

EAST HERTS COUNCIL

COUNCIL – 28 JULY 2004

REPORT BY LEADER OF THE COUNCIL

9. LOCAL PLAN (2ND REVIEW) ADOPTION PROCEDURE

WARD(S) AFFECTED: ALL

RECOMMENDATION - that the timetable and procedure for adoption of the Local Plan (2nd Review), as now submitted, be approved.

1.0 Purpose of Report

1.1 This report informs Council of two new important pieces of legislation which impact on the procedure for progressing the Council's Local Plan (2nd Review).

2.0 Contribution to the Council's Corporate Objectives

2.1 The Local Plan contributes to the Council's corporate objective to preserve the unique mix of rural and urban communities, ensuring economic opportunities for the benefit of all.

3.0 Background

3.1 The Adopted Local Plan expired in 2001. Council will be aware that the process of reviewing this Plan commenced in 1997. A revised draft Local Plan (known as the 2nd Review) was put on public deposit during the summer of 2001. Members will recall that this public deposit attracted around 10,000 objections from members of the public and interested parties.

3.2 In September 2003, the Executive considered a report concerning the procedure for taking forward the Local Plan, in the light of government guidance on the forthcoming Planning and Compulsory Purchase Act. The decision of the Executive was to proceed with the Local Plan 2nd Review under the processes existing at the time. The alternative course of action, which would have been to withdraw

the draft Local Plan in anticipation of the new Local Development Framework processes, was rejected.

3.3 The process of analysing and responding to the public objections from the 1st deposit stage has just been completed – indeed the recommendations of the last meeting of the Local Plan Executive Panel, which has been meeting to consider the objections since September 2003, are on the agenda of this Council meeting for approval.

3.4 This is the “half-way” mark towards the adoption of the Local Plan 2nd Review.

3.5 The original timetable for the remaining stages towards adoption was as follows:

Second public deposit	August – September 2004
-----------------------	-------------------------

Public Inquiry	May 2005 – April 2006
----------------	-----------------------

Inspector’s report received	Spring 2007
-----------------------------	-------------

Modifications to inspector’s report	Spring 2007 – Spring 2008
-------------------------------------	---------------------------

Adoption of Local Plan	Spring 2008
------------------------	-------------

3.6 Two important new pieces of legislation have, however, recently come into force: a European Directive on Strategic Environmental Assessments (the ‘SEA Directive’), and the Planning and Compulsory Purchase Act 2004. Both of these pieces of legislation have a significant impact on Local Authorities’ processes for planning policy making, and therefore, the impact of the legislation on this Council’s Local Plan needs to be considered by Council.

4.0 The ‘SEA Directive’

4.1 European legislation requiring all planning policies (and indeed other major policies) to be subjected to a Strategic Environmental Assessment came into force on 21st July 2004. This legislation affects both all new policies that are formulated after 21st July 2004; but it also applies retrospectively to all policy-making that started before this date **and** that are due for completion after **21st July 2006**.

- 4.2 This Council's timetable for completion of the Local Plan shows that the process is not due to be concluded until the spring of 2008. Therefore the 'SEA Directive' applies to the Local Plan.
- 4.3 This means that the Council is required to undertake a Strategic Environmental Assessment of all the policies contained within the draft Local Plan, and to re-convene the Local Plan Executive Panel to consider whether the results of that assessment require any amendments to the draft policies, **prior** to it being put back on public deposit.
- 4.4 The effect of this Directive is, therefore, that the 2nd deposit stage must be delayed until November – December 2004 to enable this work to be completed.
- 5.0 The Planning And Compulsory Purchase Act 2004
- 5.1 The Planning and Compulsory Purchase Act received Royal Assent on 13th May 2004. This Act signals a number of fundamental changes to the process for planning policy-making in the future.
- 5.2 Local Plans are to be replaced by Local Development Frameworks, which are to be more strategically focused, to have stronger links to Council's Community Strategies, and to be founded on robust community and stakeholder consultation and involvement.
- 5.3 The Act also brings in greater national and regional powers to direct plan making. All Local Development Frameworks must be consistent with national and regional planning guidance. The Secretary of State has new powers to request that a Council produce specific area or subject-based planning policy documents.
- 5.4 Within six months of the official "commencement" of the Act (likely to be 30 September 2004), all Local Authorities are required to submit a "Local Development Scheme" to the Secretary of State. This "Scheme" is a project plan for the creation of a Local Development Framework. It must set out the timetable for the adoption of up-to-date planning policies, the subjects to be covered by specific subject-based planning policy documents, and a "Statement of Community Involvement".
- 5.5 Every Council's Local Development Scheme must be approved by the Secretary of State. He has the power to require amendments to the Scheme.

5.6 The assessment process for Local Development Schemes will also be used, from 2005/6 onwards, as part of the process for awarding Planning Delivery Grant to local authorities.

6.0 Government Requirements

6.1 The Government has set down three core requirements for all Local Development Schemes, as follows:

A. Every local authority must have an adopted Local Development Framework or Local Plan in place by March 2007.

Note: all Councils were at different stages in the formulation of Local Plans. Some already have current Local Plans in place; others have Local Plans in preparation which are due for adoption before March 2007. The Act allows current adopted plans to be “saved” for a period of three years from commencement before a new Local Development Framework (LDF) is required.

B. These plans must have at least a ten-year forward time horizon (i.e. they must not expire before 2016).

C. These plans must be consistent with Regional Spatial Strategies.

7.0 How This Affects The East Herts Local Plan

7.1 The Government Office for the East of England has informed this Council that its current plans for the adoption of the Local Plan (2nd Review) are problematic. At a meeting between the Director of Planning at Go-East and Chief Officers of this Council, the Government outlined its concerns.

7.2 The main concern of Government is that East Herts is currently failing to achieve any of the three core requirements:

A. Our Local Plan (2nd Review) is not due for adoption until spring 2008 – a full year behind the government deadline.

B. Our Local Plan (2nd Review) extends only until 2011, and thus fails the “ten-year forward horizon” rule.

C. Our Local Plan is not consistent with the draft Regional Spatial Strategy for the East of England (RSS 14).

7.3 Senior Officers of this Council have been in negotiation with Government Office on these issues for the last two months, culminating in a meeting between the Regional Director of Planning, the Leader of the Council and the Executive Member for Regional Planning.

8.0 Options

8.1 There are three potential options open to the Council as to how to proceed.

Option 1: Proceed With The Intended Timetable

8.2 If the Council was to proceed with its current plans, the Local Plan 2nd Review would achieve adoption in the summer of 2008. This timetable is even later than previously planned as a result of the requirement to conduct a Strategic Environmental Assessment of the draft plan policies (which will require an additional four months on the previous timetable).

Option 2: Withdraw The Draft Local Plan And Produce A New Local Development Framework By March 2007

8.3 This is the Government's preferred option. However, it entails a number of significant problems:

- There would be the likelihood of significant public concern over the withdrawal of a draft plan that has already been the subject of significant public involvement and participation.
- The Council would not be able to take the current draft policies into consideration when making development control decisions. Withdrawal would leave only the Adopted Local Plan as a framework for development control; while some of the new draft policies remain unchanged from the Adopted plan, in other significant respects – such as affordable housing requirements and the village development strategy – the Adopted plan is quite out-of-date. Therefore, the effect of withdrawal would be to leave a policy vacuum in some significant policy areas.
- The work involved in preparation of a Local Development Framework is considerable. Council Officers advise that they do not believe that it would be possible to complete a Framework in the required timescale.

- A Framework would require planning policies to be extended from the current time horizon of 2011 to 2016. This is extremely problematic, as there is no Structure Plan or Regional Spatial Strategy currently in place to guide policy-making beyond 2011.
- Embarking on a Local Development Framework would be a direct contradiction of current Council policy. In September 2003, Council debated the option of switching to the new LDF procedure, and rejected it in favour of continuing with the current Local Plan.

Option 3: Adopt The Local Plan Using “Transitional” Arrangements Set Out In The Act

- 8.4 The Planning and Compulsory Purchase Act gives scope for the use of “transitional” arrangements. These arrangements have been designed to assist local authorities whose plans are at the mid-way stage in their preparation at the time of commencement of the Act.
- 8.5 Under the transitional arrangements, East Herts could proceed to adoption of the current draft local plan, and would, therefore, not be required to produce its first Local Development Framework until 2010.
- 8.6 There are, however, two important differences between the old legislation and the transitional arrangements:
- Firstly, the transitional arrangements would require a fresh re-deposit of the draft plan, rather than a second deposit. The difference is that the public may comment on any matter in the draft plan, whereas a second deposit would have restricted public comment to any changes that the Council has decided to make to the plan since the first deposit.
 - Secondly, under the transitional arrangements, the report of the Planning Inspector undertaking the Public Inquiry would be binding on the Council. There would be no “modifications” stage following the Inspector’s report.

9.0 Recommended Course Of Action

- 9.1 Government Officials have informed the Council that they would be extremely concerned if the Council was to proceed with Option 1 as

set out above, because it fails all three of the Government's core requirements.

- 9.2 The Council's view is that it is not possible to achieve core requirements (B) policies that extend to 2016, or (C) compliance with Regional Spatial Strategy (RSS) 14. This is because the draft RSS has not yet been published, and, indeed, will not become formal policy until the summer of 2006. The Council's view is that it is not feasible to comply with a policy that has yet to undergo public consultation or an Examination in Public, as to attempt to do so would be to pre-empt public involvement in the formulation of that policy. In the absence of the RSS, the only legal strategy document to guide the local planning policy framework is the Hertfordshire Structure Plan. This Plan only extends to 2011 (and this end-date is, in itself, a direct consequence of Government intervention in the Plan's formulation).
- 9.3 Government Officials have recognised the Council's difficulties in meeting requirements (B) and (C). Therefore, the issue of meeting requirement (A) – adoption of a Local Plan by March 2007 – becomes all the more important.
- 9.4 The Government has stated to Officers that it will require the Council to take the route to adoption that has the greatest chance of completion by March 2007. The Council will be required to submit a Local Development Scheme (LDS) within six months from September this year, and that scheme should be based on achievement of the March 2007 end-date. Moreover, the Government has indicated that it will not "sign off" an LDS that indicates an adoption date after March 2007.
- 9.5 In the light of this advice, there is little alternative open to the Council but to proceed with Option 3, the transitional route.
- 9.6 The Government has the power to require the Council to amend its LDS if it is assessed as unacceptable. This means that, if the Council was to proceed with Option 1, the Government would, within six months, require the Council to change its strategy. Moreover, this would not only have the consequence of bringing the Council into confrontation with the Government at a time when development control is still vulnerable to potential intervention, but would entail the Council being assessed as failing in terms of the Planning Delivery Grant assessment process – thus depriving the Council of the benefit of potentially significant additional revenue resources.

- 9.7 It is recommended, therefore, that the Council proceed to the adoption of the draft Local Plan (2nd review) under the transitional arrangements as set out in the Planning and Compulsory Purchase Act 2004. The indicative timetable is set out below. This timetable has been drawn up in consultation with the advice and assistance of the Planning Inspectorate.

July 2004 – October 2004	Strategic Environmental Assessment undertaken
--------------------------	---

NB: This stage is required in any case.

Late October 2004	Local Plan Executive Panel meets to consider the findings of the Assessment
-------------------	---

November 2004	Council approves any amendments to the Plan in the light of the Assessment
---------------	--

November 2004 – January 2005	Public deposit stage
------------------------------	----------------------

January – August 2005	Processing of objections received
-----------------------	-----------------------------------

September 2005	Public Inquiry begins
----------------	-----------------------

February 2006	Public Inquiry ends
---------------	---------------------

NB: Under this transitional process, the Inspection service advise that the Public Inquiry can be contained within a six-month time-scale, rather than the twelve months envisaged under the old legislation.

February 2007	Inspector's report received
---------------	-----------------------------

March 2007	Council adopts Local Plan
------------	---------------------------

10.0 Consultation

- 10.1 Advice on the options available to the Council has been taken from the Government Office for the East of England, the Office of the Deputy Prime Minister (ODPM) and the Planning Inspection Service.

11.0 Legal Implications

11.1 The Council is bound by the relevant legislation including the European Directive. The guidance from the ODPM limits the Council's room for manoeuvre. The Local Development Scheme must be approved by the Secretary of State, giving little opportunity for alternatives which would meet with approval.

12.0 Financial Implications

12.1 The Council has a special reserve fund set aside to cover the costs of the various processes, including the Public Inquiry, that are involved in the adoption of the Local Plan. It is possible that a shorter Public Inquiry will result in some cost savings. However, at this stage, it is not known how many public objections will be received at the next deposit stage, and the numbers involved will have a great bearing on the resources required to meet the Inquiry start date.

13.0 Human Resource Implications

13.1 The process of adoption of the Local Plan will entail the need to take on additional temporary staff and consultants (such as an independent Inquiry Programme officer, additional clerical and administrative staff, specialist legal and policy advisors etc). This is a normal part of the process and has been accounted for when establishing the Local Plan reserve fund.

14.0 Risk Management Implications

14.1 There are risks involved in all the options outlined in this report. These are outlined in the body of the report above. The most significant potential risk is that of having the Government reject the Council's Local Development Scheme, as this would entail direct confrontation between the Council and the Government on an issue that the Government has the legal power to enforce.

Background Papers

Various ODPM guidance notes on Local Development Frameworks and the “SEA” Directive.

Contact Member: Cllr Mike Carver – Leader of the Council

Contact Officer: Mary Orton – Assistant Director (Policy & Performance) x2006

Nps\council\28 july 2004\local plan