

Monday, 19 February 2024

Report of the Portfolio Holder for Housing and Planning

Local Plan Progression Options

Exempt Information

None

Purpose

To seek Committee endorsement of the recommendations to be made to Cabinet for approval for the revised approach to the delivery of a new local plan for Tamworth resulting from Government's proposed changes to the planning system, and for the publication of associated documents.

Recommendations

It is recommended Committee approve the following recommendations to Cabinet:

1. Approve the revised approach to the development of the new local plan for Tamworth; and
2. Approve the publication of the updated Local Development Scheme and Statement of Community Involvement.

Executive Summary

The current local plan was adopted in 2016 and covers the period up to March 2031. In March 2020 a review of the plan was carried out which determined that a number of elements of the plan would benefit from being updated as a result of changes to national policy and Council objectives. Work has commenced on a new local plan for Tamworth, with an issues and options consultation being undertaken in September/October 2022. The published Local Development Scheme ('LDS') sets out a timetable for the delivery of the new local plan. This timetable states that a draft plan is due to be submitted for examination in late 2025.

Since work began on the new plan, the Government have proposed to make a number of changes to the plan-making system, but the full details of those changes have not been set out yet. It is however anticipated that the proposed changes will be introduced in late 2024. Transitional arrangements are also proposed that would mean that local planning authorities currently in the process of writing a new local plan can submit that plan for examination under the current arrangement until 30 June 2025. Beyond that date, new plans will need to be produced and examined in line with the new arrangements.

Based on the current timetable, the new local plan will not be ready for submission before the transitional arrangements proposed by Government have expired. Therefore, based on the information currently available, a plan based on the current timetable would not be able to be submitted for examination or would not be found sound by an inspector at that point. This report considers the potential alternative approaches available to the Council at this point and recommends that the most appropriate course of action at this point would be to omit the non-statutory 'preferred options' consultation in order to condense the timetable and allow the plan to be submitted for examination before the June 2025 deadline.

Options Considered

1. Continue with the current approach

The first alternative is to continue with the current approach and seek to put a preferred options consultation out early in 2024. This is the approach currently set out in the published Local Development Scheme ('LDS') and approved by Cabinet prior to the proposed changes to the planning system. It is therefore the default position that will need to happen if no other decision is made.

If the suggested changes to the planning system are brought in within the published timeframe, then this approach would result in the Council arriving at the examination stage with a plan that is potentially not in line with the requirements to be considered 'sound' by a planning inspector. This would result in a significant amount of resources (both time and money) having been spent on a new plan that would be unable to be adopted.

2. Stop until further notice

The second alternative option is to resolve not to progress the local plan any further at this point. A number of other councils in the region have previously taken this approach as a result of the uncertainty created by the limited information provided by Government on the introduction of the new system. However, a number of those councils have since made the decision to continue development of their plans.

The benefit of such an approach would be that it could avoid abortive work being carried out if work is paused until further guidance is provided by the Government. There are issues with this approach however, as the current plan is now over 5 years old and is in need of changes as the 2020 review noted. There is a risk that the older the plan becomes, the more policies in it will become out of date and development will be allowed to occur in a less controlled way as a result. Alternatively, Government may choose to intervene in some circumstances and impose policies on the council.

There is also a risk that the proposed new plan-making system may not be introduced as planned, in which case the delay caused by pausing development of a new plan will have been unnecessary. A new plan would still be required but would take longer to deliver.

For these reasons, this option is not considered the most appropriate.

3. Push back the current timetable by 6 months

The third option considered is to push back the existing timetable by 6 months. This would mean that no preferred options consultation is carried out in early 2024 but would instead allow more time for further information on the proposed new system to be provided by Government.

This option is very similar to the previous option considered, but would have a set timeframe for the pause, after which time a further decision would be required about how to progress a new plan from that point. The key difference between this option and the previous option is that, rather than a complete pause in plan-making activities, this option would just delay any further consultations, but background work, such as evidence gathering, could continue.

This option would have a similar effect as the previous option and would therefore suffer from the same issue of delaying the delivery of a new plan and risking uncontrolled development within the borough until such time as a new plan is in place. It would however allow for some development work to continue, such as evidence gathering and policy development, where it would be of benefit to a plan made under the current system or the proposed new system.

This option is more appropriate than the previous option considered, due to the potential to continue working on plan development, which may reduce the potential delay in adopting a new plan. However, this approach would likely result in the draft new plan being assessed against the objectives of the proposed new plan-making system, not the new system. In that

case, while it is still unclear what the proposed new system will look like, there is still the risk that any work carried out may end up not being relevant, and that would not be an efficient use of resources. For this reason, this potential option is also not considered to be the most appropriate.

4. Update the current plan now, then do a new plan later

The 2020 review of the adopted local plan established that the plan was performing well in general but would benefit from changes to a few policies because of changes to national policy and guidance, as well as changes to local priorities. Since that review was undertaken, further changes have taken place at a national level, meaning that more of the policies within the adopted plan would benefit from changes.

This option considers the possibility of doing an update of the existing plan, to fix some of the more significant issues with it now, and to then start work on a whole new plan once the new plan-making system is introduced. The benefits of this approach are that it should result in an updated version of the plan being adopted earlier than if any of the first three options are chosen.

This approach would require a similar amount of work to producing a whole new plan and would require an examination in public, with a draft plan still needing to be submitted before the 30 June 2025 deadline. It would also require the collection of evidence to support the plan which would be subject to similar issues to those outlined in option 5 below. Also, due to the length of time between collecting evidence for a plan update and developing a new plan under the new system, it is possible that evidence will need to be refreshed or updated for a new plan which would result in additional cost.

If for any reason the new system is not introduced as proposed, a further update of the plan would still likely be required soon after the initial update is completed. However, if this were to happen, the Council should expect to be aware of this before the submission deadline and the opportunity should then exist to change to a different approach and develop a whole new plan if considered appropriate at the time.

One significant potential issue with this approach is that the current adopted plan runs until 2031. New plans are expected to run for at least 15 years from the date of adoption and, with an anticipated adoption date of late 2025 at the earliest, this would leave less than six years of the plan period to run at the point of adoption. This is a policy issue, not a legal issue, and so it is possible that an argument could be made that it should be acceptable, but there is a significant risk that an inspector would not find the plan sound as a result. The end date of the plan could be extended to overcome this issue, however that would affect all aspects of the plan and require further evidence to be collected. This would mean there would be no benefit to this approach over the development of a whole new plan.

This option is preferable to options 1, 2, and 3 as set out above and was the preferred option of the Local Plan Working Group. However, following further consideration by officers, this approach is not deemed to be the most appropriate option because of the risks subsequently identified.

5. Omit the non-statutory ('preferred options') consultation stage to condense the timetable

This option would see the 'preferred options' consultation stage (currently due to be carried out in early 2024) being dropped to allow the existing timetable to be condensed so that a draft plan can be submitted for examination by the June 2025 deadline. The published timetable in the current LDS has the date of submission of a draft plan for examination as late 2025. Dropping a formal 'preferred options' consultation stage should allow for resources to be focussed on the development of a draft plan, allowing the next stage of consultation to be brought forward, and allowing a draft plan to be submitted for examination before the 30 June 2025 deadline.

The benefits of this approach are that it would allow for a new plan to be written and examined under the current system and would therefore avoid the uncertainty of waiting for

the new system to be introduced. It would also likely get a new plan in place faster than waiting for the new system, which would reduce the risks associated with the aging current plan.

This approach does however rely on the ability to commission experts to help prepare the evidence base required to support the plan in a timely fashion. There are likely to be a few councils around the country working to get draft plans completed before the deadline and this could potentially impact on the availability of experts to help develop the evidence base. There is also the possibility that a delay to the process could cause the June 2025 deadline to be missed resulting in similar issues to the other options considered around not having an up-to-date plan in place and efficient use of resources.

Whilst there is the possibility that the published deadline of 30 June 2025 could be moved by Government; in the absence of any further information, it should be assumed at this point that the deadline is definitive. Therefore, any option that would result in a new plan being submitted for examination prior to that point should be considered more appropriate than an option that would not be able to comply with that deadline. If the June 2025 deadline were to be extended by Government, it may still be possible having chosen this option to insert a 'preferred options' consultation back into the timetable if it would be beneficial to the development of the new plan.

It is therefore considered that this is the most appropriate option open currently. This option was the Local Plan Working Group's second favourite.

Resource Implications

The Royal Town Planning Institute ('RTPI') estimates that the cost of developing a local plan is between £300,000 and £400,000. The estimated total cost of a new plan for Tamworth, based on market research and the costs associated with the current adopted plan, is approximately £375,000. This estimate covers the costs of collecting evidence to support the plan, along with the costs associated with an examination in public. Approximately £100,000 of this has already been spent on evidence collection.

The local plan has an annual budget of £10,000 for 2024/25 and £10,000 for 2025/26. There is also £215,759 held in reserve from underspend in previous years where plan production was delayed. A policy change may be forthcoming for the 2025/26 financial year following progression of the new local plan this year.

The resource implications of the proposed approach (Option 5) are similar to the existing approach, as the overall project is the same, just with a condensed timetable. There will still be the requirement to collect the same evidence, and there will still be a cost associated with examination. It is proposed to extend the contract length of one existing temporary post to provide additional staff resources to help deliver the new plan in the timeframe. Again, this would have been required under the existing approach and it is intended to fund this using existing budgets.

If an alternative approach were to be chosen, there may be additional resource implications. These potential implications have been referenced in the 'Options Considered' section of this report.

Legal/Risk Implications Background

Implications associated with preferred approach (Option 5)

The relevant legislation governing the production of a local plan are the Planning and Compulsory Purchase Act 2004 (as amended) ('the PCPA') and the Town and Country Planning (Local Planning) (England) Regulations 2012 ('the Regulations'). Regulations 18 and 19 of the Regulations between them require two stages of consultation. Regulation 18 is

essentially the 'issues and options' stage, which was carried out in September/October 2022, and Regulation 19 is a consultation required before submission of a draft plan for examination and is predominantly focussed on the legal compliance and soundness of the draft plan.

It is common practice for an additional stage of consultation (the 'preferred options' consultation) to be carried out between the Regulation 18 and Regulation 19 consultations. This additional consultation stage is currently included within the Council's Local Development Scheme ('LDS') and Statement of Community Involvement ('SCI'). This is the stage of consultation that it is proposed to remove in order to allow the Council to meet the deadlines set by Government in relation to the transition to the proposed new plan-making system.

Legal advice has been sought on this proposal to omit the 'preferred options' consultation stage. Unlike the other stages of consultation, the 'preferred options' stage is not a statutory stage in that it is not required by the Regulations. To omit the 'preferred options' stage would therefore not be unlawful, and this is the view reached by the Council's legal advisor on the matter.

However, section 19 of the PCPA states that development plan documents (documents that form part of the local plan) *"must be prepared in accordance with the local development scheme"*. Section 19 also states that *"in preparing the local development documents (other than their statement of community involvement) the [council] must also comply with their statement of community involvement"*.

As stated above, the Council's current LDS and SCI include a 'preferred options' consultation stage prior to the Regulation 19 pre-submission consultation. This means that to omit the 'preferred options' consultation stage without updating the LDS and SCI to reflect that approach would not be legally compliant and would result in the plan being found unsound at examination. This view has been confirmed by advice received from the Planning Inspectorate ('PINS'), who would be responsible for undertaking the examination in public.

However, if updated versions of the LDS and SCI are published which reflect the revised approach, then the risk of the plan being found unsound because of not complying with section 19 of the PCPA would be removed. This has been confirmed by advice received from PINS which made clear that no part of the assessment of legal compliance and soundness requires the Council to undertake public consultation exercises over and above those required by legislation.

The Planning Practice Guidance published by Government also states:
"There is considerable flexibility open to local planning authorities in how they carry out the initial stages of local plan production, provided they comply with the specific requirements in regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012, ('the Local Plan Regulations') on consultation, and with the commitments in their Statement of Community Involvement. It is important to make clear how any consultation fits within the wider local plan process."

A recommendation is therefore included in this report to publish a revised copy of both the LDS and SCI, which should be sufficient to address this issue.

Whilst the plan making process is controlled by the Regulations (i.e. legal process) the wider process is made up of a series of planning judgements, on such matters as the sufficiency of evidence or the range of options considered. As referred to above, before any draft plan can be adopted by the Council, it must go through an examination in public, during which an independent inspector will consider whether the plan is 'sound'.

In order for a plan to be found 'sound' it must be:

- i. positively prepared,
- ii. justified,

- iii. effective, and
- iv. consistent with national policy.

The legal advice received raised the question, is the process the Council intends to pursue sufficiently robust that an examining inspector (PINS) would consider it achieved a 'sound' plan? As set out above, PINS have confirmed that the proposed approach would not directly influence the test of soundness. However, the legal advice received raises one further point that is worth considering. Whilst the proposed approach would not be unlawful, it is possible that it would generate criticism from residents and other respondents that could lead to dissatisfied parties making an argument that the omission of a preferred options stage meant any local plan was not 'positively prepared'. Based on the advice received from PINS, this is not considered to be a significant risk. This risk can also be further mitigated by encouraging engagement from the public outside of the two formal consultation stages.

Implications associated with potential alternatives

There are a number of risks associated with the potential alternative approaches; however, where appropriate, these have been set out in the options considered section of the report.

Equalities Implications

The decision to be made here relates solely to the Council's approach to preparing a new local plan for Tamworth. The new local plan itself will have a significant impact on the borough and, as part of the plan-making process, full consideration will be given to the impact of new policies on the community including such things as health and wellbeing, and protected characteristics. The proposed approach of omitting the preferred options consultation could impact on the ability of residents to get involved in the plan-making process, however this impact would not disproportionately affect any groups, particularly those with protected characteristics.

Environment and Sustainability Implications (including climate change)

The proposals set out relate to the development of a new local plan which will be focussed on the sustainable development of Tamworth in the future. There are no additional sustainability implications as a result of the proposals set out in this report.

Background Information

The current local plan was adopted in 2016 and covers the period up to March 2031. Legislation introduced in 2018 requires that local plans are reviewed at least every five years, and in March 2020 a review of the plan was carried out. The review determined that a number of elements of the plan would benefit from being updated as a result of changes to national policy and Council objectives, and work has since begun on a new local plan for Tamworth.

A Local Development Scheme ('LDS') was published in September 2022 setting out a timetable for work on the development of a new local plan up to the end of 2025. This timetable included an Issues & Options consultation in September 2022; Preferred Option consultation early in 2024; Pre-submission Consultation early in 2025; and submission of a draft plan for examination in late 2025. An Issues & Options consultation was carried out in September/October 2022, and the next phase of plan development according to the LDS timetable would be a Preferred Option consultation.

Potential legislative changes

As part of the Levelling Up and Regeneration Bill (now enacted), Government proposed to make a number of changes to the plan-making process, but the full details of those changes have not been set out yet. According to the 2022 consultation published by the Department for Levelling Up, Housing & Communities (DLUHC), the proposed changes are intended to be introduced in late 2024.

Transitional arrangements are proposed that would mean that local planning authorities ('LPAs') currently in the process of writing a new local plan can submit that plan for examination under the current arrangement until 30 June 2025. Those LPAs will then have until 31 December 2026 for the examination to be concluded and the plan to be adopted. LPAs that do not meet the 30 June 2025 submission deadline for 'old-style' plans will be expected to prepare a plan under the new plan-making system.

Impact of the legislative changes on work on the new local plan

The published LDS sets out the timeframe for development of the new local plan up to the end of 2025. The LDS currently sets a timeframe for submission of the new plan for examination late in 2025. This is likely to be some time after the transitional arrangements proposed by Government have expired. The implications of this, based on the information currently available, is that a plan based on the current timetable would not be able to be submitted for examination or would not be found sound by an inspector at that point.

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List of Background Papers

None.

Appendices

Appendix A – Draft Local Development Scheme
Appendix B – Draft Statement of Community Involvement

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