
TITLE: LOCAL PLAN – PROPOSED SUBMISSION VERSION

Committee: Full Council

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Author: Richard Kay – Strategic Planning Manager

[T208]

1.0 ISSUE

1.1 To seek an agreed way forward for the emerging Local Plan.

2.0 RECOMMENDATION(S)

2.1 That Council:

- I. Withdraws the Submitted Local Plan from its independent examination, and in doing so the status of that emerging plan is reduced to zero for the purpose of making decision on planning matters.
- II. Notes the consequences of withdrawing the emerging Plan from its examination, including on 'five year land supply' matters.

3.0 BACKGROUND/OPTIONS

Introduction

- 3.1 The preparation of a new East Cambridgeshire Local Plan made good progress over 2016 and 2017, culminating in Full Council approving, on 5 October 2017, that the Plan be subject to a final round of consultation and subsequently 'submitted' to the Secretary of State for the purpose of undergoing independent examination.
- 3.2 That consultation duly took place, and the Plan was formally 'submitted' on 16 February 2018.
- 3.3 Immediately thereafter, an Inspector was appointed to examine the plan, namely Inspector Louise Nurser BA (Hons) Dip UP MRTPI. The Inspector's task, as set by legislation, is to determine whether the Local Plan is 'sound' and legally compliant. The Local Plan cannot be adopted until the Inspector agrees it can be done so, with or without modifications.
- 3.4 If Members would like to understand a detailed overview of the Inspector's role, and the wider examination process, then the Planning Inspectorate's own 'procedural guide' is a useful starting point:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672662/Procedural Practice in the Examination of Local Plans - final.2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672662/Procedural_Practice_in_the_Examination_of_Local_Plans_-_final.2.pdf)

- 3.5 In simple terms, the role of an Inspector involves:
- focussing only on fundamental matters of concern;
 - working closely with a local council, aiming to reach a consensus on what modifications are necessary to make a Plan 'sound';
 - undertaking timely and efficient examinations; and
 - avoiding unnecessary detailed matters or attempts to 'improve' the Plan.
- 3.6 Government explains in the NPPF (para 182, 2012 version, this version being the one upon which the plan is examined) what is meant by 'sound', namely that the plan is:
- ***Positively prepared;***
 - ***Justified;***
 - ***Effective; and***
 - ***Consistent with national policy***
- 3.7 In addition to legislation and published guidance, a council also signs a 'service level agreement' (SLA) between the council and the Planning Inspectorate, prior to an examination commencing. Such an SLA sets out the ground-rules as to what the Council agrees to do, and what the Planning Inspectorates (or in practice, the appointed Inspector) commits to doing.

The examination of the East Cambridgeshire Local Plan

- 3.8 For no specific reasons as explained to the Council, the examination has proceeded considerably slower than the guidance suggests it ought. The first hearing session did not commence until mid-June (contrary to the deadline set in the SLA). The Inspector also split the hearings into two sessions – June and September, further delaying matters. No explanation was given for this split.
- 3.9 Normally, and in line with the procedural guide, officers work collaboratively with an Inspector so that common ground is reached on what modifications are likely necessary to a Plan. In practice, around 98-100% of modifications are normally 'agreed', either in principle or in precise detail, as part of the hearing sessions themselves i.e. they are debated and 'agreed' in the public forum, even for those matters which a Council might not ideally want the modification, but accepts the need for it for a Plan to be found sound. To put it another way, an Inspector rarely springs surprises on a council, post hearing sessions. If that happens, it is usually for a very small number of modifications, on matters where it was clear that agreement could not be reached on the day, and the Inspector would therefore have to make a 'final call'.
- 3.10 Our Inspector did not undertake the examination in this way.
- 3.11 After most hearing sitting days, participants (including the Council) were left wondering what the Inspector was going to do about matters debated that day. Agreements were often not reached, or a suggested way forward not given by the Inspector. The Inspector catch phrase became 'I have a lot of thinking to do on that matter'.

3.12 As such, officers:

- struggled to know what modifications might be necessary;
- for many policy areas, had no opportunity to discuss with the Inspector whether such modifications were indeed necessary, or what form of wording they should take.

This is highly unusual, and, whilst not unlawful, not in accordance with the procedural guide.

3.13 Thus, throughout the process, officers were frustrated by both the slow speed of the examination and the considerable uncertainty as to where matters were heading, and what modifications might be necessary.

3.14 At the close of the Hearing sessions (end of September 2018 in our case), it is normal practice for the full set of modifications to be known, perhaps subject to some detailed refinement of wording to be agreed with the Inspector on a small number of matters. Consultation on such modifications then normally takes place within 2-3 weeks of the hearings closing. In our case, that would mean an October-November 2018 consultation.

3.15 Unfortunately, our examination did not follow this normal procedure.

3.16 First, officers were left wondering what modifications might be necessary. Second, we did not hear from the Inspector, in any meaningful way, until December, approaching 3 months after hearings closed.

3.17 In December, the Council then received the 'good news' letter of 5th December 2018, which confirmed that, subject to (then unspecified) modifications, the Plan was capable of being made sound i.e. it was suitable for adoption, provided her modifications were accepted by the Council. That letter meant that the Plan had been prepared in a lawful manner i.e. it had been prepared in accordance with all applicable legislation, consulted upon appropriately and met the Duty to Cooperate provisions. However, we still did not know the extent of what the modifications might be.

3.18 Finally, on 19th December 2019, the Council received a letter from the Inspector, nearly 3 months after the Hearings closed, setting out what modifications were, subject to consultation, necessary to make the plan sound. That letter is attached at appendix A.

3.19 The content of the letter raised considerable concerns, for five prime reasons:

- (i) the sheer scale of modifications the Inspector feels necessary;
- (ii) the lack of explanation or reasoning for the modifications (especially those which the Council was previously unaware of);
- (iii) the consequence of the modifications, which go to the heart of (or rather take away the heart of) the Plan prepared by the Council;

- (iv) the lack of ability for the Council to attempt to reach a consensual agreement to the potential modifications necessary (as would normally be the case); and
- (v) the questionable basis of whether many of the modifications are truly necessary (and whether the Inspector is, instead, trying to 'improve' the plan, rather than focussing entirely on soundness matters which go to the heart of the plan).

3.20 Thus, for our Plan, the 5th December letter confirmed that the Plan was capable of being sound, whilst the 19th December letter set out the minimum requirements (subject to consultation and final Inspector decision) to make it sound. To put it another way, what the Inspector is stating is that if any of her modifications, as set out in the 19th December letter, are not made to the Plan, then the plan is so fundamentally unsound as to be incapable of being (or unlawful to be) adopted.

3.21 The Council can only but guess what the rationale is for a large number of the modifications (the 19th December letter gives very limited explanation), but, that aside, the implications are considerable. Should the Council accept them all, it would mean the Plan would no longer be a Plan prepared by the Council, supporting corporate objectives of the Council, for residents of the district. It would be one which is perhaps better described as an Inspector-led Plan. In short, with the modifications, the Plan would become largely unrecognisable from the Plan submitted for examination.

3.22 The following summarises some of the more fundamental 'modifications' required by the Inspector, together with some brief officer comments.

- All reference to community-led / CLT development be removed from the Plan – both 'in principle' supporting policy, and sites allocated for such forms of development. No reasons are given by the Inspector as to why such policies are 'unsound' (nor, for that matter, why her decision contradicts the previous Inspector examining our 2015 Local Plan, who found the principles of such policies to be sound).
- The redistribution of housing across the Cambridge sub-region (as agreed by all Councils of the sub-region) be removed, resulting in 1,500 homes increase to East Cambridgeshire. Inspectors concluding other Cambridgeshire plans in 2018 (Cambridge and South Cambs) and the almost finalised plan in 2019 (Huntingdonshire), all accept the redistribution and cooperation associated with it to be sound. Our 2015 Local Plan Inspector also found it sound.
- The modifications will make maintaining a five year land supply position post adoption for any meaningful time doubly harder by (a) increasing the annual need by 75 homes (around 15%) and (b) removing a policy ('the Liverpool method') which spread the requirement over the plan period to concentrate it in the first five years. No reasons are given, nor acknowledgement of the implications.

- Policy (LP3) be halved, this policy being the one which explains where development is to be directed. Instead, the Council is asked to be 'more positive' on development in the countryside (without explaining how or why).
- The policy which sought new homes to be built with good standards of accessibility be removed, with the consequence that all homes will only be built to 'basic' standards. The needs of the elderly and disabled appear to have been ignored, though with a lack of explanation it is not known why the policy needs deleting.
- A new policy be inserted to 'provide for those of a nomadic lifestyle'. It is unclear what such a policy could be, or why it is needed. No representatives sought this.
- Guidance be removed that parking should be on plot, and deleted text which states that developers should 'avoid tandem end-to-end parking'.
- A new policy be included on 'heritage sites at risk'. It is unknown what this policy should say or achieve, or why it is needed to make the plan sound. When asked, even Historic England could not come up with any wording.
- The first policy for every village be deleted – i.e. the one which sets out the specific characteristics and character for that settlement, and specific expectations for any development in that settlement. No reasons are given. These policies have been prepared with local village representatives, were supported by representatives (with no objections in principle to them). It remains unclear why the policies are, in their entirety, 'unsound' and incapable of being made sound.
- A large number of modifications be made to the indicative site capacity of sites, mostly to increase them. The vast majority of these were not sought by representatives, were not discussed at any hearing sessions, and no written material submitted. They appear somewhat 'made up' by the Inspector (though we do not know her reasoning, as none is given). Officers believe the vast majority are so wholly unjustified as to not be defensible at a future five year land supply inquiry i.e. rather than making the plan 'sound', they would actually make the plan 'unsound' by having over ambitious dwelling targets for sites, impacting on our supply and delivery of units.
- Another effect of the increase in numbers of specific sites, is to significantly increase total growth in Littleport, Soham and Sutton.
- The Kennett site of 500 community-led dwellings be deleted. No reasons given.
- Local Green Spaces as backed by the local community in Reach and Witchford be deleted, the latter (Horsefield) being the one most supported by the parish council for allocation as LGS. No reasons for deletion given.

The options for the Council

3.23 At this stage in the process, there are two realistic options available to the Council:

- (i) To proceed as requested by the Inspector, finalising and then consulting on the modifications. This implies the Council's acceptance of them, and will highly likely form the final conclusions of the Inspector in her Inspector's Report published post consultation. Such findings become final and non-negotiable, and must be accepted in *full* if the plan is to be adopted. This option is the 'normal' process.
- (ii) To withdraw the plan.

Withdrawing a Plan

3.24 Whilst not common, there are plenty of Local Plans which have been 'withdrawn' from their examination. S22 of the 2004 Act states "*A local planning authority may at any time before a local development document is adopted under section 23 withdraw the document*". (Note: a Local Plan is, legally speaking, a 'local development document').

3.25 Most instances of withdrawal are whereby an Inspector has reached preliminary conclusions that a submitted plan is so flawed that it is incapable of being modified to be made sound. As a result, withdrawing the plan becomes the only sensible option for a council (the alternative being to let the examination continue and, consequently, the Inspector formally preparing a report which says the plan must not be adopted). In short, in most instances, withdrawing a plan simply speeds up the inevitable.

3.26 This scenario does not apply in our case.

3.27 In our case, the Inspector has made it clear that our plan *is* capable of being found sound, subject to her modifications. However, a plan can be withdrawn at any time, for any reason, by a Council. This could include, for example, because a Council does not accept the modifications being made by an Inspector, which means the only course open to a Council is to withdraw (i.e. not adopt) the plan.

Important Consideration - Five Year Land Supply

3.28 Council should be mindful of an important implication which will arise, if the recommendations attached are agreed.

3.29 As a reminder, the Council has struggled since June 2015 to be able to demonstrate a 'five year land supply' as required by national policy, with two appeal decisions (in 2015 and again in 2018) going against the Council. The overriding reason why the Council has been unable to demonstrate a five year land supply is not due to a lack of permissions given by this Council or a lack of allocations in our Local Plan (we have approximately 9 years' worth of immediately available supply on that count), but due to the lack of delivery of homes on the ground. Where homes are not built, national policy requires the

'backlog numbers' to be added to the next five years. As each year passes, the backlog increases, to the point whereby it becomes virtually impossible to regain a five year land supply (for example, we would need to be building approximately 1,200 homes per year, for the next few years, to ever 'catch up', a 400% increase on current build rates).

- 3.30 If the Council decides to proceed with the current emerging plan (i.e. it accepts the Inspector's modifications and does not withdraw the plan), it is possible that the Local Plan can be adopted by Autumn 2019 (having taken into account the next procedural steps required). At that point (but not before), we would have a Five Year Land Supply. However, as highlighted in this report, there would be a considerable risk of that position being lost again in the not too distant future, because the Inspector has: (a) increased the overall housing numbers; (b) removed our policy to spread any backlog over the whole plan (and instead made it, in effect, compulsory to make it up in the first five years); and (c) has unrealistically increased housing numbers on allocation sites. Policy within the NPPF will probably mean our five year land supply will be secure, post adoption, until 31st October 2020 (i.e. for about a year after adoption), but realistically the Inspector modifications are likely to make it very hard to sustain a five year land supply beyond that date.
- 3.31 Thus, in simple terms, proceeding to adopt the Plan will likely mean a five year land supply position is secured from Autumn 2019 to October 2020, but unlikely beyond that date.
- 3.32 If the Plan is withdrawn, we obviously would continue to have no Five Year Land Supply for the present time.
- 3.33 However, under the 'withdraw' option, and perhaps surprisingly, when we reach April 2020 we almost certainly will, under current national policy, regain our five year land supply position. This is because new (autumn 2018) national policy states that, when a Local Plan is 5 years old (which ours will be, come April 2020), any 'backlog' of development not built gets wiped clean (the precise reference for this policy being NPPG Paragraph ID: 2a 017 20180913).
- 3.34 Thus, in areas where delivery of homes is below need/requirement (which certainly is the case in East Cambridgeshire), it is 'easier' to pass the five year land supply test with an 'old' (over 5 years) Local Plan than a more up to date one. In simple terms, this Council will only need to demonstrate a genuine five or six year supply of land come April 2020, rather than nine or ten years prior to April 2020.
- 3.35 That said, in the longer term under a withdrawal option, clearly the 2015 Local Plan will progressively become out of date for wider reasons, and therefore progressively prone to challenge on matters much wider than Five Year Land Supply.

Beyond Withdrawal

3.36 Should the Council withdraw the Plan, then officers will consider the various options available in terms of the Council's future approach to planning policy. This will take account matters such as: national legislation and policy on planning policy matters; the direction of travel the Combined Authority is taking in terms of it establishing policy or guidance on the future growth of the area; and the financial costs of preparing policy. Full Council will be advised on such options available in due course.

4.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

4.1 Withdrawing the Plan would mean costs preparing the Plan would cease. The only remaining costs not yet paid (but budgeted for) would be the costs of the Inspector's time. The Council will enter discussions with the Planning Inspectorate on this matter, pointing out what the Council sees as failings in the Inspector to work in accordance with the agreed SLA.

4.2 An Equality Impact Assessment (INRA) was completed for the Proposed Submission Plan, and was considered by Full Council in October 2017 (when the Plan was being considered). See Appendix B. Obviously if the Plan is withdrawn, the 'impacts' (positive / negative) of the Plan would not materialise. If the Plan is not withdrawn, and proceeds to future adoption, a refreshed Assessment will be made and put to Full Council alongside a Local Plan to be adopted.

5.0 APPENDICES

Appendix A – Inspector Letter 19th December (and associated schedule of modifications required)

Appendix B – Equality Impact Assessment (as considered by Full Council, October 2017)

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
None	Room12A The Grange Ely	Richard Kay Strategic Planning Manager (01353) 616245 E-mail: richard.kay@eastcambes.gov.uk