



**EAST STAFFORDSHIRE BOROUGH COUNCIL**

**REPORT COVER SHEET**

<b>Title of Report:</b>	Regulation 10a Review Of The Local Plan	To be marked with an 'X' by Democratic Services after report has been presented
<b>Meeting of:</b>	LDL 28 <sup>th</sup> September 2020	X
	Leader's / Leader of the Opposition's Advisory Group / Independent Alliance Advisory Group: Wednesday 7 <sup>th</sup> October / Thursday 8 <sup>th</sup> October	X
	Council Monday 19 <sup>th</sup> October	
	Scrutiny Audit and Value for Money Council Services Committee: N/A / Scrutiny Community Regeneration, Environment and Health and Well Being Committee: N/A	



Is this an Executive Decision:	NO	Is this a Key Decision:	YES
Is this in the Forward Plan:	Yes	Is the Report Confidential:	NO
If so, please state relevant paragraph from Schedule 12A LGA 1972:	[]		

**Essential Signatories:**

**ALL REPORTS MUST BE IN THE NAME OF A HEAD OF SERVICE**

Monitoring Officer: **Angela Wakefield**

Date .....Signature .....

Chief Finance Officer: **Sal Khan**

Date .....Signature .....

**EAST STAFFORDSHIRE BOROUGH COUNCIL**

**Report to Council**

**Date: 19<sup>th</sup> October 2020**

**REPORT TITLE: Regulation 10A Review of the Local Plan**

**PORTFOLIO: Planning**

**HEAD OF SERVICE: Sal Khan**

**CONTACT OFFICER: Naomi Perry Ext. No. x1611**

**WARD(S) AFFECTED: All**

**1. Purpose of the Report**

- 1.1. The East Staffordshire Borough Council Local Plan 2012 - 2031 was adopted by Full Council on 15 October 2015. The Local Plan (hereby referred to as 'The Plan') forms part of the Council's statutory development plan and sets the spatial strategy for the Borough. The Plan was prepared in accordance with relevant legislation. This was ratified by an Independent Inspector.
- 1.2. The Plan contains a number of policies, some are identified as strategic and some detailed. There is a review mechanism which is triggered in October 2020. The purpose of this report is to consider Strategic Policy 6 'Managing the Release of Housing and Employment Land' and Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2017 as amended, assessing the need for the Council to undertake an update to its adopted Local Plan following the review.

**2. Executive Summary**

- 1.3. This report reviews the Council's Local Plan in line with police SP 6 of the Local Plan and Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2017 as amended. The paper assesses the need for the Council to undertake an update to its adopted Local Plan following the review.
- 1.4. In assessing the need to update the Local Plan the following considerations were considered:
- 1.4.1. National legislative updates/ National policy;
- 1.4.2. Strategic direction of the Authority;

- 1.4.3. Land Supply position (5 year land supply)
  - 1.4.4. Performance of adopted Plan in terms of delivery against objectives;
  - 1.4.5. Significant environmental changes;
  - 1.4.6. Delivery of infrastructure;
  - 1.4.7. Wider strategic impacts e.g. neighbouring authorities' unmet housing needs
  - 1.4.8. Proposed changes to plan making as set out in the current Planning White Paper consultation
- 1.5. The driver for undertaking an update to the Council's Plan is linked to the lack of alignment with the NPPF. The NPPF has significantly changed since the existing Plan was adopted. Inevitably the Council's policies will need to be updated to reflect these changes. Notwithstanding this the Council has maintained a strong 5 year land supply position and performed well at appeal. This indicates that the policies in the existing Plan are still relevant and robust. Housing delivery performance has been effective and there is still a good supply of sites to be delivered. A thorough review of all policies in the plan has been undertaken in terms of delivery and compliance with national policy, which has not indicated that there is an urgent or essential need to update the policies in the immediate short term. **It is on this basis that an update to the Plan be delayed for a maximum of 5 years with an annual review of specific criteria being undertaken during the intervening period.**
- 1.6. The Development Plan Committee has met three times to discuss the approach to reviewing the Local Plan and has considered and endorsed the recommendation set out in this report.

## 2. **Background**

- 2.1. East Staffordshire Borough Council adopted its existing Local Plan in October 2015. The Plan includes Strategic Policy 6 (herby referred to at SP 6). SP 6 states:

*...Following the adoption of the plan, the Council will review every five years the evidence base which assesses the current and future levels of need and demand for housing to provide an appropriate basis for longer term housing and employment provision. Where there are significant changes to evidence on need and demand for development or within 5 years of the adoption of the plan, whichever is sooner, the Council will undertake a Local Plan Review...*

- 2.2. The Council have interpreted this as meaning that the consideration for an update should be undertaken by October 2020 at the latest.
- 2.3. SP 6 implies that the trigger for an update focuses on housing and employment need. No assessments of need had been completed by the Council before 2020. It is on this basis that it is considered the Council's interpretation of SP 6 to be that of undertaking a review after 5 years of adopting the existing Plan rather than explicitly committing to an update after 5 years i.e. commencing the Plan update now.

2.4. Notwithstanding this there should be other considerations when undertaking a Plan Review. In particular the following are factors the Council should take account of when assessing the need to update their Plan:

- 2.4.1. National legislative updates/ National policy;
- 2.4.2. Strategic direction of the Authority;
- 2.4.3. Land supply position (5 year land supply);
- 2.4.4. Performance of adopted Plan in terms of delivery against all objectives;
- 2.4.5. Significant environmental changes;
- 2.4.6. Delivery of infrastructure;
- 2.4.7. Wider strategic impact e.g. neighbouring authorities' unmet housing needs; and
- 2.4.8. Proposed changes to the plan making process as set out in the Planning for the Future White Paper, published for a 12 week consultation on the 6<sup>th</sup> August 2020

2.5. In addition it is a requirement of law that the Authority complete a review of its Local Plan now. This is established in the Town and Country Planning (Local Planning) (England) as amended Regulation 10A which states:

*(1) A local planning authority must review a local development document within the following time periods-*

*(a) In respect of a local plan, the review must be completed every five years, starting from the date of adoption of the local plan, in accordance with section 23 of the Act (adoption of local development documents)*

3.6 NPPG section 61, Plan-Making, paras 61 and 62 provides:

*"Local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community. Most plans are likely to require updating in whole or in part at least every 5 years. Reviews should be proportionate to the issues in hand. Plans may be found sound conditional upon a plan update in whole or in part within 5 years of the date of adoption. Where a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below. There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible."*

- 2.6. This requirement is effectively embedded within the Council's adopted Local Plan, namely SP 6.
- 2.7. Principally this paper focuses on considering an update in the context of SP 6, however consideration is given the additional factors listed at 3.4.

### ***Assessment of factors influencing a Plan update***

#### *National legislative updates/ National policy*

- 2.8. It is a requirement for Local Planning Authorities to review their Local Plans within prescribed time periods ((Local Planning) (England Regulations 2012) (as amended)). This requirement was enacted on 6 April 2018 and requires Authorities to undertake this review at least every 5 years, starting with the date of the Plan's adoption. This is in effect the approach taken within East Staffordshire Local Plan SP 6.
- 2.9. The legislation is taken further within the National Planning Policy Framework (NPPF) at paragraphs 31 to 33, which state:

*Policies in local plans should be reviewed to assess whether they need updating at least once every five years and should then be updated as necessary.*

*Reviews should be completed no later than five years from the adoption date of the plan and should take into account changing circumstances affecting the area or any relevant changes in national policy.*

*The preparation and review of all policies should be underpinned by relevant and up to date evidence.*

- 2.10. Following undertaking the review the Council must judge whether an update to the Plan is required. This is the stage East Staffordshire Borough Council is at. The national guidance directs Authorities to consider the following outcomes:

*That their policies do not need updating and publish their reasons for this decision; or*

*That one or more policies do need updating, and update their Local Development Scheme to set out the timetable for this revision.*

- 2.11. It is recognised that since the adoption of the Council's existing Local Plan there has been an updated NPPF. This does warrant due consideration as to whether this in itself triggers a review because the policies were prepared in line with a previous NPPF. It is considered that this is best addressed through considering the headings below. Importantly are the Council delivering against its housing targets? Are policies broadly in line with the NPPF, or where they are not can the Council use the NPPF? Does the Council have a 5 year land supply? Are the Council delivering against its wider policy objectives? These are all considered below.

*Strategic direction of the Authority*

2.12. There are no current plans or announcements for the Council to go beyond the level of development set out in the current Local Plan. The Council's priorities within the 2020/ 21 Corporate Plan are:

- 2.12.1. Value for money
- 2.12.2. Community Regeneration
- 2.12.3. Environment Health & wellbeing

2.13. The Council has established a series of objectives 2020/21. The ones which are most relevant to the Local Plan are set out below:

- **Continue to work Smarter in Planning**
- **New and Refreshed Planning Policies** (We will conclude and adopt the Brewery Building Conversion Design Guidance SPD. We will revise and adopt the Car Parking SPD. We will publish the Authority Monitoring Report, publish our revised Statement of Community Involvement and decide if and how we apply Permissions in Principle to our Brownfield sites to unlock the development potential by assessing the benefits of completing a Part 2 Brownfield Register).
- **Monitor the Local Plan Performance** (It is time for the Council to decide on how to proceed with amendments to the current Local Plan which was adopted in October 2015. During the next financial year the Council will undertake early evidence to help determine the need/ type of Plan Review required. In addition the Council will undertake a review of its currently adopted policies to ascertain their need for review. The Council will continue to calculate its 5 year housing land supply position and performance against the national housing and delivery test).
- **Supporting Neighbourhood Plans**
- **Regeneration** (During 2020/21 the Council will continue to prioritise: Burton town centre and the Washlands through significant environmental regeneration; work towards achieving transformation regeneration for the wider Burton upon Trent of up to £25m through the Towns Fund; support the delivery of affordable housing on brownfield land through the utilisation of S106 commuted sums; identify a vision for the future regeneration of Uttoxeter; work in partnership to promote local employment opportunities; and continue to work effectively with regeneration partners. We will also create a grant fund to support small businesses to grow and innovate and will deliver the fund throughout the year to increase the rate of new business start-ups<sup>1</sup>).
- **Climate change & Air quality** (The Council has made and continues to make progress in reducing its carbon emissions. Between 2005 and 2016 these emissions fell from 10.2 tonnes (per

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<sup>1</sup> 2018 new business start-up rate in East Staffordshire was below the national average (LG Inform)

capita) to 6.4<sup>2</sup> as a consequence of a number of initiatives outlined in previous Corporate Plans e.g. improving the energy efficiency of the Council's leisure centres through refurbishing building plant etc. In response to national and international concerns around Climate Change the Council will be preparing a motion for Council to declare a 'Climate Emergency'. In support of a 'Climate Emergency' declaration the Council has developed a wide ranging and appropriate action plan that refocuses attention in order to tackle these wide ranging issues. As climate change issues affect all parts of the Council's activities, all Deputy Leader portfolios will be affected to a greater or lesser degree. Moving forward, the Council will seek to work with and influence partner organisations in order to effect change across the Borough as a whole. The Council will also seek to work across the Borough with all our communities in order to educate, promote and influence incremental changes that will contribute to a positive effect on Climate Change. The action plan will be reviewed on an annual basis, reporting on developments and adaptations and where necessary amended and expanded. The Council also has a number of existing policies and strategies for Climate Change and Air Quality which expire in 2020 and are therefore in need of review. The Environmental Health Team will address these policy issues and coordinate and set targets as part of the Council's Climate Change action plan).

- 2.14. As set out there is nothing within the corporate plan objectives which indicates a specific trigger to update the Local Plan. It is reasonable to assume that a Council looking at strategic growth/ ambitious growth would establish this within its objectives. This is not the case for the current corporate plan at East Staffordshire.

*Land supply position (5 year land supply)*

- 2.15. The Council has a strong five year land supply position which has been sustained since its adoption. It is also important to point out that the plan includes a stepped trajectory for development meaning that the level of development was expected to increase after the first 6 years of the plan period. The five year land supply has been calculated based on this trajectory. Within the latest published document (March 2020) the Council's 5 year land supply position stands at 6.04 years. Were an Authority's land supply identified as being below 5 years it is reasonable to conclude that an update is necessary. However East Staffordshire is demonstrating a strong position and one which meets the stepped trajectory for delivery.

*Performance of adopted Plan in terms of delivery against all objectives*

- 2.16. Please see Appendix A for analysis of this indicator.

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<sup>2</sup> (Carbon Emissions data from BEIS (Department of Business Energy and Environmental Strategy) 2016).



*Local Plan policy Compliance with the NPPF.*

2.17. Please see Appendix B for analysis of this indicator. This assessment was carried out by independent consultants Land Use Consultants (LUC).

*Significant environmental changes*

2.18. The Council declared a climate change emergency in August 2020 and have prepared an action plan. The Action Plan sets out a range of targets relating to reducing emissions, achieving carbon neutrality, annual reporting of emissions and environmental protection and enhancement. None of the targets rely solely on a Local Plan update in order to be achieved.

*Delivery of infrastructure*

2.19. The Council has successfully progressed the following schemes:

2.19.1. Infrastructure works at Dove Way, Uttoxeter - Installation of access road and utility connections to land adjacent 'Dove Way in Uttoxeter', facilitating the creation of a new HWRC and (forthcoming) commercial development comprising B1, B2, and B8 uses.

2.19.2. Infrastructure works at Pennycroft Lane, Uttoxeter - As a separate phase to the Dove Way scheme referenced above this is on the other side of Dove Way. This involved land remediation and an access road to change the use of a former industrial site into housing.

2.19.3. Branston Locks, Burton - Large infrastructure project by Staffordshire County Council with Nurtons, using funding from Stoke and Staffordshire LEP. Installation of infrastructure that was predominantly around the access roads, facilitating a major mixed use scheme and urban extension of the town.

2.19.4. Carters Square, Uttoxeter – a town centre redevelopment to enhance the retail offer of the centre.

2.19.5. Inner Burton Initiative, Burton – a shopfront improvement project.

2.20. In addition to the above the Council has made good progress with delivering strategic sites and associated infrastructure. This is dealt with under 'Performance of adopted Plan in terms of delivery against all objectives' section.

*Wider strategic impacts e.g. neighbouring authorities' unmet housing needs*

2.21. East Staffordshire has traditionally operated within its own housing market area. The administrative area of East Staffordshire is bordered by the following planning authorities:

2.21.1. Lichfield District Council

2.21.2. South Derbyshire District Council

2.21.3. Stafford Borough Council

2.21.4. Staffordshire Moorland District Council

2.21.5. Derbyshire Dale's District Council

2.22. The above authorities' sit within the Derby HMA, Greater Birmingham HMA and their own respective HMA's. There has been no recent requests made to support unmet needs from these Authorities or that of their wider HMAs<sup>3</sup>. It is for this reason that there does not appear to be a driver for an update in this context.

#### *Housing delivery performance and economic changes*

2.23. It has been demonstrated that the Council's performance has been effective with the exception of affordable housing. SP 6 focuses specifically on the changes to need and demand for development. Since the Plan was adopted there has been a change to the method of determining need. Government have established a standardised method for calculating housing need. Under this method the Borough generates a need of circa 430 dwellings per annum<sup>4</sup>. This amounts to a possible plan requirement of 8, 600 (based on a plan period 2020 – 2040). The Council currently has a potential supply of 6, 283 – 8, 110.

2.24. The above calculation concentrates upon the Council only meeting the baseline number arising from standard method. To be clear this means the Council would not be supporting other Authorities/ wider HMA need, nor would it be setting a growth figure that might create additionality within the Borough. While this can be considered unambitious there is nothing to compel the Council in taking a different approach, and ultimately this is a sound approach in planning terms.

2.25. In addition to considering the standard method for housing need the Council commissioned Oxford Economics to undertake an assessment of the economic position of the Borough. This commission identified the following:

- Employment growth faster than expected
- Productivity reduced
- GVA now broadly in-line with west midlands (this is an improvement)
- Population and employment expected to decline from mid 2020s
- Employment is still buoyant
- New sectors emerging – digital, information and energy generation
- Lower rate of business churn comparatively to wider region
- Out/ in commuting flows are even

2.26. This report does indicate changes to the baseline position. Whether they are substantial enough to trigger an update is unclear at this point. Were an update to be undertaken these economic changes would need to be considered when determining the amount and type of employment floorspace would be required.

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<sup>3</sup> There was a formal approach by Derbyshire Dale's a number of years ago but nothing in their current plan making timescale.

<sup>4</sup> Standard method under current formula: Step 1 – 2014 Household projections from current year (2020 – 2030) = 50983 to 54683 = 3700 = **370 dwellings per annum**, Step 2 – Adjust for affordability 370 \* 1.1625 (affordability factor) = **430.1 dwellings per year**, **Estimated figure = 430 dwellings per year**

*Proposed changes to the plan making process as set out in the Planning for the Future White Paper*

2.27. MHCLG published a consultation planning white paper on the 6th August. The paper includes a number of proposed changes to the plan making system summarised below:

- Under the new system, local authorities will have to bring forward stripped back local plans zoning all land in their areas for “growth”, “renewal” or “protection”.
- Local authorities will have 30 months to produce a new-style local plan
- Planning policy will be set nationally (i.e. through the National Planning Policy Framework) with local plans restricted to development allocations and specific codes and standards to be applied to projects in the zones.
- The existing “tests of soundness” for Local Plan examination set out in the NPPF are proposed to be scrapped and replaced with a “sustainability test”.
- Housing targets to be set by a renewed standard method to achieve a national 300,000 home per annum delivery target
- Current Duty to co-operate to be abolished

2.28. As these proposals are only at the consultation stage it is too early to say which proposals, if any in their current form, would become embedded into plan making legislation and national planning policy.

*Review options*

2.29. There are principally four options available to the Council which are depicted in table 1.

*Table 1 – ESBC Plan review options*

Option	Justification	Timescale
A – Delay update for 5 years with an annual review be undertaken	The Council has a 5 year supply and our position. The standard method results in a substantial drop in the per annum housing requirement which can predominantly be met from the existing supply up to 2040 (assuming 2040 were to be the end of any Plan undertaken now). The consequence of COVID-19 strengthens this approach	N/A

Option	Justification	Timescale
	because it would be reasonable to take stock of the position in a year's time before embarking on a comprehensive review now.	
B – Full update	<p>The adopted Plan is based on a previous version of the NPPF. Therefore a full update would enable the Council to be compliant with the current NPPF. This reduces the Council's risk of challenge at appeal for policies that will continually become outdated.</p> <p>The Council have declared a climate change emergency which can be supported through a Plan update.</p>	2.5 – 3.5 years
C – Partial update	A partial update should focus on areas where there is a clear non-compliance such as some of the policies. This would enable some of the more uncertain issues around housing delivery arising from COVID-19 be assessed at a later date. The partial update would focus on those 'amber' policies as set out in Appendix B.	18 months – 2.5 years
D – Joint Plan	Supported at national level	Unclear – would need engagement with neighbouring Authority.

*Risk Assessment of options*

*Table 2 – Risk Assessment of option*

Option	Risk
A – Delay update for 5 years with an annual mini review be undertaken	Over time the Council may be subject to challenge at appeal for ageing policies. An appeal has been submitted at Land off Aviation which will consider the settlement boundary and delivery of affordable housing (APP/B3410/W/20/3245077). The appeal hearing was held in September 2020 and the outcome of this appeal is something the Authority will need to consider.
B – Full update	There is significant uncertainty with regards to the development pipeline arising from COVID-19.  Were the Council to change their strategic ambitious in the short/ medium term this would then need to be considered mid-way through a full update.  The current white paper proposes a number of significant changes to the plan making system.  Commencing a review now could be costly and abortive due to the potential need to revisit any evidence during the plans development
C – Partial update	Undertaking a partial update might delay tackling some of the more fundamental components of the Plan.
D – Joint Plan	With no current driver to assist a neighbouring authority it is questionable what benefit this approach will bring. Evidence of those authorities who have undertaken joint plans demonstrates that this is lengthy and somewhat trickier process.

**Conclusion**

2.30. The driver for undertaking an update to the Council's Plan is linked to the lack of alignment with the NPPF. The NPPF has significantly changed since the existing Plan was adopted. Inevitably the Council's policies will need to be updated to reflect these changes. Notwithstanding this the Council has maintained a strong 5 year land supply position and performed well at appeal. This indicates that the policies in the existing Plan are still relevant and robust. Housing delivery performance has been effective and there is still a good supply of sites to be delivered. It is on this basis that the update to the Plan be delayed

for a maximum of 5 years with an annual review of the following being undertaken which may trigger an update commencing ahead of the 5 year date:

- Significant changes in housing delivery rates;
- Announcement of the Council that it intends to take a pro-growth strategy;
- Significant changes in 5 year land supply position;
- Evidence on likelihood of allocated sites not coming forward emerges.
- Changes to plan making legislation and national planning policy
- Appeal decisions challenging fundamental components of the Local Plan, inclusive of:
  - Settlement hierarchy
  - 5 year land supply
  - Settlement boundaries
  - Housing delivery including affordable housing

2.31. To ensure that the Authority protects itself against future legal challenge the Counsel sought advice on taking the recommended approach forward. This advice has now been received.

### **3. Contribution to Corporate Priorities**

3.1. This paper supports VFM 45

### **4. Financial Considerations**

*This section has been approved by the following member of the Finance Team: Anya Murray*

4.1. The report does not recommend updating the Local Plan at this time but again to review the situation annually. Any review of the plan will have financial implications for the council although this is anticipated as all plans require periodic review. Any financial implications will need to be considered annually as part of the development of the Medium Term Financial Strategy.

### **5. Risk Assessment and Management**

#### **5.1. Negative:**

5.1.1. By not publishing a decision in line with 10a of the regulations there is a risk the Authority could be in position of 'planning by appeal' by applicants challenging that the plan is out of date .

### **6. Legal Considerations**

*This section has been approved by the following member of the Legal Team: Sherrie Grant*

- 6.1. There are legal issues arising from this report which are ensuring the plan is up to date and a decision regarding the Local Plan review is published. The Council has sought Counsel advice and assessed the Local Plan policies for compliance with national planning policy which has assisted in making the final recommendation.

## **7. Equalities and Health**

- 7.1. **Equality impacts:** An Equality impact assessment is not required for this report

- 7.2. **Health impacts:** A health impact assessment is not required for this report.

## **8. Human Rights**

- 8.1. There are no Human Rights issues arising from this Report

## **9. Sustainability (including climate change and change adaptation measures)**

- 9.1. Future decisions on the Local Plan will have an impact on climate change.

## **10. Recommendation**

- 11.1 The recommendation is for the update to the Local Plan be delayed for a maximum of 5 years with an annual review carried out as recommended by the Development Plan Committee 23 September 2020.

## **11. Appendices**

- 11.1. Appendix A: Performance of adopted Plan in terms of delivery against all objectives
- 11.2. Appendix B: Compliance of Local Plan policies against the National Planning Policy Framework (NPPF) and National Planning Policy Guidance