

Part I
Main author: Sue Tiley
Executive Member: Cllr Stephen Boulton
All Wards

WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING & PARKING PANEL – 13TH JANUARY 2022
REPORT OF THE HEAD OF SERVICE (PLANNING)
LOCAL PLAN – ADDITIONAL SITES AND MODIFICATIONS TO THE PLAN

1. Executive Summary

- 1.1 The purpose of this report is to consider options for further modifications to enable the Inspector to find the Plan sound.
- 1.2 The Council submitted the Local Plan for public examination in May 2017. The Inspector advised after the Stage 2 Hearing Session in October 2017 that the plan could not be found sound as submitted as it did not meet the Full Objective Assessment of Housing Need (FOAHN). At the stage the FOAHN was 800 dwellings per annum.
- 1.3 Further sites were submitted to the examination in November 2020 along with the Council's evidence relating to the implications of the latest Office of National Statistics (ONS) Sub-national household and population projections (2018) on the FOAHN. However, the Inspector indicated that these are not all sound and that further sites need to be allocated if the Plan is to be found sound. The Inspector has been clear that he considers it is possible to meet the revised FOAHN from the pool of sites he has examined. In September 2021 a report to this Panel set out the implications of his report and the matters that need to be considered when selecting sites.
- 1.4 Appendix A to this report reviews the options against the criteria set out in the Inspector's reports and evaluates the options against those criteria. The Sustainability Appraisal update of the Distribution Options is set out in Appendix C.
- 1.5 Appendix B to this report considers the case for a stepped trajectory and the Council's ability to deliver a five year land supply. Appendix D provides a list of all sites considered by the Inspector and which if any option they appear in.
- 1.6 The recommendations of this Panel will be referred to Cabinet and Full Council. Main Modifications will then be agreed with the Inspector for public consultation for six weeks.
- 1.7 It is intended that a Main Modifications Schedule will be made available for a Special Meeting of Full Council on 27th January.

2 Recommendations

- 2.1 That Members of this Panel
 - i) **Consider** the results of the Site Selection Addendum and the Sustainability Appraisal Addendum and the merits and disadvantages of the different options.

- ii) That Members accept the Officers recommendation set out in paragraph 4. 30 of the report and **recommend to Cabinet and Full Council** Option D as set out in Appendix D to this report for submission to the examination along with the relevant supporting information.
- iii) That Members **recommend to Cabinet and Full Council** that public consultation take place on Main Modifications to the Local Plan once the Inspector has confirmed the content of the Main Modifications required to make the Plan sound.

3 Background

3.1 The Local Plan was submitted in May 2017 with a target of 12,000 homes. The Plan is being examined under the policy requirements set out in the 2012 National Planning Policy Framework (NPPF) rather than the revised policy requirements first set out in the 2018 NPPF. This means that the housing target for the Plan is established through the assessment of the FOAHN rather than the standard housing methodology. There have been ten stages of hearing sessions on the following matters:

- Stage 1 Legal Soundness and Duty to Cooperate (September 2017)
- Stage 2 Overarching Strategy (October 2017)
- Joint session with East Herts on Birchall Garden Suburb (January 2018)
- Stage 3 Topic Specific Policies (February 2018)
- Stage 4 Hatfield and Welwyn Garden City policies and allocations (June 2018)
- Stage 5 Green Belt Assessment (November 2018)
- Stage 6 Birchall Garden Suburb, Housing and Employment Land Needs (December 2019)
- Stage 7 Birchall Garden Suburb and Symondshyde (March 2020)
- Stage 8 Village Sites (July/August 2020)
- Stage 9 Additional Sites, FOAHN, Windfall and Green Belt boundaries (February/March 2021)

3.2 At the end of the Stage 2 session the inspector indicated that the Submitted Local Plan's housing target did not meet the FOAHN in full and that there was insufficient evidence to justify this. He therefore asked the Council to consider adding in additional sites and to carry out an assessment of harm to the green belt.

3.3 In addition the Inspector subsequently asked the Council to review the implications of the 2016-based and then more recently the 2018-based population and household projections. The 2016-based projections were considered at the Stage 6 hearing sessions in December 2019 and the 2018 based projections at the Stage 9 hearing sessions in February 2021.

3.4 In response to the Inspector's request for more sites the Council carried out a call for further sites in 2019 and subsequent public consultation on the promoted sites. Members considered the results of the consultation, the officer's analysis set out in the [Site Selection Background paper](#), [its appendices](#), the amendments to [the Sustainability Appraisal](#) and other evidence at a meeting of [this Panel](#) and subsequently Cabinet in January 2020. Further consultation on preferred alterations to the Plan then took place between February and April 2020.

- 3.5 At the meeting of this Panel on 12th November 2020 Members agreed to depart from the advice it had received from its consultants on the implications of the 2018 projections. Whilst the Council's consultants considered that the FOAHN could be reduced to 14,300 dwellings based on the Alternative variant projection, this Council considered that the ten year variant projection was more appropriate and that the FOAHN should be reduced to 13,800 dwellings. This was subsequently confirmed by Cabinet and Full Council.
- 3.6 At the same meeting of this Panel Members selected sites to meet a lower housing target taking account of the range of population and household projections, the evidence on Green Belt harm and the results of the public consultation. Members also proposed that some sites in the submitted Plan should also be removed because of the extent of harm to the Green Belt. This would have resulted in a proposed housing target of 13,277. The Inspector did not find these proposed alterations were sufficient to make the Plan sound or that the lower housing target was justified by the evidence.
- 3.7 In his report to the Council EX274 on the [FOAHN](#) the Inspector concluded that the FOAHN for the borough had fallen from 16,000 to 15,200 and not 13,800. This was based on an additional 900 dwellings being added above the Turley FOAHN of 14,300 to address the issue of net in-commuting and the needs of the economy. He expressed concern at the levels of jobs growth in the borough outstripping the growth in the economically active population as well as increasing congestion on the strategic road network. The Inspector did not comment on the extent to which the 1,350 dwelling urban extension to Welwyn Garden City (Birchall Garden Suburb) in the adopted East Herts Local Plan or the extent to which the 21% uplift applied to both the 2016 and 2018 conclusions on the FOAHN by Turley assists in this regard.
- 3.8 It should be noted, however, that the most recent data indicates a fall in the number of jobs and a growth in the resident workforce. Furthermore the 2018 alternative variant projection favoured by Turley results in a larger economically active population than the 2016 set of projections.
- 3.9 In terms of the Local Plan and the provision for new jobs the continuing losses of employment land result in a shortfall of provision to meet even the needs of the percentage of the growth in the economically active population who might choose to work in the borough.
- 3.10 Congestion on the strategic road network is at its worst in the morning peak in a southerly direction and in the evening peak in a northerly direction. Data collected by the County Council indicates that this is caused not just by traffic emanating from the borough but through traffic from districts to the north as well as those who work in the borough.
- 3.11 The Stage 9 Hearing Session, which took place in February and March 2021, considered the additional sites put forward by the Council as well as sites not promoted by the Council and the Inspector's reports set out his conclusions on all those sites as well as the FOAHN. Appendix A to this report considers his conclusions with regards to the additional sites.

- 3.12 In his letter EX271 and Supplementary report EX272 the Inspector set out some concerns relating to how sites had been selected and set out some tests which need to be considered when arriving at a final distribution. These were reported to the September 2021 meeting of the Panel and in summary comprise the following:
- The Council must establish a 5 Year Housing Land Supply + 20% from adoption
 - On adoption there should be a proportionate spread of housing throughout Plan period
 - Selection of sites around villages should result in a proportionate distribution tempered by the two classes of village and by their comparative sustainability and must meet local needs.
 - There is a need to increase dwellings in Welwyn Parish area
 - The approach to the selection of sites needs to take into account a range of criteria not just Green Belt harm.
- 3.13 In addition, the Inspector stated that if the Council still require a stepped housing target, as set out in the submitted plan, then this must be justified in the context of the availability of additional sites.
- 3.14 Since the Inspector wrote his reports the government has confirmed that the proposed planning reforms as set out in the White Paper and associated papers and consulted upon in 2020 are subject to further review. Members of Cabinet have written to the Secretary of State seeking clarification on forthcoming planning reforms referred to by the Prime Minister in his speech at the Conservative Party Conference on the 6th October and the appropriateness of the FOAHN set out in the Inspector's reports.
- 3.15 The response from the Minister of Housing did not comment on the FOAHN because of the Secretary of State's quasi-judicial functions. He pointed out that any concerns about this should be set out to the Inspector. He stressed the importance of having an up to date Local Plan, the risk of planning by appeal and the government's priority for having plans in place by 2023. He also confirmed the government's commitment to protecting and enhancing the Green Belt and the benefits of using brownfield land.
- 3.16 The Minister pointed out that the Local Plan is being examined under transitional arrangements with regards to the requirements set out in the 2012 NPPF and therefore is not subject to the standard housing methodology. The housing requirement should take account of constraints such as the Green Belt.
- 3.17 The government provides no guidance on the extent to which the Green Belt should be considered a constraint. It is clear from other local plan examinations that it is not considered to be an absolute constraint. The NPPF requires there to be exceptional circumstances for the release of land from the Green Belt. The Inspector has already confirmed that the scale of housing need is such a circumstance but has reminded the Council that exceptional circumstances need to be set out for every site proposed for release. As stated above the Inspector has confirmed that harm to the Green Belt is just one factor to consider in the selection of sites and only where very high harm would result should this be considered to be an absolute constraint.

4 **Explanation**

4.1 The options which officers have identified for the selection of sites are set out in the Site Selection Update in Appendix A. This provides an update to the previous site selection work taking account of the Inspector's conclusions and tests for a sound spatial strategy. As set out in the Introduction to this document the approach comprises the following stages:

Stage 1 define local need and proportionate levels of growth

Stage 2 identify different distribution options based on Inspector's conclusions on sites and previous assessment

Stage 3 test different distributions against Inspector's tests,

Stage 4 Refine options to improve performance

Stage 5 Test refined options against infrastructure implications and Sustainability Appraisal.

4.2 In parallel with this analysis of the need for a stepped target was carried out. This considered the ability of the Council to have a five year land supply + 20% and make up the shortfall for under delivery since 2016 in the first five years. The results of this analysis are set out in Appendix B to this report. Appendix B also contains the anticipated rate of delivery of each site in the Housing Trajectory.

4.3 **Stage 1.** In order to identify distribution options which are likely to be found sound officers have first sought to define what might be considered 'local need' in order to give a minimum figure for each village in tiers 3 and 4 of the settlement hierarchy (large and small villages excluded from the Green Belt).

4.4 Clearly the majority of villages will need to deliver more than the local need or else it will not be possible to meet the FOAHN. The Inspector has indicated that the distribution should be proportionate but tempered towards the 'tier 3' settlements and those villages with stations. These are:

- Tier 3 – Welwyn, Welham Green, Brookmans Park and Cuffley
- Villages with stations – Digswell, Welham Green, Brookmans Park and Cuffley

4.5 The Settlement Strategy which is set out in Policy SP3 of the draft submitted Plan 2016 requires the majority of development to be located within and adjoining the two towns whilst more limited development compatible with their scale and character is to take place in and around the excluded (not in the Green Belt) villages.

4.6 As part of the evidence on the FOAHN the Inspector asked the Council to provide a settlement breakdown of natural change data as well as a proportionate breakdown based on household size. This is published as [EX265](#) and Table 2 provides the data which officers have used as the basis for identifying the minimum 'to find' figure required to meet local need. In order to provide a basis for identifying what might be considered to be proportionate officers have used the data in Table 1 of the same document. This should not be considered an absolute maximum but is a basis for identifying what then might be considered a disproportionate distribution.

4.7 **Stages 2 and 3:** On this basis officers identified distribution options using the results of the previous site selection assessment as well as the Inspector's criterion on

locational accessibility and any other site specific comments arising from the Stage 9 Hearing Sessions.

- 4.8 Two options were initially identified based upon
- Option A) a proportionate approach; and,
 - Option B) without Symondshyde.
- 4.9 These options were then tested against the need to have a five year land supply and the need to have a proportionate spread of housing throughout the plan period.
- 4.10 There are different approaches to the calculation of a five year land supply. The one more usually used on appeal is known as the Sedgefield approach and is a tougher requirement to meet as it requires making up for any shortfall in the first five years following adoption. The second approach is known as the Liverpool approach and allows for any shortfall to be met by the end of the plan period. In East Herts the Planning Inspector adopted a third approach which requires the shortfall to be met by the end of the first ten years.
- 4.11 Completions for the period 2016-21 are **2,514** against a target of **3,800** (760 x 5) resulting in a shortfall of **1,286**. This then gives the following targets for assessing delivery across the plan period. The Alternative Approach included below is a variant of the East Herts approach and is calculated on the basis that the shortfall is made up for in years 6-10.

Table 1 – Five year housing land supply + 20% targets

Plan period	Sedgefield approach	Liverpool approach	Alternative approach
Years 1-5	5,846	4,989	4,560
Year 6-10	3,800	4,608	5,086
Year 11-15	3,040	3,089	3040

- 4.12 The analysis carried out on the Council's ability to deliver a five year land supply + 20% concluded that is not possible to meet the Sedgefield approach. It also identified that the requirement to achieve a five year land supply and the nature of the sites capable of delivering completions in the first five years results in a shortfall in provision in the last five years with over provision in the middle part of the plan period.

Table 2 – Options with Symondshyde (A) and without Symondshyde (B)

Plan period	Option A	Option B
Years 1-5	4,470	5,046
Year 6-10	5,541	5,501
Year 11-15	2,854	2,157
2016-36	15,379	15,218

- 4.13 Option A performed best in terms of delivery in the middle and last five years and the settlement strategy but less well in terms of the five year land supply whilst Option B performs better in terms of the five year land supply on adoption but poorly in terms of the last five years of the plan period and results in disproportionate growth in some settlements in particular Stanborough. Option B is dependent on some sites which the Inspector has indicated should only come forward if there is a local need for example BrP1 in Brookmans Park and HS24 (BrP7) in Little Heath. In both cases the

inclusion of these sites in combination with other better performing sites would exceed the minimum natural growth requirement and the proportionate requirement (by 64% in the case of Brookmans Park) and therefore it is considered that Option B would be likely to be found unsound. However, Option A would also be likely to be found unsound as it would not deliver a five year land supply whereas under the alternative approach and the Liverpool approach there is the potential to provide one with a different distribution.

- 4.14 **Stage 4:** As a consequence, options C and D were identified which sought to improve the performance of A and B (Option C being a variant of Option B and Option D a variant of Option A). It is evident from this analysis that the reduction in size of Birchall Garden Suburb along with the option of removing Symondshyde has a significant impact on delivery of sites in the last five years of the plan period. As a consequence, Symondshyde has been included in both options with option C having more limited growth during the plan period and the remainder of the settlement coming forward after the end of the plan period (had the Inspector found the whole of Birchall Garden Suburb to be sound Symondshyde would not be required under this option).
- 4.15 The size of alternative sites means that unless a phasing policy is introduced, or the Inspector reconsiders his conclusions with regards to Birchall Garden Suburb, supply cannot be improved in the last five years above 2,899 dwellings. It should also be noted that under both scenarios the target of 15,200 is exceeded. This would provide a contingency should some sites not achieve their estimated capacities or take longer to deliver but also provides the opportunity to make some further minor adjustments.

Table 3 Refined Options

Plan period	Option C	Option D
Years 1-5	4,779	4604
Year 6-10	5,409	5596
Year 11-15	2,657	2,907
2016-36	15,359	15,614

- 4.16 **Stage 5:** The previous work carried out to test the infrastructure implications of a dwelling distribution of 16,000 dwellings concluded that whilst there was a need for investment in infrastructure there were no show stoppers. The most significant implications relate to primary school provision particularly in the villages. In the north of the borough option D is preferred but in the south of the borough option C is preferred. With regards to Symondshyde a smaller development of 500 dwellings during the plan period is likely to create difficulties with ensuring sufficient critical mass to provide supporting infrastructure during the plan period. With regards to the Sustainability Appraisal Option D performs marginally better than option C. This is because Option C places additional growth at villages and therefore has the potential to substantially alter their character and the settlement pattern of the borough. However, both include growth at Symondshyde, which will introduce a substantial amount of growth to a rural location.
- 4.17 Tables 4 and 5 set out the implication for the spatial strategy and the performance of each option against the Inspector's tests for a proportionate approach to the distribution of sites.

Table 4 – Options Analysis by Settlement

	Option A	Option B	Option C	Option D	Local need target
WGC	6,525	6,525	6,525	6,525	1,464 -6,797
Hatfield	3,596	3,596	3,596	3,596	995 – 4,621
Woolmer Green	227	286	261	261	43 - 201
O&MH	86	86	86	86	89 - 413
Welwyn	254	502	502	254	112 - 490
Digswell	104	140	124	104	47 - 206
Lemsford	0	27	27	0	7 - 30
Stanborough	19	117	19	19	9 - 41
Welham Green	368	540	540	441	96 – 419
Brookmans Park & Bell Bar**	421	828	724	549	109-506
Little Heath	104	204	104	104	34 -158
Cuffley	409	585	585	409	132-575
Symondshyde	1500	0	500*	1500	n/a
Rural Areas	84	84	84	84	137 -588

Notes: *Symondshyde, Option C, 1000 dwellings to be delivered post 2036. None of these options include the small site allowance of 14 dwellings. ** The numbers for Brookmans Park and the commitments data needs to be adjusted downwards by 11 dwellings as a consequence of a Lands Tribunal decision relating to the enforcement of a covenant.

Table 5 - Options Analysis by Settlement Hierarchy

	Option A	Option B	Option C	Option D	OAN target
Tier 1 and 2 Towns	10,121	10,121	10,121	10,121	11,418
Tier 3 large villages*	1,452	2,471	2,367	1,653	1,990
Villages with Stations*	1,302	2,109	1,989	1,503	1,706
Tier 4 villages	521	743	575	555	978
New Tier 4 village - Symondshyde	1,500	0	500	1,500	n/a
Welwyn Parish	444	728	712	444	Local need target 244 – 1,109

*The numbers for Brookmans Park and the commitments data needs to be adjusted downwards by 11 dwellings as a consequence of a Lands Tribunal decision relating to the enforcement of a covenant.

- 4.18 Option D seeks to improve the performance of Option A by increasing the number of sites in the five year land supply. It seeks to deliver sufficient housing to meet local need with more growth being directed to those settlements higher in the hierarchy or with stations. It seeks to reduce growth in some settlements in order to provide greater protection for heritage and environmental assets. It therefore better meets the

strategy set out in the Local Plan as well as providing more development at the end of the plan period. Furthermore it will allow the strategy set out in the draft submitted plan for the provision of Gypsy and Traveller sites to remain largely unaltered.

- 4.19 Option C seeks to improve the performance of Option B by improving supply in the last 5 years therefore providing better protection for the Green Belt than Option B. It removes those sites which the Inspector has indicated would not be justified if not required to meet local need. The distribution is more heavily weighted towards the tier 3 settlements and those villages with stations than Option D with the consequence that some of those settlements take significantly more than their proportionate share in particular Brookmans Park.
- 4.20 Under Option C the approach for the provision of Gypsy and Traveller pitches would also need to be reviewed as the strategy in the plan is based on sites coming forward in the strategic allocations with the need being apportioned based on the size of the allocation. If Symondshyde is not to be allocated the pitches would need to be reassigned.
- 4.21 The Strategy set out in the submitted Local Plan is to make provision for 61 Gypsy and Traveller pitches for the period 2016-32. The first five years through the allocation of individual sites and as part of the overall allocation for housing at the strategic sites. Initially a site at Coopers Green Lane was to make off site provision for Symondshyde but this was found unsound by the Inspector and the promoters subsequently agreed to make provision at Symondshyde for 6 pitches and to increase the provision at North West Hatfield to 15 pitches.
- 4.22 The changes to the Local Plan submitted by Members in November 2020 proposed the removal of two of these locations - Symondshyde (6 pitches) and the extension to Barbaraville (4 pitches). This would result in a shortfall of 10 pitches. The Inspector has not commented on the soundness of the Barbaraville allocation so there is a potential shortfall of 6-10 pitches.
- 4.23 The provision for pitches at the strategic allocation North East Welwyn Garden City could be increased by a further 6 pitches given that the site has been found sound for an expansion from 625 dwellings to 845 dwellings. This proposition has been considered at the examination.
- 4.24 Should Option D be approved then the provision of pitches would form part of the allocation of Symondshyde and the increase in pitches at North East Welwyn Garden City may therefore no longer be required. If Option C were to be approved then the reduced number of dwellings could potentially also result in reduced provision at Symondshyde for the plan period and some provision being made for the period after 2036. In this case there would then still be a need for an increase in pitches at North East Welwyn Garden City to make up some of the plan period shortfall based on a proportionate approach.
- 4.25 Options B and C include sites Wel1, Wel2, Wel6 and Wel15 which all require the provision of a new bridge and the widening of Fulling Mill lane which it is understood will require some land from Singlers Marsh which is a designated nature reserve. Singlers Marsh is the subject of a town and village green application. The Registration Authority, Hertfordshire County Council (HCC), has decided that the application should be considered at a public inquiry and, therefore, it is unlikely that the final

decision will have been made by HCC by the date of the Full Council meeting at which this report will be considered. The Council has taken legal advice in relation to the potential implications of the town and village green application upon the Local Planning process. Based on that advice, if the land were to become registered as a town and village green then, so long as the registration remained effective, the land could not be used to widen Fulling Mill Lane or to provide any necessary bridge. However, registration as a village green would not be a showstopper to allocation of the land due to the possibility of an application to deregister or to appropriate a small part of the land in order to allow the development to go ahead. Whilst the success of any such application could not be guaranteed the Council would have an arguable case.

- 4.26 All the options are based on assumptions for increases in capacity of some sites which the Inspector has already assessed as sound or potentially sound. In most cases the Inspector has expressed views on the potential for increasing capacity on sites. However the hearing session on the SDS3 allocation on Broadwater Road known as the Wheat Quarter took place before the decision last November to increase the capacity of these sites as planning applications for revised schemes were in preparation. These have yet to be determined and are unlikely to receive a decision before the Council has agreed to go back to the Inspector.
- 4.27 It should be noted that if these applications as currently proposed are approved they would result in an increase in capacity above the additional 600 dwellings identified by this Council in November last year. However, if Members now have concerns about the deliverability of an additional 600 dwellings at the Wheat Quarter (SDS3) then Option D offers the potential to reduce the capacity by up to 400 dwellings as indicated in Appendix D to this report.
- 4.28 Under all options a stepped target will be required and the explanation and justification for this is set out in Appendix C. It is impossible to make up the shortfall in the first five years following adoption and the Council would continue to fail the Housing Delivery Test in the early years. This would mean the policies in a newly adopted plan would have limited weight. It is therefore considered that the case for a stepped trajectory is a strong one.
- 4.29 Furthermore, although not part of Welwyn Hatfield's housing target the East Herts portion of Birchall Garden Suburb will provide a supply of housing throughout the plan period for those looking to live in Welwyn Garden City. It will also provide an increase in the economically active workforce able to access jobs in Welwyn Garden City and Hatfield by sustainable modes of travel and help to address the Inspector's concerns about in- commuting.
- 4.30 It is considered that on balance Option D provides a distribution more closely aligned to the vision and objectives and spatial strategy set out in the submitted plan as well as the tests set by the Inspector for a proportionate distribution and proportionate delivery throughout the plan period. As set out in paragraph 4.26 above the increase in capacity assumptions could be reduced for the Wheat Quarter allocation by up to 400 dwellings. This would result in a housing supply of **15,203**¹. It is this option which is recommended by officers as it gives greater flexibility for decision making.

¹ This figure includes a deduction of 11 dwellings from the commitments figure as a consequence of a decision by the Upper Tribunal (Lands Chamber). The figures in the Appendices and Tables 4 and 5 do not.

- 4.31 Alternatively the plan period numbers could be reduced at Symondshyde thereby reverting back to the original allocation of 1,130 dwellings with the remaining dwellings being delivered after 2036. This would result in a supply of **15,233²**.
- 4.32 Should Option C be preferred by Members it will be necessary to review the distribution of Gypsy and Traveller pitches to better reflect the size of the strategic allocations.

Next Steps

- 4.33 Subject to Members approving changes to the Plan which the Inspector considers to be sound consultation will take place on the Main Modifications in February for six weeks once these have been confirmed by the Inspector.
- 4.34 A number of Main Modifications have already been discussed at hearing sessions and the last schedule submitted by the Council was published on the Council's website (accessed [here](#)) in January 2021. It should be noted however that further modifications were discussed as part of the Stage 9 hearing sessions.
- 4.35 The representations, the key issues raised and the Council's response will then be forwarded to the Inspector. He will then write his final report on the soundness of the Plan. If the representations raise any new issues which have not been considered by the examination there may be a need for further statements or hearing sessions.
- 4.36 The Sustainability Appraisal has been updated to assess additional sites and the alternative distribution options. It will again need to be updated to appraise the main modifications required by the Inspector to make the plan sound as well as any changes to the distribution.
- 4.37 The Inspector's report along with the Main Modifications required to make the plan sound will then be brought back to the Council to determine whether or not it wishes to adopt the Local Plan. Once the legal challenge period has been completed the Local Plan would then form part of the development plan for the borough, its policies would be afforded full weight in decision making and the housing delivery test would be assessed against the targets sets set out in the plan rather than the standard methodology.

5 Legal Implications

- 5.1 The preparation of the Local Plan is governed by legislation, most notably the Town and Country Planning Act 1990, the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011, as well as case law and secondary legislation set out in regulations. It also has to comply with relevant legislation relating to the preparation of Sustainability Appraisal and Habitats Regulatory Assessment.
- 5.2 The legislation requires that the Local Plan is prepared in accordance with the Local Development Scheme (LDS), the Statement of Community Involvement (SCI) and, under the transitional arrangements, the 2012 version of the National Planning Policy Framework (NPPF).

² As above

- 5.3 The legislation requires that local planning authorities seek to deliver sustainable development when preparing the plan.
- 5.4 The NPPF sets out the Tests of Soundness against which the Local Plan is examined. That is that the plan is positively prepared, justified, effective and consistent with national policy.
- 5.5 The Inspector has made it clear that only he can remove sites from the Submitted Local Plan if he considers them to be unsound. Should Members no longer wish to proceed with all the sites considered to be sound the only option would be for the Council to withdraw the Plan and start again.
- 5.6 The Council can only lawfully adopt the Local Plan if the Examining Inspector finds it “sound” and only in the form which the Inspector has found it sound (i.e. the Council would not be able to make material changes to the version of the Plan which the Inspector has found sound). Should the Inspector find the Plan to be unsound the Council would be unable to adopt the Plan and, in this eventuality, the Council would not have an up-to-date Plan. Whilst it would be open to the Council to bring a case in court to challenge the validity of the Inspector’s conclusions it is unlikely that such a challenge would succeed as the court intervenes only in clear cases of legal error. Given that the decision whether a Plan is “sound” is, inherently, one of planning judgment the courts heavily incline to leaving things in the hands of the examining inspector. If the Council wants to secure a sound plan it has to submit sufficient additional sites to deliver 15,200 dwellings over the plan period.
- 5.7 The Local Plan process could be subject to legal challenge if any party considers that it has not been prepared in accordance with legislation and national guidance.

6 Financial Implications

- 6.1 The financial implications of not having a sound Local Plan is that the Council would have to start the process again. This would require updated evidence, another call-for-sites exercise, updated site appraisal, updated sustainability appraisal and habitats assessment and further public consultation.
- 6.2 In the meantime the Council will continue to receive speculative planning applications for both urban and green belt sites (both those that are currently favoured in the plan and those that have been rejected) and could face costs if these were refused and successfully appealed.

7 Risk Management Implications

- 7.1 The Inspector has made it clear that unless the Council adds in more sites to the Local Plan to achieve the FOAHN it will be found unsound. He has also made it clear that decisions upon which sites to add into the Plan need to be based on sound planning grounds which are applied consistently and transparently.
- 7.2 The current adopted District Plan is considered to be out-of-date, particularly with regard to policies relating to new residential development. If this Plan is withdrawn or found unsound then the Council would have to rely on policies in the NPPF for

decision making. Emerging policies in the Local Plan would no longer have any weight in decision making.

7.3 Without an adopted Local Plan the Council's five year land supply figures will continue to be based on the Government's standard methodology, which is currently 875 homes per year. Because the Council no longer has a five year land supply the presumption in favour of sustainable development already applies. As a consequence, policies seeking to protect areas from residential development would carry less weight and the Council is more likely to lose decisions on appeal. This will impact on the Council's performance figures, which could place it at risk of government intervention.

7.4 The Housing Delivery Test results in a requirement for a 20% buffer being added to the five year land supply figures. In future years, without an adopted plan, it is likely that performance will fall below 45%, resulting in a risk of special measures.

7.5 Regulations now require a plan to be reviewed every five years and particularly where there are significant changes in the housing need figure. Paragraph 74 of the NPPF 2021 states:

"The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

a) 5 % to ensure choice and completion in the market for land; or

*b) 10 % where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement **OR recently adopted plan** (Footnote 40), to account for any fluctuations in the market during that year; or*

c) 20 % where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply (Footnote 41)".

Footnote 40 states: *"For the purposes of paragraphs 74b and 75 a plan adopted between 1 May and 31 October will be considered 'recently adopted' until 31 October of the following year; and a plan adopted between 1 November and 30 April will be considered 'recently adopted' **until 31 October in the same year**".*

Footnote 41 states: *"This will be measured against the Housing Delivery Test, where this indicates that delivery was below 85 % of the housing requirement".*

7.6 Should housing completions not increase the Council will come under pressure to carry out an immediate review of the Local Plan. Members should note how short the period is for an up-to-date adopted plan to count towards a five year housing land supply figure. New demographic and household projections are published every two years.

7.7 Members should also note that because the plan is being examined against the 2012 NPPF it may, once adopted, need to be updated to bring it in line with the 2021 NPPF. Wherever possible Officers will seek to ensure there is not likely to be a conflict.

- 7.8 In proposing modifications to the plan, the Council has to ensure that it has not proposed so many changes that it is, in essence, a different plan, which even if found sound might make it subject to legal challenge. Nevertheless, the Council is allowed to make changes to make the plan sound and these must by definition be substantive otherwise they would not be needed to make the plan sound. Substantive changes which are not required to make the plan sound cannot be made.

8 Security & Terrorism Implications

- 8.1 There are no security and terrorism implications arising from this report.

9 Procurement Implications

- 9.1 There are no procurement implications arising from this report.

10 Climate Change Implications

- 10.1 There are climate change implications arising from the identification of land for housing and employment. The Sustainability Appraisal judges that there will be greater energy use and emissions of greenhouse house gases and reductions in air quality.
- 10.2 The effects of this will be mitigated through the implementation of policies in the plan on sustainable design and construction and delivering sustainable development.
- 10.3 Minimising the need to travel by locating development in accessible locations close to a range of facilities and services and/or where they are close to public transport and cycle paths will assist in this or, alternatively, requiring through Section 106 or Community Infrastructure Levy (CIL) to improvements to public transport infrastructure, cycleways and footpaths.
- 10.4 Ensuring the balance of employment provision alongside housing will also help to address this.

11 Link to Corporate Priorities

- 11.1 The subject of this report is linked to the Council's Business Plan 2018-21 and, in particular, Priority 3 Our Housing - to plan for current and future needs and Priority 4 Our Economy – sustainable growth.

12 Health and Wellbeing Implications

- 12.1 Providing sufficient housing and jobs have health and wellbeing benefits for residents as does the quality of the environment.

13 Human Resources Implications

- 13.1 There are no human resources implications arising from this report. The Local Plan will continue to be prepared by the policy team. Regardless of whether the Plan is found sound, withdrawn or found unsound, it is likely to increase the number of planning applications and the caseload for development management officers.

14 Communications and Engagement Implications

- 14.1 Officers will work closely with communications colleagues to ensure that Local Plan progress is communicated to the public through newsletters, information on the website, press briefings, etc.
- 14.2 Public consultation has been carried out in accordance with the Statement of Community Involvement.

15 Equality and Diversity Implications

- 15.1 All of the policies in the Submitted Local Plan were subject to equality impact assessment.
- 15.2 Any policies which are subsequently proposed for main modification will be subject to an updated equality impact assessment.

Author

Sue Tiley, Planning Policy and Implementation Manager

January 2022

Appendices

Appendix A – Site Selection Addendum 2021
Appendix B – The case for a stepped trajectory
Appendix C – Sustainability Appraisal Addendum
Appendix D – List of sites, assumptions and options

Background Documents

Letter from members of Cabinet to the Secretary of State dated 8 October 2021
Letter from the Minister of State for Housing dated 18th November 2021