

## TANDRIDGE DISTRICT COUNCIL

### PLANNING POLICY COMMITTEE

Minutes and report to Council of the meeting of the Committee held in the Council Chamber, Council Offices, Station Road East, Oxted on the 21 September 2023 at 7:30pm.

**PRESENT:** Councillors Sayer (Chair), Chris Farr (Vice-Chair), Blackwell, Booth, Sue Farr, Gray (Substitute) (In place of Botten), Moore, Prew and Steeds

**ALSO PRESENT:** Councillors Crane, Gillman, O'Driscoll, Nicholas White and Wren

**ALSO PRESENT (Virtually):** Councillors Gaffney, Pursehouse and Windsor

**APOLOGIES FOR ABSENCE:** Councillors Botten, Alun Jones and Robinson

#### 109. MINUTES OF THE MEETING HELD ON THE 18TH JULY 2023

These minutes were confirmed and signed as a correct record.

#### 110. LOCAL PLAN OPTIONS

Following the Local Plan procedural meeting on the 27th July 2023, the Inspector had written to the Council advising that, in his view, it would not be possible to make the Plan sound and that he would recommend non-adoption. Two options were presented:

1. the Inspector writes a report concluding the Plan is unsound and not adopted; and
2. the Council withdraws the Plan.

A report, attached as appendix A to these minutes, was considered which assessed the relative merits of both options to assist the Committee in making a recommendation to Full Council.

The Chair expressed great disappointment that the Council's suggestions and arguments for retaining a Local Plan with main modifications (TED 61 and TED 58) had not been accepted and considered that the Council now owed it to residents to ask the Inspector to write a report.

The Committee debated the matter and voted unanimously in support of Option 1. It was confirmed that receipt of the Inspector's report would end the dialogue between himself and the Council.

**COUNCIL DECISION**  
*(subject to ratification by Council)*

**RECOMMENDED** – that Option 1 (the Inspector writes a report setting out why the submitted Plan is unsound and should not be adopted) be pursued.

## 111. PLANNING PERFORMANCE AGREEMENT FRAMEWORK

The Committee considered proposals for introducing voluntary Planning Performance Agreements (PPAs) as part of a pre-application service. Their purpose was to establish transparent procedures for determining large and/or complex applications and to encourage joint working with applicants and other interested parties (they are not a means of obtaining consent). A suggested pro-forma was presented as a basis for guiding the process for agreeing a PPA and which could be adapted to meet the bespoke requirements of a particular application.

The accompanying report also identified key principles which would need to be applied when setting an associated charging scheme, namely:

- the need to apply reasonable, costed charges for discretionary services which reflect both direct costs and an appropriate recovery of overheads
- the recharging of one-off external support costs (e.g. highway modelling)
- transparency, consistency and benchmarking against other Local Authorities
- an annual review process.

In response to the debate, it was confirmed that Ward Members would be notified when a PPA had been entered into and would be kept informed about the subsequent key stages of the process. The Chief Planning Officer considered that developers would probably be keen to engage local Councillors. However, it was acknowledged that such Member involvement would need to take account of the Planning Protocol.

**RESOLVED** – that:

- A. the Planning Performance Agreement (PPA) pro-forma, as attached in Appendix A to the report, be agreed in principle as the basis for negotiating performance agreements with developers on major and largescale applications; and
- B. authority be delegated to the Chief Planning Officer, in consultation with the Chairs of the Planning Committee and Planning Policy Committee, to set the appropriate scale of charges.

## 112. QUARTER 1 2023/24 KEY PERFORMANCE INDICATORS - PLANNING POLICY COMMITTEE

Information was presented about:

- key planning performance indicators for the first quarter of 2023/24 (1<sup>st</sup> April to 30<sup>th</sup> June 2023) as submitted to the Department for Levelling Up, Housing and Communities
- the Committee's risk register
- efforts to reduce the backlog of planning applications, including a funding application to the Planning Skills Delivery Fund.

Members expressed their appreciation of the Development Management team's efforts to reduce the application backlog. However, concern was expressed regarding the proportion of outstanding cases which were over a year old. The Chief Planning Officer confirmed that the team was aware of the situation and explained the context of some of those cases. She also confirmed that an imminent review of the enforcement service would include the scope for improving website content (e.g. publication of enforcement notices).

**RESOLVED** – that the Quarter 1 (2023/24) performance indicators and risks for the Planning Policy Committee be noted.

### 113. QUARTER 1 2023/24 BUDGET MONITORING - PLANNING POLICY COMMITTEE

An analysis of expenditure against the Committee's £1,338K revenue budget for 2023/24, as at the end of June 2023 (Month 3) was presented. A £197K overspend was forecast, mainly due to an increase in the provision for the cost of defending planning appeals; additional expenditure on enforcement and the Gatwick DCO; and a reduction in land charges income.

Regarding the Committee's capital programme (entirely funded by Community Infrastructure Levy income) expenditure of £0.5m was forecast, with the £2.1m carry forward from 2022/23 to be reprofiled into 2024/25.

In response to the debate, the Deputy Chief Executive explained the intention to invest in permanent staff throughout the planning service. However, she reflected on the challenging nature of the recruitment market for certain specialisms and advised that, for the medium term, it would be necessary to retain and seek a few high calibre interim staff within the planning teams.

**RESOLVED** – that the Committee's forecast revenue and capital budget positions as at Quarter 1 / M3 (June) 2023/24 be noted.

### 114. BIO-DIVERSITY NET GAIN

The Environment Act 2021 had introduced a minimum requirement for certain types of development to deliver a 10% biodiversity net gain (BNG) through the planning system from November 2023. A report was presented to inform Members about the emerging BNG regime, including the concept of 'mitigation hierarchy' whereby environmental harm arising from a development should be avoided; adequately mitigated; or, as a last resort, compensated for. While BNG mitigation / compensation should, preferably, be achieved on the development site, developers would have the option to fulfil BNG obligations through off-site measures (i.e. on 'receptor sites'). It was confirmed that developers would incur financial penalties if such 'off-site mitigation' took place on receptor sites outside the District. The responsibilities associated with becoming a receptor site were also discussed.

The report explained key aspects of BNG statutory provisions and the implications for the Council, including:

- the Biodiversity Metric (produced by the Department for Environment, Food and Rural Affairs (DEFRA)) to assess changes in biodiversity value brought about by development or changes in land management

- a BNG site register being developed by DEFRA and Natural England
- the requirements for local authorities arising from the introduction of BNG, as identified by the Planning Advisory Service, which would impact on several Council functions, e.g. development management, CIL, corporate policy and legal
- key work areas for embedding BNG within the Council, including short term essential tasks for preparing for the implementation of relevant legislation in November 2023; establishing a baseline biodiversity evidence base over the medium term; and integrating BNG into planning policy and wider corporate strategies
- an explanation of how and when BNG will be applied to planning applications, including a summary of exemptions such as householder applications
- the requirement to monitor relevant schemes over 30 year periods to ensure BNG compliance, including S106 obligations, which would trigger additional workloads for planning, finance and legal services.

Since the original publication of the report, an extra recommendation (E below) had been added which confirmed the Council's aspiration for 20% BNG. Attention was drawn to the need to justify any such increase and to consider any potential impact upon the viability of other developer obligations (e.g., regarding affordable housing and public open space provision).

Discussion focused on the potential financial implications of BNG for the Council and the need to recover costs where possible, including receipt of upfront payments to cover the cost of a 30 year BNG monitoring regime, either upon signing a Section 106 agreement or the commencement of development. It was also confirmed that an ecologist had been recruited to provide in-house capacity for implementing BNG. Arising from this, the scope for working with neighbouring District and Boroughs to share resources and best practice was discussed.

The importance of attempting to map the current ecological status of sites was raised. This would help guard against any unscrupulous attempts to degrade the ecological quality of sites prior to submitting applications (i.e. by establishing evidence of a prior baseline against which BNG requirements would have to be measured).

**RESOLVED** – that:

- A. Members note the report and the Chief Planning Officer be authorised to undertake the further work necessary to embed BNG within the Local Planning Authority and associated support services;
- B. the basic 10% BNG requirement from November 2023 onwards be adopted until further work can be undertaken to develop a robust evidence base on biodiversity;
- C. Members note the requirement for monitoring BNG statistics, BNG legal agreements and BNG planning conditions and the resourcing implications;
- D. Members note the need to consider staff cost charging schedules for all aspects of BNG related work, particularly administration and monitoring and the intention of the Chief Planning Officer to bring a report back to this Committee on the matter in November 2023; and
- E. the feasibility and achievability of a higher target in Tandridge District than the mandatory 10% BNG be investigated and a further report be submitted to the

Committee's November meeting on the progress of evidence base work relating to the Council adopting such a higher percentage target.

## 115. GATWICK AIRPORT UPDATE

Gatwick Airport Limited's (GAL) application for an Order to grant Development Consent for its Northern Runway Project had been accepted by the Planning Inspectorate (PINS) to proceed to a public examination. A report was submitted to inform the Committee about the key stages of the examination process, including the significant workstreams for the planning policy team which had now been triggered, i.e.:

- the relevant representations period commenced on 4<sup>th</sup> September and would run until 29<sup>th</sup> October
- PINS had issued ten initial observations under Section 51 of the Planning Act 2008, including advice to address the concerns of the local authorities consortium regarding the need for more effective engagement and the preparation of an Issues Tracker (initially, four separate Issues Trackers were provided, however GAL subsequently committed to the production of a consolidated Tracker which would be updated to include future issues raised through relevant representations)
- the full suite of Environmental Statement documents had been released, which enabled public scrutiny of the impacts as identified by GAL (192 documents across 16 thematic areas) – the affected authorities and their consultants were reviewing the documents to consider the assertions made with a view to seeking an appropriate basis of mitigation and/or compensation
- TDC Officers had commenced drafting its Relevant Representation in anticipation of the 29th October due date
- the Council was pursuing bespoke Statements of Common Ground with GAL regarding air quality and noise, with responses on ten other thematic areas deferred to Surrey County Council and/or other adjoining authorities as appropriate
- the Council had agreed to engage with the affected Surrey authorities in the preparation of a joint Local Impact Report, led by Surrey County Council, to be submitted to PINS in advance of the commencement of examination.

In addition, the report explained the work being undertaken by consultants AECOM, York Aviation and Ekosgen to evidence local air quality and noise impacts within the District.

The report also updated the Committee about GAL's FASI-S Airspace Change Programme (the consultation process for which was separate to the DCO) including the options appraisal analysis which indicated that new flight paths will overfly the District and create noise impacts over a wider area. TDC's consultants had been asked to consider this in undertaking their assessment of future cumulative air quality and noise impacts.

**RESOLVED** – that:

- A. the contents of this report regarding the progress made to date in the DCO process and the current position be noted; and

- B. the contents of the report regarding recent developments in relation to FASI-S be noted.

## **116. GATWICK AIRPORT DEVELOPMENT CONSENT ORDER (DCO) APPLICATION PROCESS - FINANCIAL IMPLICATIONS**

The press and public were excluded from this item in accordance with Section 100A (4) of the Local Government Act 1972 (as amended) on the grounds that:

- (i) the item involved the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Act; and
- (ii) the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

On 23rd March 2023, the Committee approved a £30k budget for Gatwick DCO related work until its next meeting on 22nd June 2023, pending clarification on future expenditure. That budget figure had been supplemented by the provision of two payments from GAL (£9k and £10k) taking the overall budget to approximately £49k. In September 2023, the provision of a further £15k had been agreed by the Chief Executive (under urgency powers) to fund additional technical advice.

The Committee was informed about financial commitments which could be offset against the existing approved spend and the need for an extra £10k to cover specific further work and any other unforeseen contingencies that may occur until the end of the examination period.

**RESOLVED** – that future expenditure of up to £10,000 in connection with the Gatwick DCO process be approved.

Rising 9.46 pm

## Local Plan Options

### Planning Policy Committee Thursday, 21 September 2023

Report of: Planning Policy Specialist

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Purpose: For decision

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Publication status: Open

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Wards affected: All

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#### Executive summary:

Following the Local Plan procedural meeting on the 27th July 2023, the Inspector has written to the Council to say that it is his view that it would not be possible to make the plan sound and that he would recommend non-adoption of the Plan. Two options were presented: (1) The Inspector writes a report concluding the Plan is unsound and that it is not adopted; (2) The Council withdraws the Local Plan. This report sets out the implications of each option in order that the Council can make a decision as to the appropriate course of action.

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**This report supports the Council's priority of:** Building a better Council/  
Creating the homes, infrastructure and environment we are need/  
Supporting economic recovery in Tandridge/  
Becoming a greener, more sustainable District

**Contact officer** Katya Fox Planning Policy Specialist  
kfox@tandridge.gov.uk

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#### Recommendation to Committee:

- A. That the Committee consider the pros, cons and risks of each of the two options for the emerging Local Plan, i.e. to request an Inspector's Report (option 1) or withdraw the emerging Local Plan (option 2); and
  - B. The Committee make a recommendation to Full Council on which option should be pursued by the Council.
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### Reason for recommendation:

The Inspector has requested that a decision be made regarding the future way forward on the Local Plan by the end of September. As a significant decision for the future of the District, the Committee is being asked to take the decision to Full Council.

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### Introduction and background

- 1 The Council submitted its emerging Local Plan 2033 for examination by PINS in January 2019. Following examination hearings, the Planning Inspector wrote to the council in December 2020 (ID16), expressing concerns about his ability to find the Local Plan sound, based on several issues:
  - a. Capacity and safety at Junction 6 of the M25 and the implications this could have on the spatial strategy
  - b. Objectively Assessed Housing Needs
  - c. Housing Land Supply
  - d. School Places Forecasting
  - e. Gypsy, Travelling and Showpeople Accommodation Need
  - f. Site Allocations
  - g. Development Management Policies
- 2 The Council sought to resolve these issues and engaged with the Inspector throughout the process.
- 3 In June 2023, the Inspector wrote to the Council, asking for a procedural meeting to be held. The meeting's aim was to cover a way forward for resolving the soundness issues and adopting the Local Plan.
- 4 The procedural meeting was held on the 27<sup>th</sup> July 2023. Following the procedural meeting, the Inspector wrote to the Council (ID26) concluding that the Council's suggested way forward (TED-61) would only serve to protract the examination further and raise further procedural concerns. On that basis, the Inspector stated that it would not be possible to make the plan sound and that he would recommend non-adoption of the Plan. The letter set out two options:
  - a. Inspector writes a report of the examination concluding the Plan is unsound and that it is not adopted.
  - b. The Council withdraws the Plan prior to the Inspector making any such recommendations.
- 5 The Inspector requested that the Council should advise how it wishes to proceed by the end of September 2023, or if it is unable to respond by this date, advise when it will be in a position to respond.
- 6 This report sets out the implications of each option for consideration.



## Appendix A

### Option 1: Inspectors Report

- 7 Under this option, the Inspector will prepare a full report on the emerging Local Plan. In his letter, the Inspector stated that the report will focus on the reasons why it is unsound following the format set out in the Procedure Guide for Local Plan Examinations.

<https://www.gov.uk/government/publications/examining-local-plans-procedural-practice/procedure-guide-for-local-plan-examinations#section-7-the-inspectors-report>

- 8 The Procedure Guide states that the report will present conclusions, backed by reasoned judgements on soundness and legal compliance of the plan. The Guide further states that:

'The focus on soundness and legal compliance means that, as far as possible, the Inspector's report will avoid summarising the cases of individual parties, referring to specific representations and representors, or describing what was said at hearing sessions. The report will not respond to every point or issue raised by those objecting to the plan, or refer to every policy and site allocation. Instead, it will explain concisely why the Inspector has arrived at his or her conclusions and recommendations.'

- 9 **Inspector's Report:** Since the conclusion of the initial hearings in 2019, a substantial amount of correspondence has been exchanged with the Inspector regarding the soundness of the Local Plan. If the report was prepared it will provide a consolidated summary of all of the soundness issues raised. This should provide a useful single reference resource to identify key lessons learnt and issues for a new Local Plan.
- 10 Without the report, decisionmakers and the development industry will be forced to rely on a series of historic documents on the examination website where the information may be buried and direction is not especially clear.
- 11 A fuller understanding of the reasons why the plan will be found unsound may assist with future plan making and decision-taking for a few years. However, it should be noted that the weight accorded to the Inspector's report will be challenged by various parties according to whether or not it supports their position. As such, it is likely to be a matter that is initially contested through the appeal process.
- 12 It will also be an easier document for the local community to access and will help them to clearly understand why the plan was unable to proceed.
- 13 However, it is important to remember that the contents of the Inspector's report will be final. In the event the Council does not agree with them or with how the Inspector has summarised the situation, there will be no opportunity for the Council to either respond or to engage further with the Inspector.

## Appendix A

- 14 **Costs:** It will be necessary to pay the Inspector for the preparation of his report. The current fees for the Inspector are £933 per day. It is estimated that the report is likely to take at least two weeks to prepare, which will result in a minimum cost of £9,330 for the council. Additional costs for the programme officer's time will also be incurred for that time period. A total cost of £12,000 is estimated to be associated with this option. This will be in addition to the outstanding costs of the Inspector's and Programme Officer's time. No other costs are associated with this option.
- 15 **Evidence Base:** The emerging Local Plan examination will not technically be concluded until the Inspector sends his final report to the council. Any documents published on the examination website will remain public and could be of use for other matters than the Local Plan until such time as the emerging Local Plan is formally withdrawn.
- 16 Once the report is received, should the council wish to retain and publish any of the existing evidence base for a new Local Plan on its website, it will need to be approved for publication individually through the standard corporate processes. This process will create the opportunity to review and update evidence base studies to align with best practice in terms of approach and reflect recent changes, for example, relating to local circumstances with respect to infrastructure requirements.
- 17 Given the likely minimal weight afforded to the Inspector's report in decision making, it will therefore be necessary to undertake further work and produce new evidence base studies in relation to identified issues to inform future planning decisions and appeals. As the Inspector's report will clearly identify soundness issues, there will be a clear steer for the scope of works for these new studies.
- 18 **Work planning:** It is unknown how long the Inspector will take to issue the report, but an initial estimate suggests that it would be no earlier than December 2023. This option offers space for reflection and work planning leading up to, and following, the receipt of the report.
- 19 Timing-wise, when the Inspector's report is received there may be more certainty about political direction at national level and more clarity regarding proposed changes to the planning system (including transition arrangements). In reality it is unlikely that Local Plan preparation could commence until 2024 at the earliest.

### Option 2: Council Withdraws the Local Plan

- 20 Under this option, the Council would make a decision to withdraw the emerging Local Plan and no further work on the Examination would be undertaken by the Inspector. The Council would not receive an Inspector's Report. Most councils withdraw their plans when the Inspector has indicated that the plan cannot be made sound. Withdrawal may also leave more options open to the Council regarding future direction for a Local Plan because there is no definitive Inspector's report.

## Appendix A

- 21 **Inspector's Report:** Although the Council will not receive an Inspector's report, it will still be possible to identify key lessons learnt and issues to address for a new local plan. However, these will need to be compiled / inferred by officers from the correspondence exchanged with the Inspector. There will not be a single consolidated document for stakeholders to reference. There will also be less clarity for the community as to why the Local Plan cannot proceed.
- 22 **Costs:** No costs will be incurred from the Inspector writing his report and associated Programme Officer work. This could be a saving of £12,000.
- 23 **Evidence base:** If the emerging Local Plan is withdrawn, the examination will have effectively ended. Therefore, the examination website, including the emerging Local Plan and supporting evidence base, will need to be immediately removed in line with regulations. Should the council wish to retain and publish any of the existing evidence base for a new Local Plan on its website, it will need to be approved for publication individually through the standard corporate processes.
- 24 This process will create the opportunity to review and update evidence base studies to align with best practice in terms of approach and reflect recent changes, for example, relating to local circumstances with respect to infrastructure requirements.
- 25 As for option 1, it will be necessary to undertake further work and produce new evidence base studies in relation to identified soundness issues to inform future planning decisions and appeals. Without an Inspector's report, it will be for officers to infer the key issues to be addressed in the scope of works for these new evidence base studies.
- 26 **Work planning:** A formal decision to withdraw the emerging Local Plan will provide a level of certainty and clarity for the local community, developers and other stakeholders regarding the planning policy framework for development and growth in Tandridge. For decision taking and plan making purposes, including neighbourhood planning, it will be clear that at the local level reference should be to the adopted Local Plan.
- 27 However, without an Inspector's report there will be less clarity regarding key issues identified through the Examination and their future consideration with respect to future growth in Tandridge in general or in relation to specific sites.
- 28 Work could immediately begin on a new Local Plan although in reality this is likely to be unable to commence until there is more certainty about political direction at national level and the proposed changes to the planning system (including transition arrangements). It is unlikely that Local Plan preparation could commence until 2024 at the earliest.

## Appendix A

### Summary

29 The table below summarises the pros and cons of the two options.

#### Option 1 – Inspector’s Report

Theme	Pros	Cons
Inspector’s report	Consolidated summary of issues – single reference source	Weight accorded to report likely to be challenged at appeal
	Fuller understanding of soundness issues to inform future plan making and decision taking	
	Community will be able to better understand why the plan cannot progress	
Costs		Estimated cost of £12,000 for Inspector’s and Programme Officer’s time
Evidence base	Report will provide clear steer for scope of works for additional evidence base studies to address soundness issues	Existing evidence base will be extant until report is issued, short-term delay to opportunity to review and update evidence base studies
Work planning	Convenience of Inspector’s report - will be helpful to decision takers and plan makers in the long-term	
	Report will provide clear steer on the issues that will need to be address through a new Local Plan – useful for future work planning	

## Appendix A

Theme	Pros	Cons
	Time / space for reflection and work planning for new Local Plan while awaiting the Inspector's report	
	May be greater clarity at proposed changes to the planning system (including transition arrangements) later this year. If this aligns with receipt of report, it will allow for more efficient work planning	

### Option 2 – Council Withdraws the Local Plan

Theme	Pros	Cons
Inspector's report	Lack of consolidated summary – single reference source	Officers will have to spend additional time compiling / inferring soundness issues
		Lesser understanding of soundness issues to inform future plan making
		Community will be less able to understand why the plan cannot progress
Costs	No costs will be incurred from the Inspector, representing a saving of £12,000	
Evidence base	Immediate opportunity to review and update evidence base studies	Less clarity re scope of works for additional evidence base studies to address soundness issues

## Appendix A

Theme	Pros	Cons
Work planning	Immediate clarity for developers, neighbouring authorities and stakeholders regarding the local policy framework	Less clarity for plan makers and decision takers regarding key issues for future growth and potential sites
	Work on a new Local Plan could begin immediately (albeit that potential reform may delay the start in practice)	Less clarity on previous soundness issues to inform future work planning on a new Local Plan
		Less clarity on the proposed changes to the planning system (including transition arrangements) at the outset of the work planning period

## Key implications

### Comments of the Chief Finance Officer

The financial implications of each option are set out in the body of the report. In the event that the Inspector's Report option is chosen, the costs would be met from the existing budget for the Local Plan. Future spending on Planning Policy matters will need to be reviewed alongside the emerging budget for 2024/25 and the Council's Medium Term Financial Strategy.

### Comments of the Head of Legal Services

In reaching a decision in this matter, it is important that Members are content that they have identified and evaluated the full range of likely impacts of each available option, associated cost implications and identified and carefully considered all of the relevant factors. In arriving at a decision Members must believe that it is in the best interests for the District.

### Equality

There are no equality impacts associated with this report.

## **Appendix A**

### **Climate change**

There are no significant environmental / sustainability implications associated with this report.

### **Appendices**

None

### **Background papers**

None

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