

REVIEW OF LOCAL DEVELOPMENT SCHEME (LOCAL PLAN WORK PROGRAMME)

Cabinet	25 July 2024
By	Bob Porter (Director of Place)
Cabinet Portfolio Member	Cllr Rick Everitt (Leader of the Council and Cabinet Member for Strategy and Transformation)
Key Decision	No
Decision classification	Unrestricted
Call in status	Can be called in
Ward:	N/A

Purpose of the Report

There is a legal requirement to have a Local Development Scheme, which is set out in section 15 of the Planning and Compulsory Purchase Act 2004.

In June 2022, Cabinet agreed a new Local Development Scheme (LDS). The LDS needs to be updated, to reflect changes in circumstances affecting Local Plan progression. This report sets out proposed changes to the work programme for updating the adopted Local Plan, and other Local Plan-related documents.

The key elements of the Local Development Scheme (the Local Plan work programme) are set out in this report.

Recommendation(s):

That Cabinet agrees the proposals for the revised Local Development Scheme.

1. Summary of Reasons

1.1 The reasons for the recommendation are as follows:

- To provide a suitable basis for resource and budget planning for the Plan-making process;
- To provide a clear Local Plan timetable for officers, members, interested groups and individuals, and other statutory bodies; and
- To meet the Council's statutory duties under section 15 of the Planning and Compulsory Purchase Act 2004.

2. Background

- 2.1 Every local planning authority has to “prepare and maintain” a work programme for its Local Plan and Local Plan-related work, known as the Local Development Scheme (LDS). This is a requirement under Section 15 of the Planning & Compulsory Purchase Act 2004.
- 2.2 The Local Plan was adopted on 9 July 2020.
- 2.3 The Local Plan Inspectors' report recommended a new Local Plan review policy SP03. The report recommended that the review of the Local Plan should:
- consider the implications of climate change;
 - review the provisions of the Plan in relation to Manston Airport in the light of a decision on the Development Consent Order;
 - assess the implications of the Local Housing Need Methodology on housing requirements for the district;
 - consider the provision of Gypsy & Traveller sites to meet the requirements set out in Policy HO20; and
 - ensure compatibility with the most recent National Planning Policy Framework.
- 2.4 The review of the Local Plan was completed in December 2020, and a new LDS published in December 2020. A significant amount of work has since been undertaken on the Local Plan Update; including public engagement on a range of key issues, and two "calls for sites" to be considered in the Local Plan process.
- 2.5 The current LDS was agreed and published in June 2022.

3. Relevant Issues

- 3.1 This report sets out some amendments to the LDS to revise the timetable for updating the Local Plan, in the light of changing circumstances.
- 3.2 The current LDS pushed the previous programme back by a few months, and also included some changes to the programme of Supplementary Planning Documents (SPDs) to be produced alongside the Local Plan Update.
- 3.3 As Members will be aware, the previous Government had started to introduce far-reaching changes to the current plan-making process. This includes:
- significant changes to the Plan-making process itself;
 - new mandatory Design Codes (which like the Local Plan, would be subject to Examination);
 - replacing Local Development Schemes (LDSs) with Local Plan timetables (LPTs);
 - the introduction of a new suite of national development management policies to cover core policy areas which are common across the country;
 - changes to the sustainability appraisal process, to introduce Environmental Outcome Reports; and

- removing the ability to produce supplementary planning documents (SPDs), to be replaced by supplementary plans (which like the Local Plan and Design Codes, would be subject to Examination).
- 3.4 The Government had also previously indicated that, in 2024, there would be a review of the impacts of the 2021 Census data on the housing “standard method”, and the latest population and household projections would be published. These are the basis for determining housing requirements, and much else in the Plan - employment land provision; retail needs; wider infrastructure planning (including education and health facilities, transport infrastructure and utilities planning). However, these have now been delayed until 2025, setting back our intended programme by about a year.
- 3.5 As yet, no Regulations have been laid in relation to the new Plan-making system. While there appears to be some political consensus regarding review of the Plan-making process, there is some doubt over some aspects of the new system, which are yet to be confirmed or changed by the new Government. It is anticipated that proposed revisions to the NPPF will be published before the Parliamentary recess. It may be therefore that the LDS requires further revision in due course. However, the work being proposed for the early part of the process will be of value whatever the final shape of the Plan-making process is, and should not be wasted.
- 3.6 As a result, it is considered that meeting the current “transitional arrangements” is not feasible, as there are now too many uncertainties which affect the strategy and content of the draft Plan. It is therefore proposed that the programme should be revised to allow the Council to prepare a new-style Local Plan as soon as possible. For members’ information, the Council has been invited to participate in a group being run by the LGA’s Planning Advisory Service, for a number of local authorities in the same position as this Council. This should provide a useful source of information and advice, as we seek to move the Plan forward.
- 3.7 These factors have necessitated a review of the scope of the adopted Local Plan. Officers have carried out an early scoping exercise of Local Plan policies against Government guidance. While many Local Plan policies are still valid, any review of the Plan will need to be cognisant of any emerging changes to Government guidance, so that the Plan fully reflects the latest position.
- 3.8 For example, the matters that will need to be addressed in the new Plan-making process will include:
- 1) Prioritising the statutory Design Code work;
 - 2) Reviewing Local Plan policies in the light of any further changes to the NPPF;
 - 3) Reviewing the Cliftonville Development Plan Document (DPD), and incorporating the relevant policies into the new Local Plan;
 - 4) Updating the Plan with relevant policies to reflect the requirements of the Development Consent Order for Manston Airport;
 - 5) Reviewing and, where appropriate, incorporating current Supplementary Planning Documents into the Local Plan (or preparing supplementary plans separately); and
 - 6) Updating biodiversity “net gain” policies to reflect the new statutory requirements.

- 3.9 For information, the Council and the other East Kent authorities have received a total of £250,000 of DLUHC funding (under the Planning Skills Delivery Fund), to take forward Phase 1 of this work. It is hoped to secure further funding for Phase 2 of the work.
- 3.10 There may also be new issues that arise during the preparation of the Plan that need to be considered. It is therefore recommended that the previous proposal for a partial update of the Local Plan is discontinued, and that the Council prepares a new Local Plan under the new Plan-making process.
- 3.11 It is therefore recommended that the Local Plan timetable be amended as follows:

Task	Key dates
Design Code (Phase 1); Biodiversity Strategy; review of evidence base; commissioning of evidence base studies	July 2024 - March 2025
Design Code (Phase 2); review of housing requirements	March 2025 - December 2025
Scoping & early participation	Sept - Nov 2025
Local Plan "Notice"	March 2026
Gateway 1	May 2026
Mandatory public consultation (Issues & Options)(8 weeks)	Sept/Oct 2026
Gateway 2	March 2027
Mandatory public consultation (6 weeks)	May/June 2027
Gateway 3	July 2027
Submission	Sept 2027
Examination (9 months)	Sept 2027- June 2028
Adoption	July 2028

- 3.12 The requirement for an LDS is to ensure that Local Plans are regularly reviewed and kept up-to-date. As new Plans develop, they gradually take on additional weight and earlier Plans, conversely, gradually carry less weight.
- 3.13 The Council does not have the power to unilaterally rescind the existing Local Plan before preparing a new Plan. There is a power for the Secretary of State (SoS) to revoke a local plan at the request of a local planning authority. From the wording in the legislation, there does not appear to be a power to revoke parts of a Local Plan; the legislation only refers to a document.
- 3.14 It is understood that no such request has ever been made, and the SoS has never exercised this power. MHCLG (Ministry of Housing, Communities & Local

Government) advice is that there would be a very high bar for any such request. The SoS would need exceptional grounds to overturn the conclusions of an independently conducted Examination process. The SoS would have the responsibility for the decision, and be potentially subject to Judicial Review and significant court costs. The SoS would also be potentially responsible for any damages sought by those developers whose sites had been allocated in the Plan that was to be revoked. The justification for revocation would have to be considerably greater than a wish to amend the current Plan. The desire to do that would be dealt with by preparing and approving a new Plan. The Council has, however, already asked the Secretary of State to determine all appeals in relation to individual applications for housing on agricultural land; a request that was refused.

- 3.15 An example of where revocation might be appropriate is a local development document that has been prepared for specific developments in a particular part of a district (for example, an Area Action Plan under the Local Development Framework system). Where circumstances have changed significantly, the original basis for the AAP may no longer exist (for example, where a major site was allocated for a particular purpose, but for whatever reason, that use was no longer possible). It would be much more difficult to justify revocation of an entire Local Plan. It could not be justified simply on the basis that there are objections to the sites previously allocated through an Examination process.
- 3.16 It is highly unlikely that the SoS would agree to revoke the Thanet Local Plan, as:
- The Plan was adopted within the last five years;
 - The Plan was found “sound” by the Planning Inspectorate, including in relation to housing requirements and provision;
 - The Council was, for a while, under direct intervention by the Secretary of State to produce a Local Plan (meeting the full housing requirement); and
 - There would likely be significant developer/landowner opposition to revocation.
- 3.17 In the unlikely event that the SoS decided to revoke a Local Plan, the Council would have to rely on the NPPF and other Government guidance in making decisions on planning applications. Not only would this entail the loss of a sufficient housing land supply for the Plan period, but it would also remove other key Local Plan policies as well - relating to minimum internal space standards for new housing and water efficiency standards (national standards implemented through policy); affordable housing; Green Wedges; agricultural land; support for social infrastructure; contributions to Bird Wise (to meet the requirements of the Habitats Regulations); protection of important employment sites; etc, as well as a range of other Thanet-specific policies not addressed in the NPPF. It would also remove the policy basis for the Council's Supplementary Planning Documents, such as the Landscape Character Assessment.
- 3.18 The Government's “standard methodology” for housing requirements would still be a key “material consideration” in dealing with planning applications for housing. This

means that the Council would still be vulnerable to Planning Appeals if it refused applications for housing on sites it considered to be unsuitable, or over developed. Significant weight would still be given to the “standard methodology” for calculating the housing numbers for Thanet.

3.19 Other significant implications could include:

- A risk to the current funding bid (£50m) for the North Thanet Link Road, which is related to the delivery of housing in the area. The delivery of homes is one of the central objectives of Main Road Network funding. The case for the bid might be undermined if the Council is seen to not be committed to the housing delivery set out in the current adopted Local Plan.
- A risk to the delivery of strategic infrastructure, such as the Thanet Transport Strategy or other social infrastructure.
- Increased uncertainty for investors and developers. Not having a Plan, or actively seeking to undo a Plan, would have the potential for a chilling effect on economic investment in the district.
- Reputational damage from seeking to undo a Local Plan that is relatively recent, calling into question the Council's competency as a local planning authority.

3.20 On the basis of the information set out above, officers would not recommend that the Council pursue a request for revocation to the SoS.

3.21 The latest changes to the NPPF signal some changes to the determination of housing requirements. However, this does not give councils the level of freedom that might be suggested. Although the NPPF (para 61) says that “*the outcome of the standard method is an advisory starting-point for establishing a housing requirement for the area*”, alternative approaches to the “standard method” can only be applied in “*exceptional circumstances*”, and it is clear that the exceptions are very limited. It should be noted that the new Government has indicated that it will reverse these changes with revisions to the NPPF (by the end of July), to restore mandatory housing targets.

3.22 Similarly, the changes to the NPPF in relation to agricultural land (footnote 62) state that “*The availability of agricultural land used for food production should be considered*”. Importantly, it does not give any specific additional protection to best and most versatile farmland. The Council has already requested that the Government amend the National Planning Policy Framework to put in place specific protections for best and most versatile agricultural land.

3.23 The timetable proposed for the revised LDS allows the Council to take account of the new population and household projections once they are published. The council will also be able to consider any new guidance in relation to housing requirements. The timetable will enable the council to produce a Local Plan under the new Plan-making

system, while retaining the adopted Local Plan, including the important protections and policies that it contains for the area.

4. Alternative Options

4.1 The options for the LDS are as follows:

1. To agree the LDS for publication as recommended in this report;
2. To agree amendments to the proposals recommended in this report; or
3. To not agree an LDS.

4.2 Option 1 is recommended - this responds to the statutory requirements, and sets out a realistic timeline for establishing a strong district-wide planning strategy. Option 2 allows for a potential variation to the work programme, but this would need to be justified by way of specific circumstances or evidence.

4.3 Option 3 is not recommended, because it would not meet the Council's statutory duties, nor provide a sound basis for moving forward the preparation of a new Local Plan, and may render the Council open to intervention by the Secretary of State.

5. Consultation

5.1 There are no specific consultation requirements in relation to the Local Development Scheme.

6. Corporate Implications

6.1 Finance and Resources

6.1.1 There are no financial implications associated directly with this decision.

6.1.2 However, there will be costs associated with the preparation of the new Plan, which are funded through the Local Plan Reserve (including some planning fees income) and operational budgets. Any new requirements associated with the Plan-making process may require a longer term review of available funding.

6.2 Legal and Constitutional

6.2.1 The requirement to have a Local Development Scheme is set out in section 15 of the Planning and Compulsory Purchase Act 2004, which states:

“15 (1) The local planning authority must prepare and maintain a scheme to be known as their local development scheme.

“The scheme must specify the local development documents which are to be development plan documents; the subject matter and geographical area to which each development plan document relates; the timetable for preparation and revision of documents and; such other matters as are prescribed.”

6.2.3 The publication of a revised LDS is in line with Government guidance and is a statutory requirement. There are no legal implications arising directly from this report.

6.3 Council Policies and Priorities

6.3.1 This report relates to the following corporate priorities:

- To deliver the housing we need
- To protect our environment
- To create a thriving place
- To work efficiently for local people

6.4 Risk

6.4.1 There are a number of potential risks associated with the new programme, not least of which is the significant uncertainty around the details of the new Plan-making systems. Until some of that is fully resolved, the published timetable will potentially be subject to change.

6.4.2 Other risks include the unresolved housing requirements looking forward. It is not yet clear on what basis housing requirements will be derived, and this is a critical element in the Local Plan, both in its own right and because it affects so many other aspects of the Plan - employment needs; retail capacity; infrastructure requirements and so on.

6.4.2 As mentioned above, there is a risk of intervention by the Secretary of State if an up-to-date LDS is not in place. The Council has been the subject of intervention once before (in 2018), and that in itself can create uncertainty, delay and potential further risk to the Plan process.

6.5 Climate Change and Biodiversity

6.5.1 There are no direct climate change or biodiversity implications from this report, as it only relates to the Local Plan timetable and anticipated work programme, not to any proposed policies or proposals within the Plan.

7. Equality, Equity and Diversity Implications

7.1 This decision does not engage the PSED, as it only relates to the Local Plan timetable and anticipated work programme, not to any proposed policies or proposals within the Plan. No EqIA is required for this report.

8. Crime and Disorder Implications and Community impact

8.1 There are no direct implications from this report, as it only relates to the Local Plan timetable and anticipated work programme, not to any proposed policies or proposals within the Plan.

9. Subject History

9.1 See Background.

Annexes

None

Background Papers

None

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Report Sign Off

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