

- (a) Delegate the decision to adopt the Policy Position Statement to the Cabinet Member for Economic Development and Land and note its implications for planning appeals and applications at this time.

3. Background

- 3.1 Following the successful challenge to the Local Plan by Gallagher Homes Ltd. and Lioncourt Homes Ltd; a High Court judgment (“the judgment”) was handed down on 30th April 2014 and an Order (“the Order”) was subsequently made on 15th May 2014.
- 3.2 The Order treats those parts of the Local Plan relating to:
- (a) the housing land provision target (the target set by Policy P5, its justification, the housing trajectory and the five year housing land requirement); and
 - (b) inclusion of two sites at Tidbury Green within the Green Belt
- as not adopted by the Council and remitted to the Planning Inspectorate for re-examination.
- 3.3 The Order is restricted to those parts of the Local Plan directly affected by the Judgment. The majority of the Plan is unaffected and remains adopted.
- 3.4 The Council has applied to the Court of Appeal for leave to appeal the Judgment on the grounds that there was no error in law in the Inspector’s approach to the NPPF or in his conclusion that exceptional circumstances existed justifying the return of the Tidbury Green sites to Green Belt.
- 3.5 At his decision session of 25th June 2014, the Cabinet Portfolio Holder for Economic Development and Land will be asked to formally adopt a Policy Position Statement which responds to the Order at this time and in the current circumstances. This report provides an update for Cabinet.
- 3.6 The Policy Position Statement has implications for planning applications and undetermined appeals against the decision of the Council to refuse planning permission for residential development at this point in time.

4. The Policy Position Statement

- 4.1 The National Planning Policy Framework (NPPF) requires local planning authorities to:
- “identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirement with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land”* (paragraph 47).
- “Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites”* (paragraph 49).
- 4.2 A decision on the Council’s application to appeal the Judgment is expected within six to eight weeks. In the mean-time, the Order treats the housing target of the Local Plan as not adopted.
- 4.3 National Planning Policy Guidance (NPPG) states that:
- housing requirement figures in up to date Local Plans should be the starting point for calculating the five year housing supply requirement.
 - In the absence of an adopted Local Plan housing target, the information

provided in the latest full assessment of housing needs should be considered.

- Where there is no robust assessment of housing needs household projections published by CLG should be used as the starting point.

- 4.4 A legal interpretation of NPPF paragraph 47 and how the housing requirement should be calculated in the absence of an adopted housing land provision target was provided in the case of *Hunston Properties Ltd. v the Secretary of State for Communities and Local Government and St. Albans City and District Council* (paragraphs 28-30). The Judge concluded that in decision taking the five year housing land requirement figure should be based on a “policy off” figure which identifies the full objectively assessed housing need.
- 4.5 There is currently no published assessment of housing need for Solihull. The Council is a member of the Greater Birmingham and Solihull Local Enterprise Partnership (GBS LEP) which, together with the Black Country Local Enterprise Partnership (BC LEP), has commissioned a Strategic Housing Needs Study to inform the development of a Spatial Framework. The Strategic Housing Needs Study will provide an objective assessment of housing need for Solihull. Once published this will be the starting point for calculating the five year housing requirement. However the timescales for publication are currently uncertain.
- 4.6 Until the GBS and BC LEP Housing Needs Study is published, the appropriate starting point in assessing the five year housing requirement is therefore the latest CLG household projection but *“the weight given to the use of the CLG household projections should take account of the fact that they have not been tested”*. Officers have considered the likelihood of the latest household projection for Solihull (the 2011-based (interim) projection) continuing into the future and conclude that it is likely to represent the highest likely level of housing need in Solihull against which to test the five year supply of deliverable housing sites.
- 4.7 The application of the latest household projection raises Solihull’s five year housing land requirement from the Local Plan target of 3,847 to 4,526.
- 4.8 At 1st April 2014, deliverable housing land supply was 4,086. This is insufficient to demonstrate five years supply of deliverable housing sites against the current requirement of 4,526. In this circumstance Local Plan Policy P5 releases housing sites from later phases. The addition of phase two and three housing sites currently before the Council and the Planning Inspectorate will enable the Council to demonstrate five years supply of deliverable sites against current requirements.
- 4.9 Unless and until the objectively assessed housing needs of the Borough are determined or the appeal against the High Court Judgment is successful; the release of Phase Two and Three housing sites will be considered for early release in line with Local Plan Policy P5. This will be recommended to the Cabinet Member for Economic Development and Land to ensure that a five year supply of deliverable housing sites is maintained and Local Plan policies for the supply of housing land can continue to be considered up-to-date at this time. This Policy Position Statement will have implications for those planning applications relating to allocated sites (phases two and three) and to undetermined appeals against the decision of the Council to refuse planning permission for residential development.
- 4.10 This Planning Policy Statement will be updated in response to a material changes in circumstance, for example, when the GBS and BC LEP Housing Needs Study is published, or in the event of a successful appeal against the Judgment.

5. Scrutiny

- 5.1 The Local Plan was scrutinised by Overview and Scrutiny Management Board

throughout its preparation.

6. Implications

- 6.1 **Policy/Strategy Implications** - The Policy Statement is in accordance with Local Plan Policy P5 and will help the Council to continue to demonstrate five years' housing land supply in current circumstances. Without this Policy Position Statement the Council could not demonstrate a five year supply of deliverable housing land; policies for the supply of housing would not be considered up-to-date and there would be a presumption in favour of development unless the adverse impacts of development would significantly and demonstrably outweigh the benefits.
- 6.2 **Current Appeals (Local Plan Phase Two and Three Housing Sites)** – There are three appeals under consideration; Site 17 Braggs Farm/Brickiln Farm Dickens Heath, Site 20 Cleobury Lane Dickens Heath and Site 21 Land at Mount Dairy Farm Tanworth Lane Dickens Heath. Public inquiries into these appeals are programmed for September and October and the Council is required to submit statements of case by 4th July. All three planning applications were refused for two reasons (i) the Council could demonstrate five years' housing land supply based on the Local Plan housing provision target and the applications were therefore premature; (ii) Drainage issues. If the Policy Position Statement is adopted and it is accepted that Phase two and three housing sites are required to assist the Council in demonstrating five years' housing land supply at this time, the Council will not be in a position to contest the first reason for refusing each of these planning applications in the statement of case, but will bring to the Inspector's attention the fact that there may be material changes in circumstance before the appeals are determined.
- 6.3 **Current Appeals (Sites not allocated in the Local Plan)** – Planning permission was refused for the residential development of Lowbrook Farm in January 2013, the decision was subsequently appealed and recovered by the Secretary of State for his own determination. A public inquiry was held but the Inspector delayed submitting his report to the Secretary of State until after the Judgment. The Inspector has refused to delay his report further pending the Court of Appeal's decision. The Secretary of State has indicated that he intends to make a decision on or before 1st December. All parties have been invited to submit a statement addressing the implications of the NPPG and the Judgment by 27th June.
- 6.4 Planning permission was refused for the residential development of Tidbury Green Farm in January; an appeal is expected within the next few weeks.
- 6.5 The Local Plan included these two, former safeguarded, sites returning to the green belt, but following the Order the green belt designation of these sites is to be treated as not adopted. The Policy Position Statement will assist the Council in demonstrating five years' housing land supply and policies for the supply of housing land will remain up-to-date. The appeals should then be determined in accordance with the Local Plan and the Council will be able to continue to contest the appeals on the grounds that development of the sites would run contrary to the Local Plan housing strategy.
- 6.6 **Future Planning Applications** – The adoption of the Policy Position Statement will assist the Council in continuing to demonstrate five years housing land supply in current circumstances. Local Plan policies for the supply of housing will remain up-to-date and planning applications can be determined in accordance with the Local Plan unless material considerations indicate otherwise.
- 6.7 **Financial Implications** – Within existing Local Plan and Development Management budgets. The adoption of the Policy Position Statement will reduce the risk of heavy

costs against the Council at appeal.

- 6.8 **Legal implications** – The Council awaits leave to appeal the Judgment and there is a risk of costs against the Council if the appellants for the phase two and three sites are successful.
- 6.9 **Risk Implications** - Not adopting the Policy Position Statement could lead to pressure for planning permission to be granted for residential development which is contrary to the Local Plan.
- 6.10 **Statutory Equality Duty** - The Local Plan was developed taking into account the diverse nature of the Borough's population. A Fair Treatment Assessment was published and examined as part of the Local Plan evidence.
- 6.11 **Carbon Management/Environmental** - Where feasible, the Local Plan seeks to ensure proposals for development reduce exposure to severe weather and climatic risks, and consideration is given to the use of renewable energy systems.
- 6.12 **Partner Organisations** - Partner organisations have been involved in the preparation of the Local Plan and will continue to be consulted on planning applications as required.
- 6.13 **Safeguarding/Corporate Parenting Implications** - None identified.
- 6.14 **Customer Impact** - Throughout the preparation of the Local Plan, extensive consultation has taken place. All representations were examined by an independent Inspector before the Local Plan was adopted in December 2013.
- 6.15 **Other implications** - None identified.

7. List of Appendices Referred to

- 7.1 None.

8. Background Papers Used to Compile this Report

- 8.1 High Court Judgment Gallagher Homes Ltd and Lioncourt Homes Ltd v Solihull Metropolitan Borough Council.
- 8.2 High Court Order Gallagher Homes Ltd and Lioncourt Homes Ltd v Solihull Metropolitan Borough Council.

9. List of Other Relevant Documents (copies available in the Members' Area)

- 9.1 Solihull Local Plan: Shaping a Sustainable Future, December 2013.