

## Local Plan Update

### Development and Conservation Advisory Committee - 4 March 2020

**Report of:** Deputy Chief Executive, Chief Officer - Planning & Regulatory Services

**Status:** For information

**Executive Summary:** This report provides an update on the Local Plan and outlines some of the next steps to take the document forwards.

**This report supports the Key Aim of: Protecting the Green Belt and Supporting and developing the local economy**

**Portfolio Holder:** Cllr. Julia Thornton

**Contact Officer:** James Gleave ext. 7326

**Recommendation to Development and Conservation Advisory Committee:**  
That the contents of the report be noted.

### Background and introduction

- 1 Members were updated on the latest position on the emerging Local Plan in July 2020. Officers informed members that the Council had submitted a claim against the Inspector's decision in relation to the duty to co-operate and that Saira Kabir Sheikh QC had been appointed to represent the Council in this process. In addition, the three MPs who represent the District had written to the Secretary of State to request that the Inspector's decision be 'called in' for further consideration. A letter of complaint had also been submitted to the Planning Inspectorate regarding the service the Council had received.
- 2 This report provides an update on all of these points and sets out the next steps going forwards.

### The Legal Challenge

- 3 The key grounds put forward by the Council in its claim against the Inspector's Report were as follows:
  - I. The Inspector erred in law in failing to apply the margin of appreciation granted to the Claimant under s. 33A of the 2004 Act;
  - II. The Inspector erred in law in failing to correctly interpret and apply the duty to cooperate and conflated the duty to cooperate with the requirement that a plan be sound;

- III. The Inspector failed to have regard to material considerations in that she failed to consider or misunderstood material evidence in front of her;
- IV. The Inspector failed to give adequate reasons and/or acted irrationally in finding that the Claimant had failed to comply with the duty to cooperate.
- 4 The claim was heard by Mr Justice Dove on 2 and 3 September 2020. The hearing consisted of the presentation of cases, firstly by Saira Kabir Sheikh QC for the Council and then the Secretary of State's case, from Mr Stephen Moules of Landmark Chambers.
- 5 The Judgement, which dismissed the Council's claim, was handed down on Friday 13 November 2020.
- 6 On 4 December 2020, the Council filed an application to the Court of Appeal for permission to challenge the Judgement. The outcome of this application is currently awaited.

#### Complaint to the Planning Inspectorate

- 7 On 14 May 2020, the Council submitted a complaint to the Planning Inspectorate in relation to the service it had received during the course of the examination procedure. The complaint focussed on a number of areas, including:
- The failure of the Inspector to provide feedback on the matters of soundness that she had promised to do;
  - Raising concerns regarding the duty to cooperate almost six months after the submission of the Plan, which is contrary to the Planning Inspectorate's own procedural guidelines; and
  - Concerns that the Planning Inspectorate sought to replace the final report with an amended version, again, contrary to its own procedural guidelines.
- 8 The reason for the Planning Inspectorate's hastily issued revision of the Inspector's Report was the presence of a double negative at Paragraph 29, which stated that:
- 'However, the evidence before me, including the minutes of meetings and the HPSs, does **not** demonstrate that there has **not** been active, constructive or on-going engagement in respect of unmet housing need.'*
- 9 In other words, there had been active engagement. Officers refused to accept the amended version of the Report.
- 10 The Council received a response to its complaint on 16<sup>th</sup> September 2020, from the Planning Inspectorate's Customer Team. The conclusion of the response states that:

*‘Overall, it is accepted that a letter or statement of error should have been sent rather than offering and sending an amended Report, and I can advise an upheld administrative complaint has been recorded in respect of this.*

*However, whilst I understand the level of disappointment in the Inspector’s conclusions on the Local Plan, after investigating the further points of complaints made, in my view the approach that was taken by the Inspector during the process was entirely reasonable.*

#### Request to the Secretary of State for call in

- 11 All three MPs who represent Sevenoaks District - Laura Trott, Tom Tugendhat and Gareth Johnson - wrote to the Secretary of State on 1<sup>st</sup> June 2020, to request that the decision be recovered from the Inspector for his consideration. The Secretary of State has since confirmed that he has no powers to intervene.

#### **Moving forward - some key themes**

- 12 Regardless of the outcome of the Council’s application to Appeal the legal challenge, further work will be needed to ensure the Local Plan reflects emerging living and working trends, the fundamental changes that have taken place over the last 12 months and the proposals set out in the Government’s Planning White Paper. Some key themes to consider are set out in the following paragraphs.

#### Making best and most efficient use of land

- 13 It is important that the emerging Local Plan promotes development that makes the best and most efficient use of land to encourage sustainable development. The principles behind this approach have been established for many years now. As context, the 2000 version of the Government’s Planning Policy Guidance Note 3, which has since been superseded by the National Planning Policy Framework, stated that:

*Local planning authorities should avoid the inefficient use of land. New housing development in England is currently built at an average of 25 dwellings per hectare but more than half of all new housing is built at less than 20 dwellings per hectare...*

*Local planning authorities should therefore:*

- *avoid developments which make inefficient use of land (those of less than 30 dwellings per hectare net - see definitions at Annex C);*
- *encourage housing development which makes more efficient use of land (between 30 and 50 dwellings per hectare net); and*
- *seek greater intensity of development at places with good public transport accessibility such as city, town, district and local centres or around major nodes along good quality public transport corridors.*

- 14 There are cases where residential development continues to be proposed in Sevenoaks at less than 30 units per hectare, which is lower than what might be found on a typical suburban street. Officers are of the view that it is possible to achieve higher density development, which maintains acceptable levels of public and private amenity space, incorporates emerging healthy living standards and reflects local character. This does not mean ‘town cramming’. Instead, the emerging Plan should place increased emphasis on bringing forward ambitious development proposals that make the best use of available land in all circumstances, whilst reflecting local character.
- 15 The proposed approach is consistent with the Council’s corporate objective to minimise the release of Green Belt land. It will also greatly assist in the delivery of current and future housing targets.

#### Change in work patterns/economic drivers

- 16 A report produced by real estate consultancy JLL on The future of office demand: Central London after Covid-19 notes that:  
*‘Some more suburban London markets could also see an increase in demand. Local clubs or hubs - perhaps occupied on a flexible basis - may become more prevalent in popular suburbs. This applies equally to towns and neighbourhoods on the fringe of Greater London with excellent transport links, such as Croydon or along the Western Corridor. These could offer alternatives to the home for local residents on the days they are not travelling into London, but the viability will depend on the individual company’s resources and the distribution of their staff.’*
- 17 The JLL report refers to the emerging demand for more spacious, flexible office accommodation, with a greater focus on health and wellbeing. Access to green space and fast public transport links to London are also important considerations. Sevenoaks has faster rail links to the City and West End than many authorities around London, particularly those located in the western corridor. It is therefore well placed to capitalise on the emerging trends, if workspace can be brought forward to meet these changes in occupier demand.

#### The future of town centres

- 18 It is often stated that crises accelerate existing trends, rather than creating new ones. Changes in town centres caused by online shopping are not a new phenomenon, as highlighted in the Mary Portas High Street Review, published in 2011:  
*‘It’s clear that retail spending on the high street is falling and this trend is set to continue.’*
- 19 The current form of the High Street is a relatively modern phenomenon that has emerged and developed since the Second World War. Notwithstanding the recent expansion of permitted development rights, it is clear that the function of town centres will continue to change in the coming years. It is important that the Local Plan maintains support for the success of town centres in the District and promotes uses that encourage vitality and

viability. Policies should also reflect emerging trends and incorporate best practice from elsewhere. Officers will therefore investigate the production of a Town Centre Strategy, as outlined in the following section of this report.

### **Updating the Evidence Base**

- 20 Alongside the legal challenge, officers have continued to progress updates to existing evidence base documents, to ensure these are fully up to date when the Local Plan returns to examination. Subject to budget considerations, a number of additional studies are proposed to be prepared in response to the themes outlined above.

### District -Wide Characterisation Study

- 21 This study will identify the specific character and context of places and spaces in Sevenoaks District, to inform proposed growth and the determination of planning applications. Studies of this nature have been undertaken by a number of local authorities and greatly assist in ensuring that development proposals make the best use of land, whilst reflecting local characteristics.
- 22 The key elements of District-wide character to be assessed in the study could include:
- Physical: Built form, development density and the natural environment;
  - Cultural, social and economic: cultural pattern and demographic mix; and
  - Perception and experience: sights, sound and perception of the District.
- 23 The study will identify, analyse and help understand the characteristics across the District that should be reinforced and protected, while also determining places that can be improved to enhance the character and make better quality places. The work will form the baseline for future local area studies, such as local character assessments and neighbourhood plans and will assist in making sure that site allocations make the best use of available land, whilst reflecting local development character.
- 24 By mapping the spatial relationship between economic, environmental and social characteristics, we can make informed decisions on where and how to create quality places where communities can thrive.

### Town Centre Strategy

- 25 One of the key themes that emerged from the Mary Portas review was the relationship between the physical quality of high streets and their success as centres, for both commercial and civic amenity. Achieving vitality and viability requires a partnership based approach and officers will therefore investigate the production of a Town Centre Strategy with colleagues from the Economic Development and Housing Policy teams.

- 26 In addition to considering the future demand for retail space, this study would examine the factors that influence the level of footfall. Depending on the advice received, a key outcome could be a vision for town centres in the District, which builds on previous work undertaken in response to the Portas recommendations. The work would have appropriate regard to other studies and strategies prepared across the Council.

#### Demand for employment space

- 27 It is suggested that further work should be undertaken to assess the potential of Sevenoaks District as a location for employment space, focussing on occupier demand for modern office accommodation. The study will investigate the implications of emerging trends outlined in the JLL report and the impact of increased permitted development rights on the availability of commercial floorspace.

#### Additional work

- 28 In addition, officers will investigate the need for further updates to the Council's Green Belt Review, Infrastructure Delivery Plan (IDP) and the Strategic Housing Market Assessment (SHMA). These documents will be made available in a live online format wherever possible. Consideration will also be given to bringing forward the Regeneration Priority Areas outlined in the emerging plan.

#### **Sites and Policies**

- 29 Discussions are on-going with the promoters of proposed site allocations to ensure they remain deliverable or developable, make the best use of available land, meet infrastructure needs and deliver the right type of development over the Plan period. In addition, work is currently being undertaken to assess the availability of small sites in main settlements, as additional sources of housing supply.
- 30 A review will also take place of the development management policies to ensure they remain fit for purpose. There may be scope for the policies to be more concise and criteria based. The objective of the review will be to avoid repetition of national guidance and to work with development management colleagues to ensure the proposed policies meet the Council's needs.

#### **Presentation of the Plan**

- 31 Officers will investigate the presentation of the plan to ensure it has a modern look and feel. Where appropriate, consideration will be given to the presentation of policies and allocations in a digital format and modern mediums will be considered. Officers understand the challenges that this could present to some residents and paper copies of information will be made available as necessary.

## Next steps in the Local Plan process

- 32 Many of the activities outlined in this report, including the production of up to date evidence base and discussions with site promoters, can proceed whilst the Appeal is being determined. Officers are of the view that the strategy underpinning the emerging plan - to accommodate as much development as possible in main settlements and release Green Belt land where there are exceptional circumstances for doing so - remains sound.
- 33 As part of this strategy, officers will seek to ensure the most efficient use of land on all sites and to make the most of capacity in existing settlements. In practical terms, this involves a consideration of factors such as whether development density reflects national planning guidance and local character. Proposals should also reflect current needs and the emerging trends outlined in this report.
- 34 Although this work can progress, the Plan cannot substantially move forwards whilst the Appeal process is on-going. Once the outcome is clear, officers will seek to hold discussions with representatives from MHCLG to agree a way forward. These discussions will inform both timescale and process.
- 35 We note the advice to engage with the Planning Advisory Service (PAS) and members will be aware that MHCLG advised the Council to do so prior to the submission of the Local Plan in April 2019. The Inspector rejected the subsequent advice received as an outcome of this process. Nevertheless, the Council must have a degree of certainty going forwards that the Government is broadly happy with the approach being taken, particularly in relation to legal compliance. The Planning Inspectorate's own procedural guidelines advise that significant concerns should be raised at the earliest possible stage.
- 36 In accordance with the advice provided by The Government, officers will seek to agree a way forwards with MHCLG to put a Local Plan in place as soon as possible that meets development needs and underpin robust planning decisions. Further updates will be provided to members as and when the outcome of the Appeal process is clear.

## Other matters

### The Planning White Paper

- 37 Members requested an update on the Planning White Paper at the last meeting in November. Further discussions have taken place regarding the proposed algorithm to calculate housing requirements, following criticism from a number of high profile MPs. An update on progress will be provided at the meeting.

### Gypsy and traveller pitch provision

- 38 The Gypsy and Traveller Accommodation Assessment 2017 identified a need for 51 additional permanent pitches across the District up to 2035. Since 2017, officers from Planning Policy, Development Management and Planning

Enforcement have been working to regularise existing, suitable unauthorised or temporary pitches and deal with any outstanding enforcement or planning application cases. This process has included working with agents, applicants, local members and local communities to form good working relationships and find appropriate and positive solutions. We have successfully defended appeal decisions, improved the quality of existing sites and undertaken any necessary enforcement action.

- 39 As of 31 January 2021, we no longer have an unmet need for new permanent Gypsy and Traveller pitches.
- 40 The Council is now in a much stronger position in terms of decision making with less pressure on the Green Belt. It should be noted, as with new housing, meeting the need does not automatically mean that all future applications will be refused, however it does strengthen the position to resist inappropriate and unsuitable proposals.

### Housing Delivery Test

- 41 The Housing Delivery Test (HDT) was introduced in the 2018 NPPF update, with the aim to boost the supply of housing in line with the Government's objectives. The test compares the past three years of 'homes required' against the number of homes delivered.
- 42 The 2020 HDT measurement for Sevenoaks District is 70%, therefore, we are delivering 70% of the homes required by the test. Therefore, we must produce a HDT action plan, include a 20% buffer on the 5-year housing land supply and apply the presumption in favour of sustainable development.
- 43 It should also be noted that we have not been able to demonstrate a 5-year housing land supply and therefore we have been applying the presumption in favour of sustainable development to planning applications since March 2020. We have not been able to demonstrate a 5 year housing land supply as a result of the Local Plan being found not legally compliant and as the adopted housing requirement is more than 5 years old, we must use the standard method need figure in its place.
- 44 The Council's housing target has increased significantly in recent years. Whilst the objective to put a Local Plan in place as soon as possible, to boost the delivery of new homes, has been curtailed by the Inspectors intervention, officers are keen to move this process forward. In addition, making the best possible use of land will assist in addressing the issue.
- 45 Paragraph 11d of the NPPF provides that, where the development plan policies are out-of-date, granting permission unless (i) NPPF policies that protect areas of particular importance, as set out in footnote 6 (including Green Belt and Area of Outstanding Natural Beauty), provide a clear reason for refusal, or (ii) any adverse effects of granting permission would significantly and demonstrably outweigh the benefits, assessed against the NPPF as a whole.



46 Members will be aware that 93% of the District is designated as Green Belt and more than 60% is within AONB. Reassurance should therefore be taken from paragraph 11d(i), which is likely to be a relevant consideration for many planning applications in the District.

## **Key Implications**

### Financial

Production of the Local Plan will be funded from the Local Plan reserve.

### Legal Implications and Risk Assessment Statement.

Preparation of a Local Plan is a statutory requirement. There are defined legal requirements that must be met in plan making which are considered when the Plan is examined by a Government Planning Inspector. Risks associated with Local Plan making are set out in the Local Development Scheme.

### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### Net Zero

This has been addressed in the main report.

## **Conclusion**

Officers will be happy to take any questions on the content of this report at the meeting.

### **Appendices**

None

### **Background Documents**

None

**Richard Morris**

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