

# Extraordinary Cabinet

25 January 2021



	<b>Moratorium on development in Staines-upon-Thames</b>
<b>Purpose of the report</b>	To make a decision
<b>Report Author</b>	Terry Collier, Deputy Chief Executive (s151 Officer) Heather Morgan, Group Head Regeneration and Growth
<b>Cabinet Member</b>	Councillor John Boughtflower
<b>Confidential</b>	No
<b>Corporate Priority</b>	Housing Economic Development Financial Sustainability
<b>Recommendations</b>	<b>Cabinet is asked to make a decision on:</b>  <ol style="list-style-type: none"><li><b>1. Whether any proposed development of Staines Town Centre by Spelthorne Borough Council should be kept on hold until the Staines Development Framework has been adopted</b></li><li><b>2. Whether Developers of Major applications proposed in the Staines Town Centre should be requested to defer their applications until the Staines Development Framework is adopted</b></li></ol>
<b>Reason for Recommendation</b>	<b>On 10 December 2020 Council agreed a Motion that Cabinet consider the above matters.</b> <b>The report sets out the background and reason for the Motion, and the relevant timeframes for the adoption of the Staines Development Framework.</b> <b>It will also set out the very significant financial, development, affordable housing and local plan implications of the Motion were it to be agreed.</b>

## 1. Key issues

- 1.1 A Motion was agreed at Council on 10 December 2020 which required Cabinet to consider:

- Whether any proposed development of Staines Town Centre by Spelthorne Borough Council should be kept on hold until the Staines Development Framework has been adopted
  - Whether Developers of Major applications proposed in the Staines Town Centre should be requested to defer their applications until the Staines Development Framework is adopted
- 1.2 For the purposes of this report Staines Town Centre is defined as the boundary agreed for the Staines Development Framework (**Appendix 1**).
- 1.3 This Motion reflects concerns being raised by residents, in Staines-upon-Thames in particular, and councillors about the potential level of development which could be coming forward via the planning application route. Their concerns are based around the fact that this would result in development coming forward in an ad hoc manner in advance of the adoption of the Local Plan and the Staines Development Framework. This means there is a risk of developments being out of sync with future Local Plan, and there could be reputational risks if planning applications are being perceived as being accelerated in advance of new Local Plan and Staines Development Framework. It is also evident from the debate which took place at the Council meeting that the proposed height, bulk and massing of developments are considered to be a particular issue of concern.
- 1.4 As a major landowner in the town centre, the Council has a critical role on a number of fronts which are expressed in a number of adopted corporate policies which have been adopted by Full Council (see para 2.58 below for more detail):
- (1) helping deliver the housing numbers required as part of the Local Plan which links to corporate objectives and priorities for housing delivery upfront
  - (2) delivering mixed use regeneration schemes which are focused on much need residential housing, and in particular housing that is affordable to local residents
  - (3) civic leadership role in ensuring a prosperous local economy especially in terms of the need to ensure a robust recovery post COVID-19 (retailers and restaurants need local residents to create footfall).
- 1.5 The moratorium Motion (if agreed) will fundamentally affect the future of the Council through:
- Increased budgetary and financial pressures
  - Lower levels of affordable housing
  - Reduction and delay in development activity
  - An increased risk the Local Plan cannot deliver the required housing numbers and is found 'unsound'
- 1.6 These implications will be explored in more detail below.
- 2. Options analysis and proposal**
- 2.1 The report will be split into sections to cover each of the limbs of the moratorium Motion which were agreed at Council, setting out clearly all the implications which fall out of these. The options for Cabinet are either to agree each of the first two limbs (as set out in the recommendation) or not.

- 2.2 For ease of reference **Appendix 2** provides a ‘one page at a glance’ consideration of all the main issues which are set out in the following pages.

**Council schemes to be kept on hold until Staines Development Framework has been adopted (Moratorium)**

**Timeframe**

- 2.3 The first key questions that are thrown up are:
- how long it will take for the Staines Development Framework (SDF) to be adopted
  - whether or not it can be de-coupled from the adoption of the Local Plan in order to accelerate its progress
- 2.4 Answers to those questions will then set the timeframe within which the moratorium would take effect, were it to be agreed. This in turn provides clarity around the length over which the financial, development and wider strategic planning impacts would be felt.
- 2.5 Adoption of the Spelthorne Local Plan is currently set for March 2022 (as per the approved Local Development Scheme set out below which sets out the timeframes for completion of the various stages to reach adoption of the Local Plan including consultation in January and February, consideration of representations in March and April, formal submission April 2021, examination in August 2021, an Inspectors report December 2021 and final adoption in March 2022). Whilst this is still achievable, there is a lot of work still to be done by the Local Plan Task Group in agreeing a draft document (including site allocations) which is ready for submission in spring 2021. For the purposes of this report it is assumed that the Local Plan can be adopted by March 2022.

Local Plan	2020												2021												2022											
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O		
Preferred options consultation	■																																			
Consider reps from consultation	■	■																																		
Prepare Publication Local Plan		■	■	■	■	■	■	■	■	■	■																									
Staines Masterplan preparation		■	■	■	■	■	■	■	■	■																										
Publication Local Plan consultation												■	■																							
Consider reps and final prep														■	■	■																				
Submission to Secretary of State																■																				
Examination of Local Plan																				■																
Inspector's report post-examination																							■													
Adoption of Local Plan																										■										

- 2.6 Between November 2019 and January 2020, the Council consulted on its Preferred Options document. At that time the aim was to meet Spelthorne’s housing needs by releasing some weakly performing Green Belt, intensifying development in urban areas and by producing a masterplan for Spelthorne’s largest town, Staines upon Thames, to seek further opportunities for growth

beyond the sites identified in our Strategic Land Availability Assessment. The Staines Masterplan (now called a Staines Town Centre Development Framework (SDF)) was expected to be complete by the end of 2020, in time for the Regulation 19 consultation of the submission version of our Local Plan in 2021. (Whilst this timeframe has slipped and there is still a lot of work to be done, the current aim is that it will nevertheless be ready to sit alongside the submission version of the Local Plan).

- 2.7 In the Preferred Options document it was made clear that the Staines masterplan would “be key to supporting our assumption on growth in the town”. As such, the SDF is intrinsically linked to the Local Plan (as one of its main delivery mechanisms) and cannot be de-coupled. It cannot set policy in its own right, and therefore it has to be adopted as a Supplementary Planning Document (either concurrently with or after adoption of the Local Plan – we are working to the former).
- 2.8 The only other option is an Area Action Plan (which *could* be accelerated separately), but this is not recommended. Such a document would have ‘no teeth’ as it could only assume what the Local Plan would say. Such a Plan could not set policy which developers would be required to follow. Nor could it provide clear parameters around how the Council expects development to come forward over the lifetime of the Local Plan.
- 2.9 For all of the above reasons, the SDF will not be in place before end March 2022, at the same time as the Local Plan. However, it is recognised that it is the adoption date for both the Local Plan and the SDF will probably move backwards, and a more realistic date is considered to be **March 2023**. This latter date sets the context for all of the matters set out below which document the effect that agreeing this moratorium would have on the Council.

### Financial Impacts

Adverse impact on Council's Revenue budget requiring additional budget savings and/or generating alternative income.

Thameside expected to contribute **£1.1m** per annum (net interest margin).

Lost rental income for KGE from Thameside House as a result of the Moratorium would be in the order of **£5.26m** and **£4.32m** for Oast House

Potential delay in receiving significant rental income from Waterfront (to be used to offset other Council projects)

Holding costs of **£1.45m** for Thameside, **£1.96m** Oast House and **£4.5m** for Tothill

Adverse impact on the net interest margin on mixed schemes

Smaller schemes are likely to result in a net loss once the cost of purchase of site is taken into account.

Appeal costs on third party schemes which might be overturned and possible awards of costs against Spelthorne (c.**£700k**)

Cost of compulsorily acquiring housing sites to ensure we can deliver Local Plan housing numbers

### Budget pressures

- 2.10 2020 was an unprecedented year due to the worldwide coronavirus pandemic. In his statement on 25 November 2020, the Chancellor highlighted that the Office for Budget Responsibility forecasts that the economy will contract by 11.3% this financial year, the biggest drop in one year in 300 years (since 1709). He also recognised the long-term scarring of the economy with GDP likely to be 3% lower than otherwise would have been the case in 2025.
- 2.11 The full economic and financial impacts of COVID-19 on the Borough and the Council are not yet known. Spelthorne, along with the whole of England, is currently under a new lockdown, and it is anticipated that this regime will be in place until the country starts to see the positive impacts of the vaccination programme. In particular, the Council needs to wait to see what impact the ending of the national furlough scheme will have on unemployment numbers, and the number of families needing to claim benefits, receiving localised council tax support or housing support. The collection fund is already being impacted by economic situation. In turn, the future impacts on the economy and how it recovers will have an impact on the Council's service fees and charges income for a number of years to come (which will be suppressed). The Council also needs to be mindful of how local development can support the economic recovery post COVID-19.
- 2.12 These pressures are in addition to the 'normal' budget pressures we as a Council already face. Councillors will be aware that as a result of the impacts of COVID-19 and the shift in policy towards greater Affordable Housing, delivery the revenue gaps for the Outline Budget are more challenging than previously.
- 2.13 A moratorium on any Council schemes coming forward until the adoption of the SDF in March 2022 would have a negative impact on the overall fiscal position of the Council at a time it will already be under strain. With limited options for alternative income generation, significant savings are likely to be required. This could result in potentially very painful decisions having to be made around service delivery, with potential cuts and/or possible future redundancies.
- 2.14 Difficult conversations would potentially have to be made around non-statutory services such as those delivered for the community, such as Day Centres/Independent Living services, Spelride, and leisure/cultural activities. Clearly these non-statutory services are incredibly important to our residents and it was one of the great strengths that has come through in our proactive approach to dealing with the current coronavirus pandemic. Longer term potential redundancies could impact across the board, and would affect the level of service that could be provided

### Impact of moratorium on rental income (development schemes)

- 2.15 Thameside House, Oast House and Kingston Road car park, the William Hill/Vodafone unit and Tothill car park would all be directly affected by the moratorium (were it to be agreed). **Appendix 3** sets out the aggregated costs of the moratorium across the Staines-upon-Thames development portfolio.

Confidential details of these projects are attached at **Confidential Appendix 4**.

- 2.16 As Cabinet are aware, once development schemes are completed they are currently transferred to Knowle Green Estates Ltd – KGE (a 100% wholly owned Council company), who are responsible for managing the residential portfolio on behalf of Spelthorne. Delay in completion of the development projects will have a knock-on effect on the rental income stream and the net interest margin the Council will earn on mixed tenure schemes.
- 2.17 Whilst all four development schemes will be adversely affected by the moratorium (if agreed), Thameside House is by far the most progressed (**Confidential Appendix 4** sets out the detail). The current timeline (without a moratorium) assumes that permission is granted in Spring 2021, work starts in the last quarter of 2021 (calendar year) and is completed in the last quarter of 2023 (calendar year). Agreeing the moratorium would push this completion out to March 2026, and the financial consequences of doing so would be very significant.
- 2.18 All borrowing on completed residential schemes will be more than covered by the loan repayments made by KGE to the Council which are entered into on completion of schemes. In the case of mixed tenure schemes such as Thameside House the Council will earn a considerable margin between the rate it is able to borrow (say 1.5% based on current Public Works Loan Board - PWLB rates) and the “market rate” it will charge to KGE. This is called the net interest margin.
- 2.19 The annual net interest margin to the Council is expected to be £1.1m per annum once Thameside is completed, which will help support the Councils budget with an on-going revenue stream. If the development does not go ahead at all then this receipt cannot be used to offset future budget gaps. Even delaying the development in line with the moratorium would result in lost rental receipts, which in turn would increase the budget gap in 2023/2024 by a further £1.1m, up to £5.9m. This rental income shortfall would remain until March 2026 when the development is completed and can be let. The total cost in terms of lost rental income from Thameside to KGE as a result of the moratorium (if agreed) would be in the order of £5.26m to March 2026. (**Confidential Appendix 4** sets out the detail).
- 2.20 Assuming the Oast House development comes forward as 100% affordable housing, there will be no net interest margin to be gained by the Council as the borrowing rate and the market rate charged to KGE will be the same. Were the figure to drop however there would be a net interest margin which would add to the gap already created if the Thameside House scheme is delayed. The total cost in terms of lost rental income from Oast House to KGE as a result of the moratorium (if agreed) would be in the order of £4.326m to March 2026. (**Confidential Appendix 4** sets out the detail).
- 2.21 There is no net interest margin to be gained for the other sites being considered by Cabinet, as the sites are already in the ownership of the Council.
- 2.22 Waterfront (Bridge Street car park and Hanover House) is an example of how the Council is diversifying its response to delivering key regeneration schemes. Instead of the Council borrowing to finance we are instead contributing the land value and Arora are investing close to £200m. Whilst it

would not be captured directly by this element of the Motion (Arora are a private developer) it is nevertheless critical to understand the impact that any delay to delivering this scheme will have on the Council's budget.

- 2.23 Once the scheme is completed and operating at full capacity it will, by 2028, potentially generate a very significant annual income. Without this income, it will be far more challenging to finance the net cost of other large-scale projects that the Council is undertaking outside of the town centre (such as the Leisure Centre).

Impact of moratorium on 'holding' costs (development schemes)

- 2.24 Of the four development schemes, three have been directly acquired for redevelopment and regeneration purposes – Thameside House (£8.5m), Oast House and Kingston Road car park (£19.5m) and William Hill/Vodafone which formed part of the Elmsleigh Centre acquisition. These were acquired through borrowing from the PWLB, and these loans have to be paid back over a 50-year period. Delaying completion of the developments, if the Moratorium were approved, will impact on the holding costs (monthly loan payments, insurance etc) which will still accumulate whilst the schemes are 'on ice'.
- 2.25 The 'holding' costs for Thameside as a result of the Moratorium would be £1.449m and for the Oast House it would be £1.932m - totalling £3.38m. These 'holding' costs include interest costs and security.

**Affordable/Development**

Delay in affordable housing by 2 years (2,100 households in need on the housing register)

Schemes can deliver between 50 – 100% affordable rented

Development schemes could deliver c.426 units (20% of current need)

Last year no net new additional affordable units were delivered by developers

Capital monies on abortive development projects will have to be converted into revenue **(£3.45m)**

Increase in construction costs and inflation arising from delays in completing schemes **(£2.09m)**

Reduction in CIL payments will impact on the 'pot' available for infrastructure projects **(£500k is the only sum which has been finalised - Thameside)**

Market conditions are not favourable for securing a realistic price for sale (due to COVID-19 and Brexit concerns)

**Affordable Housing**

- 2.26 Any delay in delivering Council schemes will have a significant impact on the number, type and size of affordable housing units coming forward in the town

centre. The need for more affordable housing is evident from the information set out in **Appendix 5**.

- 2.27 Delivery of section 106 affordable housing is particularly concerning when you consider that between 2015 and 2020 only 199 units have been delivered (and mostly in the early years as a result of A2D's Stanwell New Start regeneration programme). No net additional affordable units have been provided by developers in the past two years. There are nearly 2,100 residents currently on our Housing Register, and on average 11 households are 'chasing' each new affordable property that comes forward for letting.
- 2.28 Levels of section 106 affordable are determined through a viability assessment which is undertaken as part of the planning application process. Within Staines-upon-Thames, the most recent large-scale schemes have delivered a mere handful of units through this process. The London Square and Berkeley Homes developments between them have only provided around 10% affordable across their sites.
- 2.29 Often, the Council are offered shared ownership rather than affordable rented units (which are out of reach of the vast majority of our residents), and officers also have to negotiate very hard to achieve the right outcome in terms of the size of unit (two beds rather than one). The viability process acts as a constraint on delivery.
- 2.30 Whilst Council applications have to go through the same viability assessment to determine the level of section 106 affordable housing, the Council can voluntarily decide to provide more affordable if it so wishes. That decision has been made on a number of schemes which are coming forward in Staines-upon-Thames. 50% of the units at Thameside House can be delivered as affordable (70 flats), in addition to the possibility of 100% on the Oast House site (217 units), 100% at William Hill/Vodafone (14 units) plus a target of 50% on the Tothill site (c125 units).
- 2.31 In total these four schemes could deliver c.426 affordable rented units which would meet around 20% of the current need on the Housing Register. Agreeing the moratorium to halt Council schemes until March 2022 at the earliest would put delivery of these units back by over 2 years by the time a planning application is worked up, submitted post March 2022 and then approved (a 12 month process). In those 2 years with the current economic position of the Country the housing register numbers are likely to materially increase with more residents in the borough being unable to live here (the register has increased from 1,600 in 2016 up to 2,100 in 2020 within the economic shock of COVID-19 having taken hold so we can expect an increase to at least the same level if not more within the next 2 years).
- 2.32 The lack of affordable housing provision as a result of the moratorium (if agreed) will undoubtedly result in greater pressure on front line services due to increased size of the housing register; there is a greater risk that the Council will be failing to meet basic needs of residents and local communities (social housing provision). It may well result in increased levels of homelessness and impact on mental health/wellbeing within the community.



## Development matters

- 2.33 A number of development specific matters would further compound the fiscal challenge which the Council will face in terms of its budgetary position up to 2024:
- Added pressure on the revenue budget. Any capital monies on abortive development projects will have to be converted into revenue **Appendix 3** sets out this figure which is £3.45m
  - Higher capital costs to deliver the delayed projects due to an increase in construction materials inflation rates of 2% pa. This is likely to happen in about 18 months' time, around the same point as the moratorium would come to an end, were it to be agreed. **Appendix 3** sets out this figure which is £2.09m
  - High risk of claims from contractors due to delays. Furthermore a hold on construction does not support the Governments steer for public bodies to financially support its key suppliers in order to stay afloat in the current challenging COVID 19 economic situation
  - Reduced level of Community Infrastructure Levy (CIL) payments to the Council as a result of delayed projects (set out above). This will adversely impact the amount of money available to deliver infrastructure projects. **Appendix 3** sets out this figure which is £500k (which is only for Thameside as the other Council schemes are not sufficiently progressed to determine the CIL payment)
  - The scope to recharge assets, legal and finance costs to KGE would be diminished if schemes did not progress, putting further additional pressure on the Council's revenue budget.
- 2.34 One option for Cabinet to consider would be to proceed with the development schemes at a reduced scale. However, any significant changes (e.g. drastically reducing the height of the developments to address the concerns of some residents and councillors) would result in a net loss once the cost of purchasing the site is taken into account. This does not make sound financial sense.
- 2.35 The only other option available if the developments do not go ahead would be to sell the assets. Market conditions are not favourable for securing a realistic price (due to COVID-19 and Brexit concerns), and conceivably the Council may have to dispose of sites for less than the price we acquire them. In addition, those developers would then be able to submit an application, and would be looking to maximise density and height, whilst only delivering affordable at a level determined by a viability assessment. 'Forced' disposal would not only put the Council at a considerable disadvantage it would also not prevent developments coming forward in any event and would not fulfil the Council's stated aim of providing affordable homes.

## Strategic Planning

Housing figure back up to 606 from 489 per annum

Pressure to provide alternative sites especially if brownfield only option is pursued (need to find around a *further* **1,088** units over the life of the plan on top of the deficit of 913 homes)

Concerns over the deliverability - Council schemes are delivering 17% of the SLAA sites (395 units in years 1 to 5 and 750 in years 6 to 15)

Threat of Green Belt sites coming forward via planning applications, including those rejected at the Preferred Options stage

Contrary to national policy/guidance (would fundamentally restrict the use of significantly increased densities in sustainable areas)

Increased risk that the examining inspector will end up picking sites which the Council, left to its own choices, would not have brought forward

Worsen position in terms of housing land supply (only delivering 60% of government requirement)

## Local Plan matters

- 2.36 There are a number of very significant implications arising from putting Council developments 'on hold' until the SDF has been adopted, both in terms of the Local Plan process itself and in ensuring that there is a Local Plan which is capable of being adopted. If the latter cannot be achieved, then there are severe ramifications not only in terms of a further delay in delivering the Councils schemes (and the additional financial costs and housing implications falling out of this) but also more broadly in terms of planning the future of the whole of the borough against unacceptable forms of development, particularly in terms of large-scale release of Green Belt sites.

### Current Housing Delivery

- 2.37 As a Council we are not presently meeting the development management requirements imposed by national policy in relation to housing land supply. We do not have a five-year housing supply so we are already at the level where the presumption in favour of sustainable development applies for all schemes within the developed area.
- 2.38 We are therefore required to put in place an annual Housing Delivery Test Action Plan (HDTAP) setting out how we will increase our supply. Our delivery in 2019/20 was only 60% of what the Government requires (using the 606 units pa figure).
- 2.39 The ultimate sanction in terms of failure to deliver would be for the Government to directly intervene and take control of the planning service away from the Council, taking away local democratic accountability. However, this would be as a last resort, and the step before this would be for external advice and support to be brought in.
- 2.40 Within the HDTAP, the Council is required to set out what steps it is taking to boost supply. Two of the key elements are the delivery of a revised Local

Plan, with a SDF which 'will review and update existing policies acting as a barrier to delivery to help development come forward such as densities, design and parking' and using the Councils strategic landholdings in Staines-upon-Thames to deliver the lion's share of new development.

#### Impact on Housing Land Supply

- 2.41 If the moratorium is agreed on Council schemes the problem that the authority already faces will be compounded. It is clear that by 'holding up' these developments will mean that the early years of the plan will under-deliver on housing numbers and will require even greater volumes of delivery in later years (usually Local Plans are front loaded as the early years give certainty). As a result, an Inspector is likely to conclude that this requires increased flexibility within the housing land supply so that the plan can deliver over its time horizon to 2035.
- 2.42 Put simply this means that more sites will have to be identified *over and above* the number actually required to meet the current annual number of 606 units pa (called the objectively assessed need) in order for the plan to be found sound. (Cabinet are reminded that shortly before Christmas 2020 the Government back-tracked on its housing methodology which means our figure has gone back up to 606 from 489 per annum under the methodology consulted upon).
- 2.43 Strategic sites such as those owned by the Council have the ability to deliver at a high rate for a number of years later in the plan period, and the risk of additional strategic sites needing to come forward if these Council sites are put 'on hold' is not something that can be ignored.
- 2.44 Council owned sites within Staines-upon-Thames are expected (within the Strategic Land Availability Assessment - SLAA) to deliver a significant proportion of the identified housing need over the Local Plan period. These sites will contribute 395 units to the 5-year land supply (18%) and a further 750 units are projected to be delivered in years 6-15 (16%). Overall, they account for 17% of the total SLAA sites and therefore our supply as a whole.
- 2.45 The Local Plan Task Group has determined that the current deficit of 913 homes over the life of the Local Plan should be met on brownfield sites alone unless sufficient supply can be identified. This means the Task Group (then Cabinet and ultimately Council) will need to agree significant increases in density, heights and the number of units which can be delivered on sites which have already been identified across the borough.
- 2.46 If the Councils strategic town centre sites are removed this would leave us with a deficit of 2001 homes over the Local Plan period rather than the current 913 figure in order to meet our housing need – *another 1088 units*.
- 2.47 The Council would then be required to find an even greater number of units than those 'lost'. This might involve further significant financial outlay (when budgets are already very challenging) if the only way the Council can guarantee delivery of the housing numbers required by government is through compulsory acquisition of completely new sites. These would be sites that have not been identified either as available or deliverable up until now. There would be a significant cost to the Council, and we would in effect be paying twice for having to deliver the housing numbers dictated to us by central

government (once for the town centres sites which may not come forward and once for the new sites in order to demonstrate we have a 'sound plan').

#### Impact on the Green Belt

- 2.48 Putting a 'hold' on Council town centre schemes could also affect the Green Belt. As has been set out above, if there are not sufficient sites to otherwise meet the housing supply in the developed area then this will undoubtedly lead to a greater pressure through the Examination process to release additional Green Belt land to compensate (with all the additional environmental implications which will also fall out as a result). Developers will always look for ways to push greenfield sites where the costs are lower and the rewards higher. Experience has shown that they will engage legal counsel, even Queen's Counsel, to represent their interests at Examination, and exploit every potential weakness in the Plan to argue the case for releasing their site.
- 2.49 If the 'brownfield only' approach cannot deliver the required numbers then the only alternative is to go back to the approach being taken in 2019/20 and consider some limited release of Green Belt sites (though there would be fewer sites than proposed in the Preferred Options consultation). Agreeing the Moratorium would more than double the deficit, and this would inevitably mean reverting back to similar numbers of Green Belt sites to the Preferred Options rather than being able to remove from consideration some of the larger and most contentious sites.
- 2.50 There would also undoubtedly be the additional threat of Green Belt sites coming forward for development via planning applications, including those sites rejected at the Preferred Options stage. The consequences of not having a 5-year housing land supply become more onerous as the supply declines. Green Belt policy would still apply but a landowner or developer could make a case for very special circumstances and the weight given to meeting housing need alongside other benefits could help tip the balance to outweighing the harm to the Green Belt.

#### Staines Development Framework

- 2.51 If agreed the moratorium would put key Council development sites on hold for a considerable period of time to place. It would be unreasonable when the consultants who are producing the SDF are in discussion with landowners and developers, to ensure their schemes do not compromise the aspirations of the Framework. There would be a risk that those sites outside the Council's control that are put 'on hold' never come forward if there is a change in the viability of the site in that period, for example. An Inspector examining the Local Plan and SDF may have significant concerns over the deliverability of housing supply as a whole if the Council itself has decided not to proceed with a number of developments that could already be contributing to the 5-year housing land supply and the overall supply within the Local Plan.

#### National Guidance and Examination

- 2.52 If the moratorium were agreed not only would it be outside the Council's powers it would also be contrary to national guidance. Such a decision would amount to a fundamental restriction, contrary to national policy, on the use of significantly increased densities in areas which are inherently likely to represent sustainable locations for development.

- 2.53 It would also represent a highly unusual way of setting planning policy, if the Council were to decide the direction of the Local Plan by agreeing to the moratorium uninformed by any evidence to underpin that decision making process. The conventional approach to setting planning policy is by using a proportionate evidence base to set the parameters for emerging local plans so that consultation, refinement, and then examination of those proposals can take place within the well-established regulatory framework. The moratorium runs directly counter to this. To agree the approach set out in the Motion would restrict the iterative process of the Local Plan by setting one element in stone. This might shape proposals coming forward in a way that makes the emerging Local Plan unsustainable, fettering the ability of the Council to change direction should it need to do so.
- 2.54 All this carries a very considerable risk that this Motion (and others) will be relied upon by objectors to the Local Plan to demonstrate the Council is working at complete odds with convention, which means the plan cannot have evolved and policy cannot have been justified in line with the National Planning Policy Framework (NPPF) 2019. This leaves the Council exposed to high risk of successful legal challenge by judicial review by disgruntled developers.
- 2.55 An Inspector will also be much more inclined to look actively at sites which the Council have chosen to omit from the draft Local Plan sites if policy is agreed in this way, as opposed to a Council that is using its evidence base to determine how its housing needs might be met. There is therefore a general risk to the success of the Examination process if the Inspector takes the view that the plan is unsound because the Council has not been able to fully undertake its duty to co-operate (where other authorities have to consider the extent to which they can assist) if the housing delivery is not based on evidence.
- 2.56 In addition, there is an increased specific risk that the examining Inspector will end up picking sites which the Council, left to its own choices, would not have brought forward (which may well include those in the Green Belt).
- 2.57 If all of the above means that the Council does not succeed in bringing forward a Local Plan under the NPPF 2019 or transitional provisions under the White Paper, then it is likely to be left in a new policy framework. Under these provisions local democratic control is likely to be curtailed and as an authority we will have significantly less control over the choice of spatial strategy and how our housing needs are addressed.

#### Other matters

- 2.58 If agreed, the moratorium would run counter to a whole raft of policies which set the direction of the Council, causing misalignment in delivering the Council's overall vision and corporate strategy. This includes the current Corporate Plan 2015 – 2019, Capital Strategy (though this is due for review and will be considered at February Cabinet and Council), Housing Strategy 2020 – 2025, Asset Management Plan 2020 – 2025, and the Housing Delivery Test Action Plan 2020 amongst others. This in itself may increase the risk of a judicial review of the Local Plan, as well significantly undermining the Council's ability to achieve/deliver the Council's corporate priorities relating to financial sustainability and housing.

- 2.59 As worded, the Council would be able to rely on future supply of housing via the Council sites within the town centre from the date of adoption of the Local Plan and the SDF. However, that would not address the fundamental issues that still arise from the likely inability in the meantime for the Council to provide a sufficient supply of housing with all the significant risks set out in the section above.

**Developers be requested to defer their applications until Staines Development Framework has been adopted**

- 2.60 As Local Planning Authority (LPA), the Council has a specific function to determine planning applications which are submitted to it. An authority has no freestanding or statutory power to refuse to entertain an application (except in a very limited number of cases which relate to technical matters – none of which would apply in this situation).
- 2.61 The statutory framework sets out in detail what is required to make a valid planning application, what Councils have to consider in determining a scheme, and when it must be determined by. National policy guidance sets out clearly when planning applications may be considered to be premature, which does not apply in this case. Extensive Counsel's opinion has been obtained on previous motions and all have been clear that there is no ability to run the prematurity argument.
- 2.62 Whilst the moratorium Motion seeks a 'request to defer' an application, in effect it is seeking to achieve the same end result, by looking to prevent the submission of any applications until the Staines Development Framework is adopted. Legally, the Council cannot *require* applications to be deferred in this way.
- 2.63 As an alternative, the LPA can write to applicants asking them to defer their schemes, but it is up to those developers to decide whether or not they take heed. On the basis of past experience where this approach has been tried (Royal Borough of Windsor and Maidenhead) developers they are incredibly unlikely to comply. This would mean putting their schemes 'on ice' for at least 18 months with all the attendant costs around delay (very similar to those faced by the Council with its development schemes).
- 2.64 Assuming developers continue to submit applications, legally the LPA has no choice but to determine them (or the applicants can appeal against non-determination after 13 weeks). There are potentially very serious financial consequences for any applications which might be overturned at planning committee for reasons which cannot be defended or sustained. The Council's ability to defend against planning appeals is likely to be seriously undermined if the motion were agreed as developers will refer to the lack of 5-year housing land supply and the inability of the Council to guarantee that it can come forward with its own schemes to assist in delivery.
- 2.65 Those applicants will almost inevitably go to appeal, and the Council would potentially incur costs in the following areas:
- Employing external consultants and legal/counsel to present the Council case (which is likely to be in the order of £15,000 plus for each scheme depending on the complexity of the proposal and the reason for refusal)

- Paying out an award of costs to the appellant if the case to refuse the application cannot be sustained (which could be in the order of £100,000 or more per scheme if a total award of costs is given and external QC's are used by the appellant which ramp up their costs)
- Cumulatively, and in light of the fact that there are perhaps half a dozen schemes which might come forward from developers within the next 18 months, then the cost to the Council for supporting any refusal at appeal could be in the order of £100,000. The potential in terms of awards of costs could conceivably be up to a maximum of £600,000 so up to £700,000 in total.

2.66 Cabinet also need to consider the message this will send out to developers and the wider world about the need to invest in and regenerate our main town centre. There is no 'stand- still' option – if we do not invest in the town centre then others around us will, and we will fall behind. In the current uncertain economic climate (as a result of COVID-19 and Brexit) there could be significant consequences in taking this course of action for the longer-term future and sustainability of Staines -upon-Thames.

2.67 Developers who do still decide to submit schemes will be doing so against a backdrop of permissions which have already been granted and are being built out (London Square and Berkeley Homes schemes). These are up to 14 storeys in height, and whilst each application has to be considered on its own merits, they will no doubt still be cited as a benchmark.

2.68 In this context, affordable housing will inevitably be the loser. Such applications will only provide a level of affordable housing required as a result of the viability tests they have to go through as part of the planning application process (e.g. what the schemes can sustain). This will fall well short of the number that the Council are looking to deliver 'voluntarily' over and above the number required through the viability process.

2.69 **Community consultation prior to adoption of the Staines Development Framework**

2.70 Cabinet are not required to make a decision on this matter as it was one which Council could decide upon. However for the sake of completeness and to ensure full transparency the relevant information about community consultation is provided below.

2.71 The process for the adoption of the Staines Development Framework is set out in a preceding section of the report. As a Supplementary Planning Document, the Council is required to undertake two stages of public consultation. The first one is undertaken at the Issues and Options stage (in much the same way as we have done for the Local Plan) and the second one at draft Development Framework stage once all the views from that first consultation have been considered. After this further round, a Proposed Development Framework will be submitted to the Planning Inspectorate for formal consideration.

2.72 Central government sets out how long the statutory public consultation period should be, which is 4 weeks. This is considered insufficient in light of:

- the significance of this Development Framework in delivering a significant proportion of the Local Plan's housing requirement

- the level of interest which will be shown by key stakeholders (including residents, community and amenity groups, councillors, major landowners, developers, Staines BID, and other statutory bodies)
  - the need to adapt the consultation process in light of on-going restrictions as a result of the coronavirus pandemic.
- 2.73 On the last point, officers have been considering alongside our external advisors (David Lock Associates) how best to ensure we can consult and adequately capture views. A report with recommendations will be put to the Staines Development Framework Task Group for them to review and formally agree the approach. However, it will include on-line consultation, use of social media, small on-line focus groups with key stakeholder and groups as well as limited face to face meetings (with the appropriate social distancing in place). The use of online websites is now commonplace and over the past year everyone has to get to grips with moving on-line. Notwithstanding this we will ensure that we look to include all parts of the community (including those who may be digitally excluded).
- 2.74 The consultation period will be extended to 6 weeks at both stages to ensure everyone has ample opportunity to feed into the creation and development of the Development Framework.

#### **Options for review mechanism for the Moratorium if agreed by Cabinet**

- 2.75 The report above sets out the wide-ranging implications if the moratorium is agreed to take effect immediately until the Local Plan and SDF are adopted in March 2022 at the earliest. There is the potential for Cabinet to consider whether or not (if the Moratorium is agreed) that this is reviewed once the Local Plan Task Group have reached a final conclusion on how the housing numbers can be accommodated across the borough.
- 2.76 As it stands at present, the Task Group are still considering whether it is feasible to deliver a brownfield only option without impinging on the green belt. Within this option, consideration is being given to whether there will still be a significant focus on Staines-upon-Thames or whether it is feasible for development to be more evenly spread across the borough as a whole.
- 2.77 Any recommendations of the Task Group to Cabinet on the way forward could potentially impact to how much development comes forward in Staines-upon-Thames (though it is not anticipated that there is scope for a dramatic shift).

### **3. Financial implications**

- 3.1 These are covered in the main body of the report.

### **4. Other considerations**

- 4.1 All other considerations have been covered in the preceding sections of the report. This includes the very considerable risks around not proceeding with Council schemes until the adoption of the Staines Development Framework. The chance to seize positive opportunities will be lost as a result. A separate risk matrix using the Corporate Risk Management Policy has been completed. The draft policy was issued to Audit Committee on 24 July 2020. This is attached at **Appendix 6**.
- 4.2 Whilst the Council schemes are very much focused around residential (with a minimum of 50% affordable provision), they are also delivering on a much



wider regeneration and economic development agenda. This will be incredibly important as the Council (and the country) emerges at some point this year from the COVID-19 pandemic. Bringing additional accommodation into our main town centre will help us to ensure that the retail and hospitality industry (including the Elmsleigh Centre which we own) is sustained and supported in terms of footfall and local custom.

- 4.3 The hallmarks of a successful town centre in the future will be one which is sustainable (in terms of a significant resident population and good public transport), liveable (a mix of residential, retail, leisure and cultural uses) and affordable (accommodation for local residents). As stated elsewhere in this report, agreeing the moratorium runs the significant risk that third-party developers will secure permissions for schemes which do none of this, putting into question whether all these success hallmarks can be delivered.

## **5. Sustainability/Climate Change Implications**

- 5.1 There are no sustainability or climate change implications.

## **6. Timetable for implementation**

- 6.1 If agreed, the moratorium would come into immediate effect. This would put a hold on all Council development schemes whether they were currently under consideration by the Local Planning Authority or at pre-application or feasibility stage. Schemes could only come forward once the SDF has been adopted, which would happen in parallel with the adoption of the revised Local Plan. This is currently scheduled for adoption in March 2022. The timetable is set out in the Local Development Scheme and assumes a Regulation 19 submission of the Local Plan can be achieved by April 2021 and Examination in August 2021. This timetable may need to be revised depending on when the work being done by the Local Plan Task Group is completed in order to recommend to Cabinet a revised Local Plan document for submission.

**Background papers: There are none.**

## **Appendices:**

- 1 Boundary of Staines Development Framework** (a plan which shows the boundary around the town centre which will be used to determine the extent of the Development Framework)
- 2 One page 'at a glance' – Issues for consideration** (document sets out the key financial affordable/development and strategic planning matters to be taken into consideration)
- 3 Developments impacted by the Moratorium - Aggregated** (document sets out all the impacts which will arise if the moratorium is agreed for all the Councils development sites. Individual costs of developments will not be identified so the overall costs can be in the public domain)
- 4 Developments impacted by the Moratorium - Confidential** (document sets out all the impacts which will arise if the moratorium is agreed for all the Councils development sites. Individual costs of developments will be identified)

and therefore needs to be confidential).

- 5 Key Affordable Housing Information** (information on housing need, affordability, houses prices and salaries, number of S106 affordable units and tenure)
- 6 Risk Matrix** (this sets out the level of risk for each of the four main impacts – financial. Affordable housing, development, strategic planning)