

# STATUTORY REVIEW OF THE LOCAL PLAN AND REVISION OF THE LOCAL DEVELOPMENT SCHEME

## REPORT TO THE EXECUTIVE



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| PORTFOLIO     | Economy and Growth   |
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### PURPOSE

1. The purpose of this report is for Executive:
  - i) To consider the Statutory Review of the Local Plan to determine if a full or partial update of Burnley's Local Plan should be commenced;
  - ii) To consider if the Statement of Community Involvement (SCI) should be updated at this time;
  - iii) To consider the need to progress the Gypsy and Traveller Site Allocations Development Plan Document (DPD) at this time; and
  - iv) To update the Local Development Scheme (LDS) to reflect the above decisions.

### RECOMMENDATION

2. It is recommended that Executive:
  - i) Notes the content of the review and agrees that an update of Burnley's Local Plan 2012-2032 is not required at the present time;
  - ii) Approves the revised Local Development Scheme set out in Appendix C; and
  - iii) Agrees that an update of the Statement of Community Involvement is not pursued at the present time.

### REASONS FOR RECOMMENDATION

3. To meet the legislative requirement to review the local plan at least every five years from the date of adoption to assess whether it needs updating; and to publish the reasons if it is considered that no update is necessary.
4. To meet the legislative requirement to review the SCI at least every five years from the date of adoption to assess whether it needs updating; and to publish the reasons if it is

considered that no update is necessary.

5. To agree that an update of Burnley's Local Plan 2012-2032 is not pursued at the present time for the reasons set out in the report, which conclude that no national policy trigger has been activated in respect of local housing need, that the Plan is sufficiently up-to-date, that it continues to perform well delivering the Council's Vision for the borough and that it continues to provide a strong plan-led approach to development.
6. The proposals set out in the Levelling Up and Regeneration Bill would fundamentally change the nature of local plans and the procedures for preparing them. To commence a local plan update ahead of the Bill being enacted may lead to abortive work and costs.
7. To meet the legislative requirement to maintain an up-to-date LDS setting out the local plan documents that the Council intends to produce and the timescales for their production.

## SUMMARY OF KEY POINTS

### Background

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#### The Current Local Plan

8. Burnley's Local Plan was adopted on 31 July 2018. It will reach its 5th anniversary on 31 July 2023. The Plan covers the period 2012 to 2032. We are therefore 11 years into the 20-year plan period.
9. During the Examination of the Plan, the Inspector raised concerns regarding the then proposed Gypsy and Traveller Site Allocation at Oswald Street. In order to allow the Examination of the Local Plan to conclude, it was proposed to remove this site from the Plan and to address the issue in a separate Gypsy and Traveller Site Allocations DPD. This approach was confirmed in the January 2018 LDS and the current February 2020 LDS. Whilst some early preparation work was commenced, work ceased following the announcement of major reforms to the plan-making system in 2020. (See paragraph 56)

#### Local Plan Review Requirements

10. Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 introduced in 2017, provides that local planning authorities must review their plans every five years from the date of adoption. Section 17 of the Planning and Compulsory Purchase Act 2004 (PCP Act) requires them to publish their reasons if they consider that no update is necessary. Section 17 already required local plans and SCI's to be kept under review, but the new Regulation formalises this requirement.
11. The National Planning Policy Framework (NPPF) (2021), Para 33 states that "*Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary.*"

12. Traditionally the term 'review' was used for the updating of a plan and the redefinition of this term causes some confusion, but in the context of the current legislation and national policy the term 'review' means the assessment provided in this report to determine whether the local plan needs updating in whole or in part.

### **What triggers the need for an Update?**

13. Paragraph 33 of the NPPF sets out what the review should take into account i.e. *“changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future”*. Further guidance is set out in National Planning Practice Guidance (NPPG) which states that *“local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method.”* As this is not the case in Burnley with the plan number being above the number generated using the standard method, this particular trigger does not apply.
14. Burnley's Local Plan was written to be legally compliant with the legislation then in force and 'sound' as per the tests set out in the 2012 NPPF. One of these tests was that the plan should be “consistent with national policy”. This test remains. Revised versions of the NPPF were issued in 2018, 2019 and 2021.
15. The online National Planning Practice Guidance is also regularly updated and whilst not officially falling under the label of 'national policy' but rather 'guidance issued by the Secretary of State', it is still in effect viewed as such. In any case, legislation requires that in preparing a local development document, the local planning authority must have regard to national policies and advice contained in guidance issued by the Secretary of State. (PCP Act S192A)
16. It is open to a Council to update its local plan at any time whether or not national policy requires this. A plan may be at odds with a changed Council vision for its area, or may not be performing as intended. Performance of Burnley's Local Plan is assessed annually through the Authority Monitoring Report (AMR) to see if an update may be required before its end date of 2032. If officers identified this potential, a report would be brought to Executive regardless of the specific five-year review requirement.
17. Preparation of local plans takes many years and is very costly and plans which contain strategic policies are normally prepared to cover a 15-year period from adoption. Over such extended periods there will inevitably be changes in national policy and local circumstances and plans are carefully written to be flexible enough to accommodate some level of change. It is also important to bear in mind that the national policy and legislative picture will change throughout the preparation of any update, and again following its adoption, and that the outcome of any plan changes sought cannot be guaranteed.

18. The decision to update a plan must be made in the context of how the plan is currently performing, whether any changes sought could be implemented i.e. be successfully pursued through Examination and whether these would significantly improve the weight and functioning of the plan. The cost and uncertainty created by embarking on an update should also be borne in mind.
19. In circumstances where *“there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date”* the NPPF applies what is often described as a ‘tilted balance’ which seriously undermines many of the adopted plan’s policies. Whilst most of these circumstances are not described in the NPPF, two specific examples are given of where this would be the case: where the council cannot demonstrate a five-year housing land supply and where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Neither of these circumstances apply to Burnley at the present time.

### **Cost, Scope and Timescale of an Update**

20. Updating a full local plan (like the current plan) would take a minimum of 4 years to adoption (assuming the required resources were in place) with preparation starting August 2023 and adoption in August 2027. The current Plan took 6 years. The government previously stated that the average is 7 years. Progress is also dependent on the input from other bodies, particularly Lancashire County Council, Highways England and Natural England. Speed of progress also depends on the number and extent of national policy and procedural changes made through the course of the plan’s preparation. Undertaking a full update does not mean that every policy needs to be changed, just that the whole plan is opened up for reconsideration.
21. It is estimated that updating the Local Plan would cost c £1million on top of existing budgets.
22. A partial update of the Local Plan could possibly be completed in 2.5 to 3 years depending on the scope of the update, but this approach has significant limitations and risks. A partial update only really works if one or two discrete areas of a plan are to be updated. A partial update is always likely to result in inconsistencies between parts of the Plan to some degree, and restricting an update to certain topics only will mean people may be very unhappy about not being able to comment on matters important to them.
23. If the update involved strategic policies, the plan period would need to be extended to c2040 (15 years from adoption), which means an additional 8 years’ worth of development would need to be accommodated. This would either be an entirely new requirement or be offset by any reductions agreed to the remaining current targets to 2032. If the Plan’s housing requirement was to be revisited, the employment land requirement would also need to be reconsidered. A new ‘call for sites’ for housing and employment would be required and the sites put forward would need to be duly considered. Depending on the employment land figure agreed by the Inspector through the Examination and the alternatives put forwards in the call for sites, the release of

Green Belt land at one or more of the sites previously identified but deleted by the Inspector as not being required to meet employment needs to 2032, may be necessary.

24. If the partial update related to site allocations, then it is likely that all allocations would need to be reviewed together i.e. housing, employment and retail, and also any policies that are directly related to the choice of sites e.g. Policy HS2 Affordable Housing, Policy HS3 Housing Mix and HS4 Housing Developments (adaptable homes and open space standards); and potentially the open spaces that are currently protected e.g. through Policy NE2.
25. Adopted plans are the starting point for the consideration of planning applications and legislation requires that applications be determined in accordance with them unless material considerations indicate otherwise. This is the case whether the plan needs updating or not and even where a plan is 'time expired'. This means that the current Local Plan would remain in place whilst any updated plan is being prepared until such time as the new Plan is adopted. Of course, over time national policy changes, changed circumstances and legal duties will become weightier material considerations in the determination of individual planning applications and can mean that one or more policies of the plan no longer function as intended.
26. At this moment in time, the Council also needs to consider whether a full or partial update could realistically be progressed before that progression is prevented by changes to national policy and legislation. The proposed planning reforms set out in the Levelling Up and Regeneration Bill are proposed to be implemented in late 2024. These would include transitional arrangements and these were consulted on in December 2022 ([Levelling-up and Regeneration Bill: reforms to national planning policy - GOV.UK](#)) and proposed that any current style plan update would need to be submitted for Examination by 25 June 2025 and then adopted by 31 December 2026. Plans not submitted by that date would need to be in a new format focussed on development quantum, site allocations and design guidance with development management policies being prescribed nationally. Under the new regime, plans would be required to be completed within 30 months of starting.

## The Review

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27. In accordance with National Policy and Guidance, this Review considers whether the Local Plan:
  - Is consistent with current national planning policy?
  - Reflects current legislation (planning and non-planning)?
  - Continues to align with the Council's Vision and aligns with other Corporate Strategies
  - Is delivering as intended?
  - Needs to respond to new opportunities and/or challenges?
28. The Matrix at Appendix A to this report provides a summary analysis of the Local Plan's Vision, Objectives and Policies in relation to the above criteria, the level of change that might be appropriate and whether the change is essential or not at this time. The assessment draws on information from the [Authority Monitoring Report \(AMR\)](#). The

analysis is separated into those aspects of the policies that are affected by legislative and national policy changes and those which are affected by changed circumstance and evidence. This is a high-level analysis and does not put forward a specific recommendation or new policy wording as that would be a matter for detailed consideration, public consultation and independent examination.

29. Over a Plan's long time period, things will inevitably change locally, nationally and internationally. The important question is not therefore, has anything changed, but rather do any changes mean the plan can't operate as intended and/ or do they allow a new and improved plan to be prepared?

### **Is it consistent with national policy?**

30. Since the Local Plan was adopted in 2018 there have been several updates to the NPPF which affect both plan content and on-going decision making. The changes include revised policy on density and design, affordable housing and its definition and 5-year housing land supply.
31. There have also been changes to the method of calculating housing need and resulting plan requirements, incorporating the use of the "standard method". A brief outline of the standard method is included at Appendix B. Despite the availability of more recent household projections (2016, 2018 and 2020-based) and factual data (the Census), the standard method still uses the 2014-based household projections in its calculation. When the 2014-based population projections that underpin the household projections are compared with the actual population figures for Burnley in 2021 (94,700 according to the Census as opposed to 87,400 according to the 2014-based projections), it is clear that these would not inform a meaningful housing number for Burnley or allow the needs of different groups to be properly assessed. Once the 2021 Census data has been translated into new household projections (planned to be issued in 2024) the continued use of 2014-based statistics will be untenable.
32. As set out in paragraph 13, national policy does not require Burnley's Local Plan to be updated to take into account the standard method.
33. As set out in the Matrix at Appendix A, none of the national policy changes are considered to undermine the Local Plan or require a different approach. Where specific national policy changes post-date the plan and differ to it, they would be material considerations in relevant planning decisions.

### **Does it reflect current legislation?**

34. At the time of preparing the Local Plan, the Climate Change Act 2008 established a legally binding target to reduce the UK's net carbon account by at least 80% in 2050 from 1990 levels. In 2019, the Act was amended to increase the target to 100% i.e. "net zero."
35. There have been recent changes to the building regulations to increase energy efficiency and electric car usage which exceed some of the specific requirements of the Local Plan but are nevertheless consistent with its approach. Whilst these changes affect the

interpretation of certain clauses of Policy SP5 and IC3, these policies still perform adequately through a sensible interpretation and weighing of material considerations.

36. Changes to the Use Classes Order, particularly the amalgamation of a number of A, B and D Use Classes into a new E Class has impacted on the Council's ability to manage change within and outwith town centres (Policies TC2 and TC3). Despite this deliberate weakening of control, national policy in the NPPF on town centres remains unchanged and so the Local Plan's town centre policies remain consistent with it. Similarly, a widening of the scope of permitted development rights means more development does not require planning permission and except for limited 'prior approval' matters, the consideration of Local Plan policies.
37. As set out in the matrix at Appendix A, none of the legislative changes undermine the Local Plan or require a significantly different approach.

### **Is it delivering as intended?**

38. We are only part-way through the plan-period, five years from its adoption and 11 years into its 20-year span. The Plan was written to be flexible and forward-looking, particularly in terms of anticipated population and household growth and proactive regeneration activity; and it is remarkably on track in terms of the overall quantum of development for housing (market and affordable), employment development and retail and leisure development.
39. The Plan is proving very successful in delivering a majority of housing development on brownfield sites (92.8% - see Appendix A, Policy SP5), and development is being delivered in accordance with the settlement hierarchy on allocated and windfall sites within the development boundaries, with development in the open country being strictly controlled. Key to the Plan's success here has been in maintaining a 5-year housing land supply (currently 10.1 years) and wider developable supply over the Plan period; and passing the government's housing delivery test. (See also earlier paragraph 19.)
40. It is also on track in terms of the quality and mix of development, although some fine tuning in terms of meeting all sections of market housing demand and delivering design quality and sustainability could be beneficial (but is not essential). A number of other policies have been identified in this category i.e. they could benefit from some updating but this is not essential, and allowing for other material considerations to be taken into account, including SPDs, the policies can still operate effectively.
41. The overall need for affordable housing identified in the Plan has now been met but not the need for all specific types and tenures e.g. intermediate tenures. There is likely to still be a need for new/replacement affordable rent/social rent and the type of accommodation needed may have changed due for example, to changes in benefit rules. Updated evidence on the quantum of need and the types and tenures required is necessary in order that proposals for affordable housing can be appropriately considered and weighed in the planning balance and any contribution requests justified. However, as Policy HS2 does not include a specific target it is unlikely to require updating. The

Developer Contributions SPD which sets out the expected percentages of affordable housing by site type may need to be updated. An updated Affordable Housing Need Study is therefore to be commissioned.

### **Is it helping to deliver the Council's Vision and does it align with other Corporate Strategies?**

42. The Vision and Objectives of the Plan still closely align with the Council's [Strategic Plan \(Feb 2023\)](#) and other key strategies including [Burnley's New Economy: A Strategy for Recovery and Growth \(Sep 2020\)](#), the [Town Centre and Canalside Masterplan](#), and the [Lancashire 2050 - A Strategic Framework for Lancashire \(2023\)](#).
43. The Plan was adopted before the Council declared a climate emergency and developed its Climate Change Strategy. However, the Plan was developed in the full knowledge of the issues relating to climate change which are referenced and addressed in the Plan. Climate Change is identified as one of the "key Issues and Challenges" and reflected in the Plan's objectives particularly Objective 1: Delivering Sustainable Growth.
44. The Local Plan then addresses climate change including through policies SP5, CC1, CC2, CC3, NE5, IC1, IC2 and IC3. These policies are considered and applied in decision making and are consistent with the NPPF.
45. Whilst there have been some changes to wider national and international policy in relation to the overall targets for greenhouse gas emissions (net zero) and to national legislation e.g. the building regulations, there is nothing in the Local Plan that is inconsistent with these changes which in themselves are not reflected in the NPPF. Any wider changes can be addressed through a sensible interpretation of the policies and weighing of material considerations. The government stated in its December 2022 consultation on planning reforms that: *"As committed to in the Net Zero Strategy, we will carry out a fuller review of the National Planning Policy Framework following Royal Assent of the [LURB] Bill, to ensure they contribute to climate change mitigation and adaptation as fully as possible."*

### **Does it respond to new opportunities and challenges?**

46. The Local Plan was written before the government's "levelling up" agenda was announced. To date, the awards of levelling-up funding to the Council and to the County Council to be spent in Burnley are to a large extent to deliver projects and policies already set out in the Local Plan rather than to chart a different course. If, however, there was to be a significant increase in resources and tools to facilitate new initiatives, then an update to the Local Plan could provide an opportunity to better embrace this agenda. An example of this could be e.g. to tackle on a strategic scale the refurbishment and/or clearance of existing housing stock. This would require a level of public funding similar to that seen under the previous Pathfinder Housing Market Renewal Scheme i.e. £81.35m from 2003 to 2010 in Burnley ([Audit Commission: HMR strategic review 2010 Elevate East Lancashire](#)] ([nationalarchives.gov.uk](http://nationalarchives.gov.uk))) and there is no indication at this time that this level of funding or intervention would be forthcoming; or directed toward deprived places



like Burnley in the immediate future.

47. The economic indicators collected in the AMR demonstrates that the borough has substantially recovered following the COVID 19 pandemic. There have been no other major economic shocks that would require an update.

## **Conclusion**

48. In terms of the coding set out in the matrix in Appendix A, of the 51 Local Plan policies, 1 has been identified for possible deletion entirely, 2 for deletion with some remaining parts then incorporated into other policies, 6 for amendments to change their meaning and/or incorporate parts of deleted policies, 12 for minor changes to aid clarity or update factual information, 30 for no change and 3 possible new policies. None of the potential changes identified are considered to be immediately necessary or urgent.
49. It is considered that the Local Plan does not currently require updating. It is performing well and is on track to deliver the development needed to meet need and deliver the Council's Vision for the borough. With sensible interpretation it can continue to provide a strong plan-led approach to development.
50. Even if this were not the case, taking into account the cost and complexity of a Local Plan update and given the uncertainties created by the proposed reforms set out in the Levelling Up and Regeneration Bill which would fundamentally change the nature and procedure for preparing local plans and may prevent the progression of any update commenced, it would not be recommended that an update is pursued at this point in time. This matter should be kept under review.

## **Statement of Community Involvement (SCI)**

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51. Legislation requires Local Planning Authorities to prepare an SCI setting out how the Council will engage with communities and others in preparing planning documents such as the Local Plan and in dealing with planning applications. The current SCI was adopted on 14 July 2015.
52. Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 introduced in 2017, provides that local planning authorities must review their SCIs every five years from the date of their adoption. The Act already required SCI's to be kept under review, but the new Regulation formalises this requirement. SCI updating can be done with or without consultation.
53. In February 2020, the Executive Report on the LDS identified that whilst the SCI still adequately reflected the current plan-making system, resources had been reduced since 2015 and feedback on the post-2015 local plan consultation undertaken had included some criticism; and, that where resources permit, the Council always needed to look to improve plan-making consultation. It also identified that the Development Control Team had recently moved offices and were recruiting/restructuring and implementing a new planning applications software package. It concluded that the SCI would benefit from

some minor updating.

54. Work on this had commenced in 2020 but was delayed, initially due to the Coronavirus pandemic, but later put on hold pending the outcome of the proposed planning reforms set out initially in the White Paper – ‘planning for the future’ (Aug 2020) and then in the Levelling Up and Regeneration Bill 2022 (LURB) as these would significantly alter the procedures for plan-making and consultation. As such, it is not considered sensible to proceed with an update to the SCI at the present time, but that this matter is revisited by Spring 2024.

## **Local Development Scheme (LDS)**

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55. The Council is required to maintain an up-to-date Local Development Scheme (LDS) setting out the local plan documents (DPDs) that it intends to produce and the timescale for their production. The current LDS includes a commitment to produce a Gypsy and Traveller Site Allocations DPD and a Design Guide SPD.

### **The Gypsy and Traveller Site Allocations DPD**

56. As set out earlier in paragraph 9, this document has been put on hold pending the outcome of the planning reforms as the implications for it are unclear. Furthermore, a recent Court of Appeal judgement has implications for the interpretation of the definition of Gypsies and Travellers in the government’s ‘Planning Policy for Traveller Sites 2015’ and how these are then evidenced and addressed in plan-making. Speedy clarification of this matter by the government would be welcomed. (See Appendix A). In view of this uncertainty, it is not considered sensible to proceed with this document or an updated needs assessment at the present time, but that this matter is revisited by Spring 2024.

### **The Design Guide SPD**

57. In February 2020 Executive resolved to prepare a Design Guide: Addressing Quality and Climate Change Supplementary Planning Document (SPD). Preparation of this was to commence in 2020 and be led by consultants appointed by the Council. £40,000 was set aside for this work. This SPD was also put on hold in 2020 in view of indications that ‘Design Codes’ were to become mandatory as part of the local plan and that councils would be no longer able to prepare SPD’s. Design Codes, being more prescriptive than Design Guides are likely to require additional resource.
58. In the interim, the policy team is supporting development control with design advice where possible, and the Council has signed up to a PAS-subsidised design training package for officers and members throughout 2023/4.

## **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

59. The recommendation is to not pursue an update of the Local Plan at this time and additional resource would therefore not be required. The potential cost of updating the Local Plan is set out at paragraph 21. This estimate does not take account of the

proposals for new style local plans as set out in the Levelling Up and Regeneration Bill.

60. The SCI and Gypsy and Traveller DPD were to be prepared within existing budgets. The recommendation to not pursue the Design Guide SPD until the outcome of the Levelling Up and Regeneration Bill is clear, would save around £40,000 in the current financial year.

#### **POLICY IMPLICATIONS**

61. As set out in the report and appendices, whilst some aspects of the Local Plan do not take full account of national planning policy changes or new legislation, these changes do not undermine it or require a different approach. Where national policy changes post-date it and differ, they can be material considerations in decision-making.
62. A changed Vision for Burnley to that set out in the Local Plan could require and/or justify a new Local Plan. Whilst the precise wording of the current Vision could be debated at length and fine-tuned, it is still considered fit for purpose and it aligns with other corporate strategies. Progress towards achieving the Vision for Burnley has been made.
63. Overall, the Plan is considered to be sufficiently up-to-date to still operate as intended. This position needs to be kept under review.

#### **DETAILS OF CONSULTATION**

64. None

#### **BACKGROUND PAPERS**

None

#### **FURTHER INFORMATION**

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