

This Report will be made public on 8 September 2020

Report Number **A/20/01**

**To:** Council  
**Date:** 16 September 2020  
**Status:** Key Decision  
**Responsible Officer:** Charlotte Spendley, Director of Corporate Services

**SUBJECT:** PLACES AND POLICIES LOCAL PLAN - ADOPTION

**SUMMARY:** This report summarises the findings of the planning Inspector's report into the Places and Policies Local (PPLP). The report recommends that Council adopts the PPLP with Main Modifications identified by the Inspector, and the Additional Modifications, so that the plan can be used decide planning applications.

**REASONS FOR RECOMMENDATIONS:**

To ensure that the council has an up-to-date development plan to guide development in the district.

**RECOMMENDATIONS:**

**Council is asked:**

1. To receive and note report A/20/01.
2. To note the final report of the planning Inspector who carried out the examination of the Places and Policies Local Plan;
3. To amend the Submission Places and Policies Local Plan to incorporate:
  - a) The Inspector's Main Modifications as set out in his report (Appendices 1 and 2);
  - b) The Council's Additional Modifications;
  - c) Amendments to the Policies Map; and
  - d) Any other minor formatting changes or minor corrections that are necessary for clarity or comprehension; and
4. To adopt the Folkestone & Hythe District Places and Policies Local Plan, with the amendments set out in recommendation 3, to form part of the development plan for the district.

## 1. BACKGROUND

- 1.1 The Folkestone & Hythe District Places and Policies Local Plan (PPLP) identifies small- and medium-sized sites for development across the district to meet the targets in the 2013 Core Strategy. The plan covers the period to 2031. The remaining PPLP sites also form part of the housing land supply for the Core Strategy Review, which is currently at public examination.
- 1.2 Part One of the PPLP allocates 55 sites for development for new homes, mixed-use development, business, retail, leisure, hotel and other uses.
- 1.3 In Part Two, the PPLP sets out detailed development management policies to assess planning applications covering issues including: climate change; the natural environment; the historic environment; health and wellbeing; design and housing standards; the economy; community; and transport.

### Early stages of preparation

- 1.4 The PPLP has been through a number of iterations and public consultations, including:
  - Consultation on the Issues and Options PPLP between 30 January and 1 March 2015;
  - Consultation on the Preferred Options PPLP between 7 October and 19 November 2016; and
  - Consultation on the Submission Draft PPLP between 6 February and 19 March 2018.

### Examination in public

- 1.5 Following consultation on the Submission Draft PPLP, the council submitted the plan to the Secretary of State, for public examination by an independent planning Inspector. Mr Jameson Bridgwater PGDIPL MRTPI was appointed as the Inspector.
- 1.6 The Inspector highlighted a number of Matters, Issues and Questions (MIQs) that he wished to examine with the council and participants, and the council prepared written statements on the MIQs in May 2019.
- 1.7 A series of public hearing sessions then took place between the 15 and 17 May 2019 in the Civic Centre. The hearings were run by the Inspector, and included invited local people, interest groups, developers, landowners and other participants.
- 1.8 During the hearings the Inspector expressed concern that the draft plan did not adequately address the housing needs of the gypsy and traveller community. In order for the plan to be found 'sound' the Inspector instructed the council to identify a site to meet the outstanding permanent gypsy and traveller pitch requirement of four pitches.

### Consultation on proposed traveller site

- 1.9 The council undertook an assessment of potential sites which resulted in the identification of a proposed traveller site at Lydd Road, Old Romney. Following approval by Cabinet (C/19/13), the proposed site allocation and policy wording were subject to public consultation from 2 September to 14 October 2019.

#### Consultation on Main Modifications

- 1.10 Following consideration of the consultation comments on the proposed gypsy and traveller site, the Inspector instructed the council to proceed with the final stages of the plan process - consultation on 'Main Modifications' to the plan.
- 1.11 21 Main Modifications were drafted at the Inspector's direction; these were changes that he considered necessary to make the plan 'sound'. The Main Modifications included the introduction of the new traveller site policy and accompanying wording, but were otherwise limited in nature. The Main Modifications were approved by Cabinet (C/19/45) and consultation took place between 13 January and 24 February 2020.
- 1.12 In addition to the 21 Main Modifications, two amendments were also made to the Policies Map. (The Policies Map showing the plan's development allocations does not have the same status as the plan itself and changes to the Policies Map are not classed as 'main modifications'.) These amendments identified a Primary Shopping Area for Folkestone town centre and outlined the extent of the traveller allocation at Old Romney. The changes to the Policies Map were published for information alongside the Main Modifications.
- 1.13 The council can make minor changes to the plan without the need for consultation. These are known as 'Additional Modifications'; however, these can only include amendments which "*(taken together) do not materially affect the policies*" of the local plan<sup>1</sup>. A number of Additional Modifications were identified and published for information alongside the Main Modifications.
- 1.14 Following consultation on the Main Modifications, all comments were passed to the Inspector for him to consider in drafting his report.

## **2. INSPECTOR'S REPORT ON THE PLACES AND POLICIES LOCAL PLAN**

- 2.1 The council received the Inspector's final report on 26 June 2020. This is available to view on the council's website and is included as Appendix 1 to this report.
- 2.2 In arriving at his conclusions the Inspector has carefully considered a range of matters: the consultation comments made throughout the process; the issues he identified during the examination through the MIQs and public hearings; the consultation comments on the gypsy and traveller site; consultation comments on the Main Modifications; and the requirements of national policy and legislation.

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<sup>1</sup> Section 23(3)(b) of the Planning and Compulsory Purchase Act.

2.3 The Inspector states in paragraph 73 of his report (Appendix 1):

*“I conclude that with the recommended main modifications set out in the Appendix, the Folkestone and Hythe Places and Policies Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.”*

2.4 The Inspector makes no other recommendations for change; apart from the traveller allocation, he does not recommend that any additional sites be allocated in the plan, nor does he recommend that any allocated sites be deleted.

2.5 The Inspector identifies 21 Main Modifications (numbered MM01-MM21) which are set out in full in Appendix 2. In summary, they are as follows:

- **MM01 – Policy UA11: Affinity Water, Shearway Road, Cheriton** – additional text on design to recognise the setting of the Kent Downs Area of Outstanding Natural Beauty (AONB);
- **MM02 – Policy UA15: Land at Saltwood Care Centre, Hythe** - additional text on design to recognise the setting of the AONB;
- **MM03 – Policy RM13: Lands north and south of Rye Road, Brookland** – deletion of requirement for a masterplan for the different sites, to reflect recent planning permissions;
- **MM04 – Policy RM14: Land adjacent to Moore Close, Brenzett** - deletion of requirement for a masterplan for the different parts of the site, to reflect recent planning permission and deletion of requirement for an odour assessment following clarification from Southern Water;
- **MM05 – Policy RM15: Land adjacent to ‘The Retreat’, Lydd Road, Old Romney** – New policy, and explanatory text, to allocate a site for gypsy and traveller development;
- **MM06 – Policy ND6: Former Lympne Airfield** – additional text on design to recognise the setting of the AONB;
- **MM07 – Policy ND8: Land adjoining 385 Canterbury Road, Densole** – amendments to the policy to take account of the Highway Authority’s requirements for safe access;
- **MM08 – Policy ND9: Etchinghill Nursery, Etchinghill** – amendments to the policy to clarify the requirements for perimeter landscaping;
- **MM09 – Policy HB3: Internal and External Space Standards** – deletion of erroneous paragraph of supporting text;
- **MM10 – Policy HB8: Alterations and Extensions to Residential Buildings** – amendments to the policy so that it can also be applied to extensions to other types of building, not just dwellings;
- **MM11 – Policy HB14: Accommodation for Gypsies and Travellers** – amendments to supporting text to reflect the allocation of a site under new Policy RM15;

- **MM12 – Policy E1: New Employment Allocations** – additional policy wording to reflect the fact that some of the allocations are within the setting of the AONB;
- **MM13 – Policy E2: Existing Employment Allocations** – amendments to the policy wording to extend the policy to protect existing employment sites, not solely employment allocations, and to extend the time required to market sites for those wanting to develop employment sites for other uses from six months to 12 months;
- **MM14 – Policy E5: Touring and Static Caravan, Chalet and Camping Sites** – amendments to the policy wording to clarify the policy with regard to changes to permanent residential use;
- **MM15 – Policy RL2: Folkestone Major Town Centre** – amendments to the policy to correct the terminology and remove inconsistencies in the wording between the town centres policies. Some minor changes are also required to policies RL1: Retail Hierarchy and RL8: Development Outside Town, District and Local Centres resulting from MM15;
- **MM16 – Policy RL3: Hythe Town Centre** – amendments to the policy to remove inconsistencies in the wording between the town centre policies;
- **MM17 – Policy RL4: New Romney Town Centre** - amendments to the policy to remove inconsistencies in the wording between the town centre policies;
- **MM18 – Policy T2: Parking Standards** – amendment to the policy to increase flexibility and to delete wording repeating national policy;
- **MM19 – Policy CC2: Sustainable Design and Construction** – addition policy wording to take account of viability;
- **MM20 – Policy CC5: Small Scale Wind Turbines and Existing Development** – amendments to the policy wording to clarify the scale of development that the policy would apply to; and
- **MM21 – Policy HW1: Promoting Healthier Food Environments** – deletion of policy wording setting out an ‘exclusion zone’ for fast food outlets around schools, reflecting the Inspector’s conclusion that this had not been adequately evidenced.

### 3 MAIN MODIFICATIONS AND ADDITIONAL MODIFICATIONS

- 3.1 The Inspector’s conclusion that the PPLP, with 21 Main Modifications, is ‘sound’ brings a very positive conclusion to the process of preparing the plan.
- 3.2 Recommendation 4 of this report is therefore that Council adopts the PPLP, with Main and Additional Modifications as part of the development plan for the district, and endorses the amendments to the Policies Map.
- 3.3 The Inspector’s report and amended Places and Policies Local Plan were considered by Cabinet on 22 July 2020 (C/20/20). Cabinet recommended to full Council that it adopts the Folkestone & Hythe District Places and Policies Local Plan.

- 3.4 To show the modifications in context, a track-changed version of the PPLP is included as Appendix 3. This version shows the original text of the Submission Draft PPLP in black, with modifications shown in red; additional text is shown in red underlined and deleted text in red struck-through.
- 3.5 The 21 Main Modifications are as set out in the Inspector's Report (see Appendix 2). For ease of reference the Main Modifications are highlighted with numbering in the margins of the amended local plan (labelled MM01 to MM21). (These reference numbers will not be published in the final version of the plan.)
- 3.6 The amended PPLP also shows the council's Additional Modifications in red, but these are not numbered. (As outlined above, legislation specifies that Additional Modifications can only be minor changes that do not materially affect the plan's policies.)
- 3.7 Additional Modifications have been made to:
- Replace the plan's Foreword to reflect the fact that this will be the final adopted version of the plan;
  - Delete text in the Introduction setting out details of the last consultation stage and how to submit comments;
  - Update a reference to the St Mary in the Marsh Neighbourhood Plan to reflect the fact that the neighbourhood plan is now finalised and has been 'made' by the district council;
  - Update references to the National Planning Policy Framework (NPPF) in various chapters in the local plan. Because of the date the PPLP was submitted to the Secretary of State, it was examined against the 2012 version of the NPPF. The NPPF was subsequently revised in 2018 and again in 2019. This has meant that paragraph numbers and quotations from the 2012 NPPF in the original text are now out-of-date. The approach has been to keep the original quotes and paragraph numbers to show the context that shaped the plan, but to add footnotes highlighting the relevant part of the 2019 NPPF. In almost all cases the quoted text from the 2012 NPPF has been retained in the same or very similar form in the 2019 NPPF;
  - Update names of organisations or titles of documents where these have changed or documents that were in draft have now been finalised (for example, the change of name of the South Kent Coast Clinical Commissioning Group to the NHS Kent and Medway Clinical Commissioning Group); and
  - Amend any other minor omissions or errors.

## **4. OPTIONS**

- 4.1 The options are prescribed by the legislative framework, found in Part 2 of the Planning and Compulsory Purchase Act 2004, as well as Part 6 of the Town and Country Planning (Local Planning) (England) Regulations 2012.
- 4.2 The local planning authority must either:

- Adopt the PPLP with the Inspector’s Main Modifications, together with any Additional Modifications identified by the council that do not materially affect the policies of the plan; or
- Not adopt the plan.

Note the Inspector’s report but do not proceed to adoption

4.3 The council could note the Inspector’s report and recommendations but not proceed to formal adoption of the plan; this would, however, serve no purpose.

4.4 The Inspector conducted a rigorous examination of the plan: he assessed issues raised by objectors throughout the process, challenged the council on areas where he found the plan lacking and weighed the plan objectively against national planning policy and legislation. The Inspector concluded at the end of this process that, subject to his Main Modifications, the plan is ‘sound’.

4.5 Regarding adoption of a local plan, the National Planning Practice Guidance states that:

*“... it is to be expected that the authority will proceed quickly with adopting a plan that has been found sound.”<sup>2</sup>*

4.6 If the council does not have an up-to-date plan in place it will be vulnerable to intervention by government. The Secretary of State has powers of intervention under Section 27 of the Planning and Compulsory Purchase Act and has indicated that he will intervene where:

- Progress in plan-making is not being made;
- Policies have not been kept up-to-date;
- There is higher housing pressure; and
- Intervention will have the greatest impact in accelerating plan production.<sup>3</sup>

4.7 If the council cannot demonstrate that it has an adequate supply of housing land it will be highly vulnerable to challenge by developers at public inquiry; the result of this could be that the council loses appeals on housing sites and development comes forward in less sustainable locations.

4.8 If the PPLP is not adopted, the council will not be able to apply the development management policies which seek to secure higher standards of design and sustainability and to protect and enhance the natural and historic environment.

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<sup>2</sup> Paragraph: 058 Reference ID: 61-058-20190315. See: <https://www.gov.uk/guidance/plan-making#plan-examinations>

<sup>3</sup> Secretary of State for Communities and Local Government, Local Plans: Written Statement (HCWS254). See: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-11-16/HCWS254/>

4.9 The PPLP has been prepared to replace the adopted Shepway District Local Plan Review (2006). If replacement policies are not adopted, the policies in the Local Plan Review, now more than a decade old, will become increasingly out-of-date and open to challenge.

Note the Inspector's report, agree to the main modifications and proceed to adoption

4.10 This is the recommended option.

4.11 The Inspector has conducted a rigorous examination of the issues raised by objectors and has assessed the plan objectively against national policy and legislation. The Inspector concluded at the end of this process that the plan is 'sound' subject to his Main Modifications.

4.12 With an adopted plan in place the council will be able to use the policies it contains to guide development. These include general policies - on design, climate change, health and wellbeing, the natural environment and other topics - as well as specific policies for identified sites across the district. With adopted policies in place the council can have greater confidence negotiating with developers to secure higher quality developments and refusing any planning applications that do not meet these standards.

4.13 Sites within the plan contribute to the development targets the council is required to meet. The council needs to ensure that there is a continual supply of land coming forward to meet the development targets set by government.

## 5. RISK MANAGEMENT ISSUES

5.1 The risk management issues are set out below.

Perceived risk	Seriousness	Likelihood	Preventative action
That the Local Plan is not adopted	High	Medium	As set out in the report, local planning authorities are required to have an up-to-date plan in place and will be liable to challenge by developers or intervention by Government if this does not happen. The Local Plan has been through a long process of preparation and an independent examination by a planning Inspector, and has been found 'sound' subject to a

Perceived risk	Seriousness	Likelihood	Preventative action
			limited number of modifications.
That the Local Plan is legally challenged after it is adopted.	High	Medium	<p>An aggrieved party can mount a legal challenge to the Local Plan after it is adopted on procedural grounds. Recently there have been a number of challenges to local plans in Kent on their adoption (for example Tunbridge Wells Borough and Canterbury City). The preparation of the plan has followed a robust process and this is reflected in the positive conclusions of the Inspector's report. This should minimise the grounds for legal challenge after adoption. If the plan is legally challenged, the council will have to take specialist legal advice.</p>
That the Local Plan becomes out-of-date with changing government policy.	Medium	Medium	<p>Government requires local planning authorities to review their Local Plans every five years, or sooner if circumstances change. On adoption of the PPLP the council will monitor the implementation of the plan through the Authority Monitoring Report (AMR). Indicators in the AMR may highlight the need for a review, or partial review, of the plan. Officers will also monitor changing national policy to see if</p>

Perceived risk	Seriousness	Likelihood	Preventative action
			this requires a review of the plan.

## 6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

### 6.1 Legal Officer's Comments

The Places and Policies Local Plan forms part of the Council's policy framework and must be prepared in accordance with the statutory processes. These include conformity with the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).

### 6.2 Finance Officer's Comments

19/20 and 20/21 existing General Fund Revenue budget is available to cover the Inspectorate Fees and plan printing costs. There is a medium risk of a legal challenge to the proposed Local Plan which has been minimised by the robust preparation and positive conclusions of the Inspector's report (see Perceived Risk 1). However, if there is a legal challenge, this will cause a cost pressure on the 20/21 revenue budget, which may need a CLT contingency budget request.

### 6.3 Diversities and Equalities Implications

There are no equalities implications directly arising from this report. An Equality Impact Assessment (EIA) was carried out in August 2017 to support Place and Policies local Plan – Submission draft. In addition, the development of Places and Policies Local Plan has involved undertaking a series of public consultations as noted within the report that has allowed both local residents and statutory bodies an opportunity to comment on the proposals put forward. Associated information and the opportunity to engage within consultations at the relevant stages has always been made publically available online through Council's website and in a hard copy form provided to all local libraries as well as Town and Parish councils within sufficient timeframes to allow for meaningful engagement from a range people about the future of the area.

## 7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officers prior to the meeting:

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**Appendices:**

Appendix 1: Report on the Examination of the Folkestone & Hythe Places and Policies Local Plan

Appendix 2: Places and Policies Local Plan Main Modifications

Appendix 3: Places and Policies Local Plan revised draft showing Main and Additional Modifications