

Environment and Sustainability



30 June 2021

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| Title | Amendment to specific policies in the adopted 2009 Local Plan |
| Purpose of the report | To make a decision |
| Report Author | Heather Morgan Group Head Regeneration and Growth |
| Ward(s) Affected | Riverside and Laleham Staines South Staines But All Wards potentially affected if the Committee choose not to agree the recommendation |
| Exempt | Report is not but Appendix 3 and 4 are |
| Exemption Reason | Appendix 3 and 4 contain exempt information within the meaning of Part 1 of Schedule 12A to the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985 and by the Local Government (Access to information) (Variation) Order 2006 Paragraph 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. Information is exempt only if, in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. |
| Corporate Priority | Housing Environment Financial Sustainability |
| Recommendations | Committee is asked to: <ul style="list-style-type: none"> • Note the advice received from Counsel at confidential Appendix 4 • Agree that in light of this advice to continue with the current process which has been underway for the past two years to revise the Local Plan in its entirety • Consider the request from the outgoing Cabinet that the matter be deferred to Full Council for a final decision |
| Reason for | Expert legal advice has been obtained to establish whether or not |

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| Recommendation | <p>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</p> <p>It is recommended that the Local Plan review continues on the basis that there is no likelihood for this policy to be considered sound by an Inspector as it would not be in compliance with the National Planning Policy Framework 2019, which places an enhanced role on higher density in appropriate locations.</p> |
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1. Key issues

- 1.1 Members of this Committee will be aware from previous reports to Cabinet that officers have been asked on two separate occasions to address concerns from councillors around Council and other developments in Staines-upon-Thames.
- 1.2 Concerns are based around 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 in December 2020 that the proposed height, bulk and massing of developments are considered to be a particular issue of concern.
- 1.3 The first report was considered at an Extraordinary Cabinet Meeting on 25 January 2021 (**Appendix 1**). This addressed a motion at Council on 10 December 2020 which asked:
 - (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 and
 - (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
- 1.4 The bulk of that report (some 12 pages) set out the very significant impacts, risks and ramifications around pursuing the course of action set out above. Matters covered in detail included:
 - (a) Financial impacts – adverse impact on the Councils Revenue Budget, loss of rental income for Knowle Green Estates from Thameside House and Oast House amounting to c£9.5m, holding costs for council development sites amounting to close to £8m, appeal costs of c.£700k
 - (b) Affordable housing/development – delay in delivery of affordable rental housing by 2 years minimum over 400 fewer units coming forward (housing list 2,100 at that time), c£3.5m of abortive capital costs which would have to be converted to revenue and putting significant pressure on the Budget, increase in construction costs due to delay, reduction in Community Infrastructure levy (CIL) and poor capital receipt likely if the Council are forced to sell
 - (c) Strategic Planning – housing figure back up to 606 per annum, pressure to provide alternative brownfield sites to deliver a further 1,088 units,

concern over the deliverability of the whole plan on the basis that the Council schemes are delivering 17% of supply via Strategic Housing Land Availability Assessment (SHLAA) sites, threat of green belt applications coming forwards, contrary to national policy/guidance which advocates maximising densities in sustainable areas, increases the risk of on Inspector picking green belt sites for development that the council would not have chosen, and worsen the position in terms of housing land supply (currently only delivering 60%).

- 1.5 Very clear legally based advice was given on the very severe consequences in terms of the impact on the Local Plan in particular. Paragraphs 2.36 – 2.57 explicitly covered this point, the most critical point being that “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”
- 1.6 Contrary to the officers’ recommendation and the advice set out above, Cabinet decided that a Moratorium on Council schemes in Staines-Upon-Thames should be put in place until such time as three things took place, with the intention that these would 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 were reviewed by the assets team.
- 1.7 The second report was considered as an Urgent Item by Cabinet on 19 May 2021 (**Appendix 2**). Due to severe time constraints, this was a much shorter report. It provided an update on progress on items (a) to (c) above, and focused on the advice provided by external Counsel in connection with a question on ‘Whether or not the Council were able to amend a policy in the Core Strategy and Policies DPD 2009 in order to limit the height of buildings in Staines upon Thames to 6 storeys and what the process would be’. **Appendix 3** sets out the instructions and confidential **Appendix 4** provides the advice received in full.
- 1.8 The advice was 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”.

- 1.9 Contrary to the officers' recommendation and the advice set out above, Cabinet did not agree with the recommendation to continue to proceed with the current process to revise the Local Plan in its entirety. Instead, it resolved that:
- (1) the decision to amend specific policies within the 2009 Local Plan be deferred pending the implementation of the Committee system;
 - (2) the issue be considered by the Environment and Sustainability Committee, with a request that this is deferred to Full Council.
- 1.10 Hence the reason for this report. It will be for members of this Committee to consider the matter afresh, and either make a decision or decide to defer the matter to Full Council (as per the recommendation of the outgoing Cabinet). The officer recommendation is set out in at the top of this report and also in paragraph 2.4 below.
- 1.11 Committee should note that if the officer recommendation is not accepted, this would affect all Council schemes within the town centre (bar the redevelopment of the William Hill unit) as well as those of private developers. It is therefore essentially a re-run of all the arguments that were considered by the Extraordinary Cabinet meeting on 25 January 2021. The effect of reviewing policies in the adopted Local Plan to limit heights to 6 storeys is 'a different means to the same end'. This restriction would make all the Council schemes unviable. They would not be able to proceed unless a decision was made to develop at a very significant loss (with all the adverse budgetary impacts this would entail).
- 1.12 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. These include delivering the housing numbers required by the Local Plan, addressing the local need of residents for affordable housing, delivering mixed use regeneration including affordable residential and ensuring a prosperous economy and robust recovery post COVID-19. A review of any discrete policies in the 2009 adopted Local Plan would run directly counter to those stated aims which we agreed by Council when it approved the Capital Strategy 2021 – 2025 in February 2021.
- 1.13 Rather than repeating the very significant risks around not agreeing the recommendation in full, reference will be made to the relevant paragraphs in the Extraordinary Cabinet report at Appendix 1 where these apply.

2. Options analysis and proposal

Recommended option

- 2.1 The expert legal advice is contained at confidential **Appendix 4**. In short, it states 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 it 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.
- 2.2 It is advised that there is no likelihood that this policy would 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 on higher density in appropriate locations. A policy to limit height in this way would run directly counter to that national advice.

- 2.3 Committee are also advised that it is highly unlikely that the matter would even get to formal examination, and would in all reasonable probability be rejected either by the Planning Inspectorate (PINS) or by the Inspector at a pre-inquiry hearing.
- 2.4 The very severe consequences of not heeding this advice were all set out in the Extraordinary Cabinet report and have been set out in brief in paragraphs 1.4 – 1.5 above. On the basis of all of the above it is therefore recommended that the Committee:

Note the advice received from Counsel at confidential Appendix 4

Agree that in light of this advice to continue with the current process which has been underway for the past two years to revise the Local Plan in its entirety

Consider the request from the outgoing Cabinet that the matter be deferred to Full Council for a final decision

Alternative option 1

- 2.5 One alternative course of action would be to reject the expert professional advice, and instead agree that there should be a limited review of the relevant policies within the adopted Local Plan.
- 2.6 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 at paragraphs 2.36 – 2.57. The same risks around current housing delivery, impact on housing land supply, impact on green belt, Staines Development Framework, National Guidance and Examination effectively apply.
- 2.7 Below is a list (taken from the Extraordinary Cabinet report) at paragraph 2.36 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)

- 2.8 In terms of the wider impact on the Council, by not agreeing the recommendation the Committee would effectively be agreeing, by default, that no Council schemes can be developed at greater than 6 storeys. This would result in
- (a) Increased budgetary and financial pressures (paragraphs 2.10 - 2.25 of the Extraordinary Cabinet report)
 - (b) Lower levels of affordable housing (paragraphs 2.26 – 2.32)
 - (c) Reduction and delay in development activity (paragraphs 2.33 – 2.35)

Alternative option 2

- 2.9 The other alternative would be for this Committee to refer the matter to Corporate Policy and Resources Committee on 5 July 2021 for their consideration. It would then be for that Committee to decide whether the item should be referred up to Full Council for a final decision.

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.

Cost of limited review of Local Plan policies

- 3.2 If the Committee decide not to agree the recommendation, and determine instead to undertake a limited review, then the additional costs to undertake the review process would amount to tens of thousands of pounds, without success. This would be in addition to the costs already incurred to date for of the Local Plan review also currently taking place (£110,000) and the costs that are yet to come which are likely to be in the order of another £50,000 minimum.
- 3.3 The Strategic Planning team will not have the capacity to deal with a full review and a limited review without requiring additional resource (either in terms of temporary staff or a greater reliance on external consultants for which there is no current budget).

Cost of appeals by developers

- 3.4 These are set out in detail on paragraph 2.65 of the report at Appendix 1, and the potential cost to the Council of £700,000 still holds true.

Budgetary impacts

- 3.5 A decision to undertake a limited review would effectively stymie any Council development in the town centre (development up to 6 storeys only would not be viable). The costs of this is set out both in the Extraordinary Cabinet report and at a high level in paragraph 1.4 above.

4. Other considerations

- 4.1 There will need to be clear and easily understood communications around the reasons why there is no prospect of limiting the height of developments in Staines-upon-Thames to six storeys by attempting to review a limited number of adopted policies. This is particularly important in light of the concern being expressed by some local residents within and around Staines-upon-Thames.
- 4.2 There is a very considerable risk of reputational damage to the Council in the eyes of the development industry if a limited review of the Local Plan is

decided upon. Conversely such a decision is likely to win the support of some of the local residents who are concerned about the height of developments coming forward in Staines-upon-Thames.

- 4.3 Members of the committee will be well aware that in considering this report, and all others relating to the Local Plan, that is incumbent upon them to consider the wider impact of any potential decision on the borough as a whole, and where future development will have to take place. It is understood by everyone that this is not necessarily easy, and that difficult decisions will have to be made which cannot satisfy all interests.

5. Equality and Diversity

- 5.1 There are none arising from seeking the legal advice per se. However, the role of the Local Plan as a whole is to generate affordable housing provision and equitably help resolve our housing crisis.

6. Sustainability/Climate Change Implications

- 6.1 There are none arising from seeking the legal advice per se. However, the role of the Local Plan as a whole is to develop policies to ensure a sustainable future for the borough, and one which addresses climate change.

7. Timetable for implementation

- 7.1 If the recommendation is agreed, then the review of the Local Plan in its entirety will continue in line with the revised Local Development Scheme timetable which is elsewhere on this agenda.
- 7.2 If it is not agreed, then a new timetable will need to be developed by officers taking into account the need for a separate discreet evidence base to deal with these policies, several rounds of statutory public consultation and the examination itself. On the basis of how long the current review of the Local Plan has taken so far, but accepting that this is a more limited review, it is realistic to expect that this process from start to examination would be in the order of 18 months minimum (December 2022). Any changes to the LDS timetable elsewhere on this agenda will also affect these timescales.
- 7.3 This work will have to be undertaken in parallel with the review of the Local Plan, which will almost inevitably result in further delays and put the adoption date of July 2023 for the new Local Plan at significant risk.

Background papers: There are none.

Appendices:

- 1 Extraordinary Cabinet Report 25 January 2021 – sets out the very significant financial, development, affordable housing and local plan implications of putting developments on hold until the Staines Development Framework has been adopted
- 2 Cabinet Report 15 May 2021- sets out the need for external legal advice, the response received and the implications of looking at reviewing a discreet number of policies in the 2009 adopted Local Plan
- 3 Instructions to Counsel –the question asked by the Council to an external legal expert
- 4 Counsels opinion (confidential) – the advice received from the external legal expert