

Cabinet

19 May 2021



Title	Amendment to specific policies in the adopted 2009 Local Plan		
Purpose of the report	To note		
Report Author	Heather Morgan – Group Head Regeneration and Growth		
Cabinet Member	Councillor John Boughtflower	Confidential	No for main report but Appendix 1 is confidential
Corporate Priority	Housing		
Recommendations	Cabinet to: Note the advice received from Counsel at confidential Appendix A, and in light of this advice to continue to proceed with the current process which has been underway for the past two years to revise the Local Plan in its entirety.		
Reason for Recommendation	Expert legal advice has been obtained to establish whether or not specific policies within the 2009 adopted Local Plan can be amended to address current concerns over the proposed height of buildings and development within Staines-upon-Thames		

1. Key issues

- 1.1 Key Cabinet members informed officers last Thursday (13 May 2021) that urgent advice needed to be sought on whether or not there was scope legally to change a number of policies in the adopted 2009 Local Plan to prevent development over 6 stories within Staines-upon-Thames. Councillors advised that there is considerable concern being expressed by some local residents within and around Staines-upon-Thames about current and future applications coming forward for large scale development within the town. There are also wider concerns around numbers, height and density, which are being considered as part of the review of the Local Plan.
- 1.2 Cabinet members will recall that they considered a report on 25 January 2021 relating to a Moratorium on development in Staines-Up-on-Thames <https://democracy.spelthorne.gov.uk/documents/s31886/Moratorium%20Report.pdf>. At that meeting it was agreed that:

A Moratorium on Council schemes in Staines-Upon-Thames should take place until such time as three things take place, with the intention that these will be completed prior to the Annual Council meeting in May 2021:

- (a) That the Strategic Planning team undertake an 'Issues and Options' consultation exercise for the Staines Development Framework.
- (b) That a sub-committee, which was agreed at Extraordinary Council on 21 January 2021, is included in the recommendations of the Committee System Working Group to be reported to Extraordinary Council, currently scheduled for 25 March 2021.
- (c) That the viability of all the developments are reviewed by the assets team.

1.3 In terms of progress, on item 1.2 (a) the public consultation exercise on the Issues and Options for the Staines-Upon-Thames Development Framework commenced on Tuesday 18 May 2021 and will run for 6 weeks until 29 June. On item 1.2 (b) the sub-committee was formally agreed at the Extraordinary Council meeting on 23 March 2021, and the membership of that sub-committee will be agreed at the Annual Council Meeting on 27 May 2021. Work is still on-going under item 1.2 (c). It is therefore the case that the Moratorium stays in place on Council schemes until all three of these items have been completed in full.

1.4 Notwithstanding the above, Councillors are advising that there is still great concern amongst some of the local community about other (non-council) developments which are coming forward or will come forward in the near future within Staines-upon-Thames town centre. The current administration has therefore, with due urgency, sought expert legal advice on whether or not legally there is scope to consider amendments to policies within the currently adopted 2009 Local Plan to limit development in Staines-upon-Thames to 6 stories.

1.5 The expert legal advice is at confidential Appendix A. This expert legal advice is that to amend the Local Plan 2009 even for a single issue, would require compliance with the Local Plan Regulations 2012 and will mean going through all the steps of a local plan process. To include this as a policy would need to be supported by a proportionate evidence base and be subject to consultation and examination. For such a policy to be adopted this would need to fulfil the soundness tests. It is advised that there is no likelihood for this policy to be considered sound by an inspector as one of the tests for soundness is compliance with national policy and NPPF 2019 (which came into effect after the Council's 2009 Core Strategy) places an enhanced role of higher density in appropriate locations.

2. Options analysis and proposal

2.1 To note the advice received and proceed with the current Local Plan review to build the proportionate evidence base through all statutory requirements including the public consultation. This is the recommended option.

2.2 To note the advice but take the decision to direct that this single issue being progressed. This is not advised as the expert legal advice is that this would not be supported by an inspector. To progress, the Council would need to go through set stages and this could take at least 12 months to get to a stage of

being presented to an inspector, with no chance of this single policy change succeeding.

- 2.3 Such a decision will divert resources from the full Local Plan review which means it will be further delayed. The report to Extraordinary Cabinet on the Moratorium set out in full the risks around a delay on moving forwards with a new Local Plan. Below is a list which replicates the table at para 2.35 of that report which sets out the strategic planning risks around the delays caused by the Moratorium:
- (a) Housing figure back up to 606 from 489 per annum
 - (b) 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)
 - (c) 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)
 - (d) Threat of Green Belt sites coming forward via planning applications, including those rejected at the Preferred Options stage
 - (e) Contrary to national policy/guidance (would fundamentally restrict the use of significantly increased densities in sustainable areas)
 - (f) Increased risk that the examining inspector will end up picking sites which the Council, left to its own choices, would not have brought forward
 - (g) Worsen position in terms of housing land supply (only delivering 60% of government requirement)
- 2.4 This will place additional resource pressures on the Strategic Planning team (especially when the team will be having to recruit as a result of two retirements).
- 2.5 Developers may well use any delay in the amended Local Plan being implemented to bring forward developments under the current plan in not only the Staines-upon-Thames town centre but other areas of the borough.

3. Financial implications

- 3.1 Apart from the costs of the Counsel's advice, there are none arising from seeking the legal advice per se. If the Council were to pursue this change then there would be the additional costs to undertake the review process which could amount to tens of thousands of pounds (for a separate evidence base, several rounds public consultation and the examination) without success. This would be in addition to the costs already incurred to date for of the Local Plan review also currently taking place (c£100k), and the costs that are yet to come

4. Other considerations

- 4.1 There are none.

5. Sustainability/Climate Change Implications

- 5.1 There are none arising from seeking the legal advice per se.

6. Timetable for implementation

6.1 The advice has been provided at short notice to enable this urgent matter to be placed before Cabinet.

Background papers:

None

Appendices:

Confidential Appendix A – Counsel's advice