

APPENDIX 1 – EELGA Final Report

UTTLESFORD LOCAL PLAN 2020 – 2040: TOWARDS ZERO CARBON

LOCAL PLAN GOVERNANCE PROPOSALS

1 Summary

1.1 The Council has invited EELGA to review and comment on the draft governance proposals for the new Local Plan. In this report the EELGA associates have confirmed the case for Local Plan governance on the grounds of: the value to be created from preparing, and delivering a sound plan (as opposed to the political, reputational, financial and democratic costs of failure); the need for full compliance with the Government's governance regime for Local Plan making and the complexity of the plan making process.

1.2 The associates have proposed an updated governance structure and advised the report is read in conjunction with the organogram (in the appendix) and vice versa. The structure is based on three pillars, one for each of the Council's main Local Plan making functions / roles. We have defined these roles as: Local Planning Authority, community leader and place maker. Within the pillars, the technical, management and political governance activities are presented as layers with vertical and horizontal networks within and between the main roles.

1.3 The proposed arrangements privilege sound plan making, community engagement, strategic partnership development, project management and political direction and oversight. The arrangements are widely recognised as an essential ingredient of preparing a sound Local Plan with full community and stakeholder engagement and compliance with legislation and guidance. They align with mainstream practice but give enhanced weight to engagement in accordance with the Council's corporate priorities.

1.4 The report concludes with three points of advice:

- i) To consider adoption in principle of the proposed governance arrangements – activities, networks, and structure.
- ii) To invite Members to consider the functions and administrative arrangements of the proposed governance elements to align with corporate objectives and priorities and compliance with Government legislative requirements and legal advice. The elements comprise: purposes and outputs, formal remits, administrative status, Council support / inputs, membership, meetings, and reporting protocols.
- iii) To consider monitoring the governance environment and adapt the governance in response to change. Significant sources of change are mostly likely to arise from Government (amendments to legislation and funding regimes) and the Council's initiation and development of existing strategic policy and delivery partnerships with service and infrastructure providers and land promoters.

2 Background

2.1 Uttlesford District Council is to prepare a new Local Plan for the period 2020 – 2040. The plan and its delivery will direct and shape, among other things, the: provision of homes, jobs, facilities, services, and infrastructure; quality of the environment including the scope and extent of natural capital and quality of life for current and next generations.

2.2 The Government's rule-based governance regime for Local Plan making requires Local Planning Authorities (LPAs) to comply with statutory and regulatory obligations and Planning Practice Guidance. The system is enforced by requiring LPAs to demonstrate to independent Inspectors at public hearings the Council's Local Plan is sound and in full compliance with legislation and Government guidance. The regime is designed to both empower LPAs to make Local Plans and bound the limits of their local democratic discretion.

2.3 As Councils have found breaking or bending or gaming the Government's Local Plan making governance rules puts at risk the adoption of a Local Plan. Such an outcome, results in loss of political capital, organisational reputation, wasted expenditure and weakened local democratic control over development management. The latter arises where planning applications refused by the LPA are more likely to be allowed at appeal by Inspectors and or the Secretary of State. This is where 'notwithstanding the primacy of development plans in law' (Para 47 National Planning Policy Framework (NPPF)), 'permission has been granted in accordance with the presumption in favour of sustainable development' (Para 11 NPPF).

2.4 On the other hand, full compliance with the governance rules is more likely to lead to adoption of a Local Plan. This outcome leaves development management overwhelmingly in local democratic hands. It also provides exceptional value for money spent on plan making as adopted plans are a well spring of value creation. We have defined these sources of value as:

Private profit: The most significant source being land use allocations and subsequent built development

Public value: Different forms of public value can be created, for example, by engaging communities in making a plan that is evidence led, puts infrastructure before new homes, provides homes that are affordable for local people and built in locations evidence shows are most sustainable

The Commons: This (priceless) value is defined as the protection and enhancement of the commons: the natural resources available to all members of society, air, water, and a habitable earth. The public policy priorities and commitments for the commons are to address the global challenges of climate change and eco-system collapse through a zero-carbon future, increasing biodiversity, and net gains in natural capital.

2.5 There are then significant rewards from adoption of a Local Plan, but the Government's regime sets a high bar as the Planning Advisory Services has noted:

'Preparing a Local Plan is a complex project involving a number of stages and associated tasks involving many participants over an extended timescale.'

2.6 The high rewards for making a sound plan and complexity of the plan making process compel the Council to design and enforce its own Local Plan making governance arrangements.

3 Local Plan Making Governance

3.1 As 'form follows function,' Governance structures need to be based on the required governance functions or roles and activities.

3.2 In reviewing the emerging governance proposals we have defined the Council's main plan making governance roles as: Local Planning Authority, community leader and place maker.

3.3 Each of these roles is complex as they involve a range of different activities with different stakeholders in different combinations at different stages in plan making process. At many points in the plan making process these activities overlap with and link to each other.

3.4 To enable effective management and governance of this complexity, we have proposed a governance structure (presented as an organogram in the Appendix) in which the three main functions are represented as columns. Within the pillars, the technical, management and political governance activities are presented as layers with vertical and horizontal networks within and between the main roles.

3.5 In the next sections, we summarise the institutional contexts of these roles and propose governance activities as components of an integrated Local Plan governance regime. The text is to be read with reference to the organogram in the appendix.

Local Planning Authority (LPA) role

3.6 The Planning Advisory Service has commented,

‘Putting in place effective management ensures that clear objectives and expectations are established, responsibilities are clear and transparent, risks are identified and minimised and time spent, and costs are reduced.’

3.7 An early LPA management task is the preparation of a Project Initiation Document (PID). Based on good practice, the PID would need to include:

- i) Introduction and background
- ii) Scope and project definition
- iii) Project approach and organisational structure
- iv) Advisory and decision-making structures for Members
- v) Definition of roles, responsibilities, and reporting arrangements
- vi) Deliverables and desired outcomes and monitoring
- vii) Project Plan (detail in the Local Development Scheme)
- viii) Risk management
- ix) Communications and engagement (building on the Statement of Community Involvement)
- x) Resources, costs, and budget
- xi) Key interfaces and stakeholders
- xii) Any assumptions and exclusions

3.8 It follows the LPA governance pillar needs to provide for effective management, Member engagement and deliberation, scrutiny review and decision-making with clearly defined roles, responsibilities, and reporting arrangements

3.9 Turning to the middle pillar in the organogram, we have adopted the officers’ proposed governance elements of ‘doing,’ ‘thinking,’ ‘scrutiny’ and ‘decision making.’

Doing

3.10 *Local Plan Officer Team* with a remit to prepare the Local Plan. The team to plan and co-ordinate inputs from corporate officers and consultants in co-producing the evidence base, drafting policy, and reporting to the Local Plan Project Board. The Planning Policy Manager to be accountable to the Project Director for the day to day management of the team and its resources, the project plan, risk register and liaison with corporate officers and consultants.

3.11 *Local Plan Project Officer Board* with remit to direct the co-production of the plan and advise the Corporate Overview Officer Board on the technical, resource and reporting elements of the Local Plan making process. The tasks to include:

- Directing co-production of the Local Plan: notably the evidence base, community, and key stakeholder engagement and advice to Members on the process, procedures, programme, policy options and the administrative, legal and financial arrangements.
- Accounting to the Corporate Overview Officer Board: Proposing priorities and quality standards; allocation of tasks and resources (to co-ordinate corporate and partner inputs and commissioned studies); engagement with communities, key stakeholders and Members; overseeing the project plan and risk register) and draft reports as required.

3.12 The Officer Board to be chaired by a Project Director (a second-tier officer and member of the Corporate Management Team) accountable to the Chief Executive (as Project Sponsor) for directing the project and delivering the project objectives and outcomes.

Thinking

3.13 *Corporate Overview Officer Board* with a remit to work at the hub of the Local Plan governance structure with an objective and accountability to ensure the Local Plan is sound, produced in a timely manner and creates value in accordance with corporate priorities. The Board's technical plan making tasks being to promote best practice, embed corporate wide commitment, manage officers' performance against accountabilities (notably, programming, legal compliance and managing risks) and take officer decisions. The Board's corporate plan making tasks being to advise the Council in its roles as:

- i) LPA: Facilitating all Member Engagement Briefings and Workshops and Local Plan Leadership Group meetings and reporting to the Local Plan Scrutiny Committee, Cabinet, and full Council
- ii) Community leader: Facilitating existing engagement forums, the Stakeholder Community Forum, and formal consultations
- iii) Place maker: Development of officer and Member level liaison with the strategic officer (duty to co-operate) groups, Strategic Infrastructure Delivery Group(s), other policy makers and stakeholders including Essex County Council.

3.14 The membership of the Board builds on other Councils' governance arrangements where the highest corporate priority was attached to mission success. In this case, the Board to be chaired by the Chief Executive who, as the Project Sponsor, would have ultimate accountability for the delivery of the project (mission) to the Council. The Project Sponsor would agree the budget and resources including corporate inputs and be the key liaison officer with the Leader, Portfolio Holder and Chair of Scrutiny. The Board to have senior officer representation from Essex County Council and, ideally, a retained planning Solicitor to monitor compliance with the regulations and procedures and as required either or instruct a QC to provide legal advice.

3.15 The Board would engage all Members in briefings and workshops and the Local Plan Leadership Board. It would report and make recommendations to the Cabinet and full Council.

3.16 *All Member Engagement* with a remit to ensure all District and County Councillors can build their understanding of, comment on, and buy into the key stages of the plan making programme. The outputs from Member briefings will inform the work of the officer groups,

Local Plan Leadership Group and Strategic Infrastructure Delivery Group, and emerging advice and recommendations to the Cabinet and full Council.

3.17 All Member engagement to be conducted through informal briefings and workshops in line with the Local Plan programme. The events to include representatives of stakeholders such as Homes England, Highways England, and Historic England as invited presenters.

3.18 *Local Plan Leadership Group* a Cabinet working advisory group with a remit to consider and provide advice on the shape and preparation of the Local Plan. The purpose of this group is to enable representatives from the administration and opposition to generate, debate and formulate constructive advice in respect of extremely sensitive policy and spatial planning matters.

3.19 A recommended model for the group would be to have a small membership with no substitutes to enable it to meet regularly, keep pace with a demanding timetable and develop and apply its collective knowledge and expertise. Formal agendas would be prepared, and notes / actions taken. The Group would receive reports and matter for discussion from the Corporate Overview Board on key strategic and operational plan making matters for example, national policy developments, community engagement, duty to co-operate and related liaison and formal consultations with neighbouring LPAs and strategic partners, informal and supplementary planning guidance. Its advice would be reported via the Corporate Overview Board to Scrutiny, Cabinet, and full Council.

3.20 We note the administration's prior commitment to total transparency and that all meetings should be held in the public domain. However, in plan making statements made in open discussions by the executive could be construed by third parties to have prejudiced a specific interest or interests and leave the plan open to challenge. Our strong advice fall into two parts. Firstly, the Leadership Board meetings be closed as meeting in public would risk serving the interests of land promoters and developers at the expense of the Council and the communities it serves, encourage political grandstanding and stifle the needed creativity, debate, and advice. Secondly, the dedicated Local Plan Scrutiny Committee, a distinctive innovation of the administration, to fulfil the desired and desirable transparency.

Scrutiny

3.21 *Local Plan Scrutiny Committee* with a remit to scrutinise all aspects of the plan making process and its delivery. The remit to be holistic but with regard to compliance of the plan making process and procedures with Government legislation and regulations and pre scrutiny of Cabinet and full Council decisions on the Local Plan. In recent letters to LPAs, Inspectors have reported results of their forensic level tests of LPA's plan making procedures, evidence base and policies against clauses in the relevant legislation. For example, see the Inspector's recital of legislation in respect of the duty to co-operate in section 3.31(i) below. Whilst there is always room for interpretation, in significant cases failures found by Inspectors were not anticipated by their respective legal advisers. This reflects the way the current examination system is set up and the high and complex bar set for soundness tests. This underlines the need for focussed scrutiny of compliance within the Council's governance regime.

3.22 We endorse the officers' proposal for the Scrutiny Committee to comprise eight Members with representation from the administration and opposition. The meetings to be conducted in public with public speaking in accordance with the constitution for formal meetings of the Council. The scrutiny power specific to the Local Plan to be transferred to this committee to avoid any duplication with the existing Scrutiny Committee.

Decision making

3.23 *Cabinet* Local Plan making is as an executive function * and hence the responsibility of the Cabinet. The Cabinet would receive and consider reports and recommendations of the Corporate Overview Board.

3.24 *Council* Decisions on the formal stages of the plan, such as submission, modification, and adoption, are the responsibility of the Council. The Council would receive reports and recommendations of the Cabinet and Corporate Overview Board.

* The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 deal with what is and is not an executive function and sets this out in more detail in Section 4 and Schedule 3. The Planning and Compulsory Purchase Act 2004 reserves the adoption of a development plan to a 'resolution of the authority' Sec23 subsection 5 (see attached)

The Community Leader role

3.25 As the community leader in preparing a Local Plan, the Council has a responsibility to bring together local communities, interest groups, service, and infrastructure providers. Its purposes being to prepare a Local Plan with a clear vision and strategic objectives for the future of the district.

3.26 In practice, the various stakeholders have conflicting and competing claims on value that Local Plan policies and their delivery can create. Community leadership governance arrangements are therefore required to: enable the Council to understand competing claims, objectively mediate and strike the best available balance between them. Key sources of conflict include: Government imperatives for and local resistance to development; different priorities between communities of interest; market interests and community wants; and meeting the needs of the present whilst providing for future generations.

3.27 The proposed governance arrangements in the community leadership pillar are:

- i) Existing engagement forums: These forums to include the Parish and Town Councils, the Uttlesford Employment, Economy, Skills, Environment and Transport Group and liaison with planning agents / land promoters.
- ii) Local Plan Stakeholder Community Forum: We endorse the officers' proposal for the forum to be an informal consultative group with a remit to provide advice on the preparation of the Local Plan in accordance with the Statement of Community Involvement. The forum to comprise 15 members with representatives from health, voluntary sectors, Youth Council, and key groups such as cycling and walking. The meetings to have formal agendas and minutes and be chaired by an independent person appointed by the Council. It will be a key liaison body for the Local Plan Leadership Group, and Strategic Infrastructure Delivery Group. The meetings to be held in public but without public speaking rights and confidentiality rules as required.
- iii) Formal consultations: These to be conducted at formal stages of the plan making process. Innovations in consultation arrangements will be brought forward to better enable local communities and other stakeholders to submit their views and receive reports on consultation findings.

The Place Making role

3.28 Planning matters as it can make a difference to the places people live in and hence their well-being. For example, positive differences in the pioneering BedZed development have been measured in terms of social cohesion and carbon footprints, The BedZed Story – the UK’s first large-scale eco village (Bioregional). In this context, the Council’s role as place maker can serve to mediate conflicts by demonstrating positive benefits of development and making places people want to live in.

3.29 Place making requires constructive engagement with local communities, neighbouring LPAs, the sub regional infrastructure partnerships, service and infrastructure providers, house builders and investors.

3.30 Governance arrangements are therefore required to enable the Council to be entrepreneurial and influential in initiating new and joining and building existing partnerships with the various place making stakeholders. The purposes of this role being to shape, join up and add value to the stakeholders’ investment plans and delivery programmes.

3.31 The proposed governance arrangements in the place making pillar are:

i) Strategic Officer Group (Duty to Co-operate) The Council will convene and attend and record formal and informal meetings with adjoining LPAs to ensure full legal compliance under the Duty to Co-operate during the plan making process. The following extract from the Inspectors letter of 14th April to the St Albans City and District Council spells out the specificity of compliance.

Section 33A of the Planning and Compulsory Purchase Act 2004 (The Act) indicates that the Duty to Co-operate applies to the preparation of local plans, so far as relating to a strategic matter. A strategic matter is defined in Section 33A(4) as: (a) sustainable development or use of land that would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and (b) sustainable development or use of land in a two-tier area if the development or use is a county matter (i) or has or would have a significant impact on a county matter (ii).

The Duty to Co-operate requires the Council to engage constructively, actively and on an on-going basis in relation to the preparation of local plan documents so far as relating to a strategic matter (in order to maximise the effectiveness of plan preparation).

Paragraph 25 of the National Planning Policy Framework (the Framework) states that strategic policy-making bodies should collaborate with one another, and engage with their local communities and relevant bodies, to identify the relevant strategic matters which they need to address in their plans. Paragraph 26 is clear that effective and on-going joint working between strategic policy making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

Whilst Section 19 of the Act requires the Council to identify its strategic policies, the Courts have held that issues such as what would amount to strategic planning matters are all matters of judgement that are highly sensitive to the facts and circumstances of the case.

ii) Strategic Policy and Infrastructure Delivery Group We endorse the officers' proposal for this to be a Member reference group for Cabinet to be chaired by the Leader of the Council with Council representatives of the administration and opposition with senior officers and a Member representative and a senior officer from Essex County Council, East Hertfordshire District Council, Braintree District Council and South Cambridgeshire District Council. It would be preferable if no substitutions are permitted as it will be important for the group to develop their collective knowledge and expertise and not to have to revisit previous discussions. The Group would replace the Garden Communities Delivery Members Group Governance Board and report to the Council's and Essex County Council's Cabinets. Formal agendas and minutes to be taken and meeting to be held in private.

iii) Decision Makers The governance structure includes decision taking by third party local authorities and other service and infrastructure providers as significant actors in both informing the Local Plan making process, evidencing the plan's feasibility and deliverability, and investing in its successful implementation. The third parties to include Essex County Council, neighbouring LPAs (in respect of Duty to Co-operate and cross boundary matters), Homes England, Highways England, NHS, power generators, grid distributors, water companies and developers.

3.32 Members are referred to the summary and advice set out in section 1.1 – 1.4.

EELGA

Malcolm Sharp and Simon Smith

25th June 2020

UDC Local Plan 2020 – 2040

Governance Structure, Activities & Networks

