

19th March 2013**REPORT OF THE PORTFOLIO HOLDER FOR ECONOMIC DEVELOPMENT AND
ENTERPRISE****Local Plan 2006 – 2028
Planning Inspector's Exploratory Meeting Recommendation &
Memorandum of Understanding****EXEMPT INFORMATION**

N/A

PURPOSE

The report seeks to inform Members on:

- The progress of the Local Plan 2006 – 2028 examination
- The Exploratory Meeting into the Local Plan
- The Planning Inspector's recommendation following the Exploratory Meeting

and to update Members on:

- Updating the Memorandum of Understanding between Tamworth Borough Council, Lichfield District Council and North Warwickshire Borough Council.
- Work arising from Inspector's notes and the Exploratory meeting recommendation letter.

RECOMMENDATIONS

1. **That the Tamworth Local Plan 2011 – 2026 as submitted in November 2012 is withdrawn from examination.**
2. **To endorse the updated Memorandum of Understanding between the three Local Authorities prior to it being signed by the Leader of the Council.**

EXECUTIVE SUMMARY**Local Plan Examination**

The Tamworth Local Plan was submitted to the Secretary of State in November 2012 for examination. After the submission of the plan, the appointed Planning Inspector raised concerns over the soundness and legal compliance of the Local Plan. To overcome these concerns the Inspector requested that an Exploratory Meeting (EM) should be held so that these issues could be discussed.

The EM allows for the Inspector to consider how best to proceed with the examination in light of the concerns raised. The EM would result in 1 of 4 options: a temporary suspension to allow additional work to be done, concerns are resolved at the EM, concerns are unresolved but the examination continues with possible risk to be found un sound, or Council decide to withdraw.

Council officers prepared a response to all the points which raised in advance of the meeting. The Council's response set out how these areas of concern would be overcome and what work would be required. The Inspector's detailed list of concerns and the Council response is

attached as a back ground paper.

Summary of the concerns raised by the Inspector.

- Further detail on the Anker Valley allocation including detailed viability assessments
- Further detail to guide the principle, timing and impact of the 1,000 dwellings outside of Tamworth
- Absence of specific allocations for housing, employment and town centre uses
- Out of date Gypsy and Traveller assessment evidence base
- More information for the proposed multi-purpose community sports facility
- Flexibility of the plan and how it can deal with change

At the EM held on Tuesday 12th February the Inspector and Council discussed each of the Inspector's issues, with the Inspector inviting comments from members of the public and developers in attendance at the meeting. The comments made by the Inspector at this point suggested that he may allow the Local Plan to proceed in accordance with the Council's note and work schedule.

However the Inspector, members of the public and developers did raise concerns over the scale of changes, and whether by resolving the Inspector's concerns the Local Plan would not comply with the legal public consultation requirements and European Directives for Sustainable Environmental Assessments (SEA/SA), which would leave the Local Plan at risk to legal challenges once adopted by Council.

The Inspector issued a letter and his notes to the Council on Friday 15th these summarised the EM and gave his recommendation to withdraw the Local Plan from examination. The Inspector's reasoning for his recommendation is:

- The extent of changes would result in a substantially and significantly different Plan to that which was publicly consulted upon and then submitted for examination.
- Participants would be denied the proper opportunity to affect the Local Plan's strategic direction and detail because of the changes required
- The SEA/SA of new or amended policies in the Local Plan may be carried out to justify the decision making process, rather than being used to inform policy decisions.

It should be noted that the Inspector had no issue with the overall strategy of the Local Plan in terms of number of houses, quantity of employment land, nor did he have issue with the specific work required, but his issue was with the processes required to carry out this work would leave the Council open to legal challenge on all of the above points if the Local Plan were to be adopted.

Dealing with these issues outside of the examination process will significantly reduce the risk of legal challenge upon adoption of the Local Plan. The risk of a legal challenge on this Local Plan would be quite high, especially as the Inspector has outlined in several instances where a legal challenge could take place. There is sufficient case law from similar examples to demonstrate that a claimant could be successful in their application under Section 113 of the 2004 Planning Act for a legal challenge. Recently other Local Authorities have been advised to withdraw Local Plans with similar issues from examination.

The Inspector's notes were distributed by the Programme Officer on Monday 19th February to all of those involved in the Local Plan process and were uploaded to the Local Plan examination web page.

Under the 2012 Planning Regulations the Local Plan can only be withdrawn by the Council or the Secretary of State therefore Full Council will need to approve a withdrawal.

Background

The issues with delivering Anker Valley and demonstrating a deliverable housing supply were known upon submission of the Local Plan. These are the areas identified by the Inspector which require substantial additional work to be carried out. It was felt that these issues could be overcome during the examination process, however, as detailed the scale of change needed could result in a legal challenge. Additional contributing factors to this are: the Local Plan was predominantly prepared under the old national planning policy guidance as a Core Strategy, the new NPPF requires more detail for Local Plans predominantly the need to demonstrate viability and a greater emphasis on housing delivery, the Anker Valley consortium's failure to deliver upon agreed work schedules for master planning, infrastructure and deliverability and latterly their break up and unwillingness to work together on this scheme.

Options available

Option One – as recommended, would be to withdraw the Local Plan from examination and a revised plan to be progressed to address the concerns raised. This would allow for the additional necessary detail to be included in the plan greater than previously submitted, on key areas such as retail policy, employment allocations, housing allocations and in particular the Anker Valley sustainable urban extension. A revised plan would overcome the main concerns of potential legal challenge raised by the Inspector as the additional work and consultation would be carried out, outside of the examination process.

If the decision to withdraw is taken, a letter will need to be sent to the Planning Inspectorate to inform them of the Council's decision. After this all persons on the consultation database must be informed and a notice placed in the local press. In addition to this the Council must cease to make available documents related to the Local Plan until the process for the next Local Plan starts again. Attached to this report is the withdrawal notice which will form the basis of any notice or letter to be sent out.

Option Two – as put forward to the Inspector at the Exploratory Meeting. This would be to continue with the examination to an initial Duty to Co-Operate hearing session, and then to suspend the examination and carry out work set out in the work schedule. The examination would re-start in late Autumn, if found sound the Local Plan could be adopted Spring 2014. This option is very high risk as ultimately even if the Local Plan is found sound, there is a potential for a legal challenge on the Local Plan over public consultation and sustainability appraisal.

If the decision to carry on is taken, we must inform the Planning Inspector so that arrangements can be made for the next stage of the examination. Although it is possible to carry on with the examination, the Inspector would likely to find the plan unsound in his final report for the same reasons he has outlined in his recent letter.

Next Steps if Option One is taken

If the Local Plan is withdrawn, legally the development plan preparation process will need to re-start again. Planning regulations must be followed and therefore new rounds of public consultation must take place. There is also a requirement to carry out the necessary Sustainability Appraisal work on strategy and site specific policies. These are the two areas of work which the Inspector believes the plan would be subject to legal challenges if the plan was not withdrawn. By carrying this work out in accordance with the regulations the risk of legal challenge will be reduced.

There will need to be an assessment of the evidence base used in the preparation of this Local Plan. This will examine what evidence might need updating. The updates could involve extending projection periods or may require a refresh if the evidence is significantly out of

date. Out of date equates to roughly 5 years, but this depends upon the significance of the policy and what the evidence is used for. The Inspector has already noted that the plan period would need to be extended so that it runs for 15 years from the date of adoption and that new housing and population data should be considered.

Once this assessment has taken place work can begin on updating the evidence base and some policies can be reworked taking on board comments made by the Inspector. In addition to this the further work required to make land use allocations can begin. This initial work will look at potential options for land use allocations, once this is completed the necessary Sustainability Appraisal (SA) work can then be undertaken on strategy and allocations. The SA will inform the strategy for development in the Borough and the allocations required to achieve this. Once the allocations have been selected it will be necessary to carry out viability assessments to show that development will not be restricted by the Local Plan.

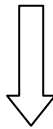
	Evidence Base Assessment
	Evidence Base Updating and some policy reworking
	Initial Allocation Work
	Sustainability Appraisal – strategy and allocations
	Viability Assessment

Table 1

Following the completion of the evidence base updates, technical work and sustainability appraisal the Local Plan would need to be consulted on in accordance with the regulations and the Council’s own Statement of Community Involvement.

The consultation work will need to demonstrate that all the strategic options and land use allocation options have been subject to an SA before any decisions were taken. The consultation must also allow for further realistic alternative suggestions to be made.

To achieve this, a Draft Local Plan should be produced. If a pre-submission version were to be the only consultation, this would have effectively removed the ability to submit realistic alternatives and for the Council to have fully considered any other options, therefore increasing the risk of a legal challenge.

Once the Draft Local Plan has been consulted on, comments can be taken on board and the pre-submission of the Local Plan can be produced and consulted on. The turn around time between these two stages should be as minimal as possible.

Once the pre-submission consultation has been completed the Local Plan can be submitted to the Secretary of State (Planning Inspectorate) for examination.

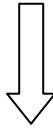
	Prepare Draft Local Plan
	Draft Local Plan Consultation
	Assess comments made on Local Plan
	Prepare ‘Pre-submission’ Local Plan
	Submit Local Plan to Secretary of State

Table 2

A work schedule has already been drawn up to address the issues raised by the Inspector at the Exploratory Meeting. This can be used as a starting point for a work schedule to progress the ‘new’ Local Plan to submission, a more comprehensive, specific and detailed schedule will be produced in due course.

Next Steps if Option Two is taken

If option two is taken then the schedule set out and discussed at the Exploratory Meeting will be followed. The immediate next step would be the duty to co-operate hearing session in

April / May, after this the examination would be suspended so that the work required to address the Inspector's concerns can be carried out. On completion of this a public consultation would take place, with the hearing sessions re-starting in November / December 2013, with a likely adoption date of the Local Plan in Spring 2014. As detailed in this report, if this option was taken there would be a significant risk of a legal challenge.

Regardless of which option is taken, the Development Plan team have progressed work areas which would be necessary for either option, this includes forming an evidence base to support a windfall allowance for housing in the Local Plan and progressing work on the Anker Valley allocation.

Positives which can be taken from this examination into preparing a new revised Local Plan

The Council has endeavoured to meet the Inspector's concerns and progress the plan as quickly as possible. However, it is clear that the legal framework would make it difficult to make the necessary changes to the Plan and allow public involvement. The Plan will be able to be progressed much more efficiently and with greater public involvement if it were to be withdrawn. The main benefits of withdrawing are:

- Move out of a reactionary (examination) into a proactive way of working to resolve these issues.
- Inspector has looked over the plan and significant areas of concern can be resolved using supporting evidence
- Gives time to re-calibrate the town centre regeneration and overall retail strategy
- Allow for work to be carried out on Anker Valley so that key issues can be resolved and the full infrastructure needs are identified
- Allow for proper consultation with statutory bodies and members of the public on changes to the plan, in particular housing and employment allocations. *Reduces the risk of legal challenge if the Local Plan is withdrawn*
- Allow for a new Sustainability Appraisal to be carried out. *Reduce risk of legal challenge if the Local Plan is withdrawn*
- Allow for the Council to re-assess its options for delivery of housing (including town centre, employment land, Greenbelt and green field) so that the necessary work (SA and consultation) has been carried out in the formative stages of plan preparation. *Reduce risk of legal challenge if the Local Plan is withdrawn.*
- Allow for proper consideration of/if sports centre allocation is required and how it can be funded.
- Able to easily make other 'minor' modifications to the Local Plan.
- The Inspector had no major issues with the strategy of the plan; he required further detail on how the strategic aims would be achieved.
- The Inspector agreed with the Council's approach to Gypsy and Traveller policy and agreed that to allocate a site for only one pitch would not be required.
- By submitting the Local Plan for examination it pushed North Warwickshire and Lichfield into consulting and moving towards submitting their respective plans for examination. Both Local Authorities had been reluctant to work with Tamworth in delivering some its housing needs. Duty to Co-operate issues will be dealt with at their Local Plan examinations, this will give a good indication as to whether Tamworth's Local Plan will require further work in this area.
- This process will result in a more effective and realistic Local Plan to tackle major issues facing Tamworth.

Memorandum of Understanding

Through the examination of the Local Plan and concerns raised by the Inspector it has become apparent that the Memorandum of Understanding (MoU) requires amending. Currently the following proposed amendments have been agreed at officer level between Tamworth and Lichfield.

- To remove the restrictions of land coming forward North of Anker Valley in Lichfield to meet Tamworth's needs based upon the construction of transport linkages, and for the delivery of homes in Lichfield to be informed by the ongoing master planning work.
- To agree the mechanisms for monitoring housing policy and residential land within Lichfield and North Warwickshire where policy indicates or land has been allocated to meet the housing needs of Tamworth.

Officers are still discussing the amendments needed with respect to the agreements between Tamworth and North Warwickshire; Cabinet will be updated of this progress in due course.

The proposed amendments are shown within enclosed document 6 in the appendix of this report.

Community Infrastructure Levy (CIL)

The Cabinet received a report on CIL in May 2012 and authorised the Director of Communities Planning and Partnerships to lead on the production of an evidence base and a preliminary draft charging schedule. The first piece of evidence has been collected on local values and further work needs to be undertaken to identify an appropriate Levy rate before being consulted on. It had been anticipated that the CIL timetable would follow that of the Local Plan. However, there is now an opportunity to run the two timetables closely together and undertake a joint consultation.

RESOURCE IMPLICATIONS

The Examination of the submitted Local Plan has incurred costs to pay for the Programme Officer and time for the Planning Inspector. The Planning Inspectorate estimate the cost to date for the Inspector is £23,000, this has not been paid yet as the Planning Inspectorate will only invoice the Council once the examination is closed. The Programme Officer has cost just under £950 to date. These costs can be met from the existing LDF budget.

It is estimated that the current LDF budget will be sufficient to cover the costs of preparing, submitting and examination of a new Local Plan, if the submitted Local Plan is withdrawn now. If the timetables for the Local Plan and CIL can be run together, there will be efficiencies to be gained from the cost of advertising and consultation.

If the submitted Local Plan examination was to continue and be found sound at examination but ultimately is unsuccessful in defending a possible legal challenge there would be the additional cost for the Council to be represented by a Barrister at the High Court. If lost at the High Court, a legal challenge may cost in the region of £30,000, if lost at the Court of Appeal this could increase by a further 20-30%. There is no budget to cover any legal challenge to the Local Plan.

LEGAL/RISK IMPLICATIONS BACKGROUND

The Inspector's letter and notes from the Exploratory Meeting have highlighted the possible legal risks to continuing with the submitted Local Plan. Again, these would be over:

- The extent of changes would result in a substantially and significantly different Plan to that which was publicly consulted upon and then submitted for examination.
- Participants would be denied the proper opportunity to affect the Local Plan's strategic direction and detail because of the changes required
- The SEA/SA of new or amended policies in the Local Plan may be carried out to

justify the decision making process, rather than being used to inform policy decisions.

Dealing with these issues outside of the examination process (by withdrawing the submitted Local Plan) will significantly reduce the risk of legal challenge upon adoption. The risk of a legal challenge on this Local Plan would be quite high, especially as the Inspector has outlined in several instances where a legal challenge could take place and the previous Local Plan was also subject to legal challenge. There is sufficient case law from similar examples to demonstrate that a claimant could be successful in their application under Section 113 of the 2004 Planning Act for a legal challenge. There are other examples of Local Authorities withdrawing Local Plan because of similar potential legal challenges.

There are risks and implications if the submitted Local Plan is withdrawn, these would be

- A delay in the adoption of a Local Plan will mean planning applications being determined using the National Planning Policy Framework (NPPF) and the old 2001-2011 Local Plan where those saved policies are in general conformity with the NPPF.
- Pressure for development in inappropriate locations, such as the Green Belt, less control over retail applications.
- No local planning policy to guide affordable housing targets, housing density, housing mix

SUSTAINABILITY IMPLICATIONS

The revised Local Plan will be subject to a Sustainability Appraisal and Strategic Environmental Assessment. This will ensure that sustainability issues are fully assessed in the preparation of planning policy and land use allocations.

BACKGROUND INFORMATION

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LIST OF BACKGROUND PAPERS

Please see links in appendices to; Inspector's Exploratory Meeting Concerns and Council's response, Inspector's Exploratory Meeting Notes, Inspector's Exploratory Meeting recommendation letter.

APPENDICES

Updated Memorandum of Understanding Between Tamworth Borough Council, Lichfield Borough Council and North Warwickshire Borough Council.

Inspector's Exploratory Meeting Concerns and Council's Response

Council's Proposed Work Schedule

Inspector's Exploratory Meeting Notes

Inspector's Exploratory Meeting Recommendation Letter

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