

**10 July 2019**

**Policy, Resources & Economic Development Committee**

**Local Development Plan Update**

**Report of:** *Phil Drane, Director of Strategic Planning*

**Wards Affected:** *All*

**This report is:** *Public*

**1. Executive Summary**

- 1.1 The National Planning Policy Framework (NPPF) requires local planning authorities to produce a Local Plan for their area and maintain an up-to-date timetable.
- 1.2 As part of the plan-making process a revised Local Development Scheme (LDS) timetable has been prepared (Appendix A). This provides an update to the currently published version, approved in November 2018. Delivery of the Plan against the published timescales is monitored by the Ministry of Housing, Communities and Local Government.
- 1.3 Brentwood Borough Council published its Pre-Submission Local Plan (Regulation 19) in February 2019. Processing and consideration of representations received is nearing completion (Regulation 20). A summary of representations has been prepared (Appendix B). This and other accompanying material will be compiled for submission to the Planning Inspectorate for Examination-in-Public (Regulation 22). Guidelines for Local Plan examinations have been published by the Planning Inspectorate (Appendix C).
- 1.4 A fundamental part of the strategy for growth in the borough is delivery of Dunton Hills Garden Village, one of four strategic allocations in the Council's Local Development Plan. It is important to secure longer-term control over the delivery of quality on site as well as consider land assembly options for the delivery of sustainable transport integration in the wider area. Design guidance for Dunton Hills Garden Village is proposed to be added to the LDS. The need for a process to secure land required for the delivery of development or related transport infrastructure in the event that a landowner does not cooperate is identified, utilising the Council's ability for compulsory acquisition of land.

## **2. Recommendations**

- 2.1 To approve the Revised Brentwood Local Development Scheme (July 2019), as set out in Appendix A;**
- 2.2 To note the summary of representations received in response to the Brentwood Pre-Submission Local Plan (February 2019), as set out in Appendix B; and**
- 2.3 To approve that the Council's Legal Team set up a programme for the compulsory acquisition of land in the event that this is required to deliver development and/or off-site infrastructure in line with the Local Development Plan.**

## **3. Introduction and Background**

- 3.1 The National Planning Policy Framework (NPPF) requires local planning authorities to produce a Local Plan for their area (Chapter 3 “plan-making”). Brentwood Borough Council is producing a new Local Development Plan (or ‘Local Plan’) and has undertaken various stages of public consultation as part of the plan-making process. The Pre-Submission Local Plan (Regulation 19) was approved by Extraordinary Council on 8 November 2018 (Item No. 181), subject to amendments. The Plan was published in February 2019. Processing and consideration of representations received after public consultation is nearing completion (Regulation 20). This and other accompanying material will be compiled for submission to the Planning Inspectorate for examination on behalf of the Secretary of State (Regulation 22).
- 3.2 Planning Practice Guidance (Paragraph 003, Reference ID 61-003-20190315, Revision date 15/03/2019) sets out that the Council is required to produce a Local Development Scheme (LDS) according to section 15 of the Planning and Compulsory Purchase Act 2004 (as amended). This must specify the development plan documents (i.e. local plans) which, when prepared, will comprise part of the development plan for the area. Local planning authorities are encouraged to include details of other documents which will form part of the development plan for the area, such as Neighbourhood Plans. The LDS must be made available publicly and kept up-to-date. It is important that local communities and interested parties can keep track of progress. Local planning authorities should publish their LDS on their website.

- 3.3 Delivery of the Plan against the published timescales of the LDS is monitored by the Ministry of Housing, Communities and Local Government (MHCLG). The current LDS was approved by Extraordinary Council on 8 November 2018 (Item No. 181) and subsequently published on the Council's website. It is now necessary to update the LDS to provide clear timescales for documents that will comprise the development plan for the borough.
- 3.4 The Local Plan sets out the long-term vision for how and where the borough will develop over the next 15 years to meet local needs in line with local character; our "Borough of Villages". This informs the spatial strategy set out in the Plan along with the priority to locate the majority of development within the borough's two transport corridors; the Central Brentwood Growth Corridor (A12 and railway to London Liverpool Street station), and the Southern Brentwood Growth Corridor (A127 and railway to London Fenchurch Street station). A fundamental part of the Plan's strategy is to deliver of a new self-sustaining garden village at Dunton Hills.
- 3.5 In January 2017 the Council's expression of interest, in response to the Government's locally-led garden villages and towns scheme, was successfully selected as one of 14 garden villages nationwide. Since then several other settlements have been added to the garden villages and towns scheme. The Council has successfully secured capacity funding from Government (MHCLG and Homes England) in subsequent years, which has helped to fund significant progress on the project.
- 3.6 The Government has been clear about the two priorities for garden settlement development:
- a) 'Delivery' of new homes; and
  - b) 'Quality' design.
- 3.7 These delivery and quality priorities inform the Dunton Hills Garden Village project and wider development in the Brentwood Local Plan. This is shown in the NPPF, Planning Practice Guidance and several recent ministerial statements.
- 3.8 The governance framework for Dunton Hills Garden Village was approved by Policy, Projects and Resources Committee on 19 March 2019 (Item No. 382). This was one aspect of achieving delivery of the early stages of the project by ensuring:

- a) Land ownership integration;
- b) Consistent quality;
- c) Locally-led development; and
- d) Deliverability.

3.9 Since approval of the governance framework, the Project Delivery Board has met once, including attendance from Homes England, Essex County Council and West Horndon Parish Council (in addition to the Council and CEG). The Technical Steering Group has met twice. In addition, several workshops have been held to inform a masterplan framework for the site. Outputs from this work are to be published online this summer. This work displays the significant progress being made. The Council is now progressing beyond the thinking stages into actively delivering the project.

#### **4. Issue, Options and Analysis of Options**

##### **Local Development Scheme (Timetable)**

4.1 The LDS provides information on the preparation of key documents that will comprise the Borough's development plan. Most importantly it provides a timetable for anticipated stages of the plan-making process. Since the current LDS was approved in November 2018, changes to the Pre-Submission Local Plan were made in accordance with the approved amendments at Extraordinary Council (08 November 2018). This, in addition to ongoing discussion with Essex County Council regarding infrastructure requirements, required additional time to prepare the Plan for public consultation, which took place in February 2019. At the close of consultation in March 2019, the process began to compile representations received and consider these as part of submission material. Processing of electronic representations (submitted online or by email) is less time consuming. Over 500 hard copy handwritten comment forms were received, the majority regarding housing allocations north of Blackmore. The processing time needed for handwritten representations has been longer than anticipated, and thorough processing of comments as well as consideration of the Council's response is required before the Plan is submitted. In addition, joint working through the Association of South Essex Local Authorities (ASELA) and work to prepare a Joint Strategic Plan (JSP) has resulted in learning about wider development needs and cross-boundary issues. Sequencing of local plan examinations in advance of the first stage of JSP consultation, expected Autumn 2019, is important. The Basildon Local Plan has now been submitted and the hearing sessions as part of Examination in Public is expected to take place in the Autumn. Cross-boundary issues considered as part of the Basildon Local Plan examination process may be relevant to the Brentwood Local Plan and so

should be considered ahead of submission, such as air quality. As a result of these circumstances, it is necessary to amend the LDS as proposed in Appendix A.

- 4.2 In summary, the Local Plan is proposed for submission by the end of July 2019 (Regulation 22). This begins the Examination in Public stage. Once the Plan has been submitted the Planning Inspectorate will advise on the appointed Inspector and timeframes for hearing sessions, among other things. These timeframes are set by the Planning Inspectorate, but an estimate is made that hearing sessions could take place in quarter 4 of 2019 (October-December) and into quarter 1 of 2020 (January-March). Subject to the outcome of the Examination in Public the soonest it is anticipated that the Council could adopt the Plan would be in quarter 2 of 2020 (April-June). Timeframes for other documents that will form part of the wider development plan are set out in the LDS.

### **Examination in Public**

- 4.3 The Planning Inspectorate has published more details on the Examination in Public process and guideline timeframes. This is set out in the Procedure Guide for Local Plan Examinations (June 2019), which is provided at Appendix C of this report. An overview of the stages and some expected timeframes are as follows:

- a) Stage 1: Submission to opening of hearing sessions
- b) Stage 2: Main modifications and reporting
- c) Stage 3: Quality assurance, fact check and delivery of final report

- 4.4 According to the Procedure Guide for Local Plan Examinations, once the plan has been submitted, the Inspector will take control of the examination process from start to finish. The role of the Inspector is to examine whether the submitted plan meets the tests of soundness defined in the NPPF and meets all the relevant legislative requirements, including the duty to cooperate. Therefore, the examination will concentrate on the issues that affect the Plan's soundness and legal compliance, and will not delve into other matters. The Inspector's conclusions will be based on a consideration of all the evidence and on the application of professional expertise and judgment.

## Local Development Plan

- 4.5 In addition to the representations described in paragraph 4.1 above, a range of issues have been submitted in response to the Pre-Submission Local Plan consultation. These include representations from neighbouring authorities and Essex County Council, mainly regarding implications of development in the Southern Brentwood Growth Corridor and Dunton Hills Garden Village. A vital part of the plan-making process as the Council progresses towards submission of the Plan is to ensure satisfactory evidence of that the duty to cooperate has been satisfied. To this end Statements of Common Ground are being prepared for individual authorities and bodies, setting out those issues on which there is agreement and issues not agreed, with details of how these will be resolved wherever possible. The appointed Planning Inspector will expect to see evidence of this, and it is considered that individual Statements of Common Ground provides the clearest way to do this.
- 4.6 A summary of the representations received in response to the Pre-Submission Local Plan, which was published for public consultation in February 2019, has been prepared at Appendix B. A response from the Council is not yet provided, which is required as part of the submission material. This sets out issues raised according to the following groups of stakeholders:
- a) Statutory consultees (neighbouring local planning authorities including Essex County Council, Government bodies and agencies, utilities and transport providers, etc);
  - b) Local residents and resident groups;
  - c) Parish Councils; and
  - d) Those representing development proposals (landowners, developers and/or agents).
- 4.7 The Council approved (Item 181 Extraordinary Council, 8 November 2018, paragraph 2.1c) to “delegate authority to the Director of Strategic Planning, in consultation with the Chief Executive and Leader of the Council, to finalise and approve the Submission documents... [as specified under paragraph 2.1b of the recommendation] ...for submission to the Secretary of State, including to:
- a) Make non-material or minor amendments to the proposed Submission documents;
  - b) Undertake any further consultation required arising as a result of the Regulation 19 consultation;

- c) Enter into Statements of Common Ground with relevant bodies before and during the Examination in Public; and
- d) Make modifications to the Submission documents during, and as a result of, the Examination in Public as advised to be necessary by the appointed Planning Inspector.”

4.8 According to the above paragraph, specifically 4.7 a&b, the degree to which amendments are considered to be non-material or minor in nature is important. There is no statutory definition of “non-material”. Each situation will require a legal view, but a broad rule of thumb is to consider the removal of site allocations altogether as a material (major) change to the Plan’s strategy. Word changes within policies to clarify or improve wording, for example, could be considered minor in nature and therefore not require further consultation before submission.

4.9 Regarding 4.7c, this is the approach being taken as set out in paragraph 4.5 above. Regarding 4.7d, this is relevant once the Examination in Public begins after submission of the Plan.

### **Dunton Hills Garden Village**

4.10 As part of progressing the plan-making process work to deliver Dunton Hills Garden Village has intensified in recent months. Design South East were appointed to be the Council’s design review providers, a service available to any development proposal in the borough, but specifically required of strategic development allocated in the Pre-Submission Local Plan including Dunton Hills Garden Village. Design South East have helped to facilitate a series of workshops to inform the preparation of a masterplan for the site, again required by the Local Plan. These have included sessions on:

- a) Vision;
- b) Green infrastructure;
- c) Heritage;
- d) Socio-economics;
- e) Sustainable infrastructure; and
- f) Sustainable transport.

4.11 Outputs from these sessions have been important to inform evolution of the masterplan framework, which will inform an outline planning application. Other workstreams are progressing, including integration of land ownership positions within the allocation for the masterplan outputs, and work on education and community elements of the project. Work is now underway to consider what will be needed from the project through the decision-taking process, including the planning application and Section 106 requirements.

- 4.12 Preparation of the masterplan framework for Dunton Hills Garden Village is progressing in partnership with the main land promoter CEG. It is essential that a masterplan for the site and other design guidance is in place to achieve quality in placemaking. The masterplan framework needs to respond positively to the requirements of Dunton Hills Garden Village policies in the Brentwood Pre-Submission Local Plan (2019), as well as broader borough-wide policies. However, this process will not arrive at the level of detail required to inform full and/or reserved matters planning applications in future.
- 4.13 In order to secure design quality further detailed guidance and work on master planning will be required. Potential risk has been identified should developers/housebuilders implementing detailed applications in future not prioritise quality in the absence of clear detailed design requirements. To avoid this, adopted detailed design guidance or coding is likely to provide enough security, setting a clear direction on detail to be followed by those delivering development in future. For this reason, it is recommended that design guidance specific to Dunton Hills Garden Village be added to the work programme of documents in the LDS (Appendix A).

### **Acquisition of Land**

- 4.14 Aspects of ensuring delivery and quality have informed work that is underway to consider the cumulative impacts of growth in the wider Southern Brentwood Growth Corridor (including Dunton Hills Garden Village). Specifically, consideration of sustainable transport integration in the corridor and how development can be planned together is now the focus of a piece of work to supplement both emerging master planning work and the Council's Local Plan Transport Assessment. This work along with the evolving development of a masterplan framework for Dunton Hills Garden Village, has identified the potential need for land assembly to deliver development and integrated transport infrastructure solutions.
- 4.15 It may be necessary to secure land outside of development allocations in order to deliver sustainable transport solutions, such as land outside the highway boundary of existing roads to secure sufficient space for a cycle lane or widening for bus use, for example. The Council will need to be able to satisfactorily evidence the ability to secure such land, if a landowner is not willing to cooperate and where it is necessary to do so to achieve delivery and quality of development schemes. This evidence will be particularly important at the Local Plan Examination in Public and is likely to be a requirement of a Planning Inspector wanting to see proof that development and infrastructure planned in the Local Plan can be delivered.

- 4.16 Recommendation 2.1c is to approve that the Council's Legal Team establish a process for compulsory acquisition of land, meaning the Council will be ready to act if necessary and only as a last resort. Any need to acquire specific land for this purpose through a Compulsory Purchase Order would be brought before Members at a relevant committee.
- 4.17 According to Government guidance on the compulsory purchase process, compulsory purchase powers enable certain public bodies to acquire land compulsorily, which ultimately requires the approval of a confirming minister. Compulsory purchase powers should be used where it is expedient to do so but only where there is a compelling case in the public interest. Demonstration of reasonable steps to acquire land should be evident. Where a decision is made to acquire land by agreement, the Council would pay compensation as if the land had been compulsorily purchased, unless the land was already on offer on the open market.
- 4.18 According to Government guidance on the compulsory purchase process, compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time can be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:
- a) Plan a compulsory purchase timetable as a contingency measure; and
  - b) Initiate formal procedures.
- 4.19 This approach will clarify the seriousness of the authority's intentions from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations. It is also likely to give confidence to a Planning Inspector that development and infrastructure can be delivered in line with the Local Plan.

## **5. Reasons for Recommendation**

- 5.1 It is necessary to have an up-to-date LDS. Delivery of the Plan against the published timescales is monitored by the Ministry of Housing, Communities and Local Government. The revised LDS set out in Appendix A sets out an updated position regarding anticipated timeframes and documents to be produced, such as final stages of the Local Plan and design guidance for Dunton Hills Garden Village.

- 5.2 The Local Plan Examination in Public will be aided by the confidence that will be shown in a process that can acquire land for the delivery of essential development or off-site infrastructure if a landowner does not cooperate with delivery. Delivery of infrastructure and the detail needed to evidence how this will be delivered has been identified as a key factor in the NPPF and other examinations across the country.
- 5.3 It will be important to secure future capacity funding from MHCLG and Homes England. To do this the Council will need to show clear evidence of progress on delivery and quality. It is likely that this case will be aided by identification of required documents and timeframes, submission of the Local Plan, a commitment to quality, and positive progress on the project displayed in the past year through use of granted funds. Approval of the recommendations will help the Council's position with regard to securing additional funds.

## **6. Consultation**

- 6.1 The Local Plan has undergone a series of public consultations. Representations received from a wide range of stakeholders are considered as part of the plan-making process. These will be considered by a Planning Inspector through the Examination in Public.
- 6.2 Documents set out in the LDS may require consultation. Informing people about consultations will be in line with the Council's Statement of Community Involvement (SCI).

## **7. References to Corporate Plan**

- 7.1 The Local Development Plan is a key priority in the Council's 'Vision for Brentwood' Corporate Plan 2016-2019. The Plan is an important delivery vehicle for several cross-cutting priorities, informed by individual Council strategies.

## **8. Implications**

### **Financial Implications**

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- 8.1 The Dunton Hills Garden Village project has been awarded a total of £628,570 of capacity funding from Homes England since 2017. This has enabled funding of necessary resources to deliver the project to date,

including a dedicated project team, facilitation of several workstreams, and specific technical studies as part of the evidence base. To date the remaining balance available is £220,274. In addition there is £54,383 available for funding received for planning delivery. Currently total reserves available to fund the delivery of the LDP is £274,657.

- 8.2 During financial year 2019/20 the amount of remaining capacity funding will not be enough to fully fund the projected outturn. This is likely to result in a budget pressure of up to £200,000. Any pressure that cannot be funded from the remaining balance available, will be funded from either Organisational Transformation Reserve or working balances. This will be reviewed and determined as part of the budget monitoring process. The future budget requirement in order to deliver the project will be considered as part of Budget Setting for 2020-21 and beyond. It is vital that future rounds of capacity funding are secured in order to maintain the resource in place to progress the project during 2020/21 and beyond.
- 8.3 Compulsory acquisition of land will require compensation to a landowner. At this stage the cost of such compensation is not possible to calculate. However, there is a need for contingency to be added to the Medium-Term Financial Plan (MTFP) and Treasury Management Strategy, which can be reviewed as part of budget setting for 2020/21, and incorporated into the MTFP and Capital Strategy. Any acquisition will need to be funded from borrowing, which will incur revenue costs to the General Fund of interest payable on the borrowing and increase in the Minimum Revenue Provision.
- 8.4 Before any recommendation to Members that land be acquired details of the full financial implications will be provided to inform that decision. Wherever possible, the delivery of infrastructure is to be paid for by development contributions, as set out in the Infrastructure Delivery Plan.
- 8.5 At this stage, it is not known what capacity or costs is required for the legal team to set up a programme for the compulsory acquisition of land as stated in 2.3, however it is assumed this can be utilised within existing resources. This will be monitored and discussed with senior officers appropriately and reported back as necessary.

### **Legal Implications**

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- 8.6 The Local Plan has been prepared in accordance with the primary planning acts, namely the Town and Country Planning Act 1990 (as amended), the Planning and Compulsory Purchase Act 2004 (as amended) and other

supporting legislation. It has been informed by the NPPF and other relevant national planning policy. Detailed regulations in relation to plan-making are set out in the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). It is a requirement of the Acts and the associated Regulations for the Local Plan to be prepared in accordance with the timetable established in the statutory LDS, and subject to an examination into its soundness.

- 8.7 The Localism Act 2011 places a legal duty on local planning authorities and other defined local bodies to engage constructively, actively and on an on-going basis to maximise the effectiveness of Local Plan preparation in the context of strategic cross boundary matters. It is not a duty to agree, but local planning authorities must make every effort to secure the necessary cooperation before they submit their Local Plan for examination. The cooperation should produce effective and deliverable policies on strategic cross boundary issues.
- 8.8 As the Dunton Hills Garden Village project transitions into delivery, securing Section 106 agreements will be key to the successful implementation and construction of the Garden Village. This will require legal input.
- 8.9 Other relevant agreements may also need to be drawn up, such as agreement between landowners on cooperation. Resource from the Legal Team will be needed as a result of the recommendation to identify a process for the compulsory acquisition of land. Part IX of the 1990 Act is the principal enabling legislation for local authorities to acquire land compulsorily and the Acquisition of Land Act 1981 is the legislation laying out the procedural requirements for compulsory acquisition. Latest Government guidance on CPOs is laid out in the Guidance on Compulsory Purchase and the Crichel Down Rules (2018). The emphasis will be on voluntary acquisition without the need for compulsory acquisition which will remain a last resort.

**Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 8.10 No other implications.

## **9. Background Papers**

- 9.1 Brentwood Pre-Submission Local Plan, Brentwood Borough Council, February 2019  
<http://www.brentwood.gov.uk/pdf/30012019092158000000.pdf>

- 9.2 Dunton Hills Garden Village Governance Framework, Brentwood Borough Council, March 2019  
<https://brentwood.moderngov.co.uk/documents/s15611/Appendix%20A%20DHGV%20Governance%20Framework%20v4.pdf>
- 9.3 Procedure Guide for Local Plan Examinations, The Planning Inspectorate, June 2019 (5<sup>th</sup> Edition) [see Appendix C of this report]  
<https://www.gov.uk/government/publications/examining-local-plans-procedural-practice>
- 9.4 Guidance on Compulsory Purchase Process and the Crichel Down Rules, Ministry of Housing, Communities and Local Government, 2018  
<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>

## **10. Appendices to this report**

Appendix A: Revised Local Development Scheme (July 2019)

Appendix B: Summary of Representations Received in Response to the Brentwood Pre-Submission Local Plan, Feb 2019 (July 2019) – to follow

Appendix C: Procedure Guide for Local Plan Examinations, The Planning Inspectorate (June 2019)

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