



Derby City Council

## **COUNCIL CABINET** **21 January 2015**

# **ITEM 14**

Report of the Cabinet Member for Planning,  
Environment and Regeneration

### **Derby Core Strategy – procedural issue to consider whether to prepare a joint plan with partners**

#### **SUMMARY**

- 1.1 An issue has arisen in respect of the three Local Plans being prepared by DCC, Amber Valley Borough Council and South Derbyshire District Council (SDDC). An objector to the SDDC plan is contending that all three authorities have failed to satisfy a requirement of the Planning and Compulsory Purchase Act 2004 (as amended) requiring local authorities to consider whether to prepare a Joint Plan. SDDC has been threatened with Judicial Review on the matter.
- 1.2 Whilst there has not been a formal resolution in regard to the preparation of a joint plan, the option to do so has always been known and available and it has been implicit in all stages of plan preparation that by choosing to prepare separate plans, it was not intended to prepare a single joint plan. Whilst the Joint Advisory Board and South Derbyshire's Environmental and Development Services Committee recently considered the matter and formally resolved to continue with the approach to prepare separate plans, the objector has suggested that in South Derbyshire's case this is too late because they have already submitted their plan for Examination, a view not accepted by South Derbyshire.
- 1.3 DCC has not yet published or submitted its plan. Cabinet is being asked with due regard to its duty to cooperate and the matters outlined in this report in regard to the ability to prepare joint plans, to ratify the approach taken in regard to the preparation of a separate plan and to confirm the Council continue with that approach.

#### **RECOMMENDATION**

- 2.1 To affirm that its preferred approach is to continue to prepare a separate but aligned Core Strategy rather than a Joint Local Plan with Amber Valley, South Derbyshire or any other potential partner.
- 2.2 To ratify the approach taken to date in regard to the preparation of a separate Core Strategy and Local Plan.
- 2.3 To continue to discuss the most appropriate approach to joint working beyond the current Core Strategies/Local Plans, including scope for preparing joint site allocations plans, supplementary planning documents or at least using a common evidence base and joint consultation as part of aligned plans.

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| <b>REASONS FOR RECOMMENDATION</b> |
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- 3.1 For clarification in regard to DCC's position in regard to the preparation of a joint Core Strategy (Local Plan) with its neighbours having regard to its duties under section 33A Planning and Compulsory Purchase Act 2004 and in particular subsection 6(b).
- 3.2 To ratify the approach thus far taken by the Council in regard to the preparation of a separate Core Strategy.
- 3.3 To re-iterate that DCC will continue to discuss with its partners the most appropriate approach to future joint working on plan making as the 'Duty' requires constructive and active engagement on an on-going basis.

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| <b>SUPPORTING INFORMATION</b> |
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- 4.1 Cabinet and Full Council have recently approved the Publication version of the Core Strategy. Work is progressing on the details of this in anticipation of formal consultation on it in January and Submission for Examination shortly afterwards.
- 4.2 The Examination will consider whether the Plan satisfies a number of 'tests of soundness', including legal compliance under the 'Duty to Co-operate' introduced by the 2011 Localism Act.
- 4.3 In the run up to the Examination to South Derbyshire's Examination, the Inspectors examining South Derbyshire's and Amber Valley's Plans received a request for a single joint Examination into all three local plans rather than separate Examinations as is currently programmed.
- 4.4 The Inspectors have declined to hold full joint Examinations, but have held a joint hearing into what the objectively assessed housing need figure should be for the HMA and how this should be distributed across the three local authorities.
- 4.5 As part of this process, the objectors asking for a joint Examination have claimed that South Derbyshire have failed to give the consideration required by section 33A(6)(b) Planning and Compulsory Purchase Act 2004 (as amended) at all stages since that provision came into force. This provision, which came into effect on 15 November 2011 requires local authorities, as part of the 'Duty to Cooperate', to consider whether to carry out a joint Local Plan (Core Strategy) with neighbouring authorities. They have also written to all three authorities asking for any evidence that this was done.

- 4.6 Early work on preparing separate but aligned Core Strategies emerged out of the former Regional Planning process and Growth Point work. It also preceded the establishment of the Joint Advisory Board (JAB) which steers the joint working arrangements. At this time the option for the Council to prepare joint plans given by section 28 Planning and Compulsory Purchase Act 2004 was available to the Council and would undoubtedly have been considered. Nevertheless, when the JAB was established in 2008, its terms of reference specifically referred to the preparation of separate but aligned Core Strategies and a Joint Site Allocations Plan for an area somewhat larger than the urban area of Derby. At that time it was envisaged that detailed site allocations, including most of the urban extensions to the City beyond its boundaries, would be made through a Site Allocations Document rather than the Core Strategies which were seen as more broad brush at that time.
- 4.7 As time has progressed, all three Core Strategies have included detailed allocations and whilst it is still intended to produce a Site Allocations Document, the need for a joint document for the Derby Urban Area has waned. South Derbyshire dropped the proposal for a joint plan from their Local Development Scheme several years ago and the current 'Terms of Reference' for the JAB no longer refer to the preparation of a Joint Site Allocations Document.
- 4.8 When the duty under section 33A(6)(b) came into force in November 2011, work on the aligned Core Strategies was already quite advanced. Stopping work on these plans to begin a single joint plan would have entailed significant work and delay in the process, without any evident benefit or clear justification for changing that approach. It should be noted that National policy emphasises the importance of putting in place up to date plans as soon as possible in order to provide local planning authorities with firm foundations for decision making. Therefore not unreasonably despite the change in the nature of section 28 from being an optional consideration to a duty to consider such, the authorities each continued with preparing separate Core Strategies, it is, however, the objector's contention that the three authorities should have formally considered whether to do this and embark on a joint plan or not. Their view is that the inability to produce a formal minute to this effect constitutes a failure to meet with this part of the legal test of the 'Duty to Cooperate'. As such, they argue that the plans, or at least South Derbyshire's plan, are unsound.
- 4.9 Throughout the process it should be emphasised that the Councils have co-operated thoroughly with each other, engaging constructively, actively and on an on-going basis and continue to do so. For the same reasons as set out above, there would be no benefit or justification in halting progress on the current plans to embark on joint plans. All three plans are at a late stage in development and both South Derbyshire and Amber Valley have already submitted their plans for Examination.
- 4.10 Whilst we have been unable to find a formal minute considering these issues, the preparation of separate and aligned plans has always been implicit in our joint working arrangements.

- 4.11 With this issue in mind, at its meeting of 18<sup>th</sup> November 2014, the Joint Advisory Board resolved to:
- re(affirm) that their preferred approach is for separate but aligned Core Strategies/Local Plans ; as a single joint plan would be likely to raise complexities that go well beyond the Derby urban area that are best dealt with by individual authorities.
  - affirm that this would have been their view if formally asked to consider the issue in 2011 or any time thereafter.
  - continue to discuss the most appropriate approach to joint working beyond the current Core Strategies/Local Plans, including scope for preparing joint site allocations plans, supplementary planning documents or at least using a common evidence base and joint consultation as part of aligned plans.
- 4.12 Subsequently, at its meeting of 20<sup>th</sup> November, South Derbyshire's Environmental and Development Services Committee also resolved to continue preparation of their Core Strategy (Part 1 Local Plan) having given consideration to the relevant legislation. Presented with this at a subsequent Examination Hearing, the objectors sought to argue that this resolution was irrelevant as it was 'Ex Post Facto'; having being resolved *after* submission of their Plan for Examination.
- 4.13 As DCC's plan has not yet been published or submitted. Cabinet are therefore being asked to agree that, having taken into account the legal Duty to consider preparing a joint plan with Amber Valley and South Derbyshire, DCC that it prefers to continue preparing a separate but aligned plan and to ratify the approach thus far taken. Cabinet is also being asked to agree that DCC will continue to discuss with its partners the most appropriate approach to future joint working on plan making as the 'Duty' requires constructive and active engagement on an on-going basis.

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| <b>OTHER OPTIONS CONSIDERED</b> |
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- 5.1 None

**This report has been approved by the following officers:**

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| <b>Legal officer</b><br><b>Financial officer</b><br><b>Human Resources officer</b><br><b>Estates/Property officer</b><br><b>Service Director(s)</b><br><b>Other(s)</b> | Stephen Teasdale<br><br><br><br><br>Christine Durrant  |
| <b>For more information contact:</b><br><b>Background papers:</b><br><b>List of appendices:</b>  | Andrew Waterhouse 01332 642124 <a href="mailto:andrew.waterhouse@derby.gov.uk">andrew.waterhouse@derby.gov.uk</a><br>None<br>Appendix 1 – Implications |

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| <b>IMPLICATIONS</b> |
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### **Financial and Value for Money**

- 1.1 If the Core Strategy were to be successfully challenged in the High Court, this could lead to considerable delay and cost whilst it is re-visited. Furthermore, DCC could incur significant costs on appeal against planning decisions without an up-to-date plan in place and may lose out on external funding for lack of a legal planning policy basis.

On the other hand, defending a High Court Challenge or assisting a partner to defend one is likely to be expensive and time consuming.

### **Legal**

- 2.1 Section 28 of the Planning and Compulsory Act 2004 (PCA 2004) gave local planning authorities the ability to agree to prepare one or more joint local development documents.
- 2.2 Changes made under the Localism Act 2004 amended the PCA 2004 adding in section 33A. This introduced, as from November 2011, a duty on local planning authorities to cooperate in relation to planning sustainable development. In particular subsection 2(a) introduces a duty to engage constructively, actively and on an on-going basis in any process by means of which activities are undertaken involving (amongst others described in subsection 3) the preparation of development plan documents. In exercising that duty. Subsection (6) states that persons engaged in the duty under subsection 2(b) includes in particular considering whether to agree under section 28 to prepare joint local development documents.

### **Personnel**

- 3.1 Officers may be required to appear as a witness in the High Court if DCC's plan is challenged.

### **IT**

- 4.1 None.

### **Equalities Impact**

- 5.1 None, although the objectors argue that their ability to have cross-boundary HMA planning issues properly examined is compromised by failure to undertake a joint plan or at least undertake joint hearings.

**Health and Safety**

6.1 None.

**Environmental Sustainability**

7.1 None.

**Property and Asset Management**

8.1 None.

**Risk Management**

9.1 The recommendations are likely to reduce the risk of successful challenge.

**Corporate objectives and priorities for change**

10.1 The recommended approach may prevent significant delay to preparation of the Plan.