



Rutland County Council

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Members of Rutland County Council District Council are hereby summoned to attend the **TWO HUNDRED AND THIRTY FIRST (SPECIAL) MEETING OF THE COUNCIL** to be held at the Rutland Showground, Showground Way, Oakham, on **1 September 2021 commencing at 7.00 pm**. The business to be transacted at the meeting is specified in the Agenda set out below.

Prior to the commencement of the meeting, the Chairman will offer the opportunity for those present to join him in prayers.

Recording of Council Meetings: Any member of the public may film, audio-record, take photographs and use social media to report the proceedings of any meeting that is open to the public. A protocol on this facility is available at www.rutland.gov.uk/my-council/have-your-say/

Although a public gallery will be available there is anticipated to be a maximum of 60 seats available and seating will only be reserved for those presenting petitions, deputations or questions, with all other seating available on a first come first serve basis. Members of the public wishing to observe the meeting are therefore encouraged to listen to the audio stream available online at <https://us06web.zoom.us/j/85261800870>

Mark Andrews
Chief Executive

A G E N D A

- 1) **APOLOGIES**
- 2) **CHAIRMAN'S ANNOUNCEMENTS**
- 3) **ANNOUNCEMENTS FROM THE LEADER, MEMBERS OF THE CABINET OR THE HEAD OF PAID SERVICE**
- 4) **DECLARATIONS OF INTEREST**

In accordance with the Regulations, Members are invited to declare any disclosable interests under the Code of Conduct and the nature of those interests in respect of items on this Agenda and/or indicate if Section 106 of the Local Government Finance Act 1992 applies to them.

5) PETITIONS, DEPUTATIONS AND QUESTIONS FROM MEMBERS OF THE PUBLIC

To receive any petitions, deputations or questions received from members of the public related to items on the agenda in accordance with the provisions of Procedure Rules 24 and 28. The total time allowed for this is 30 minutes. Petitions, deputations, and questions must be made in person and will be dealt with in the order in which they are received, any which are not considered within the time limit shall receive a written response after the meeting.

Any petitions or questions must be received by 4:30pm on the second working day before the meeting, due to the Bank Holiday on Monday, 30 August this will be on Friday, 27 August. Requests to make deputations must be received by 12pm on the day of the meeting.

6) QUESTIONS FROM MEMBERS OF THE COUNCIL

To receive any questions submitted from Members of the Council in accordance with the provisions of Procedure Rules 30 and 30A.

7) RUTLAND LOCAL PLAN (Pages 3 - 30)

To receive Report No. 105/2021 from the Strategic Director of Places.

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TO: MEMBERS OF THE COUNCIL

Mr J Dale – Chairman of the Council
Mr N Begy – Vice-Chairman of the Council

Mr P Ainsley	Mr E Baines
Mr D Blanksby	Mr K Bool
Mr A Brown	Mr G Brown
Mr P Browne	Ms J Burrows
Mr R Coleman	Mr W Cross
Mr O Hemsley	Mrs L Stephenson
Mr A Walters	Mr D Wilby
Mrs J Fox	Mrs S Harvey
Miss M Jones	Mr A Lowe
Ms A MacCartney	Mr M Oxley
Mrs K Payne	Mrs R Powell
Mr I Razzell	Miss G Waller
Mrs S Webb	

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THE COUNCIL'S STRATEGIC AIMS

- Delivering sustainable development
- Vibrant Communities
- Protecting the vulnerable
- Customer-focussed services

COUNCIL

1st September 2021

RUTLAND LOCAL PLAN

Report of the Strategic Director of Places

Strategic Aim:	Delivering sustainable development	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mr O Hemsley - Leader of the Council and Portfolio Holder for Policy, Strategy and Partnerships, Economy and Infrastructure Mr I Razzell - Portfolio Holder for Planning	
Contact Officer(s):	Penny Sharp, Strategic Director of Places	Tel: 01572 758160 psharp@rutland.gov.uk
	Roger Ranson, Planning Policy and Housing Manager	Tel: 01572 758238 rranson@rutland.gov.uk
Ward Councillors	All Councillors	

DECISION RECOMMENDATIONS

That Council:

1. Withdraw the submitted Local Plan (submitted to Government in February 2021) under Regulation 22 of the Local Plans Regulations from the process of Examination in Public following the decision made by Council on 22nd March 2021 not to accept the offer of £29.4m Housing Investment Fund (HIF) grant funding which has impacted the viability and deliverability of the proposed St. George's Garden Village scheme and, therefore, the wider development strategy affecting the soundness of the Local Plan.
2. Approves the creation of an earmarked reserve of £1,395,000 to resource the making of a new Local Plan for the County and operating without a plan (as detailed in Section 5) and that authority be delegated to the Strategic Director of Places and the Section 151 Officer in consultation with the Portfolio Holder for Planning and the Portfolio Holder for Finance, Governance and Performance, Change and Transformation to release funds from the earmarked reserve as required.
3. Approves that Council receives a quarterly statement of the Budget position in light of the cost uncertainty so that it can track whether the earmarked reserve is sufficient or can be released accordingly.

4. Approves the need to positively prepare and submit a new Local Plan informed by an updated evidence base for the benefit of the County of Rutland, its residents and businesses that will:
 - i. Deliver the corporate plan vision and themes for the County;
 - ii. Provide for sustainable growth to meet its objectively assessed housing and employment needs, utilising and promoting sustainable transport wherever possible, which will combine to contribute towards achieving the Government's net zero carbon emissions 2050 target;
 - iii. Protect and enhance the County's heritage, character and natural capital (including air quality, water resource management and biodiversity); and
 - iv. Ensure the timely delivery of all necessary infrastructure.
5. Approves the development of robust and effective strategic partnerships to support plan-making through the duty to cooperate and required for a viable, deliverable and sound plan.
6. Approves the establishment of a cross-party group to provide oversight of the process of making a new Local Plan and delegates authority to the Strategic Director of Places in consultation with the Portfolio Holder for Planning to establish a governance structure in line with the Corporate Project Management governance framework.

1 PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to advise Council to withdraw its submitted Rutland Local Plan (Local Plan) from the Examination in Public following the decision made by Council on 22nd March 2021 not to accept the £29.4m Housing Investment Fund grant awarded to support the delivery of infrastructure and a new garden community at St. George's Barracks.
- 1.2 The report also seeks approval to undertake the preparation of a new Local Plan for Rutland and for additional resources to support this work and mitigate the impact of being without a five year housing land supply.

2 BACKGROUND AND MAIN CONSIDERATIONS

Draft Rutland Local Plan – Submission for Examination In Public

- 2.1 On 10th February 2020 Council approved the Local Plan for its statutory consultation under Regulation 19 of the Local Plan Regulations. [The Town and Country Planning (Local Planning) (England) Regulations 2012 ¹ as amended]
- 2.2 The Regulation 19 Local Plan included the strategic allocation for a garden village at St. George's barracks site. In November 2019 Government announced its decision to award £29.4m Housing Infrastructure Funding (HIF) to the St. George's Garden Village scheme. As a result, it was considered that there was sufficient

¹ <https://www.legislation.gov.uk/uksi/2012/767/contents>

evidence to justify the allocation of the St. George's site within the Local Plan although the terms and conditions of the HIF grant were not agreed prior to Local Plan submission.

- 2.3 In line with the resolutions of the Council meeting in February 2020, the Local Plan was subject to Regulation 19 consultation. Following consideration of all responses received the Local Plan was submitted to the Government in February 2021 for public examination under Regulation 22. The Planning Inspectorate subsequently appointed a Planning Inspector to hold an independent examination of the Rutland Local Plan (2018-2036).
- 2.4 The purpose of the public examination of local plans and spatial development strategies is to assess whether plans have been prepared in accordance with legal and procedural requirements, and whether they are sound. At the time of submitting the Local Plan to Government it was considered that it met these requirements and the test of soundness as set out in the National Planning Policy Framework (NPPF)².

Housing Infrastructure Funding Grant

- 2.5 In March 2021 Council decided not to accept the £29.4m Housing Infrastructure Fund (HIF) grant from Homes England towards the early delivery of infrastructure to support the comprehensive development of St George's Barracks as a garden village. This decision created a viability gap for the St. George's Garden Village scheme, undermining the deliverability of the site.
- 2.6 Following the decision not to accept the HIF grant the appointed Planning Inspector wrote to the Council on 24th March 2021 advising of her decision to pause the Examination process to enable the Council to consider the implications and confirm its intentions regarding the Examination.

"In order to avoid wasted time and expense to the Council and other participants, it is not sensible for the Examination process to progress further at this stage without a clear understanding of the potential implications of this significant development for the Examination."
(Extract from Planning Inspector Letter at Appendix 1)

Confirmation of Council Intentions for the Examination In Public

- 2.7 Since the Council decision in March 2021 discussions have taken place between the Ministry of Defence (MoD) as landowner, Ministry of Housing, Communities and Local Government (MHCLG), Homes England and the Council to explore whether there was an alternative funding mechanism to address the £29.4m viability gap. The MoD has now confirmed that it has not proved possible to secure an alternative to the HIF grant.
- 2.8 In light of this situation, it is important for Council to confirm its intentions regarding the Examination of the Local Plan. This is necessary to provide clarity for the Planning Inspector, landowners, the market, other stakeholders, officers and most importantly the County's residents and businesses.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf

- 2.9 When approving the Regulation 19 Local Plan in February 2020 Council resolved to:
- “Support the Local Plan to be Submitted (Regulation 22) to Government for its Independent Examination in Public, unless any unforeseen and significant issues arise post Publication that would require re-consideration of the Local Plan...” (Council Minutes 10th February 2020)
- 2.10 The current position regarding the viability and, therefore, the deliverability, of the St. George’s site is a significant issue that impacts the submitted Local Plan. As such, Council now needs to consider how it proceeds with a Local Plan for Rutland.
- 2.11 Without grant funding there is insufficient evidence to justify the proposals for St. Georges in terms of viability and deliverability. This is in line with the findings of the Local Plan Whole Plan Viability Study (WPVS). Given the strategic significance of the St. George’s allocation in the submitted Local Plan this means that the wider development strategy is undermined, and it is no longer possible to demonstrate that the Plan meets the test of soundness. For this reason, Council is advised to withdraw its submitted Local Plan from the Examination process and notify the Planning Inspector accordingly. The Council will need to publish a statement about its intention to withdraw the Local Plan for six weeks and then give notice [under Regulations 27 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012, as amended].
- 2.12 It is not possible to mitigate the situation with the St. George’s site by making amendments to the approved policies in the Local Plan. As the Local Plan has been submitted for examination, any modifications would have to arise from the examination process and be recommended by the Planning Inspector. If the Council wanted to amend the Local Plan then it has to be withdrawn and a new plan prepared. As the Local Plan commenced in 2015 its evidence base is in some respects becoming dated. Taking account of the NPPF imperative to plan for at least 15 years ahead the withdrawal of the Local Plan will require starting on a new one from the beginning, including updating the evidence base, and likely extending the plan period for this plan for a period up to 2041.

Implications of the Withdrawal of the Local Plan

- 2.13 The issues and risks associated with withdrawing the Local Plan are summarised in Appendix 2.
- 2.14 The withdrawal of the Local Plan will result in the County being without an up-to-date strategic policy framework to meet its identified housing and other development needs. The policies in the Local Plan will have no weight in determining planning allocations. The Core Strategy, Minerals Core Strategy and Site Allocations and Policies DPD will all remain part of the Development Plan for the County, alongside made Neighbourhood Plans. Whilst most of these policies pre-date the current National Planning Policy Framework and so are increasingly dated they will still carry a degree of weight, depending upon the particular policies and circumstances, in determining future planning applications.
- 2.15 The Council has recently published the calculation of the housing land supply as being 5.2 years, this was on the basis of a number of sites allocated in the Local Plan considered to be deliverable over the course of the next five years. A planning

application for one of these sites has recently been submitted and approved, however, in the absence of the Local Plan then the assessed housing supply will fall below 5 years. As such, the County will be potentially vulnerable to the approval of unplanned, ad-hoc development, which may not deliver the benefits or infrastructure achievable through planned growth in accordance with an up-to-date plan.

- 2.16 Paragraph 11(d) of the NPPF states that Councils without a 5 year housing land supply should grant permission for new housing development, unless and to the extent that any other policies in the NPPF that protect areas or assets of particular importance provide a justifiable reason for refusing the development proposed, or that any adverse impacts of approving proposals would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole.
- 2.17 The implication for the St. George's Barracks site is that there will no longer be an emerging policy basis for its redevelopment. The site remains in the MoD's estate disposal programme (Defence Estate Optimisation Portfolio) and is scheduled to be fully vacated in 2024. On vacation, the land within the curtilage of the site will meet the definition of previously developed land ("brownfield land") as set out in the NPPF. As landowner the MoD will be considering all its options. These could include 'meanwhile' or temporary uses, alternative uses, selling the site, or promoting a new viable and deliverable scheme for consideration and assessment as part of the process of making a new local plan. As St. George's Barracks is Crown Land the MoD does have additional permitted development rights in limited circumstances to carry out certain development without requiring a planning application to be made as set out in Part 19 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.
- 2.18 Withdrawing the Local Plan will also mean that there will no longer be an emerging policy basis in Rutland for the Quarry Farm allocation of 650 homes. This site is identified in South Kesteven's adopted Local Plan as an integral part of the comprehensive Stamford North Sustainable Urban Extension (SUE) and contributes to the housing need for the sub-regional Strategic Housing Market. The Council has committed to provide the 650 homes to meet this housing need under the statutory Duty to Co-operate. Although the housing numbers allocated at Quarry Farm only begin to contribute to the South Kesteven housing supply in year 6 of its housing trajectory, the scheme is considered necessary to enable the comprehensive development of the SUE and secure the associated infrastructure (e.g. link road and primary school). The Council will be able to reconsider the strategy for Quarry Farm as part of the process of making a new local plan taking into account any legal considerations, the duty to co-operate and the refreshed evidence base of the objectively set housing need. The Council will have to consider its position if an application for the Quarry Farm site is made in the interim.
- 2.19 Given the rate of completions over the last 2 years, there is a risk of impact on Rutland's Housing Delivery Test (HDT) if supply is constrained. The HDT compares the net homes delivered over the previous three financial years to the homes required over the same period, with penalties for those councils delivering less than 95 per cent of their requirement. The most severe penalty is for those Local Planning Authorities that deliver under 75% for the previous three years and which would face the application of the 'presumption in favour of sustainable development', on the basis of the development plan being considered out of date.
- 2.20 Withdrawing the Local Plan will have implications for some services and affect the

ability to plan for the longer term, for example, school place planning, public transport planning and health provision. Also, as a result of withdrawing the Local Plan the workload in some services is likely to increase with additional complex major planning applications, in particular Development Management, Highways and Legal. These service areas are already under pressure due to a significant increase in demand. Within the first quarter of this calendar year Development Management had received major planning applications that equated to half of the previous year's total major applications. Similarly, in the calendar year to date the Highways service has received approximately the same number of service requests to the entire total from last year (and in 2020 experienced a 27% increase service requests from 2019). Without a five year land supply these services are expected to experience further increases in demand. It will be necessary to invest in additional staff resources to provide the Council with the ability to negotiate the best outcomes for the County within this new policy context.

Preparation of a New Local Plan

- 2.21 It will be important to prepare a new Local Plan in a timely fashion as there is a Government requirement that a plan is adopted by the end of 2023. There is the possibility of sanctions being placed on the Council if this deadline is not met. The Neighbourhood Planning Act 2017 provides for Government intervention in the local plan making process. This is a risk identified in Appendix 2.
- 2.22 It is anticipated that it will take approximately 3 to 4 years to take a new local plan through to adoption. An indicative project timeline is included in Appendix 3. This is an ambitious programme and the time involved will be dependent on agreeing the strategy for development. Whilst it will not now be possible to meet the Government deadline given the statutory processes involved it remains important to prepare a new local plan as soon as possible, particularly to enable all people and businesses in Rutland to be engaged in shaping its future.
- 2.23 The legal advice is that in making a new plan the Council should in the circumstances revert to the 'Issues and Options' stage of the process. This will enable the County to determine an appropriate development strategy for Rutland, supported by a robust Sustainability Appraisal and Habitats Regulation Assessment. This will involve a new 'Call for Sites' to be considered for allocation in a new local plan for both housing and employment.
- 2.24 There is a need to review the evidence base that has informed the Local Plan and determine where that evidence needs to be updated, added to or replaced. Appendix 4 details the evidence that will be required initially to make a new plan and includes an assessment of the likelihood that additional work will be required and indicative associated costs (detailed in Section 5).
- 2.25 By their nature Local Plans tend to be contentious. Whilst there will remain opposing views it is important to progress a new plan in manner that is positive, evidence-based, objective, respectful and collaborative to secure the best outcome for the future of the County. It is recommended that a cross-party working group be established to provide oversight of the local plan process and in line with the Council's existing Governance framework. It is also proposed to invest in a comprehensive community engagement approach. This can build on the Future Rutland conversation and encourage the participation of all stakeholders in determining the most appropriate land use and development policies for the County.

3 CONSULTATION

- 3.1 Four stages of consultation took place on the current emerging Local Plan. These were the Issues and Options in 2015, the Consultation Draft in 2017, the focussed consultations in 2018 regarding additional sites promoted for development as well a tailored consultation regarding the implications of incorporating the proposed garden community at St. George's into the Local Plan, and finally the statutory Regulation 19 consultation undertaken in 2020.
- 3.2 In withdrawing the Local Plan the Council will need to commit to making a new Local Plan that will enable public consultation and comprehensive community engagement in line with the plan-making process.

4 ALTERNATIVE OPTIONS

- 4.1 The Council could decide to proceed to the Examination in Public with the submitted Local Plan in the anticipation that the MoD as landowner could demonstrate viability and deliverability of the St. George's site at that time. Any re-profiling of the financial model for delivering St. George's is liable to be based on re-profiling the infrastructure delivery and may risk the scheme not complying with the Local Plan policies H2 and H3. Both the Whole Plan Viability Study and the HIF business case identified a viability gap for the St. George's garden village scheme and it is unlikely that the MoD would be in a position to demonstrate deliverability at Examination without identified grant funding. The Council would incur additional costs in proceeding to Examination with a high risk that the Local Plan would be found not to be sound.
- 4.2 The Constitution allows for Council to revisit a decision after six months has passed. As the decision not to accept Housing Infrastructure Funding was made on 22nd March 2021 the Council could choose to reconsider accepting the HIF grant after 22nd September 2021. Homes England has confirmed that there remains an option for the Council to enter into a tripartite grant agreement for HIF on the basis proposed earlier this year. Homes England has also indicated that it would be willing to extend the spend deadline to March 2025. Pursuing this option would require further negotiations with MoD and Homes England and for all parties to commit to the contractual obligations of the Grant Determination Agreement (Homes England, the Council and MoD) and the Allocation Agreement (the Council and MoD). As this would be subject to governance approvals by Council and MoD it is not possible at this stage to confirm whether all parties could commit to the contractual obligations.

5 FINANCIAL IMPLICATIONS

5.1 Overview

- 5.2 In assessing financial implications we need to consider two issues:

The Council's Medium Term Financial Plan presently shows a £1.9m deficit from 22/23 (as per Outturn report) and a level of General Fund balances of £11.065m (projected for 1 April 2022). The MTFP does not include any budget for a new local plan. Any additional cost, of whatever size, therefore will reduce the level of General Fund reserves.

- 5.3 In this context, the Council has sought to achieve two objectives in putting together a budget:

- 5.3.1 Minimise the budget requirement in the context of the MTFP; and
- 5.3.2 Seek budget certainty, as far as possible, so that Members are clear on the financial position and costs and any associated risks.
- 5.4 The process for developing the budget has involved a draft budget being prepared by the Planning team with contributions from Legal and others. The draft budget has then been reviewed and challenged by the Finance team and Section 151 Officer. In undertaking this review, Finance have consulted with other authorities regarding the costs involved and also have access to the historic costs of developing a local plan at Rutland.
- 5.5 **Local Plan Historic Costs**
- 5.6 Between 2015/16 and 2020/21, the Council spent £1.193m on the emerging Local Plan. The costs comprise two elements – internal costs (£711,386 - time spent by officers in planning, finance, governance, chief executive etc) on the local plan process (hence funding already in the budget) and marginal costs (£481,787 additional costs incurred mainly through third parties for work associated with the Local Plan, this is included in Appendix 4). It is the **marginal costs** which represent a pressure to the MTFP.
- 5.7 The withdrawal of the existing plan will release £150k of funding (previously approved by Council) which can be put towards a new budget.
- 5.8 **New plan estimated costs**
- 5.9 The historic costs are useful in that they give an insight, to some extent, into future costs. However, it is not safe to assume that the development of a new plan will cost the same as the existing plan. There are various reasons for this:
- there are new requirements associated with a new plan e.g. Digital interactive mapping and climate change metrics;
 - some activity undertaken and costs were previously done jointly with South Kesteven District Council and the Council may not benefit from economies of scale;
 - inflation e.g. the same activity will now cost more a few years on;
 - some information previously deemed adequate is now considered dated e.g. Strategic Flood Risk Assessment;
- 5.10 In developing the new local plan costs, the Council has listed the works required (detailed in Table A of Appendix 4). Each work element has been assessed in terms of its certainty i.e. is it likely to be needed? This shows clearly that there is a great degree of certainty about what is required to develop the plan in accordance with statutory and regulatory requirements. For the same elements, the Council has then estimated a minimum and maximum cost and assumed a mid-point for budgeting purposes. Figures have been informed by a combination of historic costs, information from other Councils and in some cases Officer estimates/judgements. Costs have also been classified with a certainty rating reflecting the risk associated with cost estimates. Members will note that most elements of work will be commissioned externally and estimates are not certain.

- 5.11 One of the key areas of uncertainty relates to legal costs in respect of ensuring compliance and the impact of any judicial review. We have used historical costs as a proxy but there is no method commonly used by authorities to predict this figure. It therefore remains a key cost risk. Our discussions with other councils illustrate the unpredictable nature of legal costs. For example, Guildford budgeted £300k for the risk of judicial review. In late 2020 Harrogate Borough Council was subject to a successful Judicial Review post-adoption of its Local Plan with an award to pay 15% of the claimant's costs (value undisclosed).
- 5.12 Taking all of the calculations together, the marginal cost (additional pressure to the MTFP) of producing a new local plan is estimated to be between circa £725,500 and £1,154,000 as detailed in Appendix 4. The mid-point is £939,750. The internal costs (as defined in 5.7) will be in the region of £509k.
- 5.13 As noted above, this is a best estimate at the current time and will depend upon the actions the Council takes, the challenges it faces during the course of preparing a new plan and potentially any changes imposed through the proposed Planning Bill.
- 5.14 **Costs associated with no Local Plan in place**
- 5.15 There are costs arising from the Council not having a current plan and 5- year housing land supply. These are detailed in Appendix 4, Table B.
- 5.16 Additional staff resources will be required in Development Management and Highways to support the determination of planning applications and negotiation of associated highways requirements. It is proposed to establish 2.6FTE within Development Management and 1FTE in Highways. These resources would have also been required to support the implementation of the Local Plan although it was anticipated that they would have been funded through a Planning Performance Agreement for St. George's Garden Village. The costs for the new plan include staff resources for a period of four years to provide the capacity to secure the best outcomes for the County within this new policy context. The total estimate for these costs is £670k over four years.
- 5.17 Should the Planning Committee refuse a planning application, this could be appealed on the basis that it may prove difficult for the Council to demonstrate a 5-year land supply. The Council anticipates the costs of appeals is between £7.5k - £18k for each case. Presently, the Council is aware of ten potential applications and so has estimated a provisional sum of £130k. Again, this is an area of uncertainty and will depend on the decisions made by the Committee.
- 5.18 To help offset the additional costs it is possible to anticipate some additional planning income. The Council is aware of six potential development sites that could be brought forward for planning consent. It is difficult to estimate the potential income with any certainty as costs depend on the scale of development (number of homes and size of site) and also the nature of the planning application (e.g. outline consent with all matters reserved or full planning permission). Based on the six known development sites it is estimated that potential planning income could range from £136,600 to £252,300. Planning income is entirely dependent on the market. These six sites may or may not apply for planning permission, equally there may be other landowners/developers that choose to apply for planning consent in the current policy context.

- 5.19 Planning application fees are primarily set nationally so there is limited discretion for the Council to vary these other than through negotiating Planning Performance Agreements (PPAs) for specific developments. Planning Performance Agreements (PPA) are voluntary arrangements with a developer agreeing to pay an agreed fee for a specified level of service from the Local Planning Authority. They tend to be used for large-scale developments. Negotiations were advanced in agreeing a PPA for the St. George's Garden Village. To date there has been limited interest from the developer in pursuing a PPA for Quarry Farm.
- 5.20 The estimated net cost of not having a current plan ranges between £441k (minimum) and £770k (maximum) with a mid-point c£605k. The level of certainty around this figure is low given the risks highlighted above but represents the best view at this time.
- 5.21 **Wider MTFP impacts**
- 5.22 Local Plans play a key part in the delivery of new housing, which impacts the amount of infrastructure investment needed, S106/CIL requirements, and ultimately Council Tax base projections. Withdrawing the Local Plan could potentially further impact the Medium-Term Financial Plan but at this stage the impacts are not measurable.
- 5.23 **Funding the additional cost and impact on the MTFP**
- 5.24 The Council estimates the costs of developing a new plan and mitigating risk of no plan to be £1.545m (£939,750k – see para 5.13 plus £605,636k – see para 5.21). As the withdrawal of the existing plan will release £150k of funding (previously approved by Council), the marginal impact on the MTFP will be £1.395m.
- 5.25 It is recommended that Council approve the creation of an Earmarked Reserve of £1,395,000 by transferring funds from the General Fund and that authority is delegated to the Strategic Director – Places and the Section 151 Officer in consultation with the Portfolio Holder for Planning and the Portfolio Holder for Resources to release funds annually from the earmarked reserve as required to support the new local plan process.
- 5.26 Whilst the Section 151 Officer is satisfied that the budget has been developed with appropriate due diligence and in light of the best information available, concerns remain over the certainty of the budget and level of uncontrollable factors. On this basis, it is also recommended that a statement for Council is produced quarterly showing actual costs against the budget and that the forecast budget is updated should more information become available. In the context of the MTFP, it is imperative that any possible changes (up or down) to the £1.395m budget are known quickly so that the Reserve can be increased or released.
- 5.27 The impact on the Council's Revenue Budget is significant. The proposed approach above means that the Council's General Fund reserves will now be £9,670,619 rather than £11,065,619 and that the Council will have less of a cushion as it seeks to reduce its projected deficit for 22/23 of c£1.9m.

6 LEGAL AND GOVERNANCE CONSIDERATIONS

- 6.1 The National Planning Policy Framework sets out the tests that Local Plans and Spatial Strategies should meet to be considered 'sound'. Plans are 'sound' if they are:

a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.

6.2 It is considered that the submitted Local Plan is now unlikely to demonstrate that it is ‘Effective’ given the current position with the St. George’s Garden Village allocation undermining both the viability and deliverability of the site and the wider development strategy. As such, the submitted Local Plan is unlikely to meet the test of soundness and Council is advised to withdraw it from the Examination process.

6.3 The power to withdraw a local plan prior to adoption is set out in Section 22 of the Planning and Compulsory Purchase Act 2004, which provides for a local planning authority to withdraw a local development document at any time prior to its adoption under Section 23.

6.4 As soon as reasonably practicable after withdrawing it, the Council will have to make a statement about the withdrawal available on the Council’s website and for inspection at its offices for six weeks and give notice (under Regulations 27 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012, as amended).

6.5 A decision to withdraw is subject to challenge by way of Judicial Review if there are grounds to do so. If a challenge were to be successful, the Council would be liable for the other parties’ costs as well as its own. The Council would defend any such challenge and seek costs if successfully defended however cost recovery is unlikely.

6.6 The Neighbourhood Planning Act 2017 provides for intervention in the local plan making process. The Secretary of State has previously indicated that the Government may use these powers to intervene for councils who have failed to meet their deadlines for publishing local plans. The recommendation to commence work on a new Local Plan if the current one is withdrawn is considered the best way for the Council to avoid Government intervention.

6.7 A new Local Plan will need to comply with planning legislation that requires procedural fairness and the need to meet the Equality Act. The regulatory framework is provided by the Planning and Compulsory Purchase Act 2004 (as amended) and related statutory instruments. Once adopted it will form part of the statutory development plan.

7 DATA PROTECTION IMPLICATIONS

7.1 A Data Protection Impact Assessments (DPIA) has not been completed.

8 EQUALITY IMPACT ASSESSMENT

8.1 An Equality Impact Assessment (EqIA) has not been completed.

9 COMMUNITY SAFETY IMPLICATIONS

9.1 None directly identified as part of this stage of decision making.

10 HEALTH AND WELLBEING IMPLICATIONS

10.1 None directly identified as part of this stage of decision making.

11 ORGANISATIONAL IMPLICATIONS

11.1 Environmental implications

11.2 None directly identified as part of this stage of decision making.

11.3 Human Resource implications

11.4 These are covered in the body of the report.

11.5 Procurement Implications

11.6 The Council is responsible for procuring the services associated with preparing a new Local Plan following financial regulations and procedures.

12 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

12.1 Without grant funding for the St. George's Garden Village there is insufficient evidence to justify the proposals for its strategic allocation within the Local Plan in terms of viability and deliverability. Given the strategic significance of the St. George's allocation in the submitted Local Plan the wider development strategy is also undermined, and this means it is no longer possible to demonstrate that the Plan meets the test of soundness. For this reason, Council is advised to withdraw its Local Plan from the Examination process and notify the Planning Inspector accordingly.

12.2 Without an up-to-date Local Plan, planning applications in the area will be determined in line with the National Planning Policy Framework's presumption in favour of sustainable development. Where the policies most important for determining an application are out of date (including where there is not a 5 year supply of deliverable housing sites) then this means granting planning permission, unless

- i) There are policies in the NPPF that protect areas or assets of particular importance that provide a clear reason for refusing the proposed development; or
- ii) Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

It is recommended, therefore, that Council fund additional staff resource in Development Management and Highways services for a period of four years to support the efficient determination of new planning applications and any associated

appeals.

- 12.3 It is also recommended that Council proceed with making a new plan as quickly as possible and that an earmarked reserve of £1,395,000 is established to fund the plan-making process (this will include updating the evidence-base to inform a new plan) and additional staff resource identified above.
- 12.4 The development of a new plan should be progressed in a manner that is positive, evidence-based, objective, respectful and collaborative to secure the best outcome for the future of the County. It is recommended that a cross-party working group be established to provide oversight of the local plan process and in line with the Council's existing Governance framework. It is also proposed to invest in a comprehensive community engagement approach.

13 BACKGROUND PAPERS

- 13.1 There are no additional background papers to the report.

14 APPENDICES

- 14.1 Appendix 1: Letter from the Planning Inspector – May 2021
- 14.2 Appendix 2: Summary of issues and risks with identified options
- 14.3 Appendix 3: Indicative timeline for making a new plan
- 14.4 Appendix 4: Outline budget for the preparation of a new Local Plan

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Examination of the Rutland County Council Local Plan 2018 – 2036

Inspector: Joanna Gilbert MA(Hons) MTP MRTPI

Programme Officer: Kerry Trueman

Mr Roger Ranson
Planning Policy Manager
Rutland County Council

By email

24 March 2021

Dear Mr Ranson

Inspector's Letter to the Council

1. As you will be aware, I have been appointed by the Secretary of State to conduct the examination of the Rutland County Council Local Plan 2018 - 2036 (the Plan). Since receiving the Plan, accompanying evidence and representations, I have been undertaking my initial appraisal of the Plan and other submitted documents.
2. It was my intention to issue my initial letter to the Council and documents setting out my Matters, Issues and Questions and other supporting information this week. However, this has now been overtaken by a significant development in the form of the decision reached at this week's Full Council meeting not to accept the £29.4 million Housing Infrastructure Funding for infrastructure provision to support the delivery of the St George's garden village at the existing St George's Barracks site.
3. I understand that the Council is currently considering its position regarding the implications of the Full Council decision for the Local Plan Examination process.

4. In order to avoid wasted time and expense to the Council and other participants, it is not sensible for the Examination process to progress further at this stage without a clear understanding of the potential implications of this significant development for the Examination.
5. I would be grateful therefore if the Council could confirm its intentions for the Examination. In the first instance, it would be helpful if the Council could provide me with an indicative timescale for confirming its intentions.
6. If you have any questions or queries, please do not hesitate to contact me via the Programme Officer. Thank you for your assistance.

Yours sincerely

Joanna Gilbert

INSPECTOR

RISKS AND ISSUES ASSOCIATED WITH LOCAL PLAN EXAMINATION

Local Plan is Withdrawn

Risk/Issue	Likelihood	Impact	Assessment
Current planning policies are increasingly out of date and the Council does not have an up to date Local Plan by December 2023 as expected by Government.	<i>High</i>	<i>High</i>	<p>In the short term, the current adopted planning policies of the Council can still be used, however due weight would need to be given to them, according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). This impacts on the Council's ability to determine applications for all forms of development (including commercial, employment, mineral and waste proposals) in accordance with local policies. (It is important to note that the Core Strategy pre-dates the NPPF)</p> <p>To properly address this issue then the Council needs to commit to the production of a new Local Plan. Given that work on the submitted Local Plan commenced in 2015, the evidence base to support a new Local Plan is becoming dated, meaning that there is an imperative to start a new plan from afresh, going back to Issues and Options. A new plan will take 3 – 4 years to adopt and is estimated to cost the Council circa £725,500 and £1,154,000. The mid-point estimated cost is £939,750 (not including for staff and core costs).</p>
Lack of a 5 year housing supply	<i>High</i>	<i>High</i>	<p>If the plan is withdrawn we will not be able to include supply from the emerging Local Plan of allocated sites considered deliverable within the next 5 years. This will impact the current 5 year housing supply calculation, reducing it below 5 years.</p>

			<p>The Council would need to grant permission for at least 130 - 140 additional dwellings per annum to ensure it keeps a 5 year housing supply, depending on continued rates of housebuilding. As housing land supply calculation is also affected by delivery, there is an increased risk that more permissions may need to be granted to ensure a five year supply as developers may seek to gain planning consent on sites and then effectively “landbank” the sites rather than commencing development – an approach which can reduce the overall supply in future years.</p> <p>Without a 5 year supply then paragraph 11(d) ii of the NPPF states there is a presumption in favour of sustainable development unless there are “adverse impacts which would significantly and demonstrably outweigh its benefits.” This makes it more difficult for the Council to refuse unwanted and unplanned developments. Without sufficient consents, it will take a long time to resolve the housing supply through a new plan being prepared and having weight in decision making.</p> <p>Given the rate of completions over the last 2 years, there is a risk of impact on Rutland’s Housing Delivery Test (HDT) if supply is constrained. The HDT compares the net homes delivered over the previous three financial years to the homes required over the same period, with penalties for those councils delivering less than 95 per cent of their requirement. The most severe penalty, which was triggered in November 2020, is for those LPAs that delivered under 75% and now face the ‘presumption in favour of sustainable development’.</p>
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			A number of speculative planning applications and preliminary enquiries have already been received by the Council since March 2021.
Impact on infrastructure planning	<i>High</i>	<i>Medium/High</i>	Decisions on essential contributions of Community Infrastructure Levy (CIL) towards key strategic infrastructure projects would be made in a less coherent manner. Without the certainty about the scale and location and timing of all forms of development through a planned approach. It will be difficult for the Council to prioritise the expenditure of CIL on appropriate infrastructure.
Impact on Council and other public services	<i>High</i>	<i>Medium</i>	The work of the Council as a whole and other public bodies will be impacted by the lack of an up-to-date Plan. Services provided and supported by the Council such as education, health care, waste, transport etc. rely on a degree of certainty about the scale and location and timing of future development to enable them to forward plan service provision. This is likely to lead to piecemeal decision making on such strategic matters.
Impact on Council's Medium term financial plan	<i>Medium</i>	<i>High</i>	The Council Medium Term Financial Plan (MTFP) includes housing growth. The Council assumes tax base growth from a combination of new homes, reduction in long term empty homes and changes to other variables including discounts. The assumption is that around 160 new homes will be built each year. Not having a local plan in place could impact the delivery of the growth required in the MTFP as for every home under the assumed level the council could lose £1.7k.
Judicial review of Council's decision to withdraw	<i>Low</i>	<i>Medium</i>	It is difficult to see on what basis a legal challenge could be made although this will be dependent on the reasons for withdrawal. Currently, this is considered to be a remote possibility, not requiring any further mitigation if the Council commits to the production of a new Local Plan.

Possibility of Government intervention	<i>Low</i>	<i>Medium</i>	The Neighbourhood Planning Act 2017 provides for intervention in the local plan making process. The Secretary of State has previously indicated that the Government may use these powers to intervene for Councils who have failed to meet their deadlines for publishing local plans. The recommendation to commence work on a new Local Plan if the submitted Local Plan is withdrawn is considered to be the best way for the Council to avoid Government intervention
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Local Plan is Suspended for Council to Reconsider the Housing Infrastructure Fund (HIF) Grant

Risk/Issue	Likelihood	Impact	Assessment
Terms and Conditions of the HIF grant remain unsatisfactory for Council	<i>High</i>	<i>High</i>	Homes England have indicated that the infrastructure delivery spend date could be moved out to 2025. Other than the amended spend date a new HIF agreement is expected to be on the similar terms to those that Council considered a risk in March 2021.
Terms and Conditions of the HIF grant prove unsatisfactory to the Ministry of Defence	<i>Medium</i>	<i>High</i>	There is no certainty that the MoD would agree to the original proposed tripartite agreement. The contractual agreements would need to be subject to further negotiations and formal approval by all parties.
Delay in confirmation of Council Position on its Local Plan	<i>High</i>	<i>Low</i>	A decision for Council to reconsider its decision to accept the HIF grant will continue the current uncertainty. The assessment of the risk presumes that this would only be a relatively short delay.

Submitted Local Plan Approved by Council Goes Forward for Examination (As Is)

Risk/Issue	<i>Likelihood</i>	<i>Impact</i>	Assessment – mitigation/action plan
Local Plan is not found sound through the public examination	<i>High</i>	<i>High</i>	As there is now a £29.4m funding gap for the allocated St. George's garden village it undermines the viability and deliverability of the site. Given the strategic significance of the site this undermines the deliverability of the wider development strategy and the Local Plan is unlikely to be found 'sound'.
Site promoter is unable to demonstrate that SGB is viable and deliverable through Examination process	<i>High</i>	<i>High</i>	<p>A recommendation to proceed to examination is conditional upon an ability to demonstrate that the Garden Community proposal, as a key element of the spatial strategy, is viable and therefore that the local plan strategy as a whole is deliverable. This will require MoD to provide new evidence demonstrating that the scheme is deliverable without grant funding. This may be achieved by re-profiling capital expenditure on upfront infrastructure, spreading the cost of things such as utility upgrades to latter years as required. However, any such revised proposal must still be in accordance with the policy requirements of H2. 10) which requires the phasing of development and infrastructure to ensure that infrastructure is provided ahead of or in tandem with the development it supports. As above, it may not prove possible for the delivery of the scheme to be re-profiled or value-engineered and remain policy-compliant.</p> <p>Any new evidence relating to the viability would need to be published for consultation in advance of Examination hearings and would therefore delay the examination beyond the end of this year.</p> <p>This approach would need to be subject to the Inspectors agreement.</p>

Judicial Review (most likely to occur when a decision is made to adopt the Local Plan)	<i>Medium</i>	<i>High</i>	There is always a risk of legal challenge. The risk of a successful legal challenge would be mitigated by the Local Plan Examination process in which the independent Inspector would examine the evidence and determine whether the plan is sound.
Lack of a 5 year housing supply	<i>High</i>	<i>High</i>	<p>The latest assessment shows that there is 5.2 year housing supply counting some of the sites included in the emerging Local Plan considered to be deliverable within 5 years.</p> <p>Were the current submitted Local Plan to be found sound at Examination and subsequently adopted it would enable the housing requirement to be addressed by applying a stepped trajectory (assuming the Inspector accepts that this approach is acceptable) to deliver a lower annual requirement (of 110 dwellings per annum) in the first five years and a higher requirement (of 140 per annum) for the remaining 11 years, once the larger allocations begin to deliver.</p> <p>Given the position with St. George's it is likely that the Examination process would find the Local Plan unsound, impacting the five year land supply.</p>

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Appendix 4:

Table A: Costs to deliver a new Local Plan

Issue/Evidence	Why work required	Certainty of Works	Cost Certainty	Min	Max	Total Estimated New Costs	Comments	Historical Costs for the Local Plan
Sustainability Appraisal	SA required at all stages of the new Local Plan			£40,000	£45,000	£42,500	Statutory Requirement. Costs based on recent SKDC procurement	£22,130
HRA	HRA required at Reg 19 stage			£30,000	£35,000	£32,500	Initial screening undertaken in house. Costs based on procuring similar for the submitted Local Plan	£14,627
Landscape	Full landscape sensitivity and capacity study required as existing is out of date (2010)			£55,000	£65,000	£60,000	Estimate as evidence not updated for considerable amount of time, meaning that likely to require a whole County survey	£24,001
Open Space	Full open space study required as existing is out of date (2015)			£35,000	£40,000	£37,500	Works previously done under a wider scheme - Sports and Recreational Strategy. Open space is an estimate as evidence has not been updated for some time	£0
Biodiversity	New study required			£55,000	£65,000	£60,000	New study - costs based on procurement of similar in SKDC	£0
Housing Needs	Update required on housing needs/mix			£15,000	£17,000	£16,000	Estimate based on recent procurement in SKDC	£3,000
GTAA	Full updated G&T accommodation assessment + regular input to delivery plan			£25,000	£30,000	£27,500	Works previously done in partnership with SKDC. RCC made a contribution to the works. Cost based on recent procurement in SKDC	£0
Employment Land	Updated study required			£28,000	£32,000	£30,000	Last report completed 2016, update required due to covid. Cost estimate based on procurement.	£25,271
Retail Study	Updated study required			£15,000	£17,000	£16,000	Done April 2016. Needs Updating - due to covid. Last report 2016 Estimate based on this procurement.	£14,305
Strategic Flood Risk Assessment	Full SFRA required as existing is out of date (2009)			£25,000	£27,000	£26,000	The last update in 2009 was completed inhouse. Cost estimate is a best guess as no recent experience of procuring this.	£29,889
Water Cycle Study	Light touch updates			£5,000	£7,000	£6,000	New Study required - estimate is a best guess as no recent experience of procuring this.	£0
Whole Plan Viability Study	Essential requirement			£35,000	£40,000	£37,500	Done externally 2018 & 2020. Requires two versions of the plan. Costs based on recent procurement in RCC.	£24,669
IDP	Essential requirement			£35,000	£40,000	£37,500	Statutory Requirement. Costs based on previous procurement jointly by SKDC/RCC, taking account of additional work on updating this done in house	£20,450
Minerals and Waste input	Essential requirement		27	£40,000	£45,000	£42,500	Covered by SLA paid by Planning Policy. Will increase depending on the works required.	£33,932

Specialist input to Site Assessments, evidence base and examination preparation	Deliver sound plan			£5,500	£65,000	£35,250	Interim specialist support - covered by Agency/ Professional Fees. Costs based on recent RCC experience	£66,601
Transport Assessments	Deliver sound plan			£15,000	£17,000	£16,000	Assumes no requirement to develop a Rutland Transport model at a cost of £100k + Estimated costs are a best guess but take account of external support procured to assess sites in the submitted Local Plan.	£13,884
Climate change metrics	Likely requirement for new plan			£0	£35,000	£17,500	New costs - some local authorities have had legal challenges. Would also support corporate aspirations.	£0
Health Impact study	Likely requirement for new plan			£8,000	£10,000	£9,000	New costs - estimated costs are a best guess	£11,200
Mapping	Likely requirement for new plan			£25,000	£30,000	£27,500	White paper proposal - Need to prepare for digital interactive mapping for the new plan. New - estimated costs are a best guess	£3,930
Digital consultation software	Need for more effective means of engaging the community and an efficient means of recording and analysing consultation responses			£10,000	£32,000	£21,000	New consultation platform will be required to meet national objectives for digital engagement and interactive plans. Council has a 12 month arrangement with Bangthetable which has provided the basis for the Future Rutland conversation - it may be possible to utilise this, although it would need to be extended to cover the plan making period for a further 2 - 3 years. We will need a better more intuitive way to engage people and to process and manage responses. Costs are best guess	£0
Issues and Options consultation	Consultation			£8,000	£10,000	£9,000	1st Stage - postcard. Estimates based on RCC Reg19 consultation methods and costs	£11,129
Consultation Draft consultation	Consultation			£8,000	£10,000	£9,000	2nd stage - posters etc Estimates based on RCC Reg19 consultation methods and costs	£5,444
Regulation 19 consultation	Consultation			£8,000	£10,000	£9,000	3rd stage. Estimates based on RCC Reg19 consultation methods and costs	£11,615
Examination costs	Planning Inspectorate and venue costs			£100,000	£130,000	£115,000	Estimate based on current budget provision for the submitted Local Plan	£23,926
Legal advice	Legal compliance			£100,000	£300,000	£200,000	Depending on the sites. Estimate based on current budget provision for the submitted Local Plan.	£79,504
Agency/ Professional Fees				£0	£0	£0		£32,594

Misc/ Contingency				£0	£0	£0		£9,687
Total				£725,500	£1,154,000	£939,750		£481,787

Table B: Costs of not having a Local Plan

Issue/Evidence	Why work required	Certainty of Works	Cost Certainty	Min	Max	Total Estimated New Costs	Comments	Historical Costs for the Local Plan
Legal Fees	Planning application appeals			£75,000	£185,000	£130,000	Minimum amount based on 10 applications plus solicitor cost FTE 0.5 over 4 years	£0
Additional Salary costs	Principal Policy Officer FTE 1 (PO2) Conservation Officer FTE 1 (PO2) Tree Officer FTE 0.6 (S01) Highways Engineer FTE 1 (S02)			£639,000	£1,065,000	£670,080	Assumed over 4 years	£0
Planning Income	Potential planning income, estimated on known planning applications			(136,588)	(252,300)	(194,444)		£0
Total				£577,412	£997,700	£605,636		£0

