

Report of:	Director of Regeneration Executive Member for Regeneration
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Submitted to:	Council
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Date:	7 September 2022
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Title:	Review of the Emerging Local Plan
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Report for:	Decision
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Status:	Public
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Strategic priority:	Physical environment
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Key decision:	No
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Why:	Choose an item.
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Urgent:	No
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Why:	
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Executive summary

This report recommends that the Council formally agrees to cease work on the emerging Local Plan, in order to allow work to begin on a new Local Plan. It also recommends that a new Local Development Scheme, which sets out the timetable for preparing the Local Plan, be approved.

The key reasons for this are:

- Significant changes to local and national policies since work on the Local Plan began, including the Green Strategy and a stronger emphasis on design quality;
- New legislation that places additional requirements on the Council;
- Different strategic priorities than those the emerging Local Plan had been seeking to deliver;
- Some of the baseline information upon which the emerging plan had been based is now out-of-date and needs updating; and
- The impacts of Brexit and the Covid-19 pandemic need to be taken into account.

The report also recommends that the Council delegates authority to the Director for Regeneration, in consultation with the Executive Member for Regeneration, to make any future revisions to the Local Development Scheme, to ensure that the timetable remains up- to-date.

Purpose

1. In order to positively respond to Covid-19, and to help deliver a greener borough through good design and high quality development, this report seeks approval to formally withdraw the emerging Local Plan, and to agree the Local Development Scheme 2022 - 2024, which sets out the timetable for preparing a new Local Plan.
2. The report also recommends that the Council delegates authority to the Director for Regeneration, in consultation with the Executive Member for Regeneration, to make any future revisions to the Local Development Scheme, to ensure that the timetable remains up-to-date.

Background and relevant information

3. Under the provisions of the Planning and Compulsory Purchase Act 2004, the Council is required to prepare a statutory development plan for the borough that sets out the policies and land allocations to guide development in the area.
4. The Council agreed to undertake a comprehensive review of the Local Plan in May 2016. The intention was to update all existing policies (except those concerning minerals and waste development) that are contained within the Housing Local Plan (2014), retained parts of the Core Strategy (2008) and Regeneration (2009) Development Plan Documents, and policies saved from the 1999 Local Plan, and bring the policies together into a single Local Plan document.

The existing adopted Local Plan

5. The Council's adopted Local Plan for the borough is made up of various documents, as follows:
 - Housing Local Plan (2014);
 - Core Strategy Development Plan Document (DPD) (2008) – retained policies only;
 - Regeneration DPD (2009) – retained policies only;
 - Tees Valley Joint Minerals and Waste Core Strategy (2011);
 - Tees Valley Joint Minerals and Waste Policies and Sites DPD (2011); and
 - Middlesbrough Local Plan (1999) – saved policies only.
6. The adopted Local Plan, as set out above, will remain the Local Plan for the borough until it is replaced by a new Local Plan.

The Emerging Local Plan

7. In November 2016, the Council undertook a public consultation on the Issues & Options Paper. This statutory plan making stage set out the intention to prepare a new Local Plan to replace the adopted Local Plan, and defined its scope in terms of topics that were to be addressed and its geographical coverage.
8. In May 2018, the Executive agreed a 'Preferred Options' Local Plan, following which a public consultation was undertaken. The feedback from this was taken into account in preparing the 'Publication Local Plan', agreed by the Council in October 2018. This was

subject to a formal period of public consultation, during which representations were sought on the soundness and legal compliance of the plan ahead of public examination by an Independent Planning Inspector.

9. In July 2019, following the local elections, the Council agreed that the emerging Local Plan should not progress to public examination, and a new timetable for preparation be pursued, in order to take into account a number of changes, namely:

- a change in priorities as a consequence of the recent local elections, such as an increased emphasis on urban living;
- additional information becoming available to enable the underpinning evidence base to be updated; and
- revisions to the Government's National Planning Policy Framework (NPPF) and the methodology used to calculate required housing numbers.

10. The Council's Planning Service has continued to update the evidence base, and draft a revised Local Plan in readiness for a new 'Preferred Options' consultation.

Subsequent issues affecting Local Plan preparation

Brexit

11. In January 2020, the UK's withdrawal from the European Union was completed. Much of the legislation upon which the planning system operates is directly affected by European Law. The European Union (Withdrawal) Act 2018 made provision to retain EU law into the UK's domestic legal framework, meaning there were no immediate implications for plan making. However, there is a Government commitment to introduce planning reforms in the near future, and these are likely to impact on the way Local Plans have to be prepared.

Covid-19

12. In March 2020, the Covid-19 pandemic resulted in a series of lockdowns, significantly reducing the ability of officers and consultants to complete research and evidence base work, and thus prepare the Local Plan. It was agreed to further delay the Local Plan in order to ensure a robust and credible evidence base upon which it could be prepared. This work is now largely complete, and it is considered that there is currently an up-to-date evidence base.

13. The longer term impacts of Covid-19 are as yet unknown. However, it is possible that assumptions around how people live, shop, work and travel could no longer be appropriate, and further consideration should be given to how this may affect the planning of the area.

Changes to National Planning Policy

14. The NPPF is periodically updated, and is important to both local plan preparation and decision-making, with the most recent changes being made in July 2021. The NPPF now places significantly more emphasis on achieving good quality design, and it is important that new local plan policies are able to ensure the best quality possible for Middlesbrough.

15. In June 2022, the Government announced that further revisions to the NPPF would be published over the summer. The new Local Plan will need to be prepared in accordance with the most up-to-date NPPF.

Council's Green Strategy

16. The Council adopted its Green Strategy in January 2021 setting out the Council's ambitious 10 year vision to develop a Green agenda to rise to the challenge of climate change and support and improve biodiversity within Middlesbrough. It sets a programme to meet Government targets for greenhouse gas emissions, and make the town more climate resilient so that it is prepared and can adapt to changes in climate and minimise the environmental impact of Council services in future. Restarting the Local Plan review will provide an opportunity to ensure that it is developed around the core principles of the Green Strategy, and ensure that they are enshrined throughout the Local Plan's policies and allocations.

Mayoral Development Corporation

17. In May 2022, the Middlesbrough Mayor and Tees Valley Mayor announced the intention to establish a Mayoral Development Corporation in Middlesbrough, under legislation associated with the Tees Valley Combined Authority. At this moment there is a lack of certainty over the impact this will have on Local Plan preparation.

Nutrient Neutrality

18. In March 2022, Natural England issued formal advice to the Council stating that new development that involved additional overnight stays, including residential and tourist accommodation, should not be approved unless 'nutrient neutrality' could be achieved. This is because there are excessive levels of nitrogen in the River Tees, which is adversely affecting the Teesmouth and Cleveland Coast Special Protection Area. New development has the potential to worsen this situation.

19. Whilst the immediate impact is on planning applications, including for developments in the existing Local Plan, it will now be necessary to consider nutrient neutrality in the new Local Plan.

Levelling-up and Regeneration Bill

20. Following the publication of the *Planning for the Future White Paper*, the Government introduced proposals to reform the planning system through the Levelling-up and Regeneration Bill. The overarching purpose of the new bill is to "*drive local growth, empowering local leaders to regenerate their areas, and ensuring everyone can share in the United Kingdom's success*", and it is expected to result in significant changes to how local plans are prepared, and how associated infrastructure will be delivered.

21. The Bill is expected to become law during 2023, and the new Local Plan will now need to be prepared in accordance with this new legislation.

New responsibilities arising from the Environment Act 2021

22. In January 2022, the new Environment Act came into force. Whilst much of this new legislation does not affect planning, there are some key aspects that will have a significant impact. The most notable of these is the introduction of Biodiversity Net Gain, where it will become a requirement for development to ensure a higher biodiversity value as a result of development than had previously existed. The Council will be expected to address Biodiversity Net Gain through the new Local Plan.

Risks of continuing to progress the emerging Local Plan

23. There are a number of risks associated with continuing to prepare the emerging Local Plan:

- The challenges facing the borough as a result of the Covid-19 pandemic are significantly different to those which the emerging plan has set out to address. There is a risk that if we pursue with the emerging Local Plan then it will not be fit for purpose in a post-Covid world;
- The amount of time that has passed since preparation commenced. The baseline position and scope were established in 2016, and it could be argued that the plan being prepared is substantially different to that originally envisaged;
- Some of the baseline information that was gathered to undertake the Sustainability Appraisal and Habitats Regulations Assessment is now out-of-date. In order to ensure the soundness of the emerging plan, it is necessary to refresh this information and consideration needs to be given to reviewing the Sustainability Appraisal objectives and indicators; and
- The change in administration of the Council means that the strategic context has altered significantly since work on the Local Plan commenced. For example, more emphasis is now being made on bringing forward urban, brownfield sites over significant greenfield extensions and making provision for a greener borough through supporting the implementation of the Green Strategy.

24. These risks significantly increase the risk of the Local Plan being found unsound at the Independent Examination stage. If this happens, the Council would not be able to adopt the Local Plan and would, instead, have to prepare a new Local Plan, with further delays and costs. In order to address these issues, it is recommended that the emerging Local Plan be withdrawn, and for the Council to commence the preparation of a new Local Plan.

Local Development Scheme

25. In accordance with the legislation, the Council is required to prepare a Local Development Scheme (LDS) that sets out its intentions for preparing a Local Plan and the proposed timetable for doing so.

26. The most recent LDS was agreed in 2020 and reflects the intentions for preparing the Local Plan at that time. As such, it is now out-of-date and a new LDS must now be agreed.

27. The new LDS for 2022 – 2024 is attached at Appendix 2, with the timetable summarised below:

Stage	Timescale	Description
Scoping Report	October 2022 Consultation November 2022 – January 2023	Formal commencement of the new Local Plan
Draft Local Plan	June 2023	A non-statutory stage that provides the opportunity for the

Stage	Timescale	Description
	Consultation June – July 2023	Council to set out its preferred approach and to engage with the community on the emerging policies
Publication Local Plan	October 2023 Consultation October - December 2023	Statutory stage, seeking formal representations on the Local Plan that the Council wishes to adopt
Submission	April 2024	Formal submission to the Secretary of State.
Public Examination	April - August 2024	Independent Examination of the Plan to determine legal compliance and soundness. Can only be adopted if found to be sound
Adoption	September 2024	Formal adoption of the new Local Plan by the Council

Next Steps

28. In order to restart work on the Local Plan, it is necessary to formally withdraw the emerging Local Plan. A Withdrawal Statement will be prepared and publicised in accordance with the legislation.
29. The Local Development Scheme will be placed on the Council's website, and kept under review.
30. A further report will be brought to the Council to seek approval for a Local Plan Scoping Report, which will detail what the new Local Plan will cover. This report will formally commence the preparation of a new Local Plan. It is expected to be brought to the Council in October 2022, following which there will be a period of public consultation on the Local Plan Scoping Report.

What decision(s) are being recommended?

31. That the Council:

1. In order to positively respond to Covid-19, and to help deliver a greener borough through good design and high quality development, approves the formal withdrawal of the emerging Local Plan; and
2. Approves the Local Development Scheme 2022 – 2024;

3. Delegates authority to the Director of Regeneration, in consultation with the Executive Member for Regeneration, to make future amendments to the Local Development Scheme.

Rationale for the recommended decision(s)

32. The withdrawal of the emerging Local Plan will allow the Council to reconsider the scope and strategic direction of the new Local Plan, to ensure it aligns to the Executive's preferred approach and reflects current and emerging Government policy and legislation. It will allow full consideration of the infrastructure required to support the development programme being pursued. It would also enable the baseline data to be updated, including the environmental information, which would help ensure the soundness of the plan and its compliance with the legislation.
33. The approval of the Local Development Scheme 2022 – 2024 would confirm the programme for preparing the new Local Plan and ensure the Council meets its statutory obligation to publish and maintain an up-to-date LDS.

Other potential decision(s) and why these have not been recommended

34. **Continue to prepare the emerging Local Plan.** This is the currently agreed course of action. As detailed above, there have been significant changes to the policy and legislative context within which the plan must be prepared, and it is considered that there are substantial risks in continuing to prepare the emerging Local Plan. The risks are detailed in paragraph 23, and it is highly likely that the Local Plan would be found unsound if this options was pursued. Being found unsound would further delay the adoption of a new Local Plan and would have substantial financial implications.

Impact(s) of the recommended decision(s)

Legal

35. The withdrawal of the emerging Local Plan must be undertaken in accordance with the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012.
36. Decisions on the statutory stages of the Local Plan are a non-executive function, and must be made by the Council as required by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and the Council's Constitution.
37. There is a statutory requirement for the Council to prepare a Local Plan for the borough. A further report will be brought to the Council to seek approval for a Local Plan Scoping Report, which will satisfy the legal requirements governing commencing preparation of a new Local Plan.
38. There is a statutory requirement for the Council to publish a Local Development Scheme and keep it up-to-date.
39. The adopted Local Plan for the borough will not be affected by this decision, and will continue to be used in the determination of planning applications until a new Local Plan is prepared.

Strategic priorities and risks

40. The following risks are considered to be affected by this report:

O8-055	If the Council doesn't respond effectively and efficiently to legislative changes it could be in breach of statutory duties in relation to service delivery and fail to make the most of opportunities.	<p>The proposal to withdraw the emerging Local Plan has been considered in accordance the legislation and latest Government guidance. The proposal will provide the opportunity to best ensure legislative requirements will be satisfied, so this will have a positive impact on this risk.</p> <p>Continuing to prepare the emerging Local Plan presents a risk that it will be found unsound through the examination process, resulting in having to restart the work in any case.</p>
O1-005	If poor economic growth occurs, then this will reduce public and private sector investment in the town, including town centre retail, housing development and business.	The development of a new local plan will support the revitalisation of the town with urban housing etc. so will have a positive impact on this risk.
O1-051	A major downturn in housing growth that results in a significant decline in new housebuilding in Middlesbrough, resulting in lower house building rates lower Council Tax receipts and thereby increasing the risk of impact on successful delivery of the MTFP.	By producing a new local plan with revised base data this will ensure that the correct data is being utilised and that any links with the MTFP will be more accurate so this will have a positive impact on this risk.
O1-052	Substantial areas of the town have high residential voids/low sales values and high population churn, effectively creating market failure resulting in significant social consequences which in turn have implications for Council resources and service delivery. Such an approach is unsustainable and will result in the need for significant market invention at great cost to the Council.	By reviewing the local plan it will create a positive planning framework for areas across the Borough but with the new strategic direction this will look at the revitalisation of the town centre so this would have a positive impact on this risk.

Human Rights, Equality and Data Protection

41. The proposal to withdraw the emerging Local Plan has been subject to an initial Impact Assessment (IA), which accompanies this report (see Appendix 1). This identifies that a full IA is not necessary.

Financial

42. The costs associated with preparing, implementing and monitoring the Local Plan can be broadly categorised as follows:

- **Staff time.** The majority of the work on the Local Plan is undertaken by the Strategic Policy Team, with input from other service areas as and when required. Staff costs are met from existing departmental revenue budgets, supplemented through grants and funds secured from Section 106 agreements;
- **Maintaining an up-to-date evidence base.** It is important that the Local Plan is based on a robust and credible evidence base, so that policies relate to local circumstances and take into account broader corporate aims and objectives. The evidence base is a combination of work done in-house by Council staff and studies completed by external consultants and is most often updated in response to changes in national policy and legislation, in addition to more localised factors.

The evidence base is additionally used for the implementation of existing policies and in the consideration of planning applications. Critically, it helps deliver the Council's Capital Programme. As such, it is important that it is continually kept up-to-date, whether or not a Local Plan is being prepared.

The costs associated with maintaining the evidence base are partly met from existing departmental revenue budgets. However, a significant proportion is met through capitalisation due to its relationship with the Council's Capital Programme.

The average cost of maintaining the evidence base averages circa. £85,000 per annum. The total costs of maintaining the evidence base when the emerging Local Plan was being prepared (i.e. between 2016 and 2019) was circa. £230,000. Since 2019, the evidence base has continued to be updated at a total cost of circa. £205,000. These studies, and a number of the earlier ones, are used in considering planning applications, and are still considered to be sufficiently robust to underpin the preparation of the Local Plan. The commissioning of any further studies/work will primarily be the result of changes to legislation and national policy; and

- **Examination costs.** The Local Plan must be subject to an Independent Examination, and found to be 'sound', before it can be adopted by the Council. The Examination is undertaken by a Government-appointed Planning Inspector. The costs associated with this can vary but are usually circa. £100,000, financed through existing budgets. They are normally the most significant one-off cost associated with preparing a Local Plan. No examination costs have been incurred from Local Plan preparation since 2014.

43. The decision to withdraw the emerging Local Plan, and commence work a new Local Plan, will be met through these established departmental budgets.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
The Council is required to issue a formal notice of withdrawal, and notify the statutory and general consultees in accordance with the regulations.	Alex Conti, Strategic Policy Manager	September 2022
The Local Development Scheme will be published on the Council's website.	Alex Conti, Strategic Policy Manager	September 2022
A further report will be brought to a future meeting of the Council to seek agreement to formally commence work on a new Local Plan.	Alex Conti, Strategic Policy Manager	October 2022

Appendices

1	Initial Impact Assessment of the proposal to withdraw the emerging Local Plan
2	Middlesbrough Council Local Development Scheme 2022 – 2024

Background papers

Body	Report title	Date

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