

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

LOCAL PLAN ADVISORY COMMITTEE – 16 DECEMBER 2015

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| Title of report | LOCAL PLAN – RISK MANAGEMENT |
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| Purpose of report | To advise members of updates in respect of government policy and legislation and how this might impact upon the Local Plan and to provide an update in respect of the management of risk associated with the Local Plan. |
| Council Priorities | <p>These are taken from the Council Delivery Plan:</p> <p>Value for Money Business and Jobs Homes and Communities Green Footprints Challenge</p> |
| Implications: | |
| Financial/Staff | None |
| Link to relevant CAT | None |
| Risk Management | A risk assessment of the project has been undertaken. As far as possible control measures have been put in place to minimise these risks, including monthly Project Board meetings where risk is reviewed |
| Equalities Impact Screening | None |
| Human Rights | None |

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| Transformational Government | Not applicable. |
| Comments of Head of Paid Service | The report is satisfactory |
| Comments of Section 151 Officer | The report is satisfactory |
| Comments of Deputy Monitoring Officer | The report is satisfactory |
| Consultees | Local Plan Project Board |
| Background papers | None |
| Recommendations | <p>THAT THE ADVISORY COMMITTEE:</p> <p>(I) NOTES THE UPDATE IN RESPECT OF HOW CHANGES TO NATIONAL POLICIES MIGHT IMPACT UPON THE LOCAL PLAN ; AND</p> <p>(II) NOTES AND COMMENTS ON THE CURRENT RISK ASSESSMENT</p> |

1.0 INTRODUCTION

- 1.1 As members will be aware, a key test in terms of the ‘soundness’ of the Local Plan will be that it is consistent with national policies.
- 1.2 It is the case that the planning system and national policies have, in recent years, undergone significant changes. Such changes are still ongoing which is problematic for the preparation of local plans in order to ensure that they are consistent with national policies. There are many examples of where local plans have had to be changed quite late on in the process to reflect changes in national policies. It is reasonable to assume that this council’s local plan may similarly be affected throughout the course of its preparation.
- 1.3 This report seeks to highlight for members some recent changes, actual or proposed, which may impact upon the local plan.
- 1.4 Changes in national policy represent a potential risk to the local plan. However, there are many other potential risks. A report to the meeting of the Local Planning Advisory Committee on 9 September 2014 set out for members the risk register that was in place for the local plan. This report provides an updated risk register to take account of changes since the earlier report, including reflecting where it is now in the process.

2.0 NATIONAL POLICIES

Affordable Housing

- 2.1 Members will recall that at the time that the local plan was being considered by Council it was reported that the Government's proposed approach in respect of affordable housing had been successfully challenged in the High Court.
- 2.2 The Government had proposed to have a threshold above which affordable housing could be required of 10 dwellings or more. This had been taken in to account in preparing the council's draft local plan.
- 2.3 The report to Council noted that it was understood that the government was considering an appeal against the decision of the High Court. This appeal has now been confirmed following a statement from government on 28 September 2015.
- 2.4 It is not clear as to when this matter is likely to be considered by the Court of Appeal and so the matter will be kept under review.
- 2.5 In the event that the government is successful in its appeal then the local plan as drafted would (subject to considerations raised in response to the current consultation) be consistent with national policy. However, in the event that the challenge is unsuccessful then the council could consider alternative approaches which could include having lower thresholds than those currently proposed.

Provision for gypsies and travellers

- 2.6 The draft Local Plan proposes that a separate allocations Development Plan Document be prepared to identify sites for gypsies and travellers. This matter is the subject of a separate report elsewhere on the agenda for this meeting.
- 2.7 The report to Council noted that a similar approach was proposed by Maldon District Council but that the Inspector had raised concerns. Maldon Council invited the Secretary of State to intervene and the matter was then called in by the Secretary of State. It is understood that no decision has been made on this issue at this time but officers will continue to be keep it under review.

Housing and Planning Bill

- 2.8 The draft Bill was presented to parliament on 13 October 2015. It contains a number of matters which maybe of relevance to the local plan.

Starter Homes

- 2.9 Clause 3, sub section 1 states "*An English planning authority must carry out its relevant planning functions with a view to promoting the supply of starter homes in England*"
- 2.10 Starter Homes are defined as new homes available for first time buyers under 40 at 20 per cent less than the market value, with an initial price cap at £450,000 in London and £250,000 outside. Councils will have a duty to promote Starter Homes, with an option for the Government to introduce regulations to determine that councils only grant planning

permission if a specific Starter Home requirement is met. Regulations may vary this requirement for different areas.

2.11 The explanatory notes to the Bill and productivity plan indicate that this is likely to include ensuring that every "*reasonably sized housing site*" includes a proportion of Starter Homes by requiring a S106 planning obligation to be entered into.

2.12 There are a number of issues which remain to be resolved in respect of this, including:

- Will it be necessary to determine how many starter homes are likely to be required in an area and if so will this need to be done as part of Strategic Housing Market Assessment (SHMA)?
- Will there be any site threshold below which starter homes will not be required? The explanatory notes would suggest so but what does a "reasonably sized site" look like?
- What is the relationship between starter homes and affordable housing and hence any targets for both of these?
- Will having a certain number of starter homes have an impact upon viability issues? If so will this mean that affordable housing targets are secondary to provision of starter homes and so targets will be less than might have been the case?
- Could it have an impact on the overall need for housing and so require revisiting the SHMA?
- Will the proposal for starter homes result in delays to development if developers decide to wait for greater clarity on what this will involve and/or seek to amend existing agreements?

2.13 Depending upon the answers to the above questions it is possible that the approach currently envisaged in the draft Local Plan may have to change. For example, the inclusion of a target for starter homes as well as affordable homes. This will need to await passage of the Bill and then the subsequent regulations before it is clear what will be required. This could result in modifications before or during the examination stage but should not delay the Local Plan at this stage.

Self-build and custom housebuilding

2.14 There will be a new duty on councils to grant planning permission for enough sites to meet the demand for custom-build and self-build in a local authority area arising from the local self-build and custom build register which was introduced as part of the Self-build and Custom Housebuilding Act 2015. The Bill includes a clause to enable the Secretary of State to make regulations about how and when authorities can apply for an exemption from the duty.

2.15 The Bill goes on to clarify that the definition "*does not include the building of a house on a plot acquired from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person*" – i.e. regular commercial housing developers.

2.16 The issue of self-build is addressed in the current SHMA, although the consultants were unable to point to a specific need in the housing market area or individual districts. The

need to maintain an up-to-date register of interested people will provide an indicator of need and can be fed in to any future revisions to the SHMA.

- 2.17 There does not appear to be any suggestion at this time that local plans will be expected to include any targets regarding the number of self-build homes to be provided. It is not clear whether a specific policy setting out the criteria to be used to assess proposals for self-build would be required and if so how the considerations would differ to those for general housing, unless they are to be treated as exceptions in the way that exceptions sites for affordable housing in rural areas are.
- 2.18 As with starter homes any implications for the Local Plan will only be clearer following the passing of the Bill and the publication of the subsequent regulations. This could result in modifications before or during the examination but should not delay the Local Plan at this stage.

Assessment of accommodation needs

- 2.19 It is proposed to remove clauses in the Housing Act 2007 which oblige local authorities to undertake a specific assessment of the needs for gypsies and travellers. However, it will be necessary, when authorities are carrying out a review of housing needs, to consider the needs of all the people residing in or resorting to their district, including those who reside in caravans or houseboats.
- 2.20 The Government's reason for removing the specific requirement to assess gypsy and travellers' needs separately is not clear, and nor is it clear how this might be done, for example would it be done as be part of the SHMA?
- 2.21 At this time it is considered there are unlikely to be any implications for the current local plan but that it is most likely to impact on any future assessments of need.

Local Planning

- 2.22 As proposed the Secretary of State would have additional powers to intervene in the local plan-making process or provide some clarity or additional requirements where the Secretary of State considers it appropriate to intervene. This includes " *if the Secretary of State thinks that a local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a development plan document*".
- 2.22 In respect of the latter point, previous Government comments have made it clear that they expect local authorities to have local plans in place by early 2017. It is not clear as to what "in place" means nor when exactly in 2017.
- 2.23 These proposals emphasise that it is essential that the Council continues to make progress on the Local Plan as quickly as possible, whilst also having regard to the need to meet the tests of soundness.

Other matters

- 2.24 Members will be aware of the current proposals to create a combined authority across Leicester and Leicestershire. It is currently anticipated that if all of the Leicester and

Leicestershire local authorities support the proposals then they will be submitted to the DCLG in late 2015/early 2016. DCLG will then prepare an Order which could come in to law in October 2016.

- 2.25 The timing of this Order could coincide with the Examination in to the Local Plan and so there is a possibility of some uncertainty and confusion. For example, work on a Strategic Growth Plan (SGP) (which will be one of the main outcomes from a Combined Authority) will be looking to generate evidence to inform the SGP but which could also affect the Local Plan and its contents. It will be necessary, therefore, to ensure that officers working on the Local Plan are aware of all developments on the SGP so as to be aware of any potential issues and how they might impact on the Local Plan.
- 2.26 On 15 September 2015 the Planning Minister announced the setting up of a group of experts tasked with identifying ways in which the local plan process could be streamlined. The group comprises of representatives from various sectors, including one from local government. It is understood that the review will look at broad range of areas, including whether local plans seek to address too many issues and how matters such as strategic housing requirements can be better dealt. Information available suggests that the aim is to produce a report to government by the end of February 2016.
- 2.27 Clearly it is not possible to predict what proposals may result from this review, but it is reasonable to assume that it will impact upon the Council's Local Plan to some degree.

3.0 RISK MANAGEMENT

- 3.1 As noted previously, the Local Planning Advisory Committee on 9 September 2014 considered a report in respect of risk management, including the risk assessment at that point in time.
- 3.2 The risk assessment is reviewed at every monthly officer Project Board meeting.
- 3.3 In accordance with the Council's agreed Risk Management Strategy all potential risks are assessed in terms of both the likelihood of the risk materialising and its potential impact with and without any mitigating controls. Each risk is given a score with those scoring 8 or more (after allowing for mitigation controls) representing the highest risk.
- 3.4 Risks can be categorised in terms of whether they are external or internal to the Council (i.e. is the risk one which the Council can control entirely on its own or is it dependent upon the decisions and actions of external organisations) or are subject to local factors (i.e. something specific to a locality – for example the volume of responses to a consultation).
- 3.5 The current risk assessment is attached at Appendix A to this report and takes account of any changes that have occurred since the committee last considered this matter, including the fact that as the plan has progressed so some of the risks have changed or are no longer consider to be a risk.

APPENDIX A

| Risk number | Risk Identified | Likelihood | Impact | Risk rating | Countermeasures | Likelihood | Impact | Risk rating |
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| 1 | Loss of staff during preparation of Local Plan thus resulting in lack of resources to deliver to agreed timetable. | 3 | 4 | 12 | In the event of a vacancy it will be vital to ensure that it is filled as soon as possible, although this will conflict with vacancy savings built in to the budget. Taking a flexible approach to how vacancies are filled (for example by the employment of consultants/temporary staff to deal with specific tasks rather than a full time replacement) would also help although this will require careful management and would need to stay within budget. | 3 | 3 | 9 |
| 2 | New legislation, government guidance or decisions of PINs in respect of other Local Plans which affects approach being taken thus requiring additional work and hence delays. | 4 | 3 | 12 | Ensure that all Planning Policy team is aware of any emerging issues and guidance and immediately assess potential impact upon Local Plan. Provide updates to Local Plan Advisory Committee. | 4 | 2 | 8 |
| 3 | Volume and nature of responses to consultations results in need for additional work. | 3 | 3 | 9 | Generally the interest and expectations of public, developers and landowners in the Local Plan process is high. Consider the employment of temporary staff or redeployment of resources from elsewhere in the Planning department to assist with any capacity issues arising from consultations, particularly in respect of administrative duties so as to free up experienced planning officers. | 3 | 2 | 6 |

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| 4 | Insufficient budgetary resource available to undertake work necessary to support the Local Plan , including background studies and evidence gathering | 4 | 4 | 16 | Local Plan a key corporate priority to which budgetary provision will be attached. | 1 | 1 | 3 |
| 5 | Number of significant planning applications submitted and /or appeals which require input from Planning Policy staff | 3 | 3 | 9 | Need to ensure that Local Plan work is prioritised and that this is communicated to staff in both Planning Policy and Development Management. Consider use of external consultants to provide assistance where appropriate. This will be managed on a case by case basis by the Head of Planning. | 3 | 2 | 6 |
| 6 | Lack of sufficient capacity available at stakeholders and Planning Inspectorate, particularly in light of recent public sector funding cuts. | 2 | 3 | 6 | Planning Inspectorate to be consulted on proposed programme in LDS. A Service Level Agreement will be signed when programme agreed. Ensure that stakeholders are engaged in process as early as possible. Identify key personnel within stakeholder organisations who have role to play. | 2 | 2 | 4 |
| 7 | Un-prioritised corporate or external requirements impinge upon the resources available within the Planning Policy team | 2 | 3 | 6 | Ensure that appropriate priority attached corporately and politically to Local Plan. Ensure that issues such as progress on HS2 are monitored and any potential implications for work of Planning Policy team identified as early as possible. | 1 | 2 | 2 |

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| 8 | Local politics undermines the Local plan process and confidence in the outcomes. | 4 | 4 | 16 | <p>The final decision as to what goes into the submission Local Plan rests with the Full Council. Previous experience suggests that large numbers of members have felt disenfranchised as they have not been involved in the preparation process. To help overcome this a Local Plan Advisory Committee has been established to oversee the preparation of the Local Plan. This provides an opportunity to engage with more members and for those members on the Advisory Committee to act as champions for the Local Plan and to discuss issues within their respective groups so as to minimise the potential for lack of support when the Local Plan goes before Full Council.</p> <p>Ensure that members are made aware of the importance of having an up-to-date Local Plan in place.</p> | 3 | 4 | 12 |
| 9 | Deliverability issues on development sites delay preparation and adoption of Local Plan. | 3 | 4 | 12 | Work with site promoters to identify issues early on and ensure that evidence base is comprehensive and robust. All allocations in the draft Local Plan have been subject to viability testing. | 2 | 4 | 8 |
| 10 | Challenge by third party that definition of the housing market area is not appropriate. | 3 | 4 | 12 | Ensure that new SHMA addresses issue of appropriateness of the HMA. | 2 | 2 | 4 |

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| 11 | Defining limits to development in draft Local Plan results in an increase in representations at consultation stage and the time to deal with these. | 3 | 3 | 9 | Limits to Development are defined having followed a clearly defined methodology. This should help to make dealing with responses on the limits to development easier. | 3 | 2 | 6 |
| 12 | New household projections published by DCLG which are significantly different to current projections. | 3 | 3 | 9 | Officers to review projections when published and advise of any implications. | 3 | 3 | 9 |
| 13 | Housing growth aspirations in Local Plan challenged as either being too high or too low. | 4 | 4 | 16 | Ensure that in defining housing requirements that regard is had to advice in Planning Policy Guidance and to any emerging decisions from PINs elsewhere. Review any evidence submitted which suggest different housing requirements, including use of consultants if required. | 3 | 4 | 12 |
| 14 | Infrastructure Development Plan not developed sufficiently to provide robust evidence. At worst could result in soundness issue if Inspector has concerns regarding deliverability of proposals | 3 | 4 | 12 | Ensure that sufficient resource is made available, including use of consultants if required. Seek input from development industry to ensure that are supportive. Ensure that seek views and information from public utility companies | 2 | 3 | 6 |

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| 15 | Failure to comply with the Duty to Cooperate | 2 | 4 | 8 | <p>Ensure that all HMA authorities are consulted throughout process of preparing the Local Plan.</p> <p>Strategic Planning Group in place which provides forum for sharing information and agreeing way forward on key issues.</p> <p>Maintain a Duty To Cooperate log to demonstrate compliance with duty.</p> | 2 | 2 | 4 |
| 16 | HMA authorities raise objections to housing requirements being over and above those set out in the SHMA and the MOU | 4 | 4 | 16 | <p>Ensure that all HMA authorities are consulted throughout process of preparing the Local Plan.</p> <p>Meet with authorities who raise concerns to understand nature of those concerns and to explore how these can be addressed whilst recognising that the Council has to make adequate provision for new housing.</p> | 3 | 3 | 9 |
| 17 | Failure to progress the preparation of the Gypsy and Traveller DPD has consequences for Local Plan at examination whereby Inspector considers that Local Plan is not sound. | 3 | 4 | 12 | <p>Ensure that members are fully aware of the need to progress the Gypsy and Traveller DPD and get support from LPAC.</p> <p>Develop Project Plan for preparation of Gypsy and Traveller DPD.</p> | 2 | 3 | 6 |
| 18 | Inconsistencies between Local Plan and Neighbourhood Plans puts one or both plans at risk and/or results in delays. | 4 | 3 | 12 | <p>Provide advice to Neighbourhood Plan groups where requested.</p> <p>Keep Neighbourhood Plan group informed of progress on Local Plan.</p> <p>Seek regular updates on progress from Neighbourhood Plan groups.</p> | 3 | 3 | 9 |