

SOLIHULL METROPOLITAN BOROUGH COUNCIL

Report to:	Cabinet Member for Economic Development and Land
Meeting date:	25 th June 2014
Report from:	Director for Places
Report Author/Lead Contact Officer:	Rachel Batts
Wards affected:	All Wards
Public/Private report:	Public
Exempt by virtue of Paragraph:	N/A of Schedule 12A of the Local Government Act 1972.

Subject/Report Title:
SOLIHULL LOCAL PLAN - POLICY POSITION STATEMENT

1. Purpose of Report

1.1 To seek endorsement to a policy position statement in response to the High Court Judgment and associated Order against the Local Plan.

2. Decision(s) Recommended

2.1 The Cabinet Member is asked to:-

- (a) Endorse the Policy Position Statement set out at Appendix A.
- (b) Note the implications of the Policy Position Statement for planning applications relating to allocated housing sites (phases two and three) and to undetermined appeals against the decision of the Council to refuse planning permission for residential development (see Section 7 of the attached report).

3. Background

3.1 As reported to Full Cabinet on the 19th June, the High Court Judgment gives rise to complex issues and implications, which are subject of this report and the Policy Position Statement to which it relates. The policy position statement is not new policy, it is a factual update responding to the High Judgment and the operation of the phasing aspect of Local Plan Policy P5.

3.2 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.

3.3 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,

	<p>the housing trajectory and the five year housing land requirement); and</p> <p>(b) inclusion of two sites at Tidbury Green within the Green Belt</p> <p>as not adopted by the Council and remitted to the Planning Inspectorate for re-examination.</p> <p>3.4 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.</p> <p>3.5 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.</p> <p>3.6 In order to provide appropriate clarification and in the interests of transparency, it is considered necessary to endorse a Policy Position Statement to explain the context, implications and to clarify the Council’s Policy Position.</p> <p>3.7 Full Cabinet agreed to delegate the adoption of the Policy Position Statement to Cabinet Member for Economic Development and Land.</p> <p>3.8 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.</p> <p>3.9 As further context to this report, given the complex planning position at this moment, it is important to have the position clarified as a matter of urgency.</p>
4.	Evaluation of Alternative Option(s)
4.1	No alternative options considered as this is a factual report based on the Court Judgement, the latest information and the Council’s policies set out in the Solihull Local Plan.
5.	Reasons for Recommending Preferred Option
5.1	N/A (see above).
6.	Scrutiny
6.1	Solihull Local Plan has been considered by Scrutiny.
7.	Implications
7.1	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.
7.2	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 Cheswick Green. 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.

- 7.3 **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.
- 7.4 Planning permission was refused for the residential development of Tidbury Green Farm in January; an appeal is expected within the next few weeks.
- 7.5 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.
- 7.6 **Future Planning Applications** – The endorsement 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.
- 7.7 **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.
- 7.8 **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.
- 7.9 **Risk Implications** - Not endorsing the Policy Position Statement could lead to pressure for planning permission to be granted for residential development which is contrary to the Local Plan.
- 7.10 **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.
- 7.11 **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.
- 7.12 **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.

7.13	Safeguarding/Corporate Parenting Implications - None identified.
7.14	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.
7.15	Other implications - None identified.
8.	List of Appendices Referred to
8.1	A – Solihull Local Plan Policy P5 Position Statement, June 2014.
9.	Background Papers Used to Compile this Report
9.1	N/A.
10.	List of Other Relevant Documents
10.1	Solihull Local Plan – Shaping a Sustainable Future.
10.2	High Court Judgement Gallagher Homes Ltd. and Lioncourt Homes Ltd. v Solihull Metropolitan Borough Council.
10.3	High Court Order Gallagher Homes Ltd. and Lioncourt Homes Ltd. v Solihull Metropolitan Borough Council.