

AGENDA ITEM NO.5

CABINET

17th January 2024

Subject: **Castle Point Plan – Letter of possible Intervention**

Cabinet Member: **Councillor D. Blackwell – Leader of the Council**
Councillor W. Gibson – Strategic Planning

1. Purpose of Report

For Cabinet to note the letter of possible intervention on the preparation of a new local plan, the response from the Leader and Deputy Leader of the Council, and next steps in the preparation of a revised Local Development Scheme.

2. Links to Council's Priorities and Objectives

This report impacts on the Corporate Plan objectives - Economy and Growth, Place and Environment.

3. Recommendations

- (1) To note the letter from the Secretary of State and the response to that letter from the Leader and Deputy Leader of the Council.**
 - (2) For officers to revise the Local Development Scheme for decision by Council.**
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4. Background

- 4.1 On the 19 December 2023, the Secretary of State at the Department of Levelling Up Homes and Communities, Rt Hon Michael Gove, wrote to the Leader of the Council. The letter (**Appendix One**) put the Council on notice that as the Council did not have an up-to-date local plan in place, he may use his powers under Section 15 of the Planning and Compulsory Purchase Act 2004 and intervene to prepare a plan.
- 4.2 The Council was one of seven in England that received similar letters. The letter was published on the day that it was issued. It sought that within 12 weeks (12 March 2024) the Council revise its Local Development Scheme (LDS) to show that the new plan is submitted by the end of June 2025 and, if the Council believes that there are exceptional circumstances why he should not intervene, to write to him on or by 12 January 2024.

- 4.3 It is not clear what form intervention could take, but it would be that the Government prepares a plan or decisions on the plan are taken by the Secretary of State. Either way, the Council would lose its plan making powers.
- 4.4 The response from the Leader and Deputy Leader of the Council (**Appendix Two**) reiterates the Council's commitment to the new Castle Point Plan, the cross-party working and governance, and the good progress to date. It is not felt that there is any justification for the Secretary of State to intervene.

5. Proposals

- 5.1 As set out in the response, officers have undertaken an initial review of the LDS and shortened the timetable, and this has been discussed and agreed by the Castle Point Plan Delivery Board. The next step will be to present a revised LDS to the Council for approval and submission, as required, to the Secretary of State.

6. Corporate Implications

(a) Financial Implications

In the event that the Secretary of State does intervene, a report will be made to Cabinet on the financial implications.

The Castle Point Plan budget is closely monitored, and the Plan is being prepared within budget. As set out in the response to the Secretary of State if additional resources are required to ensure that timescales are met, the case will be made to do so.

(b) Legal Implications

In the event that the Secretary of State does intervene, a report will be made to Cabinet on the legal implications.

(c) Human Resources and Equality Implications

Human Resources

None.

Equality Implications

None.

(d) IT and Asset Management Implications

None.

7. Timescale for implementation and Risk Factors

s set out in the report.

8. Background Papers

As set out in the report.

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19 December 2023

Dear Cllr Blackwell,

s.15 Planning and Compulsory Purchase Act 2004 intervention in the Castle Point Borough Council Local Plan

In my role as Secretary of State for Levelling up, Housing and Communities I have been consistently clear that local plans are at the heart of the planning system. The Planning and Compulsory Purchase Act 2004 (the 2004 Act) in section 19 requires that each Local Planning Authority (LPA) must identify the strategic priorities for the development and use of land in the authority's area, and policies to address those priorities must be set out in the local planning authority's development plan documents, such as the local plan.

Following the publication of the revised National Planning Policy Framework (NPPF) today, I have emphasised the importance of planning for the development our communities need and that having an up-to-date local plan is a priority to meet this objective.

Castle Point Borough Council is one of only 12 LPAs who have failed to adopt a local plan prepared in accordance with the 2004 Act and one of only seven who are not currently taking their draft plan through the examination process. Your Council's persistent failure to adopt a plan has left your communities vulnerable to speculative development and has risked not delivering the economic growth and infrastructure they need.

The deadline for the submission of plans in the current system is 30 June 2025, and there is limited time remaining in the current plan-making system for the submission of a draft plan. Given the lack of progress your authority has made towards adopting a plan over the last 19 years, I have considered whether I am justified in using my powers of intervention to ensure that your authority has an up-to-date timetable, which indicates whether you will submit a draft plan in the current system.

LPAs are required to publish and maintain a Local Development Scheme (LDS) as set out in section 15(1) of the 2004 Act. Following the publication of the revised NPPF, and having considered your lack of progress towards submitting a draft plan, I have considered using my powers of direction under section 15(8)(b) of the 2004 Act.

The relevant provisions of the legislation are as follows:

The local planning authority must revise their local development scheme—

- (b) when directed to do so by the Secretary of State

I have considered whether I am justified in taking intervention action in relation to the statutory test set out in section 15(8AA)(a) of the 2004 Act. This requires that the person giving the direction thinks that revision of the scheme is necessary for the purpose of ensuring full and effective coverage (both geographically and with regard to subject matter) of the authority's area by the development plan documents (taken as a whole) for that area.

The last adopted local plan in Castle Point was in 1998, 25 years ago. Your Council withdrew the last draft submitted plan after it was found to be sound by an Inspector in June 2022. You had the opportunity to have an up-to-date plan in place but due to the decision to withdraw, it looks increasingly unlikely that a draft plan will be submitted in the current system.

The LDS for your emerging draft plan indicates that Regulation 19 consultation will be taking place in February 2025 and submission will be in June 2025. Due to your Council's persistent failure to meet milestones on your previous draft plan, you were one of 15 local authorities where the formal process of intervention was considered in 2017-18.

In order to ensure full and effective coverage of Castle Point by a development plan, it is justified to direct Castle Point Borough Council to revise its LDS, given the length of time since your Council has had an up-to-date plan for its area, your past failure to meet LDS milestones and the proximity of your proposed submission date to the end of the current system.

I have concluded that to ensure full and effective coverage of Castle Point Borough Council's area by a development plan, I am justified in using my powers in section 15(8)(b) of the 2004 Act and I am directing Castle Point Borough Council to revise their Local Development Scheme within 12 weeks of the publication of the revised NPPF.

I will be asking Departmental officials to liaise with you on this matter on a regular basis and to provide me with updates on your progress. Should you fail to comply with the direction in this letter, or should you delay progress of your emerging draft plan in relation to your LDS milestones, I will consider whether I need to take any further intervention action.

I can reconsider my decision to direct your Council at any time if I consider this is justified. If you consider there are reasons why intervention is not appropriate in your case, please advise me of these as soon as possible and no later than 12 January 2024.

I look forward to hearing from you regarding your revised Local Development Scheme.



RT HON MICHAEL GOVE MP
Secretary of State for Levelling Up, Housing and Communities
Minister for Intergovernmental Relations

Councillor Dave Blackwell

Member for Central Ward
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12th January 2024

Dear Secretary of State

s.15 Planning and Compulsory Purchase Act 2004 intervention in the Castle Point Borough Council Local Plan

I write further to your letter dated 19 December 2023 in which you set out your intention to intervene in the preparation of a new local plan for Castle Point Borough. This response is from me, as Leader of the Council and also from my Deputy Leader, who is the Group Leader of my coalition partner.

This letter sets out the exceptional circumstances that the Council believes justify you not intervening to produce a new local plan for the Borough. I request that you take these into consideration in deciding on this matter.

Since receipt of your letter, the Council's Chief Executive together with the Director People and Communities and the Assistant Director for Climate and Growth have met with your officials, and we have taken on board the good advice that they have provided. We have established a very strong relationship with your team during the last plan, and we will maintain that going forward, ensuring that we provide regular updates on our progress.

I strongly reiterate that the Council is on track to deliver a new local plan (the Castle Point Plan), under the 2004 system. We are committed to do so with cross party support, embracing the Government's planning reforms and through proper and effective engagement with the local community. The new local plan will reflect the real needs of the Borough – people, economic and environmental.

I acknowledge that the Council does not have an up-to-date local plan. That puts us at risk of speculative development and planning by appeal. That position is not justified or sustainable, and goes completely against the grain of the objectives of the administration of this Council that has been in place since May 2022. Only a new local plan will afford the Council the strongest

possible position to defend against inappropriate development. I know this view is shared by members across all parties.

The Council has submitted plans for examination on three occasions since 2004, which for various reasons, have not been adopted. When this administration took over the running of the Council after two decades in May 2022, we inherited a sound but deeply unpopular and non-adoptable local plan. That plan had evolved through previous unsound iterations in 2012 and 2016.

Unfortunately, a new local plan had also become a battleground for political disagreement and a hostile media environment. Such conditions make plan making at all stages inherently risky, and there is no political consensus to support the plan through to adoption.

As a result of that, this administration has learned from past mistakes and we have listened, not just to the electorate, but to officers, experts, your officials and ministers. We have embraced your planning reforms in our approach and encouraged the Government to reform plan making so that it is less top down and embrace local needs. Importantly, we are working across all three parties to achieve a consensus.

Local Development Scheme (LDS)

As you state in your letter, we will submit the new local plan in or before June 2025, and thereby achieve the target for submissions of plans under the current system of June 2025. We are on track to deliver on those timescales, but acknowledge that it is cutting it fine with no room for any delays.

Therefore, we have reviewed the LDS to see whether progress can be sped up and what is needed to do so.

Our initial assessment is that we could reduce the timescales to enable submission in April 2025, but we will confirm that shortly. We are prepared to increase resources strategically to speed things up, in particular the analysis of comments at the Regulation 18 and 19 stages.

We will confirm this in a review of the Local Development Scheme which we will place before a full Council meeting on 31 January 2024 for approval. We will send the report to you when it is published and we will confirm the Council decision once it has been taken. This will be well before the 12 March 2024 deadline that you have set.

We wish to put the risk of intervention behind us so we can focus on plan preparation, but always mindful that slippage could reverse that position. This administration is committed to ensuring that a new local plan is secured for the residents of Castle Point as quickly as possible.

The current LDS sets out our evidence base requirements and we will reflect progress in the preparation of that evidence base, as set out later in this letter, in the revised LDS.

We are therefore acting swiftly in our response to your letter. We had already established an all-party Castle Point Plan Board, and Members agreed at its meeting on 3 January 2024 that we will seek to reduce the timescales.

However, I must be clear: we are committed to a plan that fully meets local needs and which will achieve good place making objectives. Therefore, speeding up the process which then results in a poor plan is not acceptable. I am sure that you will agree with me on that point. We will not do less than a thorough job. We will put in additional resource where needed and will accelerate progress where it is safe and appropriate to do so. There will be no short cuts.

The Council is aware that tough decisions will need to be taken on this plan and that those decisions will not satisfy everyone. However, with the work we are doing, and at the good pace that we are doing so, we are confident that where those tough decisions are to be made they are fully justifiable, recognisable and, unlike the previous failed plans, driven by local need and supported by local people.

Background to the approach to the Castle Point Plan

It is important to set the context for the new plan and why the LDS timetable is what it is.

It is important to note that the Council had proven that it has the capacity and capability to produce a sound local plan, and there is no doubting our ability to do the same again. We are not a local authority who is not capable of producing a sound local plan. Our lead officers who worked to make that plan sound, remain with the Council, and we have greatly expanded the officer resource for the new plan.

Just to confirm that the current development plan is the Castle Point Local Plan 1998. Policies in that plan were saved in 2007. The Council has used that plan, together with national planning policy as the basis for decision making, with a 70% success rate on appeal across all types of Section 76 appeals.

The now withdrawn Castle Point Local Plan 2018 – 2033 was prepared following the threat of intervention from the Secretary of State in 2017 and 2018. It was made quite clear in discussions with government officials and advisors in that period, that the Government expected the plan to proceed with pace and meet government targets. That is what the administration at that time did. The plan was approved for submission in October 2019, and after a period of engagement, the plan was submitted for examination in October 2020. The hearing was held in May to June 2021.

A further round of consultation in August that year at the request of the Inspector to look at the impact of a revision to the NPPF. Consultation on Modifications in the winter 2021/22, and the Inspector issued his final report on 2 March 2022.

On receipt of the Inspector's report, the plan was presented to Council on 23 March 2022 with a strong recommendation from officers to adopt the plan and clear advice on the risks of non-adoption. However, councillors from all parties, including the conservative councillors who had previously agreed to the Plan at regulation 19 stage, agreed not to adopt the plan.

At the 23 March 2022 Council meeting the report was clear that in the event of non-adoption that a further report be made back to Council. As motion to prepare new plan, had been tabled at that meeting, that motion – to effectively withdraw the plan – became the basis for the report in June 2022.

Given the decision not to adopt the plan, to have maintained a sound but unadopted plan, would have significantly exposed the Council to planning by appeal, with possible designation on quality grounds and at considerable costs. It would also have led to the unsustainable loss of green belt.

Therefore, this administration had no option than to withdraw the plan. The motion to withdraw was agreed unanimously by Councillors across all three parties on 15 June 2022.

Council officers had a number of meetings with your officials ahead of the Council meeting on 15 June 2022 and were clear about the risk of the plan being withdrawn.

There was the expectation that you as the Secretary of State would have used your powers to call-in the plan for your consideration. That did not happen. Had you done so, it would have gone against the expressed wish of a newly elected administration. However the plan was sound and the risk of call-in was, therefore, high.

Post the decision to withdraw, officers met your officials and started the process of how we should prepare a new plan.

Your, then, Minister of State for Housing, Marcus Jones MP, wrote to me on 23 August 2022 setting out his disappointment that the Council had withdrawn the plan. He also set out what he anticipated from the Council going forward and our requirement to prepare a timetable for doing so. He stated that he wanted the council to proceed at pace, but also bear in mind the planning reforms.

The Minister's requirement was that the Council should engage local residents and he concluded his letter with his expressed hope '*that the whole Council can come together to progress a plan which can find local support and which can deliver against the Levelling Up missions, bringing those benefits to the local community as swiftly as possible.*'

I agree with the Minister's view and I set out our approach in my reply to the Minister sent on 31 August 2022. We have stuck to our commitment.

In November 2022 the Council unanimously, across all three political parties, approved a Local Development Scheme for the preparation of the Castle Point Plan.

We also committed £1.6 million in new resources and to ensuring that our local communities have their say from the outset. This fresh approach is also designed to rebuild much of the trust that has been lost between the Council and the plan making process with local residents.

Running alongside this, we continue to work closely with key partners, including statutory consultees, to ensure that they share in what the plan will seek to achieve, but that they can also incorporate the emerging proposals and policies into their own delivery plans. We are already working on ensuring that we have minimised risk of objections from key bodies, which only cause delay and uncertainty post submission.

The Council has commissioned a significant portion of the evidence needed to support the new plan, including the innovative use of new technologies (including the use of Artificial Intelligence). Ensuring that we engage across all age groups, particularly young people, is

always difficult, so we are using innovative approaches through arts and social media to achieve that.

All of this is well underway and does not cause any delay.

Progress

Set out below is our progress to date:

1. Review of existing evidence (including Stage One Green Belt Assessment) and data to test compliance with tests of soundness and relevance – COMPLETE
2. Stage one engagement with the local community and businesses to identify key issues – COMPLETE
3. Engagement through Art – UNDERWAY and will be ongoing to Reg 19
4. Local Housing Needs assessment, including interviews with local residents – COMPLETE
5. Urban Capacity Assessment, including the use of AI to identify and assess an additional 375 sites in the urban area – Stage One COMPLETE – Stage Two (working with landowners is UNDERWAY complete March 2024)
6. Call for Sites – UNDERWAY complete March 2024
7. Playing Pitch and Sports Facilities Strategy review – COMPLETE and presented to Cabinet on 17 January 2024
8. Local Cycling and Walking Improvement Plan – UNDERWAY complete by March 2024
9. Open Space Assessment – COMPLETE
10. Economic Development Strategy – UNDERWAY complete April 2024
11. Local Wildlife Site review – UNDERWAY to be completed in March 2024
12. Strategic Flood Risk Assessment Part One – UNDERWAY to be completed by May 2024
13. Design Codes, including for a conservation area – UNDERWAY to be completed by Rag 18 engagement (summer 2024)
14. Gypsy and Travellers Accommodation Assessment – UNDERWAY complete March 2024
15. Transport Assessment – UNDERWAY started January 2024 and complete by June 2024

In addition, we are working with Essex County Council (ECC) on net zero housing development and testing options for Biodiversity Net Gain. ECC has also completed a Climate Action Plan and an Economic Sector Growth Strategy which will also feed into the plan. The commercial arm of ECC, Place Services, is being commissioned to prepare evidence, via a service level agreement, where appropriate.

Working with partners across South Essex, there is a completed Strategic Housing Market Assessment, a Green and Blue Infrastructure Study and Strategy, Economic Development Needs Assessment and an Employment Land Availability Study.

The Infrastructure Delivery Plan will use the sound model and baseline of the Plan used for our CIL, which we adopted in 2023.

The viability appraisals will be commissioned when we have developed the options for the spatial strategy. These will also use the sound appraisals as a baseline used for CIL.

We are at the procurement stage for the integrated impact assessment.

The Habitats Regulations Assessment can only be commissioned later in the year when the spatial strategy emerges and that will complete the evidence for the plan.

Focus is now on preparing the Regulation 18 Issues and Options plan.

Therefore, the high-level programme is:

1. Reg 18 Issues and Options for approval in June 2024
2. Formal engagement on Reg 18 in Summer 2024
3. Reg 19 Draft Plan approval in January 2025
4. Consultation on Reg 19 to March 2025
5. Submission in April 2025

This programme is possible by twin tracking, use of our own resources and data to focus commissioned work, early procurement and advanced engagement planning. As I have also stated, we will increase resources if needed.

Impact of Intervention

All of the above progress will be lost if the Government were to intervene in the preparation of our new plan.

I can assure you that no one is anti-development. There is no “NIMBY” charter amongst local residents or any of the three political parties on the Council.

However, all three parties now agree that the approach taken in previously submitted plans did not work and will not work again, hence the completely new approach.

We acknowledge that we could have reviewed the withdrawn plan and adapted it to better suit the needs, by reducing housing numbers and or taking out Green Belt sites. The previous administration had done exactly that in 2016, and that plan failed at examination. We took the view that if we repeated that mistake that it would ultimately once again end in failure and we would not have a plan in place.

Therefore, a fresh approach was needed. That means starting from scratch so that we get the plan right.

It is not clear what approach the Government would take if it was to intervene and whether or not it would speed up the process and deliver a sound plan, that is supported locally, any quicker than the current LDS.

Would a Government appointed team pick up where we are now, or start afresh? Either way there are significant risks to continuity, trust and the loss of considerable local knowledge and expertise through our members and, as importantly, our officers, who are as committed to this approach as the Councillors are.

Most importantly, intervention will destroy the growing new found trust local people have in the Council and the development of the Castle Point Plan. If intervention meant steamrolling over local opinion, then that will lead to very strong local objection and it is not something the Council would accept. If however, intervention meant that the team would continue with the approach we are taking, then why intervene and why not let the Council do that?

In allowing the Council to continue at pace, we will work with your officials and the Planning Advisory Service, who have, since your letter, reached out to the Council to offer support.

We are under no illusion of our need and desire to have an up to date local plan in place. We recognised that in the motion to withdraw and the report to Council on 30 November 2023.

On that basis and for all the reasons set out in this letter we do not believe that there is any justification for you to intervene now in the preparation of a new local plan for Castle Point.

We intend to present a report to the Council's Cabinet at its meeting on Wednesday 17 January 2024, that will include your letter and this reply, which will be published and in the public domain.

We are at any time happy to meet with you, the Housing Minister of State and your officials to discuss this matter.

Yours sincerely,



Cllr Dave Blackwell
Leader of the Council

Yours sincerely,



Cllr Warren Gibson
Deputy Leader of the Council

cc.

Cllr Mrs B Egan – Leader of the Conservative Group

Rebecca Harris MP

Angela Hutchings – chief Executive

Ian Butt – Director of Place and Communities

Amanda Parrott – Assistant Director for Climate and Growth