

**MAIDSTONE BOROUGH COUNCIL**

**JOINT MEETING OF THE LOCAL DEVELOPMENT DOCUMENT  
ADVISORY GROUP AND THE LEISURE AND PROSPERITY  
OVERVIEW AND SCRUTINY COMMITTEE**

**21 FEBRUARY 2011**

**REPORT OF DIRECTOR OF CHANGE, PLANNING AND THE  
ENVIRONMENT**

**Report prepared by Sue Whiteside**

**1. Core Strategy 2006-2026: Next Steps**

1.1 Issue for Decision

- 1.1.1 To consider the progress of the Core Strategy Development Plan Document since June 2009 when the programme for preparing the DPD recommenced (Appendix A), and the next steps to public participation.
- 1.1.2 To consider amendments to the draft vision and objectives previously agreed by the Local Development Document Advisory Group (Appendix B).
- 1.1.3 To consider the issue of including a local connection criterion in the Core Strategy policy for gypsy and traveller accommodation.

1.2 Recommendation of Director of Change, Planning and the Environment

- 1.2.1 That the Local Development Document Advisory Group and the Leisure and Prosperity Overview and Scrutiny Committee:
  - i. Note the amendments to the draft spatial vision and objectives for the Core Strategy as set out in paragraph 1.3.18 of this report and suggest any further revisions; and
  - ii. Recommend to Cabinet that the Core Strategy policy for gypsy and traveller accommodation does NOT include a local connection criterion.

### 1.3 Reasons for Recommendation

- 1.3.1 The purpose of the report is to summarise the progress of the Core Strategy since the programme for its preparation was restarted in June 2009, and to explain the current position and next steps leading to the approval of the Core Strategy for public participation and beyond. A summary of progress is attached at Appendix A.
- 1.3.2 The report revisits the draft vision and objectives which Members first considered at a meeting of the Local Development Document Advisory Group (LDDAG) in June 2010, the arising amendments being attached for information purposes to a subsequent report to the Group on 26 July 2010. The agreed draft vision and objectives are attached as Appendix B. Members are requested to consider proposed amendments to the vision and objectives, which have arisen as a result of ongoing work on the Core Strategy.
- 1.3.3 This report also addresses the issue raised by Members of LDDAG, Leisure and Prosperity Overview and Scrutiny Committee, and Planning Committee to consider including a local connection criterion in the Core Strategy policy for gypsy and traveller accommodation.

#### **Progress to Date**

- 1.3.4 Appendix A sets out a chronology of events that have occurred since the Core Strategy programme restarted in June 2009. This includes a number of Member meetings, presentations and workshops; the completion and publication of new studies and reports that augment the Core Strategy evidence base; and the changes in national planning policy since the election of the coalition government in May 2010.
- 1.3.5 A number of Core Strategy issues have been debated at Member meetings and workshops during the past 18 months. These include:
- The format and content of the Core Strategy;
  - The Core Strategy draft spatial vision and objectives;
  - The development of a settlement hierarchy for Maidstone borough and the designation of rural service centres;
  - The development of a green and blue infrastructure strategy for the borough;
  - Policy directions and the setting of a boundary for the town centre;
  - Draft generic core policies, including those for design, sustainable development and climate change, economic development, housing mix, affordable housing, local needs housing, gypsy and traveller accommodation, a green and blue network, and biodiversity;
  - The approach to setting a numerical target for gypsy and traveller accommodation;

- Development of a methodology to enable the Council to set a local dwelling target and determine a distribution pattern for development; and
- The testing of development scenarios to establish preferred targets for housing and employment together with a development distribution, which will underpin the spatial policies of the Core Strategy in advance of its publication for public participation.

1.3.6 Meanwhile, additional studies and reports have been published that inform and support Core Strategy policies. These include the Sustainability Appraisal Scoping Report, updates on retail and employment land demand, population and labour supply forecasts, the Town Centre Study, the Water Cycle Study, and the Strategic Housing Market Assessment. All of these documents can be viewed and downloaded from the LDF page of the Council's website.

1.3.7 Initial survey work has been completed for a borough wide Landscape Character Assessment, which is currently subject to stakeholder consultation; and the evidence base for Core Strategy Sustainability Policies will be published shortly. As part of the appraisal process for testing development scenarios, further work has also been ongoing through consultations with infrastructure providers and transport modelling. Additional reports attached to this agenda update Members on these aspects of the Core Strategy evidence base.

1.3.8 Members have received a number of reports and updates on proposed changes to the planning system by the coalition government. The Localism Bill was published on 14 December 2010 and is expected to be enacted in 2011/12. The Bill retains the LDF system and gives scope for the setting of local development targets and the preparation of neighbourhood development plans.

1.3.9 At the meeting of the Cabinet on the 9 February 2011 it was agreed:-

- That a local housing target of 10,080 dwellings and a development distribution for new housing attached to the Cabinet report be agreed for the period 2006 to 2026 as the basis for the initial Core Strategy consultation document; and
- That a decision on the distribution of employment land be deferred to enable officers to:
  - a) undertake further work on updating employment data to a base date of 2010;
  - b) investigate opportunities for alternative potential employment sites that can support a dispersed pattern of development better suited to the housing locations to replace a critical mass of

employment land of 11 hectares at J8 of the M20 motorway; and

- A report would be made back to Cabinet in April when the draft Core Strategy will be considered for publication participation.

1.3.10 On the additional work that is required this will include:-

- Updating the Employment Land Review;
- Reviewing the assumptions in the Economic Development Strategy;
- Reviewing the assumptions around employment sites across the borough; and
- Putting together a complete picture that encompasses all additional employment including retail, offices, light industrial, general industrial, warehousing, etc. between 2006 and 2011 and provision for the period from 2011 to 2026.

The outcome of this work will then be presented to Cabinet in April as part of the Core Strategy report.

### **The Spatial Vision and Objectives: Balancing Urban & Rural Development and the Phasing of Brownfield and Greenfield sites**

1.3.11 The draft spatial vision and objectives were initially considered by LDDAG in June 2010. Since then, the development of a local strategy for setting a dwelling target and distributing development has led to a move away from the South East Plan indicative target of 90% of new housing in or adjacent to the urban area. The draft strategy which was considered by Cabinet on 9<sup>th</sup> February 2011 sought to balance the need for regeneration of the urban area with the need to expand the roles of the rural service centres to support the continuing viability aspirations of those sustainable settlements.

1.3.12 Taking account of the number of dwellings completed to date, land with planning permission, known brownfield sites and a contribution from unidentified windfall sites in the latter part of the plan period, between 2006 and 2026 approximately 79% of the 10,080 dwelling target is proposed to be provided in or adjacent to the urban area. This figure could be higher depending on the amount of brownfield windfall sites that materialise in the early part of the plan. It is recommended that the vision and objectives be amended to acknowledge this shift.

1.3.13 The second issue relates to the phasing of greenfield sites after 2016. In recent years dwellings have been built on high density brownfield sites within the urban area and the town centre, in accordance with government policy. Thus, the housing mix has focused on flatted development which, in turn, has affected the provision of family

housing.

- 1.3.14 The Strategic Housing Market Assessment (2010) concludes that the greatest demand for housing throughout the borough is for family housing. The Council's current land supply largely comprises brownfield sites but this imbalance can be addressed through the Core Strategy and is assisted by the new PPS3: Housing (June 2010), which deletes the national indicative density of 30 dwellings per hectare so local authorities can set their own density ranges, and removes private residential gardens from the definition of previously developed land.
- 1.3.15 The draft vision currently states that greenfield sites, well related to existing urban areas, will be phased after 2016. However, the Core Strategy will not be adopted until autumn 2012, and LDF documents that allocate specific sites for development must follow the Core Strategy. Therefore, DPDs or AAPs that allocate land for development could not be adopted before 2014. Given the lead in time to develop sites, the plan making process is likely to result in the development of greenfield sites from around 2015/16, therefore naturally phasing the release of greenfield sites. However, it is recognised that where there is firm evidence to demonstrate a local need at a Rural Service Centre that cannot be met through a local needs housing site, a proportion of suitable greenfield housing development may be permitted before 2014, in advance of allocating specific sites in site allocations documents that will follow the Core Strategy. Any such proposals will need to cater for the physical and social infrastructure needed in the Rural Service Centre area.
- 1.3.16 Previously developed land will continue to materialise throughout the plan period but the high percentage of brownfield development experienced in the recent past will not be able to be sustained. Nonetheless, a borough wide target of 60% brownfield development throughout the plan period (2006 to 2026) to meet government policy aspirations is not unreasonable.
- 1.3.17 The currently identified supply of brownfield housing sites will assist regeneration of the urban area in the first half of the plan period and unidentified brownfield sites, together with the preparation of an Area Action Plan for regenerating the town centre, will support regeneration in the latter period. Given the natural phasing of sites through the plan making system, the impact of short to medium term economic conditions on the housing market, and the need to ensure the spatial strategy is flexible and deliverable, it is recommended that the vision is amended to delete reference to phasing greenfield sites after 2016.
- 1.3.18 The draft spatial vision and objectives have been reproduced in full for Members' convenience at Appendix B. It is recommended that the following amendments (emboldened) to the second paragraph of the

vision and to objectives (b) and (e) be agreed as follows.

*"The Core Strategy will help in delivering sustainable growth and regeneration while protecting and enhancing the borough's built and natural assets. Regeneration will be prioritised and delivered at the urban area of the county town first to make best use of brownfield land. ~~so the release of~~ Greenfield sites, well related to existing urban areas, will be **phased developed from 2015/2016**. Development will be led by a sustainable and integrated transport strategy, together with necessary strategic and local infrastructure."*

b) *"To focus new development at Maidstone urban area with:*

- *~~90%~~ **80%** of new housing built within and adjacent to the urban area of Maidstone, appropriate sustainable greenfield development being well located to the existing urban area*
- *The aim of providing 60% of new housing across the plan period on previously developed land and through the conversion of existing buildings*
- *New employment allocations in Maidstone town centre strictly coordinated and targeted with opportunities on the most suitable greenfield sites only.*

e) *To consolidate the roles of Harrietsham, Headcorn, Lenham, Marden and Staplehurst as rural service centres with successful village centres, as the focus of the network of rural settlements, with retained services, **new housing** and regenerated employment sites*

1.3.19 The draft vision and objectives have not been considered by Members in the context of all Core Strategy policies, so there are no specific recommendations to Cabinet.

### **Policy for Gypsy and Traveller Accommodation: Local Connection Criterion**

1.3.20 Members have previously resolved that consideration be given to the inclusion of a local connection criterion in the Core Strategy Gypsy and Traveller Accommodation policy. A suggestion made was that the criterion could be framed in similar terms to a rural exceptions policy approach for which occupancy of the social housing is limited to those with a residence, employment or close family connection. Legal advice has been sought on the matter and the key conclusions are set out as follows.

1.3.21 First, local connection criteria are explicitly identified as unacceptable in the current Circular 01/06 Planning for Gypsy and Traveller Caravan Sites because, as a nomadic people, gypsies will not always have links to a locality.

1.3.22 Further, the legal opinion is that there is a reasonably clear argument that the proposed approach is indirectly discriminatory under the terms of the Equality Act (2010). The advice warns that the approach would be treating the gypsy and traveller community in a different way to those seeking conventional private housing in the borough: *"unless a requirement of an unmet local need will be applied to all applications for and allocations of bricks and mortar accommodation (other than, for example, just rural exception sites) there seems to me to be a reasonably clear argument that this is indirectly discriminatory."*

1.3.23 Counsel concludes that the approach *"is only likely to be free from challenge under the Equalities Act 2010 if local need is sufficiently widely drawn to take into account the cultural preference for nomadism and the historic under provision of sites, and it is not applied more onerously to gypsy and traveller applications than to bricks and mortar applications."* Such a widely drawn definition is unlikely to meet the objectives in setting it.

1.3.24 Whilst the Circular is known to be under review, the requirements of the Equalities Act will remain. It is therefore recommended that the emerging Core Strategy policy should not include a local connection criterion.

1.3.25 On 9<sup>th</sup> February 2011 Cabinet agreed a gypsy and traveller pitch target of 71 pitches for the period 2006 to 2016 for inclusion in the public participation draft of the Core Strategy. Importantly, this target is derived from the assessment of locally arising need only. Making provision for sites that meet a target set in an up-to-date adopted Core Strategy will place the Council in a much stronger position to defend appeals on unsuitable sites, irrespective of need.

### **Next Steps**

1.3.26 On 9 February 2011 Cabinet agreed the target and development strategy for housing, which has been based on sound evidence and developed with input from a variety of stakeholders, including infrastructure providers and Members. The strategy will underpin the spatial policies of the draft Core Strategy, which will include a strategy and policies for all land uses. Cabinet is expected to approve the document for consultation in April.

1.3.27 As highlighted above further work was also requested on the employment land and employment figures at the Cabinet meeting. This

has commenced and will be incorporated in the Cabinet report on the 13 April.

1.3.28 In addition to published evidence, the Core Strategy will be accompanied by a supporting document containing much of the detail as to how the strategy and certain policies evolved, as well as the draft Infrastructure Delivery Plan and draft Integrated Transport Strategy.

1.3.29 It is important to remember that public participation is the starting point for the strategy and there are a number of further stages the Core Strategy will undergo before it can be adopted. Following consultation in spring, the Core Strategy can be amended before publishing for the next round of consultation (the "Publication" version of the DPD). There can only be minor amendments to the plan between Publication and submission of the document to the Secretary of State. However, if a major amendment following Publication was justified, the Council can undertake additional public consultation before submission. The programme for these steps (excluding the need for additional consultation) is set out below.

<b>Core Strategy Stage</b>	<b>Dates</b>
Cabinet approval of draft Core Strategy	13th April 2011
Public participation (6 weeks)	28 <sup>th</sup> April to 17 <sup>th</sup> June 2011
Cabinet approval of Publication version	10 <sup>th</sup> August 2011
Publication consultation (6 weeks)	26 <sup>th</sup> August to 10 <sup>th</sup> October 2011
Council approval of Submission version	14th December 2011
Submission	December 2011
Examination	April 2012
Receipt of Inspector's Report	July 2012
Council adoption of Core Strategy	September 2012

#### 1.4 Alternative Action and why not Recommended

1.4.1 Members could proceed with the inclusion of a local connection criterion in the Core Strategy gypsy and traveller accommodation policy but this approach is contrary to Counsel advice and there would be a high risk that the Core Strategy would be found unsound at examination.

#### 1.5 Impact on Corporate Objectives

1.5.1 The content of the report impacts on the key priorities of the Sustainable Community Strategy and the draft Strategic Plan, particularly those relating to a decent place to live and reducing the level of deprivation.



## 1.6 Risk Management

- 1.6.1 Undertaking public participation in advance of the enactment of the Localism Bill and the abolition of regional strategies with prescribed dwelling targets carries some risk. If this part of the Localism Bill falls then the Council would need to revisit its strategy and re-consult on a new option for a target of 11,080 dwellings (as currently set out in the South East Plan). Additionally, undertaking consultation prior to the abolition of the South East Plan targets may result in the receipt of objections to the Core Strategy housing target on the grounds of non conformity with the regional strategy, and possible judicial review.
- 1.6.2 The government purported to revoke regional strategies in July 2010, but a successful High Court challenge by housing developer CALA Homes re-established the South East Plan. A second challenge by CALA Homes to the government's position that the intention to revoke regional strategies was a material consideration to be taken into account when making planning decisions was lost. Therefore the intended abolition of the regional strategy can be considered by the local planning authority in making decisions. However, pending the abolition of regional strategies the South East Plan remains part of the Development Plan, although the government's intention to revoke strategies is a material consideration. The weight given to any material consideration depends on individual circumstances and it is for the decision maker to decide the appropriate weight. (CALA Homes has indicated it will appeal to the Court of Appeal).
- 1.6.3 At this stage of the Core Strategy process, the risk of judicial review is relatively low because (a) public participation is an early stage of engagement with the public and stakeholders and (b) the government's intention to revoke regional strategies is a material consideration. There will be a higher risk at Publication stage when the Council undertakes consultation on the strategy it proposes to submit to the Secretary of State for examination because, until the regional strategy is revoked, the core strategy should be in general conformity with it. The timing of Submission of the Core Strategy will depend on the progress of the Localism Bill.
- 1.6.4 Considering all matters, it is recommended that the Council proceeds with the Core Strategy programme outlined in paragraph 1.3.29 and engages with the public to develop the plan. During consultation the Council will consider and appraise any proposals made before moving towards Publication. A decision to advance to the following stages of the plan making process can be taken at the appropriate time. Officers will keep a watching brief on the matter and inform Members of any developments.

## 1.7 Other Implications

1.7.1

1. Financial
2. Staffing
3. Legal
4. Equality Impact Needs Assessment
5. Environmental/Sustainable Development
6. Community Safety
7. Human Rights Act
8. Procurement
9. Asset Management

X

1.7.2 The recommendation in this report accords with legal advice received to exclude a local connection criterion in the gypsy and traveller accommodation policy.

1.8 Relevant Documents

None

1.8.1 Appendices

Appendix A: Chronology of events relating to the Core Strategy DPD  
Appendix 2: Core Strategy draft spatial vision and objectives

1.8.2 Background Documents

Local Development Document Advisory Group Reports 28 June 2010  
and 26 July 2010  
Cabinet report 9 February 2011

**IS THIS A KEY DECISION REPORT?**

Yes

No

If yes, when did it first appear in the Forward Plan?

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This is a Key Decision because: .....

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Wards/Parishes affected: .....

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