



**PARTIAL UPDATE
EXAMINATION OF THE
DISTRICT LOCAL PLAN**

**PRE-HEARING STATEMENT IN RESPONSE TO
INSPECTOR'S MATTERS, ISSUES AND QUESTIONS ON
BEHALF OF BRECKLAND DISTRICT COUNCIL**

Policy INF03

Issue 2. What is the justification for pursuing the BLPPR by means of an alternative timetable rather than a review of the four key policy areas set out in INF03 as required by the Inspector?



The Planning Inspectorate

Examination of the Breckland Local Plan Partial Review

Inspector's Matters, Issues and Questions for Examination

By Janet Wilson BA BTP MRTPI DMS

Inspector appointed by the Secretary of State

7 March 2023

Introduction

Prior to the forthcoming Hearing sessions, responses are invited from participants on the following Matters, Issues and Questions ('MIQs') for Examination. The MIQs are based on the Main Issues identified by the Council and other relevant issues raised by representors.

Further information about the examination, hearings and format of written statements is provided in the accompanying Examination Guidance Note¹, which should be read alongside the MIQs.

As set out in the Examination Guidance Note, the deadlines for providing hearing statements in response to these MIQs is

31 March 2023

These should be sent electronically to the programme officer

Document references refer to the Local Plan Examination Library which can be found on the Examination web site

<https://www.breckland.gov.uk/planning-policy/examination-library>

This note contains the main issues that I have identified in order to determine the soundness and legal compliance of the Breckland Local Plan Partial Review (hereafter referred to as the Plan). These will form the basis of the hearing sessions to be held. Furthermore, it poses both general and specific questions that I have in relation to the soundness of the Plan and which can be addressed in any hearing statements. General advice about statements is contained in my guidance note but there is no need for every question to be covered.

In setting them I have had regard to Section 3 of the National Planning Policy Framework which sets out in broad terms what Local Plans should do. The Council should also consider this in addressing the questions below.

Should, as a result of these questions, suggested changes be proposed to Policy INF03 or the accompanying text then these should be included in a schedule of suggested changes. This should be kept up-to-date and the latest version published prior to the examination hearings.

¹ Examination Document ID-01

Matters Issues and Questions

Policy INF03

Issue 2. What is the justification for pursuing the BLPPR by means of an alternative timetable rather than a review of the four key policy areas set out in INF03 as required by the Inspector?

11. How is the alternative wording to Policy INF03, justified, effective and consistent with national policy and guidance?

- 11.1 The Council considers that the current up to date Local Plan is justified, robust and consistent with national policy and guidance.
- 11.2 The revised wording proposed in the Partial Update commits the Council to have submitted the Full Update of the Local Plan by December 2024 that is consistent with national guidance as it accords with the 5-year timescale set by national planning policy for reviews of local plans. The approach is considered to be justified for the reasons set out in the Topic Paper and the conclusion reached that to have sought to undertake the Partial Review as set out in Policy INF 03 would have been both unreasonable and unachievable because of reasons that were unknown at the time the Local Plan was being considered at examination when Policy INF 03 was drafted.
- 11.3 Furthermore, the approach is considered to be justified, effective and consistent with national policy as otherwise key aspects of the adopted Local Plan would have been “deemed to be out of date” by virtue of the provisions of Policy INF 03 as adopted, with adverse and unsound consequences for development management in the District. The development management system is ‘plan-led’ – this means that planning applications are determined in accordance with the development plan unless other material considerations indicate otherwise.
- 11.4 The NPPF is one such material consideration. Para 11 includes the *‘presumption in favour of sustainable development’* which includes, so far as decision taking is concerned:
- “c) approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting*

permission unless:”

- 11.5 So far as para 11 c) and d) are concerned, a plan or a ‘most important’ plan policy that, on its face, is deemed to be out of date, is likely to be determinative that the plan is not up-to-date and the policy is out-of-date. In effect, the tail-piece to adopted policy INF 03 would, if it was to remain in place, take away the planning judgment that a decision-taker would otherwise apply in para 11 of the NPPF. The adopted plan was examined against the policies in the 2012 edition of the NPPF. The equivalent policy was at para 14. Since the plan was examined, the Courts have confirmed that whether or not policies are up-to date is a matter of planning judgment unless the ‘deeming’ provisions in the NPPF apply.
- 11.6 The inspector examining the now adopted Local Plan knew full well the consequences of the deeming provision in policy INF 03 he found ‘sound’. That is not surprising given the evidence base at the time included that the 2018 Standard Housing figure was available, the Gypsy and Traveller provision as defined by national policy had not been fully met and that the A47 dualling highway scheme was imminent. a determination of the amount of unmet need was imminent. It was also ‘sound’ to ‘hold the Council’s feet to the fire’ when it came to agreeing the approach towards an immediate partial review.
- 11.7 However, even ‘best laid plans’ can be de-railed as the Council explains in the Topic Paper accompanying this Partial Update. The proposed changes to Policy INF 03 will not mean that in considering planning applications a decision-taker will inevitably conclude that all policies, or at least the most important policies, relevant to the determination of the planning application are up-to-date. That will still be a matter of planning judgment applying the usual principles. But it will ensure that not all of them are deemed to be out-of-date without the application of any further planning judgment. Planning applications will therefore be determined in the ‘normal’ way with consideration of whether the ‘tilted balance’ is engaged decided on the basis set out in the NPPF.

12 The Local Development Scheme at paragraph 3.4 refers to a ‘truncated process’ and to a publication of the Council’s intent to update Policy INF 03, which publication does this refer to? Please identify the document this refers to and the date of its publication. (If not already supplied in the submitted documents please supply the relevant publication)

- 12.1 The Council published it’s intent to update Policy INF 03 in the public Cabinet Report (September 2021)² where it was agreed “that a Single Policy Partial Review of Policy INF 03 is prepared in parallel with a Substantive Review of the whole Local Plan as

² LPR/PU/C/002

outlined in Section 4 of the report” and again as part of the first consultation in the Breckland Local Plan Partial Review Submission Document³

13 Where has the Council got to with the steps identified (as A to I) in Appendix 1 to the LDS (timetable) for both the full and partial update? Is there substantive evidence to demonstrate that the steps (due by the end of 2022) have been concluded and where is confirmation of those steps to be found?

Partial Update		
A	Commencement of Preparation: Q3 2021	Approved at Cabinet September 2021 (LPR/PU/C/002)
B	Scoping of the Review: Q3 2021	Approved at Cabinet September 2021 (LPR/PU/C/002)
C	Prepare revised local development scheme (Cabinet approval): September 2022	Approved at Cabinet September 2021 (LPR/PU/C/002)
D	Prepare and consult on Statement of Community Involvement (Cabinet approval): July 2022 July 2022	the final SCI was adopted by Cabinet in July 2022 ⁴ .
E	Sustainability Appraisal Scoping Report and preparation (including consultation): Q4 2021 -Q4 2022	Approved as part of the first consultation by Cabinet in July 2022 (LPR/PU/C/004)
F	Collation of evidence base Q3 2021	Set out in Cabinet Report September 2021 (LPR/PU/C/002)
G	Prepare Call for sites (Working Group and Cabinet): Q4 2021	Not applicable to Partial Update
H	Consult on Call for Sites: June 2022 – December 2022	Not applicable to Partial Update

³ LPR/PU/SUB/001

⁴ <https://democracy.breckland.gov.uk/ieListDocuments.aspx?CIId=116&MIId=4847>

I	First Conversation Consultation (Issues and Options) preparation and Cabinet approval (Regulation 18)	Not applicable to Partial Update
---	---	----------------------------------

The Council can confirm that it has undertaken all of the steps set out in the LDS for the Partial Update and that it submitted the Plan for Examination in November 2022 (Step P)

Full Update		
A	Commencement of Preparation: Q2 2021	Approved at Cabinet July 2020 (LPR/PU/C/001)
B	Scoping of the Review: Q3 2021	Approved at Cabinet July 2020 and at Cabinet in September 2021 (LPR/PU/C/001 and LPR/PU/C/002). The Scope of the Full Update will be further refined following the publication of the new NPPF (expected in March 2023)
C	Prepare revised local development scheme (Cabinet approval): September 2022	Approved at Cabinet September 2021 (LPR/PU/C/002)
D	Prepare and consult on Statement of Community Involvement (Cabinet approval): July 2022 July 2022	the final SCI was adopted by Cabinet in July 2022 ⁵ .
E	Sustainability Appraisal Scoping Report and preparation (including consultation): Q1 2022 -Q3 2026	Tenders for the Integrated Assessment are to be published in April 2023 and reports prepared thereafter to inform the Regulation 18 consultation.
F	Collation of evidence base Q3 2021 – Q4 2024	The Council has prepared or is committed to preparing the following evidence base for the Full Update ⁶ : <ul style="list-style-type: none"> • Housing and Economic Development Needs Assessment: Preferred

⁵ <https://democracy.breckland.gov.uk/ieListDocuments.aspx?CIId=116&MIId=4847>

⁶ <https://www.breckland.gov.uk/article/19942/Local-Plan-Full-Update>

		<p>Tender to be offered March 2023: Work to commence March 2023</p> <ul style="list-style-type: none"> • Gypsy and Traveller and Travelling Show people Needs Assessment: Tender out for bids March 2023 • Integrated Assessment: Tender out for bids March 2023 • Flood Risk: Tender out for bids April 2023 • Open Space Assessment: Tender out for bids April 2023 • Community Engagement Support: Preferred Tender awarded March 2023 • Breckland Design Guide: Work underway • Breckland Landscape and Settlement Character Assessment: completed • Norfolk Study Older Person Housing: completed
G	Prepare Call for sites (Working Group and Cabinet): Q3 2021 - Q	Approved by Cabinet March 2022 ⁷
H	Consult on Call for Sites: June 2022 – December 2022	Undertaken between April and December 2022 ⁸
I	First Conversation Consultation (Issues and Options) preparation and Cabinet approval (Regulation 18)	Document agreed by Local Plan executive in November 2022 before an all member briefing and Cabinet in January 2023.

⁷ <https://democracy.breckland.gov.uk/ieListDocuments.aspx?CIid=116&MID=4747#AI34290>

⁸ <https://www.breckland.gov.uk/article/19942/Local-Plan-Full-Update>

		Report approved by Cabinet on January 9 2023. Consultation started March 10 2023 ⁹ .
--	--	---

14. In the light of responses to the above timetabling issues are the dates indicated for the completion of a full review of the Breckland Local Plan (BLP) achievable?

14.1 Yes. The Council is committed to delivering the Full Update of the Local Plan in accordance with the LDS.

15. Is there sufficient justification to revise the wording of INF03 to undertake an immediate full review of the BLP and to submit it by December 2024?

15.1 The Council considers that there is sufficient justification to undertake the Partial Update of the Local Plan as is being proposed. These are detailed in the Breckland Local Plan Partial Review Submission Draft Topic Paper (Regulation 19) and in the interests of brevity are not repeated in full detail here.

15.2 In summary, the Council considers that there have been a number of significant changes which have occurred since the Local Plan was adopted and since the Council committed to undertake a full review of the Plan in June 2020 which had potential implications for the review of Policy INF 03 and its timetable. These are as follows:

- Uncertainty and delays to the publication of the housing need / standard method figures and delays to work on the revised Strategic Housing Market Area Assessment (SHMAA)
- The Review would not accord with the 2021 National Planning Policy Framework (NPPF) and need for a minimum 15-year time horizon for strategic policies and at least 30 years for larger scale developments such as new settlements or significant extensions to existing villages and towns;
- The A47 improvements near Dereham are yet to be commenced and have been delayed since they were considered by the Local Plan Inspector in 2018.
- The definition of Gypsies and Travellers was subject to a High Court challenge until July 2021.
- The introduction of local internal space standards would require a new plan wide viability study that could impact on other key parts of the Plan

⁹ <https://www.breckland.gov.uk/article/19942/Local-Plan-Full-Update>

- 15.3 There are a number of other considerations that have emerged since the Council resolved to undertake a Full Review of the Plan in June 2020 including the need for a clearer understanding of the implications of Covid 19, First Homes, the announcement, in March 2022, by Natural England that development in parts of Breckland cannot proceed if it increases levels of nutrients, revisions to the National Planning Policy Framework in July 2021 and probable further announcements as to how national planning policy is likely to change expected (previously expected in July 2022 but now delayed) as well as the continuing discussion over planning reform and the introduction) of the Levelling Up and Regeneration Bill to Parliament on 11 May 2022 and the Environment Act (2021).
- 15.4 Furthermore, the Council explored this option through 2 virtual advisory meetings with the Planning Inspectorate on 15 April 2022 and 24 August 2022 where the issues set out above were explored alongside a similar approach that had been successfully undertaken by North West Leicestershire Council. In the notes from the meetings the Inspector concluded that the principle of the approach of submitting an update of Policy INF 03 for examination by November 2022 (partial update) alongside the commencement of a full updating of the LP to be submitted by the end of 2024 (full update) appears to be justified. (Para 13 and para 5 respectively). The notes from the meetings are in Appendix 2.

16 What are the reasons for the differences in the text as expressed in paragraph 8.22 and those contained in the revised Policy INF03?

- 16.1 The proposed text for para 8.22 is as follows:

Policy INF03 sets out the Council's commitment to undertake an immediate full review of the Plan and to submit it by December 2024.

- 16.2 The proposed wording for the Policy INF 03 is as follows:

The Council will undertake an immediate full review of the Plan. The full Review of the Plan is planned to be submitted for examination by December 2024.

- 16.3 The supporting text sets out the descriptive and explanatory material for Policy INF 03 and the policy wording is a measurable commitment to submit the Full Update by December 2024.

17 Is the BLPPR effective? – What would be the consequences if the Council do not adhere to the submission of the full Local Plan Review by December 2024?

17.1 This would be an additional factor to take into account in determining whether the most important policies for determining a planning application were out-of-date and whether the 'tilted balance' should be applied as per paragraph 11 of the NPPF.

18 What is the justification for seeking to delete the text which refers to policies becoming out of date (should the December 2024 date not be met)?

18.1 Maintaining a "deeming provision" in INF03 is not justified. Whether or not policies are out of date should be judged at the time a decision is being taken. It may be that policies would be out-of-date as a matter of planning judgment or as a result of the deeming provision in the NPPF relating to housing land supply. There is simply no justification for introducing any further automatic deeming provision.

19. What, if any, are the implications of the substantive changes to Policy INF03 for the rest of the Plan?

19.1 The policies in the rest of the plan would continue to be applied in decision-taking. Whether or not they are up-to-date and what weight to give them would be a matter of planning judgment exercised at the time taking into account all relevant considerations.