

**Bolsover District Council**

**Executive**

**18<sup>th</sup> June 2018**

**Local Plan Update Report**

**Report of the Joint Strategic Director**

This report is public

**Purpose of the Report**

- To advise Executive of progress in relation to the Local Plan and to set out the associated issues and risks.

**1 Report Details**

**Update**

- 1.1. On the 23<sup>rd</sup> April 2018, the Executive received an update on the Local Plan in the form of a presentation confirming that MHCLG intervention was not going ahead at that stage. However, it was also made clear that the council would be monitored closely and that any further significant delays would lead to reconsideration of that decision.
- 1.2. It was also confirmed at that time that the new Local Development Scheme (LDS, the Local Plan timetable), as submitted as part of the intervention case, had been successfully consulted on and subsequently had been adopted by Planning Committee on 14<sup>th</sup> March 2018.
- 1.3. Lastly, at that time, the Publication Draft Local Plan had been agreed by Planning Committee on 18<sup>th</sup> April, in accordance with the LDS, and consultation was due to start on 2<sup>nd</sup> May 2018.
- 1.4. Consultation commenced, as timetabled and we managed to achieve a two page spread on Local Plan issues in the Council's 'In Touch' magazine which has gone to every household in the district and good coverage of the Local Plan has been on the Council's web site. Copies of the relevant documents were also placed in 11 deposit points throughout the District.
- 1.5. All of the 1,256 people and organisations on the Council's Local Plan database were either sent e-mails or letters in relation to the consultation period and the Publication Local Plan, and a short presentation was given to the Bolsover Partnership (3<sup>rd</sup> May 2018) and the Developer Forum (17 April 2018).

- 1.6. The last of 10 Roadshow events was held on 6<sup>th</sup> June in South Normanton. One evening event was held in every town and large village and an extra event in Clowne on a Saturday to cover the whole district. Overall there were 77 attendees across the 10 events, with the best attended being the Clowne evening event with 24 people.

#### Consultation Attendance

<b>Date</b>	<b>Location</b>	<b>Attendance</b>
<b>11/05/18</b>	<b>Clowne</b>	<b>24</b>
<b>15/05/18</b>	<b>Whitwell</b>	<b>6</b>
<b>17/05/18</b>	<b>Shirebrook</b>	<b>0</b>
<b>19/05/18</b>	<b>District wide (Clowne)</b>	<b>7</b>
<b>22/05/18</b>	<b>Creswell</b>	<b>6</b>
<b>24/05/18</b>	<b>Pinxton</b>	<b>2</b>
<b>29/05/18</b>	<b>Barlborough</b>	<b>2</b>
<b>1/06/18</b>	<b>Tibshelf</b>	<b>9</b>
<b>4/06/18</b>	<b>Bolsover</b>	<b>9</b>
<b>6/06/18</b>	<b>South Normanton</b>	<b>12</b>
<b>Total</b>		<b>77</b>

- 1.7. Clearly turnout at these events has been low despite publicity and direct notification to all those registered on the Councils Local Plan database. This is likely to be related to the stage reached in the process which is very similar to the Consultation Draft Local Plan, which people commented on at the end of 2016; and to the nature of this consultation exercise which is very process orientated. Rather than simply asking people what they think, or what they would change, respondents need to set out a basis for their objection and a clear explanation of what would be required to address it.

- 1.8. People can object to the Plan on 1 of 3 basic grounds:

1. Legal – That the Plan has not been produced in accordance with legal requirements
2. Duty to Cooperate – That the Council have failed to comply with the duty to cooperate with adjoining authorities
3. Soundness, that the Plan is not sound and does not meet one of the four tests of soundness:
  - a. **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;
- b. **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
  - c. **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
  - d. **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.
- 1.9. Currently only a limited number of representations have been received and logged. This is normal as most representations are generally received in the last week and the most significant representations will normally be submitted during the last day or so.
- 1.10. Currently it is considered that we are on schedule with the Local Plan and work is ongoing to prepare for submission in late July.
- 1.11. At the point of submission the Council must have a Programme Officer in place to administer the examination process. This officer is employed by and paid for by the Council, but works directly to the Inspector independently of the Council. All correspondence between the Inspector and the Council and third parties must pass through them. This is a specialist role that requires appropriate experience and training to ensure the smooth running of the examination. The Planning Inspectorate (PINS) hold a list of approved Programme Officers who have undertaken the PINS training program. This Council together with North East Derbyshire has secured a suitably experienced individual from the approved list following an open competitive tender process that was overseen by the Procurement Team and involved both Planning Policy Managers. The cost of this will be met from existing approved budgets.

### Consideration of Risk

- 1.12. In the 18<sup>th</sup> April update report to Executive, the risks in relation to the successful progress of the Local Plan were considered and it was agreed that further work was required to identify the main areas of risk and seek to mitigate them as far as possible.
- 1.13. The aim of the work is to consider potential risks, challenges and obstacles to bringing the Local Plan forward to adoption in accordance with the Local Development Scheme (LDS), which sets the timetable for the Local Plan. In relation to this it is important to consider at what stages the Council can take action to amend or withdraw the Plan in order to effect any changes needed.

### Withdrawal

- 1.14. At all times the Council has the right to indicate that they are withdrawing the Plan, in order to make significant alterations. However, such a course of action could have significant impact on the LDS and could result in severe reputational

damage to the Council and may result in renewing the likelihood of intervention. It is an action that should only be taken in exceptional circumstances where the Council is convinced that without changing the Plan in that way at that time, it will fail the examination and significant further work would be required to ensure the Soundness of the Plan.

#### Local Development Scheme (LDS)

- 1.15. It is important to note that the Local Plan can still reach adoption stage without compliance with the existing LDS. However non-compliance with the LDS does give rise to its own risks in respect of the following:
1. Further delay can cause additional problems to emerge such as the requirements of the new National Planning Policy Framework and other potential guidance documents taking effect
  2. Due to the fluid nature of planning, delay could lead to other issues arising such as new planning applications or appeal decisions (especially as any significant delay would encourage appeals) which may add new complexities to the Plan.
  3. Intervention – Following on from the recent threat of intervention, any significant delay is likely to attract the interest of MHCLG. The justification and reasonableness of our actions will therefore be important consideration subject to scrutiny.
  4. If we are not to comply with the LDS, we will need to amend the document consult on it and adopt it.
- 1.16. The LDS also sets out important ‘breaks’ in the process when it is most suitable to amend the Plan. The Council is currently consulting on the Publication Draft Local Plan (2<sup>nd</sup> May to 15<sup>th</sup> June 2018). We then plan to review the representations received with the aim of submitting the Plan within the third week in July.
- 1.17. In the period between Publication and Submission the Council can choose to carry out major changes to the Plan, which would require us to halt the process and produce a new Publication plan (or earlier position statement) and amend the LDS. Such an approach would only be justifiable by the absolute need for significant changes to the strategic approach to the plan which materially affect its soundness.
- 1.18. An Addendum of proposed changes can be submitted as part of the Submission of the Plan, but that would require a fresh consultation period and probably further Sustainability Appraisal work on the changes proposed.
- 1.19. Once the Plan is submitted, further changes to the Plan can only be achieved through one of the following potential opportunities:

1. Significant and fundamental changes may be achieved by withdrawing the Plan and starting again, during the post submission stage. This would be an exceptional situation requiring justification.
2. Significant changes to the Plan (removing or adding policies or sites) can be done through major modifications that may come to light through pre hearing discussions with the Inspector, where the Inspector has indicated that without changes the Plan will fail the tests of soundness. Making changes at this time could delay the opening of the Hearings, so that the potential modifications could be subject to consultation and potential SA considerations.
3. Significant changes to the Plan (removing or adding policies or sites) that may come to light through the hearing discussions with the Inspector, where the Inspector indicates that without changes, the Plan will fail the tests of soundness. These changes are normally accomplished as a set of major modifications to the Plan which would be developed through the examination. They would be consulted on towards the end of the examination, following an adjournment to allow for consultation and consideration of the responses, before the final sessions which would deal with the proposed modifications and representations.

1.20. It is important to note that the Council are at liberty to make amendments to the plan which are considered to be 'minor' on adoption of the Plan. Normally this would encompass all spelling or grammatical changes, updating factual matters and changes to wording which would not significantly change the nature of that part of the Plan. Whilst the Council is accountable on adoption of the plan for these changes, it is normal for them to be added as a separate list to all proposed major modifications to avoid potential legal challenges in the future.

1.21. The above sets out a range of options for making changes to the Plan. The option selected will be a matter of judgement, dependent upon the nature of issue involved, its level of significance to the Plan as a whole and the overall assessment of risk. Such judgements may need to be informed by additional evidence base work and/or specialist legal advice and would require member engagement and approval.

### Types of Risk

- 1.22. In terms of the different forms of risk that we face, these can be seen in relation to the following areas:
1. **Political** – Both national and local
  2. **Resources** – Considers Financial and staffing
  3. **Plan process** – Considers the implications of the Legal Framework and the duty to Cooperate

4. **Plan issues** – Looks at issues within the Plan that may cause challenge and lead to adverse effects upon the Plan. Specify risk categories to be included in the risk register and in risk reporting.

1.23. **Political** - In relation to the Political risks these can be seen as two separate elements:

1. **National** - Through changes to national guidance and planning requirements, this has been a significant issue in the past. However, we currently consider that the plan is reasonably robust to address the changes proposed within the draft NPPF. Also, an important consideration is that Government have stated that they will provide transitional arrangements so that Plans such as ours, if submitted in accordance with the LDS, will not be subject to the provisions of the amended NPPF.
2. **Local** - Support from across the Council has been consistent and appreciated. Difficult decisions have been dealt with head on and no risks are apparent at this stage. It is most likely that Adoption will take place after the May 2019 elections.

1.24. Therefore it is considered that there are no significant political risks in relation to us bringing forward the Local Plan at this time.

1.25. **Resources** - In terms of Resources, there are again two main considerations namely:

1. **Financial** - The Council have made delivery of the Plan a key aim of the authority and there is a clear undertaking of providing financial resources when required. The Council have invested significantly in the Local Plan process and there is no basis to think that they will not meet any further financial requirements to see the process through
2. **Staffing** - Maintaining appropriate staff levels, experience and knowledge is essential and the loss of key members of staff could have an impact on plan delivery. This risk will be mitigated by ensuring any resource loss is replaced as soon as possible utilising all possible sources, and ensuring an appropriate level of staff within the team establishment.

1.26. **Plan Process** – In relation to this issue, a plan can be challenged in relation to its legal compliance with the guidance as well as whether the Duty to Cooperate has been complied with. In order to seek to avoid these pitfalls we have:

1. Sought to follow all guidance and potential changes
2. Taken legal advice on Duty to Cooperate
3. Followed good practice from elsewhere

1.27. In general these issues are ones that should come out from the current consultation event, prior to submission and consideration will be given to the level of risk at that time, and legal advice taken if necessary.

- 1.28. **Plan Specific Issues** – This is the area where most concerns and objections will be raised by third parties, reflecting objections to or support for specific sites and or policies.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 The report clarifies that we should not submit a Plan unless we consider it to be sound and compliant with legal requirements. However, planning is a matter of judgement and there will always be those making objections, whilst some of these may have planning merit, it does not necessarily mean that our Plan is wrong.
- 2.2 The report makes clear that there are a number of opportunities for the Council to reconsider their position and seek to make amendments to the Plan. The approach to take will be a matter of judgement based upon an assessment of the issues involved, the level of risk and legal advice.

## **3 Consultation and Equality Impact**

- 3.1 The Local Plan has followed all consultation requirements to date and will abide by such requirements into the future. Making further amendments to the Plan, in the interests of specific submissions would require further consultation and would need to be done for clear and transparent reasons as set out in the above report.
- 3.2 Delays to the Local Plan process instigated by the Council is more likely to lead to a potential for intervention, than any delays which may be advised by the Planning Inspectorate. Such intervention may impact on local democracy as powers could be taken away from local representatives. This would create a democratic deficit and result in a reduction in democratic accountability.

## **4 Alternative Options and Reasons for Rejection**

- 4.1 The Council must recognise that the production of a Local Plan often leads to conflict situations and what is most important is that we can show a robust approach and fair consideration to all representations submitted, as outlined above. Deciding to do otherwise at this point would be counterproductive.

## **5 Implications**

### **5.1 Finance and Risk Implications**

- 5.1.1 As set out in the report

### **5.2 Legal Implications including Data Protection**

- 5.2.1 As set out in the report

### **5.3 Human Resources Implications**

- 5.3.1 As set out in the report

## 6 Recommendations

- 6.1 It is recommended that the report be noted in terms of the work that has been completed in relation to the Local Plan and the risks that have been recognised and our approach to the proposed management of such risks.

## 7 Decision Information

<p><b>Is the decision a Key Decision?</b>  A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:  <i>BDC: Revenue - £75,000</i> <input type="checkbox"/>  <i>Capital - £150,000</i> <input type="checkbox"/>  <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/>  <i>Capital - £250,000</i> <input type="checkbox"/>  <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p><b>Is the decision subject to Call-In?</b>  (Only Key Decisions are subject to Call-In)</p>	No
<p><b>District Wards Affected</b></p>	All
<p><b>Links to Corporate Plan priorities or Policy Framework</b></p>	All

## 8 Document Information

Appendix No	Title
<p><b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
Report Author	Contact Number
Rob Routledge Karen Hanson	242299

Report Reference –