
REPORTS FROM THE EXECUTIVE AND COMMITTEES TO COUNCIL

1 REPORT OF THE EXECUTIVE

Draft Corporate Plan 2011-16

- 1.1 This item of business was referred by the Executive on 22 June 2011 to Full Council with a recommendation relating to approval of the draft Corporate Plan. An extract of the key elements of the report of the Chief Executive to the Executive is attached at appendix 1. A copy of the draft Corporate Plan, amended to incorporate the observations of the Executive, is attached at appendix 2.
- 1.2 It is proposed that Council **RESOLVES** that the revised Corporate Plan for 2011-16 be adopted. (CE)

2 REPORT OF THE PORTFOLIO HOLDER FOR PLANNING AND TRANSPORTATION

Rochford Core Strategy – Way Forward

- 2.1 This item of business was referred by the Portfolio Holder for Planning and Transportation on 7 July 2011 to Full Council with a recommendation relating to requesting the Inspector that the examination into the Core Strategy be suspended until December 2011. A copy of the decision containing the recommendation is attached at appendix 3. A copy of the related report from the Head of Planning and Transportation to the Portfolio Holder is attached at appendix 4.
- 2.2 It is proposed that Council **RESOLVES** that a formal request be made to the Inspector that the examination into the Core Strategy be suspended until December 2011, and that in the meantime work is undertaken to identify and consult on the amendments required to ensure the Core Strategy has regard to the likely adoption date of 2012 (option A). (HPT)

If you would like this report in large print, Braille or another language please contact 01702 318111.

**EXECUTIVE DECISION BY PORTFOLIO HOLDER FOR PLANNING
AND TRANSPORTATION****SUBJECT: ROCHFORD CORE STRATEGY – WAY FORWARD****1 DECISION MADE**

- 1.1 It is recommended that a formal request be made to the Inspector that the examination into the Core Strategy be suspended until December 2011, and that in the meantime work is undertaken to identify and consult on the amendments required to ensure the Core Strategy has regard to the likely adoption date of 2012 (option A).
- 1.2 Under the Council's constitution, the decision to make such a request to the Inspector is within the remit of the Portfolio Holder. However, given the significance of the Core Strategy, the Portfolio Holder considers it appropriate for all Members to have the opportunity to discuss the way forward at this crucial juncture. As such, the above recommendation will be considered at Council.

2 REASON FOR DECISION

- 2.1 The attempts by government to change national planning policy, the statements issued, and the subsequent decision that such actions were unlawful have caused considerable delays to the Core Strategy process and placed the Council in a difficult position vis-à-vis its planning framework for the District. There is a considerable lack of clarity in respect of the national position. It is hoped that the Localism Bill will provide clarity going forward.
- 2.2 The affect of the delay in proceeding to adoption has resulted in the need to undertake review and undertake amendments to the plan to accord with an expected adoption date in 2012.
- 2.3 It is considered to be essential that a clear, sound framework for the future development of the district is put in place without further delay. The implications of not doing so are the likelihood of planning applications for development in locations that are not considered to be acceptable to the Council, but without a demonstrable five year supply of housing land would be difficult, if not impossible to resist.

3 WAY FORWARD**Option A**

- 3.1 Submit a request to the Inspector that the Core Strategy examination be suspended and undertake the required minor changes to the Core Strategy to have regard to the delays in the adoption date, proceeding on the basis of the retention of the 190 dwellings per annum housing delivery rate.

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- 3.2 Minor policy revisions would be required due to the delays in the examination. Such changes would require some additional work on the Core Strategy.
- 3.3 This approach is not currently permissible (as clarified by the Inspector), but is expected to be once the Localism Bill has achieved Royal Assent. As such, it is suggested that the Core Strategy examination be suspended until December 2011. The Council may request that the Inspector suspend the examination until December 2011 in order to allow the outcome of the Localism Bill to be considered, and to enable the Council to undertake other minor changes on the Core Strategy to ensure the plan period has regard to the likely new adoption date.
- 3.4 The Council has already prepared a timetable for the Core Strategy which addresses the separate issue of the Core Strategy SA Addendum and need for additional consultation if the SA Addendum¹ were to suggest changes to the Core Strategy are required (the “Scenario 2” timetable). The Inspector has already agreed to this timetable in which further public consultation on changes could take place from 3 August until 26 September 2011. The Inspector also stated that this consultation period could be used to make further amendments to the Core Strategy aside from those engendered by the SA Addendum. Although not referring to the types of changes envisaged if this option were to be pursued, in principle, this provides a potential timeframe in which consultation could be undertaken and the Core Strategy finalised by November 2011.
- 3.5 The Inspector may require further hearing sessions and / or written representations on revisions to the Core Strategy.
- 3.6 If this option were to be pursued, the Council would draw up a revised timetable for the Core Strategy. It is envisaged that the Core Strategy would be adopted in early 2012.

4 ALTERNATIVE OPTIONS CONSIDERED

Option B

- 4.1 Undertake revisions to the Core Strategy to restore the original minimum housing targets of 250 dwellings per annum, so as to be in general conformity with the East of England Plan 2008.
- 4.2 This would constitute a change to the Council’s agreed approach of 190 dwellings per annum. It would not simply be a case of reverting back to the Core Strategy as originally submitted, as the original housing policies ran until 2025 and the Core Strategy is required to set policies for the delivery of

¹ This report is not intended to address the issue of whether changes to the Core Strategy are required as a result of the SA Addendum work. This issue will be addressed separately.

housing for at least 15 years. Given the delays, policies which set out the distribution until 2027 would be appropriate.

- 4.3 Revisions to the Core Strategy, once agreed, would need to be subject to public consultation and appraisal.

5 NAME OF PORTFOLIO HOLDER

- 5.1 Cllr Keith Hudson

6 LEAD OFFICER

- 6.1 Shaun Scrutton, Head of Planning and Transportation

I confirm that the above decision does not depart from Council policy and that appropriate consideration has been given to any budgetary and legal implications.

Portfolio Holder Signature: _____



Date of Decision: 7th July 2011

Note: Please ensure that Member Services are provided with the original of the decision on the day it is taken (or by 10.00 am the following morning at the latest) to enable publication.

**REPORT TO PORTFOLIO HOLDER FOR PLANNING AND
TRANSPORTATION**

REPORT FROM HEAD OF PLANNING AND TRANSPORTATION

SUBJECT: ROCHFORD CORE STRATEGY – WAY FORWARD

1 DECISION BEING RECOMMENDED

- 1.1 That the Council make a formal request to the Inspector that the examination into the Core Strategy be suspended until December 2011, and that work is undertaken to identify and consult on the amendments required to ensure the Core Strategy has regard to the likely adoption date of 2012.

2 REASON/S FOR RECOMMENDATION

- 2.1 The attempts by government to change national planning policy, the statements issued, and the subsequent decision that such actions were unlawful have caused considerable delays to the Core Strategy process and placed the Council in a difficult position vis-à-vis its planning framework for the District. There is a considerable lack of clarity in respect of the national position. It is hoped that the Localism Bill will provide clarity going forward.
- 2.2 The affect of the delay in proceeding to adoption has resulted in the need to undertake review and undertake amendments to the plan to accord with an expected adoption date in 2012.
- 2.3 It is considered to be essential that a clear, sound framework for the future development of the district is put in place without further delay. The implications of not doing so are the likelihood of planning applications for development in locations that are not considered to be acceptable to the Council, but without a demonstrable five year supply of housing land would be difficult, if not impossible to resist.

3 SALIENT INFORMATION

- 3.1. The Core Strategy is a key part of the Local Development Framework – a collection of documents which set out how development will be managed in the District over the next 15 years, and beyond.
- 3.2 The production of the Core Strategy was an iterative process with the submission version being agreed at Council on 9 September 2009. This version set out the Council's strategy for delivering a minimum of 250 dwellings per annum, in accordance with the requirements of the East of England Plan 2008 (the relevant Regional Spatial Strategy for Rochford District).
- 3.3 The next stage in the Core Strategy process was for the document to be subject to pre-submission consultation, in which members of the public and

other stakeholders were given the opportunity to make representations on whether they felt the Core Strategy was sound and legally compliant. The results of this consultation, together with the submission version of the Core Strategy and other evidence documents, were submitted to the Planning Inspectorate for examination in January 2010.

- 3.4 The role of the Planning Inspectorate is to conduct an examination into the soundness and legal compliance of the Core Strategy on behalf of the Secretary of State. Guidance from the Planning Inspectorate states that the time period between submission and their final report on soundness and legal compliance is six months. That being the case, it was anticipated the final Core Strategy could be adopted in autumn 2010.
- 3.5 However, on 27 May 2010 the Secretary of State for the Department of Communities and Local Government wrote to Local Planning Authorities informing them of his intention to abolish Regional Spatial Strategies. Importantly, the letter also stated this intention to abolish Regional Spatial Strategies should be regarded as a material planning consideration by Local Planning Authorities and the Planning Inspectorate.
- 3.6 The Inspector conducting the examination into the soundness of the Core Strategy wrote to the Council and other Core Strategy participants on 14 June 2010 inviting representations in light of the Secretary of State's actions.
- 3.7 On 6 July 2010 the Secretary of State for the Department of Communities and Local Government issued a statement revoking Regional Spatial Strategies under s79(6) of the Local Democracy Economic Development and Construction Act 2009. This meant that Regional Spatial Strategies, including the East of England Plan, no longer formed part of the development plan for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004. In short, the Rochford District Core Strategy was no longer required to conform to the East of England Plan, including the housing allocation of 250 dwellings per annum.
- 3.8 The government issued advice alongside the revocation of the Regional Spatial Strategies which stated that Local Planning Authorities should continue with the production of their Local Development Frameworks, but may wish to review them in light of the revocation of Regional Spatial Strategies.
- 3.9 The Inspector in the Core Strategy examination wrote to the Council and asked for a response to the aforementioned letter (in addition to other changes). Accordingly, having regard to the government's decisions and advice, the Council proposed that the housing policies in the Core Strategy be amended to deliver a maximum of 190 dwellings per annum over an extended plan period to 2031. The justification for this approach was set out and submitted as part of the examination¹. In short, this approach was felt to be

¹ Core Strategy Topic Paper 3 – Sustainable Housing Allocation for Rochford District.

an appropriate balance between addressing identified need, as evidenced through a Strategic Housing Market Assessment report, and consideration of the environmental constraints the District is subject to. It is the figure that was agreed at the regional level, as part of the draft review of the East of England Plan (RSS31). RSS31 was agreed by the Regional Assembly and submitted to government for approval in March 2010. The draft plan proposed revised housing figures for the period 2011 – 2031, having regard to the view of stakeholders (including Rochford District Council) and supported by Sustainability Appraisal and Habitats Regulations Assessment. However, it was never formally approved as part of the Regional Spatial Strategy by government, as the government sought to revoke and abolish this tier of the plan making process.

- 3.10 The aforementioned amendments to the Core Strategy were approved by Council on 14 October 2010, and subject to public consultation from 18 October 30 November. The amendments were subsequently submitted, along with supporting documents², to the Inspector for examination.
- 3.11 Public hearings to consider the proposed amendments to the Core Strategy took place in February 2011.
- 3.12 Meanwhile, whilst the Council was undertaking changes to the Core Strategy in light of the Secretary of State pronouncements, a third party (CALA Homes) challenged the legality of the Secretary of State's decision to revoke Regional Spatial Strategies. On 10 November 2010, the High Court determined that the revocation of Regional Spatial Strategies by the Secretary of State was unlawful.
- 3.13 However, on the same day, the Secretary of State issued a statement, and wrote to all Local Planning Authorities, claiming that the Court's ruling "changed very little" and that advice from the letter of 27 May 2010 still stood.
- 3.14 CALA challenged this stance, but following a series of court hearings was eventually defeated in February 2011 when the High Court ruled that Councils should regard the letter from the Secretary of State, and the intention to revoke Regional Spatial Strategies, as a material consideration.
- 3.15 CALA appealed this decision. On 27 May 2011 the Court of Appeal dismissed the claim that the government's intention to revoke regional strategies could never be a lawful material consideration in planning decisions. However, this was something of a pyrrhic victory for the Secretary of State, as the Court of Appeal clarified two key points in its judgment:

² See under *Related Documents* at http://www.rochford.gov.uk/planning/policy/local_development_framework/core_strategy_dpd.aspx

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- The proposed abolition of Regional Spatial Strategies was capable of being material in the determination of planning applications, but only in very limited circumstances;
 - The proposed abolition of Regional Spatial Strategies is not a material consideration at all in plan-making (e.g. the preparation of Core Strategies) and that it would be unlawful for a Local Planning Authority preparing, or a Planning Inspector examining, Development Plan Documents to have regard to the proposal to abolish Regional Spatial Strategies.
- 3.16 The judgment suggests that, whilst the Council's decision to amend the Core Strategy such as it no longer sought to deliver 250 dwellings per annum as per the requirements of the East of England Plan was in accordance with government advice at the time, the Inspector who must determine the soundness of the Core Strategy now cannot lawfully have regard to the proposal to abolish Regional Spatial Strategies in reaching her decision.
- 3.17 On 10 May 2011 the Inspector wrote to the Council, clarifying her views on the implications of the appeal on the Core Strategy:
- “As you will be aware from the hearing sessions, an area of concern is the relevance of the RS [Regional Spatial Strategy] housing figures. In this regard I have to take into account the fact that the RS remains part of the development plan and that your strategy has to be in general conformity with the RS. Accordingly, as you will see in my report which you will shortly get for fact check purposes, I have not been able to support your proposed changes which were published for consultation last autumn.”
- 3.18 At the same time, the Council was also made aware of a recent High Court Ruling in the case of *Save Historic Newmarket v. Forest Heath District Council* in relation to a separate matter, namely the format of Sustainability Appraisals. Rochford District Council requested that the issuing of a decision on the soundness of the Core Strategy be delayed to enable the Council to undertake a review of the Core Strategy Sustainability Appraisal. The Planning Inspectorate accepted this request and, as such, no report from the Inspector has yet been received.
- 3.19 Notwithstanding the various pronouncements from the Secretary of State and the legal challenges, the Localism Bill is proceeding through parliament and clause 89 provides for the abolition of spatial strategies. Royal Assent of the Localism Bill is expected by November 2011.
- 3.20 The Core Strategy is therefore out of sync with the legal position in relation to the status of the East of England Plan. In order to ensure the plan can be found sound prior to the enactment of the Localism Bill, it would be necessary to revert to a housing allocation which requires the delivery of a minimum of 250 dwellings per annum over the period to 2027 (to allow for a plan period of 15 years). This is not however the Council's preference for housing delivery, the plan amendment proposing a reduced, maximum provision of 190

dwellings per annum, though over a slightly longer plan period. The preferred option could be adopted once the East of England Plan is revoked.

- 3.21 The Council is currently undertaking additional work on the Sustainability Appraisal in light of the Forest Heath case. The results of this will have to be considered in the Core Strategy. The draft out to public consultation until 11 July 2011 suggests that the current proposed housing locations and employment locations in the Core Strategy are sustainable locations when compared to alternatives.
- 3.22 The additional work on the SA addendum is important, but in considering the timetable for the possible adoption of the plan it has become apparent that the delays to date mean that a further review is required to take account of the delayed adoption date.

4 ALTERNATIVE OPTIONS CONSIDERED

Option A

- 4.1 Submit a request to the Inspector that the Core Strategy examination be suspended and undertake the required minor changes to the Core Strategy to have regard to the delays in the adoption date, proceeding on the basis of the retention of the 190 dwellings per annum housing delivery rate.
- 4.2 Minor policy revisions would be required due to the delays in the examination. Such changes would require some additional work on the Core Strategy.
- 4.3 This approach is not currently permissible (as clarified by the Inspector), but is expected to be once the Localism Bill has achieved Royal Assent. As such, it is suggested that the Core Strategy examination be suspended until December 2011. The Council may request that the Inspector suspend the examination until December 2011 in order to allow the outcome of the Localism Bill to be considered, and to enable the Council to undertake other minor changes on the Core Strategy to ensure the plan period has regard to the likely new adoption date.
- 4.4 The Council has already prepared a timetable for the Core Strategy which addresses the separate issue of the Core Strategy SA Addendum and need for additional consultation if the SA Addendum³ were to suggest changes to the Core Strategy are required (the “Scenario 2” timetable). The Inspector has already agreed to this timetable in which further public consultation on changes could take place from 3 August until 26 September 2011. The Inspector also stated that this consultation period could be used to make further amendments to the Core Strategy aside from those engendered by the SA Addendum. Although not referring to the types of changes envisaged if this option were to be pursued, in principle, this provides a potential timeframe

³ This report is not intended to address the issue of whether changes to the Core Strategy are required as a result of the SA Addendum work. This issue will be addressed separately.

in which consultation could be undertaken and the Core Strategy finalised by November 2011.

- 4.5 The Inspector may require further hearing sessions and / or written representations on revisions to the Core Strategy.
- 4.6 If this option were to be pursued, the Council would draw up a revised timetable for the Core Strategy. It is envisaged that the Core Strategy would be adopted in early 2012.

Option B

- 4.7 Undertake revisions to the Core Strategy to restore the original minimum housing targets of 250 dwellings per annum, so as to be in general conformity with the East of England Plan 2008.
- 4.8 This would constitute a change to the Council's agreed approach of 190 dwellings per annum. It would not simply be a case of reverting back to the Core Strategy as originally submitted, as the original housing policies ran until 2025 and the Core Strategy is required to set policies for the delivery of housing for at least 15 years. Given the delays, policies which set out the distribution until 2027 would be appropriate.
- 4.9 Revisions to the Core Strategy, once agreed, would need to be subject to public consultation and appraisal.

5 RISK IMPLICATIONS

Risk Implications of Option A

- 5.1 There is recent precedent for an Inspector to allow the suspension of a Core Strategy examination, including at Luton and Bedfordshire where the issue of concern related to the consideration of the revocation of Regional Spatial Strategies. However, the Inspector would be under no obligation to accept the request to suspend the examination.
- 5.2 The figure of 190 dwellings was agreed at the regional level, as part of the draft review of the East of England Plan (RSS31) and as such formed part of a plan that was supported by Sustainability Appraisal and other evidence. However, this plan was not formerly implemented and as such there is no guarantee the figure would be accepted by government.
- 5.3 The approach relies upon the Localism Bill achieving Royal Assent and abolishing Regional Spatial Strategies; the current version of the Bill proposes the latter, but both matters are beyond the Council's control.
- 5.4 The Council is also reliant on the government competently and lawfully abolishing Regional Spatial Strategies through the Localism Bill, and for the abolition to be enacted relatively swiftly after the Bill. It is a possibility that further regulations will be required to be implemented before the abolition of

Regional Spatial Strategies can take place. It is also a possibility that the Localism Bill itself will be further delayed.

- 5.5 Of crucial importance is that the Council is reliant upon the Core Strategy to ensure it has a five-year supply of housing. Failure to ensure a five-year supply of housing may leave the District exposed to applications for development within the District in locations not considered to be the most sustainable, which do not conform to the Council's vision for the development of the District, and through which wider and cumulative impacts are not addressed.
- 5.6 The Council cannot adopt a Core Strategy until it has been found sound and legally compliant by the Planning Inspectorate.

Risk Implications of Option B

- 5.7 This option would require: changes to be made to the Core Strategy; these changes to be agreed by Council; consultation and appraisal to be undertaken on said changes; the results of consultation and appraisal to be analysed and fed into the decision-making process; and, depending on the outcome of the consultation / appraisal, a final Core Strategy to be agreed. This would cause a delay in the Core Strategy process as, unlike Option A, it would not be feasible to be in a position to be out to consultation in August due to the degree of change to the Core Strategy that would be required.
- 5.8 To adjust the Core Strategy to deliver 250 dwellings per annum would require more time. The less time the Council is left without a Core Strategy, the less it is vulnerable to applications for development that do not conform to the Council's vision for the future of the District.
- 5.9 Furthermore, it is likely that the process would not be clear before the Localism Bill is enacted. As such, by the time the Council has amended the Core Strategy to be in conformity with the Regional Spatial Strategy, it may no longer be required to do so. However, as discussed above, it is not entirely clear at this juncture whether the Localism Bill will, on its own, completely revoke / abolish Regional Spatial Strategies.
- 5.10 Under the current planning regulations⁴, if the Council were to submit changes to the Core Strategy with a view to conforming to the East of England Plan, the Council would be required to write to the Regional Planning Body to request its opinion as to the general conformity of the Core Strategy with the Regional Spatial Strategy. However, Regional Planning Bodies no longer exist, having been successfully abolished by the government. Further advice from the Planning Inspectorate would be required in this respect – it is currently unclear how the Council would be required to proceed.

⁴ Regulation 29 of the Town and Country Planning (Local Development) (England) (Amendment) Regulations 2008

6 ENVIRONMENTAL IMPLICATIONS

- 6.1 There is little doubt that delays in putting in place a clear planning framework for the future development of the district will increase the likelihood of planning applications being sought for development on land that is not considered to be acceptable for development, and will have unacceptable environmental impacts. The key test will be the availability of a five year supply of housing and, as explained, this is dependent on the adoption of the Core Strategy.

7 RESOURCE IMPLICATIONS**Resource Implications of Option A**

- 7.1 If the Inspector were to accept the request to suspend the examination, additional examination time, plus potentially additional hearing sessions, would be required which would engender a cost to the Council. This could be met from existing resources.

Resource Implications of Option B

- 7.2 Similar situation to Option A, albeit requiring more officer time and resources.

8 LEGAL IMPLICATIONS

- 8.1 There are clear tests for the assessment of the soundness of a Core Strategy. The legal challenges to the government's stated intention to abolish spatial strategies means there is considerable uncertainty for the Council in progressing the preferred Core Strategy to final adoption, until such time as the Localism Bill becomes law.

I confirm that the above recommendation does not depart from Council policy and that appropriate consideration has been given to any budgetary and legal implications.

SMT Lead Officer Signature:  _____

Date: 7 July 2011

Background Papers:

Rochford Core Strategy as amended, October 2010.