

**REPORT TO:** CABINET

**DATE:** 13 SEPTEMBER 2018

**TITLE:** LOCAL DEVELOPMENT PLAN – SUBMISSION TO PLANNING INSPECTORATE FOR EXAMINATION UNDER REGULATION 22

**PORTFOLIO HOLDER:** COUNCILLOR DANNY PURTON, PORTFOLIO HOLDER FOR ENVIRONMENT

**LEAD OFFICER:** GRAEME BLOOMER, HEAD OF PLACE (01279) 446270

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PAUL MACBRIDE, FORWARD PLANNING MANAGER (01279) 446258

**This is a Key Decision**

**It is on the Forward Plan as Decision Number I007557**

**The decision is not subject to Call-in Procedures for the following reason:**

The decision stands as a recommendation to Full Council.

**This decision will affect all Wards.**

**RECOMMENDED that Cabinet recommends to Full Council that:**

- A** The Harlow Local Development Plan Pre-Submission Publication (2018) be formally approved for Submission to the Secretary of State in accordance with Regulation 22 of the Town and Country Planning (Local Development) (England) Regulations 2012 (as amended).
- B** The updated Local Development Scheme (Appendix G to the report) is approved.
- C** Delegated authority is given to the Managing Director, in consultation with the Leader of the Council and the Portfolio Holder for Environment, to make and approve any minor and inconsequential amendments to the documents to be submitted in support of the Harlow Local Development Plan Pre-Submission Publication (2018) arising from the completion of the ensuing technical studies prior to the Public Examination.

**REASON FOR DECISION**

- A** To enable the Harlow Local Development Plan Pre-Submission Publication (2018) to be formally submitted to Government for Examination to ensure that

the Council has an up to date development plan in place and a Local Development Scheme that reflects the Local Development Plan and the Town Centre Area Action Plan's current time table in accordance with Regulation 22 of the Town and Country Planning (Local Development) (England) Regulations 2012 (as amended).

- B** To ensure that any necessary supporting technical documents and resulting minor modifications' proposals can be submitted before examination of the Harlow Local Plan Development Plan Pre-Submission Publication (2018).

## **BACKGROUND**

1. Following consideration by Cabinet on 25 January 2018 and Full Council on 29 March 2018, approval was given for the publication under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) of the Harlow Local Development Plan Pre-Submission Publication (2018) (the Plan). The Plan was publicised for consultation, between Thursday 24 May and Friday 6 July 2018, in accordance with legislation and the guidance set out in the Council's adopted Statement of Community Involvement (SCI).
2. Guidance from the Planning Inspectorate states that local plans published under Regulation 19 should be the local plan that a Council intends to submit under Regulation 22 for examination by an independent Planning Inspector (PINS) appointed by Government. The purpose of the Regulation 19 was, therefore, to enable representations to be made on the overall soundness of the local plan which will be considered by PINS at the Examination.
3. The Government's Planning Practice Guidance also notes that having received any representations on the publication version of the local plan, the local planning authority should submit the local plan along with a Regulation 22 statement which sets out the process, the representations and the supporting documents for PINS to examine on behalf of the Secretary of State. The documents that will be submitted to support the Plan are listed below and the key documents are attached in the appendices of this report. In addition the Council can indicate which representations, if the Inspector is so minded to make modifications, the Council will not oppose.
  - a) Local Development Plan (Appendix A);
  - b) Policies Map (Appendix B);
  - c) Regulation 22 Consultation Statement (Appendix C);
  - d) Sustainability Appraisal (Appendix D);
  - e) Habitats Regulation Assessment (Appendix E) ;
  - f) Statement of Community Involvement (Appendix F);

- g) Local Development Scheme (Appendix G);
  - h) Statement on Duty to Cooperate (Appendix H);
  - i) Equalities Impact Assessment (Appendix I);
  - j) Schedule of minor modifications (Appendix J);
  - k) Core Strategy Issues and Options Document;
  - l) Emerging Strategy and Further Options Document;
  - m) Development Management Policies Document; and
  - n) Supporting technical documents (list in Appendix K).
4. After the Plan and the accompanying documents are submitted to PINS, they will appoint an Inspector and identify a date when they will begin the Examination. The current indication is that date is likely to be in January/February 2019. The Inspector will:
- a) Assess if the duty to co-operate, legal compliance and soundness have been met;
  - b) Decide on the topics for examination; and
  - c) Invite participants to a round table discussion as part of the examination process.
5. If the Inspector considers that without modifications the plan would be unsound the Council is given the opportunity to agree those modifications. After the Examination the Inspector will then issue a report along with any recommended modifications. It is expected that such modifications will be consulted on. Depending upon the outcome of that consultation then the amended Plan will come back to Cabinet and Council to ratify the Plan's adoption.
6. This report seeks the approval of the Cabinet to recommend to Full Council that the Harlow Local Development Plan Pre-Submission Publication (2018) be submitted to Government for Public Examination.

## **ISSUES/PROPOSALS**

### **Responses**

7. In accordance with Regulation 22 there is a requirement for the Council to set out the main responses that have arisen from the Pre-Submission Regulation 19 Publication. These will be reported to the Inspector who will consider the matters raised during the Examination process. In total 72 submissions were received from organisations or individuals, amounting to 165 specific representations.

Some consider the Plan sound, others consider that modifications to specific policies and proposals are needed to make it sound, and others consider the Plan to be unsound. There are representations that support the Plan and others that oppose the policies and these are set out in full within the Regulation 22 Statement. A summary of the key representations for each policy area is set out below with an indication of which ones the Officers are proposing the Council should not oppose.

### **Harlow and Gilston Garden Town**

8. Responses were mixed between some considering that the Harlow and Gilston Garden Town policies should only apply to sites within Harlow while others wanted more policies aimed towards the entire Garden Town. The Inspector will provide guidance whether the approach set out in the Plan is appropriate. As some of the overarching technical documents for the Garden Town have not yet been completed, some comments have stated more information was required on the Sustainable Transport Corridor, Vision and Design Charter, infrastructure funding, and on the Water Cycle study. These studies are currently in draft but should be completed before the Plan is examined, so this detail will be made available and any changes to the Plan that may be required will be suggested to the Inspector as minor modifications. Although it would be preferable that these documents had been completed, working in partnership and the relatively recent formation of the Garden Town has meant the work is not aligned with the Plan's timetable. Legal advice indicates that if these reports require that changes are made to the Plan they can be discussed at the Examination and any changes accommodated through the modification procedure. There is, however, a greater risk of not submitting the Local Plan before 24 January 2019, when the new National Planning Policy Framework (NPPF) comes into force which changes some requirements and would delay the Plan being examined, than waiting for completed technical reports. Elsewhere inspectors have accepted that, in the Government's drive for ensuring adopted local plans are in place, supporting documents can be finalised after a local plan has been submitted. As these are joint overarching documents, Officers consider it can be justified why these technical reports have not been completed before the Plan is submitted.
9. Princess Alexandra Hospital (PAH) has requested that the potential to improve facilities on the current hospital site should be recognised as well as the option to relocate. Currently there is uncertainty as to what PAH are proposing to do, but by the time of the Examination it should be clearer and the Council will then need to decide whether, if the Inspector is so minded, to make a modification that addresses their position if they do not relocate.

### **Housing**

10. There were challenges that the new NPPF methodology on housing need should be used and that the joint Strategic Housing Market Area (SHMA) under estimated need. The housing trajectory and the five year housing supply's delivery were also challenged. Legal advice has been sought and confirmation given that the new NPPF methodology comes into force on 24 January 2019 and, providing the Plan is submitted before then, there is no requirement for the

new NPPF to be considered. It is noted that the Inspector for East Herts District Council's Local Plan approved the joint SHMA and Officers are confident that housing trajectory and the five year housing supply are robust.

11. PAH have also asked to reduce the number of houses allocated on the hospital site, but Officers suggest that this will be resolved by the Inspector's decision on the approach to PAH relocation or otherwise. There were representations against the requirements to provide accessible and adaptable housing, self-build and the housing mix, which Officers propose should not be altered.
12. There were also representations to remove three sites (south of Clifton Hatch, Fennells and Jocelyns) by residents and two sites by the Civic Society (east of Katherines and Stewards Farm) from the housing allocations and a representation to add a new housing site at Latton Farm. A technical process was followed to identify housing sites and Officers consider that this process is robust and will stand up to challenge either way.
13. In addition it was raised that the criteria by which planning applications will assess Houses in Multiple Occupation needs to be more stringent. Officers suggest that if the Inspector proposes to amend this policy, the modification will be accepted.
14. Representations have been received from the Home Builders Federation and a consultancy that specialises in making representations on local plans. These are generic representations and have not taken into consideration Harlow's situation with a tight administration boundary and limited opportunities for unallocated potential (developers' assessment) housing sites, so it will be for the Inspector to consider whether their position is justified, at the Examination.

### **Economy and Retail**

15. Representations have stated that it is unclear how the employment shortfall identified in the joint evidence base work will be addressed across the Garden Town. Currently work is being undertaken at the Garden Town level on how this will be addressed and the results of this work will be submitted to the Inspector.
16. A request was made that the employment designations for sites being converted to residential use under the General Permitted Development Order should be deleted from the Policies Map. Officers consider such sites, which are in designated employment areas, should remain as employment land. Employment land should be protected to meet the other representation's concerns that there may be shortfall. It was also raised that the impact assessment for new retail facilities should be in line with the old NPPF. Officers have identified a higher impact assessment in line with evidence undertaken on retail needs in the Town and to ensure additional protection for the Town Centre.

### **Strategic Infrastructure**

17. Representations were made on the need to apportion infrastructure provision across the Garden Town. This is being addressed in the Garden Town

Infrastructure Study. Policy SIR1 sets out infrastructure requirements that are required to be supported by all developments across the Garden Town. Requests have been made that education and PAH should be added to the items. Policy SIR1 allocates land for infrastructure items that have a land-use implication and are therefore indicated on the policies Map. As education facilities and the hospital relocation are yet to be identified or refined, the Policy Map is unable to include them and therefore not included in the Policy. The County Council have changed their way of indicating the size of schools and have, therefore, asked that references to forms of entry for education provision be deleted. Officers suggest that if the Inspector is minded to make that modification it will not be opposed.

18. The County Council have also raised the need to increase capacity of the household waste facilities to accommodate growth across Garden Town. Officers are aware that discussions are taking place regarding the potential of finding an alternative site which is not in the Enterprise Zone and, therefore, will not identify this as an acceptable modification.
19. Further details of the Sustainable Transport Corridor were requested in the representations and concerns raised over locating transport corridors in the Green Wedges. The Sustainable Transport Corridor work is underway and clarity will be given when this is completed. There were general representations about the dependency on external factors and co-operation needed to deliver major infrastructure items and over the lack of road capacity, health, education and infrastructure for the planned growth and the need for robust mechanism for the pro-rata of contributions. Although some of this provision and funding were addressed in the Harlow Infrastructure Delivery Plan, the wider Garden Town infrastructure work will identify the Garden Town's infrastructure requirements, the cost, provision and delivery. The County Council has proposed that their planning contribution document should supersede Harlow's policy. Officers propose that this modification is not supported as it is more appropriate that there is a holistic approach to cover the Garden Town's wider infrastructure requirements.
20. One representation has been made that the northern by-pass reference should be removed. Officers propose that such modifications are not supported.
21. There were some representations that related to encouraging drivers to use more sustainable modes of transport, to ensure a 60 percent modal shift by restricting car parking and the identification of a model hierarchy, but there was a separate representation which states that there is no evidence to justify provision of electric charging points. Officers propose to not oppose the former position, but consider there is sufficient evidence to justify the requirement of the latter position.
22. Where policies require more than what is considered the basics, developers have tended to make representations against such policies. The Broadband Policy is one such policy which is considered unreasonable because it is over and above Building Regulations requirements. Officers hope that the Inspector

will agree with the Council's approach that it is important to ensure more than the basic requirement is provided to improve the potential to meet future needs.

## **Placeshaping**

23. There were range of representations covering the loss of green spaces, potential harm to biodiversity assets and the increase of flood risk related to new housing allocations. The housing need, arising from Harlow's residents, also has to be met and in selecting future housing sites a robust methodology has been undertaken which takes into consideration such issues. If some unforeseen circumstances arise then, when a planning application is assessed, there would be a requirement to mitigate against any harm or flooding risk arising.
24. A request has been made from Natural England that water assets are included in the Green Infrastructure definition. Officers propose that these modifications are supported, and that references to net biodiversity are also included.
25. Some developers stated that the Green Wedge policies appeared more restrictive than Green Belt policies and that there are issues with the Green Wedge and Green Belt Review studies which justify any changes to the boundaries. Officers disagree with such representations and would contest any such changes at the Examination, especially as Natural England has commended the approach taken in the Plan to Green Infrastructure, including Green Wedges and Fingers.

## **Leisure**

26. Representations have been received that the leisure facility policy should be more flexible to recognise public open space and leisure provision may not always be achievable on smaller development sites. Officers consider that the policy allows in such cases payments towards improving off-site facilities which would be used by these residents and, therefore, would propose modifications to that policy. The public art policy has also been challenged that it is not compliant with planning obligations and NPPF. Officers consider that Harlow's Sculpture Town status will justify such a policy.

## **General**

27. There has been a recent court case referred to as the 'Sweetman case' which requires councils to revisit the Habitat Regulation Assessment (HRA), a supporting document to the local plan, as the method of undertaking them has changed. The HRA can be revisited before the Examination as, in practice, other councils have had to undertake a new assessment during their examinations as a result of this case. Additionally, until Epping Forest District Council has completed its Mitigation Strategy for Epping Forest Special Area of Conservation, Natural England has taken the precautionary approach by not commenting. Natural England has also requested that the Council takes into consideration Harlow Woods SSSI and Hatfield Forest SSSI without providing any justification. A Mitigation Strategy will be drafted and the HRA reviewed in the light of the 'Sweetman case' and discussed with Natural England to provide

clarity on what is required for the SSSIs. Officers consider that this can be completed before the Examination so that Natural England's representations can be addressed and modifications agreed. This is the best option, in the circumstances, to ensure that the Plan is found sound.

28. There are representations suggesting revisions to a number of policies and supporting text which, in the representors' opinion, are required in order to make the Plan sound. A number of these representations relate to the promotion of alternative developments or because they wish policies to be deleted. However, Officers consider that there are no other representations that cause concern that the Plan would be found unsound and legal advice is being sought to confirm that conclusion.

## **Conclusion**

29. Having reviewed the representations received it is considered that the overall strategic growth strategy, and the policies and proposals set out in the Pre-Submission Publication version of the Harlow Local Development Plan are sound. However, as discussed above, there are some representations that Officers consider should not be opposed if the Inspector is so minded to make modifications to address these representations. The schedule of minor modifications (Appendix I) sets out which representations Officers are proposing not to oppose.
30. In conclusion, and having regard to the representations discussed above and set out in Regulation 22, it is considered that the Harlow Local Development Plan Pre-Submission Publication (2018) is sound and that the Plan should be submitted to Government (PINS) for the formal Examination.

## **IMPLICATIONS**

### **Place (Includes Sustainability)**

As contained within the report.

**Author: Jane Greer, Head of Community Wellbeing, on behalf of Graeme Bloomer, Head of Place**

### **Finance (Includes ICT)**

There are no specific financial implications arising from the report or its recommendations. However, the local plan will set out the preferred options for future development in and around Harlow and as a consequence the commercial and residential income that may well result from such development. Additional service provision may also be required as a direct result of such development activity and these issues will be considered in future budget setting processes and as development proposals are brought forward.

**Author: Simon Freeman, Head of Finance**

### **Housing**

As outlined in the body of the report.

**Author: Andrew Murray, Head of Housing**

### **Community Wellbeing (Includes Equalities and Social Inclusion)**

The Local Development Plan provides the basis and confidence for future regeneration, economic and housing growth, enabling greater opportunity for increased prosperity and community wellbeing.

**Author: Jane Greer, Head of Community Wellbeing**

### **Governance (Includes HR)**

The report sets out the legislative framework and timescales for submission of the Local Plan. Specialist Legal advice has confirmed the view that the best course of action is to formally approve the Harlow Local Development Plan Pre-Submission Publication (2018) for submission, at this time.

**Author: Colleen O'Boyle, Interim Head of Governance**

### **Appendices**

Appendix A – Local Development Plan

Appendix B – Policies Map (circulated separately)

Appendix C – Regulation 22 Consultation Statement

Appendix D – Sustainability Appraisal

Appendix E – Habitats Regulation Assessment 2018

Appendix F – Statement of Community Involvement

Appendix G – Local Development Scheme

Appendix H – Statement on Duty to Co-operate

Appendix I – Equalities Impact Assessment

Appendix J – Schedule of Minor Modifications

Appendix K – List of Supporting Technical Documents to the Local Plan

### **Background Papers**

Emerging Strategies

Issues and Options

National Planning Policy Framework (NPPF)

Technical Reports

### **Glossary of terms/abbreviations used**

HRA – Habitat Regulation Assessment

NPPF – National Planning Policy Framework

PAH – Princess Alexandra Hospital

PINS – Planning Inspectorate

SCI – Statement of Community Involvement

SHMA – Strategic Housing Market Area