

<b>Report to:</b>	<b>Cabinet</b>
<b>Date:</b>	<b>14 March 2023</b>
<b>Title:</b>	<b>Eastbourne Local Plan</b>
<b>Report of:</b>	<b>Ian Fitzpatrick, Deputy Chief Executive and Director of Regeneration &amp; Planning</b>
<b>Cabinet member:</b>	<b>Councillor Colin Swansborough, Cabinet Member for Climate Change, Heritage Assets, Place Services and Special Projects</b>
<b>Ward(s):</b>	<b>All</b>
<b>Purpose of report:</b>	<b>To provide a summary of the plan-making process, identify the main issues arising from the recent public consultation, and outline the next steps in the preparation of the Eastbourne Local Plan.</b>
<b>Decision type:</b>	<b>Key</b>
<b>Officer recommendation(s):</b>	<b>(1) That Cabinet notes the summary of the plan-making process that is outlined in the report</b> <b>(2) The Cabinet notes the risks in delaying the preparation of a ‘sound’ local plan</b> <b>(3) That Cabinet notes the initial summary of the main issues arising from the Growth Strategy consultation</b> <b>(4) That Cabinet note the Full Council agreement that the Fisherman’s Green site should be withdrawn from the Growth Strategy as the site is no longer available</b> <b>(5) That Cabinet agree that any further public consultation into the Eastbourne Local Plan is paused until all evidence on potential allocation sites is sought, available and assessed.</b> <b>(6) That Cabinet agree to receive the Regulation 19 ‘Proposed Submission’ draft local plan late 2023, early 2024.</b>
<b>Reasons for recommendations:</b>	<b>To receive and complete the required evidence base and to enable work to continue in the background on the</b>

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## preparation of the Eastbourne Local Plan.

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### **1 Introduction**

1.1 The National Planning Policy Framework 2021 (NPPF) requires local planning authorities to prepare succinct and up-to-date plans that provide a positive vision for the future of their area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings (para 15).

1.2 Eastbourne Borough Council has commenced the preparation of a new Local Plan to replace the existing local plan, which is now considered 'out of date' in accordance with national planning policy. A timetable for the preparation of the new Local Plan was provided in the Eastbourne Local Development Scheme 2022-2025, which was adopted by Full Council in November 2022.

1.3 Following the conclusion of a public consultation on the Growth Strategy undertaken in the preparation of the local plan, this report seeks to outline the process involved in preparing the local plan, including the setting of a housing requirement figure, provides an update on the main issues that were raised in the Growth Strategy consultation, outlines the next steps in preparing the Eastbourne Local Plan, and identifies the potential implications for not following the plan-making process.

1.4 The plan-making process is on-going with significant work still to do.

Currently, there is no robust evidence to justify a decision in planning terms to exclude any sites identified in the Growth Strategy from further consideration, with the exception of Fisherman's Green where there is evidence that it is no longer available.

For clarity all remaining sites which include Pevensey Levels, Priory Road, Sovereign Harbour, and the Brighton University recreation sites will continue to be reviewed and assessed when further evidence is received.

### **2 Background**

2.1 The Planning and Compulsory Purchase Act 2004 (as amended) requires that local planning authorities set out the authority's policies relating to the development and land use in their area through a local plan. It also requires that

in preparing the local plan, local planning authorities must have regard to national policies and must have them independently examined in order to assess whether the local plan is sound.

- 2.2 The Town & Country Planning (Local Planning) (England) Regulations 2012 (as amended) builds on the statutory framework in the 2004 Act by setting out the procedure to be followed by local planning authorities in relation to the preparation of local plans, including stages of consultation, who to consult with and what documents should be made available at each stage.
- 2.3 The NPPF sets out the Government's planning policies and how these should be applied, including what should be taken into account and addressed in the preparation of the local plan, and the tests of soundness that the local plan needs to meet through the examination process. A series of Planning Practice Guidance (PPG) is also provided by the Government to add further context to the NPPF on a range of different topics.
- 2.4 Producing a local plan is one of the most important undertakings for a local authority. Local plans set out the long-term vision and strategy that shapes future development over a 20-year period. They include policies to guide decisions on the location, amount and type of development that the area needs, whilst also protecting the natural and historic environment and addressing the challenge of climate change.
- 2.5 The local plan is critical to the day-to-day decisions on planning application that the Council takes as the local planning authority. It also enables future needs for infrastructure to be planned appropriately and ensures that the cumulative impacts of development over the plan period are properly assessed.

### **3 Current Position**

- 3.1 The Eastbourne Core Strategy is the current local plan that contains the current strategic policies for the Eastbourne local planning authority area (i.e. the Borough excluding the South Downs National Park). It was adopted in February 2013 following Public Examination by a Planning Inspector in May 2012. The Core Strategy sets out the Council's spatial vision for Eastbourne up to 2027, and the primary land use objectives and strategic policies that will deliver it.
- 3.2 The NPPF (para 33) requires that local planning authorities undertake a review of their local plans at least once every five years from adoption, to ensure that policies remain relevant and effectively address the needs of the local community.
- 3.3 A review of the Core Strategy in 2018 at its five-year anniversary determined that the Core Strategy cannot be considered to be up to date due to the under-delivery of housing against the housing requirement set out in the plan, an

increase in the housing need calculated through the Local Housing Need standard method, and the lack of a five-year housing land supply.

3.4 Local plans that are out of date make managing development difficult and can result in unplanned development being permitted where it is not possible to demonstrate a 5-year housing land supply. This is due to the NPPF's 'presumption in favour of sustainable development' (para 11), which applies to the determination of planning applications in cases where policies most important for determining the application are out-of-date. This usually means granting permission unless:

- i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

3.5 A Local Development Scheme (LDS) was prepared to set out a timetable for the preparation of a new local plan that will provide up-to-date strategic policies that set out a vision and a framework for the future development of the area and address needs and opportunities in relation to housing, the economy, community facilities and infrastructure, as well as a basis for conserving and enhancing the natural and historic environment, mitigating and adapting to climate change, and achieving well designed places.

3.6 The NPPF (para 31) confirms that Local Plans must be underpinned by relevant and up-to-date evidence, which should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals. Sustainability Appraisal and Habitats Regulations Assessment also form an integral part of the plan making process. These help to ensure negative environmental impacts are avoided, and policies and proposals deliver development in a sustainable manner.

3.7 Evidence gathering to support the preparation has been on-going. To date, the evidence base includes:

- Eastbourne Land Availability Assessment (October 2022)
- Eastbourne Windfall Assessment (October 2022)
- Assessment of Residential Densities in Eastbourne (October 2021)
- Eastbourne and Wealden Economy and Employment Study (April 2022)
- Eastbourne and South Wealden Strategic Flood Risk Assessment (Level 1) (September 2022)
- East Sussex Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment (May 2022)

- Eastbourne Local Plan Shared Transport Evidence Base (STEB): Interim Assessment and Mitigation Strategy

3.8 As the first stage of public consultation on the new local plan, Eastbourne's Direction of Travel: Issues & Options for the new Local Plan was published in November 2019, which invited comment on the main issues that the Local Plan should address and on potential options for addressing those issues.

3.9 In November 2022, a 'Growth Strategy' was published for public consultation. This was informed by representations made to the Issues & Options consultation, as well as technical evidence studies and initial discussions with stakeholders including infrastructure providers.

#### **4 Housing Requirement Figure**

4.1 One of the main roles of the local plan is to identify the number of homes that should be delivered within the area. This housing requirement figure is determined by the local planning authority, working with local communities, through the plan-making process. It should be established in the context of the requirements of national planning policy and based on evidence, which means that a housing target cannot be set unilaterally by the local planning authority outside of the plan-making process.

4.2 The NPPF (para 11) requires that local plans should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:

- i. the application of policies in the NPPF that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

4.3 Objectively assessed need for housing is the number of additional homes that would be needed based on predicted demographics changes, migration and household formation rates, without taking into account any constraints or land availability issues that may impact the number of homes that can actually be delivered. The assessment of housing need is the first step in the process of deciding how many homes need to be planned for.

4.4 The NPPF (para 61) confirms that to determine the minimum number of homes needed, a local housing need assessment should be conducted using the standard method set out in national planning guidance. The standard method uses a formula to identify the minimum number of homes expected to be planned for based on household growth projections and affordability data. For

Eastbourne, this results in a local housing need of 738 homes per year. PPG<sup>1</sup> confirms that the standard method identifies a minimum annual housing need figure, and does not produce a housing requirement figure.

- 4.5 It is for the plan-making process to test whether there are reasons why it may be appropriate to plan for a different level of housing provision, for example where there are significant strategic constraints to development that would justify a lower level of provision. The PPG<sup>2</sup> confirms that constraints that may impact the level of development should be considered through the assessment of the suitability, availability and achievability of sites. This assessment is undertaken through the Land Availability Assessment and the Sustainability Appraisal process, which provides the key evidence that justifies the number of homes that can realistically be delivered.
- 4.6 A proposed housing requirement will eventually be identified in the 'Proposed Submission' draft local plan, following the course of the plan-making process and based on the evidence gathered. This will then be subject to an Examination in Public and scrutiny from a Planning Inspector before it is finally confirmed on the adoption of the local plan.

## **5 Growth Strategy**

- 5.1 In November 2022, Cabinet made the decision to publish the Eastbourne Local Plan Growth Strategy for public consultation between 11th November 2022 and 20th January 2023. This consultation was undertaken under Regulation 18 of the Town & Country Planning (Local Planning) (England) Regulation 2012 (as amended) and consultation was conducted in accordance with the Council's adopted Statement of Community Involvement (2019).
- 5.2 The purpose of this consultation was to enable the local community to be part of the discussion regarding the level of housing and employment growth that could be accommodated in Eastbourne and where it might be located.
- 5.3 The Growth Strategy clearly identified that it was not a consultation on a draft local plan. It was consulting on the key components that would inform a draft local plan, including the potential scale and location of housing and employment growth, to allow the local community to provide their views so that these can be considered at the next stage in the preparation of the Local Plan.
- 5.4 As the NPPF identifies that housing need should be 'a minimum' for the number of homes provided, all sites with potential for development were identified and

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<sup>1</sup> [Housing and economic development needs, Paragraph: 002 Reference ID: 2a-002-20190220](#)

<sup>2</sup> [Housing and economic land availability assessment, Paragraph: 002 Reference ID: 3-002-20190722](#)

subject to an initial assessment against the policies in the NPPF that protect areas or assets of particular importance (NPPF, para 11b). Sites that were not affected by these constraints were used to inform the potential level and locations for growth identified in the Growth Strategy.

- 5.5 This initial assessment of land availability and how sites are affected by constraints indicated that there are strong reasons as identified in NPPF (para 11b) why the local housing need of 738 homes per year cannot be met. Based on this initial assessment, the Growth Strategy indicated a potential capacity to accommodate 6,401 homes over the plan period (2019-2039), which is equivalent to 320 homes per year – less than half of the housing need – with 80% of these homes being on previously developed ‘brownfield’ sites. It is important to note that this number is not the proposed housing target, but an indication of what a target could be, in order to enable the local community to be part of the discussion regarding how many homes should be delivered in the town.
- 5.6 The Growth Strategy also identified a potential capacity to accommodate 53,000 sqm of new employment floorspace, against an objectively assessed need for employment space of 76,000 sqm.
- 5.7 The number of ‘key development sites’ were identified as locations where the most significant development could take place, and comments were invited to clarify whether there are further issues and constraints that need to be considered in determining if these sites should be considered ‘developable’ and allocated in the draft local plan. This will lead to further evidence gathering to enable more detailed assessment of these sites.

## **6 Consultation**

- 6.1 The public consultation on the Growth Strategy received 644 direct responses and three petitions – two petitions, signed by 1,598 people at the close of the consultation period (5,811 people as at 24th February 2023) and 18 people respectively, relating to the development of the Fisherman’s Green site, and one further petition, signed by 93 people, relating to development in Summerdown.
- 6.2 Of the 644 responses, 432 responses (67%) commented on Fisherman’s Green. These responses identified a number of potential issues associated with any potential development at Fisherman’s Green, including (but not limited to): the loss of tennis courts, the loss of car parking, the loss of community facilities, the loss of businesses, issues associated with current and future flood risk, and the impact of development on the character of the seafront.
- 6.3 Of the other key development sites identified in the Growth Strategy, 51 responses commented on the University of Brighton site at Hillbrow on Denton Road, 47 responses commented on Land at Southbourne, 46 responses

commented on Land off Pevensey Bay Road, 43 responses commented on Land at Tutts Barn Lane and 42 responses commented on Land at East Langney Levels.

- 6.4 In relation to the level of growth proposed, there were a significant number of comments relating to the impact of new development on infrastructure, a number of concerns raised about the impact of development on 'greenfield' sites particularly in relation to flooding and ecology, and there was some concern about the impact of taller buildings on the character of the town. However, there was general acknowledgement of the need to provide new homes and support given to the number of 'brownfield' sites identified.
- 6.5 Detailed analysis of the consultation responses is on-going, and a summary of the main issues raised and how these have been addressed will be published alongside the 'Proposed Submission' draft local plan.

## **7 Next Steps**

- 7.1 Following the conclusion of the Growth Strategy consultation, all representations will be considered in the preparation of the draft local plan, with further evidence gathering work being undertaken in response to some of the comments. This will include identifying where changes may be justified to the levels and locations of growth and detailed site assessment work to identify allocations for the draft local plan.
- 7.2 In December 2022, the Government published a consultation on 'Levelling-up and Regeneration Bill: reforms to national planning policy', which seeks views on the proposed approach to updating the current NPPF. This, alongside the statement made by the Secretary of State for Levelling Up, Housing and Communities in the House of Common on Monday 20th February 2023, has resulted in some uncertainty around future national planning policy in relation to plan-making. These changes will need to be considered and their impact on the local plan assessed once they have been implemented, anticipated for spring 2023.
- 7.3 Once the draft local plan (known as the Proposed Submission) has been prepared, it will be considered by both Cabinet and Full Council before being published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) and being subject to a further round of public consultation.
- 7.4 Following this, the local plan will be submitted to the Secretary of State for independent examination by a Government appointed Planning Inspector. Through the examination process, the Council will need to demonstrate that the local plan has been prepared in accordance with legal and procedural requirements and that it is 'sound' according to the tests set out in the NPPF.

Only when the Inspector has found the plan to be sound can be formally adopted by the Council.

- 7.5 Therefore, through the next stages of the preparation of the local plan, it will be important that forethought is given to the examination process and the likely requirements of the Planning Inspector so as to prepare the local plan with the legislative requirements and tests of soundness in mind.
- 7.6 An important part of the local plan preparation that will be tested at the examination is that it is based on robust evidence. The evidence gathering process continues throughout the plan making process, and further evidence will be required to support the preparation of the draft local plan, including the identification and assessment of sites.
- 7.7 It is noted that Full Council motion on Wednesday 22<sup>nd</sup> February has confirmed that the Council owned Fisherman's Green site is not considered to be available for development. This means that the site does not meet the definition of 'developable' in the NPPF and as such won't be considered further for allocation for housing development in the Proposed Submission draft local plan.
- 7.8 The consultation has highlighted issues with other sites that were identified in the Growth Strategy consultation. Further evidence is required on a range of issues, including (but not limited to) flood risk, biodiversity and landscape impacts, so that sites can be reassessed in light of these issues to determine whether they should still be considered 'developable'.
- 7.9 The plan-making process is on-going with significant work to gather sufficient evidence for the removal of other sensitive sites.
- 7.10 Cabinet and Full Council will have the opportunity to decide on the inclusion of these sites in the 'Proposed Submission' local plan at Regulation 19 stage once all of the evidence and information has been gathered and presented. The current LDS anticipates that this will be by the end of 2023.

## **8 Implications and Risks**

- 8.1 The implications of making decisions on the local plan outside of the plan-making process, such as unilaterally setting a housing requirement figure or excluding sites from consideration without evidence, is that there is a significant risk that the local plan could fail at examination due to not following legal and procedural requirements and failing the 'positively prepared' and 'consistent with national policy' tests of soundness (NPPF, para 35).
- 8.2 If at examination the Inspector considers that local plan is likely to be found unsound, they could require changes to be made to the plan or direct the Council to withdraw the plan from examination, which would mean restarting the

process and result in significant delays to the adoption of a new local plan. This could mean that the evidence gathered to support the local plan may become out of date and need to be reviewed and updated at significant cost.

- 8.3 Delays in adopting a new local plan would prolong the period that the local plan is out of date and is therefore unable to demonstrate a five-year housing land supply. This means that policies in the existing Local Plan will be given less weight in the determination of planning applications and at appeals, with decisions on development proposals having to be made in the context of the 'presumption in favour of sustainable development' in the NPPF (para 11). As a consequence, the Borough would be more vulnerable to speculative planning applications, including for development on any 'excluded' sites, which would be determined under the NPPF's presumption in the absence of an up-to-date plan.
- 8.4 Further delays in adopting a new local plan will also mean that the Council would not have an overall strategy for how it wants to manage growth and change. This would prolong uncertainty over the amount and location of future development, which could have negative impacts on communities and compromise the realistic planning of new and improved infrastructure to accommodate the growth that would be permitted in the absence of an up-to-date local plan.
- 8.5 It would also delay the adoption of up-to-date policies that can be used to address issues such as energy efficiency in new development, affordable housing provision, concentration of Houses in Multiple Occupation, and the extent of the Tourist Accommodation Area.
- 8.6 The local plan will also have a role to play in helping the Council meet its climate neutral ambitions, and the new local plan would be expected to have specific policies to address this. A delay in the Local Plan may therefore compromise the Council's objective of being a carbon neutral town by 2030.
- 8.7 The Government do have powers available to them through section 27 of the Planning and Compulsory Purchase Act 2004 (as amended) to intervene in the Council local plan-making process if the Secretary of State thinks that the local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a development plan document. However, these powers are very rarely used so this is not seen as a significant risk at the current time.
- 8.8 The current understanding is that there are no other formal penalties or sanctions that could be imposed by the Government at the current time for not having an up-to-date local plan. However, the application of the NPPF's presumption in favour of sustainable development and a limited ability to defend refusal of planning permission at appeal as a result of not having an up-to-date

local plan is seen as a considerable risk.

## **9 Corporate plan and council policies**

9.1 The Eastbourne Borough Council Corporate Plan 2022-2026 identifies a key priority to regenerate and deliver housing through agreeing a new Local Plan that sets delivery targets that meet local housing needs; and identifying sustainable locations for development.

9.2 The Local Plan will also assist in delivering a number of priorities set out in the Council's Corporate Plan, including:

- delivering new homes;
- transitioning to the delivery of new carbon neutral & environmentally friendly homes
- helping to maintain the heritage environment;
- encouraging cycling and using public transport more through improved infrastructure,
- enhancing the biodiversity of public and open spaces; and
- efficient processing of planning applications.

## **10 Financial appraisal**

10.1 There are no direct financial implications relating to this report.

## **11 Legal implications**

11.1 The development plan is at the heart of the planning system with a requirement set in law that planning decisions must be taken in line with the development plan unless material considerations indicate otherwise. Section 19 Planning and Compulsory Purchase Act 2004 sets out specific matters to which the local planning authority must have regard when preparing a local plan and the Town and Country Planning (Local Planning) (England) Regulations 2012 prescribe the general form, content and the process to follow when seeking to adopt a local plan. Most importantly, during the independent examination of a draft local plan, the planning inspector must assess whether the local plan has been prepared in line with the relevant legal requirements (including the duty to cooperate) and whether it meets the tests of 'soundness' contained in the National Planning Policy Framework.

*Legal Implications Provided 27.02.23 JCS IKEN Ref 011860*

## **12 Risk management implications**

12.1 The risk management implications are identified in Section 8

## **13 Equality analysis**

- 13.1 It is not considered that an Equalities and Fairness Analysis is required for this report. The new Local Plan itself will need to undergo an equalities and fairness analysis, and this will be undertaken during the preparation of the plan.

## **14 Environmental sustainability implications**

- 14.1 The environmental sustainability implications are identified in Section 8

## **15 Background papers**

The background papers used in compiling this report were as follows:

- Planning and Compulsory Purchase Act 2004 - <https://www.legislation.gov.uk/ukpga/2004/5>
- Town & Country Planning (Local Planning) (England) Regulations 2012 (as amended) - <http://www.legislation.gov.uk/uksi/2012/767/made>
- National Planning Policy Framework (2021) - <https://www.gov.uk/government/publications/national-planning-policy-framework--2>
- Planning Practice Guidance - <https://www.gov.uk/government/collections/planning-practice-guidance>
- Eastbourne Core Strategy Local Plan 2006-2027 – <https://www.lewes-eastbourne.gov.uk/planning-policy/eastbourne-core-strategy/>
- Eastbourne Local Development Scheme - <https://www.lewes-eastbourne.gov.uk/planning-policy/local-development-scheme/>
- Eastbourne's Direction of Travel - Issues and Options for the Eastbourne Local Plan (2019) - <https://www.lewes-eastbourne.gov.uk/planning-policy/new-eastbourne-local-plan-2018-2038/>
- Eastbourne Local Plan Growth Strategy Consultation - [https://planningpolicyconsult.lewes-eastbourne.gov.uk/ELP\\_GS/consultationHome](https://planningpolicyconsult.lewes-eastbourne.gov.uk/ELP_GS/consultationHome)
- Levelling-up and Regeneration Bill: reforms to national planning policy - <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy>