

Update Report on the Local Plan Update: Your City, Your Neighbourhood, Your Planet

Date: 16th July 2024

Report of: Chief Planning Officer

Report to: Development Plan Panel

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

This report provides Members of Development Plan Panel with an update on the 'Local Plan Update – Your Neighbourhood, Your City, Your Planet', following an interim update given in January 2024 after the close of consultation on Pre-Submission Changes on the 11th December 2023. This plan has the objective of supporting the Council's Best City Ambition Net Zero Pillar through a range of policies including around design, placemaking, flood risk, green and blue infrastructure, biodiversity and net zero carbon buildings.

The report also includes information on the judgment of a High Court challenge on a Written Ministerial Statement (WMS) that was published by the Government on the 13th December 2023 and has delayed submission of the Local Plan. The intent of the WMS is to limit the ability of Local Authorities from setting their own zero carbon building policies. The judgement handed down on the 2nd July 2024 is therefore of critical relevance to the Local Plan Update.

Recommendations

That Members of Development Plan Panel note the contents of this report.

What is this report about?

- 1 This report seeks to provide Members of Development Plan Panel with an update on the 'Local Plan Update – Your Neighbourhood, Your City, Your Planet' (LPU), following an interim update given in January 2024, which followed the close of consultation on Pre-Submission Changes which closed on 11th December 2023.
- 2 The LPU proposes focussed changes to the Leeds Local Plan, which guides development decisions in the District. It proposes ambitious planning policies to tackle net zero, climate adaptation, improve health and well-being and protect and manage the environment. The LPU has been through three rounds of public consultation where, in general, support for these policies has been received from a wide range of participants. Of particular relevance to this report, the LPU proposes carbon reduction policies that focus not just on achieving net zero

developments, but on increasing the energy efficiency of new buildings to help reduce costs and improve the safety and liveability of dwellings through the use of Energy Use Intensity targets.

- 3 Members will recall that upon conclusion of the final draft consultation on the Local Plan Update, which ended on 11th December 2023 the previous Conservative Government released a Written Ministerial Statement (WMS) on 13th December 2023. This WMS entitled 'Planning – Local Energy Efficiency Standards Update' made it clear that the Government would not support Local Authorities in setting planning policies that set energy efficiency standards beyond those prescribed in the Building Regulations, particularly in light of updated Regulations which are due to come into force in 2025 (via the Future Homes Standard). The WMS stated that if local authorities were to set policies above Building Regulations these would need to be viable (and including any impact on housing supply and affordability) and would also need to be expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP).
- 4 The LPU draft Policy EN1B (attached as Appendix 1) sets a zero carbon standard incorporating ambitious Energy Use Intensity targets, which are not necessarily consistent with the provisions of the WMS. One of the Tests of Soundness for Local Plan Examination (and for Plans to be submitted for Examination), is that Plans are considered 'sound' if they are 'Consistent with national policy'. The previous Government has made clear that they consider written ministerial statements to be an expression of national policy. Therefore, the WMS is of importance to the soundness of the draft Local Plan Update.
- 5 For clarity, the reason for the Council's proposed use of Energy Use Intensity targets within the Policy is, as previously reported to and supported by Members of Development Plan Panel, because the objective of the policy is to not only focus on achieving net zero development but also to require high standards of energy efficiency by setting ambitious Energy Use Intensity targets. These have been developed in response to issues presented by the costs of heating and powering homes being exacerbated by the 'Cost of Living crisis'.
- 6 A number of local authorities are affected by the WMS and the Council has been considering its future options for progression of the Plan along with these authorities and the Town and Country Planning Association. A factor in this consideration has been a legal challenge to the WMS, brought by the Climate Emergency legal action group 'Rights Community Action' and the Good Law Project. There were three grounds of challenge. In summary, 1. The Secretary of State (SoS) failed to have due regard to the Environmental Principles Policy Statement, 2. The SoS unlawfully restricted local authority powers already conferred by statute, and 3. That the WMS unlawfully presents a misleading picture of the legal powers of decision makers. The case was heard at the High Court on the 18th June and on 2nd July Mrs Justice Lieven handed down her judgement, which ruled against Rights Community Action and dismissed all three grounds of challenge.
- 7 The judgement supports the right of the Government, as expressed through the WMS, to prevent Local Authorities from setting standards based on Energy Use Intensity. The relevant paragraph from the judgement is provided below (with the 'PEA' referring to the Planning and Energy Act, and the 'PCPA' referring to the Planning and Compulsory Purchase Act):

[69] In my view the WMS does not unlawfully state the law or undermine the purpose of s.1 PEA or s.19 and s.38(6) PCPA. The purpose of s.1(2) PEA and the section as a whole, was clearly explained by the Minister, Mr Khan MP as set out above. It was to prevent inconsistency of standards, which is precisely what the WMS is also seeking to

avoid. Section 1(5) makes it clear that the Government can constrain the setting of standards in development plans through the use of national policy. The WMS accords with this approach. (Author's emphasis).

- 8 To that end, subject to any future appeal, it is settled that the WMS is not unlawful and that emerging Plans are required to be consistent with it. In relation to its reliance upon Target Emission Rates as a standard, the Council will need to further consider how to progress Policy EN1B.

General Updates

- 9 Whilst the High Court case has been progressing the Council has been considering and progressing other aspects of the Local Plan Update.
- 10 As reported in January, a number of consultation comments had been received in objection to the Plan that triggered the need for a further review of draft policies. These include comments from members of the public, developers and statutory consultees, such as the Environment Agency. In addition, further changes to regulations on topics such as Biodiversity Net Gain require further consideration of draft policies. Much work has been undertaken over recent months to address these points and these will be reported to Members of DPP shortly, in advance of a final round of consultation.
- 11 Related to this, the Plan will be subject to a final round of viability assessment to help test the latest draft version of policies. This is a vital step in plan-making, to ensure that proposed policies are deliverable. It should be recognised that such work may require the further amendment of policies if the latest viability evidence suggests that they are not implementable in their current form. Should this be the case, it will be reported to DPP Members at the earliest opportunity.
- 12 Finally, it is noted that there will be a need to assess progress of the Local Plan Update against the mandate of the new Labour Government. The Labour Manifesto contains objectives to make changes to the planning system, but as yet it is not known what the new Government's views on the WMS are.
- 13 Therefore, there remains some further modifications to be made to the Local Plan Update and some areas of clarity are required before it is subject to a further round of consultation prior to submission.. Members will continue to be updated on progress.

What impact will this proposal have?

- 14 This report provides an update on the Local Plan Update, with a more comprehensive update to be provided at the next available opportunity. As such, there are no proposals presented as part of the report.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 15 This report is an update and does not contain a proposal. However, the adoption of the Local Plan Update has a clear and supportive impact on all three of the pillars of the Best City Ambition as has been noted in previous DPP papers on this matter. It should be noted,

however, that if the Plan has to be amended to remove standards to achieve ambitious targets for Energy Use Intensity that development will be slower to meet net zero requirements.

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted? Yes No

16 This report is an update report and therefore does not contain material subject to consultation. However, the Local Plan Update Pre-Submission Changes was subject to public consultation for six weeks between 30th October to 11th December 2023. This was the third round of public consultation on the Plan.

What are the resource implications?

17 This report is an update and there are no resource implications as a result of this report. However, how the Council seeks to respond to the results of further viability work may have resource implications. These will be reported to Development Plan Panel at a future date.

What are the key risks and how are they being managed?

18 This report is an update and no direct risks emerge from this report. However, there are risks attached to how the Council seeks to respond to the provisions of the WMS. One of the Tests of Soundness for Local Plan Examination is that Plans are considered 'sound' if they are 'Consistent with national policy'. The Government has made clear that they consider WMSs to be an expression of national policy. Therefore, the WMS is of relevance to the soundness of the Local Plan Update.

What are the legal implications?

19 This report is an update and there are no legal implications arising of this report specifically. However, as per other implications listed above, how the Council responds to the WMS will need to take account of legal advice.

Options, timescales and measuring success

What other options were considered?

20 This report is an update and does not require a decision and as such no formal options are considered at this stage.

How will success be measured?

21 Ultimately success on this matter will be measured by the adoption of the Local Plan Update.

What is the timetable and who will be responsible for implementation?

22 This report is an update and there is no decision to be implemented at this time. However, it is hoped that updated consultation policies will be brought to DPP for further consideration in due course.

Appendices

- Appendix 1: Extract of LPU policy EN1B – as consulted on in Autumn 2023.

Background papers

- None