

<b>Report title:</b> Adoption of the Essex and Southend on Sea Replacement Waste Local Plan	
<b>Report to:</b> Council	
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<b>Date:</b> 11 July 2017	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

## **1. Purpose of Report**

- 1.1. To ask the Council to adopt the Essex Replacement Waste Local Plan (RWLP, referred to as 'the Plan' throughout this report). This includes the modifications recommended by the Inspector appointed by the Secretary of State to examine the Plan, which are necessary to make the Plan sound and legally compliant.
- 1.2. The Cabinet considered the Plan and the Inspector's final report at its meeting on 20 June 2017. It recommended that the Council adopts the plan with a number of modifications.

## **2. Recommendations**

- 2.1 That Council adopts as the Essex Replacement Waste Local Plan the version approved by Council in 2016 as amended by:
  - (a) the main modifications recommended by the Inspector in her final report (attached at appendix 1);
  - (b) The minor modifications supported by Cabinet in 2016 (attached at appendix 4); and
  - (c) The further minor modifications (attached at appendix 6).

### **Summary of issue**

- 3.1 Essex County Council and Southend-on-Sea Borough Council have jointly prepared a Replacement Waste Local Plan (RWLP). In February 2016, both Councils approved the Pre Submission version of the Plan for public consultation and subsequent submission to the Secretary of State for Examination.
- 3.2 The extant Local Plan was adopted in 2001 and is considered to be out of date and must be replaced. ECC has a statutory responsibility to plan for future waste management capacity from a land use perspective, and it is fulfilling this

responsibility by preparing the replacement Plan to support the achievement of sustainable development within the County until 2032.

- 3.3 In June 2016, the Plan was submitted to the Secretary of State who appointed a Planning Inspector to undertake the formal examination process. The Inspector conducted hearing sessions over a two week period in September and October 2016.
- 3.4 During the hearing sessions the Inspector identified a number of modifications needed to ensure the Plan was sound, legally compliant and suitable for adoption by the Councils.
- 3.5 In December 2016, Cabinet supported the modifications identified by the Inspector and authorised a period of public consultation on them, which took place between 5 January and 16 February 2017.
- 3.6 The Inspector has considered the Replacement Waste Local Plan, all comments submitted during the examination process including the consultation on the modifications and issued her final report (Appendix 1). This concludes that the plan is legally compliant and is sound if adopted with the main modifications.
- 3.7 The Cabinet considered the RWLP at its meeting on 20 June 2017. It approved the modifications recommended by the Inspector and agreed to recommend the Plan for adoption by the Council subject to the main and minor modifications referred to in this report.
- 3.8 Once adopted, the Plan will replace the existing Waste Local Plan (2001) and will provide the framework to determine planning applications for waste development.

#### **4. Outcomes of Public Consultation on Modifications**

- 4.1 The public consultation on the modifications received a total of 553 responses from 372 separate organisations/individuals. The Inspector requested that all responses be submitted to her for consideration and also requested these be supported by comments on the responses from Essex and Southend-on-Sea Borough Councils. Two documents (appendices 2 and 3 of this report) were supplied to the Inspector on 20 March 2017.
- 4.2 Arguably the most significant of the modifications proposed the allocation of an additional site, Dollyman's Farm, Basildon. The consultation period was the first opportunity for consultees to comment on this new proposed allocation as the site was only included in the Plan through the examination process.
- 4.3 A large number of comments from parish councils, local residents, businesses and organisations objected to the allocation of Dollyman's Farm for inert waste landfill. These are set out in Appendix 2, but in summary the main reasons for objection include the green belt status of the site, concerns about impacts on

public accessibility, pollution risks - particularly to the local streams and onwards to the River Crouch, and traffic impacts.

- 4.4 In preparing the Council's comments for the Inspector (Appendix 3), the issues raised were carefully considered and conclusions drawn regarding the possible need for additional amendments to the Plan. It was considered that the only potential further change from the modifications consulted upon could stem from the points raised in relation to Dollyman's Farm by Natural England. All other matters raised have been addressed earlier in the examination process or are capable of being addressed through any future planning application process.
- 4.5 Natural England expressed the opinion that an assessment under Habitats Regulations (HRA) is required to support the allocation and that the restoration approaches should fit with the Northern Thames Basin National Character Area. The Authorities completed the HRA, and engaged in further discussion with Natural England regarding the conclusions and implications for the site allocation. The conclusions of the HRA support the allocation of the site subject to additional amendments to the Development Principles set out in the plan. These amendments were confirmed to the Inspector (appendix 3) and form part of an additional modification to the Plan set out in section 5 below. This has not been the subject of consultation but the Inspector does not consider that public consultation is required on these points, which represent further constraints on the development of this site.

### **Public consultation**

- 4.6 Public consultation on the Replacement Waste Local Plan has been carried out in line with the adopted Statement of Community Involvement at every stage.

### **Timetable and Adoption**

- 4.7 It was envisaged in Essex County Council's [Minerals and Waste Development Scheme](#) (2015) that the adoption of Plan would be possible in December 2016, however this has not proved possible, but the plan is now ready to be adopted.

## **5. Inspector's Recommendations**

- 5.1 The Inspector has considered the Replacement Waste Local Plan along with all comments submitted during the examination process, including the consultation on the modifications, and issued her final report (appendix 1).
- 5.2 The Inspector's Report confirms that the Plan provides an appropriate basis for waste planning within Essex and Southend-on-Sea, and is therefore sound and legally compliant, provided that a number of main modifications are made to it. These modifications are included as appendices 1 and 2 of the Inspector's Report (which is appendix 1 of this report).

5.3 The modifications were all supported by Cabinet in December 2016, however three of these modifications have been subject to additional change by the Inspector, in response to the public consultation as follows:

- **MM13- Policy 10:** As a result of comments from Natural England received during the public consultation in Jan- Feb 2017, the Inspector has recommended that Policy 10 criterion b) is further reworded to clarify the relevant considerations with respect of water quantity and quality in relation to planning applications for waste management. This wording differs only slightly to that supported by Cabinet although it clarifies the importance of maintaining the quantity as well as quality. The Inspector considered that the further modification is necessary to satisfy the adequate protection of water resources in terms of quantity as well as quality.

<b>Policy 10 criterion b (amended wording as subject to public consultation in January 2017)</b>	<b>Policy 10 criterion b (as recommended by Inspector's Report)</b>
<p>b) the quality of water within water bodies, with particular regard to:</p> <ul style="list-style-type: none"> <li>• preventing the deterioration of their existing status; or</li> <li>• failure to achieve the objective of 'good status', and</li> <li>• the quantity of water for resource purposes within water bodies'</li> </ul>	<p>b) water resources, with particular regard to:</p> <ul style="list-style-type: none"> <li>- the quantity of water within water bodies:</li> <li>• preventing the deterioration of their existing status; or</li> <li>• failure to achieve the objective of 'good status', and</li> <li>- the quantity of water for resource purposes within water bodies</li> </ul>

- **MM21- Sunnymead, Elmstead and Heath Farm Site allocation:** As a result of comments from Historic England received during the public consultation in early 2017, the Inspector has recommended that the development principle supporting allocation of this site be further modified in relation to references to ensure the protection of the historic environment. The wording recommended by the Inspector differs only slightly from that supported by Cabinet in 2016, and ensures consistency with the adopted Minerals Local Plan, which recognises the potential existence of multi period archaeological deposits – not just from the Palaeolithic period.

<b>Text to follow Table 19- Sunnymead, Elmstead and Heath Farm- Specific issues and opportunities (as subject to consultation in</b>	<b>Text to follow Table 19- Sunnymead, Elmstead and Heath Farm- Specific issues and Opportunities (as recommended in the</b>

January 2017)	Inspector's Report)
An archaeological desk based assessment would be required to investigate the gravels to establish their potential for Palaeolithic remains and trial trench evaluation will be required, along with a mitigation strategy, to form part of the Environmental Statement.	An archaeological desk based assessment would be required to investigate the gravels to establish their potential for archaeological remains and trial trench evaluation will be required, along with a mitigation strategy, to form part of the Environmental Statement.

- MM23- Dollyman's Farm site allocation:** As a result of comments received from Natural England received during the public consultation in early 2017, the Inspector has recommended that the development principles supporting this allocation should be further modified in relation to the protection of ecology and local amenity matters. Although this wording has not been previously considered by Cabinet, it is recommended by the Inspector to ensure the Plan is sound:

New development principles:

- The proposal should demonstrate that there would not be an adverse effect on a European site through HRA. Such an assessment should include consideration of functionally linked land, and must demonstrate no adverse effects on the integrity of any international site. Evidence will change over time regarding the preferences of species such as the Dark-bellied Brent Geese, so appropriate foraging distances should be reviewed as part of any HRA.
- Chichester Hall Brook requires protection, for example through an appropriate buffer of at least 15m and through the assessment of potential hydrological impacts with appropriate protection.
- Restoration of the site through this allocation provides the significant opportunity for biodiversity, landscape, visual enhancement and historic asset preservation. Careful consideration of the environmental impacts of the waste development will be necessary as part of a planning application with proportionate levels of mitigation to be established. Specifically, the WPA would seek the overall landscape improvement of the site, with the final restoration and long-term aftercare to be beneficial to the Green Belt and biodiversity with particular reference to habitat creation in line with the Northern Thames Basin National Character Area.

### Minor modifications

- 5.4 In addition to the 26 main modifications considered by and supported by Cabinet in December 2016 and as further modified as above by the Inspector, a number of minor modifications were supported by Cabinet in December 2016. All modifications considered by Cabinet at that time can be viewed in appendix 4. The minor modifications address minor matters of consistency,

typographical errors and updates to supporting text. These were also subject to public consultation in Jan- Feb 2017. The consultation responses are set out in appendix 2 and the Council's response to those responses are set out in appendix 3. With the exception of the representation from Magnox/Nuclear Decommissioning Authority, no changes to these minor modifications are proposed as a result of any public comments.

- 5.5 Magnox and the Nuclear Decommissioning Authority responded to the public consultation in early 2017 to confirm their support for the modifications as a whole but requested that references to Radioactive Waste in the Plan be updated to refer to the latest published UK Strategies covering such waste as published in 2016. The current references are based on older Strategies and the update proposed by Magnox would ensure the Plan is up to date and includes up to date information. The further minor modifications proposed are set out in full at the end of this report – as Appendix 6.
- 5.6 The Inspector cannot make recommendations in respect of these minor modifications, as they are not modifications that she considers necessary to ensure the soundness and lawfulness of the Plan. As these have been supported by Cabinet previously and remain relevant, in recommending the Plan for adoption, the Cabinet also recommends that they should be retained as set out at Appendix 6, and incorporated into the final version.

## **6. Options**

- 6.1 The Cabinet considered the following options relating to the future of the Replacement Waste Local Plan:
1. Supporting the conclusions of the Inspector's Report, and recommending to Council that the Plan be adopted with both the main modifications set out in the Inspector's Report and the minor modifications supported by Cabinet in December 2016 (the preferred option). This option is the best way to ensure the waste planning decisions made in the County reflect up to date policy and strategy and support sustainable development pursued by district/borough planning authorities.
  2. Supporting the conclusions of the Inspector's Report and recommending to Council not to adopt the Plan. The Council would then need to decide on an alternative approach to preparing a Waste Local Plan, revisiting existing evidence and undertaking potentially significant additional public consultation. Such a process would likely result in a delay measured in years. This option also risked penalties for the Councils levied by the government for the absence of an up to date Local Plan.
  3. Doing nothing - work on the Replacement Waste Local Plan would cease and the joint planning authorities would be forced to rely on national planning policy and guidance in making planning decisions in future. This option also risked penalties for the Councils levied by the government for the absence of an up to date Local Plan. This option would not lead to the adoption of a locally derived Waste Local Plan.

6.2 Cabinet opted to support the conclusions of the Inspector's Report, and recommend to Council that the Plan be adopted - Option 1. It is clearly advantageous for ECC to have a new Waste Local Plan in place as soon as possible. This avoids the risk of new planning applications for development being considered without an up to date Plan – one of the consequences being a lack of certainty regarding where new waste development will take place in the county in the future, and whether such development is indeed required in the Plan area.

## **7. Issues for consideration**

### **Financial implications**

7.1 The Replacement Waste Local Plan is a statutory requirement and there is currently adequate budgetary provision for the production of the final version of the Plan through to adoption. The Plan provides the framework for ECC to determine planning applications for waste development and as such, there are no additional financial implications.

### **Legal implications**

7.2 Given that the inspector has issued main modifications, the Council may only adopt the Plan with those main modifications unless it successfully applies to the Court to quash the Inspector's report. As the Cabinet has agreed to support the main modifications and to recommend the Plan (incorporating the modifications) for adoption by the Council, it appears unlikely that the Council will wish to make such an application.

## **8. Equality and Diversity implications**

8.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful;
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not;
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

8.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 8.3 The Public Sector Equality Duty is a relevant factor in making this decision but given that the main modifications mainly relate to a need to better reflect the evidence supporting the Plan and also national policy/guidance it is not considered that the recommendation to approve the modifications will have any further adverse impact on the five protected characteristics already detailed with the Plan's main Equalities Impact Assessment.
- 8.4 The Plan itself was subject to a full EqIA as part of the Pre-Submission approval process and found that five equality groups could be adversely impacted. Mitigating actions for each of these adverse impacts are detailed within this EqIA and assessment of the Plan as supported by the Inspector's Report does not lead to any changes to these conclusions.

## **9. List of appendices**

Appendix 1: [Inspector's Report on her Examination of the Waste Local Plan](#)

Appendix 2: [Modifications Consultation - Schedule of All Representations](#)

Appendix 3: [Modifications Consultation - Comments of the Waste Planning Authorities](#)

Appendix 4: [Waste Local Plan - Schedule of Modifications – as approved by Cabinet in December 2016 and subject to public consultation in Jan-Feb 2017\)](#)

Appendix 5: [Equality Impact Assessment](#)

Appendix 6: Further Minor Modifications- see below

## **10. List of Background Papers**

[Draft Waste Local Plan](#) (as approved by full council in Feb 2016 and subject to public consultation in March- April 2016)