



PART A:	MATTERS DEALT WITH UNDER DELEGATED POWERS
REPORT TO:	POLICY AND RESOURCES COMMITTEE
DATE:	9 DECEMBER 2010
REPORT OF THE:	HEAD OF PLANNING GARY HOUSDEN
TITLE OF REPORT:	THE DEVELOPMENT PLAN AND THE DECISION MAKING PROCESS
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To consider a motion moved at Council on the 4 November 2010 which has been referred to this Committee.

2.0 RECOMMENDATION

- 2.1 It is recommended that no further action be taken.

3.0 REASON FOR RECOMMENDATION

- 3.1 Legislation, national planning policy and planning case law provide an appropriate context to inform the (planning) decision making process in the absence of an up to date Development Plan.

4.0 SIGNIFICANT RISKS

- 4.1 All planning decisions should be made in a way which take account of and give appropriate weight to relevant material considerations. To agree a course of action that would, in effect, commit the Local Planning Authority to determining planning applications without having full and proper regard to all material planning considerations would place the authority at risk in an appeal situation and possible award of costs. Moreover, it would also increase the risk of formal legal challenges to the planning decisions made by this Authority.

REPORT

5.0 BACKGROUND AND INTRODUCTION

- 5.1 Members are aware that the District does not have an up to date local Development

Plan. Whilst much of the policy framework of the Ryedale Local Plan remains relevant and can be used until it is fully replaced by policies in the Local Development Framework, the Plan does not have an up to date and planned supply of land to accommodate the development requirements for each of the main land uses, in particular, housing and employment.

- 5.2 At the meeting of Council on the 4 November 2010, a motion was moved by Councillor Woodward and seconded by Councillor Clark as follows:

“This Council resolves that:

Until the LDF is in place all development (except in exceptional circumstances of a particular case) is within development limits of the settlements of Ryedale”.

- 5.3 The Chairman announced that the motion would be referred to a meeting of this Committee as, under Council Procedure Rule 11.4, the motion fell within the purview of the Policy and Resources Committee.

6.0 POLICY CONTEXT

- 6.1 Local Planning Authorities are required by law to make planning decisions in accordance with the statutory Development Plan unless material considerations indicate otherwise. (Section 38(6) of The Planning and Compulsory Purchase Act, 2004). In Ryedale, the Development Plan consists of saved Ryedale Local Plan policies and the Yorkshire and Humber Plan – the Regional Spatial Strategy. (Members will recall that whilst the latter was revoked by the Secretary of State for Communities and Local Government in July 2010, it has been subsequently ‘reinstated’ following a successful High Court challenge by Cala Homes.) The Government has stated that it will continue to progress the abolition of Regional Strategies through the forthcoming Localism Bill.

- 6.2 The courts have held that in principle, any consideration which relates to the development and use of land is capable of being a material planning consideration. As well as covering fundamental planning factors (such as design for example), national planning policy statements are material considerations which must be taken into account in decisions on planning applications. Additionally, emerging national and local policies may also be regarded as material considerations, although as with any material consideration, the weight which may be attached to these will depend on a particular context.

- 6.3 In the absence of an up to date Development Plan, planning applications in Ryedale will need to be determined on their merits and in the light of all material considerations.

7.0 CONSULTATION

- 7.1 The report is a technical report. Consultation is not required to inform or accompany the recommendation.

8.0 REPORT DETAILS

- 8.1 Members will be aware that developers have submitted and continue to submit planning applications for development, mainly, although not exclusively for housing development, in advance of the Local Development Framework. A number of these applications propose the development of sites that lie outside of the current

Development Limits. Clearly this is of concern to a number of local communities, particularly in those areas where proposals for new housing development on green field sites are coming forward.

- 8.2 However, it is important to reiterate that all Local Planning Authorities have a duty to consider and determine the planning applications that they receive, irrespective of whether an up to date development plan is in place. Such applications need to be determined in the light of all material planning considerations.
- 8.3 National planning policies embodied in Planning Policy Statements are important material considerations. Many of these were updated/revised by the previous Government and have been issued following the production and adoption of the Local Plan. In many instances national Planning Policy Statements provide a more recent policy context and this should be reflected in the weight which needs to be attached to them as material considerations in the decision making process.
- 8.4 Members are aware, for example, that Planning Policy Statement 3 (Housing) which was issued in 2006 and updated in 2010, makes it clear that Local Planning Authorities should maintain a five year supply of deliverable housing land. It states that in situations where “ *Local Development Documents have not been reviewed to take account of policies in this PPS or there is less than five years supply of deliverable sites, they should consider favourably, planning applications for housing having regard to the policies in this PPS, including considerations in paragraph 69*”.
- 8.5 Paragraph 69 of PPS 3 states that –
- “In general, in deciding planning applications, Local Planning Authorities should have regard to :*
- *Achieving high quality housing*
 - *Ensuring developments achieve a good mix of housing reflecting the accommodation requirements of specific groups, in particular families and older people*
 - *The suitability of a site for housing, including it’s environmental sustainability*
 - *Using land effectively and efficiently*
 - *Ensuring the proposed development is in line with planning for housing objectives, reflecting the need and demand for housing in and the spatial vision for, the area and does not undermine wider policy objectives eg addressing housing market renewal issues”*
- 8.6 In combination with allocated development sites, the Development Limits of the Local Plan were drawn to ensure that the plan provided sufficient land to address development requirements over its planned shelf life. As the document is no longer fully up to date, the Council, as Local Planning Authority must take account of more recently produced national policy as a key material consideration in the decision making process. The requirement of PPS3 to maintain a five year supply of housing land clearly has significant weight in the decision making process. As Ryedale does not currently have such a supply, planning decisions need to be determined taking full account of the requirements of PPS3.
- 8.7 The motion as written, effectively seeks a policy position which would commit the authority to determining planning applications outside of Development Limits without full regard to all relevant material considerations. As outlined in paragraph 4.1, it is considered that this would place the authority at significant risk in an appeal situation or at risk of legal challenge.

- 8.8 It should be noted that Planning Policy Statement 4 (Planning for Sustainable Economic Growth), issued in 2009, provides a recent and up to date policy context for the consideration of planning applications relating to proposals for economic development. This covers, for example, the release of employment land and the provision of additional retail space.
- 8.9 It is also considered that the motion, as written, would introduce a policy position which would be contrary to existing adopted and saved policies of the Ryedale Local Plan. The Local Plan supports in principle, many types of development outside of existing Development Limits, including rural exceptions housing; agricultural workers dwellings; farm buildings; tourist related development; replacement dwellings; the conversion of buildings; small-scale employment facilities; community facilities and renewable energy development, for example. These types of development are not supported as an exception to the Plan or in exceptional circumstances. They are supported in principle by the Plan and are integral to the policy approach of the Plan as a whole.
- 8.10 The motion would effectively, introduce a new policy approach. Members are reminded of an earlier report to the last meeting of this Committee which made it clear that the introduction of policy outside of the correct procedures could not be considered lawful policy for the purposes of making planning decisions.

9.0 IMPLICATIONS

- 9.1 The following implications have been identified:
- a) Financial
Significant risk of costs on appeal or the costs associated with any legal challenge.
 - b) Legal
Failure to take full account of all material considerations in the decision making process would increase the risk of legal challenges to the decisions made by the Planning Committee.
 - c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)
No direct implications.

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Background Papers:

Policy and Resources Committee Agenda 30 September 2010
Planning Policy Statements

Background Papers are available for inspection at:

<http://democracy.ryedale.gov.uk/ieListDocuments.aspx?CId=119&MId=654&Ver=4>

<http://www.communities.gov.uk/planningandbuilding/planningsystem/planningpolicy/planningpolicystatements/>