

BRECKLAND DISTRICT COUNCIL

IN THE MATTER OF THE INDEPENDENT EXAMINATION OF THE BRECKLAND LOCAL PLAN
PARTIAL REVIEW

OPENING STATEMENT OF THE LOCAL PLANNING AUTHORITY

1. The plan-led system is underpinned by LPAs having up-to-date local plans in place which promote a sustainable pattern of development, meet the development needs of the area, align growth and infrastructure, improve the environment and mitigate the effects of climate change.
2. The Council's current Local Plan was adopted on 29 November 2019. However, the inspector judged that an immediate review was called for because:
 - a. The housing need basis of the plan was premised on the 2014 household projections and the 2016 projections had just been published.
 - b. Further work was required in order meet the needs of ethnic gypsies and travellers who did not fall within the definition within PPTS.
 - c. Further work was required in respect of technical design standards for new homes, in particular to meet the needs of an aging population.
 - d. The planned 'dualling' improvements to the A47 by 2020 had not been taken into account in the Council's employment strategy and a comprehensive review of its approach top economic development and its links to housing need was called for.
3. As a result, policy INF03 was included in the Local Plan by MM160. It requires an immediate partial review of the plan to be undertaken in respect of each of these matters, and:

"The partial review of the Plan will be submitted for examination 3 years after the date of adoption of this Plan or by November 2022, whichever is soonest. In the event that the review is not submitted for examination by this time, then the Council's policies that relate to the supply of housing, economic development and gypsy and travellers will be deemed to be out-of-date."

4. However, for the reasons set out in the Topic Paper [SUB/012], by May 2020 it became apparent that (a) a full review was required and (b) that it could not be prepared within the time-frame set out in policy INF03 (see Cabinet papers for meeting on 1 June 2020 at [C/001]). The final decision to carry out the current partial review was taken by Cabinet in September 2021 [see C/002].

5. Unless something else was done, the “consequences” in INF03 would bite, and key policies in the Local Plan would be deemed to be out of date for the purposes of decision-taking on planning applications without any further exercise of planning judgment.

6. The NPPF includes the following on decision-taking:

“11.... d) where the policies which are most important for determining the application are out-of-date⁸, granting permission unless:
 or
 ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

⁸This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

7. The key words are “where the most important policies are out-of-date”. If the ^{fn8} “deeming provision” does not apply, then whether or not the ‘tilted balance’ applies is a matter of planning judgment. However, policy INF03 would introduce a further deeming provision which would dictate the outcome of that planning judgment. As well as progressing the Full Review, the Council therefore decided to submit a Partial Review which modified INF03 which retains the planning judgment in NPPF paragraph 11.d)ii. Submission of the Full Review is expected by December 2024.

8. The revision to INF03 sought to be made, if accepted, will mean that for decision-taking:
 - a. There will be no ‘deeming provision’ in the Local Plan.
 - b. Whether or not any Local Plan policy is out-of-date in the context of any individual planning application will depend on:

- i. fn8 (in a housing case).
- ii. Planning judgment - including:
 1. The circumstances of the need for a partial review identified in 2019.
 2. That the Full Review is underway and is due to be submitted in 2024.

9. It emphatically does NOT mean:

- a. That the **policies that relate to the supply of housing, economic development and gypsy and travellers** will always be regarded as being up-to-date.
- b. That the 'tilted balance' will NEVER apply.

10. There is no need for a "consequences clause" tailpiece in INF03 (as proposed to be modified). If for any reason the December 2024 date for submission of the Full Review is not met, then that too will be highly relevant as to whether or not policies should be regarded as being out-of-date as a matter of planning judgment. But, again, there is no reason to be prescriptive if, for example, the Full Review was submitted a few days 'late' in January 2025.

11. Two other matters merit a mention in this Opening Statement.

12. First, how the Duty to Co-operate impacts on this Partial Review. S33A of the 2004 Act provides:

- a. In (3)(a) that the DtC applies to preparation of DPDs "so far as relating to a strategic matter".
- b. (4) defines a "strategic matter" as "(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas."
- c. The Partial Review (at the same time as the Full Review) does not have such an impact and is therefore not subject to the DtC.
- d. For the avoidance of doubt, the Full Review is subject to the DtC and the discharge of the duty is ongoing.

13. Second, how SEA/SA matters are engaged in Partial Review. In respect of

“alternatives” there are / were only ever two reasonable options:

- a. Carry out only the Full Review. The deeming provision in INF03 would then have taken effect in November 2022, or
- b. Carry out both the Partial and Full Reviews in tandem. This is the option selected.
- c. The Integrated Assessment Report [SUB/013] contains the SA/SEA.

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