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**JOINT PLANS PANEL
THURSDAY 14th JULY 2016**

LATE ITEM

HOUSING LAND SUPPLY

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Report of the Chief Planning Officer

Report to Joint Plans Panel

Date: 12th July 2016

Subject: Implications of Grove Road decision

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): All	☒ Yes	☐ No
Are there implications for equality and diversity and cohesion and integration?	☒ Yes	☐ No
Is the decision eligible for Call-In?	☐ Yes	☒ No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	☒ No

Summary of main issues

1. The Secretary of State (SoS) and his Inspector have considered an appeal against non-determination of planning permission for 103 dwellings on a Protected Area of Search (PAS) at Grove Road, Boston Spa, which the Council defended in May 2014. They have determined that the appeal should be upheld and that permission should be granted. They also determine that the local planning authority does not have a Five Year Housing Land Supply (5YS) and that its policy for protecting PAS / safeguarded land is now out of date.
2. Following opinion from leading counsel, there are grounds to challenge the Secretary of State's decision, chiefly around the inconsistency between it and the Bagley Lane decision in March 2015. This report outlines the key issues arising from the decision and the details of the challenge.

Recommendation

3. Joint Plans Panel is invited to note this report for information.

1 Purpose of this Report

- 1.1 The purpose of this report is to update Joint Plans Panel on the recent decision by the Secretary of State (SoS) to allow an appeal for 103 dwellings on a Protected Area of Search (PAS) at Grove Road, Boston Spa, which the Council defended in May 2014. He has determined that the appeal should be upheld and that permission should be granted. He also determines that the local planning authority does not have a Five Year Housing Land Supply (5YS) and that its policy for protecting PAS is now out of date.

2 Background Information

Context

- 2.1 The presence of a 5YS is necessary to maintain control over local policies for housing land release. The Council, like many other local planning authorities, has fought many planning appeals on this issue. In 2011 UDP Phase 3 sites were released to bolster the supply of land for housing. Similarly in March 2013 the Council introduced a pragmatic interim-PAS release policy which further bolstered supply.
- 2.2 The Council's approach to maintaining a five year supply was upheld by a Planning Inspector, the Secretary of State and subsequently a Judge (following a High Court Challenge by Thornhill Estates) relating to land at Bagley Lane, Farsley in 2015. This endorsement helped support technical exercises surrounding the calculations of the five year supply.
- 2.3 The Council's technical evidence since Grove Road was heard, is considered to have been strengthened by means of further viability work, benefits of the Council's approach to delivery in the inner areas and partnership with house builders who are active in low market areas and the City Centre. Moreover there have been tangible signs of City Centre renaissance in the City Centre and City Centre fringe driven by Private Rented Sector schemes in the pipeline. It therefore is difficult to rationalise an unfavourable decision in a market seemingly recovering well, which follows a favourable decision at Bagley Lane made when the market was still struggling.
- 2.4 However, the performance of house building in Leeds has been lower than anticipated since the recession and there is a backlog of over 4,000 homes against Core Strategy requirements. It is this aspect that the SoS requested further information on in January 2016, prior to coming to his decision on Grove Road. The Government's intention is that the 5YS should be used to help boost the supply of housing in order to meet both national and local targets, by adding more land to create choice and competition. In simple terms this is what the SoS is now seeking to achieve. He does not see a target being achieved in Leeds and considers that more land supply must be the remedy to this.
- 2.5 As Members will be aware the reality of the situation is far from that simple. The Council has an Adopted Core Strategy, which sets a focus on the main urban area and use of brownfield land. The Site Allocations Plan is seeking to

release land through a plan-making not 'planning by appeal' process. Moreover, the choices of the volume house building sector are largely focused upon outer market areas, rather than the priorities set within the Core Strategy upon the main and inner areas of Leeds for the purposes of regeneration and growth.

3 Main issues

- 3.1 On the advice of leading counsel the Council will challenge the Grove Road decision.
- 3.2 The Council contends that the Secretary of State's decision was unlawful because he failed to take into account of (or alternatively failed to explain his reasons for departing from) his conclusions on another planning appeal in respect of which he reached, in the Council's view, diametrically opposite conclusions on the issues of critical importance.
- 3.3 Notwithstanding the disappointment of the SoS decision as a whole, it is an unhelpful decision for a number of specific reasons.
 - it considers the UDP Review Policy N34 which protects safeguarded land to be out of date, whereas the Bagley Lane inspector and High Court thought it in date and relevant. Moreover, the NPPF notes that safeguarded land should only be released through a plan review (as the Council is progressing via the SAP);
 - it considers that Leeds has a record of persistent under-delivery of housing and should have a 20% buffer applied to its requirement, whereas the Bagley Lane inspector accepted a 5% buffer on the same evidence;
 - it does not clearly set out the gap in the Council's land supply, making it difficult to remedy with any certainty;
 - the report contains a number of misrepresentations of fact e.g. in the manner the Inspector has dealt with windfall
- 3.4 These issues are highlighted in the legal challenge, which can be made available on request.
- 3.5 The decision raises a number of implications. First, officers are currently looking to maintain and improve the five year land supply position and seek to responsibly address any weaknesses in the Council's position. This is challenging given the conclusions reached by the Grove Road inspector.
- 3.6 Second, the SoS has decided that he does not have sufficient evidence to determine the Bagley Lane appeal decision, which was quashed by the High Court. The re-opened Bagley Lane appeal is due to open in January 2017.
- 3.7 Third, officers have written to Mr Ken Barton, Planning Inspector, who heard the Council's up to date evidence on land supply at three conjoined appeals in

February and March 2016 (at Breary Lane, Bramhope; Leeds Road, Collingham and Bradford Road, East Ardsley). Mr Barton heard a significant amount of evidence on land supply including via a round table which he administered. His decision is due to be handed to the SoS this summer.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The maintenance of a 5YS is driven through a Strategic Housing Land Availability Assessment (SHLAA) which is a technical exercise. The SHLAA is supported by a partnership comprising officers, Members of Development Plans Panel and representatives from the house building industry.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 It is considered that the report raises no issues about equality.

4.3 Council Policies and City Priorities

- 4.3.1 Maintaining a Five Year Supply helps implement the Development Plan i.e. the Core Strategy and emerging SAP and AVLAAP. The Development Plan plays a key strategic role in taking forward the spatial and land use elements of the Vision for Leeds and the aspiration to the 'the Best City in the UK'. Related to this overarching approach and in addressing a range of social, environmental and economic objectives, these Plans seek to implement key City Council priorities. These include the Best Council Plan (2013-17) (in particular Objective 2: to 'promote sustainable and inclusive economic growth'). The SHLAA also supports the delivery of breakthrough projects on the delivery of housing.

4.4 Resources and value for money

- 4.4.1 The legal challenge will have resource implications which are considered necessary to ensure that the Council has clarity over this sensitive and important issue.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The report is not eligible for call in as no decision is being taken. Risk Management

4.6 Risk Management

- 4.6.1 Without a five year supply in place the Adopted Leeds Core Strategy housing policies become out of date and the Council loses the ability to direct new housing to the most appropriate locations.

5 Conclusions

- 5.1 The decision of the SoS is disappointing but fails to specifically assist the Council in identifying what its land supply might be. The decision is being

challenged by the Council and the latest position on 5YS has been heard at three recent appeals which are with the Planning Inspectorate and SoS.

6 Recommendation

- 6.1 That Joint Plans Panel note this report for information.

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