

Cabinet

6 April 2016

County Durham Plan – the next steps and Assessing Development Proposals in County Durham



Key Decision R&ED/03/16

Report of Corporate Management Team

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Development

Councillor Neil Foster, Cabinet Portfolio Holder for Economic
Regeneration

Purpose of the Report

- 1 For Members to agree an approach to delivering a local plan for County Durham including a Local Development Scheme setting out the timetable for its delivery and a Statement for Community Involvement which sets out how we will involve the community and stakeholders as it progresses.
- 2 For Members to agree the Statement of Community Involvement 2016 for consultation. This will enable comments and views to be sought on how and when communities and other interested parties can influence the planning process including the local plan, neighbourhood plans and planning applications.
- 3 For Members to endorse a revised Policy Position Statement intended to provide for a consistent approach to handling development proposals until the emerging local plan has progressed sufficiently to be given weight in planning decisions. The Position Statement will provide consistency for the benefit of Members, Officers, Developers and the public.

Background

- 4 Preparation of the County Durham Plan began in 2009 and has gone through a number of stages:
 - County Durham Local Plan – Issues Paper (2009)
 - County Durham Local Plan – Issues and Options (2010)
 - County Durham Local Plan – Policy Directions (2011)
 - County Durham Local Plan – Preferred Options (2012)
 - County Durham Local Plan – Pre-Submission Draft (2013)

All of these stages were underpinned by an extensive evidence base and informed by substantial public consultation.

- 5 Following the final round of consultation, the Plan was agreed by Full Council and submitted for independent examination in April 2014. The Interim Inspector's Report received following the examination hearings identified the economic growth as set out by the Council and its partners as over ambitious. This, alongside issues of process, and following negotiations with the inspectorate, left the council no alternative but to challenge the report. Subsequently and with the consent of Government the report was quashed by the High Court. This in effect allows the Council to revisit the plan process without the constraints of the last inspectors report having any legal weight. In the Statement of Matters within the Consent Order accompanying the decision, the Council agreed that it would withdraw the Plan.
- 6 This left us in a unique and difficult situation and therefore following the court decision significant discussion has taken place with DCLG and the Planning Inspectorate and advice sought from legal advisers. The outcome of these discussions was that it is advisable to undertake a three stage process in the preparation of the new local plan. This will also ensure meaningful engagement with the community and stakeholders.

The County Durham Plan – taking it forward

- 7 Due the time that has passed since preparation of the original plan it is necessary to update the key pieces of evidence that will inform the policies and proposals of the new plan. We are also proposing a new end date for the Plan of 2033 to ensure that at least 15 years will be left after adoption of the Plan as identified by the National Planning Policy Framework (NPPF), paragraph 157.
- 8 At this first step in the process we will be consulting on an Issues and Options document which will identify the key issues that affect County Durham and set out different options for addressing them. We will be asking for responses on whether we have identified the right issues, what are the best solutions for dealing and whether there are others that we have not identified. This will take place in June and July. Following consideration of responses we will then prepare a Preferred Options for consultation towards the end of this year. Publication of the Pre-Submission Draft will then follow in Spring/Summer 2017. The full timetable, including for the additional Minerals and Waste Policies and Allocation document, is set out in the updated Local Development Scheme at Appendix 2 but the key milestones are shown below:

Stage	Date
Cabinet Issues and Options	June 2016
Consultation	June/July 2016
Cabinet agree Preferred Options	November 2016
Consultation	Dec/Jan 2016/17
Cabinet agree Pre-submission Draft	June 2017
Consultation	July/August 2017
Full Council agree submission	November 2017
Submission	December 2017

8. Cabinet will be asked to consider each stage of the process prior to it proceeding to public consultation. Members will be kept up to date throughout

the preparation of the local plan with briefings in advance of any consultation. During consultation officers will be available to discuss any issues that members wish to raise, there will also be a number of drop in surgeries arranged throughout the process to assist in answering any questions that members may have.

- 9 There are a number of external factors which also make it imperative that the Plan is progressed expeditiously. In October 2015 the Government announced that it would intervene where councils are failing to produce up to date local plans. The Council must therefore show a commitment to producing a local plan to ensure this is not the case in County Durham. Similarly the recent consultation on the New Homes Bonus proposed that, from 2017/18 local authorities may not receive New Homes Bonus for the years where they have not submitted a Plan. By submitting before the end of 2017 this should mean that we will continue to receive New Homes Bonus.

Statement of Community Involvement

- 10 Public engagement is at the core of the plan making process. Our recommended approach recognises this and sets it out in the Statement of Community Involvement. It is a statutory requirement (Section 18 of the Planning and Compulsory Purchase Act 2004) to publish a Statement of Community Involvement (SCI). The existing SCI has become dated and it is proposed to revise it. The revised SCI is attached in Appendix 3 and sets out how local communities and other interested parties can influence the planning process including the Local Plan and planning applications. The SCI also advises Town and Parish Councils and Neighbourhood Forums on how to involve local people and groups in the preparation of Neighbourhood Plans.
- 11 The SCI recognises that local communities and other interested parties have differing needs depending upon knowledge and experience of the planning system as well as based on their own individual circumstances and seeks to set out different consultation methods in order to make involvement easier for them.
- 12 In order to ensure that the Council engages with communities and other interested parties in the most meaningful way, it is appropriate to seek comments on the draft document.

Assessing Development Proposals in County Durham

- 13 The timescales for bringing forward the local plan provides a period whereby any application will be considered against either national policy or existing local plan policies, some of which are dated in terms of the economic position of the County. This has encouraged developers to forward schemes which whilst possibly in line with national policy do not positively maximise opportunities in terms of sustainability, economic or social objectives. The recent changes in respect of the local plan require clarification which is the purpose of the attached note.

- 14 The Policy Position Statement is attached for information at Appendix 3. It sets out how development proposals will be assessed, with guidance on the following matters:
- i) The status of the existing Adopted Local Plans in County Durham;
 - ii) The status of the County Durham Plan;
 - iii) The status of proposals in the Inspector's Interim Report;
 - iv) The Status of Neighbourhood Plans in County Durham;
 - v) The Council's understanding of Sustainable Development;
 - vi) Infrastructure requirements and planning obligations;
 - vii) Appropriate scale of development;
 - viii) How will the matter of Prematurity be addressed; and
 - ix) Five-year housing land supply.
- 15 The Paper includes an Appendix that lists how relevant Local Plan policies should be considered in the current policy situation. This is to avoid concern and confusion amongst the local communities affected and provide for more certainty and consistency for Members and developers.

Recommendations and reasons

16 In relation to the new local plan:

1. Agree the approach and proposed timescales as set out in the Local Development Scheme;
2. Agree the draft Statement of Community Involvement 2016 to be published for a four week consultation from the 15th April to the 13th May; and

Agree that any minor modifications to the draft Statement of Community Involvement 2016 following consultation and approval of the final document are delegated to the Director of Regeneration and Economic Development in consultation with the Portfolio Holder for Regeneration and Economic Development.

3. That 'Assessing Development Proposals in County Durham' be agreed as a Council Policy Position Statement to provide clarity to Members, officers, developers and the public.

Background papers

- The draft Local Development Scheme is attached at Appendix 2
- The draft Statement of Community Involvement is attached at Appendix 3
- Assessing Development Proposals in County Durham is attached at Appendix 4 (NB: The Appendix to Appendix 3 is available to view in the Members Library)

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Appendix 1: Implications

Finance –

The new local plan will require budget commitment for appropriate evidence gathering, consultation, printing and EIP costs.

Staffing –

Resource required to progress the local plan.

Risk –

DCLG are introducing a mechanism to take control of the preparation of local plans if local authorities do not make satisfactory progress. Therefore delivery of the local plan as programmed is critical to avoid this outcome which would have a major impact on local democracy. The Position Statement provides for consistency in decision making in the period as the local plan progresses.

Equality and Diversity / Public Sector Equality Duty –

The local plan will be subject to EQIA as it progresses. The draft Statement of Community Involvement 2016 has been subject to an EQIA and has been prepared with the partnership and community engagement team.

Accommodation –

None.

Crime and Disorder –

None.

Human Rights –

None.

Consultation –

The consultation approach on the local plan is outlined in the timetable. The draft Statement of Community Involvement 2016 will be subject to a four week consultation period and has been produced with the partnership and community engagement team.

Procurement –

Potential consultant commissions to deliver evidence papers.

Disability Issues –

The local plan will seek to address relevant issues, e.g. DDA

Legal Implications –

Legal opinion and advice has been sought from the Council's in-house legal team in the preparation of the Position Statement. Internal and external legal advice has informed all decisions on the way forward for the new local plan.

Appendix 2

A LOCAL PLAN FOR COUNTY DURHAM

WHAT WE'RE DOING AND WHEN

LOCAL DEVELOPMENT SCHEME

April 2016

THE LOCAL DEVELOPMENT SCHEME

The Local Development Scheme (LDS) is an essential part of the plan preparation process. It is a Project Plan that represents an agreement with central government outlining the arrangements for producing this new plan. It is the starting point for all interested parties to find out about the Council's emerging planning policies in respect to a particular area or issue. It illustrates the relationship between the individual documents currently proposed and how they fit into the Council's wider strategies. This project plan supersedes any previously adopted by Durham County Council.

THE NEW LOCAL PLAN

The new local plan is being produced in accordance with government legislation and guidance. It provides a new and up to date policy context against which all planning applications and development proposals will be assessed and determined. The new plan provides the spatial expression of, and be the key delivery mechanism for, many elements of the County Durham Sustainable Community Strategy and the County Durham Regeneration Statement. It is therefore a key influence and steer in the manner in which the County will develop and prosper in the period to 2033 and beyond.

In addition we are also preparing a number of other documents which are not included in the LDS including:

- Infrastructure Delivery Plan, in order to identify the strategic and local infrastructure necessary to deliver the development proposals in the local plan; and
- Charging Schedule for the Community Infrastructure Levy (CIL), in order to set the appropriate financial levy to be applied to new development, to fund the delivery of the new infrastructure identified in the Infrastructure Delivery Plan.

STRUCTURE

The **Local Plan** sets out the spatial vision and strategic objectives for future development of the County, including minerals and waste, to which all supporting documents must conform. It will contain policies and site allocations to deliver these objectives, on which planning applications will be determined. The local plan will also contain a framework for monitoring and implementation.

The **Minerals and Waste Policies and Allocations** document will develop the strategic minerals and waste content of the local plan. Strategic components of the waste and minerals including strategic sites where justified and necessary will be allocated in the local plan. Where needed and justified the Minerals and Waste Policies and Allocations document will allocate non-strategic minerals and waste sites.

The **Proposals Map** uses an Ordnance Survey base to depict the areas to which each of the policies will apply. For example, it will show areas which have been

allocated for specific types of development, such as industrial estates and retail areas; and designations such as conservation areas, where special controls apply.

MILESTONES

The key milestones for the production of each document that makes up the development plan are shown in Figure 1 below.

SUSTAINABILITY APPRAISAL

The local plan is subject to Sustainability Appraisal (SA). It considers the environmental, social and economic impacts of the policies and proposals. This will ensure the local plan complies with the Strategic Environmental Assessment (SEA) Directive (European Directive 2001/42/EC).

MONITORING AND REVIEW

Each year an Annual Monitoring Report (AMR) will be prepared to assess progress on the delivery of the local plan and review the effectiveness of its policies. The AMR is published in December each year and assesses the following factors:

- Progress on the delivery compared with LDS milestones.
- Reasons for any variance and proposed actions.
- Any factors that may impact on the following year's LDS milestones and planned action.
- The need for new evidence or research.
- A review of policy effectiveness.
- A trajectory of future housing provision against housing requirements.

The LDS will be reviewed and rolled forward when necessary to take account of changes to national or regional policy, progress on the programme, milestones and the content of the AMR. The flexible nature of the system means that new documents can be added to the LDS as circumstances change.

Assessing Development Proposals in County Durham: Revised - March 2016

Council Policy Position Statement

**Planning Services
Regeneration and Economic Development**

March 2016



Assessing Development Proposals in County Durham

Revised Council Policy Position Statement

1.0 Context and Introduction

- 1.1 Until a Local Plan is produced, the “saved” policies of our nine existing Local Plans are the starting point when considering planning applications. A number of Neighbourhood Plans are now coming forward and, depending on how advanced they are, may attract weight when assessing proposals. This Statement sets out the level of consistency of key saved policies to enable clarity in decision making.
- 1.2 This Statement is primarily aimed at addressing housing development in the period before the emerging Local Plan can attract weight. The issue of Student accommodation is dealt with elsewhere.
- 1.3 The “presumption in favour of sustainable development” under national policy requires us to assess schemes against the National Planning Policy Framework (NPPF). The housing supply policies in our Local Plans will be out of date if we do not have a five year supply of deliverable housing sites, and may be out of date for other reasons too. When Local Plan policies are out of date, the presumption usually requires that we should grant permission “unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits”.

Resisting inappropriate development whilst retaining business confidence

- 1.4 The Council is keen to encourage appropriate development at a time when a number of major investments are happening but equally we seek to resist inappropriate development.

2.0 Assessing Development Proposals

- 2.1 The principal matters to assess in considering development proposals are:

i) The status of the Adopted Local Plans in County Durham

- 2.2 The policies in Local Plans, although aged, are still the starting point for decision making. If they are not consistent with the NPPF then national policy is that they should be given reduced (or no) weight. An Officer assessment of consistency with NPPF/PPG can be viewed at: <http://durhamcc.limehouse.co.uk/portal/planning/slpnppf>. Some policies remain consistent, some are partially consistent, and others are not consistent with the NPPF. Officers will clarify the weight that should be applied to a policy when preparing reports.
- 2.3 ***Considering key policies and their status:*** Paragraph 1.3 above refers. The key questions are: which are our housing supply policies, do we have a 5YHLS and are other relevant policies out of date?
- 2.4 Most of the Local Plans use development limits/settlement boundaries as the broad demarcation of where development will and will not be permitted. They also include general policies for dealing with housing. Policies delineating settlement boundaries are housing supply policies, as they are intentionally restrictive to development and, when based on old housing figures (as our Local Plan policies invariably are) are out of date¹. How this affects key policies is set out in Appendix 1. “Settlement boundary” policies will, on their own, rarely justify refusal of edge of settlement proposals.

- 2.5 The Local Plans include general policies for protection of the countryside and more general topics (e.g. urban sprawl). To some degree these policies constitute housing supply policies and are out of date. However, they also serve purposes other than guiding the housing supply and in those respects they are not necessarily inconsistent with the NPPF and therefore can be given weightⁱⁱ. The NPPF supports resisting isolated developments, so in this context certain of the settlement boundary and countryside policies will attract weightⁱⁱⁱ.
- 2.6 Policies designed to protect particular features or designations are not normally considered to be housing supply policies for NPPF purposes, and will therefore continue to be given weight subject to a consistency analysis.

ii) The status of the County Durham Plan and its evidence base

- 2.7 The CDP has been withdrawn so is not material to decision making. Some of its supporting evidence nevertheless remains as evidence on a topic basis and may guide the assessment of proposals; for example, the Retail Study, the Employment Land Review (ELR), and the Strategic Housing Land Availability Assessment (SHLAA).

iii) The status of proposals in the Interim Inspector's Report

- 2.8 The Interim Report has been quashed in the High Court and as such its content is not material to decision making and it carries no status.

iv) The Status of Neighbourhood Plans in County Durham

- 2.9 As of March 2016 there are 22 Neighbourhood Plans (NPs) at various stages of preparation across the County^{iv}. None are adopted but the Whorlton NP has completed its Submission Consultation, Sedgefield's NP is in submission consultation, and Great Aycliffe and Witton Gilbert are close to draft stage. The PPG clarifies that refusal on prematurity grounds would seldom be justified unless a Neighbourhood Plan had reached the stage when it had been submitted to the County Council and been subject to consultation. It also sets out that where there is an emerging Neighbourhood Plan but no 5YHLS (see below on this matter) "...decision makers may still give weight to relevant policies in emerging neighbourhood plans, even though these policies should not be considered up-to-date".
- 2.10 In cases when there is potential conflict between a proposal and an emerging Neighbourhood Plan, the PPG does not clarify the level of weight to be applied in cases of conflict and this would be a matter of planning judgement. Where a proposal conforms with an emerging Neighbourhood Plan, the stage of Neighbourhood Plan preparation, sustainability of the site, and the nature of representations to the site through the Neighbourhood Plan consultation process will be taken into account in recommending a decision to Members.

v) Sustainable Development

- 2.11 One of the purposes of this Statement is to guide development proposals in the period until the Local Plan becomes material. The NPPF (at para 14) makes clear that there is a presumption in favour of sustainable development that applies where the development plan is absent, silent or relevant policies are out of date.
- 2.12 Sustainability is assessed by reference to the NPPF which sets out its three dimensions of economic, social and environmental sustainability. Where these are lacking, the presumption in favour may be overturned even where there is no 5YHLS.^v

- 2.13 These three matters will be relevant when seeking to achieve the planning balance when assessing proposals in the light of NPPF para 14.
- 2.14 In considering the sustainability of a site, developers should look to Appendix 2 to this Paper, which sets out the sustainability objectives for assessing proposals.

vi) Infrastructure requirements and planning obligations

- 2.15 The Core planning principles set out in the NPPF require the delivery of sufficient community and cultural facilities and services to meet local needs. This Statement applies in advance of the adoption of a CIL Schedule.
- 2.16 The Council will negotiate with developers on a site by site basis to agree Section 106 contributions where infrastructure requirements of a development are identified.
- 2.17 ***Affordable Housing*** - The current requirements for affordable provision are set out in the Council's evidence base and in particular the Strategic Housing Market Assessment 2013 and the CIL viability study 2014. These remain the starting point for negotiation under saved Local Plan policies. The Council will also consider individual site viability in any discussion of affordable housing.
- 2.18 ***Recreational and open space needs*** - One of the general saved policy requirements for residential development is appropriate recreational and amenity space both on site and sometimes off site to meet the needs of the new residents of that scheme. The Council has an Open Space Needs Assessment (OSNA) that sets out provision levels in an area and the standards for what is required dependant on those existing level of facilities, which will be used in assessing housing proposals.
- 2.19 Whether or not a site is sustainable will not depend solely on infrastructure or meeting planning obligations, so it will not always follow that such contributions can make a site sustainable and therefore acceptable.

vii) Appropriate scale of development

- 2.20 Whether the scale of development is appropriate for a settlement is a relevant consideration. The 2012 Settlement Study developed a hierarchy of towns and villages based upon the availability of facilities and services. This provides a useful indicator of the sustainability of a settlement. The current scale of a settlement and its position in the hierarchy will help to guide this matter.

viii) How the matter of Prematurity will be addressed

- 2.21 The PPG sets out that prematurity will seldom be justified as a reason to refuse an application unless a Plan has been submitted for examination and then only when the Council indicates clearly how the grant of permission would prejudice the outcome of the plan-making process. As the CDP has been withdrawn, such prejudice could not presently be demonstrated. In relation to Neighbourhood Plans, guidance on prematurity is set out above.

ix) Five-year housing land supply

- 2.22 Local Plans are out of date for the purpose of assessing housing requirements. The housing trajectory associated with the former CDP is no longer relevant and the CDP Objectively Assessed Need (OAN - for housing) figure no longer exists. This raises the

issue of what is the requirement against which the supply is to be measured in order to calculate whether or not 5YHLS exists.

2.23 In the period until a new Local Plan OAN figure can be established, the Council will seek to accord with advice in the PPG regarding OAN: *“...Where there is no robust recent assessment of full housing needs, the household projections published by the Department for Communities and Local Government should be used as the starting point, but the weight given to these should take account of the fact that they have not been tested (which could evidence a different housing requirement to the projection, for example because past events that affect the projection are unlikely to occur again or because of market signals) or moderated against relevant constraints (for example environmental or infrastructure)”*.

2.24 The Council cannot currently demonstrate a 5YHLS because it does not have an OAN but it will provide PPG compliant figures to provide guidance that will be updated as required.

2.25 **Conclusion:** (an assessment of the implications of this on a key policy basis is set out at Appendix 1):

- Policies that were fundamentally intended to guide housing proposals based on time-limited evidence are out of date (e.g. straightforward settlement boundary and specific housing supply or delivery policies).
- Policies that could sensibly exist regardless of whether the distribution and location of housing policies are out of date should continue to be given appropriate weight, for example, hybrid settlement boundary policies addressing development in the countryside, those resisting isolated development in the countryside, or those protecting specific designation, with the level of weight dependent upon their consistency with the NPPF

ⁱ As clarified in the Droitwich Spa case Ref: APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426 - the Secretary of State concurred with an appeal Inspector that where development plan policies were based on old housing figures which did not represent an objectively assessed need, they were "out of date" irrespective of the position on 5 year supply, and accordingly the NPPF para 14 presumption in favour applied

ⁱⁱ The case of Daventry District Council v DCLG and Gladman - CO/3447/2015 of 2-12-15- provides clarity, when it is concluded that it was wrong to treat a policy relating to development in open countryside as a housing supply policy when it was clearly intended to protect the countryside

ⁱⁱⁱ A recent appeal decision at Ebchester supports the above conclusion when a single dwelling in the open countryside was refused, the Inspector applied Derwentside DLP Policy EN1 (Protecting the Countryside) and Policy EN2 (Preventing Urban Sprawl) and noted that “Both policies have significant resonance with paragraph 17 of the Framework which recognises the intrinsic character and beauty of the countryside”. The Inspector concluded that “Whilst there would be some benefits of the proposal, in terms of a small contribution to housing supply, I consider the totality of the harm which I have identified would outweigh the benefits of the proposal” - Ref: APP/X1355/W/15/3131730

^{iv} Barnard Castle, Bearpark, Cassop-cum-Quarrington, Cotherstone, Coxhoe, Durham City, Eggleston, Ferryhill, Gainford & Langton, Great Aycliffe TC, Lanchester, Middridge, Oakenshaw, Sedgfield, Sherburn Village, Stanley, Tow Law, West Auckland, Whorlton, and Witton Gilbert.

^v Ref: APP/J3720/A/14/2215276 - Gladman proposal in Warwickshire when the Inspector dismissed the appeal despite a lack of five-year supply on grounds, including that “...The proposal would be at odds with NPPF para 7 which makes clear that “contributing to protecting and enhancing our natural , built and historic environment is an aspect of sustainable development”.