


Agenda Item No:	13	
Committee:	Full Council	
Date:	6 November 2014	
Report Title:	Overview of the flexible nature of the Local Plan for the district including issues related to north-east March and the Estover Road playing field	

Cover sheet:

1 Purpose / Summary

It was agreed at the last meeting of Full Council on 18th September 2014 that a report would be prepared in relation to the flexible nature of the Local Plan, how this relates to any development in the district including in particular the north east March area, and what progress there has been in discussions between Cambridgeshire County Council, Fenland District Council and March Town Council about the future of the Estover Road playing field.

2 Key issues

- To advise Members on the basis of the development of the Fenland Local Plan 2014, the meaning of flexibility in the plan, and how this impacts on so-called "windfall" development, referred to within the Plan as non-strategic site allocations.
- To clarify how the changes to the development strategic allocation and so-called "windfall" relates to the north east area of March.
- To clarify to Members the extensive engagement process both internally and externally in respect of the Local Plan process with particular attention to NE March changes and the so called 'windfall' arrangements.
- To update Members on discussions between Cambridgeshire County Council (CCC), Fenland District Council (FDC) and March Town Council (MTC) about the future options for the development of Estover Road Playing Fields and surrounding land.

3 Recommendations

That:

- The Full Council note the findings as set out in the report.

Wards Affected	All Wards
Forward Plan Reference	
Portfolio Holder(s)	Cllr John Clark - Leader Cllr Chris Seaton - Portfolio Holder for Finance Cllr Will Sutton - Portfolio Holder for Neighbourhood Planning Cllr Fred Yeulett - Portfolio Holder for Growth

Report Originator(s)	Richard Kay - Neighbourhood Strategy Manager Graham Nourse - Head of Planning Gareth Martin – Senior Development Officer Rory McKenna - Senior Solicitor
Contact Officer(s)	Gary Garford – 01354 622373 Richard Kay - 01354 622347 Graham Nourse - 01354 622315 Gareth Martin – 01354 622439 Rory McKenna - 01354 622452
Background Paper(s)	Adopted Fenland Local Plan (May 2014), Inspector's Report into the Fenland Local Plan - 9th April 2014

Report

1 Background / introduction

- 1.1 The Fenland Local Plan was adopted by Full Council on 8th May 2014. Since then a proposal for the future development of the Estover Road playing field, which is owned by Cambridgeshire County Council, has attracted significant local interest.
- 1.2 At the meeting of Full Council on 24th July 2014 it was agreed that a meeting would be held between Cambridgeshire County Council, Fenland District Council and March Town Council to discuss all of the possible options for the development of the playing fields and surrounding land. An update on the current situation is provided in the report.
- 1.3 An associated issue relating to the development of the so-called "windfall policy" in the Local Plan, linked to the earlier Council decision to remove NE March as a Strategic Allocation, was also raised at the Full Council meeting on 18th September and an explanation of the emergence of such is provided in the report.

2 Considerations

Development of the so-called "windfall" policy in the Fenland Local Plan

- 2.1 The thinking behind the so-called "windfall" policy was integral to the development of the Core Strategy (subsequently known as the Fenland Local Plan) from the outset of the Plan development.
- 2.2 In March 2011 Fenland District Council's Cabinet approved a new approach to Plan-making in Fenland.
- 2.3 The aim, driven by the then Leader of the Council and Senior Members, was to "produce a single all-embracing Core Strategy, which was to contain about 12 policies that would provide a strategic context and enable all development proposals to be considered against important criteria." As part of this more flexible approach to planning, development area boundaries (DABs) around all settlements and specific allocated sites on a plan were to be replaced with criteria based policies.
- 2.4 Members unanimously supported this approach to produce a more flexible pro-growth plan with original aspirations for significant growth in the region of 12,000 - 16,000 dwellings over a 20 year period across Fenland (subsequently reduced to 11,000 in the adopted plan). This was a radical departure from conventional plan making which (as with the 1993 Local Plan) sought to allocate specific sites for development. Members felt that this approach had been too inflexible and had put an unreasonable restraint on development opportunities in the past to the detriment of the district. They were very keen to move away from the approach of allocating specific sites to have a more flexible and responsive plan.
- 2.5 In July 2011 Cabinet approved the Draft Core Strategy – July 2011 for 6 week public consultation to run from 12 August to 23 September 2011.
- 2.6 In order to enable the pro-growth flexible approach to planning, Policy CS2 – Housing was included which formed the basis of a key tool in the new plan which later developed into Policy LP4 Part B of the Local Plan – now referred to widely (and informally) as windfall developments.
- 2.7 The wording of Policy CS2 meant that in effect any piece of land in or around a market town or village could be considered as being a potential site for development as long as all other relevant policies such as flood risk etc. were also met. There was no upper or lower limit for the size of individual sites to come forward in this way.
- 2.8 In short, the approach approved was not to allocate any specific development sites on a map, but rather have indicative areas for growth on diagrams and through written description/criteria. In effect, Fenland was proposing a 100% windfall approach to

meeting its plan target. This was a unique proposal nationally but fully embraced by leading members.

- 2.9 To be clear, this was not windfall in the conventional sense in that sites which have not been allocated in a local plan subsequently come forward for development. Rather they were 'windfalls' in that whilst the exact location wasn't certain (i.e. not allocated in the Local Plan on a map), the flexible nature of the plan enabled any site to be potentially considered for development, assisted by the general criteria and indicative diagrams.
- 2.10 Following the publication of the government's National Planning Policy Framework (NPPF) in March 2012, the Council was obliged to re-consider its emerging Core Strategy.
- 2.11 In June 2012, Cabinet approved the Core Strategy – Further Consultation Draft – July 2012 for 6 week public consultation.
- 2.12 To accord with the NPPF this version made a significant change to the plan in respect of allocating sites. Unlike the earlier version, it now allocated some (around half) of the plan's housing target on specific, large scale strategic sites for development known as Strategic Allocations on an official map (the Policies Map), but still reserved a large amount for 'Broad Locations' (i.e. indicative areas rather than specific areas for growth), and for windfall.
- 2.13 The phrase 'windfall' wasn't specifically used, but instead the phrase 'Policy CS2 Part B sites' was used, thus directing the reader to the specific policy in the plan for how such sites would be determined. Around 1,800 or more homes were stated as coming forward via such 'Policy CS2 Part B sites', or at least 16% of the Local Plan overall target.
- 2.14 In January 2013, Cabinet and Full Council approved the Core Strategy - Proposed Submission – Feb 2013 for 6 week public consultation. In this document the old Policy CS2 was renumbered CS4, and Policy CS4 Part B – Housing was simplified. It also clarified for the first time the 250 threshold for strategic site allocations.
- 2.15 First, taken as a whole, Part B clarified that 'large scale housing proposals' were 250 dwellings or more, and thus by default 'small scale' sites were less than that i.e. 249 dwellings. The overall thrust of the plan was to only allocate 'large scale' sites, thus any site below 250 would automatically become a windfall site. Part B confirmed that:
"Large scale housing proposals (i.e. 250 dwellings or more) on the edge of market towns are directed to the identified specific or broad locations for sustainable growth. Any other large scale housing proposals on the edge of market towns away from these areas will be refused."
- 2.16 By default, therefore, any site less than 250 would be considered on its merits (i.e. considered as a 'windfall'), as an integral part of the pro-growth, flexible nature of the plan to allow the housing targets to be realised, which all Members of FDC, baring one abstention, voted in favour.
- 2.17 The Council's radical approach to plan making was seen as being fully aligned with the Government's own pro-growth and flexible approach to planning as set out in the NPPF and endorsed by the Secretary of State for Communities and Local Government.
- 2.18 The revised allowance in the Feb 2013 plan for 'Part B sites' (i.e. windfall) was 2,165 dwellings, or nearly 20% of the overall Local Plan housing target (an exceptionally high allowance compared with other plans nationally, but considered reasonable due to the Fenland Plan not allocating sites below 250).
- 2.19 Subsequent versions of the emerging Local Plan retained this policy unaltered (i.e. the Core Strategy - Proposed Submission - Addendum – June 2013 (removing NE March Allocation), and the Fenland Local Plan Core Strategy – Submission - September 2013 (submitted to the Secretary of State via the Planning Inspectorate).

- 2.20 These versions of the Local Plan were subject to further rounds of public and stakeholder consultation/engagement, involving 6 week public consultation from 27 June to 7 August 2013, a Public Hearing led by the independent Planning Inspector at Fenland Hall from 9 to 13 December 2013 and a 6 week public consultation from 14 January to 24 February 2014 on a schedule of proposed modifications to the final Plan prior to formal adoption in May 2014.
- 2.21 There were therefore no further changes made to Policy CS4 Part B – Housing i.e. the windfall policy up until adoption in May 2014. This was in keeping with Members' aspirations and strong steer to deliver a pro-growth and flexible plan for both the market towns and villages. The Policy was a key tool for ensuring that the Council adopted a flexible approach to new developments which might come forward in any location and was an integral part of the plan throughout its development from March 2011 until final adoption by Cabinet and Full Council on 8th May 2014.
- 2.22 At these two meetings Members also considered the Inspector's Report of 9th April 2014 into the Examination of the Local Plan. The Inspector found the plan to be sound and recognised its radical approach and the importance of the "windfall" element as being an integral part of it.
- 2.23 In para 60 of her report (which was made public as part of the subsequent consultation) she explained:
- "...DABs that previously curtailed windfall development are no longer applicable. Large scale windfalls (up to 249 dwellings) can therefore come forward in and around the towns. This is a very different approach to that contained in the historic Local Plan and so past trends in relation to windfalls must be treated with some caution. Indeed, an application had been submitted for 249 dwellings at the time of the hearings (Showfields site in Whittlesey) and a number of sites, not included in the CSLP, have been referred to in representations which may support such windfall development."*
- 2.24 Following its adoption the Fenland Local Plan now forms (along with the Cambridgeshire and Peterborough Minerals and Waste Plan) the statutory development plan for the district against which all planning proposals are considered.
- 2.25 A pro-growth, flexible plan has been a central Member-led and approved theme running throughout the production of the plan, from its inception in March 2011. Members were involved in the production of the Core Strategy / Local Plan not only in formal decision taking i.e. at Cabinet and Full Council but also informally through the Fenland Community Development Plan (CDP) Review Team meetings, which was established by the former Leader Cllr Alan Melton, and Member Briefings.
- 2.26 The CDP meetings gave Members an opportunity to rigorously challenge the policies in the plan or the thinking which had resulted in the policies.
- 2.27 The CDP Review Team consisting of Councillors M Archer (replaced by M Bucknor), Mrs J French, P Hatton and Mrs F S Newell, and chaired by Councillor K Owen, was an informal steering group of Members for the Core Strategy and associated matters, which did not have formal decision making powers, but was used as a forum to provide member direction on policies and their formulation.
- 2.28 The All Member Briefings were sessions where Members could discuss and comment on emerging policy documents and shape them in accordance with member aspirations for development in Fenland, and in line with the NPPF.
- 2.29 Below is a list of the dates of the CDP Review Team, All Member Briefings and formal Cabinet/Council meetings which considered the emerging Local Plan. These are in addition to the extensive public and stakeholder consultation periods (5 separate consultations), including a public hearing as outlined below.

CDP Review Team and all member briefings:

CDP Review Team – 11th June 2011
CDP Review Team – 10th October 2011
CDP Review Team – 7th November 2011
CDP Review Team – 5th December 2011
CDP Review Team – 2nd February 2012
CDP Review Team – 26th April 2012
CDP Review Team – 11th June 2012
CDP Review Team – 8th November 2012
All Member Briefing – 6th December 2012
CDP Review Team – 6th December 2012
All Member Briefing - 11 January 2013

Cabinet and Full Council Meetings:

Cabinet – 24th March 2011
Cabinet – 7th July 2011
Cabinet – 10th May 2012
Cabinet – 21st June 2012
Cabinet - 24th January 2013
Full Council – 24th January 2013
Cabinet – 30th May 2013
Full Council – 30th May 2013
Cabinet – 8th May 2014
Full Council – 8th May 2014

Public and stakeholder consultations:

6 week public consultation from 12 August to 23 September 2011
6 week public consultation from 25 July to 5 September 2012
6 week public consultation from 28 February to 10 April 2013
6 week public consultation from 27 June to 7 August 2013
Public Hearing at Fenland Hall from 9 to 13 December 2013
6 week public consultation from 14 January to 24 February 2014
End of period for legal challenge - 19 June 2014. No comments received.

- 2.30 The entire process of preparation, consultation, governance and adoption of the Local Plan was carried out in an open, transparent and professional manner from both an Officer and Member perspective. This was endorsed by an independent inspection that resulted in a successful approval and adoption of a new Local Plan for Fenland in line

with Members' pro-growth steer. Indeed, the process followed in developing the Local Plan was rigorously examined by the Inspector, and deemed 'sound'.

Implications of the so-called "windfall" policy for development in north-east March

- 2.31 On 30th May 2013 Full Council agreed that the 'Strategic Allocation' for 450 dwellings in North- east March should be removed from the plan. A copy of the motion that Members agreed to is attached as Appendix A.
- 2.32 The motion was very clear as to exactly what amendments to the Core Strategy (as it was then known) should be made, should the motion succeed. Following the approval of the motion each of the points set out in it was acted upon in full. The Inspector examining the plan subsequently accepted all such changes, and as a result the adopted Fenland Local Plan incorporates all elements of the motion.
- 2.33 The motion did not seek a 'complete bar to development in NE March', in fact to try to do so through the Local Plan would have been unlawful. It sought the removal of the site as a Strategic Allocation only. Full Council considered and approved the motion as presented and signed by the relevant supporting Members, and Officers subsequently acted upon the motion as instructed.
- 2.34 This approach was subsequently accepted by the Inspector when she made specific reference to the removal of the North-east March Strategic Allocation along with the resultant 'windfall' impact in paragraph 128 of her Report:
- "The deletion of March North-east has increased the number of dwellings anticipated to come forward through unplanned windfall development in March by a further 250 dwellings. Such ad-hoc windfalls may come forward in the northern area of March in any event. It should be acknowledged that windfall development is unlikely to result in the same level of infrastructure benefits that were required through the development of the March North-east site as a strategic allocation, such as improved recreational facilities. Nevertheless, given the lack of DABs, the scale of windfall developments that are likely to come forward, the flexible nature of the plan, the estimated land capacity and opportunities that exist around March it is reasonable to conclude that the target of 4,200 dwellings (for March) will be achieved."*
- This statement by the Inspector made it very clear that at no time did the motion result in a bar on all developments in NE March and even pointed out that such unplanned windfall could come forward in northern March in any event.
- 2.35 It is important to note that the motion did not make any reference to the wider issue of windfall development or the flexible approach to growth. It did not, for example, seek the return of Development Area Boundaries or deletion of the policy approach of a pro-growth, flexible plan, including a high reliance on windfall. Indeed, the motion directly increased the reliance on windfall development. The deletion of the N E March Strategic Allocation neither introduced nor amended that approach.
- 2.36 As a result this proposal was agreed by the Inspector, the Local Plan was found 'sound' and it was ultimately considered and approved by Members at Cabinet and Council meetings on 8th May 2014.
- 2.37 In addition, in order for the Plan to be found sound the Council also had to demonstrate that it properly engaged with partners, stakeholders (including Town and Parish Councils) and the community via the Duty to Co-operate tests and its approved Statement of Community Involvement, which it obviously did successfully.
- 2.38 In addition, the Inspector's report was published in full as part of the 8th May 2014 Cabinet and Council reports.
- 2.39 Following a CCC led public meeting held on 18th July 2014 at which proposals were outlined for the Estover Playing Field site, concern was expressed by local stakeholders and certain members that FDC Members and the community may have not been fully

informed (or it was even alleged misled) of the situation at the time of deletion of the NE March Strategic Allocation.

2.40 The Council obviously took such allegations seriously and as a result wanted to ensure that its decision making process was lawful, open and transparent.

2.41 Members were advised that Counsel opinion would be sought to confirm whether this approach was sound. Counsel advised that:

"The NE March allocation was required to be and has been removed. The units were reallocated to south west March and to "windfalls" in March. Reasonably interpreted there was never intended to be any geographical restrictions on windfalls...which indicates they could be "anywhere". That is indeed inherent in the very nature of a windfall.

As to the suggestion of a complete bar, that would be most exceptional and I cannot conceive that in these circumstances it would have been lawful or would have been approved by the Local Plan Inspector on the material before me. There is nothing in the motion which suggests that extreme position was intended."

2.42 A full copy of Counsel's response is attached as Appendix B.

Reconsidering the Local Plan

2.43 There is no 'short cut' to amending any policy in an adopted Local Plan. The full regulatory steps would need to be taken (minimum two rounds of consultation; independent examination; sustainability appraisal; evidence reports etc.). The process for any such review may likely require a complete re-run on the entire Local Plan for the District and could take 2-3 years and place an avoidable financial burden on the Council.

2.44 It should be reaffirmed that it is unlawful to 'bar' development via planning policy in any specific area i.e. North East March. Any development proposal would need to go through the full democratic planning process with consideration given to all of the adopted policies. To try to reopen the local plan now on the basis that it could bar any development in North East March would not be successful as the action may likely be deemed unlawful.

2.45 Overall, to amend the Local Plan itself is time consuming, expensive and not without significant risk, in that the whole plan is up for challenge. Such an approach by FDC, as an Authority that has a recently approved Local Plan would not be recommended.

2.46 Finally, any such approach would also dictate that the currently approved Local Plan would remain in force until a new replacement is adopted.

Update on discussions between Cambridgeshire County Council, Fenland District Council and March Town Council on the future of Estover Road playing field

2.47 At the request of CCC, initial pre-application discussions were held during May 2014, by the Council's planning team with CCC as the potential developer of the Estover site.

2.48 Subsequent to the above referred to public meeting on the 18th July 2014, initiated by the Leader of CCC, the meeting of Full Council on 24th July 2014 agreed that a meeting would be held between Cambridgeshire County Council, Fenland District Council and March Town Council to discuss all of the possible options for the development of the playing fields and surrounding land.

2.49 This meeting was convened by the Leader of the Council and held on 5 September 2014, attended by senior Member and Officer representatives from FDC, CCC and MTC.

2.50 Various issues were discussed in detail, including clarity on the Local Plan process along with CCC representatives providing their thoughts around the potential provision of some level of housing development to help contribute to the provision of enhanced sports/leisure facilities for the area.

- 2.51 Concerns were subsequently expressed by March Town Council, local member Cllr. Peter Tunley, a local resident Mr Trevor Watson and a representative of the Estover playing field committee.
- 2.52 Relevant written responses have been given and meetings have been held with certain parties. Such responses have been consistent with the information outlined in this report.
- 2.53 A written invitation to March Town Council from the Leader of Fenland District Council to get round the table (with CCC) to discuss a way forward had, at the point of issuing this report, has not yet been taken up.
- 2.54 In the interim the Council has, following a request from MTC, processed the Asset of Community Value application and this was agreed by Cabinet at its meeting on 23 October.
- 2.55 To clarify the planning situation for the area the adopted Local Plan allows any site for 249 or less dwellings in or adjacent to a market town to be considered to be a suitable candidate for a Policy LP4 Part B (windfall) site as long as all relevant policies in the plan are satisfactorily addressed. For further clarity the Local Plan allows for about 4,200 new dwellings across the town within the 20 year plan period up to 2031. These consist of about 3,100 dwellings contained within Strategic Allocations and Broad Locations (over 250 units), extant (i.e. with consent, but yet to be implemented) planning permissions (460), dwellings already completed (40) and the resultant number of 600 dwellings as so-called "windfall" under Policy LP4 Part B.
- 2.56 The policy would also be relevant in the north east area of March. However, any proposal to develop on an area of public open space, such as the Estover Road playing field, would also need to satisfy the strict criteria in the NPPF (paragraph 74) in relation to the loss of open space and any compensation that might be required as a result.
- 2.57 For the avoidance of doubt, no formal planning application has been received for land in the north east area of March. Should any application be submitted for this location the Council will assess each proposal on its own merits taking all policies and considerations into account. Any such proposal will also be subject to the required consultation and stakeholder engagement process.

Written Motion

We the undersigned move the following resolution:

This motion refers to the decision of the Council on the 24th January 2013 reference 53/12 Fenland Core Strategy - Proposed Submission Version.

Subsequent to local community concerns related to the March North East housing allocation; that the previous decision in respect of that allocation be rescinded, and that the allocation be removed from the Core Strategy.

As such, if this Motion succeeds, the following matters will take place:

- a) allocation removed from the Policies Map;
- b) allocation removed from the March Key Diagram (page 47 of the Core Strategy);
- c) policy wording together with the notional allocation of 450 homes be removed from Policy CS9 (page 44-45 of the Core Strategy);
- d) the provision of locally enhanced open space, leisure and recreational facilities related to the allocation be removed;
- e) the contribution towards delivery of local transport and infrastructure be removed;
- f) the windfall allowance (i.e. housing coming forward on unallocated sites) be increased for the rest of March by 250 homes, from 350 to 600;
- g) the notional target for the number of homes coming forward at the broad location for growth at south-west March be increased from 300 to 500;
- h) any other consequential changes to the Core Strategy and supporting documentation be made; and
- i) the overall district housing target (11,000 new homes), and the overall housing target for March (4,200 new homes) be retained.

A map identifying the allocation to be deleted is set out at Appendix A.

Further, this Motion requires the Council to consult on the above changes made to the Core Strategy (as an addendum to the previously agreed Core Strategy). Once such consultation has taken place, the Core Strategy with addendum shall be submitted to government for independent examination.

It is acknowledged that if the motion is defeated at Council the existing allocation remains unaltered and the resolution made on 24th January 2013 will stand.

Proposed:

Alan Mellor

Seconded:

Chris Suter

Supported by (a total of 10 members must sign the motion):

1. *[Signature]*

2. *[Signature]*

9. *[Signature]*

3. *[Signature]*

4. *[Signature]*

10. *[Signature]*

5. *[Signature]*

6. *[Signature]*

7. *[Signature]*

8. *[Signature]*

NE March – E mail Advice from Queen’s Counsel

I have considered your Instructions and, in short, endorse the proposed draft Statement. I add the following by way of elucidation only.

The NE March allocation was required to be and has been removed. The units were reallocated to south west March and to “windfalls” in March. Reasonably interpreted there was never intended to be any geographical restrictions on windfalls, see paragraph 1.30 of the relevant report - which indicates they could be “anywhere”. That is indeed inherent in the very nature of a windfall.

As to the suggestion of a complete bar, that would be most exceptional and I cannot conceive that in these circumstances it would have been lawful or would have been approved by the Local Plan Inspector on the material before me. There is nothing in the motion which suggests that extreme position was intended.

It is one thing to remove a site as an allocation, which was achieved, so now there is no specific support for it, and quite another to place an embargo on it.

Any applicant would no doubt bear in mind the Council’s reasons for removing the site before applying to develop it as a windfall.

Regards,

James Findlay Q.C.