

Burnley's Local Plan

REPORT TO THE EXECUTIVE



DATE	20/03/2017
PORTFOLIO	Regeneration and Planning Policy
REPORT AUTHOR	Kate Ingram/Elizabeth Murphy
TEL NO	01282 477271/477286
EMAIL	kingram@burnley.gov.uk; emurphy@burnley.gov.uk

PURPOSE

1. The purpose of this report is to seek Members' support for a recommendation to Full Council that the Burnley Local Plan Proposed Submission Plan (Appendix 1) be approved for Publication for the seeking of representations as to soundness and legal compliance in accordance with the Council's Statement of Community Involvement (SCI) and statutory requirements.
2. The Proposed Submission version of the Plan is the Plan which is to be submitted to the Secretary of State for independent Examination.

RECOMMENDATION

3. That Full Council be recommended to approve the Burnley Local Proposed Submission Plan for Publication for the seeking of representations as to soundness and legal compliance over a 6 week period from 12th April to 26th May 2017 and its subsequent Submission to the Secretary of State for Examination.
4. That Full Council be recommended to authorise the Head of Regeneration and Planning Policy to make minor editorial changes to the Local Plan Proposed Submission Plan, the accompanying Policies Map, the sustainability appraisal and any other relevant documents prior to Publication and Submission, subject to these not involving the addition or deletion of any site and not otherwise changing the Plan's direction or overall strategy where it is able to do so.
5. That Full Council be recommended to authorise the Head of Regeneration and Planning Policy to propose main modifications to the Plan to the inspector where the inspector has indicated these are necessary to ensure soundness, subject to the caveat that if, in the opinion of the Head of Regeneration and Planning Policy and following consultation with the Portfolio Holder for Regeneration and Economic Development, these changes are considered to be so substantial as to alter the entire plan and its strategy, these will be referred back to Full Council for a decision during the Examination.

REASONS FOR RECOMMENDATION

6. Local Authorities are required by legislation to prepare a Local Plan to set the local planning framework for their district. The current Burnley Local Plan Second Review adopted in 2006 was intended to cover the period until 2016. Its policies have been 'saved' indefinitely by the Secretary of State until such time as a new plan is put in place.
7. Failure to have an up to date local plan in place limits the Council's ability to influence the quantum, location and quality of development in its area. The Government have made clear that they expect Council's to have a local plan in place and are still considering possible sanctions such as intervention by DCLG and/or possible financial penalties for those Councils that do not.
8. The Council has produced the Proposed Submission version of the Plan in line with the statutory requirement to do so. This version of the Plan is the version that the Council intends to submit to the Secretary of State for independent Examination, prior to it being formally adopted, and as such a decision of Full Council is required by legislation at this stage.
9. The Council is required by legislation to invite representations on the Proposed Submission Documents (i.e. the Plan, the Sustainability Appraisal and other relevant supporting documents) over a 6 week period prior to Submission. These representations should be on matters of soundness and legal compliance only, but in practice are not restricted to these matters – although these are the only matters the inspector can consider at the Examination.

SUMMARY OF KEY POINTS

10. Burnley's new Local Plan will cover the whole of the Borough and look ahead to 2032. It will provide the statutory planning framework for the borough for non-minerals and waste matters which are the responsibility of Lancashire County Council. The adopted Joint Lancashire Minerals and Waste Local Plan also forms part of the development plan for Burnley.
11. The Local Plan is being drawn up in accordance with the legislation governing plan-making, including the Duty to Cooperate; and in the context of national planning policy with which it must be consistent, whilst also having regard to other relevant local strategies. To progress to adoption, the Plan must be 'sound' and the tests for judging soundness are set out in the National Planning Policy Framework (NPPF). The Plan must also be legally compliant in its content and preparation.
12. The Plan will be used to guide decisions on planning applications and areas where investment should be prioritised. Once adopted, it is intended to fully replace the 'saved' 2006 Local Plan.

Outcome of Preferred Options

13. Preferred Options was not a formal stage required under the regulations governing plan preparation i.e. The Town and Country Planning (Local Planning) (England) Regulations 2012. Councils are required by the regulations to consult about what the Plan 'ought to contain' and to take the comments received into account. Effectively, the Council broke down this requirement into separate stages: Issues and Options and Preferred Options, in

line with the commitment set out in its SCI.

14. Following consultation on Issues and Options in early 2014 and some additional sites in late 2014 which encouraged early involvement in the Plan's preparation, the Preferred Options document was a draft plan for consultation setting out the Council's preferred strategy, policies and site allocations and was the subject of consultation over a 6 week period from 15 July to 26 August 2016.
15. A report on the comments received and the recommended responses is included at Appendix 3. Copies of the original comments in full are available for inspection. A number of changes have been made to the Plan as a result of the comments received and further work on the evidence base has been commissioned and completed.

Content of the Proposed Submission Plan

16. The Proposed Submission Plan sets out:
 - the issues that Burnley faces;
 - a Vision of the kind of place Burnley might be by 2032; and
 - the policies to plan and manage change and development in order to deal with the issues that the borough faces and achieve the Vision for Burnley.
17. The Plan has been informed by an extensive evidence base, including a number of studies produced specifically to inform the plan, including: a Joint Strategic Housing Market Assessment with Pendle Council (SHMA), an Employment Demand Study (ELDS), a Strategic Housing and Employment Land Availability Assessment (SHLAA), A Retail, Office and Leisure Assessment (ROL), a Gypsy, Traveller and Travelling Showpeople's Accommodation Assessment (GTAA), a Green Belt Review, a Green Infrastructure Strategy, a Strategic Flood Risk Assessment, a Transport Impact Assessment and a Viability Assessment.
18. The Plan begins with an explanation about its purpose and development and a summary of the context within which the Plan is being prepared. It is then set out as follows:
 - Section 2 provides a concise geographic, economic and social portrait of Burnley Borough and the key issues it faces
 - Section 3 sets out the spatial vision for Burnley describing the sort of place Burnley will be by 2032. In order to achieve this vision and to respond to issues identified, a number of objectives have been defined
 - Section 4 sets out the strategy for housing and employment growth and the strategic / overarching policies for development, including the housing and employment land targets (SP2 and SP3) and overall spatial strategy (SP4)
 - Section 5 sets out the allocations (including housing under HS1 and Employment under EMP1) and specific policies by subject area
 - Section 6 set out the arrangements for implementation and monitoring
19. The Policies Map is a series of Plans attached at Appendix 2 (these are currently drafts or printers proofs awaiting the Full Council Decision).
20. An Infrastructure Delivery Plan (IDP) is being produced alongside the Local Plan. The IPD is a living document which reviews and evaluates the social, environmental and economic

infrastructure that that will be required to support the development and growth set out the Plan. The Draft IDP is attached to this report in Appendix 6.

Sustainability Appraisal

21. Throughout its development, the Local Plan is subject to a number of environmental appraisals. Sustainability Appraisal (SA) assesses the environmental, social and economic impacts of the plan and its policies; Strategic Environmental Assessment (SEA) assesses the environmental effects of the plan and its policies and any 'reasonable alternatives'; and Habitats Regulations Assessment (HRA) assesses any significant effects on European nature conservation sites. The first two processes tend to be combined and jointly described as SA for ease of reference.
22. SA is a systematic iterative process to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives as well as being a means of identifying and mitigating any potential adverse effects that the plan might otherwise have.
23. Initial SA and HRA reports were published at the Issues and Options stage and further SA and HRA was undertaken of the Preferred Options. Further SA and HRA has been undertaken of the Proposed Submission Plan taking into account the relevant comments received at Preferred Options. The HRA report is attached at Appendix 4. The SA and Non-Technical Summary report is attached to this report in Appendix 5a and 5b. The publication of an SA Report for comment alongside the Proposed Submission Document is a legislative requirement at this stage.

Impending Changes to national Policy and Legislation

24. At the time of writing, legislative changes to the planning system through some as yet unenacted clauses in the 2016 the Housing and Planning Act and through the Neighbourhood Planning Bill 2016-17 are anticipated. Some changes to national planning policy and the plan-making system have been announced and further changes proposed (subject to consultation) in the Housing White Paper of February 2017. These changes are likely to be significant. However, in so far as it is within the Council's control, it is important that these should not result in delay to progression of the Local Plan. Officers seek to minimise risks in this regard by trying to predict and anticipate the likely changes.

Proposed Submission Consultation

25. Consultation on the Proposed Submission Plan will take place over six week period from Wednesday 12th April 2017 to Friday 26th May 2017 and will be carried out in line with legislative requirements and the Council's SCI. Due to the particular nature of this plan-making stage which is often described as a 'technical consultation', there will only be two drop-in events held at the town hall where officers will be available to answer questions on the Plan content, how to make representations, and on the forthcoming Examination. Officers will be available to answer queries by phone for those who are unable to attend an event.
26. The Proposed Submission Plan will be available on the Council's website and printed copies will be available to view at Contact Burnley, Burnley Central Library and Padiham Leisure Centre. Representations will be able to be made online at www.burnley.gov.uk or

by e-mailing localplan@burnley.gov.uk or by writing to Burnley Borough Council, Regeneration and Planning Policy, 19 Parker Lane, Burnley, BB11 2BY

27. The representations received in response to this consultation will be considered by the inspector. For Submission, the Council is required to prepare a report setting out the number of representations received, their nature and the main issues raised in order to assist the inspector. He or she may during the course of the Examination, ask the Council to respond to the representations.

Submission and Examination

28. The Proposed Submission Plan, together with the representations and report discussed above and the entire evidence base and supporting assessments will be submitted to the Secretary of State for independent Examination in July 2017. A planning inspector from Planning Inspectorate (PINS) will be appointed to conduct an Examination into the soundness and legal compliance of the Plan. Whilst soundness failures in many circumstances can be rectified by changes to the Plan or the preparation of supplementary evidence; this is more difficult with legal compliance failures in relation to the Plan's preparation, including 'Duty to Cooperate' failures which can be fatal.
29. The Examination starts immediately on Submission. The inspector will determine what matters he/she wishes to discuss and invite participants to prepare further material under his/her direction. He or she will normally look first at the legal compliance (process) issues as failures here could halt the Examination, before going on to look at soundness (content) issues. There will be hearing sessions held in public to discuss these matters.
30. Whilst assessing whether a plan is 'sound' is actually a legal requirement, it is the NPPF that sets out four tests which the inspector will use to assess this. These are:
- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
 - **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
 - **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
 - **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.
31. Only those who have made representations at the Proposed Submission stage and within the six week period can participate in the Examination. They can participate in writing or at the hearings in person, or both. Only those seeking change to the Plan have a right appear in person, but supporters can too at the inspector's discretion. Anyone can attend to view the hearings whether they have made representations or not.

Modifications

32. During the Examination and prior to the ultimate adoption of the Plan, two types of modifications can be made.

33. **Minor Modifications** – These can be made at any time by the Council. These are changes which do not affect the substance of the plan e.g. typographical corrections, factual updating or minor wording changes to aid understanding/clarity. In practice, the Council maintains a live ‘tracked changes’ version of the Plan showing these, but they are actually made on adoption.
34. **Main Modifications** – These are changes to the plan to ensure soundness or occasionally legal compliance - although the latter tends to be more about the preparation process than plan content. There is a peculiar process for introducing these main modifications. Where an inspector indicates that these may be necessary to avoid a finding of unsoundness – he or she invites the Council to propose them to him/her. Following the hearing Sessions, these main modifications will be formally consulted on and the inspector will consider any further responses in addition to all other matters considered during the course of the Examination and if necessary he or she will reopen the hearing sessions.
35. Council officers need to be given the delegated authority to make /propose these changes in order for the Examination to proceed. The inspector will seek confirmation of the necessary delegation being in place. In circumstances where wholesale changes are under discussion e.g. a substantial increase in housing numbers and a suite of new sites required, the matter will need to be referred back to the Full Council for a decision. In extreme circumstances, a Plan may need to be withdrawn.
36. A Programme Officer must be in place at the time of Submission. The Programme Officer, who must not have been involved in the preparation of the Plan, organises the Examination and liaises between the inspector the Council and representors.

Adoption

37. Following the Examination, the inspector will issue a Report. If he or she concludes that the Plan is legally compliant and sound, or can be made so with main modifications, he or she will recommend its adoption. Full Council can then adopt the Plan in accordance with the inspector’s recommendations. If this is not the case he or she will recommend the Plan is not adopted and the Council cannot then adopt it. There is a 6 week period following adoption when this decision can be challenged in the High Court.

Local Plan Working Group

38. The Local Plan Working Group met on 9th March 2017. A query was raised regarding the delay for this stage of the process. The Head of Regeneration and Planning Policy indicated that this was due to delays on technical assessments which were outside of the Council’s control.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

39. Whilst the main Examination costs including the inspector’s fee and the Programme Officer have been budgeted for, the inspector may require additional work or evidence, including to address changes in legislation and national policy. Additional costs may be incurred if there is a legal challenge following adoption.

POLICY IMPLICATIONS

40. The adopted Local Plan will become the key planning document for the Borough. It will help to guide investment, give greater certainty about the future use of land and form the basis for determining planning applications.
41. The Council can only adopt the Plan with the main modifications recommended by the inspector and cannot make any main modifications of its own or reject the inspector's.

DETAILS OF CONSULTATION

42. As outlined in the report.

BACKGROUND PAPERS

As outlined in the Report and the Appendices
Local Plan Evidence Base <http://www.burnley.gov.uk/residents/planning/planning-policies/burnleys-emerging-local-plan>

FURTHER INFORMATION

PLEASE CONTACT: Kate Ingram

ALSO: Elizabeth Murphy

Stages and terms that refer to specific requirements and stages under legislation are capitalised in this report to aid understanding.