

Executive Meeting



To: The Executive
Date: 1 November 2012
Status: For noting / Information
Report Published: 23 October 2012
Author: Helen Gregory, Policy Officer
Executive Member: Councillor John Mackman
Lead Officer: Mark Steward, Managing Director

Title: Core Strategy Examination in Public

Summary:

This report updates the Executive on the progress of the Core Strategy through the Examination in Public (EIP) at the reconvened sessions that took place on 5 and 6 September 2012.

It provides for information only, a copy of the Draft Council report which sets out the key issues and the draft further proposed changes required in order to ensure consistency with the new National Planning Policy Framework (NPPF).

The Proposed Changes respond to the June/July 2012 public consultation on compliance between the Core Strategy and the NPPF and which were debated at the September 2012 EIP. The remaining few changes require a further consultation exercise and the soundness issues will be examined at a reconvened EIP in February 2013.

The Inspector has provided a Note outlining his remaining areas of concern which is being published on the same day as this Executive report (23 October).

At this stage therefore, this Executive report provides only a brief summary of the Inspector's Note. By the time this Executive report is considered on 1 November, Officers will have considered the Inspector's comments in detail. Extraordinary Council on 6 November (published on 29 October) will therefore consider an amended report and revised Schedule, which will take into account any changes arising as a result of the Inspector's Note for approval for consultation purposes (commencing on 12 November).

Recommendation:

i. Note:

- **the contents of the attached DRAFT report for Extraordinary Council (6 November 2012);**
- **the contents of the Inspector's Note;**
- **the related issues set out in this covering report; and**
- **that the Final Council Report will be amended as required taking into account the Inspector's comments.**

Reasons for recommendations:

A formally adopted Core Strategy is an essential part of the Council's Local Development Framework (now referred to as the Local Plan) and is needed for the proper planning of the District of Selby.

The recommendations seek to assist the progress of the Core Strategy towards adoption and will contribute towards the implementation of the statutory development plan within the timescale agreed with the Government Inspector.

1. Purpose of the Report

1.1 This report informs councillors about:

- the progress of the Core Strategy through the Examination in Public (EIP);
- key issues arising including important legal issues;
- further proposed changes; and
- the next steps.

2. Background

2.1 The reconvened EIP held on 5 and 6 September 2012 has been adjourned until 27 February 2013 in order to consider any further changes required to comply with the national planning policy framework (NPPF).

2.2 Councillors should refer to the attached draft Council report and appendices which outline the background and next steps.

2.3 The Council report recommends the Council to approve a further, 7th Set of Proposed Changes to the Selby District Core Strategy in order to ensure it meets 'soundness' tests. A further round of consultation is necessary prior to the February 2013 EIP.

3. Update

3.1 Officers have provided the Inspector with a copy of the Draft 7th Set of Proposed Changes and he has now published (on 23 October) a Note outlining his comments on them and highlighting any remaining areas of

concern. The Note is published on the Core Strategy EIP Webpage alongside the Draft 7th Set of Proposed Changes (as attached in the Appendix to this report).

- 3.2 At this stage therefore, this Executive report provides only a brief summary of the Inspector's Note. By the time this Executive report is considered on 1 November, Officers will have considered the Inspector's comments in detail. Extraordinary Council on 6 November (published on 29 October) will therefore consider an amended report and revised Schedule, which will take into account any changes arising as a result of the Inspector's Note for approval for consultation purposes (commencing on 12 November).
- 3.3 The Inspector's Note is also attached to this Executive report for information at Appendix 2.
- 3.4 The revised timetable for the remaining steps, between October 2012 and the reconvened EIP in February 2013 has been published on the EIP webpage and is attached at Appendix 3 for councillors' information.

4. Key Policy Issues

- 4.1 The key issues arising out of consultation and the April 2012 EIP are set out in the attached draft Council report. This section of this Executive report highlights only the key points raised by the Inspector in his Note (Appendix 2) for information.
- 4.2 The final Extraordinary Council Report will contain the officer response to the Inspector's Note and consequently a revised set of proposed changes for approval for consultation purposes taking into account the issues raised by the Inspector.

Other Matters

- 4.3 The Inspector notes that, as a result of the Council's positive response to, initially, the reasons for the Examination being suspended and, subsequently, to the representations and discussions concerning the National Planning Policy Framework (NPPF), the areas where there remains a risk of him having to recommend main modifications to achieve a sound plan are relatively few.
- 4.4 Other than the one topic below, on Fairburn, the Inspector says that the various concerns he has expressed on a range of other matters throughout the Examination, have largely been addressed, at least to the extent that (on current thinking) they are unlikely to be the subject of recommendations by the Inspector of main modifications which have not been suggested by the Council.

Green Belt (Policy CPXX)

- 4.5 The Inspector suggests some re-phrasing in the Policy CPXX, given that there might potentially, in time, be more than one circumstance which triggers the need for a Green Belt review.

Scale of Housing and Windfall Development (Policy CP2 and text)

- 4.6 The Inspector welcomes the recognition now given to the contribution from windfalls, for it makes clear that the CS is expected to result in more houses being delivered than the 450 dpa minimum of Policy CP2, thereby satisfying the NPPF requirement to significantly boost housing supply. It also allays any residual concern of his about overall housing numbers.
- 4.7 However, he requires some further clarification regarding how the housing target is to be met (from allocations and existing permissions at the base date).

Rural Affordable Housing (Policy CP6)

- 4.8 The Inspector raises some queries regarding:
- the consistency between revised Policy CP6 and Policy CP1 Part A, Section (b)
 - whether it is appropriate that the Rural Exceptions Policy applies to all settlements rather than just villages
 - the suggested deletion of a previous propose change at CP6 Part (i), which clarifies where the policy would apply within the settlement hierarchy

Economic Growth (Policy CP9)

- 4.9 The Inspector requires some clarification on the particular areas to which the rural economy, Part C applies. He also considers that that the NPPF qualification that all rural development should be sustainable is an important one. In addition he raises some presentational points.

Renewable and Low Carbon Energy (Policy CP14)

- 4.10 The Inspector suggests some improvements to the wording of the revised policy.

Identification of Designated Service Villages (DSVs) (Policy CP1)

Fairburn

- 4.11 The Inspector is clear that the objective analysis in the Core Strategy Background Paper (No. 6 Village Growth Potential) as updated by evidence during the Examination, does not support Fairburn's designation as a DSV. He considers that nothing in NPPF changes this – there is no compelling evidence that additional housing would lead to a more sustainable rural community or enhance its vitality. Unlike Appleton Roebuck (the other settlement where the objective analysis calls DSV designation into question), no case is advanced that Fairburn is part of a recognised group

of villages where development would support services in other villages nearby (indeed the reverse is true, for the nearest villages to Fairburn are already identified as DSVs). On the evidence thus far, the Inspector is likely to recommend deletion of Fairburn as a DSV.

Escrick

- 4.12 The Inspector considers that the recent identification of Escrick as a DSV is soundly based on the objective evidence and, for that reason, appears justified. However, the Inspector suggests that Policy CP1A (a) be annotated to clarify that Escrick is largely surrounded by Green Belt and any development on Green Belt land would have to accord with policy GBXX and the results of any Green Belt review.

5. Legal Issues

Main Modifications and the Duty to Cooperate

- 5.1 The unresolved legal point about the Inspector's ability to recommend Main Modifications (see attached Council report) represents a risk to the legality of the Core Strategy.
- 5.2 Councillors should be aware that this is a significant issue and at this point in time there is no certain outcome. Also that the legal points are inter-related to the remaining requirement that the Core Strategy must be in general conformity to the Regional Strategy (RS) and that there is a requirement to demonstrate that the Core Strategy is consistent with the NPPF including the Duty to Cooperate.
- 5.3 It is a risk to the Council that the legal opinions are not requested until January. As such officers requested an early view from the Inspector.
- 5.4 As such, the Inspector's Note sets out that he gave his ruling on the legal aspect of the Duty to Cooperate in April 2012, concluding that it does not apply in this case (INSP/12). He considers that the argument that this finding does not allow him to recommend main modifications seems, on the face of it, to have little merit because s20(7) of the 2004 Act consistently refers to *any* duty imposed by s33A – the Inspector interprets this as allowing for situations in which (for whatever reason) the Duty to Cooperate does not bite. He states that he cannot reach a firm conclusion on this point until he has considered the full legal submissions to be put to him early next year, but his initial view is that s20(7C) does apply and that he has the power to recommend main modifications.

Regional Strategy (RS) Compliance

- 5.5 The Core Strategy must be in general conformity with the RS. Although SDC has reviewed its housing figures in the light of the debate at the September 2011 EIP and within the expectations of the planning reforms, the SDCS remains in general conformity with the statutory RS.
- 5.6 Although the Government has signalled its intention to revoke Regional

Strategies nationally (and this is recognised in the SDCS), there have been delays in that process. There is no timetable for the revocation of RS in the Yorkshire and Humber Region. The Government is currently consulting on the Strategic Environmental Assessment of the Revocation of the Yorkshire and Humber Regional Strategy. However the RS is expected to still be in place by the time the SDCS EIP reconvenes in February 2013 and during the reporting period of the Inspector. It is not known what the implications would be if RS was revoked prior to the adoption of the SDCS, which presents a further risk to the Council in trying to progress the Core Strategy.

Statutory Challenge to the Plan

- 5.7 The decision of the Inspector to suspend the EIP in September 2011 was not challenged under the Planning and Compulsory Purchase Act 2004 (PCPA) by any of the interested parties. The Council did receive a formal Letter Before Action in respect of the decision of Full Council on 13th December 2011 from an interested party but following an exchange of correspondence, that party took a view that they would not challenge the Council at this time. The interested party is reserving their position pending the outcome of the reconvened EIP.
- 5.8 Therefore, in the event that the Inspector finds the Core Strategy both legally compliant and sound, and the Council seek to adopt a modified plan in the light of the Inspector's report, there is a risk that there will be a statutory challenge to the Council under s113 of the PCPA. Such a challenge would delay the adoption of the Core Strategy with the associated implications for ensuring an up-to-date local plan for the District. It would also incur additional expense to the Council in defending the challenge.

Changes from a Local Development Framework to a new Local Plan format

- 5.9 The SDCS (submitted in May 2011) has been developed within the context of the Local Development Framework which made provision for a suite of separate documents. In Selby District, the Local Development Scheme envisaged the Core Strategy followed by the Site Allocations DPD and Development Management DPD.
- 5.10 The Localism Act 2011 and new 2012 Regulations (and the NPPF published in March 2012) now envisages a single Local Plan and there is no longer a requirement for separate Core Strategy and further Development Plan Documents (DPDs). The new system has evolved whilst the SDCS has passed through its various stages.
- 5.11 Officers are currently reviewing how to progress the remainder of the new Local Plan (former LDF suite of documents) and the implications. It should be noted that although "DPDs" will no longer exist per se, it is acceptable to produce the Local Plan in separate documents.
- 5.12 Officers will bring another report to Councillors in due course with a recommendation for the best way forward with either separate or combined

documents and in the light of the advice in NPPF. Legal issues regarding transitional arrangements need to be also considered in detail.

6. Financial Issues

- 6.1 The initial assessment indicated there would be an additional cost of £40k – £50k as a consequence of the Suspension of the September 2011 EIP to address the three topics. This did not include legal costs and did not anticipate further adjournments.
- 6.2 It is estimated that the additional PINS fees for the reconvened April 2012 EIP is likely to be in the region of £13k. Similar figures are expected for each of the EIPs in September 2012 EIP and February 2013 EIP (if it runs to 2 days).
- 6.3 Extra legal costs have been £11,700 so far and more legal costs are still to be incurred for opinion on the 'main mods' issues as well as preparation and representation at the February 2013 EIP. These additional Legal costs (Counsel and SDC Solicitor time) are likely to be more than £20k.
- 6.4 The actual cost in consultants' fees of additional work undertaken between September 2011 and March 2012 during the suspension is approximately £10k. The cost of further additional work between April 2012 and October 2012 for consultants (housing numbers - Arup and Sustainability Appraisal - Watermans) has been £11K. Further technical/expert advice from consultants is likely to be minimal although the additional SA work that has been undertaken will be approximately £4k.
- 6.5 The advertising costs for the January consultation was about £3k and for the June consultation another £2k. The additional November/December consultation exercise will incur further costs for advertising and document production etc of around £2k. There are also other miscellaneous costs.
- 6.6 These total additional costs of approximately £102k can be met within the existing LDF budget although overall this will create budget pressures on the future parts of LDF/Local Plan. The precise amounts will be assessed as part of the work identified under para 6.7 below.
- 6.7 There has also been an impact on other work programmes. Whilst not having a direct bearing on the Core Strategy, it is worth noting that the delay in the Core Strategy will have a knock on effect for the timetable of subsequent Local Plan documents including the Site Allocations and Development Management policies elements. The implications and impact on the revised timetable is currently being assessed as outlined above at 5.9 – 5.12)

7. Conclusion

- 7.1 Council on 6 November will be recommended to approve a final revised 7th Set of Proposed Changes for consultation. The final proposed changes will respond to both the previous consultation on the 6th Set of Proposed Changes, the debate at the September 2012 EIP and the Inspector's Note. The further changes are required to ensure consistency with national policy

in the NPPF and in order to comply with the tests of soundness. They are a pro-active response in a changing national policy arena.

- 7.2 The report also highlights that there are still risks associated with dealing with issues which are not restricted to Selby District and which are being debated nationally in an evolving planning system. The risks are being minimised by ensuring we have access to expert advice and support on technical issues but some of the legal risks are beyond the Council's control.

Background Documents

Submission Draft Core Strategy (May 2011) and subsequent Composite Schedule of Proposed Changes.

National Planning Policy Framework (NPPF), March 2012.

Inspector's Note, 23 October 2012

Selby Core Strategy Background Paper No. 6 'Village Growth Potential', February 2012 and Addendum, January 2011, (CS/CD22e, EIP Library)

Inspector's Ruling on the legal aspect of the Duty to Cooperate, April 2012 (INSP/12, EIP Library).

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Appendix 1 DRAFT Extraordinary Council Report 6 November 2012 and Associated Appendix / Annexes (*see separate documents*)

Appendix 2 Inspector's Note, October 2012

Appendix 3 Revised Timetable

Appendix 2

NOTE TO COUNCIL ON DRAFT 7TH SET OF PROPOSED CHANGES

1. At the September 2012 Examination hearings I sought (and obtained) agreement from participants to give a "steer" to the Council on my current thinking on the latest version of the CS before it published its final set of Proposed Changes (PCs) for consultation later this year. The Council subsequently sent me its draft 7th set of PCs and draft report for comment.
2. As a result of the Council's positive response to, initially, the reasons for the Examination being suspended and, subsequently, to the representations and discussions concerning the National Planning Policy Framework (NPPF), the areas where there remains a risk of my having to recommend main modifications to achieve a sound plan are relatively few. The comments below are primarily directed to the draft 7th set of PCs, though I also address other matters which potentially go to soundness. I also respond to the Council's request for my current thinking on the 'duty to cooperate' legal issue.
3. It is important to appreciate that the views expressed below should not be taken as definitive of the final conclusion I may reach in my report. Whilst they represent my current thinking, the decisions I come to in my report can only be made after all the representations have been considered, the hearings have finished and the complete body of evidence has been taken into account.

Green Belt

4. One of the reasons for the Examination being suspended was my concern that the CS failed to give guidance on the important 'exceptional circumstances' test which has to be met if Green Belt releases are to be justified. At the discussion during subsequent hearings I repeated my view that a policy which facilitated a Green Belt review should set out the reasoning which, in Selby, could result in exceptional circumstances being found. To further assist the Council, I also provided my thoughts on its first re-draft of policy GBXX following the September 2012 hearings.
5. The Council has broadly incorporated my latest comments into the 7th set of PCs. That being so, I have just one point in relation to the first line of paragraph 4.39j. Given that there might potentially, in time, be other circumstances which trigger the need for a Green Belt review, it could be argued that there is an over-emphasis on the word "only". It might be better to re-phrase the first line as follows:
"Thus the need for a Green Belt review is most likely to arise if sufficient deliverable/".

Scale of housing and windfall development

6. The recognition now given to the contribution from windfalls is welcomed, for it makes clear that the CS is expected to result in more houses being delivered than the 450 dpa minimum of policy CP2, thereby satisfying the NPPF requirement to significantly boost housing supply. It also allays any residual concern of mine about overall housing numbers. However, despite the intention to allocate the full housing target (paragraph 5.28c), I am not at all certain that, as currently written, the contribution from windfalls would be counted as an addition to the 450 dpa target figure.

7. In the 5 year supply calculation (excluding the buffer element), the contribution from completed windfall sites and those committed windfall sites regarded as deliverable is proposed to form part of the built/ committed supply¹. If the target remains at 450 dpa, the situation would be similar to that which applied in the past (paragraph 5.28a of the text) – the scale of need for additional sites would be reduced below the 450 dpa on allocated sites because of the contribution from built/committed windfalls. The same principle applies to the establishment of a new baseline date for the Site Allocations plan – the overall total to be allocated would be lower than the target of 450 dpa on non-windfall sites because of built/committed windfalls in the intervening period.

8. Is the above analysis correct, or have I misunderstood the process of calculating the 5 year supply and the overall scale of housing provision? If I am right, however, the final sentence of paragraph 5.28d is not consistent with the rest of paragraphs 5.28c and 5.28d and does not properly reflect the plan's stated intention to provide significantly more than 450 dpa, as illustrated in the trajectory.

9. It seems to me that there are two main ways in which this problem could be overcome. One is to specifically exclude windfalls (and other non-allocated development) from the 5 year supply calculation, the other is to increase the target figure to include some or all of the anticipated windfall supply.

Rural affordable housing

10. The inclusion of the market homes provision in policy CP6 is consistent with NPPF. However, does the reference to "100%" affordable housing in policy CP1(A)(b) remain appropriate if some market homes are now possible? On a separate matter, as now drafted policy CP6 could arguably be applied to the District's towns – is this appropriate? Would it be clearer to start the policy with "In villages....." (criterion (iii) refers to the setting of *the village*, so presumably the intention is to limit the policy to villages)?

11. It is not obvious to me why PC3.10 should be deleted, given that policy CP1A(a) makes a clear distinction between the types of development acceptable in DSVs compared with Secondary Villages. Deletion of PC3.10 raises the

¹ I appreciate that it was my suggestion that the text at the final sentence of paragraph 5.28d be changed from "may" to "will", but that is the usual approach and no one from the Council argued otherwise. In addition, there was no indication of how "may" would be interpreted (ie which windfall sites would be included and which would not).

following question: on what types of site within DSVs would development be allowed for rural affordable housing which would not otherwise be permitted? On the face of it, PC3.10 seems to make an appropriate distinction - is there something I have missed?

Economic growth

12. Whilst the general approach to the rural economy and the changes resulting from the September 2012 hearings are consistent with NPPF, the latest wording for part C of policy CP9 raises a number of issues. The first is definitional – it is not entirely clear to what areas the “Rural Economy” heading applies, and whether this is the same as “rural areas” in the first sentence of part C. I assume from Part A (3) that it relates to DSVs, SVs and the countryside – is that correct, and should it be specified?

13. Secondly, the first sentence of part C seems not to apply the “sustainable” test of NPPF paragraph 28 to all development. Thus a small scale, well designed building for employment development on a greenfield site in open countryside in a remote part of the District would appear to gain support from the policy, even though it might be regarded as unsustainable because of its location and/or use of greenfield land. It seems to me that the NPPF qualification that all rural development should be sustainable is an important one.

14. On a matter of presentation, the inclusion of certain types of site (C.2) in a list which otherwise refers to categories of use and development appears somewhat out of place, especially as the policy starts with “Development proposals for.....”

Renewable and low carbon energy

15. The addition of the first new paragraph to policy CP14 closely follows NPPF paragraph 97 and is fine (though it might be easier to comprehend if the two main elements were better separated). The second new sentence is poorly phrased as drafted, for it could be taken to imply that Council support might *not* be given for schemes within ‘identified suitable areas’; I suggest the “if” after ‘neighbourhood plans’ is replaced by “including those”, or similar.

16. The assessment criteria then follow. The first set deletes the previous reference to ‘identified suitable areas’ (deleting PC6.85) and is appropriate. There then follows a repeat of the criteria with the ‘identified suitable areas’ clause of PC6.85 retained – I assume this is an error, for if not the policy does not make sense.

Other matters

17. I have no specific comment on the other PCs now proposed in the 7th set. Of course, it is not possible to say that this will remain the position following receipt of representations on these PCs and the consideration of them at the final hearing session in February 2013.

18. Other than the one topic below, the various concerns I have expressed on a range of other matters throughout the Examination have largely been

addressed, at least to the extent that (on current thinking) they are unlikely to be the subject of recommendations by me of main modifications which have not been suggested by the Council.

Identification of DSVs

19. I do remain concerned about the inclusion of Fairburn as a DSV. The objective analysis in CS/CD22e, as updated by evidence during the Examination, does not support such designation. Nothing in NPPF changes this - there is no compelling evidence that additional housing would lead to a more sustainable rural community or enhance its vitality. Unlike Appleton Roebuck (the other settlement where the objective analysis calls DSV designation into question), no case is advanced that Fairburn is part of a recognised group of villages where development would support services in other villages nearby (indeed the reverse is true, for the nearest villages to Fairburn are already identified as DSVs). On the evidence thus far, I am likely to recommend deletion of Fairburn as a DSV.

20. The recent identification of Escrick as a DSV is soundly based on the objective evidence and, for that reason, appears justified. However, I appreciate the argument that, as it is almost completely surrounded by Green Belt, its inclusion as a DSV might imply that some development on Green Belt land is inevitable. In my view that is not the case - the tests of policy GBXX would have to be applied to any potential Green Belt releases at Escrick and the outcome should not be predetermined by designation as a DSV. I believe that such a qualification should be made explicit in policy CP1A (a) - perhaps by a notation (similar to the linked villages asterisk) which states that Escrick is largely surrounded by Green Belt and any development on Green Belt land would have to accord with policy GBXX and the results of any Green Belt review.

Duty to cooperate

21. I gave my ruling on the legal aspect of the duty to cooperate in April 2012, concluding that it does not apply in this case (INSP/12). The argument that this finding does not allow me to recommend main modifications seems, on the face of it, to have little merit because s20(7) of the 2004 Act consistently refers to *any* duty imposed by s33A - I interpret this as allowing for situations in which (for whatever reason) the duty to cooperate does not bite. Clearly I cannot reach a firm conclusion on this point until I have considered the full legal submissions to be put to me early next year, but my initial view is that s20(7C) does apply and that I have the power to recommend main modifications.

Martin Pike

INSPECTOR
October 2012

Appendix 3

Examination Programme, October 2012 to February 2013

23 October 2012	Council publishes papers for Executive Meeting on 1 November
23 October 2012	Inspector publishes Note to Council on draft Proposed Changes
12 November to 28 December 2012	Consultation period on Council's 7th Set of Proposed Changes
18 January 2013	Council publishes copies of all Representations received on 7 th Set of Proposed Changes
18 January 2013	Deadline for legal submissions to Inspector on interpretation of S20(7) of Planning and Compulsory Act 2004 (as amended)
1 February 2013	Deadline for responses to above legal submissions
15 Feb 2013	Inspector produces Agenda for final Examination hearing session
27 February 2013	Final Examination hearing session into 7 th set of Proposed Changes
28 February 2013	Reserve day in case of hearing over-run