

Climate Emergency Advisory Committee



Report of Head of planning

Author: Adrian Duffield

Telephone: 07801 203603

E-mail: Adrian.duffield@southandvale.gov.uk

Cabinet members responsible:

Anne-Marie Simpson (Cabinet member for planning)

Tel: 01491 651298

E-mail: anne-marie.simpson@southoxon.gov.uk

AGENDA ITEM

To: Climate Emergency Advisory Committee

DATE: 28 October 2020

South Oxfordshire Local Plan 2034 and the Climate Change Act

Recommendation

That the Advisory Committee note the contents of this report and the legal advice provided, confirming that the council's approach to climate change and adaptation through its policies in the emerging Local Plan 2034 is lawful.

Purpose of Report

1. The purpose of this report is to respond to the advisory committee's request regarding the council's compliance with the Climate Change Act 2008 (amended 2019), and in particular our approach to climate change and adaptation through planning policies in the emerging Local Plan 2034.

Strategic Objectives

2. A number of our strategic objectives set out in our Corporate Plan 2016-2020 and the themes set out in our emerging Corporate Plan 2020-2024 impact on plan making and how we can influence climate change.

Background

3. The Advisory Committee 29 June and 3 August resolved, in summary, to seek legal advice to ensure the legality of climate policies in the emerging local plan. The Chair wrote in July that the advisory Committee seeks an audit with legal

advice on the council's planning policy in light of our statutory duty to reduce carbon emissions to net zero by 2050, as required by the Climate Change Act 2008 (amended 2019)

The current planning system

4. It is important to understand that the Council, as the Local Planning Authority, is required to work within and implement the planning acts, associated regulations and national policy, such as the National Planning Policy Framework (NPPF).
5. The NPPF seeks to ensure that key statute which applies to planning is addressed through local plans and the determination of planning applications. This explicitly includes the Climate Change Act 2008 (amended 2019).
6. An extract from the NPPF says: *'Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures'* (NPPF para.149 and footnote 48)
7. The process of plan-making and the determining planning applications is set out in the planning acts and in national policy, such as the NPPF.
8. An extract from the NPPF on plan-making says: *'Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision for:d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.'* (NPPF para.20)
9. Once a Local Plan is adopted and becomes part of the Development Plan for the district it sets out planning policies, including those addressing climate change that need to be applied locally. *'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise...'* (NPPF para.47).
10. In terms of the Advisory Committee's belief that it is a statutory duty for the Council to reduce carbon emissions, we need to refer to the Climate Change Act 2008 (amended 2019) which says: *'It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline'*(Section (1)). Thus, legislation imposes the carbon reduction target on the Secretary of State, not the Council, as a Local Planning Authority.
11. However, the Planning & Compulsory Purchase Act 2004 states: *'Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.'* (S.19(A)).
12. As mentioned above the NPPF and supporting guidance (National Planning Policy Guidance - NPPG) suggests the Council, as Local Planning Authority, has many opportunities to integrate climate change mitigation and adaptation objectives and policies, subject to evidence, into Local Plans. The emerging Local Plan 2034 does this. It contains specific climate change policies,

prepared in line with the NPPF and the NPPG, such as new policy DES11 and DES9 as proposed to be modified. The Council's Hearing Statement on Matter 8 explains how the plan addresses climate change mitigation and adaptation. The main modifications to the Local Plan (including MM69 on DES9 Promoting Sustainable Design, MM70 on DES10 Renewable Energy, and MM71 on new policy DES11 Carbon Reduction) are currently subject to public consultation.

13. The Sustainability Appraisal can be used to help shape appropriate strategies in line with the statutory duty on climate change and ambition in the Climate Change Act 2008. This has been done throughout the plan-making process, including most recently through the Sustainability Appraisal Addendum (September 2020) which assesses the proposed Main Modifications to the local plan (including new policy DES11 on carbon reduction).
14. The approach we take in our local plan to address climate change is tested, scrutinised, at Examination by an independent Inspector. The Inspector has indicated in his Preliminary Findings letter of 28th August 2020 that he is content with the approach put forward by the Council, however we should wait his final report following the current Modification's consultation..

Legal implications

15. We have sought advice regarding the legality of the emerging planning policies and our proposed approach in the Local Plan 2034, and our legal advisor confirms that the approach taken in the plan is lawful. We have attached the legal advice (Appendix 1) for the Advisory committee.

Financial Implications

16. There are no immediate direct financial implications arising from this report.

Risks

17. The Advisory Committee need to be aware that officers and advisors are providing the Council, best advice on the process and approach to planning to help inform sound decision making.
18. There is always a risk that a third party is not satisfied with our processes and consider they have a case to pursue a legal challenge. In the current circumstances officers and your expert advisor believe we are in a strong position to defend the council's position.

Conclusion

19. Overall, in reviewing our plan-making and decision making in planning and the legal advice provided, the council's approach to climate change and adaptation through its policies in the emerging Local Plan 2034 is lawful.

Appendix 1

Legal Advice; Rob Walton QC

Background Papers

Minutes of Climate Emergency Advisory Committee

[Matter 8 Written Statement – Climate Change Mitigation - South Oxfordshire District Council](#)

[Schedule of Proposed Main Modifications](#)