


Agenda Item No:	12	
Committee:	Council	
Date:	18 December 2014	
Report Title:	Update on the Council's Local Plan (Adopted May 2014) and associated policies.	

Cover sheet:

1 Purpose / Summary

At the last meeting of Full Council on 6 November 2014, a comprehensive report was considered covering a number of issues including: the extensive engagement process both internally and externally; the flexible nature of the Local Plan; how this relates to any development in the district including 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.

At that meeting Members passed an amended motion which reaffirmed the Council's decision made on 30 May 2013 (Minute 12/13 refers). That decision being to pass a motion which removed the NE March (including Estover Rd playing fields) as a strategic allocation from the then emerging Local Plan.

Following the Council meeting of 6 November, it was agreed that a further report be brought to Full Council covering the following matters:

- What the Local Plan is, and its status
- The flexible nature of the Plan
- How the Local Plan could be amended
- How the Local Plan is reviewed
- How the Local Plan could be supplemented by other policy and/or guidance
- Advice on the decision making process for a proposal should it be received for land at Estover Road

2 Key issues

The key issues highlighted in this report can be summarised as follows:

- FDC has in place an adopted Local Plan that is flexible and adheres to the Member led growth agenda.
- To achieve a 'sound' plan is a significant achievement as many emerging Local Plans across the country are encountering significant problems and are either being delayed, withdrawn or are being found unsound by Inspectors. Recent examples include East Cambs, Cheshire East and Uttlesford DC. In addition FDC continues to receive positive enquiries and comments about its successful Local Plan approval and adoption.
- The benefits of having an up to date Local Plan are already paying dividends in terms of robust decision making and planning performance.

- There is no short cut to amending a Local Plan. It is costly, time consuming and not without risk.
- To review the 'so called' windfall policy in isolation from other key parts of the Local Plan may adversely impact upon other policies within the Plan. Thus, creating risk in terms of FDC's planning policy framework.
- A full Local Plan review is complex, costly and not without risks.
- Any policy review requires that the current policies remain in place until the outcome of such a review.
- A SPD is not appropriate for windfall, however a guidance and clarification note is provided
- Any development proposal for Estover Rd playing fields would have to meet the policy requirements of the NPPF, and in particular Para 74 related to existing open space, along with all other relevant FDC Local Plan policies.
- No such application, at the time of writing this report, has been submitted for the Estover Rd playing fields area.

3 Recommendations

That:

- The Council note the findings as set out in this 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 Full Council agenda papers - 6th November 2014

Report

1 Background / introduction

- 1.1 The Fenland Local Plan was adopted by Full Council on 8th May 2014. Since then a potential proposal for the future development of the Estover Road playing field, which is owned by Cambridgeshire County Council (CCC), has continued to attract significant local interest, and in doing so has attracted particular interest in the flexible nature of the pro-growth Local Plan, especially the so called 'windfall' policy arrangements within it.
- 1.2 At the meeting of Full Council on 6th November 2014, a comprehensive report on the Local Plan, the 'windfall' policy and issues relating to Estover Road playing fields was received. The discussion which arose when considering this item generated a number of issues.
- 1.3 This report seeks to address those matters.

2 Considerations

The Fenland Local Plan (May 2014): Status

- 2.1 On 8th May 2014, Full Council adopted the Fenland Local Plan. As reported in detail at the last meeting, this followed:
 - Extensive public consultation (5 rounds of six-week consultations, 2011-2013)
 - Extensive Member engagement (9 CDP Review Team meetings, 2 All Member Briefings)
 - Significant FDC Member consideration (7 Cabinet meetings and 3 Full Council meetings)
 - A formal public examination, including a public hearing held by an independent Planning Inspector and the publication of an 'Inspector's Report'.
- 2.2 On adoption, the Fenland Local Plan earned its status, in legal terminology, as a 'Development Plan Document' (DPD). In doing so, this affords it the highest status in terms of planning policy for the district.
- 2.3 For completeness, there are actually two other DPDs which operate in Fenland, and have an equal status with the Fenland Local Plan, namely the Cambridgeshire and Peterborough Minerals and Waste Core Strategy DPD (2011) and the Cambridgeshire and Peterborough Minerals and Waste Site Specific Proposals Plan DPD (2012). These two other DPDs are very specific to minerals and waste matters, and therefore not relevant to the matters of this report.
- 2.4 Other material planning considerations can be contained in the following:
 - A Neighbourhood Plan - none currently in Fenland, although several currently under development.
 - The National Planning Performance Framework (NPPF)
 - The National Planning Practice Guidance (NPPG)
 - Any Supplementary Planning Documents (SPDs) produced for the district (see commentary later on SPDs)
 - Any guidance produced by, for example, a national body or organisation
- 2.5 To be clear, there can be no planning policy adopted which has greater status or weight than a DPD.
- 2.6 By having such a legal status, preparing or amending a DPD has an extensive set of Acts and Regulations which must be adhered to, which this report will come on to later.

Flexible nature of the Local Plan

- 2.7 As advocated by FDC Members, a key element of the Local Plan from its inception was to enable a greater degree of 'flexibility' in the planning system than was permitted under the old Local Plan. This was implemented in a number of ways, such as:
- Removal of Development Area Boundaries (DAB's)
 - Use of 'broad locations for growth' around our market towns
 - Large reliance on 'so called windfall' and no sites allocated under 250 homes
 - Criteria based policies, rather than 'black and white' policy requirements
- 2.8 The Local Plan is therefore more flexible in where, when and what scale development should take place in the district. The Local Plan allows flexibility in how it can be interpreted in different circumstances to suit the proposal being put forward.
- 2.9 However, what 'flexible' does not mean is the ability to amend the Local Plan on an as and when basis. Once adopted, a Local Plan is essentially fixed. The law does not permit a Local Plan, or any policy within it, to be 'switched on or off'. Only a proper review of the Local Plan, following the set regulations, has the ability to approve any amendments to its policies.

Benefits of having an adopted Plan

- 2.10 As Members are aware the 1993 Local Plan had become dated and left the Council open to challenge in relation to planning decisions particularly at Appeal. Adoption of the 2014 Local Plan has already led to significant benefits to the Council in terms of:
- Robustly defending decisions at Appeal which are in line with adopted policy. As an example since the adoption of the Local Plan in May, of fourteen Planning Appeals determined only one Appeal has been allowed by the Planning Inspectorate - this represents a very high success rate by the Council in defending Appeals.
 - Providing necessary certainty for applicants and developers in that so long as their proposed schemes comply with adopted policies they can expect the planning process to be completed in a timely manner enabling development to take place more quickly. There has been a significant improvement in planning performance.
 - Ensures that there are fewer applications submitted which are contrary to the Local Plan - in turn this has led to significantly fewer applications needed to be determined by Planning Committee allowing Members to focus on more strategic decision making i.e. major applications.
 - Members attention is also brought to the recent appeal dismissal relating to the Showfields site in Whittlesey which is discussed later in the report.
- 2.11 It is worth reiterating that the original 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 approximately 12 policies that would provide a strategic context and enable all development proposals to be considered against important criteria."
- 2.12 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. Members have been

very keen to move away from the approach of allocating specific sites to have a more flexible and responsive plan.

- 2.13 At the November 2014 Council meeting, following Cllr Sutton's (as the lead portfolio holder) presentation of the Local Plan item, Cllr Melton stated "That he would like to endorse every single word that Cllr Sutton had read out as that was as he understood it when he moved the motion, when he drove through the Core Strategy which in turn was endorsed by the Planning Inspector and commented upon personally by the Secretary of State as one of the best and robust core strategies that had ever been written and at that time was one of the few that had been written".
- 2.14 Cllr Melton added that Cllr Sutton had stated that "If this was dragged out then it would be a significant cost to the Council which in turn is a cost to the people of Fenland as this would be Council Tax money; if the Core Strategy is put to one side then it could hold up significant development within Fenland for five years, which would mean no New Homes Bonus, no Section 106 monies, therefore it is essential that Members endorse this report".

Amending the Fenland Local Plan DPD

- 2.15 As reported to Council at the last meeting, 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.
- 2.16 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.
- 2.17 Officers have also considered other options such as a 'Single policy review', which in essence reviews one aspect or policy in a DPD, and retains the rest as currently adopted.
- 2.18 This is a difficult and time consuming process and poses the following risks:
- It must go through all the same legal steps as a full review, such as public consultation, examination, sustainability appraisal and the like. Realistically, this process would take 12-18 months and cost up to £100,000.
 - Such single policy reviews are becoming increasingly rare, predominantly because Inspector's are finding it difficult to accept that amending or introducing one policy would have no consequences on any other policy. Therefore such an approach presents certain risks to this Council.
- 2.19 The 'so called' windfall policy in the Fenland Local Plan would be such a case. Whilst on the face of it, it would appear that a single policy review could attempt to amend the windfall policy down from 249 dwellings, and leave the rest of the Fenland Local Plan DPD as it is. But there are wider policy consequences of such an attempt, such as the following scenario explains:
- The Local Plan relies on 2,005 dwellings coming forward via windfall. If the threshold is reduced down from 249, it may reasonably be argued that the 2,005 windfall target would no longer likely be met; and if the target can no longer be met, then the 11,000 overall housing target for Fenland would not be met; to plug that gap, new sites would have to be found to meet the shortfall, and allocated in the plan; and if new sites are to be found, where should they be located? Potentially, some might argue that the 11,000 figure itself should be re-looked at;

and so on. This example illustrates the potential knock on effects on the whole Local Plan.

- 2.20 Theoretically, another single issue review could be prepared, with its only item being the designation of a specific area as a protected open space, most likely a designation of Local Green Space status in accordance with the NPPF.
- 2.21 However, this option has the same costs, risks and uncertainties as highlighted at section 2.18 of this report. Furthermore, the current Local Plan and NPPF provide significant protection to such areas of designated public open space.
- 2.22 As mentioned above to undertake a full Local Plan review is time consuming (2-3 years, perhaps more), expensive (several hundred thousand pounds) and not without significant risk (in that the whole Local Plan is up for challenge). Such an approach by FDC, as an Authority that has a recently approved Local Plan, is hard to justify in terms of additional value that this would deliver to local tax payers, and indeed the further financial burden to them.
- 2.23 If the Council embarks on such a process on change, the currently approved Fenland Local Plan of May 2014 would remain in force until a new replacement/addition is adopted.

Reviewing of the Local Plan

- 2.24 Although the Local Plan covers the period between 2011-2031 it would be normal practice to commence a review of it in 5-6 years (i.e. 2020 or 2021) unless there was a significant change in government policy or the annual monitoring of the plan (as set out in the Council's AMR) showed that policies were being regularly and significantly breached. Such a review would take about 3-4 years to complete with the expectation that a new Local Plan would be adopted by 2024-2025.

Supplementing the Fenland Local Plan with other policy or guidance

- 2.25 As an alternative to reviewing or adding to the Fenland Local Plan, a council has the ability to produce Supplementary Planning Documents (SPDs). As the name suggests, these supplement the Local Plan. They do not amend or override the Local Plan.
- 2.26 Crucially, they must take the lead from, and conform to the Local Plan. Council will recall adopting two SPDs recently (July 2014), one on Resource Use and Renewable Energy and another on Delivering and Protecting High Quality Development. These two SPDs quite clearly supplement and add greater detail and clarification to policies in the adopted Fenland Local Plan.
- 2.27 There is no limit on how many SPDs are produced by a Council. Typically, they take 12 months or so from inception to adoption, and must undergo at least one round of public consultation. There is no 'examination' or inspector involved in the process, but there is the right to legally challenge a SPD should a party be aggrieved by what it says.
- 2.28 A SPD's status (or weight) is considerably less than a DPD, but nevertheless the Council should take them into account when determining planning applications.
- 2.29 A recent (2012) new regulation to the production of SPDs is that they must not allocate land. This point is crucial in the case of Estover playing fields in that it would be unlawful to prepare an SPD which allocated the site for anything.
- 2.30 However, in principle, an SPD could be prepared entitled 'Windfall Development SPD'. Nevertheless, the scope for what such an SPD would say is considered extremely limited because, as stated above, a SPD cannot in any way be seen as an attempt to amend a DPD policy. It could not, for example, attempt to reduce the 249 cut off point to a lower figure; it could not add extra policy requirements which made it harder or more costly for windfall development to take place; indeed, it is difficult to know what such a SPD might say which would have a material effect on the determination of planning applications.

- 2.31 Officers conclude therefore that, in relation to Estover Road playing fields or the broader windfall topic as a whole, a SPD is not an appropriate option available to the Council.
- 2.32 However, a measure which can be put in place is a 'Guidance and Clarification' note on the windfall policy, so that all parties are clear what policies in the local plan are relevant and what considerations developers need to take into account when submitting an application on a 'windfall site'.
- 2.33 It is worth emphasising that there is no single common approach or definition to windfall and that it is dependent of the relevant Local Plan of each Planning Authority.
- 2.34 This FDC clarification note would not be a policy document and would have no weight in the decision making process. An initial draft of this note is attached at Appendix A, for which it is suggested that final approval is delegated to the Portfolio Holder.

Determining Decision on Estover Road Playing Fields

- 2.35 Before giving advice on this point, it must be made clear to Members again that, at the point of writing, no formal planning application is with the Council for development on Estover Road playing fields. As such the following advice is hypothetical until such an application is received (if ever).
- 2.36 As stated above, the key considerations will be the policies in the LP, and it is the plan as a whole which will be taken into account. Thus, if a proposal only meets one policy in the plan, it does not mean it will automatically get permission.
- 2.37 A full report would be put to Planning Committee setting out all relevant policies and the degree to which those policies are met, together with any other material considerations and the recommended weight to be given to those considerations. It would also report on the feedback from the public consultation and statutory consultees.
- 2.38 Of those 'material considerations', an important one will be the need for the proposal to meet the criteria in paragraph 74 of the NPPF regarding the loss of open space, which is quoted in full as follows:

NPPF Para 74:

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- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
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- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

- 2.39 Therefore, any proposal would have to meet the relevant policies in the Local Plan as well as any other material considerations. The very recently dismissed Appeal for 249 dwellings at the Showfields site in Whittlesey highlighted that the failure to ultimately satisfy a policy in the Local Plan, meant that the application could not be supported by the Inspector.
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- 2.34 This FDC clarification note would not be a policy document and would have no weight in the decision making process. An initial draft of this note is attached at Appendix A, for which it is suggested that final approval is delegated to the Portfolio Holder.

Determining Decision on Estover Road Playing Fields

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- 2.36 As stated above, the key considerations will be the policies in the LP, and it is the plan as a whole which will be taken into account. Thus, if a proposal only meets one policy in the plan, it does not mean it will automatically get permission.
- 2.37 A full report would be put to Planning Committee setting out all relevant policies and the degree to which those policies are met, together with any other material considerations and the recommended weight to be given to those considerations. It would also report on the feedback from the public consultation and statutory consultees.
- 2.38 Of those 'material considerations', an important one will be the need for the proposal to meet the criteria in paragraph 74 of the NPPF regarding the loss of open space, which is quoted in full as follows:

NPPF Para 74:

Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

- 2.39 Therefore, any proposal would have to meet the relevant policies in the Local Plan as well as any other material considerations. The very recently dismissed Appeal for 249 dwellings at the Showfields site in Whittlesey highlighted that the failure to ultimately satisfy a policy in the Local Plan, meant that the application could not be supported by the Inspector.
- 2.40 This welcome Appeal decision confirmed the approach and robustness of the pro-growth flexible Local Plan in that whilst up to 249 dwellings (as proposed in this application) on a

site might be considered for potential development, it needs to satisfy all relevant criteria in the Local Plan and any other material consideration before it can be approved.

- 2.41 Members should therefore be mindful that the so-called "windfall" policy is not an open ended invitation for any development anywhere, but that the Local Plan (together with other material considerations, such as the NPPF) has safeguards within it to ensure that development is appropriate and sustainable whilst providing significant incentives for developers to provide new development in the right locations.

Guidance and Clarification Note about Policy LP4 Part B – Criteria for Assessing Housing Development Proposals (so-called “windfall” policy)

Introduction

This note seeks to clarify how Policy LP4 Part (B) - Criteria for Assessing Housing Development Proposals in the Fenland Local Plan should be interpreted to provide guidance and clarification about the way planning proposals are considered. For a copy of the Fenland Local Plan please refer to the following link:

<http://www.fenland.gov.uk/CHttpHandler.ashx?id=10010&p=0>

The policy states:

“For housing proposals in the specific and broad locations for growth, see, in particular, Policy LP7. For housing proposals in or around villages, see, in particular, Policy LP12. For small scale housing proposals on the edge of market towns, or any housing proposals within market towns, see, in particular, Policy LP16.

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.”

Background

The adopted Fenland Local Plan is by design a pro-growth and flexible plan to encourage development in the district. The plan no longer relies on Development Area Boundaries (DABs) to set the development limits for settlements (both villages & market towns), and does not allocate a large number of new (relatively small) sites for development, as is the traditional approach in plan making. Rather, in order to establish which sites would be acceptable for development new planning proposals are assessed against a range of criteria set out in a number of policies.

This radical and flexible approach to planning means that only large scale sites in the form of Strategic Allocations and Broad Locations for Growth around the four market towns have been specifically allocated for development in the Local Plan. A large scale site is considered to be 250 dwellings or more.

The Local Plan sets out (in the Housing Trajectory section on pages 93 & 94) that 11,000 dwellings are to be built over the plan period from 2011 to 2031. The Strategic Allocations and Broad Locations are to provide for about 6,440 dwellings. The remaining 4,560 are to be provided from existing planning permissions (2,035) and those already completed since 2011 (528), with the remaining 2,005 being provided in the form of proposals which are assessed against specific criteria (so-called “windfall” development) .

New development in Strategic Allocations and Broad Locations for Growth

The Key Diagrams in the Local Plan specify the locations of the Strategic Allocations and Broad Locations around the market towns. For proposals in these areas the reader is referred to Policy LP7 – Urban Areas for guidance and the specific policy criteria that would need to be addressed. Proposals which are more than 249 dwellings should only be provided in the Strategic Allocations or Broad Locations for Growth; outside these areas proposals of this scale will be refused planning permission.

New development in Market Towns other than Strategic Allocations and Broad Locations for Growth (non-allocated sites i.e. windfall)

For proposals for fewer than 250 dwellings (small scale sites) which are either in or adjacent to a market town and not within a Strategic Allocation or Broad Location, the reader is referred in the first instance to the criteria in Policy LP16 - Delivering and Protecting High Quality Environments across the District. Under Policy LP4 Part B any site for between 1 to 249 dwellings may be considered as having potential for development.

New development in Villages (non-allocated sites i.e. windfall)

The Local Plan expects about 1,200 dwellings to be built in villages over the plan period. For development in villages Policy LP4 Part B directs the reader to Policy LP12 – Rural Areas, which sets out eleven criteria (a to k) that any planning proposal would need to satisfy. Each village has the potential to increase by up to 10% (15% in the case of Growth Villages) with this limit only exceeded where there is demonstrable support from the local community through either a proportionate pre-application community consultation or a Neighbourhood Plan exercise.

Policies to Consider

Planning law requires that Policy LP4 Part B should be read in conjunction with the development plan as a whole. Depending on the type of development and its location all relevant policies in the development plan need to be satisfied before planning permission can be granted. **Part B of LP4 advises the reader about which particular policies should be referred to in the first instance, but all other relevant policies would still need to be satisfied for a proposal to be approved.**

In addition when determining a planning application any other material considerations would need to be assessed. These may be particularly relevant in certain circumstances. For example, a proposal to build on an area of public open space would need to satisfy policies in the National Planning Policy Framework (NPPF) on the loss of open space as this matter is not directly addressed in the Local Plan. In this instance NPPF policy would be a material consideration (and carry significant weight if not addressed in the Local Plan) in the determination of that proposal.