

Forest Heath District Council

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Report of the Cabinet Member for Planning, Housing and Transport

CABINET

2 OCTOBER 2012

CAB12/035

HOUSING LAND SUPPLY – A WAY FORWARD

Summary and reasons for recommendation(s)

The district of Forest Heath does not have enough land set aside or identified for all the housing needed over the next five years. Given the implications of the Government's National Planning Policy Framework, and the presumption in favour of approving sustainable development proposals where the development plan is not up to date as in the case of Forest Heath, it is important that consideration is given to rectifying this shortfall in as expeditious a manner as possible. The present timetable for the completion for the Single Issue Review of Housing Policy CS7 is April 2014, and the Site Allocations Local Plan is presently late 2015. We are also aware that developers are considered likely to submit planning applications during this period that we will have to determine against all material planning considerations but also with reference to paragraph 14 of the NPPF, and also in recognition that the Council's priorities include being 'open for business' through supporting economic growth and housing.

It is therefore considered prudent to explore what options are available to the Council to take a more proactive approach, whilst still complying with all the relevant planning legislation.

Recommendation(s)

The Cabinet views are sought on the options outlined in this report.

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How will the recommendations help us meet our strategic priorities?

1. The preparation of up-to-date Local Plans will help guide development to the most sustainable locations and help meet the Council's priorities of supporting economic growth and meeting the district's housing needs.

Wards affected

2. All.

Introduction

3. The Council anticipates that there may be developers who wish to submit major planning applications for housing development in the knowledge that:
 1. There is a shortfall in the 5 year land supply in accordance with the National Planning Policy Framework (NPPF) March 2012. The shortfall is currently 515 dwellings, representing 3.6 years supply (1st April 2012). However this shortfall increases to 607 dwellings in accordance with the NPPF requirement for a 5 year supply plus a 5% buffer.
 2. The timescale before the Core Strategy Policy CS7 Single Issue Review (CS7 Review – looking at housing numbers, distribution and phasing) will be adopted is currently programmed for April 2014.
 3. The timescale before any associated Site Allocations Local Plan (SA Plan) is adopted is currently estimated as late 2015.

Proactive Approach

4. The Council would like to take a proactive approach to addressing the shortfall in the housing land supply in accordance with the NPPF presumption in favour of sustainable development and the expectation that planning permission will be granted where the development plan is out of date (paragraph 14). Furthermore paragraph 49 of the NPPF states:

'Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.'

5. However, the Council has an overall responsibility to consider each planning application on its own merits and satisfy the legal requirements of the Planning and Compulsory Purchase Planning Act 2004 Section 38(6). The Council will therefore need to strike an appropriate balance between the material consideration of expeditiously remedying the shortfall in its 5 year land supply and the material consideration of not prejudicing the outcome of the emerging CS7 Review.

Factors to Consider

6. How the balance will fall in the consideration of any individual case will depend on the particular facts of the planning application, but the relevant factors that may be taken into account will include:
 1. The scale of the shortfall in the 5 year land supply at the time that the application is being determined.
 2. The contribution that the development will make to the supply of housing land, both within the relevant 5 year period and overall, in essence its deliverability.
 3. The extent to which the development will prejudice the outcome of the CS7 Review, having regard in particular to its scale and location in accordance with adopted Core Strategy Policy CS1 'Spatial Strategy'. The latter recognises the uniqueness of Forest Heath and provides for a development strategy to secure sustainable development focusing on the three Market Towns of Brandon, Mildenhall and Newmarket, the two Key Service Centres of Lakenheath and Red Lodge, and the four Primary Villages of Beck Row, Exning, Kentford and West Row.
 4. The progress that has been made on the CS7 (Single Issue) Review at the time that the application is being determined.
 5. The progress that has been made on any associated Site Allocations Local Plan at the time the application is being determined.
 6. Other material considerations (including the merits of the site) that may support the grant of planning permission.
 7. Other material considerations (including the merits of the site) that may support a refusal of planning permission.
 8. The Evidence Base which underpins Policy, including the Strategic Housing Land Availability Assessment, Infrastructure and Environmental Capacity Appraisal, and the Parish Profile work etc. This is useful in assisting in an assessment of sustainability.

Post NPPF Appeal Decisions

7. Since the publication of the NPPF there have now been several appeal decisions decided by the Secretary of State which support applications for major development where there has **not** been a 5 year supply of deliverable housing land. For example in June 2012 the Secretary of State allowed an appeal for 1,150 dwellings (and a related link road) on a greenfield site on the edge of Lytham St Annes, Lancashire. Whilst the decision obviously turns on its own facts, two of the key issues were prematurity and lack of a 5 year supply of housing land. This decision, along with several others, is an indication that the Secretary of State may be more exacting post-NPPF, if faced with a prematurity objection when there is a shortfall in land supply, than he was pre-NPPF.

8. There has also been a recent appeal decision in Forest Heath at Griffith's Yard, Gazeley Road, Moulton that is of relevance in this instance. In this decision the Inspector accepted that the Authority's local plan was out of date, in particular Policy CS1 based on the fact that there was no demonstrable five year housing supply. However, in assessing whether or not the proposal was 'sustainable' the Inspector was also mindful that the evidence base which underpinned the policy is still a material consideration and the appeal was therefore dismissed as being unsustainable.

Conclusion

9. If the Council wish to take a proactive stance (rather than simply reactive) then it needs a robust approach as the local plan is prepared and subsequently adopted.
10. In this respect consideration could be given with regard to perhaps encouraging planning applications for housing development to address its shortfall in 5 year land supply. Given the work carried out to date, the Council could select the most appropriate sites previously identified and also illustrate why other sites could have a prejudicial effect on the CS7 Review, rather than decisions being forced on the Council through appeals. However, Counsel advice has been sought on this option, and it is understandably cautious. The Authority cannot publish what would be tantamount to an 'Interim Policy statement' without complying with all the relevant planning regulations.
11. This leads to the conclusion that inviting planning applications for particular sites is not an appropriate way forward, and that the best way to resolve the present position is perhaps instead to speed up the plan making process, particularly the Site Allocations document, albeit, in doing this, it will be important to be mindful, given the time it will take to adopt, of the Authority updating its key evidence base documents in the meantime.
12. The NPPF aims to strengthen local decision making and reinforces the importance of up-to-date plans. For 12 months from the publication of the NPPF (March 2012), decision makers may continue to give weight to relevant policies adopted since 2004. They may also give weight to relevant policies in emerging plans according to the stage of preparation of an emerging plan (the more advanced the preparation, the greater weight that may be given). Therefore it is important for the Council to proceed with the preparation of the CS7 Review and Site Allocations Plan Documents as quickly as possible to ensure that the Site Allocations document is adopted as soon as possible after March 2013.

Way Forward

13. Members are aware that the CS7 Review Issues and Options consultation commenced on the 31 July 2012 for 8 weeks, concluding on 25 September 2012. It is intended to bring the results of this consultation and the CS7 Submission Document back to Members later in the year with a view to carrying out further consultation in Spring 2013. In order to supplement the CS7 Review Submission Document (development strategy) it is suggested that the preparation of the Site Allocations Plan (site specific) is brought forward from a proposed commencement in 2013 and adoption late 2015. This Plan sets out specific locations for

development. Instead, the Plan could run in parallel with the Single Issue Review, but to still ensure that each document is informed where relevant by the other. This will enable the consultations on each document to be run together, although Members' opinion is further invited on the two potential options. Option 1 involves a further Issues and Options Consultation on the Site Allocations at the same time as the Single Issue Review Submission version consultation, whereas Option 2 involves going straight to consultation on a submission version Site Allocations at the same time as the consultation on the submission version of the single issue review. The timescale implications of each option are set out later on in this report. Both options presents challenges in terms of workload and in terms of preparing a robust and credible evidence base, as will be expanded on later.

14. Members will recall a Site Specific Allocations Final Issues and Options (SSA) Document was considered and approved for consultation purposes by the Planning Committee in April 2010 (Minute 550). Whilst the consultation did not proceed in light of the High Court Challenge to the adopted Core Strategy Policy CS7, the SSA Document could be re-visited and updated, in accordance with any updated evidence and changed context, reasonably quickly to produce the Site Allocations Plan.
15. The main revisions required will be to the preferred housing sites taking into consideration the feedback from the consultation on the Strategic Housing Land Availability Assessment (SHLAA) 2nd Review which was completed in August 2012, and also taking into account the feedback received in response to the presently ongoing consultation on the Core Strategy Single Issue Review of Housing Policy CS7 and the Sustainability Appraisal and Habitats Regulations Assessment work that accompanies the process.

Newmarket – Planning for Real Exercise

16. This exercise is being carried out by the Prince's Foundation on behalf of Forest Heath DC and Newmarket Town Council to establish a shared 'Vision' for Newmarket. The outcomes from this exercise are expected before the end of the year.
17. On completion of this important work, and of both consultations referred to above, the Council will be in a position to run a Site Allocations Plan (further Issues and Options or Submission) Document alongside the Policy CS7 Review Submission Document.
18. The advantage of this approach is that the next stage of consultations can be carried out at the same time, with the Policy CS7 Review Submission establishing the overall development strategy, and informing the Site Allocations Plan preferred housing sites, and vice versa. In pursuing this approach of bringing forward the SSA preparation the Council is demonstrating its commitment to the 'plan led' system in accordance with NPPF aims, whilst also bringing its Development Plan up to date in the most expeditious fashion. Whilst both Documents could very likely be subject to change through the consultation process, they will give a clearer and earlier indication of the Council's preferred housing sites, thereby assisting, as the Plan progress to completion, in the determination of planning applications for housing development.

19. In the meantime planning applications for major housing developments may come forward to address the shortfall in the 5 year housing land supply. However by following this twin approach, updating and expanding on the evidence base including the SHLAA (and the local Forest Heath SHLAA review), Parish Profile and IECA study, and applying the factors referred to above, it is considered that the Council would be better placed both to select the most appropriate sites and also to illustrate why other sites could have a prejudicial effect on the CS7 Review. The alternative is decisions being forced on the Council through appeals by not having up-to-date plans sufficiently advanced to be given due weight.

Timetable

20. The potential timetable for a combined approach, as outlined above, to the consultation on the Single Issue Review and the Site Allocations is:

Draft Strategic Housing Land Availability Assessment 2 nd Review Consultation Completed.	28 August 2012
Single Issue Review Issues and Options Consultation Ends	25 September 2012
Strategic Housing Land Availability Assessment 2 nd Review Completed	End September 2012
Analytics Cambridge Trends/Forecasts Review	Due end September 2012
Newmarket Planning for Real Exercise	September – November/December 2012
Single Issue Review Submission Document (Draft)	Mid/End October 2012
Site Allocations Document (Issues & Options or Submission)(Draft)	End October/Mid November 2012
Sustainability Appraisals/Habitats Regulations Assessments.	End November 2012
Local Plan Working Group (2 meetings) – Discussion and consideration around Single Issue Review submission document, and around the preferred sites, as well as approval for consultation.	Late November – Early December 2012
Finalise Single Issue Review & Site Allocations (Issues & Options or Submission) Documents	End December 2012
Cabinet – Approval for consultation	15 January 2013
Council – Approval for consultation	4 or 13 March 2013 (No meeting in February)
SIR Review Submission & Site Allocations (Issues & Options (Option 1) or Submission (Option 2)) Consultations	Late March - May 2013

21. Following consultation, further changes can be made to both documents as necessary, and in response to the consultation, prior to submission to the Secretary

of State. Thereafter, Examinations in Public will be held at which further opportunity will exist for discussion and consideration.

22. The above twin track consultation timetable will hopefully result in the adoption the Policy CS7 Review by Spring 2014 and the Site Allocations Plan by approximately Spring 2014 (Option 1) or approximately Autumn 2014 (Option 2).

Evidence Base

23. Members should note that there remains significant further work to do in respect of the necessary evidence base work, including a Transport Impact Assessment, updated Strategic Housing Market Assessment, and work to ensure the Site Specific Allocations dovetails with emerging Community Infrastructure Levy work. Members should note therefore that there remain risks around speeding up the process that are, at the time of writing, still being quantified. These risks are present in relation to both Option 1 and Option 2, but are especially so in relation to the swifter Option 2. It is anticipated therefore that legal advice will be sought on this matter, and around the risks involved, and this will be presented to Members at the earliest opportunity. At this stage, Members should note therefore that any discussion and agreement in relation to this report and on the way forward must have the caveat of review as and when further advice is received.

Community impact

24. This is an integral part of the development of a Local Plan Document.

What consultation has been undertaken and what were the outcomes?

25. This is an integral part of the development of a Local Plan Document.
26. Whilst it is considered that the above process is the appropriate way forward, it is suggested that this re-considered at the end of the consultation period – Single Issue Review – Issues and Options Document, when there is an understanding of the issues raised during that process. This is also important in terms of obtaining a full understanding of the evidence base requirements that might be necessary to support this process.

Financial and resource implications

27. Running two consultations at the same time in relation to these significant policy documents will put pressure on the planning policy resource, at a time when the organisation is going through considerable change.

Working with Cabinet

28. This is a significant piece of work that will help shape the direction of growth within the district. It is therefore essential that the political leadership is involved in this process. In this respect it is suggested that the Cabinet is involved:

- (i) Session focussing on feedback from the SIR consultation, SHLAA and parish discussions, outcomes from the Newmarket Planning for Real exercise, and update on population requirements.
- (ii) Undertake a review of the work previously undertaken by the former LDF Working Party in identifying preferred sites, include a tour of identified sites

29. That the outcome of these sessions help inform the next version of these documents, which would be submitted for consideration by the Local Plans Working Group, Cabinet and full Council in the usual way.

Risk management implications

30. Our Core Strategy has already been challenged, and therefore we need to ensure that the course of action followed is entirely in accordance with the relevant regulations and takes fully into account the court's decision. As discussed above, there also remain risks associated with the evidence base which are not fully quantifiable at this stage.

Legal/Policy implications

31. It is suggested that legal advice be sought on the process outlined in this report.

Documents attached

None

Background papers

None