JOINT CORE STRATEGY – INDEPENDENT REVIEW OF PROCESSES AND PROCEDURES

Portfolio holder: Leader
Wards affected: All

1 SUMMARY

1.1 At its meeting on 22 March 2012, Council agreed to commission an independent person to undertake a review of the processes and procedures followed during the preparation of the Joint Core Strategy, with particular regard to the selection of the North East Growth Triangle for strategic growth in Broadland.

1.2 On behalf of Council, the Deputy Chief Executive commissioned Paul Shadarevian of Cornerstone Barristers to undertake the review. His review report is attached as Appendix 1.

1.3 Mr Shadarevian's report is in the form of a summary following extensive reading of background material. It makes a number of observations on the processes and procedures which were adopted and the failings in some of these. However, ultimately he concludes that he has "*seen nothing that causes me to question the overall veracity of the JCS process and the conduct of the participants (officers or Members) beyond the narrow (albeit important) basis upon which the JCS was judicially reviewed and remitted (which is a reflection on the competency of part of the process undertaken).*"

1.4 Council is requested to consider the report.

2 KEY DECISION

2.1 This is not a key decision and has not been included in the Forward Plan.

3 BACKGROUND

3.1 Council agreed at its meeting on 22 March 2012 to:

(4) instruct the Deputy Chief Executive to commission a Review by an independent person of the processes and procedures followed during the preparation of the JCS, with particular regard to the selection of the North East Growth Triangle for strategic growth in Broadland, and report back to Council on completion.

3.2 At the Council meeting there was some debate about ensuring the independence of the person who would undertake the review. As this is

clearly a sensitive issue the requirements I used when seeking a suitable person were that they would need to demonstrate that they:

(i) have not advised any of the GNDP partners (Broadland DC, South Norfolk DC, Norwich City Council, Norfolk County Council or the Broads Authority) during the JCS process;

(ii) do not have any professional or personal relationships with senior officers and/or Members of Broadland District Council or other GNDP partners;

(iii) do not have any other prejudicial interests.

3.3 In addition to the above, and given the complexities of the JCS processes, as well as the debate at Council in March, I was of the opinion that the review would be best undertaken by somebody with a legal background with expertise in the planning field. Following a fairly lengthy search I appointed Paul Shadarevian from Cornerstone Barristers to undertake the review. Mr Shadarevian specialises in a number of aspects of planning and environmental law including local development frameworks and policy formulation.

3.4 The brief Mr Shadarevian was given following the decision of Council was as follows:

Council has requested that a review is undertaken of the processes and procedures followed during the preparation of the JCS, with particular regard to the selection of the NEGT for strategic growth in Broadland.

The intention of the review is to establish why the processes and procedures followed were not robust enough to meet the requirements of the European Directive as set out in the judgment issued by Mr Justice Ouseley.

Depending on the above, the review should also make recommendations as to appropriate measures and safeguards which could be adopted to avoid a similar scenario in the future.

4 REPORT

4.1 Mr Shadarevian has now submitted his report which is attached at Appendix 1. It takes the form of a summary to address the key points of his investigation and findings.

4.2 The report is clear and concise and addresses the brief he was given. It makes a number of observations on the JCS processes and procedures adopted with regard to the selection of the North East Growth Triangle in

Broadland. Clearly, there are lessons to be learned from this experience which he sets out in the report – these are particularly around transparency and the clarity of information provided at key decision making points. However, he concludes that he has "*seen nothing that causes me to question the overall veracity of the JCS process and the conduct of the participants (officers or Members) beyond the narrow (albeit important) basis upon which the JCS was judicially reviewed and remitted (which is a reflection on the competency of part of the process undertaken).*"

5 RESOURCE IMPLICATIONS

5.1 When Council agreed the review, a budget for covering the costs of an independent person to carry it out was not identified. Officers will be reviewing the budgets to ensure that the costs can be covered. Employing a planning lawyer to undertake the review clearly has resource implications and if available an update can be given on costs at the Council meeting.

6 LEGAL IMPLICATIONS

6.1 There are no direct legal implications arising from this report. Members will be aware that the Greater Norwich Development Partnership has sought its own legal advice on appropriate actions to address the High Court judgment. The report from Mr Shadarevian is a separate exercise to address the specific request from Council on 22 March.

7 OPTIONS FOR COUNCIL

7.1 Council is requested to consider the report from Mr Shadarevian.

Matthew Cross
Deputy Chief Executive

Background papers:

None

For further information on this, please call Matthew Cross on (01603) 430588 or e-mail matthew.cross@broadland.gov.uk

REVIEW OF JOINT CORE STRATEGY PROCESSES AND PROCEDURES
NORTH EAST GROWTH TRIANGLE

SUMMARY REPORT

INTRODUCTION

1. I have been instructed to prepare this report on behalf of Broadland District Council as one of the three local planning authority members of the Greater Norwich Development Partnership, along with Norwich City Council and South Norfolk District Council. The Partnership has been responsible for the production of the Joint Core Strategy (JCS). The JCS has been challenged and following the High Court's decision (*Heard* [2012] EWCH 344) the JCS has been remitted in part. This requires the Partnership to re-embark on the pre-submission stage of policy formulation in respect of its housing policies and particularly housing numbers and distribution. I say more about this below.

2. I am asked to prepare this report with particular reference to the matters identified in my instructions:

    a. To review the processes and procedures followed during the preparation of the JCS, with particular regard to the selection of the NEGT for strategic growth in Broadland;

    b. Why the processes and procedures followed were not robust enough to meet the requirements of the European Directive;

    c. To make recommendations as to appropriate safeguards and measures to avoid similar scenarios in the future.

THE HIGH COURT DECISION

3. It is important to note that the decision to quash the relevant parts of the Plan was based upon the failure to explain the refinement of options in relation to the spatial distribution of housing, with particular reference to the North East Growth Triangle (NEGT), in accordance with EU Directive requirements and by reference to the SA/SEA process.

4. Mr Justice Ouseley was critical of the failure of the Councils to provide any document that explained either the selection of alternatives at any given stage nor any that explained why particular alternatives were rejected at any stage [para.57]. Option D was not assessed and no other non-NEGT option was assessed. The importance of this is that a no NEGT option was considered at the outset as one of 6 possible spatial alternatives. I have read through the substantial documentation that accompanied each stage of the process, including the relevant SA, and there is clearly no explanation of why non-NEGT options were rejected nor any discussion of the comparative merits of the various spatial alternatives that formed the 6 options at the outset.

5. The adoption of a joint process as in this case (involving strategic planning decisions across three administrative areas) requires a particularly sensitive approach, in my view. Absent an express and cogent justification for major spatial decisions that are referable to a comprehensible process of evaluation, a judgment or perception by interested parties that the burden of development is being unnecessarily (and possibly unfairly) carried by one particular area or community, for example, may well have the propensity to be magnified in a cross-authority context. It requires an approach therefore, that not only respects the legislative requirements of the Directive and domestic regulations strictly, but which, on a very practical level, imbues the

iterative and reasoning processes with the utmost transparency and legibility.

6. It is not surprising that the decision to quash part of the Plan has caused the decision making process to be criticized more broadly, particularly by those most effected by the option to pursue major growth in the NEGT. I think it fair to indicate that I have seen no evidence of malpractice or inappropriate behaviour by those officers and members tasked with the objective of producing the housing strategy. I do believe, however, that the process should have been conducted on a more transparent basis, particularly during all pre-submission stages.

7. The learned Judge's conclusion was that, but for all the effort put into the preparation of the JCS, consultation and its SA, the need for outline reasons for the selection of the alternatives dealt with at the various stages had not been addressed [para. 66]. In particular, the Judge was concerned that at no stage could it be said that a non NEGT growth scenario, with or without the NDR, had been considered, or if it was why it had been rejected. I have had regard to a considerable amount of background material, including decisions made in the GNDP Policy Group Meetings in 2008 and 2009, and I can find nothing here that discloses the reasoning process in relation to the exclusion of a non-NEGT option. Whilst, therefore, it may not be necessary or indeed sensible, to keep all options open at each stage of the plan process, there is a requirement for a publicly available assessment for each stage that must be comprehensible at pre-submission stage.

8. These regulatory requirements mean that the assessment process must be fair and equal in the sense that each option should be considered and tested on an even footing so as appropriately to justify the preferred alternative. This process of evaluation should, moreover, be appropriately evidenced and made available and summarized. In this sense, I am of the view that the administrative structure should respond to these legal and

practical imperatives. I have been given a flow chart that plots the course of decision making from Issues and Options stage through to submission draft.

9. Indeed, and although I am satisfied that the options that were chosen were appropriately assessed, it was not possible to discern what spatial imperatives drove the selection of alternatives having regard to the overall housing requirement. For example, it might have been concluded that to provide the overall housing requirement for the JCS area meant that there was no reasonable alternative that would or could exclude the NEGT as accommodating substantial growth. Instead the SA process and the decision making process that it informed proceeded on the presumption that the NEGT would be a component of every alternative to be considered without adequate explanation.

10. It is clear to me that the administrative processes were complex and involved principally two bodies that influenced the path of the draft plan and the spatial choices adopted: the GNDP Policy Group and the LDF Working Group. Whilst I do not criticize the use of this committee structure in this way, I note that the meetings of these Groups were not held in public and that some, but not all minutes, were made publicly available. Apart from following the publicly available material as made available on the JCS website, it is, in my opinion, extraordinarily difficult to discern what material decisions were made in the earlier stages in rejecting and/or choosing which options to follow and what factors were influential in this regard (other than in relation to those that were progressed and ultimately refined). In my view these early stages (scoping the options to be considered and identifying what of those options represent reasonable alternatives) are critical, because errors made at the outset have the real potential to infect the whole of the subsequent process (both for want of compliance and in not being able to discern the basis for, and the direction of, the decision making process at later stages). The publicly available documentation shed little light on this

process, and in relation to a non- NEGT option, how this was assessed and what the assessment process revealed (with and without the NDR).

THE DECISION MAKING STRUCTURE

11. I fully accept that the decision-making processes involve the co-ordination of a multi-disciplinary team and that the process of evaluation, particularly in the case of a cross-boundary plan, is a very complex matter. However, these processes must be capable of being, and should be, translated into an accessible and reasoned matrix and summary which is suitably evidenced and referable to *each stage* of the process.

12. It seems to me therefore that each of the relevant phases should be concluded with the exercise of the public decision making function, the decision to proceed to the next stage, and on what basis, being informed by a report that summarises the process by reference to the technical inputs, including an SA of the alternatives considered. It is essential that at issues and options stage all reasonable alternatives be subject to an SA on an equal footing. Where alternatives that present themselves at scoping stage are clearly and logically unrealistic and unreasonable, it should be explained why they should not be regarded as constituting reasonable alternatives for the purposes of further evaluation. Moreover, the selection of alternatives for subsequent stages, including thereby the rejection of alternatives, should be clearly explained by reference to the evidence base and the relevant SA for that stage. This will provide a suitable basis upon which to refine the options at subsequent stages leading to the selection of the preferred option and its refinement for the purposes of the submission draft.

13. The report to the relevant committee at each stage should be intelligible and accessible to the lay reader (a non-technical summary). The non-technical summary that accompanied the pre-submission SA was

somewhat insubstantial in my view and it is questionable whether it would have been possible to explain at that stage why a non-NET option did not present itself as a reasonable alternative in earlier stages given the absence of any earlier assessment that addresses it.

14. It is not my role to advise the Council on the procedures to be adopted in respect of the remitted matters. However, I would recommend that whatever process is adopted that there be regular reporting to Members that adequately explains the progression of policy options by reference to the evidence and the SA process.

CONCLUSION

15. The JCS process was infected at the outset for the failure adequately and appropriately to address alternative spatial strategies for future housing growth in a way that the Directive requires. Without wishing unduly to repeat my observations above, I believe that it is essential that all reasonable alternatives be appraised in equal fashion at each stage before being narrowed down through the iterative process. At the issues and options stage those alternatives that are not considered to be reasonable should be identified and discounted with adequate reasoning. In this regard, I have seen nothing to suggest that a non-NEGT option is not a reasonable alternative, or one that should be discounted without more, unless it is abundantly clear that, without a substantial allocation in this sector, there is no other way in which to accommodate the overall housing numbers. Accordingly, it should be the subject of a sustainability appraisal even if it is eventually rejected as an option, in my opinion.

16. I believe that the reporting mechanisms which were in place with officer reporting to the GNDP Policy Group and decision making then devolving to each Council for decision was satisfactory, but for the failures identified. The need for transparency in the process indicates to me that

the work of any such committee should be conducted in open (public) session and should be appropriately minuted. It should be charged with monitoring compliance with due process as well as informing the decision making process in relation to substantive strategic policy issues. The Council may wish to exercise an independent scrutinizing role in addition to this through the use of its Place Shaping Committee.

17. This Summary Report has been produced after extensive reading of background material, and although I have not been instructed to have regard to the efficacy of the decision-making process in relation to other subject areas of the JCS (and I do not purport to make any judgments thereon), I have seen nothing that causes me to question the overall veracity of the JCS process and the conduct of the participants (officers or Members) beyond the narrow (albeit important) basis upon which the JCS was judicially reviewed and remitted (which is a reflection on the competency of part of the process undertaken).

20th July 2012

PAUL SHADAREVIAN

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