

## **CABINET**

**9TH FEBRUARY 2018**

**AGENDA ITEM:**

### **REPORT OF MRS JENNY CLIFFORD, THE HEAD OF PLANNING, ECONOMY AND REGENERATION**

#### **MID DEVON LOCAL PLAN REVIEW UPDATE: REVIEW OF SUSTAINABILITY APPRAISAL UPDATE.**

**Cabinet Member(s):** Councillor Richard Chesterton  
**Responsible Officer:** Mrs Jenny Clifford, Head of Planning, Economy and Regeneration

**Reason for Report:** This report provides an update on the Local Plan Review, specifically information on the findings of the review of Mid Devon District Council's Sustainability Appraisal Update 2017 (SA Update 2017) carried out independently by a consultant. This was commissioned to advise whether the SA Update 2017 met the legal requirements and to consider matters of reasonable alternatives.

#### **RECOMMENDATION:**

**That Council notes this report and its appendices and having regard to their contents;**

- 1. Reaffirms its decisions of 22nd September 2016 and 1<sup>st</sup> December 2016 regarding the Mid Devon Local Plan Review (incorporating proposed modifications) and instructs officers to liaise with the Planning Inspector to restart the examination process as quickly as possible subject to (2) and (3) below;  
and, in accordance with part 4 of this report**
- 2. Approves the publication of the LUC SA Update Review (2018), the Schedule of amendments made to the Sustainability Appraisal Update (2017), the Sustainability Appraisal Update (2018) and the Executive Summary of SA Review process (2018);**
- 3. Approves a 6 week public consultation on the schedule of amendments made to the Sustainability Appraisal Update (2017).**

**Relationship to Corporate Plan:** The expedition of the Local Plan Review is a key corporate priority. The Local Plan Review will form the legal basis for determining planning proposals, once it has been adopted.

**Financial Implications:** No direct implications. However securing an up to date development plan is vital to support wider economic and housing development. It will be an important part of the framework that will enable CIL and the effective operation of s106 obligations.

**Legal Implications:** The Local Plan Review must meet legal requirements including the need for a Sustainability Appraisal (“SA”) which complies with the Planning and Compulsory Purchase Act 2004 and the Environmental Assessment of Plans and Programmes Regulations 2004 (the “SEA Regulations”). The independent review of the Sustainability Appraisal Update (2017) by consultants ‘Land Use Consultants’ (LUC) and the Sustainability Appraisal Update 2018 strengthen the Council’s case that it meets this requirement. However, ultimately, this is a matter for the Inspector to decide.

**Risk Assessment:** The independent review of the SA Update 2017 seeks to ensure that the modification stage SA is legally compliant. It has not revisited matters of planning merit, which will be subject to the examination of the Local Plan. A decision to not proceed with the plan as submitted or to vary it would further delay the plan’s preparation as it would in itself form a main modification necessitating further consultation. During which time the Council is more vulnerable to speculative planning applications, the evidence supporting the plan becoming dated, the context of the plan altering through forthcoming the new legislation and the plan becoming less capable to meet the requirements of future national planning policy and legislation. Further amendment to the plan would make the Council’s position unclear at a later examination. It would undermine the credibility of the plan and potentially harm the Council’s reputation as a plan making authority.

The Council submitted the plan for examination, having decided its contents to be appropriate. The outcome of the SA review process has not resulted in the need amend or vary the plan as previously submitted.

**Equality Impact Assessment:** No direct impact, but securing an up to date development plan is critical to delivering a range of development including affordable housing, community facilities and for guiding growth in the public interest.

## **1.0 Background: Mid Devon Local Plan Review Submission and adjournment of examination hearings.**

- 1.1 The Mid Devon Local Plan Review Submission Version (incorporating proposed modifications), hereafter referred to as the “Local Plan Review”, was submitted on 31<sup>st</sup> March 2017 to the Planning Inspectorate for its examination. This was in accordance with the decision of the Council at its meeting on 1<sup>st</sup> December 2016 at which Council adopted the recommendations of the preceding Cabinet meeting held on 21<sup>st</sup> November 2016. The submitted Local Plan Review included a land allocation at Junction 27 and associated housing sites, these having previously also been considered at meetings of Cabinet and Council on 15<sup>th</sup> September 2016 and 22<sup>nd</sup> September 2016 respectively.
- 1.2 The Planning Inspectorate confirmed that the first Local Plan Review examination hearings would be held on 26<sup>th</sup> and 27<sup>th</sup> September 2017, specifically to assess the inclusion of the proposal of Junction 27 on the M5 motorway together with associated housing allocations, in advance of assessment of the remainder of the Local Plan Review.
- 1.3 The Council commissioned legal advice from a Barrister to act on its behalf in respect of the Local Plan Review examination of Junction 27 and subsequent housing allocations. His advice to the Council, having reviewed the Council’s

submissions and those made by objectors was to commission an independent report to review the main modifications stage to the sustainability appraisal (SA Update 2017) and to publish this before the examination hearings. This also provided an opportunity to consider submissions made by objectors as to the SA process undertaken by the Council.

- 1.4 The Council's own legal representative agreed with the Barrister's advice and on 13<sup>th</sup> September 2017 the Chief Executive determined to request to the Planning Inspectorate that the examination hearings scheduled for the 26<sup>th</sup> and the 27<sup>th</sup> September be deferred.
- 1.5 Deferral of the examination hearings would allow for the Council to commission the independent report to review the main modifications stage of the sustainability appraisal (SA Update 2017). This precautionary additional work would benefit the examination process, aid the Inspector's decision making, and give additional assurance to all hearing participants and the public that a fair and thorough assessment has been undertaken. An opportunity for public consultation on the findings of this independent assessment would be provided prior to the hearings being reconvened.
- 1.6 On 14<sup>th</sup> September 2017 the Council received notification from the appointed Planning Inspector that he agreed to the requested deferment of the examination hearings.
- 1.7 The Local Plan Review examination hearings have since remained adjourned to allow for the independent review of the main modifications stage to the sustainability appraisal (SA Update 2017) to take place.

## **2.0 Sustainability Appraisal and independent review.**

- 2.1 The Planning and Compulsory Purchase Act 2004 and Environmental Assessment of Plans and Programmes Regulations (2004) ("The SEA Regulations") place a legal requirement for the Local Plan Review to be supported by a sustainability appraisal (SA). This legal requirement is an important element of testing the "soundness" of local plans that is required by National Planning Policy Framework paragraph 182.
- 2.2 A sustainability appraisal (SA) forms part of the technical evidence required to support the Local Plan Review. The process helps to consider the effects of the Local Plan Review (and the effect without the Local Plan Review) on the environment, on people and on the economy. It helps the Council make sure that the proposals in the Local Plan Review are the most appropriate given the reasonable alternatives, to promote sustainable development.
- 2.3 The Local Plan Review's SA comprises a Scoping Report (2013), Interim Report (2014) and SA Proposed Submission Report (2015). In support of the proposed modifications stage of the Local Plan Review, an SA Update (2017) was prepared. An explanation of the updating of the SA and the resulting conclusions was included in the officer report to 21<sup>st</sup> November Cabinet meeting and the following 1<sup>st</sup> December (2016) Council meeting which approved the Local Plan review as a whole, including Junction 27 and

associated housing allocations. The SA Update was subsequently published in January 2017.

- 2.4 The Council commissioned Land Use Consultants (LUC) to undertake an expert independent review of the SA Update 2017 in relation to the proposed modifications made to the Local Plan Review Submission Version – specifically:

- Legal compliance.
- The approach of the SA Update 2017 over reasonable alternatives to site allocations made at the modifications stages including Policy J27, together with concomitant housing allocations at Higher Town (SP2) and Blundells School (TIV16) and other modifications to the plan.

- 2.5 The independent review undertaken by LUC has culminated in the consultant's report to the Council (**Appendix 1**):

“Review of Sustainability Appraisal Update in relation to the main modifications made to the Mid Devon Local Plan Review Submission Version: Review of Legal Compliance (Land Use Consultants, January 2018)” – hereafter referred to as the “LUC SA Update Review (2018)”.

- 2.6 LUC's independent review and the Council's SA Update 2018 have not re-assessed sites or sought to identify additional options. Whilst all of the potentially reasonable alternative sites have been the subject of SA, there is an element of planning judgement in the decision to propose Higher Town (SP2) and Blundells School (TIV16) rather than other options. The Council's reasons for its decision are set out in the SA Update 2018 and the planning merits of some or all of the possible reasonable alternative sites will be subject to the examination of the Local Plan Review. LUC has commented that the sieving criterion used by the Council for the options on how the additional housing need from J27 could be met is considered by them to be reasonable.

- 2.7 During the process of this commission LUC has advised it has not been necessary to undertake additional SA work in relation to sites or other options, but that it would be helpful if the Council could sign-post where the requirements for an SA are met in each of the previously published SA reports and where reasonable alternatives were considered. This was due to information being spread between different existing documentation.

- 2.8 The Council has followed recommendations made by LUC and has prepared the “Sustainability Appraisal Update (incorporating LUC recommendations) (January 2018) – hereafter referred to as the “SA Update (2018)” (**Appendix 2**). This signposts, clarifies and collates previous SA work done by the Council in order to be more easily accessible for the Inspector and examination participants, allowing greater clarity over what SA work has been done and the conclusions reached. An Executive Summary of SA Review process (2018) has also been prepared which sets out the changes made to the SA Update (2017) and the reasons for them (**Appendix 3**). A schedule of amendments made to the SA Update (2017) and included in the SA Update (2018) has been prepared (**Appendix 4**). In concluding their review, LUC has

stated that ‘In LUC’s professional judgement, the work carried out and presented in the SA Update document (2018) is proportionate and appropriate to meet the requirements of the SEA Regulations.’

### **3.0 Conclusions**

- 3.1 The LUC SA Update Review (2018), advises that through the sign-posting, re-ordering, and clarification of its content the SA Update (2018) is proportionate and appropriate to meet the requirements of the SEA Regulations.
- 3.2 In light of the findings of the independent review undertaken by LUC, there is nothing which would appear to steer the Council to a different conclusion to that reached in its previous decisions on the proposed modifications made to the Mid Devon Local Plan Review Submission Version (the plan as submitted) and hence also nothing arising from this review that would steer the Council to a different position at the examination of this plan.

### **4.0 Next steps**

- 4.1 It is proposed that the LUC SA Update Review (2018), SA Update (2018) and the Executive Summary of the SA Review process (2018) are published together with a schedule of amendments made to the Sustainability Appraisal Update (2017). The Schedule of amendments made to the Sustainability Appraisal update (2017) is to be subject to a 6 week period of public consultation at the earliest practicable date, with all resultant representations received on these documents to be submitted to the Planning Inspectorate where they can be considered together with all previous consultation responses received to the Mid Devon Local Plan Review Submission Version (incorporating proposed modifications). It should be made clear within this process that the scope of this consultation is the updated SA documentation (schedule of SA amendments), rather than the unchanged contents of the submitted plan. It is therefore not an opportunity to revisit previous consultations of the Mid Devon Local Plan Review Submission Version (incorporating proposed modifications).
- 4.2 A proposed timetable is as follows:

|  |                       |
|--|-----------------------|
| 6 week public consultation   | February – April 2018 |
| Submission of the LUC SA Update Review (2018), the Schedule of amendments made to the Sustainability Appraisal Update (2017), the Council’s SA Update (2018), the Executive Summary of the SA Review process (2018) and consultation responses received to the Planning Inspectorate | April 2018            |

- 4.3 The Council will write to the Planning Inspectorate to update them on the above timetable, but it is for the Inspectorate to determine when the

examination hearings shall be reconvened, having considered the findings of the LUC SA Update Review (2018), the Council's SA Update (2018), the Executive Summary of the SA Review process (2018) and the outcome of the consultation exercise together with all previously submitted documentation.

- 4.4 The restarting of the examination timetable will require a 6 week period of public notification prior to the commencement of the examination hearings. Your officers estimate examination hearings will take place summer / autumn 2018, but stress that decisions over timing rest with the Planning Inspectorate. Through informal contact with the Planning Inspectorate it is understood that examination dates will not be scheduled until the consultation period has elapsed and associated documentation and responses have been forwarded.

**Contact for more Information:**

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**Circulation of the Report:**

Cabinet Members

**List of Background Papers:**

"Review of Sustainability Appraisal Update in relation to the main modifications made to the Mid Devon Local Plan Review Submission Version: Review of Legal Compliance (Land Use Consultants, January 2018)"

"Schedule of amendments to the Sustainability Appraisal Update (2017)"

"Sustainability Appraisal Update (incorporating LUC recommendations) (January 2018)"

"Executive Summary of SA Review process (2018)"

Cabinet November and December 2014,  
15th September 2016, 21<sup>st</sup> November 2016.

Council January 2015, 27<sup>th</sup> April 2016, 22<sup>nd</sup>  
September 2016, 1<sup>st</sup> December 2016.

Local plan evidence base  
<https://www.middevon.gov.uk/residents/planning-policy/local-plan-review-evidence-base/>

<https://www.middevon.gov.uk/residents/planning-policy/local-plan-review-site-specific-evidence-base/>