

42. NEW LOCAL PLAN 2018 This Special Meeting of the Council had been convened for the Council to approve and progress a new Local Plan for the Borough. A report together with a copy of the pre-publication Local Plan November 2018 including a Policies Map and the Equality Impact Assessment (EquIA) had been circulated to the Council.

The Chief Executive presented the comprehensive report to the Council.

Section 4 of the report set out the background and highlighted the long and difficult history the Council had experienced in trying to develop a local plan. Special Council 28.11.2018 2

In November 2017 the Secretary of State had written to 15 authorities which included Castle Point expressing his concern at their failure to make progress with local plans.

A response was sent to the Secretary of State setting out the Council's special circumstances. The Secretary of State wrote again in March 2018 continuing his intervention saying that we were now one of three authorities (the others being The Wirral and Thanet Council) and he had instructed a specialist team to determine the best way to **accelerate** the delivery of a local plan.

At the meeting of Special Council on 6th June 2018 the Council agreed to a timetable that **accelerated** the delivery of the New Local Plan to be considered at this meeting. That timetable was set in consultation with the Government office. Council was advised of the importance of adhering strictly to that timetable.

The Chief Executive was grateful to all Members who had been extremely patient and understanding at the briefing meetings that were arranged throughout the summer to share progress. The Briefings covered: Local Plan Preparation and Site Assessment Methodology; Update on Evidence; Call for Sites and Work on the SHLAA (Strategic Housing Land Availability Assessment); Policies and Allocations; Duty to Co-operate and Master Planning; Report to Council.

Section 5 of the report considered the policy context and dealt with the National Planning Policy Framework July 2018 (NPPF) which set out the Government's policies with regard to plan – making.

Local plans were to be subject to independent examination by a planning inspector before they could be adopted. The examination process checked that the proposed local plan had been prepared in accordance with legal and procedural requirements, and were sound. The NPPF sets out four tests of soundness that must be met. These were:

Positively prepared – the plan should be prepared based on a strategy which should as a minimum seek to meet the area's objectively assessed needs, and is informed by agreements with other authorities so that unmet requirements from neighbouring authorities can be accommodated where it is reasonable to do so and consistent with achieving sustainable development;

Justified – the plan should be based on an 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, as evidenced by the statement(s) of common ground; and

Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the NPPF. Special Council 28.11.2018 3 Government also published

and maintained its National Planning Practice Guidance (NPPG) in web-based format providing practice guidance on a range of matters relevant to plan-making.

Section 6 described the significant work being carried out across South Essex by all local planning authorities and Essex County Council on a range of matters. In January 2018, agreement was reached to form the Association of South Essex Local Authorities (ASELA). Its ambition was to develop a long-term place-based growth ambition. Part of the South Essex growth ambition would be realised through the preparation and adoption of a Joint Strategic Plan (JSP). In accordance with the NPPF, a statement of common ground had been prepared to support the preparation of the JSP, to ensure that there was not only a proactive and positive approach to strategic planning matters across housing market areas, but that there was a clear (and agreed) approach to how these would be delivered in all relevant local plans.

Section 7 summarised the important evidence base that had been used to formulate the plan. This included the Strategic Housing Land Availability Assessment (SHLAA); the Annual Monitoring Report (AMR); the Strategic Housing Market Assessment (SHMA); draft Transport Evidence; draft Viability Report; Joint South Essex Strategic Flood Risk Assessment (Level 1) and Draft Castle Point Strategic Flood Risk Assessment for Housing Site Options (Level 2); Draft Green Belt Review (Parts 1 & 2) and Draft Green Belt Topic Paper; Draft Housing Sites Options Topic Paper; Draft Sustainability Appraisal.

Members' attention was directed to the important figure at paragraph 7.5 which stated that the housing need for the Borough is 342 dwellings per annum.

Section 8 of the report described the contents of the New Local Plan 2018 and covered the following:

- Vision and Objectives
- The Presumption in Favour of Achieving Sustainable Development and Effective Use of Land
- Delivering a Sufficient Supply of Homes
- Building a Strong, Competitive Economy
- Ensuring the Vitality of Town Centres
- Promoting Healthy and Safe Communities
- Promoting Sustainable Transport
- Supporting High Quality Communications Infrastructure
- Achieving Well-Designed Places
- Protecting Green Belt Land
- Meeting the Challenge of Climate Change, Flooding and Coastal Change
- Conserving and Enhancing the Natural Environment
- Conserving and Enhancing the Historic Environment • Monitoring & Review

Within the section dealing with Delivering a Sufficient Supply of Homes the strategic sites forming a crucial part of the plan were identified together with commentary about each site.

Council was reminded that this was a twenty year plan and it might be some while before any of sites came forward for development and because of the sequential test those on Canvey were more likely to be towards the end of the plan period.

Council's attention was directed to paragraph 8.12 which confirmed the plan could only deliver 240 homes per annum which was some way short (102 homes per year) of the assessed need.

Given that shortfall information was provided in Section 9 of the report on how the Council had worked and would continue to work with the Council's neighbouring local authorities to fulfil the Duty to Co-operate. Council was reminded that objections from Rochford, Thurrock, Basildon, Southend and Essex County Council to the 2016 draft local plan regarding the duty to cooperate meant it failed.

This time there were no objections to the plan as the Council's neighbouring authorities recognised there had been a very thorough examination of all of the opportunities to provide housing within the Borough and was not (by excluding deliverable sites) forcing them to use more of their own Green Belt.

Section 9 of the report also covered other matters relating to Legal and Policy compliance such as the Draft Sustainability Appraisal and Strategic Environmental Assessment. A full copy of the Equality Impact Assessment had been included with the agenda papers for the meeting. The analysis found the Objectives and Policies of the New Local Plan to meet the socio-economic and single (integrated) equality duties of the Equality Act 2010, and that there were no areas which needed to be changed or given further consideration in order for the Council to fulfil its duties under the Act.

Section 10 of the report contained the next steps the Council must take in accordance with the expressly agreed time table.

Subject to Members agreement, a further round of public consultation on the plan would take place in January of next year prior to submission for public examination before a planning inspector. This would take place during the summer and would provide a further important opportunity for anybody who remained dissatisfied with the contents of this plan to make their views known directly to the planning inspector. It would be the Inspector who decided whether the plan went forward or not.

Paragraphs 10.7 to 10.9 highlighted the new master planning approach adopted in the plan. This would allow Members and the local community to work together with the developer to ensure the proposed development reflected the local character and amenity of the area.

The Chief Executive reminded Members of his statutory duty to bring to the Council's attention matters presenting a corporate risk to the authority. These concerns were set out in paragraph 11.1 through to 11.21 of the report, reproduced below:

11.1 As the Proper Officer of the Council the Chief Executive has a duty to ensure that before a decision is made Councillors are aware of the consequences of failure to approve the New Local Plan 2018. The Chief Executive has advised separately the Leaders of the Political Groups on the Council regarding the legal, financial and reputational risks of failing to approve the New Local Plan 2018 and as a consequence of intervention.

(a) Intervention

11.2 A report was presented to Cabinet on intervention and its consequences in September 2018. Council is reminded that Intervention by Government in any area of local government business is a

last resort and follows poor decision making and failure to follow Government direction and advice. Intervention is a sanction and should not be considered as an alternative mechanism to deliver a local plan. The Secretary of State is still considering whether to intervene in the local plan process in Castle Point. Failure to keep to the programme as agreed by Council in the LDS to produce a legally and technically compliant local plan is likely to result in intervention. The Secretary of State has extensive powers to intervene in the planning process.

11.3 There are two principal areas where the Secretary of State could intervene in the Borough Council's work as Local Planning Authority. In terms of **plan-making**, it is clear from legislation, most recently the Housing & Planning Act 2016 that the Secretary of State has wide-ranging powers to intervene in plan-making; for example he may direct that a certain approach be taken, or not taken. In these circumstances the local planning authority loses control of the plan-making process. A plan would be prepared elsewhere by others and with reference to evidence, national policy and guidance; it would be taken through the necessary legal stages to adoption. Members of the Council will not be involved and will be excluded from the plan-making process. This plan would then become the statutory development plan for the borough, with no formal involvement by the Borough Council.

11.4 In terms of **decision-taking**, the Government will wish to make certain after intervention that the statutory development plan and policies for the borough will be implemented and will not allow the local plan, once agreed, to be frustrated by the development control process. Consequently as the Borough Council had no role in the preparation of the plan, indications from the Ministry are that the Secretary of State will exercise powers available to him to direct that any strategic planning applications submitted pursuant to the plan will be referred to the Planning Inspectorate directly rather than the Borough Council, to ensure that the plan and its policies are correctly implemented. The Borough Council through the Development Control Committee will not be involved in implementation of the statutory development plan and the Council's ability to take decisions locally on strategic planning applications will be lost.

11.5 As one of the very few planning authorities under intense scrutiny by the Ministry, the Council remains at great risk of intervention and this will lead to considerable reputational damage on a national scale. This may cause other non-intended consequences such as the inability to attract staff; implications for joint working arrangements and funding opportunities which could last over many years.

(b) Planning Implications

11.6 Any amendments made to either the policies in the plan, to the proposed housing sites or to other allocations on the Policies Map will undermine the strategy, objectives and policies in the New Local Plan 2018, since it must be read as a whole.

11.7 For example to remove sites with a higher likelihood of delivery in favour of other less sustainable and less deliverable sites may result in the plan's approach to housing provision being found to be faulty. This in turn makes the plan less sound, and puts the Council at risk either from intervention by the Secretary of State, or from criticism from neighbouring or nearby authorities and duty to co-operate bodies, or ultimately from the planning inspector appointed to examine the plan. Therefore it is likely that as with the 2016 New Local Plan the Council will fail at the first hurdle, namely the duty to co-operate stage.

11.8 Failure to make progress with the New Local Plan 2018 at this time will also be noted by the Secretary of State. As mentioned earlier Officials from the Ministry have been in regular contact with Council officers since the Secretary of State's decision to continue intervention in March 2018. It is

clear that the Ministry officials believe that the Secretary of State's published criteria for invention have been met in the case of Castle Point. The Council has only avoided more direct control from the Ministry by publishing and keeping to the accelerated plan preparation timetable set out in the LDS in June 2018.

11.9 Should there be any indication that the Council will be unable to make progress with the plan, then further and more direct intervention and control can be expected. As described earlier this would be likely to take the form of a direction from the Secretary of State requiring either the Council to take whatever action he deems necessary to progress the plan, or to provide his appointed officials and/or consultants with the New Local Plan 2018 and all its associated background material so that it may be progressed with no formal input or involvement from the Council. These measures are likely to be put in place for a significant period of time, leading up to and through examination and adoption, and potentially until the first review of the plan after 5 years.

11.10 Furthermore the Council is likely to lose the ability to determine significant planning applications which would deliver development as proposed in the plan. The Secretary of State may direct that applications that give effect to the proposals are "called in" for his own determination. Again, there would be no formal input or involvement from the Council in this casework. Moreover there will be no ability to be involved in the master planning of sites.

11.11 As a consequence, the Council will find itself spending considerable sums of money on supporting the Secretary of State's officials and/or consultants on the preparation and approval of a plan, and/or the determination of strategic planning applications over which it would exercise no control.

(c) Financial Implications

11.12 Expenditure to Date: The technical work involved in preparing a New Local Plan 2018 has been carried out using the resources identified in the LDS 2018, considered and approved by Council on 6th June 2018.

11.13 Required Expenditure: The further costs of taking the New Local Plan 2018 through the next stages of plan preparation to examination and adoption have been included in budget projections for the plan, and were also identified in the LDS 2018, considered and approved by Council on 6th June 2018.

11.14 Potential Cost Avoidance: It is estimated that by making progress with the New Local Plan 2018, the Council could avoid in the region of £1.3m in appeal costs. These estimated appeal costs are not currently included in the Council's detailed budget, but do form part of the calculation of the minimum required level of General Fund reserves.

11.15 Potential Income Generation: There will be longer term potential financial implications from approval and adoption of the local plan. These cannot be quantified at this time, and will need to be the subject of future reports, but could potentially include additional income from:

- Pre-application fee income
- Planning Performance Agreements
- Planning application fee income
- Section 106 contributions to Council facilities required as a result of development

- An increased Council Tax Base from new properties;
- Business Rates

11.16 It should be noted however that some of these additional income streams may have costs associated; for example an increase in the number of preapplication and master plan requests may require further staff resources to respond adequately, while additional dwellings would result in increased costs of servicing those properties, such as refuse and recycling collection costs.

(d) Legal Implications

11.17 As set out above there are a number of statutory requirements that must be met during the preparation of a local plan. These include the requirements to carry out and consider sustainability appraisals, habitat regulations assessments and equality impact assessments. These requirements have been met in the preparation of the New Local Plan 2018.

11.18 The Localism Act 2011 introduced the duty to co-operate. As Council will recall from its experience in 2016, failure to co-operate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in the plan, by engaging with neighbouring authorities and other relevant bodies during preparation and in the period up until the finalisation of the New Local Plan, would leave a planning inspector with no option but to cease examination work and recommend the plan be withdrawn.

11.19 The New Local Plan 2018 will be subject to independent examination by a planning inspector who will consider whether the tests of soundness set out in the NPPF have been met. This report sets out how those tests – positively prepared, justified, effective and consistent with national policy - have been satisfied.

11.20 The recommendation for a legal and technical review of any new evidence or guidance and the consultation responses will also provide advice on any consequences for the New Local Plan before submission.

11.21 Failure to agree the New Local Plan 2018 will result in the very real risk that the Secretary of State will use his powers of direction to in effect take control of plan-making and the determination of strategic planning applications in the borough.

The Chief Executive reminded Members that the Secretary of State had threatened to intervene in the plan making process of this Council. The Housing and Planning Act of 2016 had given him 'new' powers to take over plan making and Castle Point was now alone faced this threat.

The decision before Members was entirely focussed on whether Council wished to retain control of plan making and development control or rely on the intervention of Government officials. Members' attention was drawn to paragraphs 11.9 and 11.10 in this respect.

Consequently the Chief Executive had spoken again most recently with the Government Chief Planner about intervention.

The Chief Executive reported that the Chief Planner had confirmed that arrangements were in hand with consultants commissioned to undertake preparation of a local plan should the Secretary of State consider it to be necessary. The Council had only been able to avoid intervention by adhering to the accelerated timetable Council agreed in June.

The Chief Planner had also confirmed that intervention should **not** be regarded as an alternative mechanism for plan making. It was a sanction that would be painful and costly to the local

community. The Government office did not want to intervene - they would much rather the planning authority got on with the task but in the event of continued failure to make progress the Government had no choice.

Members were warned that Intervention was likely to result in a plan that delivered more and not less housing. The Government team would not want to risk failure at public examination and would be at pains to demonstrate how they could accommodate the identified level of housing need in full. That would mean up to an additional 2000 homes over the plan period.

Members were also reminded that intervention could last for some time. If plan making was removed from Council control, it was highly likely that the Development Control Committee would not be allowed to manage the implementation of the plan. Planning applications would be called in and determined directly by the Government Office and the Secretary of State. Exclusion could last for up to five years and would have implications for what happened on each of the strategic housing sites.

Finally and most importantly, in para 12.3 of the report the Chief Executive indicated that the opinion of the Government intervention consultants (Intelligent Plans and Examinations) had been sought on the final draft of the Council's plan

The Chief Executive informed Council that the consultants, led by an experienced Planning Inspector had concluded 'Lit appears that the Council should be able to submit a local plan for examination which meets current national advice'.

This was an important endorsement from the Government's consultants to the advice before Members. Plan making was a legal process and Council could therefore have confidence that the plan before them was legally and technically compliant which was essential if the plan was to be successful at public examination.

The Chief Executive concluded that the decision before Members was extremely difficult and restated that this was not a decision about whether development took place in the Green Belt or not. The decision was whether to keep control of the local plan making process for Castle Point or allow Government officials to intervene and take over the process.

The following recommendations were commended to Council:

Recommendations:

1. Pursuant to Section 20 of the Planning & Compulsory Purchase Order Act 2004, and Regulations 19 and 22 of the Town & Country Planning (Local Planning) (England) Regulations 2012, Council to approve the publication of the Castle Point New Local Plan 2018 for further consultation and then submission to the Secretary of State, subject to 3.4 below;
2. Make available for public examination the evidence base and supporting documents prepared to inform and accompany the New Local Plan 2018;
3. In consultation with the Leader of the Council, the Chief Executive should continue with on-going engagement and additional work as necessary to fulfil the duty to co-operate;

4. In consultation with the Leader of the Council, the Chief Executive should seek appropriate legal and technical advice on any new evidence or guidance which emerges, and effect any consequential changes as required to the New Local Plan before consultation or submission;
5. In consultation with the Leader of the Council, the Chief Executive should seek appropriate legal and technical advice on any consultation responses to the New Local Plan 2018, and effect any consequential changes as required to the New Local Plan before submission;
6. To appoint a Master Plan Working Group for each site identified for master planning or planning briefs, membership to include Ward Councillors, to work with officers, other service providers, the local community and developers to prepare a master plan or planning brief for the site to be reported to Cabinet and formally agreed by the Council. (Note - Planning approval will still be required from the Development Control Committee to progress development in respect of each of the Master Plan sites)

In moving the Recommendations the Leader of the Council among other matters emphasised the importance of the Council remaining in control of the Local Plan making process and future planning decisions for the Borough. (The Leader advised that Councillors would be given the opportunity to request adjustments other plan prior to consultation and submission provided no fundamental material changes were made to the Plan .The Chief Executive confirmed that this could be accommodated).The Deputy Leader seconded the Motion.

Debate took place during which Members acknowledged the difficult decision before the Council. A number of Members recognised that they would have to set aside their views concerning the use of Green Belt land for building in order that an effective Local Plan could be delivered to retain control of local plan making in the Borough and future planning decisions for the benefit of the community and avoid the serious consequences of intervention.

At the conclusion of the debate a vote was taken on the recommendations by show of hands which was lost narrowly by one vote. The meeting concluded.

(Councillor Dick was unwell during the meeting and left the Chamber and did not take part in the vote on the recommendations)

Mayor