

Cabinet



Forest Heath
District Council

Title of Report:	Single Issue Review(SIR) and Site Specific Allocations (SSA) Local Plan (LP) – Assessment of Reasonable Alternatives	
Report No:	CAB/FH/14/009	
Decisions plan reference:	Dec14/07	
Report to and date/s:	Local Plan Working Group	16 October 2014
	Cabinet	9 December 2014
Portfolio holder:	Rona Burt Portfolio Holder for Planning, Housing and Transport Tel: 01638 712309 Email: rona.burt@forest-heath.gov.uk	
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Purpose of report:	To consider alternative options with regard to preparing the Site Specific Allocations and Single Issue Review Local Plan documents.	
Recommendation:	That Cabinet proceed with Option 2, as outlined in Report No CAB/FH/14/009 and as recommended by the Local Plan Working Group on 16 October 2014, in preparing the Site Specific Allocations (SSA) and Single Issue Review (SIR) Local Plan (LP) documents.	
Key Decision: (Check the appropriate box and delete all those that do not apply.)	<i>Is this a Key Decision and, if so, under which definition?</i> Yes, it is a Key Decision - <input type="checkbox"/> No, it is not a Key Decision - <input checked="" type="checkbox"/>	
<i>The decision made as a result of this report will be published within 48 hours and cannot be actioned until seven working days have elapsed. This item is included on the Decisions Plan.</i>		

Consultation:	• See paragraph 5.1.		
Alternative option(s):	• See paragraph 3.1		
Implications:			
Are there any financial implications? <i>If yes, please give details</i>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • See paragraph 6.1	
Are there any staffing implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any ICT implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any legal and/or policy implications? <i>If yes, please give details</i>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • See paragraph 8.1	
Are there any equality implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Risk/opportunity assessment: <i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>			
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
See paragraph 4.12			
Ward(s) affected:		All Wards	
Background papers: <i>(all background papers are to be published on the website and a link included)</i>		Local Plan Working Group – 16 October 2014 – Report No LOP14/020 (https://democracy.westsuffolk.gov.uk/CeListDocuments.aspx?CommitteeId=171&MeetingId=1771&DF=16%2f10%2f2014&Ver=2)	
Documents attached:		None	

1. Key issues and reasons for recommendation(s)

1.1 Summary

- 1.1.1 The consultation draft SSA and SIR LP documents were approved for a consultation in early 2014, at the Cabinet meeting of 26 November 2013. Subsequent to this and as most recently reported to Members of Local Plan Working Group (LPWG) on 8 May 2014, the consultations have been postponed on the basis that Officers need to progress further work with their external consultants and continue dialogue with Counsel, to ensure that the supporting Sustainability Appraisal (SA) and Strategic Environmental Assessment (SEA) processes are adequately robust for both LP documents.
- 1.1.2 Officers received further advice from Counsel, specifically with regard to progress to date in preparing the SIR LP SA/SEA on 25 June 2014.
- 1.1.3 It is the contention of Counsel that further appraisal is required to ascertain whether or not more housing can be delivered within the District, (given the 'constraints' and provisions of the NPPF), within the plan period to 2031 in order to facilitate more of the affordable need being met. Counsel has also advised that the distribution of whatever housing figure is finally 'settled upon' does require further consideration in terms of 'reasonable alternatives'.

1.2 Strategic Priorities

- 1.2.1 The SIR and SSA LP documents relate to all three priorities contained within the West Suffolk Strategic Plan, (2014-16).

2. Key Issues

- 2.1 The consultation draft SSA and SIR LP documents were approved for consultation by Cabinet on 26th November 2013. Subsequent to this and as most recently reported to LPWG on 8th May 2014, the consultations have been postponed whilst Officers work with their consultants and seek continued dialogue with Counsel, to ensure that the supporting SA/SEA documents are sufficiently robust and therefore less susceptible to legal and 'soundness' challenges at a later date. (Advice received to date would suggest that the Authority is not as yet in a 'robust' enough position to progress with consultation).
- 2.2 A concise summary of progress following the Cabinet meeting of 26 November 2013, is presented within the table below.

Date/Period	Stage/Progress
26 November 2013	Consultation draft SIR 'Submission', (Regulation 19 stage), and SSA 'Issues and Options', (Regulation 18 stage), LP documents approved for consultation early in 2014 by Cabinet.
December/January 2013/2014	Consultation draft SIR and SSA LP documents finalised and published ready for consultation.
19 December 2013	Advice from consultants - Legal advice ought to be sought on the risk of legal challenge should the Authority wish to proceed, as planned, with

	assessment of new alternative options within the context of the SA/SEA Report to accompany the Submission/Regulation 19 stage SIR LP. Further and in order to incorporate a range of additional 'reasonable alternatives' for consideration, there may be a need to add another stage of preparation for the SIR LP, (i.e. a further Issues and Options/Regulation 18 stage). The Authority was reluctant to take this course given recent Counsel's advice as it pertained to a similar matter in relation to the Joint DM Policies LP.
23 January 2013	Advice received from Counsel. In terms of moving forward the Council should: a) Complete the update of baseline information in support of the SA/SEA Scoping Report, b) Review its evidence of objectively assessed housing needs, (OAN), c) Consult with statutory consultation bodies on the scope and level of detail to be included in the SA/SEA, d) In light of the above consultation, undertake the SA/SEA itself, e) The Authority should then use the results of the SA to inform the final form of the SIR LP.
11 February 2014	Teleconference with consultants to consider Counsel's recent advice and the future work programme. The scoping report would be finalised and a workshop would take place to consider 'reasonable alternatives', (specifically as these related to the SIR LP), to be considered by statutory consultees alongside consultation on the scoping report itself. The Council were advised by their consultants that they should seek advice from Counsel as to whether or not it was reasonable to revisit the overall housing numbers, (i.e. reasonable alternatives to 7,000 dwellings), given there was a memorandum of co-operation in existence between all SHMA participating Authorities.
February - April 2014	Further work undertaken by consultants and officers in terms of finalising the scoping report, (baseline environmental information), and generating 'reasonable alternatives' for consideration by statutory bodies alongside the scoping report and ultimately within the context of the SA/SEA documents themselves. The 'reasonable alternatives' workshop was held on 21st February 2014.
8 May 2014	Progress report to LPWG – Members informed as to why there was a delay in going out to consultation on the SIR and SSA LPs, (i.e. the requirement to do further work on the SA/SEA documents). At this stage it was envisaged that

	the next 'rounds' of consultation would be undertaken simultaneously and that for the SIR LP the Council would be consulting on the 'Submission', (Regulation 19), version whilst for the SSA LP the Council would be consulting on the 'Further Issues and Options', (Regulation 18) version.
12 May 2014	Consultants advise that the Council should not consult statutory bodies on the reasonable alternatives, (to be consulted upon alongside the Scoping Report), until Counsel's advice had been received on whether or not the overall housing number should be revisited in terms of reasonable alternatives.
20 June 2014	Advice from consultants – Council's preferred 'route' of twin tracking the SIR, (Proposed submission/Regulation 19), and SSA, (Further Issues and Options/Regulation 18), processes is not sufficiently robust and they were consequently not prepared to continue working with the Council on such a basis.
25 June 2014	Further Advice note received from Counsel with regard to the adequacy of the assessment of reasonable alternatives to date as these related to the quantum and distribution of housing growth within the District. The advice was clear insofar as the assessment of reasonable alternatives to the requirement of 7,000 dwellings should be revisited.
July- August 2014	Consideration of possible options moving forward, (in light of Counsel's latest advice note).
Today	The opportunity has presented itself to consider taking a step back in terms of the SIR LP and start, from the (further) Issues and Options/Regulation 18 stage. This would allow the production of a LP that combines both SIR and SSA LPs and allows the assessment of reasonable alternatives to be explored in a robust manner.

2.3 To boost significantly the supply of housing, the NPPF tells local planning authorities that they should.....

'use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework.....'(NPPF, para. 47).

2.4 Although 'objectively assessed', Counsel has questioned if the SHMA, (Technical Report), derived housing requirement figure of 7,000, (3,742 affordable), dwellings in the plan period, (2011-2031), are sufficient to 'convince' the Planning Inspectorate that the Authority has gone as far as it reasonably can in meeting its full and objectively assessed needs (OAN) for both market and **affordable** housing (as is practicably achievable in market /

viability, terms and having regard to issues of 'sustainability' and reasonableness which include the District's environmental constraints).

- 2.5 Counsel's concerns centre on the affordable housing, (AH), element, (3,742 dwellings), which constitutes some 53% of the total requirement of 7,000 dwellings. On the basis of 30% delivery, (in accordance with adopted Core Strategy policy CS9), 'across the board', only 2,100 affordable dwellings would be delivered, or 61% of the total AH need within the plan period. As Counsel has pointed out in their advice note, this is likely to be of concern to the Planning Inspectorate.
- 2.6 Indeed, it is the contention of Counsel that in undertaking the aforementioned assessment, (the identification of the 'full' needs, unconstrained by any policy or deliverability issues, and the assessment of how much of the 'full' needs should be met in the relevant plan area, having regard to the policies in the NPPF), *the Authority is likely to find that there is some scope to increase overall provision so as to deliver more AH but probably that it is not realistic or reasonable to expect the District to be able to meet the full need for AH.*
- 2.7 There is a risk that if the Authority were to proceed with the SHMA, (Technical Report), derived figure of 7,000 dwellings, without first exploring whether or not this figure can be 'stretched', the Authority's growth strategy could be found unsound at the examination stage and or could be prone to legal challenge at a later date.
- 2.8 It should be noted that any further appraisal will not necessarily reveal potential for increasing the housing 'target' and any 'final' figure must be 'sustainable'.
- 2.9 Further, it is Counsel's contention that further assessment of the reasonable alternatives, in terms of the distribution of growth, will be required but only after the final 'target' figure has been 'settled upon'.
- 2.10 It is fair to say that other SHMA participating Authorities have advanced their Local Plans using their SHMA, (Technical Report), housing requirement figures, namely Fenland District Council and St Edmundsbury Borough Council. However, all Authorities growth strategies will be assessed on their own merits, for example, having regard to their own 'constraints' and their own policies as these relate to the provision of AH and as these appear within their respective Local Plans.
- 2.11 As identified in the table below and in terms of a potential 'option' moving forward, it may even be wise to go back a stage in the preparation of the SIR LP and progress the SIR and SSA LP documents in combination from the same 'Further Issues and Options', (Regulation 18), Stage. Although this may mean not having an adopted 'replacement' Policy CS7 as early as may otherwise be the case, it will allow time for the 'reasonable alternatives' in terms of quantum, distribution and phasing of housing growth to be adequately considered alongside the 'reasonable alternatives' as these relate to the allocation of specific sites (to deliver this housing) and for such assessment to be adequately reported within the context of the respective SA/SEA document(s).

- 2.12 Bringing forward the SIR and SSA LPs together is more likely to convince the Planning Inspectorate that both plans are deliverable, (i.e. there are sufficient deliverable sites in the right places and at the right time to deliver the strategic housing policy). Further, with both evidence bases being consistent and produced in 'parallel', there would be no requirement to undertake a further review of the strategic housing policy prior to adopting the SSA Plan, (as would be required, to ensure consistency, if the LPs are brought forward independently of each other and at different stages).

Risk Assessment of 'Options' moving forward

Option	Potential Risk(s)	Potential benefit(s)
<p><u>Option 1:</u> Proceed with the SHMA, (technical Report), derived figure of 7,000, (3,742 affordable), dwellings within the plan period to 2031. Council to progress with consultation as planned on the Submission/Regulation 19 version of the SIR LP and the Further Issues and Options/Regulation 18 version of the SSA LP.</p>	<p>A planning Inspector may deem that the LPA has not gone as far as it reasonably can go in meeting its OAN particularly for AH as presented within the SIR LP. <u>Officers advise that this is not a preferred option as there is too great a risk of challenge and the potential for further delays in the longer term should the Authority be 'forced' to re-consider their housing strategy at a later date.</u></p>	<p>The Authority <u>could</u> have a replacement policy CS7 in place sooner than may be the case with option 2 below.</p>
<p><u>Option 2:</u> Undertake further appraisal of the District's ability to deliver more housing and as a consequence an uplift in AH provision. Bring forward a 'new style' LP combining both SIR and SSA LPs, (from the Regulation 18 Issues and Options stage).</p>	<p>There is likely to be further delay in going out to consultation on the SIR and SSA LP documents in the short term. There is the risk that ultimately the Authority may not have an adopted replacement Policy CS7 as soon as might be the case with option 1 above.</p>	<p>The SIR and SSA documents will be more robust in terms of adequate appraisal of reasonable alternatives, (as evidenced within the supporting SA/SEA documents), and as a consequence less susceptible to challenge and issues of 'Soundness' in the medium to long term. Help to demonstrate to the Planning Inspectorate the plan is deliverable. No need to undertake a further review of the housing strategy</p>

		ahead of the SSA LP adoption, (which might be the case if the plans are brought forward independently of each other and at differing stages in their development). <u>Officers advise that this is the preferable option.</u>
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Sequence of events with estimated dates for bringing forward each option

Option 1		Option 2
Minimum 6 week consultation on the Regulation 18 stage 'Further Issues & Options' SSA LP document and the Regulation 19 stage 'Submission' SIR LP document. January/February 2015.		Minimum 6 week consultation on the Regulation 18 stage 'Further Issues & Options' SIR/SSA LP document. March 2015. Final Document for Consultation to be agreed by Cabinet 17th February 2014 Likely date for Consultation to commence 10th March 2014 8 week consultation period includes: <ul style="list-style-type: none"> • Workshops in 3 Towns and 2 Key Service Centres • Attendance at Parish Council meetings upon request
SIR document (Option 1)	LP	SSA LP document (Option 1)
Regulation 19 'Submission' stage SIR LP document submitted to the Secretary of State. June/July 2015.	Representations received during 6 week consultation period inform the preparation of a Regulation 19 stage 'Submission' SSA LP document. June/July 2015.	Representations received during 6 week consultation period inform the preparation of a draft Regulation 19 stage 'Submission' SIR/SSA LP document. June-July 2015.
'Submission' draft SIR LP document examined by	Minimum 6 week consultation period on the Regulation	Minimum 6 week consultation period on the Regulation 19 Stage 'Submission' SIR/SSA LP document. October/November 2015.
		Regulation 19 'Submission' stage SIR/ SSA LP document submitted to the Secretary of State.

Inspector. October 2015.	19 Stage 'Submission' SSA LP document. October 2015.	January/February 2016.
Consultation on proposed modifications made to 'Submission' draft SIR LP document. December / January 2015.	Regulation 19 'Submission' stage draft SSA LP document submitted to the Secretary of State. January/February 2016.	'Submission' draft SIR/SSA LP document examined by Inspector. May/June 2016.
Inspector's report received. February / March 2016.	'Submission' draft SSA LP document examined by Inspector. May/ June 2016.	Consultation on proposed modifications made to 'Submission' draft SIR/SSA LP document. July/August 2016.
Adoption of SIR LP document. March / April 2016.	Consultation on proposed modifications made to 'Submission' draft SSA LP document. July/August 2016.	Inspector's report received. September/October 2016.
	Inspector's report received. September/October 2016.	Adoption of combined SSA/SIR LP document. October/November 2016.
	Adoption of SSA LP document. October / November 2016.	

NOTE: Should consultation not take place in the pre-election period, but commence June this would not result in a change in the final date for adoption of the Plan.

3. **Other options considered**

- 3.1 The SIR 'Issues and Options'/Regulation 18 stage considered hypothetical or potential scenarios, (or 'options'), for establishing the District's housing requirement and sought opinion on each of these. The document also sought opinion on how the Authority should respond to specific environmental and physical constraints in distributing this housing across the District. The 'submission'/Regulation 19 stage consultation draft document established an overall housing requirement for the District based on the Cambridge Sub-Region SHMA and Technical Report; however it has not considered reasonable alternatives to stretch that 7,000 overall annual requirement higher to deliver the affordable housing backlog.

4. **Community Impact**

- 4.1 The SIR and SSA LP documents will be subjected to consultation alongside their requisite Sustainability Appraisal, (incorporating SEA), and Habitats Regulation Assessment, (HRA), documents.

5. **Consultation**

- 5.1 The preparation of the SIR and SSA LP documents are iterative processes. A previous round of consultation on the **SIR** 'Issues and Options', (Regulation 18 stage), took place between 31st July 2012 and 25th September 2012. The responses received during this period of consultation were subsequently considered by Officers and Members, (LPWG meeting 4th July 2013), and were used to inform the 'Submission', (Regulation 19 stage), consultation draft document. In terms of the **SSA** LP document, Planning Committee approved a 'Final Issues and Options', (Regulation 18 stage), Consultation document in April 2010, although the document did not proceed to the formal consultation stage in view of the High Court Challenge. A revised Regulation 18 consultation was prepared and reported to Members in November 2014 along with the proposed submission CS SIR, both documents have not been issued for consultation.

6. **Financial and Resource implications**

- 6.1 The SIR and SSA LP document preparation can be delivered within the planning service budget for 2014/15.

7. **Risk/opportunity assessment**

- 7.1 Failure to proceed with the preparation of the SSA and SIR LP documents through to adoption will leave the Authority with an incomplete Local Plan, leading to less control over planning matters across the district.

The Council needs to demonstrate timely progress with the Local Plan which will gain weight in the development management process as the Local Plan is prepared. At the same time, the Council also needs to prepare the relevant robust and sufficient evidence to deliver a sound Local Plan.

8. **Legal and Policy Implications**

- 8.1 The Planning and Compulsory Purchase Act, (2004), requires Forest Heath DC to prepare and keep an up-to-date Development, (Local), Plan. An effective Development, (Local), Plan is essential for the continuation of an effective planning service.

Consideration also needs to be given to the requirements of ss2 and 4 of the Local Government Act 1986 and the Code of Recommended Practice on publicity. The Act and Code require local authorities to be particularly careful about the material they publish during the pre-election period (often known as 'purdah'). It must not give the appearance that it is designed to affect support for any particular political party. Given the purpose of the documents going out to consultation, that they are under the Forest Heath brand, and have been created by a long process involving members who are not only from the

majority party, officers consider that they cannot reasonably be construed as intending to influence political support, and that consequently the risk of a successful challenge to the process is low.

Members do need to be aware, however, that in order to comply with the Act and the Code, during 'purdah' no material will be published, or any views or proposals reported, in such a way that they can be identified with individual members or groups of members. In practical terms this means that no assistance can be given to any member with such things as statements, press releases or responses to questions.