited as part of the Section 2 examination.

The Town and Country Planning (Local Planning)(England) Regulations 2012 make provision for the operation of the local development planning system including, for the purposes of this report, regulations relating to the preparation, publication and representations relating to a local plan and the independent examination.

Section 19 of the 2004 Act requires a local planning authority to carry out a Sustainability Appraisal of each of the proposals in a Local Plan and the consequence of reasonable alternatives, during its preparation and in addition prepare a report of the findings of the Sustainability Appraisal. More generally, section 39 of the Act requires that the authority preparing a Local Plan must do so "with the objective of contributing to the achievement of sustainable development". The purpose of a Sustainability Appraisal is to ensure that potential environmental effects are given full consideration alongside social and economic issues. A Sustainability Appraisal was carried out for the Section 2 Local Plan but might require updates before the plan is adopted, depending on the Inspectors' advice and conclusions going forward.

The NPPF requires a local planning authority to submit a plan for examination which it considers to be “sound” meaning that it is: positively prepared, justified and effective. The job of the Planning Inspector is to test that the Local Plan meets legal and procedural requirements and the following tests of soundness:

- **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 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 Framework.

OTHER IMPLICATIONS

Area or Ward affected: All wards.

Consultation/Public Engagement: The statutory consultation on Section 2 of the Local Plan took place in 2017 and Officers consider that the majority of comments received have either been addressed as a result of planning decisions or can be resolved through amendments to the plan – however the Planning Inspectors will determine what issues need to be discussed as part of the examination and who will be invited to participate in the hearings. If the Inspector does recommend formal modifications to the Section 2 Local Plan following the examination hearings, they will be the subject of consultation in their own right before the plan can be formally adopted.

APPENDICES

Appendix 1: Planning Inspectors’ Advice Note dated 19th August 2020

Appendix 2: Letter of the Inspectors from the Assistant Director for Strategic Planning and Place dated 4th September 2020.

BACKGROUND PAPERS

None.