

Report of the Director of City Strategy

**City of York Local Development Framework –Core Strategy Submission
Draft**

Summary

1. The purpose of this report is to allow Members to consider the draft Core Strategy Submission document (Annex A) and associated legal and soundness issues. The report also comprises the following Annexes directly relating to the draft Core Strategy document:
 - Annex B – Preferred Options Consultation Summary;
 - Annex C – Sustainability Appraisal;
 - Annex D – Heritage Topic Paper and Heritage Impact Appraisal; and
 - Annex E – List of Available Technical Papers.
2. Annexes B, C and D include information for Members to consider when making a judgement about the content of the main Core Strategy document. Annex E lists additional technical papers that provide information to supplement the existing Core Strategy bibliography and the Sustainability Appraisal. These are available in the Members' Library, from the author of the report and on-line.
3. The issues highlighted in this report were considered in detail at the Local Development Framework Working Group held on 14th February 2011. The minutes of the meeting along with the recommendations of the group are attached as Annex F. In addition Annex G (attached) highlights the key changes to the Core Strategy document requested by the LDF Working Group along with an officer response and other minor editorial or factual changes. The changes have been incorporated in the draft Core Strategy (Annex A).
4. The Core Strategy is a written statement of the planning strategy and vision for the City of York, together with strategic policies. All other planning documents produced must fit with the Core Strategy. At the LDF Working Groups in October and November Members made key recommendations relating to the proposed Spatial Strategy element of the Core Strategy. These essentially related to issues surrounding the preservation of the general extent of York's Green Belt as identified in the draft Local Plan. The recommendations of the group were subsequently endorsed at the Executive in December and are fully reflected in the draft Core Strategy document (Annex A).

Background

5. The LDF Core Strategy is the key tool for delivering effective, strategic planning and provides the context for all subsequent LDF documents. To do this it is important that it delivers the spatial / physical elements of the Sustainable Community Strategy. It must do this in a way that provides an effective strategy for managing change and responding to York's specific planning issues. This includes responding to the future need for development land in a way that respects York's unique natural and historic environment.
6. The Core Strategy effectively involves public participation at the three stages highlighted below.
 - **'Issues & Options' Stage** – at this point the Council highlights key issues and options for consultation to inform the content, scope and direction of the Core Strategy.
 - **'Preferred Options' Stage** – consultation on the Council's intended approach.
 - **Submission Stage** - representations are invited on the final document which will be submitted by the Council to the Secretary of State. Any comments received at this stage will be forwarded to the Planning Inspectorate for consideration at a public examination into the document.
7. We are currently at the Submission stage of production. This follows on from two Issues and Options stages undertaken in June 2006 (Issues and Options 1) and again in August 2007 (Issues and Options 2) and a Preferred Options consultation June to October 2009. The draft Core Strategy (Annex A) draws on the responses that were received during the consultation as well as feeding in the evidence base findings and higher level policy including national planning policy. Given the proximity of the Local Government Elections, the document will not be published for formal representations to be made until May.

LDF - Core Strategy

8. As indicated the Core Strategy will set out the overall vision and strategy for the Local Development Framework as a whole and in doing so provide the context for delivering the spatial aspects of the Sustainable Community Strategy. In summary the Core Strategy covers the following broad areas.

Background & Vision

9. This includes the consideration of those factors that would influence the strategic planning of York and uses them to develop a planning vision. These are summarised in figure 1 below.

Figure 1: Key Influence on the LDF vision.



10. The document includes a descriptive vision supported by a vision statement. This is then linked to a series of objectives which are addressed in subsequent chapters by strategic policies and targets. Following the Preferred Options consultation the influences have been amended to reflect work on the *Climate Change Framework and Action Plan* and the publication of the *York-New City Beautiful* document. In addition, to reflect consultation responses an additional theme relating to education and training has been added.

Spatial Strategy

11. The Spatial Strategy was considered in detail at the LDF Working Groups held on 4th October and 1st November and at the Executive on 14th December. Inline with the recommendation of the Executive the proposed approach aims to ensure that the general extent of the Green Belt will remain unchanged from that included in the draft Local Plan. Future development will therefore be concentrated on the main urban area of York and within existing settlements. This will be done in a way that ensures:
 - York's unique character and setting is protected;
 - future development is concentrated in locations well served by public transport and services, maximising the use of brownfield sites;
 - flood risk is appropriately managed; and
 - green infrastructure is protected.
12. Changes to this section of the Core Strategy also reflect the amended approach to the York Northwest area, with York Central and the Former British Sugar/Manor School sites now being identified as Strategic Allocations. The approach also reflects the latest work on the City Centre, including the *York-New City Beautiful* document.

Strategic Policies

13. The document contains a range of spatial and strategic policies grouped under the following headings:
 - York's Special Historic & Built Environment;
 - Building Confident, Creative & Inclusive Communities;
 - A Prosperous & Thriving Economy;
 - A Leading Environmentally Friendly City; and
 - A World Class Centre for Education and Learning for All.
14. A range of changes have been made to these sections to reflect the outcomes from consultation and new evidence base work. Key amendments include: a reviewed approach to the historic environment which also reflects the definition of heritage assets introduced by the new PPS5; changes to the affordable housing policy to reflect the dynamic viability model developed by Fordham Associates; an expanded economic growth policy addressing the wider definition of economic development included in the revised PPS4; new renewable energy targets resulting from the Renewable Energy Study; and new policies on education and training and air quality.

Delivery & Review

15. National Guidance (PPS12) requires the Core Strategy to be supported by evidence of what physical, social and green infrastructure is needed to facilitate the amount of development proposed for the area, taking account of its type and distribution. It states that this should set out who will provide the infrastructure and when it will be provided. Work has been ongoing with key infrastructure partners to understand the strategic infrastructure requirements arising from York's Core Strategy. In a number of areas these requirements are reflected in specific Core Strategy policies, for example on transport and community facilities. If Members agree the draft Core Strategy, then further work will be undertaken to finalise an infrastructure paper which will cover all relevant infrastructure types and discuss delivery and funding.

Consultation

16. This document follows on from the Preferred Options consultation which was held between June 2009 and October 2009. Reports to the LDF Working Group in January and April 2010 provided Members with information relating to the consultation. With regard to future housing and employment growth and the spatial strategy in summary the citywide questionnaire included the comments below.
 - 90% of respondents supported the key constraints used to help shape the spatial strategy relating to green infrastructure, flood risk and historic character and setting, whilst 10% did not;
 - 43% of respondents felt that York's economy should grow by 1000 jobs per year and 9% by more than this amount. 48% felt the number of jobs should be lower;

- 58% of respondents felt that we should be building less than 850 new homes a year, 33% agreed that 850 new homes per year should be built, whilst 9% felt it should be higher;
 - around 60% of respondents felt that land should not be identified in the draft green belt for housing or employment. However, if we had to identify land in the draft green belt for housing, 67% of respondents felt that Areas A and B would be most suitable. 58% of respondents believed that Area C was suitable for industrial and distribution employment, whilst 41% agreed that Area I was suitable; and
 - 77% of respondents agreed that we should be allowed to include a higher level of windfalls in the plan, whilst 23% disagreed.
17. Through the other forms of consultation a variety of other issues were raised including those highlighted below.
- Concerns surrounding the levels of growth of housing, employment and retail including implications for the green belt, infrastructure implications and the environmental impact of the proposed overall approach. Although there was support for focusing growth on the main urban area.
 - Comments both against and for the proposed areas of search, including issues about phasing and location and whether the outer ring road should form a constraint.
 - Support for the precautionary approach to flood risk and the focus on previously developed land.
 - Discussion on how to deliver the right mix and type of housing, comments both for and against the inclusion of windfalls and the need for a flexible approach to housing density.
 - A recognition that YNW is essential to achieving the Core Strategy vision.
18. Annex B includes a full summary of consultation responses for Members to consider along side the Core Strategy document.

Sustainability Appraisal

19. When producing LDFs local authorities are required to consider, at each stage of production, the impacts their proposals are likely to have on sustainable development. This is done through undertaking a sustainability appraisal of the document concerned and the publication of the appraisal so that those responding to any consultation are aware of the economic, social and environmental implications of certain approaches.
20. The Sustainability Appraisal (SA) for the Submission document highlights largely positive but some key negative potential effects arising from the analysis of policies. The strongest positive effects identified relate to the economy as the majority of the Core Strategy Policies could directly or indirectly help to support conditions for economic success and investment, either in terms of delivering jobs or underpinning those factors that make York attractive for visitors, residents and investors. The SA has also found that the policies have strengthened their approach towards achieving environmental objectives EN2, EN4 and EN5 regarding the character and setting of the Historic and Built Environment, managing the impacts of climate change and

improving air quality through more comprehensive inclusion of targets connected to design and construction. Positive social effects are also identified through the consideration of increased accessibility to services and sustainable transport as well as a strengthened approach to positively influencing human health and well being through enhancing green infrastructure and improving air quality.

21. The Sustainability Appraisal does, however, have significant concerns over the cumulative effect of implementing a low housing delivery target coupled with high expectations for employment growth. In the short-term policies CS5 (the Scale and Distribution of Housing) and CS15 (Sustainable Economic Growth) should be positive in meeting some of the required need for housing and employment. The greatest concern is for the long-term as the lower housing target could lead to associated social, economic and environmental impacts. In summary, the impact of this could be in terms of lack of provision for market and affordable housing to meet the projected need, difficulty in providing a balance of mixed housing types, lack of a supporting workforce and the increased need for inward commuting leading to negative impacts on the transport network.
22. The Sustainability Appraisal is provided as Annex C for Members to consider along side the draft Core Strategy document.

Heritage Appraisal

23. Both the Issues and Options and Preferred Options papers noted the significance and concentration of Listed Buildings, Scheduled Ancient Monuments and Conservation Areas (amongst other assets) in York, and used available historic and archaeological records to map their location. While such a 'heritage assets' approach should help at a site specific level, providing guidance about the sensitivity of a particular location, the overall pattern and profile of monuments and buildings, and indeed of other features such as historic parks and gardens, it cannot describe the significance and sensitivity of the wider historic environment, nor what elements of the city's character we should strive to protect or hope to strengthen.
24. In order to develop a sound basis for informed decision making, a Heritage Topic Paper and Heritage Appraisal have been undertaken. The Heritage Topic Paper aims to capture the significance of York's many historic assets, describing why these are special or unique to the city, and uses this to assess what the impact of the LDFs emerging development strategy would be on those assets. It takes a strategic, high-level overview of historic environmental character and sensitivity to assist with determining the location and broad scale of development and change and provide a framework within which more detailed studies can be undertaken. The purpose of the Heritage Impact Assessment is three-fold. First, it provides an evidence base for the historic environment for the Core Strategy. Second, it provides a view of the special character and significances of this historic environment. Third it provides a methodology for testing, at a high level, the potential impacts of the policy statements contained in the LDF Core Strategy.
25. The Appraisal highlights the positive benefits of the proposed spatial strategy and green belt policy. It is indicated that in conserving a green belt around

York, and focusing development on the existing built-up area they are likely to reinforce the compact nature of the City, and substantially help retain important views from the Minster Tower – the converse is also true, affording views of Minster from outlying suburbs. It is also stated that the policy approach should reinforce existing neighbourhoods and nodes, and set a good framework for establishing the same within new major development opportunities.

26. It is highlighted that strategic development proposals should be developed with reference to six Principal Characteristics identified in the paper: strong urban form; compactness; landmark monuments; architectural character; archaeological complexity and setting. It is indicated as developments are considered in more detail it is important that site appraisal work/masterplanning is undertaken to consider impact on these characteristics. A specific point identified is the potential for tall buildings to undermine the relatively small scale of York's architecture.
27. Retail is identified as a particular concern, more specifically it is highlighted that proposals for large scale retail development which competes with the City Centre could potentially undermine the character of the urban core through increased vacancy rates, low investment, pressure on small specialist shops. It is recommended that the impact of new retail development on the City Centre's retail character needs to be properly tested. However, a sympathetic development proposal at Castle Piccadilly is identified as potentially bringing significant benefits improving linkages between The Eye of York and Clifford's Tower to the rest of York.
28. The Heritage Appraisal is provided as Annex D to this report for Members consideration when evaluating the content of the Core Strategy.

Legal and Soundness Issues

29. At the 1st November LDF Working Group Officers were asked to provide further information on legal and soundness issues as a public examination will be held to consider the soundness of the Core Strategy. The current and emerging position is highlighted below along with the summary of the advice from the Planning Inspectorate.
30. Under the current Planning and Compulsory Purchase Act 2004 S 20(5)(a) an Inspector is charged with firstly checking that the plan has complied with legislation. This includes checking that the plan:
 - has been prepared in accordance with the Local Development Scheme and in compliance with the Statement of Community Involvement and the Regulations;
 - has been subject to sustainability appraisal;
 - has regard to national policy;
 - conforms generally to the Regional Spatial Strategy; and
 - has regard to any sustainable community strategy for its area (i.e. county and district).

31. In addition Section 20(5)(b) of the Act requires the Inspector to determine whether the plan is “sound”. To be “sound” a core strategy should be ‘justified’, ‘effective’ and consistent with national policy. “Justified” means that the document must be founded on a robust and credible evidence base. It must also be the most appropriate strategy when considered against the reasonable alternatives. “Effective” means that the document must be: deliverable and flexible. If it appears to the Inspector at the pre-examination meeting that it is likely that the Core Strategy would require significant amendments to make it sound and that these amendments would not be able to be made through the examination process, the Core Strategy would need to be withdrawn at that stage.
32. The coalition agreement published in May 2010 highlighted that the Government believes that it is time for a fundamental shift of power from Westminster to local councils, communities, neighbourhoods and individuals. As a part of this approach they included a commitment to ‘rapidly abolish Regional Spatial Strategies and return decision making powers on housing and planning to local councils’. Following on from this on 6th July the Secretary of State for Communities and Local Government (CLG), Rt Hon Eric Pickles, announced the revocation of Regional Strategies with immediate effect.
33. In early August, house builder CALA Homes (Cala 1) launched a legal challenge to the government’s decision to revoke RSSs. They argued that the Secretary of State was not empowered to revoke RSS in the way he did and that he had breached his obligations under European law by failing to assess the environmental effects. They were successful in this challenge which essentially means that the regional strategy remains part of the statutory development plan. The Secretary of State has subsequently advised that the proposed abolition of regional strategies (in the now published Localism Bill) is a Government commitment which Inspectors should take into account as a material consideration where relevant to their casework. This position was the subject of a further unsuccessful legal challenge to the Secretary of State by Cala Homes (Cala 2).
34. The Decentralisation and Localism Bill (‘the Bill’) was published by the Coalition Government on 13th December 2010. In a press release dated 13th December 2010 CLG indicated that the Localism Bill will put an end to the hoarding of power within central government and top-down control of communities, allowing local people the freedom to run their lives and neighbourhoods in their own way. In addition a letter from the chief planner dated 15th Dec 2010 indicates that the Government has been clear that it intends to bring forward a number of reforms to the planning system, aimed at restoring democratic and local control and shifting power to communities. The Localism Bill is a key vehicle for achieving this. The Bill itself is such that encompasses issues as wide ranging as a general power of competence for local authorities; local authority governance; standards; financing; community empowerment; planning and housing. Part 5 of the Bill refers to planning matters and indicates that Regional Spatial Strategies are to be abolished. In addition it does however include a new duty to cooperate in the preparation of development plans.

35. Considerable detail is still awaited as to precisely how the provisions of the Bill are to be fleshed-out in legislation. This includes both the nature of the duty to cooperate and information on the new concise National Planning Framework. It is not clear what the latter might contain, or how the policies included within it may differ from that contained within existing national planning policy guidance and legislation.
36. Following the LDF Working Group on 1st November Officers contacted the Planning Inspectorate to seek further advice. They noted the intention of the Government to abolish regional strategies and highlighted that the determination of Cala 2 would provide a clear legal answer to the question which is whether the proposal in the Localism Bill to abolish regional strategies is a material consideration. If it is, they suggested that the weight to be attached will relate to the passage of the Bill through the House. Accordingly it may be, depending on what happens in the House, that by the time we submit our plan conformity with the regional strategy will be less important than it is now. Although it should be noted the Bill is unlikely to be enacted until November. In these circumstances the Planning Inspectorate indicated that our plan will be judged largely against the robustness of the local evidence along with whatever is the relevant government guidance at the time.

Options

37. Officers request that Members consider the following options relating to the Core Strategy document:

Option 1: That the Executive, subject to amendments proposed by the LDF Working Group, recommend that Council approve the document, attached as Annex A, along with supporting information for publication and submission for public examination.

Option 2: That the Executive, subject to amendments proposed by the LDF Working Group, approve the policies and principle included in the draft Core Strategy. In addition request Officers to provide a further report on legal and soundness issues before recommending that Council approve the document for publication and submission for examination;

Option 3: Seek amendments to the document to address the legal and soundness issues highlighted in the report and recommend the Executive to recommend to Council the approval of the amended document along with supporting information for publication and submission for examination.

Analysis of Options

38. There are clearly a number of risks that arise from the current national policy context these are highlighted below. These must be viewed against the Government's public policy approach which involves a fundamental decentralisation of control from central government.
39. The draft Core Strategy would not be in conformity with RSS in terms of its approach to housing. The initial Cala1 decision has reinstated RSS as a part of the development plan. However, given the likely abolition of RSS through

the Localism Bill, coupled with the Cala 2 ruling, this could be a matter of timing i.e. the position of the Bill in relation to the Core Strategy examination process. The final form of the Localism Act, however, can not be determined. It must also be stressed that the proposed removal of the RSS does not remove the requirement for the Core Strategy to be in general conformity with national policy and comply with the tests of soundness in PPS12. The majority of the plan would meet these tests although they are likely to present a significant problem in terms of the proposed approach to housing.

40. There is little guidance at the moment relating to the timing and content of the new National Planning Framework. In the absence of new provisions existing national guidance remains. This would create problems for our proposed approach in meeting the test of soundness given potential divergence from national guidance, particularly PPS3, in terms of the approach to housing need and the inclusion of windfalls, PPG2 'Green Belt' and PPS12 as detailed.
41. National guidance currently indicates that for a plan to be 'sound' it must be 'justified'. This means a plan must be founded on a robust and credible evidence base. The need for an appropriate evidence base is also highlighted by both the Planning Inspectorate and confirmed by the Council's solicitors. National guidance also highlights the importance of undertaking and reflecting public consultation. A significant amount of technical evidence base work across many policy areas has been undertaken to underpin the plan's approach. However, in terms of considering the quantity and location of future housing, the plan's approach reflects responses to consultation rather than appropriate technical evidence.
42. National Guidance also indicates that a plan must be 'effective' i.e. 'deliverable' and 'flexible'. The draft Core Strategy does not incorporate sufficient flexibility to allow for the failure to deliver certain key sites. This is a particular concern in relation to the York Central Strategic Allocation which is currently the subject of further work to refine development levels and ensure deliverability.
43. The Localism Bill includes a new duty to cooperate in the preparation of development plans. This is consistent with existing guidance included in PPS12. This is one of the areas that will be subject to further government guidance, however, the Bill would seem to support continued strategic coordination. This may also present a problem for York's Core Strategy if it is perceived by neighbouring authorities to be displacing housing.
44. Currently national guidance and legislation remains unchanged. For the reasons highlighted above at this point in time there is a high risk of the plan being found 'unsound' if Option 1 is pursued. Given that consultation on the draft Core Strategy will not occur until after the Local Government Election in May, Option 2 would allow for a reconsideration of legal and soundness issues at that point in time. It would also allow Officers to seek further legal advice, if Members deemed it appropriate. Option 3 would require making alteration to the plan to reduce the risk of it being judged 'unsound'. This would require a reconsideration of the future approach to housing, including the assessment of future need and the inclusion of windfalls, and the Green

Belt. In light of the current public policy context Officers would recommend Option 3. This is supported by advice from the Council's own solicitors.

45. As indicated in paragraph 3, the issues highlighted in this report were considered in full by Members of the LDF Working Group held on 14th February 2011. As detailed in the minutes, attached as Annex F, the Group recommend that the Executive approve the draft Core Strategy Document along with supporting information for public consultation and submission for public examination (Option 1). Key considerations behind this approach were: the overriding need to protect York's Green Belt, responding to community concerns about its loss; views on development in light of recent economic and market conditions; the number of unimplemented planning permissions; and the priority for brownfield redevelopment.
46. If the Council pursue a strategy which ultimately proves unsound following Public Examination then this will lead to the abortive costs of running such an inquiry and the potential additional costs of a future examination. Any subsequent planning work to achieve a 'sound' plan and its testing at a Public Examination will have to be funded by the Council, and would therefore prove an additional cost.

Corporate Priorities

47. The option outlined above accords with the following Corporate Priorities
 - The Sustainable City
 - The Thriving City
 - The Learning City
 - The City of Culture
 - The Safer City
 - The Healthy City
 - The Inclusive City

Implications

48. The following implications have been assessed.
 - **Financial** – *If the Core Strategy is found unsound then this would lead to additional costs as detailed in paragraph 46 above.*
 - **Human Resources (HR)** – *None.*
 - **Equalities** – *Through the stages of the Core Strategy's development equalities issues have been considered. In relation to the 10 dimensions of equality, the Core Strategy is likely to have the most impact on longevity; health; education; standard of living; and productive and valued activities. There may be negative implications for some groups with equality protected characteristics related to paragraph 21 above.*
 - **Legal** – *Highlighted in paragraphs 29 to 36 above.*
 - **Crime and Disorder** - *None*
 - **Information Technology (IT)** - *None*
 - **Property** - *None*
 - **Other** – *None*

Risk Management

49. According to the Council's Risk Management Strategy there are a number of risks associated with this report. The most significant risks relate to legal and financial as outlined in paragraphs 29 to 36 and 46.

Recommendations

50. That the Executive:
- i) seek amendments to the document to address the legal and soundness issues highlighted in the report and recommend Council to approve the amended document along with supporting information for publication and submission for examination (as per paragraph 37, Option 3).

Reason: So that the Local Development Framework Core Strategy can be progressed.

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**Report
Approved**



Date 15/02/2011

Specialist Implications Officer(s)

N/A

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Background Papers:

Technical Papers as listed in Annex E (these can be viewed on-line with the agenda for the LDF Working Group meeting on 14 February 2011, at:

<http://democracy.york.gov.uk/ieListDocuments.aspx?CId=128&MId=5660&Ver=4>

Annexes:

Annex A: Draft Core Strategy;
Annex B: Preferred Options Consultation Summary;
Annex C: Sustainability Appraisal;
Annex D: Heritage Topic Paper and Heritage Impact Appraisal;
Annex E: List of Available Technical Papers;
Annex F: LDF Working Group Minutes; and
Annex G: Proposed changes arising from recommendations of the LDF Working Group and other minor editorial or factual changes.