

Three Rivers District Council

Sub Committee Report

12 May 2025

LOCAL PLAN SUB COMMITTEE – 12 May 2025

PART I

LOCAL PLAN – Further Regulation 18 Consultation (DoF)

1 Summary

- 1.1 This report sets out Counsel's advice in regard to undertaking an additional Regulation 18 consultation on new sites and seeks Member agreement for the Council to conduct a Regulation 18 consultation in the summer.

2 Introduction

- 2.1 At the Extraordinary Meeting of Full Council in January it was agreed that officers would now work towards a timescale so that the Council might be in a position to have a Regulation 19 for public consultation in early November. It was also agreed that further evidence work was required in support of the Local Plan to help ensure it being found sound at examination.
- 2.2 At the March Local Plan Sub-Committee Officers presented the new sites submitted through the additional call for sites exercise undertaken in January/February. As there were new sites that would potentially be added to the Local Plan that had not been through Regulation 18 consultation, it was agreed that officers should seek legal advice on whether the requirements of Regulation 18 would have been met if we progressed straight to Regulation 19 without consulting on new sites through Regulation 18 previously.
- 2.3 The response from Counsel was that although they did not consider it a breach of Regulation 18 to proceed straight to Regulation 19 publication of the plan without conducting further Regulation 18 consultation on new sites, they advised there would be a high risk of legal challenge or the plan being found unsound at examination if the Regulation 18 consultation was not completed prior to progressing to Regulation 19.

3 Background

Regulation 18

- 3.1 Regulation 18 of The Town and Country Planning (Local Planning) (England) Regulations 2012 relates to the preparation of a local plan. Paragraph (1) of regulation 18 requires a local planning authority to notify each of the bodies or persons specified in paragraph (2) of "*the subject of a local plan which it proposes to prepare, and to invite each of them to make representations about what a local plan on that subject ought to contain*".
- 3.2 Paragraph (3) of Regulation 18 requires the local planning authority, in preparing the local plan, to take into account any representation made to it in response to its invitations to make representations under paragraph (1).
- 3.3 Regulation 18 does not define what is meant by 'the subject' of a local plan and makes no reference to specifics such as the sites and policies contained within the plan.

- 3.4 The Council has undertaken multiple Regulation 18 consultations to support its local plan preparation. These consultations covered different levels of growth and included the vast majority of sites that would make it into the Regulation 19 publication version of the plan. The Spatial strategy on how the Council would meet its growth needs would fundamentally remain the same across all the different levels of growth with the focus being on edge of settlement development. It was only the scale of growth that was changing.
- 3.5 The first of these was the Regulation 18 Issues and Options Consultation in 2017. It sought feedback on the Local Plan vision and objectives, potential growth strategies, affordable housing, transport and sustainability and climate change
- 3.6 In 2021 the Council consulted on a full draft Local Plan. This was the Regulation 18 Preferred Policy Options and Sites for Potential Allocation. The document considered preferred policy options and set out the sites that could potentially be allocated for development in the Local Plan.
- 3.7 As a result of this consultation a further 18 sites were submitted for the Council's consideration. These sites were assessed and six sites were considered appropriate for potential allocation. The six sites (as well as those not considered suitable) were consulted on in 2022/23 in the Regulation 18 Additional Sites for Potential Allocation document.
- 3.8 Following changes to national planning policy the Council consulted on its Regulation 18 'Lower Housing Growth Option – Protecting More Green Belt Land' in late 2023. This consultation sought views on this low growth strategy and the housing sites selected to be included within.

Regulation 19

- 3.9 Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 refers to the publication of a local plan. It states that:
- “Before submitting a local plan to the Secretary of State Under S.20 of the Act, the local planning authority must – (a) make a copy of each of the proposed submission documents and a statement of the representations procedure available...”*
- 3.10 When publishing a plan under Regulation 19, a local authority must take the view that the local plan is ready for independent examination, which includes a decision that the local plan is sound.
- 3.11 Paragraph 36 of the NPPF sets out that Plans are sound if they are:
- “a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;*
- b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;*
- c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and*

d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.”

- 3.12 Regulation 19 can be considered the beginning of the examination stage of plan-making. Its publication isn't really a consultation exercise, rather it is the mechanism by which interested persons can make representations on the draft plan to enable them to participate in the process of independent examination.
- 3.13 Full Council in December 2024 adopted an updated Local Development Scheme (LDS) setting out the timetable for Local Plan preparation. This new LDS set out expected Regulation 19 publication of the Local Plan in February / March 2026. It was agreed to complete additional evidence work to bring the local plan in line with changes to national planning policy.
- 3.14 An extraordinary Full Council in January 2025 resulted in Members requesting an accelerated timetable to publish the Regulation 19 plan in early November 2025.
- 3.15 This additional evidence work included a call for sites to ensure that we had considered all of the suitable and available site options going forwards. As a result of this call for sites over 30 new sites were submitted, which are currently being assessed as part of the Strategic Housing and Employment Land Availability Assessment.
- 3.16 It was officers' view that the council could proceed straight to Regulation 19 publication of the plan without further Regulation 18 consultation as the council had already consulted on different levels of growth through its previous Regulation 18 consultations, and its approach to delivering that growth had not changed. However, as it had not consulted on the individual new sites submitted from the call for sites, officers suggested seeking Counsel advice on whether to proceed straight to Regulation 19 publication or whether to undertake a further round Regulation 18 consultation.

4 Details

- 4.1 The Council sought Counsel from James Neill at Landmark Chambers on whether to proceed straight to Regulation 19 publication or whether to undertake a further round of Regulation 18 consultation. When it came to interpreting Regulation 18, they were asked to advise on whether differing housing targets altered the 'subject' of the local plan, and was there a requirement to consult on new sites submitted, and would it be sufficient to only consult on the newly submitted sites.
- 4.2 Counsel Analysis:
- 4.3 *“Strictly speaking, there is no requirement in the 2012 Regs that there should be a specific consultation on the specific plan that a local authority wishes to adopt. Regulation 18 specifically refers to “the subject of a local plan”: it does not refer to “the local plan”. It is precisely because of the width of that term that Regulation 18 consultations often just take the form of an issues and options consultation, in which the Council has not determined or expressed a view as to which of those options it prefers.*
- 4.4 *Therefore, in my view there is no absolute legal bar on proceeding to publish pursuant to Regulation 19 a draft plan, without that actual draft plan having been published for consultation under Regulation 18.*

- 4.5 *However, the real question here which arises is whether or not, in the absence of further consultation under Regulation 18, can the Council be satisfied that the plan is sound. The Council has to address that question prior to the publication of the plan under Regulation 19.*
- 4.6 *In my view, the “subject of the plan” is not the housing target (although that is clearly a highly relevant consideration in determining the appropriate policies for the plan). The subject of the plan is the appropriate vision and framework for the future development of the area, addressing needs in particular in relation to housing.*
- 4.7 *To construe the “subject of the plan” narrowly as meaning “the specific housing target” identified by a local planning authority I do not think would be correct. It would preclude the wider issues and options type consultations which often take place under Regulation 18 in which the appropriate housing target, and differing spatial strategies to meet that target, are often the subject of consultation.*
- 4.8 *Therefore in my view the real question which the Council will need to address is whether, if there are extensive new allocations that need to be made to meet the higher housing target it identifies, which have not previously been the subject of a Regulation 18 consultation, whether or not the Council can be satisfied that including those sites is sound absent a further consultation exercise specifically in relation to those additional allocations.*
- 4.9 *In my view, it would be high risk to proceed to publish a Regulation 19 draft without having consulted on those additional allocations. The Council would be exposed to the possibility of legal challenge on the grounds that it has not consulted on the inclusion of those additional sites and has moved prematurely to publication under Regulation 19, and therefore does not have the information before it to satisfy itself that the plan is sound.*
- 4.10 *This approach (i.e a limited Reg 18 consultation on new sites) is on the assumption that the draft plan that the Council identifies following its Green Belt assessment and Transport Assessment does not identify or lead to the conclusion that a fundamentally different spatial strategy to the spatial strategy identified following the original Regulation 18 consultation on issues and options in 2017 is necessary. I note in this regard that the options for Housing Growth were consulted on in the original Regulation 18 consultation and five broad spatial options were identified (i.e concentrate new development within existing urban areas, infilling and extensions to villages, increase in density to development, extensions to existing settlements, new settlements, or a mixture of the above). The Council would need to explain if and when proceeding to Regulation 19 why the approach it has adopted is not fundamentally different to the broad options for housing growth initially consulted on in 2017.*
- 4.11 *If the Council were to proceed without carrying out any further Regulation 18 consultation at all, even if the Council were not faced with a legal challenge at the Regulation 19 stage, the risk would re-surface at examination stage as the examining Inspector would consider for himself or herself whether or not the plan is justified, and the absence of any consultation on the new allocations, even if that is not strictly required as a matter of law, would be relevant to the question of whether the policy is justified (one of the tests of soundness).*
- 4.12 *I note that I have not been asked to consider whether or not proceeding straight to Regulation 19 would also engage questions about compliance with strategic environmental assessments pursuant to the Environmental Assessment of Plans and Programmes Regulations 2004 (as amended) (“the SEA Regs”). My*

initial view is that to remove or reduce the risk of any legal challenge based on the SEA Regs, is that it would be preferable to show that the new site allocations have been subject to sustainability appraisal at Regulation 18 stage.”

4.13 Counsel conclusions:

4.14 *“I do not consider that there would necessarily be a breach of Regulation 18 if the Council were to proceed immediately to Regulation 19 and publish a plan based on a higher housing target. However, I consider that proceeding to do so is high risk and, depending on what the content of that plan and whether it does contain new allocations the inclusion of which have not previously been consulted upon, would be vulnerable to legal challenge on the basis that the Council, for example, could not rationally have come to the view that the plan was sound without having undertaken that further consultation exercise. I also consider that proceeding without consulting on any additional allocations would also raise questions over soundness when it comes to the examination of the local plan.*

4.15 *I do not think there is a strict statutory requirement to re-consult merely because some new individual sites have been included. The real issue in my view is that there would be a real risk of legal challenge if new sites were included at Regulation 19 publication stage without any consultation on those having taken place previously.*

4.16 *In my view, particularly if the overall growth strategy remains broadly the same as one of those consulted on in the original Regulation 18 consultation in 2017, it would be sufficient to just consult on new sites that have been included.”*

4.17 Considering the above advice, officers recommend undertaking an additional Regulation 18 consultation on the newly submitted sites. Although officers understand that there is no requirement to consult on individual new sites at Regulation 18 stage, it is clear from Counsel advice there is a risk of the plan being found unsound at examination if we do not complete Regulation 18 consultation on these sites.

4.18 It is imperative that the Council reduces the risk of the plan being found unsound at every opportunity. Should the Local Plan be found unsound at examination this would result in further work on the plan being required. The costs of examination can run into the hundreds of thousands of pounds, so if the plan is found unsound this money is effectively wasted and we would have to incur those costs again to bring a new plan to examination at a later date. It would also lead to delays (18 months to two years) in the plan being adopted as further evidence work and consultation would be required before a new plan can be brought to examination. This would increase the period of time the Council is susceptible to speculative planning applications being successful at appeal.

4.19 The additional Regulation 18 consultation would include the newly submitted sites that the council considered deliverable (suitable and available) seeking views on them, as well as those that it does not consider deliverable.

4.20 Officers will bring the site assessments to the 10 June Local Plan Sub-Committee, with aim to undertaking the Regulation 18 consultation over the summer. Full Council is on the 8 July, an extraordinary Policy and Resources Committee will need to be organised as there is no Policy and Resources Committee between the June Local Plan Sub-Committee and the July Full Council.

- 4.21 There will be work involved in preparing the consultation documents, documenting and analysing all the representations and summarising the key issues. This may have an impact on the Council's accelerated local plan timetable. Due to the additional work required. Officers will continue to monitor Local Plan progress closely and will report back to Members should there be any concerns that the timetable may change.
- 4.22 The Policy team has had two new starters, a Senior Planner started on 23 April and a Principal Planner joined on the 28 April, funded through the government grant supporting local plan preparation. It will take a little time to get them up and running but their support to the Policy team will help us get the work completed as quickly as possible.

Sustainability Appraisal

- 4.23 The Sustainability Appraisal (SA) is prepared alongside each stage of the Local Plan. This began with the SA Scoping Report in 2017 followed by multiple SA working notes as we worked through the various Regulation 18 consultations. Each consultation is supported by an SA that informs the decisions on sites and policies to be included at each stage.
- 4.24 The SA assesses the potential social, economic and environmental impacts of the Local Plan, ensuring the plan aligns with sustainable development objectives by identifying potential positive and negative effects and proposing mitigation. It should be integral to Local Plan preparation, providing the framework to test and develop options. Whether we can demonstrate consideration of reasonable alternative options will be scrutinised at examination.
- 4.25 Counsel rightly raised the issue of the new sites not having been through the SA process at Regulation 18 stage. The additional Regulation 18 consultation will provide the opportunity to ensure that all of the sites that are included in the final Regulation 19 publication version of the plan have been fully assessed by the SA at Regulation 18 stage, providing stakeholders the opportunity to provide representations on the SA. This will avoid potential legal challenge on whether the plan meets the requirements of the SEA Regulations.
- 4.26 Following discussions with the SA consultants, we have agreed to include any new policies such as the sustainability policies in the additional Regulation 18 consultation so that we can be sure that all the policies have been assessed by the SA too.

5 Policy/Budget Reference and Implications

- 5.1 The recommendations in this report are within the Council's agreed policy and budgets.

6 Financial, Legal, Staffing, Equal Opportunities, Environmental, Community Safety, Public Health, Customer Services Centre, Communications & Website, Risk Management and Health & Safety Implications

None specific.

7 Financial Implications

£200,000 has been added to the budget to ensure that all the evidence work is budgeted for and can be completed on time. There is also a further £200,000 set aside in reserves for planning. We have also received £227,962.50 in government funding to support local plan preparation and a further £70,000 to cover the costs of the Green Belt Assessment.

The additional Regulation 18 consultation will not require any additional money than that which is already in the Planning Policy budget.

8 Legal Implications


- 8.1 Failing to undertake an additional Regulation 18 consultation could result in legal challenge under the Town and Country Planning (Local Planning) (England) Regulations 2012 and/or the *Environmental Assessment of Plans and Programmes Regulations 2004 (as amended)*.

9 Risk and Health & Safety Implications

- 9.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.
- 9.2 The subject of this report is covered by the Planning Policy and Conservation service plan. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this plan.

Nature of Risk	Consequence	Suggested Control Measures	Response (tolerate, treat, terminate, transfer)	Risk Rating (combination of likelihood and impact)
Failure/Delay in delivering Local Plan	Increase in speculative planning applications	Local Development Scheme	tolerate	6
Local Plan found 'unsound' at examination	Main modifications may be required which will result in an extended examination and costs and/or the Plan may have to be withdrawn.	Ensure that the Local Plan is evidenced based and justified	tolerate	6

- 9.3 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

Very Likely  Likelihood Remote	Low 4	High 8	Very High 12	Very High 16
	Low 3	Medium 6	High 9	Very High 12
	Low 2	Low 4	Medium 6	High 8
	Low 1	Low 2	Low 3	Low 4
	Impact Low -----> Unacceptable			

Impact Score

- 4 (Catastrophic)
- 3 (Critical)
- 2 (Significant)
- 1 (Marginal)

Likelihood Score

- 4 (Very Likely (≥80%))
- 3 (Likely (21-79%))
- 2 (Unlikely (6-20%))
- 1 (Remote (≤5%))

9.4 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

10 Recommendation

10.1 That the Local Plan Sub Committee:

- Agree that an additional Regulation 18 consultation on newly submitted sites be completed prior to Regulation 19 publication of the Local Plan.

Report prepared by: Marko Kalik, Head of Planning Policy and Conservation

Background Papers

National Planning Policy Framework (2024)
Planning Practice Guidance
Core Strategy (2011)
Regulation 18 Part 1: Preferred Policy Options (2021)
Regulation 18 Part 2: Sites for Potential Allocation (2021)
Regulation 18 Part 3: Additional Sites for Potential Allocation (2023)
Regulation 18 Part 4: Lower Housing Growth Option (2023)
Potential Sites consultation (2018)

Regulation 18 Issues & Options consultation (2017)
South West Hertfordshire Local Housing Needs Assessment (2020)
South West Hertfordshire Local Housing Needs Assessment Update (2024)

