

Report To:	EXTRAORDINARY COUNCIL	Date:	6 SEPTEMBER 2018
Heading:	ASHFIELD LOCAL PLAN UPDATE AND OPTIONS APPRAISAL		
Portfolio Holder:	LEADER OF THE COUNCIL		
Ward/s:	ALL		
Key Decision:	COUNCIL DECISION		
Subject to Call-In:	NO		

Purpose of Report

The report is to provide the Council with an update and for it to consider options in relation to the Emerging Ashfield Local Plan (Local Plan document attached).

Recommendation(s)

Council is asked to:

- 1. Note the updated position in relation to the Emerging Ashfield Local Plan; and**
- 2. Decide which of the two options outlined in the report it will choose to approve.**

Reasons for Recommendation(s)

To update the Council following the Main Modifications Consultation.

To consider the implications on the Emerging Local Plan in light of the recently published National Planning Policy Framework and the ambitions of the new Council Leadership.

Alternative Options Considered

(with reasons why not adopted)

All options are set out in the report.

Detailed Information

A. Update in Relation to the Progress of the Emerging Ashfield Local Plan

The Local Plan Process

The Ashfield Local Plan was submitted for Examination on 24 February 2017. In October 2017, the Inspector held an Examination which comprised a series of hearing sessions on questions raised by the Inspector relating to the soundness of the submitted Local Plan. During the Hearing the Inspector identified a number of proposed Main Modifications to the Plan which he considered may be necessary to make the Plan sound. These comprised redrafting text, the omission of specific policies and the inclusion of new policies for specific site allocations already identified in the Plan and a Rural Exception Sites Policy.

In accordance with the Planning Inspectorate's Procedural Practice, a public consultation on the proposed Main Modifications was undertaken from 22 June 2018 to 10 August 2018.

Ashfield Local Plan - Consultations

In bringing the Local Plan forward, the Council has undertaken consultations in accordance with the Planning and Compulsory Purchase Act 2004 (the 2004 Act) and the relevant Regulations. The following consultation has been undertaken:

- The Ashfield Local Plan Preferred Options Consultation was undertaken between 2 February and 20 March 2016. The Council received 683 responses to the consultation setting out 1,387 representations.
- A further consultation was undertaken on the proposed submission draft of the Ashfield Local Plan Publication from 4 November to 19 December 2016. A total of 471 persons or organisations responded with 918 representations.

The Main Modifications consultation undertaken from 22 June to 10 August 2018 resulted in 128 representations received from 73 respondents.

B. Next Steps in the Local Plan Process

Following the conclusion of the Main Modifications consultation, the Council has collated responses received and sent these to the Inspector for further consideration, in accordance with the process. Before the Inspector issues his final report setting out his recommendations, over a period of approximately 6 weeks, there is a quality assurance check by the Planning Inspectorate and a fact check of the draft report by the Council, feeding back any fact changes to the Inspector.

Once the Inspector has considered the responses from the Main Modifications consultation there are two options. The Inspector could:

- Hold further hearing sessions. However, it is not typical to hold additional hearing sessions and they will only be held if the Inspector considers it is necessary to clarify or resolve substantive outstanding issues.
- Issue his Report following the procedure concerning quality assurance and fact check.

Provided the Inspector does not require additional hearing sessions, the Council could receive the Inspector's Report by mid to late October.

The Inspector's Report will set out his conclusions and recommendations as to whether the Plan may be adopted, with or without Main Modifications, or should not be adopted. If the Inspector recommends Main Modifications, the 2004 Act requires that the Plan should not be adopted without the Main Modifications identified in the Inspector's Report. On receipt of the Inspector's Report, the Council is required to publish the Report in accordance with section 20(8) of the 2004 Act and this has to be done as soon as reasonably practical (Town and Country Planning (Local Planning) (England) Regulations 2012, as amended, Regulation 25).

The Council is not entitled, and has no legal power, at this stage in the Local Plan process to make material or main modifications to the Plan which has been submitted to the Inspector for examination, unless the Inspector makes a recommendation for the Council to make such a change. A material or main modification would include, for instance, the removal and/or inclusion of site allocations.

C. Options in Relation to the Emerging Ashfield Local Plan

The Council has two potential options available to it at the present time:

1. Wait until the Planning Inspector's final report is received and consider the adoption of the Local Plan at that point; or
2. Withdraw the Emerging Local Plan and commence development of a new Local Plan immediately.

Each option is considered in detail below setting out the potential consequences of those options. It should be borne in mind that there is cross-over between the benefits of having an up-to-date Local Plan with the implications of withdrawing the Emerging Local Plan.

1. Wait until the Planning Inspector's final report is received and consider the adoption of the Local Plan at that point

The Benefits of Adopting the Emerging Local Plan

The Government has set in national planning policy that Local Plans are at the heart of the planning system, so the Government considers that it is essential they are in place and kept up to date. Local Plans set out a vision and a framework for the future development of the area, addressing needs and opportunities in relation to housing, the economy, community facilities and infrastructure – as well as a basis for safeguarding the environment, adapting to climate change and securing good design. They are a critical tool in guiding decisions about individual development proposals, as Local Plans (together with any Neighbourhood Plans) are the starting-point for considering whether applications can be approved. It is important for all areas to put an up to date Plan in place to positively guide development decisions.

The Ashfield Local Plan Review 2002 (ALPR) is Ashfield's most recently adopted district-wide Local Plan which helps guide decision making. However, it predates the publication of the National Planning Policy Framework (NPPF) (both in its original and current form) and there are policy gaps as a result of policies which could not be "saved". Furthermore, a number of the

“saved policies” are now out of date in some respects and have far less consistency with the revised (NPPF) published on 24 July 2018 than the Emerging Ashfield Local Plan.

Under current plan policies, Ashfield cannot demonstrate a 5 year supply of deliverable housing sites and the NPPF makes clear that relevant policies for the supply of housing should not be considered up-to-date where this is the case. As a result, and in accordance with the NPPF, the “tilted balance” is required to be engaged when considering planning applications in the District and at appeals, such that planning permission will be required to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this NPPF or the proposal conflicts with policies in the NPPF which protect particular areas or assets. Without a 5 year housing supply the District is vulnerable to what is often termed “planning by appeal” and the approval of unplanned, ad-hoc development which may not deliver the benefits achievable through the Emerging Local Plan, such as: a higher level of affordable housing; starter homes; adaptable dwellings; new/improved infrastructure such as schools via developer contributions (s106 agreements). These are explained below:

- **Adoption of the Local Plan and Securing a Five Year Housing Land Supply**

With an up-to-date Local Plan in place, the Council should be in a position to demonstrate a 5 year housing land supply so the “tilted balance” would not be engaged and applications for planning permission would be determined in accordance with policies of the recently adopted Local Plan.

This would result in a greater degree of control over the location of the new development, would avoid speculative and ad hoc development being approved and would provide greater protection to vulnerable areas (such as countryside) against ad hoc development.

- **Affordable Housing**

Adoption of the Plan would bring forward the Affordable Housing Policy which will see more affordable homes at affordable rents on development sites.

The Emerging Local Plan provides up-to-date compliant policies which further develop national policy in order to guide development/safeguard assets at a local level.

- **Strategic Policies**

The strategic policies set out the approach to housing, the economy, the environment and health. They have been informed by a Sustainability Appraisal, which considered the social, economic and environmental effects of the Plan and the alternative strategies.

The policies in the Emerging Local Plan ensure that there is a sufficient supply of proposed housing sites to meet the current Objectively Assessed Need (OAN) for the entire plan period up to the year 2032, including sufficient deliverable sites to meet the 5 year housing supply consistent with the revised NPPF (para. 67). Having assessed employment land requirements as part of the evidence base, the Emerging Local Plan makes appropriate employment allocations based on need. In this context, the policies provide certainty for commercial developers, promoting economic development and jobs. If the Local plan is not adopted the Council will be left without a strategic policy framework to meet its identified housing and other development and infrastructure needs.

- **Development Management Policies**

- CC2: Water Resource Management and CC3: Flood Risk and Sustainable Drainage Systems - Policy CC2 sets out a comprehensive approach to improving water quality.

It also identifies water efficiency measures to achieve savings above the current Building Regulations requirements. Flood policies in the ALPR were not “saved”. Policy CC3 ensures that flood risk from development is minimised and helps to maximise opportunities for reducing existing flood risk and utilise soft engineering solutions which are incorporated into the green infrastructure network.

- HG2: Affordable Housing - In addition to affordable housing requirements in the NPPF, this policy also introduces a 20% requirement for Starter Homes on sites of 11 or more dwellings across the District, higher than the 10% minimum requirement set out in paragraph 64 of the NPPF.
- HG2a: Rural Exceptions Sites - This is a new policy which does not currently exist in the ALPR. It enables small sites used for affordable housing in perpetuity to come forward where they would not normally be used for housing. This seeks to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection.
- HG4: Housing Mix - This introduces a new policy which supplements para. 61 of the revised NPPF, in particular with regard to a requirement for 10% accessible or easily adaptable dwellings (on sites of 10 or more dwellings) to help meet the needs of the elderly or people with disabilities.
- SD1: Good Design Considerations for Development - This introduces a new policy which will be key to securing opportunities to improve the character and quality of an area. The policy sets out more detailed design principles than provisions in the revised NPPF. It aims to promote high quality, sustainable design that ensures attractive, usable and durable places which help to deliver economic and social prosperity; in turn helping to attract inward-investment.

- **Infrastructure Policies**

An up-to-date Local Plan coordinates and helps ensure the infrastructure needed to support development is achieved, for example, the Plan is key in identifying sites for new schools. In the absence of a Plan it is not clear how the necessary school infrastructure requirements will be achieved. Allocations for schools in the Plan also facilitates potential access to additional funding to meet infrastructure requirements.

Meeting infrastructure requirements is dependent on planning contributions through Section 106 agreements, and in this respect there are limited requirements in current ALPR policies. The Emerging Local Plan has a far more comprehensive approach to contributions.

- **Other Policy Implications**

The Emerging Local Plan policies expand on basic requirements set out in the NPPF:

- **Policy EV4** – Provides policy protection for local wildlife sites, which do not have national protection.
- **Policy EV10** - Expands on the non-designated Heritage Assets provisions, which comprises buildings and structures considered to be of local importance and significance and provides a policy approach which supplements the requirements in the basic wording of the NPPF.

- **Policy EV11 and Policy PJ4** - set out policies to consider the impact on the landscape and would be a further consideration in considering any application for an agricultural building in the Green Belt and other locations (agricultural buildings constitute appropriate development in the Green Belt).

Legal Implications

Under the 2004 Act, there is no statutory requirement for a local planning authority to adopt the Plan. Once the Inspector's final report is received it can be considered for adoption by way of a resolution of the Council under section 23(5) of the 2004 Act. There is no statutory timeframe within which the decision to adopt or withdraw a plan must be made, however, the Council could not delay reaching a decision indefinitely.

It should be noted that the Secretary of State for Housing, Communities and Local Government has powers to intervene in respect of an Emerging Local Plan. At any time before the Council adopts the Emerging Local Plan, the Secretary of State has the power (under section 21(1)(a) of the 2004 Act) to issue a holding direction to prevent the Council doing anything further in relation to the Local Plan, if he considers that the Plan is unsatisfactory, and to require the Council not to adopt the Plan until it has been modified in accordance with his direction. Of more relevance in the present context is section 21(4) of the 2004 Act, by which the Secretary of State may at any time before adoption of the Emerging Local Plan require that the Plan is submitted to him for approval. In effect, this provides a power for the Secretary of State to take over a Plan and "approve" it himself. Under Section 21A of the 2004 Act, the Secretary of State can also issue a temporary direction requiring a local planning authority to not take steps regarding adoption of a Plan while he considers whether to give a direction under Section 21 of the Act.

Adoption of the Emerging Ashfield Local Plan would remove the risk of legal challenge or intervention by the Secretary of State if the Council was to withdraw or unreasonable delay adoption of the Plan (referred to below). The Secretary of State has default powers (under sections 21 or 27 of the 2004 Act). In particular, under section 27(5)(b) of the 2004 Act the Secretary of State may direct a local authority to consider adoption and under section 21(4) and section 27(5)(a) of the 2004 Act the Secretary of State may direct that a Local Plan should be approved by him.

Financial Implications

If the Council waits for the Inspector to produce his report and then proceeds to adopt the Emerging Ashfield Local Plan, there are no anticipated additional budgetary implications.

Adoption of the Emerging Ashfield Local Plan has potential financial benefits in the shape of improved opportunities to negotiate Section 106 contributions and for increased New Homes Bonus payments.

Additional Option following receipt of the Inspector's Report

Whilst not an option to consider at this stage, if the Council decides to wait until the Planning Inspector's final report is received and then consider the adoption of the Local Plan, at this point the Council could resolve to adopt the Emerging Local Plan but commit to an early review of the Plan.

2. Withdraw the Emerging Local Plan and Commence Development of a new Local Plan with Immediate Effect

The Council remains under a duty to prepare and set out a planning framework for the whole of the District. As such, if the Council withdraws the Emerging Local Plan the Council would be required to start work on preparing a new Local Plan immediately.

The Benefits of Withdrawing the Local Plan

A Local Plan should set out the long term vision of the Council and enable the Council to act as a place shaper for local communities. It is a delivery plan for the Council's core objectives. As such it should respond to the latest challenges set out by Government. There may be a concern that the current Plan is not ambitious enough to reflect the aspirations of both Government and the new Council Leadership. The new Council Leadership has in particular stated a desire to revisit the parameters of the Local Plan seeking to reconsider issues such as housing allocations to make the most of brownfield sites and a desire to reconsider the underpinning strategy of the Local Plan to make the most of locational advantages such as Junctions 27 and 28 of the M1 motorway. The new administration has indicated that a new Local Plan would be brought forward as quickly as possible and would be pro-growth.

Evidentially there is also a standardised approach to identify local housing need being introduced as of September 2018. This is different to the current methodology used by the Council. Starting again would provide the opportunity to reflect these wider matters.

Possible Planning Implications of not adopting the Emerging Local Plan

If the Council were to withdraw the Emerging Local Plan there would be a period between withdrawal and a new Local Plan being in place during which time there would be significant implications for planning decisions as set out below:

Lack of a Five Year Housing Supply

As set out above, the Council does not currently have a 5 year housing supply. If the Council approves the Emerging Local Plan the consequential 5 year housing supply is based on a trajectory of specific site delivery; with an approved Plan in place the annual rate of delivery needed to meet the 5 year housing supply can be evidenced based on specific sites, their deliverability and predicted rate of completion. If the Council withdraws the Emerging Local Plan, it cannot easily demonstrate a 5 year housing supply. The implications of not having a 5 year supply are addressed above and can be summarised as follows:

- **Ad hoc development** - If the Council does not have a 5 year supply development will still happen, but in an unplanned and ad hoc way, on land outside the anticipated allocations. Without a 5 year housing supply and a Local Plan the "tilted balance" would be engaged such that planning permission will be required to be granted by the Council, or by an inspector at appeal, unless 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, or particular policies of restraint affecting specific areas or assets arise.
- If the Council refuses development which is then made the subject of an appeal, the Council will face significant costs in defending these appeals (including having costs awarded against it, if it is found to have refused planning permission unreasonably) and there would be an increase in the potential for government intervention.

- **Areas vulnerable to ad hoc development** – Countryside does not have the same level of protection as Green Belt. Therefore, the countryside to Kirkby-in-Ashfield (west and north) and Sutton in Ashfield become the centre of developer attention and is at risk from ad hoc development. In addition, there is a likelihood of housing planned for Selston migrating to Kirkby-in-Ashfield (west and north) and Sutton in Ashfield via developer applications.
- **Green Belt** – While the Green Belt has substantial national policy protection this does not rule out development. Pressure increases the lower the 5 year housing supply becomes. National Planning Policy Guidance identifies that ‘*unmet housing need is unlikely to outweigh the harm to the Green Belt*’¹. Nevertheless, historically there have been a number of planning appeal decisions, which have allowed housing development in the Green Belt having regard to the particular circumstances which have arisen; that is an outcome which could occur in the District if the Council cannot demonstrate a 5 year housing supply.

Potential Negative Impact on infrastructure

- There is a potential loss of section 106 contributions for necessary education, highway, healthcare and green infrastructure. This reflects that:
 - There are policies in the Emerging Local Plan which form the basis for requesting these contributions.
 - The “tilting balance” and NPPF provisions means that benefits of the delivery of housing has prime importance in considering applications for residential development and there is potential for permission to be granted even if the infrastructure which the Council seeks to secure is not delivered as part of the scheme.
- **Uncoordinated approach to infrastructure.** This could have particular issues for education and the provision of new and expanded schools/academies.
- With no Local Plan in place with identified infrastructure requirements there are fewer opportunities to seek funding to support infrastructure and growth.

Affordable Housing

- **Loss of affordable housing.** The Emerging Local Plan brings forward more affordable homes on development sites. If the Affordable Housing Policy is not in place, the basis for the affordable housing requirements remains the existing ALPR and the Affordable Housing SPD 2009, which have a lower requirement.
- **Affordable Rents** - The shift in the emphasis by the Government on affordable homes from affordable rental to starter homes/low cost homes for sale means that potentially less affordable housing for rent will be brought forward as there would be no policy basis for the emphasis on affordable rents. The Emerging Local Plan currently identifies a split between starter homes and affordable rents.

Neighbourhood Plans

- If the Emerging Local Plan is revisited, there is a risk that Neighbourhood Plans will become non-compliant with the new Plan. Also, additional housing could be brought forward in Neighbourhood Plan Areas which was not anticipated as the emerging local land sites are no

¹ Planning Practice Guidance Paragraph: 034 Reference ID: 3-034-20141006

longer allocations and there would be no strategic policies which will inform the approach on neighbourhood plans.

- Additional work will be required in relation to potential neighbourhood plan areas as the Council is required as part of strategic plans to set out a housing requirement figure for neighbourhood areas.

Developing a New Local Plan

- **What stage of plan preparation would the Council have to return to?**

If the Emerging Local Plan is withdrawn it is anticipated that the Council would start again on a new Plan.

The timescale for a new Plan, would be dependent on the strategy proposed and whether there would be major changes required to the current Local Plan at Examination. If there are limited changes, it is anticipated that the existing evidence base could be updated and the Plan brought forward relatively quickly. This would require resourcing, early agreement over allocating sufficient sites to meet the anticipated need over a period of 15 years from the anticipated adoption date and considering the responses from consultations under Regulations 18 and 19 (Town and Country Planning (Local Planning) (England) Regulations 2012, as amended).

If the Plan takes a substantial period to be agreed in principle and is significantly different from the existing Plan it is anticipated that a comprehensive update of the evidence base would be required as the existing evidence base is likely to be out of date by the time the plan is submitted for Examination. This potentially includes but is not limited to:

- Strategic Housing Needs Assessment (SHNA)
- Strategic Housing/Employment Land Availability Assessment
- Local Plan Viability Assessment (including Affordable Housing)
- Employment Review
- Transport Assessments
- Retail Assessment
- Renewable and Low Carbon Energy Study
- Strategic Flood Risk Assessment
- Education and other Infrastructure Assessments
- Gypsy and Traveller Accommodation Assessment

The new Plan is also legally required to be informed by a:

- Sustainability Appraisal
- Strategic Environmental Assessment
- Habitats Regulation Assessment

Previously, the costs of the supporting evidence base was reduced by undertaking shared studies with other councils. It is not clear whether this will be possible with a new Plan, if it is not possible, the new evidence base will be more expensive than was the case with the Emerging Local Plan.

- **Timescales**

The timescale for the development of a new Plan is difficult to determine at this stage for the reasons set out above, however, it is possible to say that generally speaking a Local Plan takes a number of years to develop and bring forward to its conclusion.

- **Previous representations on the Local Plan**

Effectively this would be a new plan which is likely to raise new or other issues not previously commented on. Consequently, the Council would undertake consultations on the new Plan and consider the representations received from these consultations.

- **What happens to proposed allocations and land submitted to the Council for consideration?**

The existing housing, employment and retail allocations in the Emerging Local Plan would have no planning status unless identified in the Ashfield Local Plan Review 2002. As it is a new plan the Council would have to reconsider all previously identified sites, whether housing, employment or retail, to decide if they remain suitable for allocation. It is anticipated that the Council would contact all land owners/developers who have submitted land to the Strategic Housing/Employment Land Availability Assessment to determine whether the land would still be available for development.

- **In the absence of the Emerging Local Plan what is the statutory development Plan for the District?**

The adopted Local Plan is the Ashfield Local Plan Review 2002 (ALPR) “saved policies”. A number of policies in the ALPR can no longer be applied on the basis of a decision by the Secretary of State in 2007. Although it has gone past its end date it remains the most up to date adopted plan for the purposes of making planning decisions. However, “saved policies” have to be considered against the NPPF. If there have been significant changes to national planning policy they will have overtaken parts of the Plan, making those policies or aspects of the policies limited in application. In these circumstances, the Council will have no option but to rely on more up to date national planning policy as the basis for making planning decisions. Neighbourhood Plans would have to be considered further.

- **Interim Policies**

While the Council could draft interim planning guidance, it may not be able to give it any statutory weight in determining planning applications. This would be dependent on the subject matter of the interim guidance as the Courts have identified that:

- There is no lawful role for interim planning guidance where its subject matter falls within the categories of documents that under the Town and Country Planning (Local Plan) (England) Regulations 2012 should be prepared as either a Development Plan Document (local plan) or a Supplementary Planning Document (SPD).²
- An SPD builds upon and provides more detailed advice on policies in the local plan such as design or a specific development site brief on an allocated site (NPPF). It cannot contain policy identifying development and use of land, which the Council wishes to

² R (Skipton Properties Ltd) v Craven District Council [2017] EWHC 534 (Admin)

encourage, or which make site allocations or site allocation policies³; these have to be brought forward under a Local Plan.

- **Implications of a new Plan in relation to the new NPPF**

The new plan would be required to reflect the provisions on the revised NPPF published in July 2018. This has a number of implications in relation to housing and employment land requirements.

- **Housing Need**

Higher annual requirements - Ashfield's housing need base will be based on the 'standard method' rather than the Strategic Housing Market Assessment figure. Based on figures released by Government in September 2017 the housing need for Ashfield was identified as 519 dwellings per annum (rather than 480 dwellings per annum in the Local Plan at Examination).

Neighbourhood authority requirements - Housing numbers for Ashfield would have to consider any needs that cannot be met by neighbouring areas through the statutory duty to cooperate. Neighbouring areas is not defined but could include Nottingham, Mansfield, other Nottinghamshire authorities or adjacent Derbyshire authorities. For any new plan, a Statement of Common Grounds with the neighbouring authorities would be necessary to provide evidence on this aspect.

Longer plan period – A new plan has to be for '*a minimum of 15 years from adoption.*' (Para 22). Under the NPPF 2012 plans have '*to be drawn up over an appropriate timescale, preferable 15-years' time horizon.*' The revised NPPF has no flexibility in the wording. The implication is 3 additional years for preparation on a 15 year plan at adoption, which takes the plan to 2037. The Council, would have to plan for an additional 1,920 (approx.) homes (based on 480 dwellings per annum).

- **Housing Supply**

Sites completed or nearing completion - When the housing supply was looked at under the Emerging Local Plan (from 2013) it included a number of sites which had planning permission and were under construction. These have been or are nearing completion. There is not the same level of sites currently with planning permission in place to replace this supply. The Local Plan to 2032 is crucial in this context. Consequently, it is highly likely that additional land on top of the existing allocations will need to be allocated to meet the housing need to 2037.

Green Belt changes - The NPPF places a higher bar on meeting the exceptional circumstances for taking land out of the Green Belt. This places additional pressure on the 'countryside' to the west and north of Kirkby and around Sutton.

Brownfield Sites - Available brownfield sites have largely been developed, therefore there will be additional pressure on greenfield land.

³ William Davis Ltd & Ors v Charnwood Borough Council [2017] EWHC 3006 (Admin) – The case in question looked at identifying affordable housing requirements through an SPD.

Allocations – Any future plan is likely to have to bring forward a mix of larger and smaller sites under the provisions of the NPPF (para. 72 and para. 68).

➤ **Employment Land**

The NPPF makes specific reference to addressing the locational requirements of different sectors including the specific locational requirements of storage and distribution operations. Distribution Sector requirements were raised at the Local Plan Examination Hearing and would be a consideration in any future replacement plan in relation to employment land. The areas of search for distribution employment land is likely to be around the junctions of the M1 motorway, the A38 and the MARR route.

Legal Position

Section 22(1) of the 2004 Act allows for withdrawal of a local plan at any time before adoption. If the Council is minded to withdraw the local plan it must act reasonably and cite sound planning reasons for withdrawing the plan (particularly as it is at such an advanced stage in the process towards its adoption). There is no legal duty on the Council to inform the Inspector or the Secretary of State that it is minded to withdraw the local plan before it does so.

Aggrieved land owners/developers who may have an interest in bringing forward development in conformity with the Emerging Local Plan have the opportunity to legally challenge the reasonableness of the decision through judicial review.

If a judicial review challenge was successful against the Council the Court cannot order the Council to adopt the plan; the Court would make a Quashing Order. A Quashing Order would mean the Council's original decision to withdraw the plan would no longer stand and the Council would be told to make a new decision.

There is also a material risk that if the plan is withdrawn the Secretary of State may intervene. If the Court quashed the Council's decision to withdraw the Local Plan the Secretary of State may intervene following the Court decision and direct (in accordance with section 27(5)(b) of the 2004 Act) that the Council should consider adopting the local plan. Alternatively, he may use his default powers (section 27(5)(a) of the 2004 Act) and approve a local plan himself. Counsel has advised that it is not altogether clear whether the Section 21 and Section 27 intervention powers are exercisable after a plan has been withdrawn so as to "resurrect" the Plan wholly at his discretion. Counsel has advised that the Secretary of State may consider construing his powers widely and intervene in this way to "resurrect" the Plan and either direct the Council to consider the Plan for adoption or approve the Plan himself. Counsel is not aware that his has been tested in the courts so far.

Whilst historically the powers of intervention by the Secretary of State have been used rarely, it is understood that intervention is now a distinct possibility where the Secretary of State considers there to be undue or unexplained delay in the preparation, or progress towards, the adoption of a Local Plan. Government intervention is therefore considered to be highly likely in the event that the Council withdraws the Emerging Local Plan or, following withdrawal of the Emerging Local Plan, it fails to actively progress with the preparation of a new plan with some urgency.

What Might Intervention by the Secretary of State Look Like Following the Withdrawal of the Local Plan

- **Powers** - The Secretary of State for Housing, Communities and Local Government through provisions in the Housing and Planning Act 2016 (the 2016 Act), has substantial new powers to intervene to suspend, prepare and otherwise control the plan-making and examination process (sections 143–148 of the 2016 Act which amend provisions of the 2004 Act).
- **Exceptional circumstances not to intervene** - Based on 15 letters⁴ already sent by the Secretary of State to other local authorities for failing to progress their plans, it is not considered that the Council has grounds to argue there are exceptional circumstances why the Plan has not been progressed. The fact that Ashfield will have had two failures to take a Local Plan through examination is likely to be a significant factor in intervention.
- **Intervention** – Potential intervention by the Secretary of State is detailed above. In practice these processes are likely to be initially by a letter asking the Council to justify its lack of progress, followed by involvement of a team of experts, led by the Ministry’s Chief Planner, having direct discussions with the Council. For other authorities, the expert group is understood to have included planning consultants. The team of experts will look at the options available before recommending what steps the Secretary of State should take. It is also likely the Secretary of State’s officials will open discussion on the option of inviting Nottinghamshire County Council to prepare a Local Plan for Ashfield or alternatively planning consultants. In the interim period, the Secretary of State may issue a direction which prevents the Council taking any action in respect of the Local Plan.
- **Costs** - If the Secretary of State takes over the preparation of the Council’s Local Plan, the Council will be responsible for all the costs associated with bringing the Plan forward. At this time, there is no precise estimate as to the likely costs that he might incur. However, it is likely to be substantially in excess of undertaking the plan in-house particularly if the Secretary of State was to appoint nationally established planning consultants with expertise in local plan matters.

Financial Implications of Withdrawing the Emerging Local Plan and Developing a New Local Plan

At this stage, it is only possible to estimate the financial implications of withdrawing the local plan and developing a new plan but it is reasonable to say that the costs will be substantial. Costs will include:

- Costs of defending a potential judicial review
- Costs of developing a new Local Plan – this would include the costs of staffing resources, the costs of the studies and evidence gathering as set out above, additional consultation costs and Examination costs.
- Costs of appeals – this only becomes an issue if major applications are appealed against for refusal or non-determination.

Costs are difficult to estimate but inclusive of any legal costs, the Council could expect costs to be in the region of £500k+, based on previous experience.

⁴ <https://www.gov.uk/government/publications/local-plan-intervention-letters-to-councils>

In addition to the above estimated costs, there are potential implications to the level of S106 Developer contributions and New Homes Bonus payments which would be received by the Council.

Implications

Corporate Plan:

One of the three Council purposes is to “*act strategically and plan for the future, working with others to bring about sustainable improvements in people’s lives.*”

Housing is one of the Council’s Corporate Plan Priorities. As part of this priority, the Council has committed to:

- Influencing housing provision to ensure that there is sufficient housing available in the district of the right size, type and quality;
- Ensuring that new housing is sustainable and fuel efficient;
- Ensuring that when new housing is built that the right infrastructure is in place to create great places to live.

Economic Regeneration is also a Corporate Plan Priority. Through its development of the Local Plan, the Council has committed to ensuring that sufficient land – in the right place - is being made available to allow businesses to invest and grow in the District. This includes a need to improve transport and connectivity. To have an agreed Local Plan is a key priority of the Council. Through the Corporate Plan, the Council has also committed to proactively work with developers and other private sector partners to bring forward key development sites.

Legal:

Detailed legal advice is contained within the report. External specialist legal advice has been obtained from Queen’s Counsel who is recognised in the fields of town and country planning, infrastructure compulsory purchase, environment, administrative and local government law, highways law and property law and who regularly represents local planning authorities.

Article 4 of the Council’s Constitution sets out the role of the Council in determining the overall Budget and Policy Framework. The plans and strategies which together comprise the Local Plan are part of the Policy Framework which rests with the Council to determine (Article 4.01(a)). Section 23(5) of the 2004 Act requires a resolution of the Council to adopt a Local Plan.

Finance:

Budget Area	Implication
General Fund – Revenue Budget	Potential financial implications are set out in the report above. Estimated costs of not adopting the Plan would have to be incorporated in to a future MTFS.
General Fund – Capital Programme	N/A
Housing Revenue Account – Revenue Budget	N/A

Housing Revenue Account – Capital Programme	N/A
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Risk:

Risk	Mitigation
Risks and potential mitigations have been explored in detail in the body of the report.	

Human Resources:

There will be staffing resource implications associated with developing a new local plan in the event the Council resolves to withdraw the Emerging Ashfield Local Plan.

Equalities:

An Equality Impact Assessment has been completed. The adoption of the Emerging Local Plan would have some positive impacts in relation to protected groups in that the Plan meets the growth requirements anticipated for the District over the Plan period in policies which address issues arising for protected groups. The withdrawal of the Plan would have the effect of the Council continuing to rely on the ALPR “saved policies” until a new Plan is developed and adopted. The ALPR has been assessed as having neutral impacts in relation to the protected characteristics during the time a new Plan is developed.

Other Implications:

None.

Background Papers

[Emerging Local Plan](#)

[Additional supporting document to the Local Plan – Appendix 3](#)

Supporting documents to the Emerging Local Plan can be accessed via the Council’s website:

<https://www.ashfield.gov.uk/residents/planning-building-control-and-land-charges/forward-planning/local-plan-examination-library/>

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