

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

03 September 2018

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Council

1 LOCAL PLAN

This report presents a set of Local Plan documents, which subject to the agreement of Full Council, are proposed to be submitted to the Secretary of State for Housing, Communities and Local Government following public consultation required by Regulation 19 of the Town and Country Planning (Local Plans) (England) regulations 2012.

The report also summarises the key matters arising from the consideration of the draft Local Plan at the Planning and Transportation Advisory Board meetings in June and July, including amendments that have been incorporated; provides an update of the Local Plan evidence base; and sets out the next steps in the progress of the Local Plan.

1.1 Introduction

- 1.1.1 The preparation of the Local Plan has reached an important stage. Subject to approval by Full Council on the 12th September, the Local Plan and accompanying documents will form the basis of a further round of public consultation before being submitted to the Secretary of State, within the transitional window confirmed by the publication of the revised National Planning Policy Framework on 24th July.
- 1.1.2 The draft Local Plan document has been considered by the Planning and Transportation Advisory Board at its meetings on 5th June and 24th July and been subject to a thorough debate on both occasions. There has also, of course, been significant discussion by the Board primarily around the publication of the Regulation 18 consultation document "The Way Forward".
- 1.1.3 Comments made by Members at the Board meeting on the 5th June were taken into consideration and amendments made for the 24th July meeting. Further comments were made at that meeting and these have also been taken into consideration. The next section of this report highlights where changes have been made to the Local Plan document attached at Appendix 1. It is worth noting that the Local Plan is a strategic document to guide and manage future development

in the borough to 2031. Some matters of detail will be addressed as part of further master planning and/or planning applications in due course.

- 1.1.4 The importance of ensuring the timely delivery of infrastructure to accompany planned new development set out in the Local Plan was once again highlighted by many Members at the July Board meeting. The Infrastructure Delivery Plan and Transport Assessment forming part of the evidence base for the Local Plan provides more details and can be found on the Council's website here: www.tmbc.gov.uk/localplanevidence
- 1.1.5 The Local Plan seeks to deliver significant infrastructure improvements as well as meet future needs for housing and employment. This is clearly an important issue for local residents and Members alike. Planning obligations from major sites, built on an allocation in a local plan, provide opportunities to secure infrastructure enhancements or improvements.
- 1.1.6 Once adopted the Local Plan will provide a robust policy basis for negotiating developer contributions to deliver planned infrastructure as set out in the relevant policies, but in the absence of a Local Plan the ability of the Local Planning Authority to secure that infrastructure, particularly in the case of 'windfall' developments, will be more challenging.
- 1.1.7 A sound Local Plan will also serve well in providing a platform from which to launch bids and initiatives for other sources of funding, in partnership with others where appropriate. Pursuing such an approach without first adopting a clear plan to meet development needs seems unlikely to be fruitful given the general thrust of Government policy in this area.
- 1.1.8 There have been successful bids in the past, for example, the Local Growth Fund, which helped secure funding for the improvements to the eastern overbridge at junction 4 of the M20. New initiatives will be launched during the life of this Local Plan, which could provide further opportunities for securing forward funding and other forms of assistance to support and facilitate the planned developments in the Local Plan. For example, the Government has recently relaunched a Garden Communities Prospectus (published on 15th August) inviting expressions of interest for ambitious proposals for new garden communities in return for tailored assistance to help design and deliver the vision for these places. The strategic site at Borough Green could qualify for such assistance and this will be examined further.
- 1.1.9 Also appended to this report is a copy of the changes to the policies and proposals map, the Sustainability Appraisal and the Habitats Regulations Assessment, which will also form part of the public consultation and will be submitted to the Secretary of State along with the Local Plan document.
- 1.1.10 This report also provides an update on the Local Plan evidence base and a section setting out the potential implications of not having an up to date Local Plan.

1.2 Main amendments to the Local Plan following the Planning and Transportation Advisory Board on 24th July.

- 1.2.1 The following amendments have been made to the Draft Local Plan document following the Board meeting on the 24th July. These are set out in order of appearance in the document.
- 1.2.2 Policy LP13 – Local Natural Environmental Designations – The list of designations in the previous draft were based on the most up to date information available at the time. Following the discussion at the Board meeting where Members identified new designations, the list has been updated and an amendment made to the policy to ensure that any new open spaces delivered during the Plan Period are also covered by the policy.
- 1.2.3 Policy LP19 – Habitat Protection and Creation – Amended wording to reflect the Sustainability Appraisal process.
- 1.2.4 Policy LP27 – Strategic Site Bushey Wood, Eccles – reference to the masterplan including a transport assessment added.
- 1.2.5 Policy LP29 – Strategic Site Borough Green Gardens – The suggested amendment to the phasing of the initial housing development prior to the opening of the relief road introduced following the Board meeting on the 5th June appeared to cause an element of doubt, albeit that the revised policy had been the subject of consideration by Counsel advising the Borough council. So the policy wording has reverted to the previous i.e. that the whole relief road is completed and open by no later than the completion of 15% of the total number of dwellings in the masterplan area (which amounts to 450 new dwellings i.e. 15% of 3,000). It is noted in the text and policy that the detail and phasing of the road will be governed by Planning Obligation agreements.
- 1.2.6 A further amendment has been made to reflect the wording of the NPPF in respect of development within the AONB.
- 1.2.7 Policy LP30 – Strategic Site Broadwater Farm, north of Kings Hill - reference to the masterplan including a detailed transport assessment has been added in order to examine the merits of proposed and possible alternative access arrangements. In addition, the policy now stresses that vehicular access to the development (with the exception of emergency vehicles) via the network of rural lanes will not be permitted.
- 1.2.8 Policy LP31 – Strategic Site South West Tonbridge – additional wording to ensure sensitive design taking account of relationship with the Area of Outstanding Natural Beauty and its setting, to be consistent with other policies.
- 1.2.9 Policy LP35 – Employment Land: Former Aylesford Newsprint Site and supporting text – amendments to ensure the site is subject to a masterplan in advance of a

planning application and to further address the issue of the opening of Bellingham Way as part of any redevelopment.

- 1.2.10 Policy LP42 – Parking Standards – amendment to reflect latest Government policy on charging points for electric vehicles that all new homes where appropriate should have a charge point.
- 1.2.11 A number of other mainly factual amendments have been made to address points raised by Members

1.3 Local Plan Evidence

- 1.3.1 The following evidence has been completed and uploaded to the Local Plan evidence pages on the Council’s website since the Board meeting on the 24th July.
- 1.3.2 Green Belt Study Stage 2 Report
- 1.3.3 This report sets out the proposed amendments to the Green Belt designation and the exceptional circumstances for doing so.
- 1.3.4 Transport Assessment Addendum
- 1.3.5 This report, prepared by the Council’s consultants Mott Macdonald, represents an addendum to the Transport Assessment completed in June 2018. It makes proposals for further improvements to some of the junctions modelled.
- 1.3.6 Infrastructure Delivery Plan
- 1.3.7 This report draws together the infrastructure requirements arising from the development strategy proposed in the Local Plan and provides more information on costing and delivery, including input from statutory infrastructure providers.
- 1.3.8 Sustainability Appraisal
- 1.3.9 This appraisal tests the sustainability credentials of policies and proposals in the Plan and is required to accompany the submitted Local Plan documents.
- 1.3.10 Habitats Regulations Assessment
- 1.3.11 This assessment has been prepared by the Council’s consultants Mott Macdonald and is also required to accompany a Local Plan. It assessed the potential impact of the development strategy on designated ecological sites in the borough.

1.4 Next Stages and the Implications of not having an up to date Local Plan

- 1.4.1 Subject to Cabinet recommending the Local Plan and accompanying documents for the purposes of public consultation and subsequent submission to the Secretary of State to Full Council and Full Council agreeing the recommendation, the next stages of the Local Plan will be as follows:

- 1.4.2 Public Consultation required by Regulation 19 of the Town and Country Planning, England (Local Planning)(England) Regulations 2012
- 1.4.3 This consultation will take place for 6 weeks commencing around the end of September and concluding in mid-November 2018.
- 1.4.4 The format of the consultation will be similar to that for the consultation exercise in the autumn of 2016 required by Regulation 18. Those wishing to make representations will be advised of the data protection requirements introduced by the General Data Protection Regulations that came into force in May this year in order that copies may be submitted to the Secretary of State along with the Local Plan documents as required by Regulation 22(d) and also made publicly available.
- 1.4.5 Submission of the Local Plan to the Secretary of State
- 1.4.6 Once the public consultation exercise has closed the representations will be grouped into themes and submitted to the Secretary of State together with the Local Plan documents. It is anticipated that this will be during December and in advance of the transitional window introduced by the revised NPPF enabling Local Planning Authorities to use the 2012 version of the NPPF and their locally derived housing need, which is due to close on 24th January 2019.
- 1.4.7 Appointment of a Planning Inspector
- 1.4.8 After submission, the Secretary of State will appoint an independent Planning Inspector to scrutinise the Local Plan. The Local Planning Authority will be advised once an appointment has been made and will liaise with the Inspector regarding arrangements for a Local Plan Examination, expected to take place during the first half of 2019. The dates for a pre-examination meeting and the examination itself will depend on the number of Local Planning Authorities making similar requests in advance of the 24th January and the availability of Inspectors.
- 1.4.9 Stages leading up to adoption of the Local Plan
- 1.4.10 The length of the planning examination will be determined by the Inspector and will in part be influenced by the number of representations received at Regulation 19. The current Local Plan timetable assumes that the examination, Inspector's report and any recommended modifications, will be addressed during the latter part of 2019 enabling the Local Plan to be adopted by the end of the calendar year.
- 1.4.11 The implications of not having an up to date Local Plan
- 1.4.12 At this key stage in the preparation of the Local Plan it is important to emphasise the advantages of proceeding to adoption at the earliest practical opportunity and also considering the implications of not doing so.

- 1.4.13 The Government through the revised NPPF has reiterated the importance of the plan-led system. This means that up-to-date and robust local development plans are the starting point for guiding new development. Where those plans are out of date or silent, the presumption in favour of sustainable development will apply as set out in the NPPF.
- 1.4.14 Tonbridge and Malling was one of the first local authorities in the country to adopt a Local Development Framework (LDF) between 2007 and 2010 based on an annual housing target of 450 units a year handed down in the then South East Plan. This has ensured that the Council has had a robust plan for most of the last decade, but the LDF is now becoming out of date and the five year housing land supply beginning to fall as the development sites in the LDF reach maturity.
- 1.4.15 Many other local authorities struggled to adopt a LDF before it was replaced by new Local Plans with the publication of the NPPF in 2012 and there are many examples of where this has led to problems in guiding development to the most appropriate locations and securing the necessary infrastructure to accompany it.
- 1.4.16 The publication of the revised NPPF on 24th July invites those local planning authorities able to submit a Local Plan within 6 months the opportunity to use the 2012 version of the NPPF for plan making purposes and importantly locally derived housing need figures. If this Local Plan is agreed by Full Council on 12th September it is anticipated that by the end of 2019 it will be adopted with all of the advantages of having an up to date and robust Local Plan with a robust five year housing supply.
- 1.4.17 It has been noted that as soon as the Local Plan is adopted a review will have to begin taking into account the new housing need figures arising from the standardised methodology. Indeed, the revised National Planning Policy Framework states that plans should be reviewed within 5 years of adoption or sooner if housing need estimates are expected to change significantly (paragraph 33).
- 1.4.18 In practical terms this means that in the future plan making will be a continuous process. The current Local Plan will have taken 7 years to complete if it is adopted in 2019, which is not uncommon. Therefore, to complete a review within 5 years will require Local Planning Authorities to commence a review almost immediately after adoption. However, in the meantime the adopted Local Plan will provide an up to date and robust basis for development management and re-establish a 5 year housing land supply.
- 1.4.19 The alternative scenario is less positive and can be illustrated as follows:
- 1.4.20 Delaying the timetable
- 1.4.21 If the Council decide not to approve the Local Plan, an alternative strategy will need to be devised, which will inevitably delay the Local Plan timetable while alternative sites are considered and evidence is updated. This is likely to require a

further round of public consultations and could result in many months of delay in getting back to the point we have currently reached. There are no guarantees that any alternative sites put forward to address our objectively assessed housing need will be better received than the current ones. The Borough Council could decide not to address the housing need assessment and submit a Plan and face an examination on that basis. This option carries a very significant risk that our Local Plan would be found unsound.

1.4.22 Planning for Higher Housing Need

1.4.23 The transitional period for submitting a Local Plan within 6 months of the publication of the revised NPPF ends on 24th January 2019. After this date we would have to plan for the additional housing need set out in the NPPF standardised methodology. As currently illustrated this would equate to an additional 159 dwellings a year or a 23% increase – over 3000 more than is currently planned for and consequently additional sites of a significant scale would need to be found.

1.4.24 Worsening 5 year Housing Land Supply Situation

1.4.25 Since the publication of the 2017 Annual Monitoring Report last year the Council has been unable to demonstrate a 5 year housing land supply. The Government requires that Local Planning Authorities can demonstrate a 5 year housing land supply plus a 5% buffer in order to have a robust and up-to-date Plan. This means that some of the planning policies in the adopted Development Plan (the LDF) that are related to the delivery of housing carry significantly less weight in determining planning applications.

1.4.26 The current shortfall of 199 dwellings representing a 5 year housing land supply of 4.7 years (as of 31.3.17) is understandable for a mature Development Plan such as the LDF as most of the housing allocations have been developed, but it does emphasise the importance of adopting a new Plan at the earliest opportunity to replenish the 5 year housing land supply.

1.4.27 If the new Local Plan is submitted within the transitional period, the housing need against which the 5 year housing land supply is measured remains at 696 dwellings per year for the lifetime of this Local Plan, but if not, then the 5 year housing land supply is recalibrated against the standardised methodology resulting in a proportionately much lower supply position.

1.4.28 If Local Planning Authorities consistently fail to meet their 5 year housing land supply over several years the 5% buffer is increased to 20%. Any unmet need in previous years also has to be planned for. In short, further delays in adopting a new Local Plan will almost certainly result in a declining 5 year housing land supply and the consequential implications for decision making i.e. reduced weight for the relevant policies in the Development Plan.

1.4.29 Decision Making

- 1.4.30 Where Local Plans are out of date and there is no demonstrable 5 year housing land supply, there is a far stronger presumption and responsibility placed on local authorities to grant planning permission. Planning applications for housing that are refused by the Local Planning Authority in these circumstances are generally at far greater risk of being allowed on appeal. Permissions granted on appeal may bolster the housing land supply situation, but they may not be in the best locations or deliver the wider planning benefits set out in the Local Plan strategy. There is also less opportunity for the Local Planning Authority to secure infrastructure through Planning Obligations.
- 1.4.31 In a future scenario where we have no up-to-date Local Plan or 5 year housing land supply, the Green Belt and Areas of Outstanding Natural Beauty will continue to provide protection in areas where those policy designations apply. Unmet housing need does not constitute a Very Special Circumstance for inappropriate development in the Green Belt when determining planning applications. Major developments in the AONB are also unlikely to be successful given national policy. This would inevitably mean that proposals for development are highly likely to be focussed on those parts of the Borough that are more susceptible to windfall developments i.e. those areas not covered by high level constraints.
- 1.4.32 In addition, the revised NPPF published in July 2018 notes that there may be grounds for arguing prematurity in refusing planning applications before a Local Plan is adopted. However, the NPPF makes it clear that this would be unlikely to be justified where a draft plan has yet to be submitted (see paragraph 50 of the NPPF (July 2018)).
- 1.4.33 Intervention
- 1.4.34 The Secretary of State has indicated that he will intervene in plan making if plans become out of date and there is insufficient progress being made. This may result in another body appointed by the Government preparing a development plan for Tonbridge and Malling.
- 1.4.35 Green Belt Extension
- 1.4.36 The proposed extension to the Green Belt has attracted support from Local Members and residents, but it will not be confirmed until the Local Plan has been through its due process and is adopted. If the Local Plan is delayed the proposed extension to the Green Belt east of West Malling will remain a proposal carrying very limited weight in determining planning applications.
- 1.4.37 Infrastructure
- 1.4.38 As noted in the Introduction to this report, the Local Plan seeks to deliver significant infrastructure improvements as well as meet future needs for housing and employment and this is clearly an important issue for local residents and Members alike.

- 1.4.39 Once adopted the Local Plan will provide a basis for negotiating developer contributions and opportunities to secure infrastructure enhancements or improvements, while providing a platform from which to launch bids and initiatives for other sources of funding, in partnership with others where appropriate.
- 1.4.40 However, in the absence of a Local Plan the ability of the Local Planning Authority to secure infrastructure on the back of development, beyond what is necessary to make a proposal acceptable in planning terms, will be severely diminished. Bids for other sources of funding will also be weakened in the absence of a clear strategy set out in a Local Plan.

1.5 Conclusions

- 1.5.1 This report updates Members of the Cabinet on the preparation of the Local Plan and sets out the advantages and disadvantages of proceeding to adoption. The documents appended, namely the Local Plan, a document setting out any changes to the policies and proposals map, the Sustainability Appraisal and Habitats Regulations Assessment will form the basis of a further public consultation prior to submission to the Secretary of State, subject to approval by Full Council as set out in the recommendation below.

1.6 Legal Implications

- 1.6.1 Planning law requires that planning applications are determined in accordance with the Development Plan unless other material considerations indicate otherwise. The Local Plan for Tonbridge and Malling will represent a significant part of the development for the borough and needs to be prepared in accordance with the NPPF and be kept up-to-date.
- 1.6.2 Failure to prepare a Local Plan or having a Plan that is out-of-date reduces the ability of the Local Planning Authority to manage development proposals that come forward.

1.7 Financial and Value for Money Considerations

- 1.7.1 There are resource implications for preparing the Local Plan, but these can be accommodated within current budgets
- 1.7.2 Preparing a Local Plan within the transitional period defined by the revised NPPF (July 2018) represents a potential cost saving for the Council as the alternative would be to update existing evidence and delay the adoption of the Local Plan while the implications of the uplift in housing need is addressed.
- 1.7.3 Having an up-to-date Plan at the earliest opportunity will also re-establish a 5 year housing land supply and provide a stronger basis for defending appeals.

1.8 Risk Assessment

1.8.1 Failure to submit a Local Plan within the transitional period will result in significantly higher risks associated with having an out-dated Plan and the associated implications described in the sections above.

1.9 Recommendations

1.9.1 That the content of this report be noted; and

1.9.2 The Local Plan and accompanying documents appended to this report be recommended to Full Council for approval for the purposes of public consultations and submission to the Secretary of State in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012.

Background papers:

Nil

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