WAVERLEY BOROUGH COUNCIL

MINUTES OF THE OVERVIEW & SCRUTINY COMMITTEE - ENVIRONMENT
- 15 FEBRUARY 2018

(To be read in conjunction with the Agenda for the Meeting)

Present

Cllr Jerry Hyman (Chairman)          Cllr David Hunter
Cllr Wyatt Ramsdale (Vice Chairman)  Cllr Peter Isherwood
Cllr Maurice Byham                   Cllr Nick Williams
Cllr Mary Foryszewski

Cllr Denis Leigh (Substitute)

Apologies

Cllr Stephen Hill and Cllr Anna James

Also Present

Councillor Brian Adams, Councillor Paul David Follows, Councillor John Fraser,
Councillor Andy MacLeod and Councillor Bob Upton

WELCOME AND INTRODUCTIONS

The Chairman welcomed Members and members of the public to the meeting.

The Chairman introduced the Officers attending, who would introduce the report
and respond to Members’ questions:

Graeme Clark, Strategic Director
Elizabeth Sims, Head of Planning
Ian Motuel, Principal Planning Policy Officer
Gayle Wootton, Principal Planning Policy Officer
Daniel Bainbridge, Borough Solicitor
Lewis Jones, Planning Lawyer

50. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS (Agenda item 1.)

Apologies for absence were received from Cllrs Stephen Hill and Anna James.

Cllr Denis Leigh attended as a substitute.

51. DECLARATIONS OF INTERESTS (Agenda item 2.)

There were no interests declared in relation to the items on the agenda.

52. WAVERLEY BOROUGH LOCAL PLAN PART 1: ADOPTION (Agenda item 3.)

Elizabeth Sims, Head of Planning, introduced the report that had been circulated to
all Members with the agenda for the meeting.
Following a lengthy process, the Council had reached an important milestone in the development of Waverley’s Local Plan. The Inspector’s report on Local Plan Part 1, which sets out the overall strategy along with strategic planning policies and some strategic site allocations, had been received.

The Inspector had identified three main issues upon which the soundness of the Plan depended:

- Whether the Plan made adequate provision for new housing;
- Whether the spatial strategy was sound, including all its component parts; and
- Whether the development management policies of the Plan were clear, effective and consistent with statute, Government policy and guidance.

Subject to the inclusion of the Main Modifications, the Inspector had found the Plan to be ‘sound’. It was crucial to understand that without the Main Modifications, the Plan was not considered ‘sound’.

Adoption of the ‘sound’ Local Plan Part 1 by the Council would allow Local Plan Part 2 to progress, which would deal with other allocations of land as well as setting out the more day to day development management policies; and also Neighbourhood Plans that were being prepared across the Borough. The adopted Plan would be given full weight for the purposes of planning decision-making and would replace a number of the policies in the 2002 Local Plan. It would enable the Council to defend its position against speculative development proposals that were inconsistent with new Plan policies. It would also enable the Council to move forward with the adoption and implementation of the Community Infrastructure Levy.

There were clear risks to the Council if it decided not to adopt the Modified Plan. The lack of an up to date Plan would leave the Council vulnerable to more speculative development, and it would be more difficult for the Council to defend its 5-year housing supply position. Even if the Plan were not adopted, the Inspector’s report would be a material planning consideration that could be used by developers to strengthen their arguments against Waverley. In addition, the Council would lose the certainty that the Plan provided, it would be more difficult to progress the Community Infrastructure Levy, and Neighbourhood Plans, and Waverley would be vulnerable to potential Government intervention with reputational consequences.

Having regard to the Inspector’s findings and the benefits of having an up to date Plan in place, Officers strongly recommended that the Council adopt the Plan incorporating all the Modifications required by the Inspector to make it sound.

Before inviting the Environment Overview & Scrutiny Members to comment, the Chairman reminded all present that Officers represented the Council and Members represented the electorate, and it was important that the Committee carried out thorough scrutiny and reflected their concerns.

The Chairman informed the Committee that Cllr Paul Follows and Cllr Andy MacLeod had given notice that they wished to speak on this matter, and he invited them to address the Committee.

Cllr Follows had listened to Officers highlight the risks of non-adoption, but there appeared to be significant weight attached to the Inspector’s Report even if the Plan
was not adopted. Given the failure of previous incarnations of the Plan it was never a foregone conclusion and there seemed to be some method of changing them if necessary. As a new councillor, he had not been involved in the development of the Plan, and he urged anyone who had been involved to ask questions if they felt that they had not been asked and answered.

Cllr Follows had three questions:

- Did the recent developments in relation to the air quality statistics reported today in any way affect the Local Plan and its evidence base?
- With regard to Aaron’s Hill and Policy RE2 (MM12) did Officers have any view on what Guildford’s Plan might propose for the Green Belt boundary, as he wanted to understand what the theoretical extent of development might be?
- With regard to the additional housing numbers effectively mandated by the Inspector, and that had been proportionately distributed by town size across the Borough, why had this not all been allocated to the Dunsfold strategic site, where a larger concentration of housing and infrastructure would have benefited the whole borough?

Cllr MacLeod advised of the confusion and anger among Farnham residents about the Local Plan and how it has affected the Farnham Neighbourhood Plan, which had taken a great deal of work to produce over 3-4 years and now needed to be completely reconsidered. Residents had seen three attempts to produce a Local Plan for Waverley: in 2012 Waverley was planning for 250 houses a year, and the Inspector rejected that and said we should be planning for around 700 houses a year. With the 2017 Plan we were planning for 519 houses a year, and the Inspector has said 590. Residents don’t understand the housing numbers, and are confused and angry.

Despite that, Cllr MacLeod recognised that Waverley needed a Local Plan in order to progress CIL, have more control, and avoid the risk of special measures. However, he saw it as less of a Plan and more a statement of aspiration: the Housing Trajectory in the Schedule of Proposed Main Modifications showed that in the first 4 years of the Local Plan period there had been between 100 and 350 completions a year. In the current year the Plan was for 477 completions but the Planning team had advised that it would be 200 – 250 completions. How was a Borough that had not produced 400 completions in any year suddenly going to produce over 1300 houses in 3 years from now? Waverley didn’t produce houses; developers did, and they were not going to meet the planned numbers. Cllr MacLeod asked if there should be a contingency plan, so that when the planned housing numbers were not completed it was not Waverley that was penalised?

Cllr MacLeod also did not accept the Inspector’s conclusion that the planned number of houses could be provided sustainably, and the Inspector did not seem to have taken into account all the constraints in Waverley, such as traffic, air quality, water quality, Green Belt and constraints of the Special Protection Areas.

With regard to Cllr MacLeod’s question about whether the Local Plan was realistic, Elizabeth Sims responded that whilst she understood his concern the Planning system could only follow the requirements to capture the aspiration to provide the required number of houses, and to grant planning permissions. The constraints on deliverability had been scrutinised and the Inspector had found the Modified Plan to be sound and deliverable. The Local Plan would be monitored and housing
completions were reported to the Government. Whilst the appeals process appeared to hold the Council to account for not allocating enough sites, everyone was aware that the Council did not build houses.

With regard to Cllr Follows’ question on the evidence base in relation to air quality, Elizabeth Sims assured Members that the evidence base for the Local Plan was sound. It had been the most up to date data available at the time of preparation and was 2014 data taken from the 2015 Annual Status Report and earlier data. The Council was confident that the data was robust. Daniel Bainbridge added that the Council was unequivocal that there was no issue with that data; the data that formed the evidence base had not been withdrawn by the Council.

Turning to the proposed release of Green Belt at Aaron’s Hill, Ian Motuel explained that this site had been identified as part of the Green Belt review but the submitted Plan had proposed to consider this further in Local Plan Part 2. As described in paragraph 111 of his report, the Inspector had felt that it would provide more certainty if Waverley addressed this in Part 1 and removed the parcel of land from the Green Belt. The Council had captured this recommendation in the modification MM12. Waverley was not in a position to influence what Guildford did with the Green Belt land on its side of the Borough boundary, nor to speculate on what the Inspector might require from Guildford’s Local Plan. It was understood that currently Guildford Borough Council was not intending to remove the land in question from the Green Belt. The land within Waverley could come forward for development on its own, and it was important not to pre-judge the outcome of the Guildford Plan. Whilst Inspector Bore had been appointed recently to examine the Guildford Draft Plan, it was unlikely that he would have known this at the time of writing his report on Waverley’s Plan.

The Chairman queried whether proximity to a heritage site affected the proposed release of the Binscombe site from Green Belt. Ian Motuel advised that heritage issues would be dealt with as part of a planning application. The Inspector had been aware of the constraints and was happy in principle that the site could be released.

Cllr Hunter commented that in 2015 the Conservatives had stood on a manifesto not to release Green Belt, and he was disappointed to see the number of 35 houses; but he was confident the site would not be needed to achieve the housing numbers, and he supported adoption of the Modified Local Plan.

The Chairman referred to the Inspector’s comments on the release of Green Belt opposite Milford Golf Course, and the covenant on this land. He asked Officers whether it would be right for Waverley to adopt the Local Plan if it was known that there were constraints beyond the Council’s control that affected deliverability? Elizabeth Sims advised that generally speaking land ownership is not a planning consideration; the Inspector’s view was that it would be considered to be in the public interest for the covenant to be lifted at the appropriate time and the site could be delivered. Daniel Bainbridge added that there had been extensive discussion at the Hearings and in subsequent correspondence about this issue and the Inspector had covered this within his report. Cllr Isherwood referred to his note of the Inspector’s comments at the Hearings, that the site was deliverable.

The Chairman asked what would happen to the housing allocation if it was not delivered at that site – would it be allocated elsewhere in Milford, or redistributed to
another location? Elizabeth Sims advised that if adopted, the Plan would be monitored going forward and any shortfall in the amount of housing delivered would be assessed and taken account of in a future plan. It was beyond the scope of the current exercise to consider how this might happen.

Cllr Leigh observed that there was extensive reference to Milford in the Inspector's report, and as a Milford resident he recognised there would be effects. But he felt that it was important to avoid conjecture and hypotheticals, and to focus on what had been concluded. He was conscious of the huge amount of time and money had been spent on developing the Local Plan, and having read the report carefully he appreciated the clarity that the Inspector had provided. The Milford ward members were well aware of the covenant and felt that in the right circumstances it could be revoked, and he was reasonably happy with the proposal.

Cllr Leigh also commented that as Waverley councillors, Members had to think about the whole Borough and whilst they might not like everything individually, they had to think about the equitability across the whole Borough, and he felt the Local Plan did this rather well.

Cllr Byham reminded the Committee that Bramley is ‘washed over’ by the Green Belt. The Neighbourhood Plan team was coping with the housing numbers, but some sites had been identified as having potential to be brought forward as exception sites. However, it was understood that these would not count towards Bramley’s increased allocation of 90 houses. Ian Motuel advised that the Bramley was very constrained and this presented challenges to the Neighbourhood Plan group. The Green Belt Review had not given any scope for removal of Green Belt around Bramley, but Officers would continue to work with the local group to find a way forward. All housing units built would count towards the gross number, but there was a separate target for windfall sites in the larger and smaller villages.

Cllr Foryszewski and Cllr Ramsdale both encouraged Members to focus on the Modified Plan that the Council was being recommended to adopt. Cllr Foryszewski emphasised that the Plan had been examined and found to be sound with the Inspector’s modifications. Waverley could not predict what Guildford might do in relation to Aaron’s Hill, and did not have control over what housing was actually delivered. There should be sanctions against developers who did not build out permissions granted, but that was not a matter for discussion now.

Cllr Ramsdale echoed the lack of belief that house-builders would deliver, but Members needed to focus on the Local Plan in front of them. If Waverley didn’t adopt, the Council would have to continue defend itself against developers arguing that we did not build enough homes. On balance, he would rather have the protection afforded by the Local Plan than not.

The Chairman reminded the Committee of the need to scrutinise the Inspector’s conclusions, and returned to the modification requiring the release of Green Belt at Aaron’s Hill which he felt was a direct consequence of Waverley having to take part of Woking’s unmet housing need. He asked why the housing numbers put forward by Neil McDonald in the CPRE consultation response to the Main Modifications had not been used?

Elizabeth Sims explained that the Neil McDonald report argued that the Objectively Assessed Housing Needs (OAN) should be based on 2014 population projections.
These had come out after Waverley was well advanced on its Plan development based on 2012 projections. The report had been considered at the Examination and the Inspector had agreed that the 2014 population projections should be used and these formed the starting point for his calculation of the housing numbers Waverley had to provide. However, the Inspector had then adjusted the base line figure for migration and Woking’s un-met need to arrive at 590 houses per year.

Elizabeth Sims recognised that the allocation to Waverley of part of Woking’s unmet housing need was probably the most unpopular part of the Inspector’s report. The National Planning Policy Framework had introduced the requirement for Local Planning Authorities to address need across their Housing Market Area. The timing of Woking’s Local Plan, which was adopted in 2012, meant that the unmet need had to be addressed. The Inspector found the Council’s intention to support Woking to meet its own needs was not sufficient and in his view the submitted Plan was not sound without the specified modifications. In due course, Woking would have to update its Local Plan, including presumably a new Housing Market Assessment. Whilst Waverley was proposing to release some Green Belt, this was to meet the housing needs of Waverley communities, and those communities that were more constrained had had a proportionately smaller allocation of the additional housing numbers.

Cllr Hyman referred again to the CPRE report that challenged the rationale for the calculation of the uplifted housing figures, and then referred to a letter received from the Protect our Waverley campaign that drew attention to DCLG data that indicated that 63% of Woking was affected by planning constraints compared to 64% of Waverley. Where was the evidence to support the Inspector’s conclusion that Waverley is less constrained than Woking and therefore in a position to take Woking’s unmet need?

Elizabeth Sims referred the Committee to paragraph 39 of the Inspector’s report which captured his technical assessment of the evidence in his conclusion that there was ‘no convincing evidence’ that 590 houses per annum could not be met in a sustainable manner.

Whilst the Chairman reiterated the need for O&S to ensure that the Inspector’s conclusions were robust and would withstand a challenge, Cllrs Ramsdale and Foryszewski emphasised to the Committee that Waverley was not able to open negotiations with the Inspector over his findings, and they were for Waverley to take – and adopt the Plan as modified – or leave. The Council had been waiting since 2002 to shape and control planning and members had a responsibility to get on with it. The process had been followed, and while the outcome was not perfect it offered some security; and if the Plan was not adopted communities would continue to suffer from developer led planning.

In response to a question from the Chairman, Daniel Bainbridge advised the Committee that the risks of not adopting the Local Plan were all set out in the Officers’ report and there were no ‘hidden risks’. As Members had said, the options for the Council were to adopt the modified Local Plan, or to withdraw it and start again. Officers did not consider there were grounds for Waverley to seek to judicially review the Inspector’s report; nor to defer and ask the Secretary of State to intervene.
Cllr Isherwood echoed previous comments, that if the Local Plan was not adopted then developers would continue to target Cranleigh and other areas that were vulnerable. The Council had been waiting for a long time to reach this point and it was important to move on and get the benefits of having an adopted Local Plan. He had sat through the Examination hearings and the evidence base had been robustly scrutinised.

The Chairman then asked about the two outstanding Natural England objections, and Gayle Wootton responded to clarify the position. Referring to paragraph 103 of the Inspector’s Report, this stated that Natural England had not raised an objection to the Council’s approach in the submission plan, but had raised an objection to the additional 450 homes, unless new strategic SANG was identified now. The Inspector had dealt with this objection in the following paragraphs of his report. Gayle Wootton also referred the Committee to the Inspector’s Assessment of Legal Compliance at paragraph 141 of the Report, in which the Inspector concluded that in respect of the Habitats Regulations, screening has been carried out, together with an Appropriate Assessment for each of the five European sites in the Borough. The effects of MM3 (the housing number uplift) had been considered in the HRA Addendum. Therefore he had concluded that the Plan and the modifications are legally sound.

Gayle Wootton then explained that an Appropriate Assessment is what the law refers to, and that a Habitats Regulations Assessment is the stage preceding an Appropriate Assessment where it is determined whether likely significant effects might occur on any SPA or SAC. If a likely significant effect was determined in that screening stage you would move to the Appropriate Assessment stage. The Committee was referred to the Habitats Regulations Assessment document for Local Plan Part 1 which had been updated with the housing needs uplift in the Habitats Regulations Assessment Addendum of 2017: on page 35 there was an Appropriate Assessment for the Thames Basin Heaths SPA; on page 42 there was an Appropriate Assessment for the Wealden Heaths Phase 1 SPA; and on page 52 there was an Appropriate Assessment for the Wealden Heaths Phase 2 SPA, none of which had been objected to by Natural England.

The Chairman reiterated his concerns that the Council was at risk of challenge without convincing objective evidence. The law was not specific other than requiring convincing Waddenzee evidence, and that this needed to be in relation to the conservation interests of the habitat or species. No bird numbers had been provided, therefore he did not think an Appropriate Assessment had been carried out; the Appropriate Assessments that had been completed did not consider whether provision of SANG was effective. The Chairman asked for confirmation that Waverley did have convincing objective evidence required by paragraphs 13-21 of SI Circular 06/2005, referred to in paragraph 113 of the NPPF.

Gayle Wootton responded that the Inspector had considered the technical evidence produced by Aecom, and which had been consulted on. The Inspector concluded that the Plan and Modifications meet the legal requirements of the Habitats Regulations. In response to a further challenge by the Chairman on the same point, Daniel Bainbridge reiterated that Planning Officers had answered as fully as they were able. If in due course Natural England or anyone else believed that any element of the Inspector’s report was challengeable, they would be entitled to bring a challenge in the 6-week challenge period if the Plan were adopted by the Council.
Waverley Officers were satisfied throughout that the evidence base for the Plan was sound.

Elizabeth Sims added that Natural England is the expert statutory body for this issue, and it had not objected to the Plan in terms of the approach to mitigation in the SPA. The only objection latterly had been in relation to the housing uplift and whether there was enough SANG identified for the remainder of the Plan period. The Inspector had addressed this, and disagreed with Natural England, and found the Plan to be sound. Natural England is the expert body as to whether the mitigation is appropriate, and it had agreed with the broad approach.

Cllr Foryszewski assured the Chairman that the Plan had been scrutinised by Members throughout its development, and the Council now had a Plan that had been examined and found sound. Not to proceed now would be to fail the Borough.

The Chairman questioned whether the transport provisions were satisfactory; he noted that policy ST1 was stated to be consistent with Waverley’s Air Quality Action Plan, but he did not think the Action Plan would improve Air Quality. However, Cllr Leigh observed that the Local Plan was supported by the Infrastructure Delivery Plan, and not adopting the Local Plan would hamper the adoption of the Community Infrastructure Levy and the possibility of getting funding for much needed infrastructure.

Notwithstanding the concerns of the Chairman, Cllr Ramsdale drew the discussion to a close by reminding the Committee that it was not considering a draft report, there was no further opportunity to change it, and the options were to accept the Modified Local Plan or start again. Whilst he did not like all of it, it had been thoroughly argued over the years and was a robust piece of work. In some respects it was too late for Cranleigh, but in order to protect other communities in Waverley, he urged the Committee to endorse adoption of the Modified Plan.

The Committee agreed the following comments to be passed to the Executive:

The Committee considered the report at length, and questioned Officers on a number of key issues in relation to the additional housing numbers and their distribution, the deliverability of housing, the proposed release of Green Belt, and the robustness of the evidence base.

The Chairman questioned the soundness of the Modified Plan in respect of a number of matters that, in his opinion, had not been adequately addressed, including: the lack of an Appropriate Assessment containing bird numbers and an assessment of mitigation proposals; the outstanding Natural England objection; concerns in relation to the approach to air quality; and the evidence to support Waverley taking part of Woking’s unmet housing need.

With the exception of the Chairman, the Committee was satisfied with the responses of the Officers and the explanation of the evidence the Inspector had considered in reaching his conclusions. The clear majority view of Members was that whilst there were elements of the Local Plan that were disappointing from their Ward perspectives, what was now best for Waverley as a whole was to have an adopted Plan in place as soon as possible.
The Committee felt that adopting the Modified Plan, which the Inspector had found to be sound after a rigorous examination, would return control of development management to the Council and going forward would provide a level of protection to communities that had been absent for a number of years. It would allow Neighbourhood Plans to progress alongside the work on Local Plan Part 2, and income to be generated from developers to fund infrastructure through the implementation of the Community Infrastructure Levy.

On balance, and with the exception of the Chairman, the Committee agreed that not to adopt the Modified Plan would be to fail the Borough. The advantages of having an adopted Local Plan outweighed the risks of rejecting it at this stage, and any personal reservations about the housing numbers.

The meeting commenced at 7.00 pm and concluded at 9.15 pm

Chairman