



Report of Chief Planning Officer

Report to Development Plan Panel

Date: 8th September 2020

Subject: Legal Challenge on the Site Allocations Plan (SAP) Update

Are specific electoral wards affected? If yes, name(s) of ward(s): ALL	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary

1. A report to Development Plan Panel in July 2020 provided an update on the High Court challenge to the Site Allocations Plan (SAP). The SAP was adopted by Full Council on 10th July 2019, following receipt of the independent Inspectors' Report (IR) from the Planning Inspectorate. Post adoption, the SAP was the subject of a Legal Challenge by the Aireborough Neighbourhood Development Forum, submitted to the High Court on 20th August 2019. The case primarily focussed on the release of Green Belt land within the Aireborough Housing Market Characteristic Area for housing within the SAP. Subsequently, the case was heard at the High Court in February 2020, with Judgment being handed down on Monday 8th June 2020. The Judge found that three of the seven grounds constituted errors of law (within the IR) but at the time of Development Plan Panel in July a judgement on the relief to be ordered was awaited.
2. The High Court has now ordered relief (handed down on 7th August 2020) (see Appendix 1). The effect of this relief is that all parts of the SAP which allocate sites for housing (including mixed use sites) that, immediately before the adoption of the SAP were in the Green Belt (37 sites), will be remitted back to the Secretary of State and the Planning Inspectorate for further examination.

3. During this remittal process these 37 sites will be considered as not adopted and as such will return to the Green Belt until re-examined. The remainder of the SAP remains adopted and carries full weight. The 37 sites are listed at Appendix 2 with a plan showing their location at Appendix 3.
4. Appendix 4 shows the effects of the judgement on housing supply across Housing Market Characteristic Areas (HMCAs).
5. Policy HGR1 of the adopted SAP requires a review to assess and address the need for additional housing allocations and safeguarded land designations post 2023 following the adoption of the Core Strategy Selective Review. Policy HGR1 states that the review will be submitted by the end of December 2021. As the plan in part will now be re-examined by an inspector it is not possible to submit a review of housing allocations and safeguarded land by 2021, to address HGR1. However, as part of the remittal process the Council will in effect be reviewing the additional need for housing allocations post 2023 and as such the work undertaken may incorporate the same work required by HGR1. If this is the case, the proposals submitted to the Secretary of State for re-examination could include that policy HGR1 is deleted. This would have the effect of removing the need for a SAP Review.
6. Whilst a 5 year housing land supply still exists despite the Judgment, the relief order has reduced this from 7.2 years to 6.1 years supply, through removal of the 37 housing allocations.
7. Officers have commenced work on updating housing evidence, in particular the Strategic Housing Land Availability Assessment (SHLAA), as this will underpin any further proposed modifications to the Plan. The SHLAA is an ongoing technical process to inform planning policy development and implementation. It assists in the monitoring of whether there is an adequate supply of deliverable housing land at any point in time. The preparation of a SHLAA is an annual requirement of the National Planning Policy Framework (NPPF). The 2020 update will take account of new planning permissions and construction activity to a base date of 1 April 2020. The update will be informed by recent national planning policy announcements, current market adjustments and any challenges posed to housing delivery by Covid-19.
8. The process moving forward will be:
 - Update the evidence base as detailed above;
 - Determine what changes to the plan in respect of the 37 Green Belt allocations are required, taking account of the findings of the Judgment and the updated evidence;
 - Provide further update reports to DPP on the updated evidence and proposed approach to amending the Plan prior to resubmission to the Secretary of State;
 - Submit any proposals to the Secretary of State for further examination and subsequent adoption.

Recommendation

Panel Members are asked to:

- (i) note and comment on the contents of the report as it relates to the Site Allocation Plan legal challenge and review, and process prior to remittal back to the Secretary of State.

1. Purpose of this report

- 1.1 The purpose of this report is to update Members on the Legal Challenge to the Site Allocations Plan. The paper provides the latest information on the legal challenge and an outline of the immediate tasks required and the process moving forwards for consideration by Members.

2. Background information

- 2.1 The Leeds Site Allocations Plan (SAP) was adopted by Full Council on 10th July 2019. The SAP provides site allocations and requirements that help to deliver the Adopted Core Strategy (CS) 2014, ensuring that sufficient land is available in appropriate locations to meet the targets set out in the CS for housing (including Gypsies, Travellers and Travelling Showpeople), employment, retail and greenspace.
- 2.2 To account for the (then) imminent adoption of the CSSR, the SAP Inspectors introduced SAP Policy HGR1 which requires that once the new CS housing target (introduced into the CS on adoption of the CSSR) was adopted, the Council would undertake a review to consider the need for additional housing allocations and safeguarded land designations to deliver the new CS housing target (this is the 'SAP Review').
- 2.3 Upon adoption, the housing provision in the SAP was below the existing CS 2014 housing target. This was because the Council had taken steps to reflect a known downward housing trajectory (which was being advanced in its CSSR and, reduce (by over half) the amount of Green Belt land to be allocated. This resulted in the removal of 32 proposed Green Belt sites from the SAP.
- 2.4 The CSSR was adopted on 11th September 2019 and amended the housing requirement from 70,000 (net) between 2012-2028 to 51,952 (net) between 2017-2033, of which 46,400 homes need to be allocated in the SAP and the Aire Valley Leeds Area Action Plan.
- 2.5 However, following the day of adoption of a plan there is a six week statutory period within which interested parties may seek permission of the High Court to challenge the legality of the Plan. Aireborough Neighbourhood Development Forum submitted a High Court challenge in August 2019.
- 2.6 The challenge was on 7 grounds which were outlined in the DPP report dated 29th July. The case was heard at the High Court in February 2020 with Judgment being handed down on Monday 8th June 2020. The Judge, Mrs Justice Lieven DBE, allowed the Claim on three out of the seven grounds raised. These three grounds related to three legal errors of the independent inspectors (not of the Council), namely legally deficient reasons given in their report on:
- justifying the release of the specific Green Belt sites and site selection process; and
 - an error of fact relating to the calculated increase in supply of housing (mainly in the city centre) during the process.

- 2.7 As outlined in the DPP report in July, it should be noted that the Judge did not find that Green Belt sites could not properly be released and nor did she find that the site selection process was in error.
- 2.8 The Order for Relief was handed down on 7th August 2020 (see Appendix 1). The judge concludes at paragraph 24 that, *“It does however seem to me to be appropriate to remit this matter to the Secretary of State, and through him the Inspectorate, rather than quash either the whole or parts of the SAP. It seems reasonable to start from the position that the process should be taken back to the stage where the error of law occurred rather than back to the beginning through quashing.”*
- 2.9 The Judge goes on to say that *“If the matter is remitted then the Council will have to decide what, if any, modifications it intends to propose to the Inspectors. That is a matter of planning judgement for the Council and it is not for me to adjudicate on what approach the Council takes to exceptional circumstances for GB release once the matter is remitted”*, (paragraph 26). She also explains that once the SAP is remitted it is for the Secretary of State to make the appropriate arrangements and it is not essential that the matter should be put before different Inspector(s) (but this is a matter for the Planning Inspectorate to determine).
- 2.10 Paragraph 31 of the relief judgement concludes: *“The remittal of all GB allocations to the Inspectors will, I accept, cause delay and will impact upon the Council’s ability to show a 5YLS. [See paragraph 3.10 of this report in response to this]. However, those are not grounds not to remit if that is the only way to remedy the illegality that I have found. The planning judgements that follow, in terms of conformity with the NPPF and whether the tests for GB release are met, are matters for the Council and the Secretary of State and not for the court.”*
- 2.11 In summary, the effect of this relief is that all parts of the SAP which allocate sites for housing (including mixed use sites) that, immediately before the adoption of the SAP were in the Green Belt (37 sites), will be remitted back to the Secretary of State and the Planning Inspectorate for further examination.
- 2.12 During this remittal process these 37 housing sites will be considered as not adopted and as such will return to the Green Belt until re-examined. The remainder of the SAP remains adopted and carries full weight. The 37 sites are listed at Appendix 2, with a plan showing their location at Appendix 3.

3. Main Issues

- 3.1 Appendix 4 shows the pre-judgement and post-judgement figures for housing supply – figures are rounded for simplicity.
- 3.2 **Pre-judgement outstanding housing capacity** on sites adopted in the SAP and Aire Valley Leeds Area Action Plan (AVLAAP) was 50,600 homes (an overall surplus of around 4,200 new homes against the CSSR requirement from 2017 to 2033). A large surplus in City Centre and Inner Area HMCAs contributes significantly to the total. The distribution of housing varies between HMCAs with four in exceedance of requirement, two on target and five (all outer areas) in deficit.

- 3.3 **Post-judgement outstanding housing capacity** on sites adopted in the SAP and AVLAAP reduces plan supply to 46,530 homes overall (a surplus of 130 homes against requirement). The uneven distribution is exacerbated with eight HMCAs now in deficit of indicative targets and only three in surplus.
- 3.4 Appendix 4 also provides figures on **new windfall sites** that are not part of the adopted plan. We would expect this to contribute at least 500 dwellings per annum but because of activity in the City Centre and fringe and a buoyant student housing market the figure is 3,750 units (accrued over 3 years, since baseline SAP figures). This windfall adds to the overall picture of supply, which post-judgement totals **50,100 homes** and provides surplus/headroom of 3,880 homes or 8% over the CSSR requirement.
- 3.5 The effect of this is that with current allocations within the SAP and AVLAAP, plus recent permissions, there is a sufficient housing land supply to meet CSSR targets. However, this current position will need to be the subject of updated evidence to inform the Council's approach to the re-examination of the SAP, which takes account of an up to date housing supply picture, which may decrease or increased as a result of an updated SHLAA.

Up to date evidence

- 3.6 The Judge considered other judgements in her assessment and refers to the need for updated evidence (at number 5, Appendix 1): *“The passage of time may well require the council to update its evidence, and potentially, to invite the Inspector to recommend modification to policies”*. A Strategic Housing Land Availability Assessment (SHLAA) review has therefore now commenced (September 2020). The SHLAA is the evidence which will underpin any proposed modifications to the Plan. The SHLAA provides a technical database of all sites submitted for assessment for housing in terms of their availability (any known ownership constraints), suitability (in terms of site assessment including topography, flood risk and other considerations) and deliverability (whether the site is likely to deliver housing in the short (0-5 years), medium (5 to 10 years) or long term (10+ years). The SHLAA will provide an update on the SAP sites which remain adopted to ascertain the current land supply position.
- 3.7 The SHLAA assists in the monitoring of whether there is an adequate supply of deliverable housing land at any point in time. The preparation of a SHLAA is an annual requirement of the National Planning Policy Framework (NPPF). The 2020 update will take account of new planning permissions and construction activity to a base date of 1 April 2020. The update will be informed by recent national planning policy announcements, current market adjustments and any challenges posed to housing delivery by Covid-19.
- 3.8 The pipeline of sites both under construction and with planning permission yet to start remains healthy. Building control returns reveal that there are over 100 outlets operating district-wide with more than 5,000 individual plots actively being built across all markets and locations. There is a total stock of almost 29,000 new homes with planning permission reflective of the greatest level of outstanding capacity in over a decade. In addition, the Government's recent announcements including increased permitted development rights for new housing may further boost the picture of supply. At this stage it is too early to tell what the impacts of the pandemic will be on the supply and delivery of

housing. Whilst construction inevitably slowed during the lockdown months there are signs that this is now quickly recovering and Government has put in place measures to stimulate the house building sector. All these factors will need consideration in order to determine whether there is a need for any or all of the Green Belt allocations listed in the schedule.

- 3.9 It is recognised that the current housing land supply picture is supported by allocations and planning permissions within the City Centre and Inner HMCAs, which include Purpose Built Student Accommodation and Build to Rent schemes. The impact of Covid-19 sees the UK prepare for adjustments in the housing market on both the supply and demand side with potential impacts including shifts relating to locational preferences and requirements in the type and size of new homes. After the last recession in 2008 there was a significant reduction in delivery in the City Centre apartment schemes where starts have only recently started to recover to pre-recession figures in 2018/19. It is therefore fundamental to the robustness of Leeds' housing supply that City Centre and Inner Area schemes are not overly relied upon as these are the areas where market adjustments are felt most significantly.

Five Year Housing Land Supply

- 3.10 The Judgment has implications on the Council's Five Year Housing Land Supply (5YS) and on the SAP Review. In terms of the 5 year supply the removal of the 37 remitted sites means a reduction from 7.2 years to 6.1 years (i.e. around 3,700 homes surplus). The revised 5YS figure is calculated from the 2019 Five Year Housing Land Supply Statement excluding the contribution of units from the remitted sites during the short term period from the base date of 1 April 2019. This will also need to be updated through the SHLAA 2020, which will include a number of new sites from planning permissions granted during the previous year. Final performance for completed new homes in 2019/20 was 3,386 units exceeding the Core Strategy target in consecutive years. It means that currently we can defend against speculative proposals, but in the longer term supply needs to be managed correctly. The SHLAA process includes consultation with the Home Builders Federation, individual landowners, agents and developers in order to produce the most accurate and up-to-date picture of delivery for each site. Observations on lead-in times, build-out rates and the capacity of the industry to deliver will be taken into account. The accompanying report will detail the methodology and chronology of the update and set out the revised housing land supply position.
- 3.11 In paragraph 31 of the Judgement, Justice Leiven acknowledges the impact the relief will have on the 5YS. However, it is important to clarify that the Judge is not making a pronouncement on whether Leeds has a 5YS or not. Where a Plan is in part quashed or remitted Local Planning Authorities are treated as having an incomplete plan (despite the rest remaining adopted) and therefore in plan-making terms we are adjudged to not have a completed and adopted Plan with which we could use to demonstrate a 5YS. It is, however, important to stress that the Judge did not consider our 5YS picture in any detail, nor is the Judge making a judgement on whether we have a 5YS, the Judge is simply saying that we cannot currently rely upon our Plan to demonstrate the 5YS. However, in Leeds, because of permissions and existing allocations, the City Council has in excess of a 5YS position (6.1 years). Consequently, this provides a basis to resist speculative development on non-allocated greenfield sites.

SAP Review

- 3.12 Policy HGR1 of the adopted SAP requires a review to assess and address the need for additional housing allocations and safeguarded land designations post 2023 following the adoption of the Core Strategy Selective Review. Policy HGR1 states that the review will be submitted by the end of December 2021. As the plan in part will now be re-examined by an inspector it is not possible to submit a review of housing allocations and safeguarded land by 2021, to address HGR1. However, as part of the remittal process the Council will in effect be reviewing the additional need for housing allocations post 2023 and as such the work undertaken may incorporate the same work required by HGR1. If this is the case, the proposals submitted to the Secretary of State for re-examination could include that policy HGR1 is deleted. This would have the effect of removing the need for a SAP Review.

Next steps

- 3.13 The process moving forward will be:
- Update the evidence base as detailed above;
 - Determine what changes to the plan in respect of the 37 Green Belt allocations are required, taking account of the findings of the Judgement and the updated evidence;
 - Provide further update reports to DPP on the updated evidence and proposed approach to amending the Plan prior to resubmission to the Secretary of State;
 - Submit any proposals to the Secretary of State for further examination and subsequent adoption.
- 3.14 The effect of the Judgement is to revoke the adoption of 4,070 new homes across 37 sites. In some instances, it may, however, be the case that individual developments in specific contexts are able to demonstrate very special circumstances for development in the Green Belt, and therefore acquire planning consent in spite of no longer being allocated and being returned to the Green Belt.
- 3.15 At this stage, until evidence is updated, the approach for preparation of the Plan for remittal cannot be agreed. It is therefore proposed that a further report be brought back to DPP once the SHLAA has been updated and officers have considered what modifications (if any) may be required to the Plan.

Timescales

- 3.15 It is estimate that the process for the SHLAA can be concluded in between 6-8 weeks. Following consideration of this data and evidence, officers will aim to bring a further report to DPP in December, updating members on the evidence gathered and approach proposed. As set out in paragraph 2.9 of this report, once the SAP is remitted it will be for the Secretary of State to make the appropriate arrangements, with regards to Inspectors and dates and process for any future Examination proceedings.

4. Corporate considerations

4.1 Consultation and engagement

4.1.1 Following the Court's Order for Relief in the SAP Legal Challenge, any further proposals to amend the Plan will be subject to public consultation and examination.

4.2 Equality and diversity / cohesion and integration

4.2.1 An EDCI is not required for this report. Appropriate EDCI screenings / assessments will be undertaken in the course of the next steps noted in the report.

4.3 Council policies and the Best Council Plan

4.3.1 There is a clear role for planning in delivering against all of the Council's priorities as established through the Best Council Plan. In particular, the SAP overall contributes to the Council's key strategies, as follows:

Health and Well-being Strategy – through policies including the design of places, quality of housing and accessibility and the integration of public health infrastructure

Climate Emergency – managing the transition to zero carbon via policies including: the design of places, the location of development, accessibility to public transport, use of brownfield land, energy, supply, generation and the efficiency of buildings

Inclusive Growth Strategy – through policies including the links between homes and jobs, planning for the land use and infrastructure needs of key economic sectors, the location of development, green infrastructure and connectivity

4.4 Resources, procurement and value for money

4.4.1 Whilst this report does not have any budget implications, remittal of the Plan does have implications for resources in terms of time and staffing, at a time of increased budget pressure. In general, costs will be met from within existing budgets.

4.5 Legal implications, access to information, and call-in

4.5.1 There are no legal implications arising from the recommendations in this report.

4.6 Risk management

4.6.1 The High Court decision and the relief ordered is a process that is outside of the Council's control. Once evidence is updated, further reports will be brought to DPP to consider the process moving forward, prior to remittal to the Secretary of State. Given the delay caused to the SAP Review (SAPR) by the High Court Challenge, it is now considered unlikely that the Council will meet the December 2021 deadline for submitting the SAPR to the Secretary of State, and that this could be subsumed by the further work on the SAP, with a modification to the

Plan suggesting deletion of Policy HGR1.

5. Conclusions

- 5.1 This report has provided an update on the Legal Challenge to the Site Allocations Plan and an outline of the immediate tasks required and the process moving forwards.
- 5.2 A further report will be brought back to DPP once evidence required for further examination of the Plan has been updated.

6. Recommendation

Panel Members are asked to:

- (i) note and comment on the contents of the report as it relates to the Site Allocation Plan legal challenge and review, and process prior to remittal back to the Secretary of State.