

Item No. 6.1	Classification: Open	Date: January 28 2009	Meeting Name: Council Assembly
Report title:		Aylesbury Area Action Plan Publication Version Report	
Ward(s) or groups affected:		East Walworth, Faraday, Newington, Grange, South Bermondsey, Peckham, Brunswick Park, Camberwell Green and Livesey	
From:		Strategic Director of Regeneration and Neighbourhoods	

RECOMMENDATIONS

1. That the council assembly:
 - consider the Aylesbury AAP publication version (appendix A), the consultation plan (appendix B), the sustainability appraisal (appendix C), equalities impact assessment (appendix D) and consultation statement (appendix E);
 - note the comments of the planning committee on the Aylesbury AAP publication version and the executive's response to these comments set out in this report;
 - delegate the approval of any minor amendments to the wording of the Aylesbury AAP publication version, following its meeting, to the director for regeneration and neighbourhoods in consultation with the executive member for regeneration for submission to Secretary of State.
 - agree to the publication of the Aylesbury AAP publication version and submission to the Secretary of State in April 2009 together with any representations received.

BACKGROUND INFORMATION

2. The council is preparing an area action plan (AAP) for the Aylesbury Estate and surrounding area. The AAP is being prepared under the new planning system and will be a spatial plan that combines land use planning policies with an employment strategy, a health and services strategy, a transport strategy, an open spaces strategy and a business and delivery plan, to create a holistic plan for the regeneration of the estate and surrounding area. Once adopted it will be a development plan in the council's local development framework (LDF) and will be used as the basis for determining planning applications in the area. Together with the core strategy which the council is commencing work on this year, and other local development framework documents, it will replace the Southwark Plan. The AAP must have regard to national planning policy and guidance, Southwark 2016 Sustainable Community Strategy and be in general conformity with the London Plan.
3. Legislation and national guidance sets out the requirements for the preparation of an AAP. The council has complied with these requirements. Preparation of an AAP takes place over a number of stages: -
 - The first stage involved preparing and consulting on the sustainability appraisal scoping report (May-June 2007).
 - The second stage involved consulting on issues and options (October-November 2007).
 - The third stage involved a consultation on preferred options (April-May 2008). The preferred options established a direction for the regeneration of the area

with regards to issues such as the tenure mix of new dwellings, the bedroom mix, street layouts and building heights, proposals for open spaces, schools and health facilities etc.

- The fourth stage involved a consultation on revised preferred options (November-December 2008) to make the proposals more family friendly by reducing the number of homes, making the homes larger and reducing the density.
4. The council is now at the fifth stage in which the publication/submission version is consulted on and then submitted to the Secretary of State for independent examination.
 5. The draft submission AAP will then be subject to an examination in public held by a planning inspector appointed to act on behalf of the Secretary of State. The inspector will consider representations made by interested parties to test the soundness of the draft AAP. This may involve the inspector asking further questions about issues and examining relevant evidence. He will then provide the council with a binding report with changes that the council has to make. The council is then either bound to make the changes set out in the inspector's binding report and adopt the AAP accordingly or reject the changes and start a fresh return to issues and options or to take another way forward.
 6. The publication version (appendix A), is accompanied by a consultation plan (appendix B), a sustainability appraisal (appendix C), an equalities impact assessment (appendix D) and a consultation statement setting out details of consultation carried out to date (appendix E).
 7. Following approval of the Aylesbury AAP by the council assembly and prior to its publication and submission,, the executive member for regeneration will provide a foreword to the document which may include a comment on the process so far and a brief explanation of the purpose of the .AAP. It is noted that this foreword is an introduction to the AAP and does not form part of it.

CONSULTATION

8. Prior to starting work on the AAP, the council prepared an overarching consultation strategy to guide the overall approach to consultation on the AAP. All consultation carried out on the AAP has been consistent with this strategy and also with the requirements of the recently adopted statement of community involvement (SCI).
9. A considerable amount of consultation took place with residents and other stakeholders prior to beginning work on the AAP. This included including the tenant ballot of 2001-002, Project Placecheck, August/September 2002, the options appraisal for the south west corner, June to November 2004, the Aylesbury Tenants Survey 2005, and the 2006 Visioning Workshops.
10. The consultation which has taken place as part of the AAP process is summarised below (full details are provided in the consultation statement in appendix E):
 - **Publicity:** Consultation on the AAP issues and options report and preferred options reports were widely publicised over a period of 12 weeks through mail outs to contacts on Southwark's planning policy database, information on Southwark's website and the Aylesbury Regeneration website, press advertisements etc.
 - **Events and exhibitions:** A show homes exhibition with a mock up of the flats being proposed in Phase 1a of the redevelopment of the Aylesbury Estate

took place in June 2007. This was followed by the Building Futures Exhibition in October 2007, the Aylesbury Future Roadshow in April 2008, and the revised preferred options exhibition in October/November 2008. The latter sought residents' opinions on the revised preferred options.

- Stakeholder meetings: A neighbourhood team comprising representatives of the Aylesbury estate tenants and residents organisations, ward members, and representatives of local business groups, voluntary organisations and health and youth service providers has been established. The team has prepared a charter setting out its objectives for the redevelopment of the estate and this forms the basis of the AAP objectives. Continuous consultation on the issues and options, preferred options and revised preferred options has also taken place with the Aylesbury Estate Steering Group, as well as the regeneration subgroup and the overarching consultation strategy, issues and options and preferred options have been presented to Walworth community council.
11. The revised preferred options exhibition was held to communicate the proposed revisions to the preferred options relating to housing, namely tenure mix, size and types of homes, density and building height. The exhibition was attended by 54 people and 46 questionnaires were filled in. Of these: -
 - 89% agreed with the revised tenure mix;
 - 89% agreed with the revised types of homes and thought the provision of more units for family homes would make the scheme attractive;
 - 85% supported the revised sizes of homes;
 - 96% welcomed the decrease in density, though 2 participants wanted it reduced further;
 - 94% supported the revised building heights. 3 people considered the new building heights were still high.
 12. In all 11 written representations were received in response to formal consultation on the revised preferred options. These were broadly supportive of the options. The Head of Surrey Square Junior School expressed concern that the impact of the regeneration on local schools had not been taken sufficiently into account.
 13. GLA: The Deputy Mayor considered that the principle of the development of the AAP is supported from a strategic planning perspective. The design concept and level of affordable housing was also thought to be acceptable. The revised housing mix, family focus and increased number of houses were welcomed. It was noted that further work needs to be undertaken on the viability of the plans.
 14. TfL: TfL considered that notwithstanding the Mayor's recent announcement on the cross river tram, Southwark should continue to safeguard the tram route while alternative public transport improvements were considered.
 15. GOL: GOL highlighted a number of issues regarding process. In particular they cautioned that the council would need to be able to demonstrate that the proposals were founded on a sound evidence base and are implementable. With regard to consultation, GOL expressed concern that it would be difficult to take the response to the revised preferred options consultation fully into account in view of the turn around time between revised preferred options and preparation of the publication draft AAP.
 16. Natural England and the Coal Authority: No comments at this stage.
 17. English Heritage: EH welcomed the revised proposals.

18. Consultation responses have informed the selection of the policies. Residents and other stakeholders now have an opportunity to comment formally on the publication version.
19. The publication version will be taken forward as the submission version. Further comments received will be reported to the Secretary of State without formal consideration by the council. Details of consultation which will be carried out at publication stage are contained in the consultation plan (appendix B).
20. Planning committee comments
 - a) There is a need to put the consultation document in context noting the previous consultation that has already taken place;
 - b) There would be merit in clarifying the reasons for the proposed size of the apartments, which was welcomed;
 - c) There would be merit in allowing flexibility to meet changing living requirements;
 - d) There would be merit in building in provision for flexibility on heating systems and on to ensure that the costs of heating are equitably shared;
 - e) Back up heating provision needs to be identified and provided for;
 - f) Concern was expressed about the evidence available on financial viability and the level of detail provided. It was suggested that the AAP could contain less detail but that further information could be developed as part of the evidence base in the lead up to the examination;
 - g) It was noted that the executive needs to consider the viability of the overall scheme, and be confident that the additional resources will be available;
 - h) It was noted that there were site specific justifications for the 75/25% affordable housing split which does not achieve the proper Southwark plan split of affordable housing;
 - i) There is a need for adequate car parking provision across the site as a whole, that there is control across the phases/sub-phases and that it needs to adequately reflect the emergence/failure of the tram;
 - j) There is a need to make sure that policies that set thresholds/requirements across the site (on parking/affordable housing etc) are drafted in a way that can be applied at development control stage.
21. The executive considered that:
 - points a, b, c and h could be covered in the foreword to the AAP
 - points d and e could be covered in the background papers but would not form part of the AAP
 - points g, i and j need only be noted
 - point f should also be noted. In view of the advice from the Government Office for London, it was considered that the AAP should not contain less detail.
22. There are no material changes to the AAP or sustainability appraisal resulting from the meeting of planning committee or executive for approval by council assembly. Members of council assembly should note that minor textual changes and corrections have been made to the AAP publication version following the meeting of the executive on 14 January. These changes were made for clarity, consistency or accuracy (for instance correction of arithmetic errors, figures or plans). They are

not deemed to be new or material changes and have no policy implications.

KEY ISSUES FOR CONSIDERATION

23. The Aylesbury AAP policies are grouped under 5 key themes which are better homes, better and safer streets, squares and parks, improved transport links, enhanced social and economic opportunities and finally the delivery of the AAP.

Better homes

24. The AAP tenure mix policy is to redevelop all buildings on the estate and provide approximately 4200 new homes. Around 50% of the new homes will be affordable with a 75% / 25% split between social rented and intermediate homes. The objective is to maximise re-provision of social rented homes and ensure that existing tenants rehousing needs can be met, while introducing a good proportion of intermediate homes and providing enough private homes to ensure that the proposals are viable and to ensure a mix of tenures. Our current modelling estimates that there may be a small loss of around 150 affordable homes. Officers consider this to be a necessary compromise to ensure the proposals are deliverable with more family housing.
25. The council is keen to ensure that the new neighbourhood is attractive for families. Approximately 30% of new dwellings will have 3 or more bedrooms and 40% will have two bedrooms. This breakdown is derived from Southwark's 2006 Housing Needs Assessment and the anticipated rehousing needs of existing residents. The design guidance in the AAP (Appendix 6 of the publication version) states that all social rented homes must be 10% larger than Parker Morris size, while intermediate homes will be 5% larger.
26. Energy and heating will be provided by a combined heat and power system (CHP) and district heating. Renewables (biomass heating) will be used to reduce carbon emissions by 20% in line with the revised London Plan. All homes will meet at least Code for Sustainable Homes level 4 (the equivalent to an Eco-homes "excellent" rating) This will rise to levels 5 and 6 in future years in line with proposed changes in the Building Regulations. Overall, the aim of the AAP will be to achieve carbon zero growth.

Better and safer streets, squares and parks

27. The option to introduce green fingers extending north from Burgess Park into the new neighbourhood received strong public support and have been incorporated in the street layout policy and masterplan.
28. Most of the buildings in the new neighbourhood area will be 2 to 4 storeys high. Buildings will be taller (between 7 and 10 storeys) where sites front onto open space (Burgess Park and the green fingers) and Thurlow Street. The AAP specified explicitly that building heights must vary and the full range set out in the policy should be used. The development will also contain some carefully located and designed taller buildings, including one district landmark (between 15 and 20 storeys) at the junction of Thurlow Street and Albany Road and four local landmarks (between 10 and 15 storeys) at the southern end of Portland Street, the King William IV and Chumleigh green fingers and the Amersham site.
29. There will be a well-connected and high quality network of open spaces of different sizes, functions and for different age groups within the Aylesbury area. These spaces will include both equipped and informal play and sports spaces for all age groups, as well as more formal spaces for relaxation and learning. There will be

approximately the same amount of open space within the AAP area (i.e. 60 hectares), although some of this will be within communal gardens and private garden areas.

Improved transport links

30. The environment for walking, cycling and enhancing public transport must be improved. A route has been protected for a public transport corridor and the council is working with Transport for London (TfL) to consider the business case for improving the frequency of existing bus services.
31. Car parking should be minimised. A maximum of 0.4 spaces would be provided per dwelling, as census data and transport surveys suggest that car ownership is no higher than 40%, and the modal split of journeys made by car is considerably lower: approximately 20% of journeys to work are made by car. The majority of allocated parking spaces would be provided in underground and podium car parks. On street parking will be either provided allocated on unadopted highway or within the public highway regulated by a Controlled Parking Zone (CPZ). In addition to that, short stay parking will be provided in the public highway along Albany Road, Thurlow Street and Portland Street.

Enhanced social and economic opportunities

32. We cluster retail, employment and community facilities to enable them to support one another. The community spine (Westmoreland Road and Beconsfield Road) will link retail, learning and community facilities located on Westmoreland Road (phase 1a), Michael Faraday School and Thurlow Street. Flexible community space will be provided at the Amersham centre, and employment space will be located adjacent to East Street. This would provide space for small businesses, and would potentially be “grow-on” space for businesses emerging from the anticipated Elephant and Castle incubator. Facilities will not be allowed unless there is an identified user and evidence that the proposed activities are economically viable. We also will work with the PCT to provide health facilities.

Delivery

33. Delivery is a key part of the overall plan as it is essential that we can demonstrate that it can be implemented to the government inspector.
34. The area action plan will be delivered in 4 main phases over 15-20 years. Much work is already under way, in particular:
 - The first phase of development, Phase 1a, starts on site shortly.
 - Preliminary works are underway for Phase 1, and re-housing has commenced.
 - A re-housing policy and phasing plan have been established.
 - Commitment to funding and political support has been achieved.
35. The council will deliver the scheme by creating manageable development parcels attractive to a wide private sector market as well as to different types of developer, contractor, investment fund and RSL at different times throughout the redevelopment programme. The project will be controlled by a public sector partnership and sites will be offered to the developer market in a series of phases over time, Flexibility will be vital for the project to adapt and adjust to the changing property market.
36. A financial model for the lifetime of the project has been produced. The model

estimates the full lifetime cost of the capital programme at around £1.8 billion and has identified a total funding shortfall of around £299m. The following measures are designed to manage and address this shortfall:

- i. Establishing a public sector partnership to help us the council secure funding and manage risk.
 - ii. Progress will be monitored and the phasing programme may be adjusted and revised in order to ensure that the project objectives continue to be met. This will help the programme management to respond to the various property market, macro-economic, financial risks and other factors that change over time.
 - iii. The council and its partners will bear the up-front cost of securing vacant possession and clearing sites. This is intended to encourage a higher level of private sector confidence in the project, enabling it to secure more competitive funding terms, leading to enhanced viability.
 - iv. The project will demolish the worst blocks first in order to minimise abortive expenditure on blocks which are due for demolition.
 - v. Certain elements of infrastructure are 'front loaded' and are therefore delivered before a commensurate level of housing is built. This cost will need to be funded in advance by the council or through other forms of private or public funding such as the Regional Infrastructure Fund.
 - vi. The council is in discussions with the Homes and Communities Agency (HCA) (formerly Housing Corporation and English Partnerships) about funding the delivery of new replacement affordable rented and intermediate accommodation in phase 1. An Expression of Interest for Housing Revenue Account (HRA) Private Finance Initiative Funding (PFI) to Communities and Local Government (CLG) has been submitted to partially support the delivery of Phases 2 and 3. A bid has been submitted to the GLA under the Priority Parks scheme for £2m to support improvements to Burgess Park, and the council has sought a commitment of £4m NDC match funding for this.
37. We will seek financial contributions, in the form of a s106 planning obligations tariff, to ensure delivery of key infrastructure, including public open space and childrens' play equipment, improvements to Burgess Park, public transport improvements, pre-school education facilities and energy infrastructure for the CHP Plant. For other non-Aylesbury specific items, such as contributions towards provision of employment work-place coordinators, health facilities and strategic transport contributions, we will continue to use the formula set out in the existing s106 planning obligations supplementary planning document (SPD).
38. The council is aware that further evidence in support of the financial model and implementation generally will emerge between the decision to submit the draft AAP and examination in public. Any emerging evidence about sources of funding would be submitted as evidence before an Inspector and will influence the determination of the soundness of the AAP.

Community Impact Statement

39. The purpose of the AAP is to facilitate the development of the Aylesbury Estate and the regeneration of the surrounding area, including Burgess Park in a sustainable manner ensuring that community impacts are taken into account.

40. In preparing the publication version, the council has also completed an Equalities Impact Assessment (EqIA) stage 2 assessment (appendix D). This report highlights a number of key issues that need to be addressed in preparing the AAP. The first of these is the need to ensure that the methods used to consult and engage people in the preparation of the AAP are open accessible to all members of the community. To help address this issue the council prepared a consultation strategy which sets out the principles of how it will consult and the importance of reducing barriers to consultation. It emphasises that particular needs such as access, transport, childcare and translation need to be considered, as well as a strategy to broaden the appeal of consultation and make it attractive to a diverse range of people and groups. The council has used a variety of means to publicise and consult on the AAP. Consultation monitoring revealed that a very broad range of groups were involved, particularly in the Building Futures exhibition. The range of people who responded to the formal questionnaire on the issues and options was much narrower and emphasised the need to continue to pursue informal means of engaging with the local community.
41. The EqIA scoping identified the need to ensure that the AAP does not limit the opportunities for small and medium sized businesses (SMEs) and that such businesses are not displaced by development. The scoping was reported to the council's Equalities Panel and this issue was raised by the panel. To address this, the AAP sets out a broad strategy for encouraging enterprise and employment. Around 2,500 sqm of employment floorspace suitable for small businesses would be provided in the masterplan area. This would potentially provide grow-on space for businesses leaving the incubator which is anticipated at the Elephant and Castle and it is estimated could accommodate around 80 businesses. S106 agreements would be used to help target training and employment opportunities which arise from the redevelopment to be targeted towards local people.
42. The EqIA scoping also noted the importance of maintaining provision for childcare, training and health services both while redevelopment is taking place and once it has been completed. The publication draft seeks to ensure that existing services including pre-school provision such as Tykes Corner, Half Pint Club, Aylesbury Early Years Centre, and Aylesbury pre-school will be maintained until new space is made available as part of the redevelopment.
43. A sustainability appraisal has been prepared to ensure the wider impacts of development are addressed. Both the sustainability appraisal and the EqIA have informed the preparation of the publication draft AAP.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

COMMENTS OF THE STRATEGIC DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

44. The purpose of this section of the report is to set out the legal considerations for council assembly in approving the Aylesbury area action plan publication version for publication and submission to the Secretary of State for examination in public (EiP).

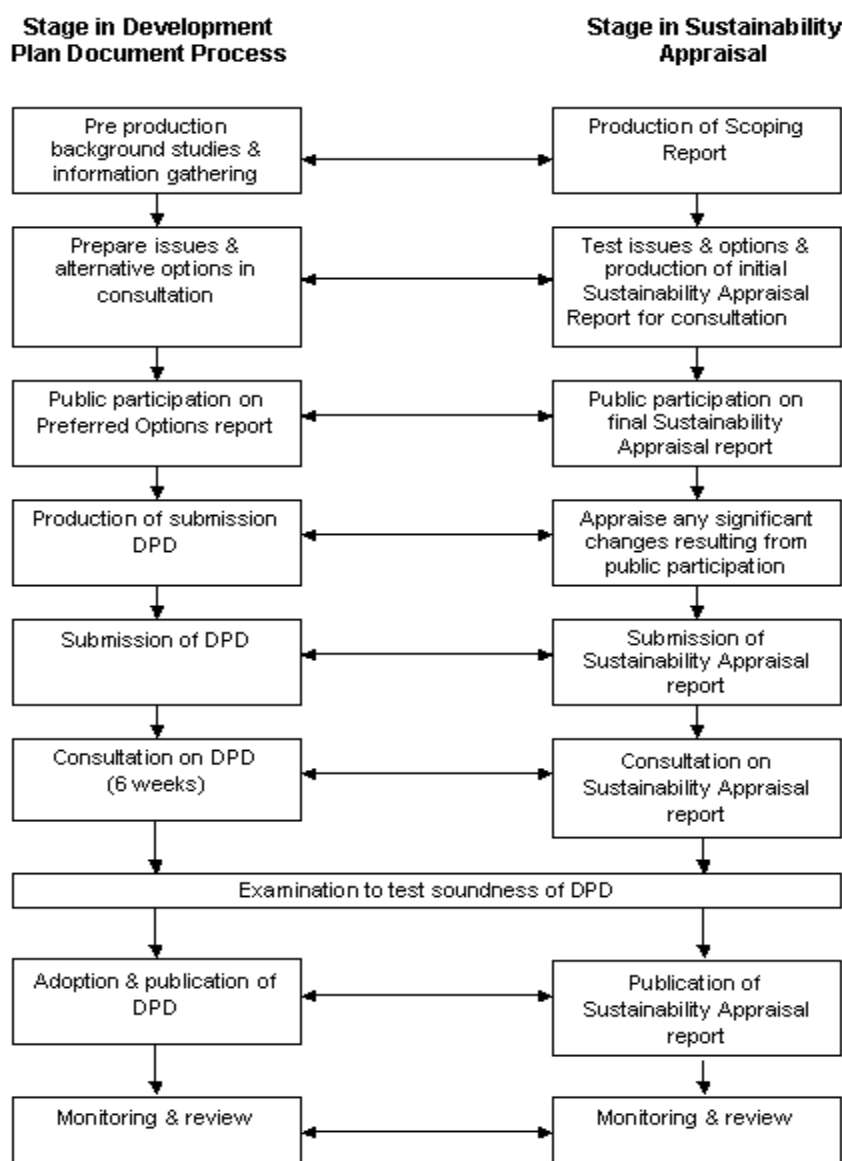
Procedure for adoption of the Aylesbury AAP

45. Regulation 7 of the Town and Country Planning (Local Development) (England) Regulations 2004 ('The Regulations') provides that area action plans must be development plan documents (DPDs). This means that the Aylesbury AAP will form part of the statutory development plan once adopted.

46. The status of the Aylesbury AAP as a DPD also means that the stringent legislative processes for the preparation of DPDs must be followed. The preparation process is divided into four stages:

- Pre-production – survey and evidence gathering leading to decision to include the Aylesbury AAP in the Local Development Scheme;
- Production – preparation of preferred options in consultation with the community, formal participation on these, and preparation and submission of the Aylesbury AAP in light of the representations on the preferred options;
- Examination – the independent examination into the soundness of the Aylesbury AAP (EiP); and
- Adoption – the binding report and adoption.

Figure 1: Process of preparing a Development Plan Document and Sustainability Appraisal



47. In preparing the Aylesbury AAP the council must have regard to: -

- National policies and guidance;
- The London Plan;

- Southwark 2016, the sustainable community strategy;
- Any other DPDs adopted by the council; and
- The resources likely to be available for implementing the proposals in the Aylesbury AAP.

Consultation and Soundness

48. The production process of the Aylesbury AAP was extended voluntarily by re-consulting on the revisions to preferred options of spring 2008.
49. Regulations 24 and 25 of the Regulations require the council to consult with the community and stakeholders during the preparation of the preferred options and publish an initial sustainability report. Regulation 26 and Section 19(3) of the Planning and Compulsory Act 2004 (“the Act”) specifically require local planning authorities to comply with their adopted SCI. In so far as the SCI exceeds the consultation requirements of the Regulations, it must be complied with. This process of consultation in accordance with Regulation 25 (the statutory consultation period of 6 weeks) and the council’s adopted SCI (including 6 weeks of informal and 6 weeks of statutory formal consultation) occurred in early 2008 and culminated in the preferred options report spring 2008. Extensive consultation took place on the council’s preferred options on the AAP with the public, statutory bodies and other stakeholders.
50. As a result of concerns raised during that round of consultation, the preferred options were revised in respect of housing provision to create a better and more sustainable development which is family orientated and residential in character. All other elements of the preferred options remained unchanged as outlined in Part 2 of the revised preferred options report. There is no express statutory requirement in the Act or Regulations to consult again on revisions at the production stage.
51. Against this background, the council undertook further voluntary consultation on the revisions by following the process set out in the SCI (6 weeks informal and 6 weeks formal consultation) to ensure the community and stakeholders had the opportunity to make representations both to the revisions and the original options identified at the issues and options stage. By facilitating effective engagement by the community, statutory bodies and other stakeholders with the revisions, the consultation process was deemed to ensure that the revisions to the preferred options and the AAP as a whole, would be sound, justified, effective and consistent with national policy in accordance with guidance by the planning inspectorate (Local Development Frameworks: Examining Development Plan Documents: Soundness Guidance 2008 – “the PINs Guidance”). The consultation responses from the revised preferred options stage have been fed into this publication submission version of the AAP.

Publication and Submission of the AAP

52. The AAP is now at the formal stage of publication and submission to the Secretary of State. Before submission to the Secretary of State, Regulation 27 requires require local planning authorities to publish DPDs, such as this AAP, for a minimum period of 6 weeks to enable formal representations to be made concerning the “soundness” of the AAP.. At this stage the AAP is published for a minimum period of 6 weeks, as required by law, to allow for any formal representations to be made. This is distinguished from a participation or consultation process and simply allows an opportunity for representations. Nonetheless, in line with its usual practices about public engagement, the council intends to informally publicise the AAP for an additional period of 6 weeks. At the end of formal publication for 6 weeks, the AAP will be submitted to an inspector for

an examination in public. Any formal representations made will also be sent to and considered by the inspector. In terms of the soundness, the legislation sets out three tests. The AAP must be (1) justified – founded on a robust and credible evidence base; (2) effective – deliverable, flexible and capable of monitoring, and (3) consistent with national and London Plan policies.

53. Indications from the Deputy Mayor, GLA are positive in so far as the London Plan is concerned. The AAP is deemed to be sound at this stage in accordance with the above three tests. However, the following concerns could potentially impact on the soundness of the submitted AAP on examination by an inspector of the Secretary of State:

- **The mechanisms for monitoring and implementation** – Further evidence to support the financial model will probably emerge between the decision to issue publication version of the AAP and EiP. Given the current downturn in the property market a greater level of certainty about the financial model and implementation is not possible. However, whilst likelihood of implementation is a factor impacting on the soundness of the AAP, on balance it should not impede its submission. More financial information may emerge by EiP and may be submitted to the Inspector for consideration. For instance, a commitment to funding from the HCA for social rented and intermediate affordable housing may be forthcoming thus strengthening the case for soundness. The AAP is a medium to long term policy, its implementation would be phased and is likely to endure a number of economic cycles. The council can improve the prospects for success on EiP by keeping funding under review and gathering further evidence by submission.
- **Potential blight claims** - When the AAP is submitted to the Secretary of State it will trigger the potential for statutory blight claims to be made. By the submission stage the council should have a strategy for addressing potential claims.

54. The above concerns have been addressed as far as possible in the current economic climate in which a degree of uncertainty is inevitable. This on its own should not impede submission of the AAP. As the evidence base may evolve between publication / submission and examination, these factors should be kept under review and further evidence gathered.

55. On the executive's recommendations, council assembly will be requested to simultaneously approve the AAP for publication and subsequent submission to the SoS. Any representations made as to the soundness of the AAP during the publication period would be considered by an inspector of the SoS. In the event that the council wishes to make any substantive changes to the AAP following publication, the document cannot be submitted to the SoS without the council reconsidering decision-making afresh.

Strategic Environmental Assessment / Sustainability Appraisal

56. The European Directive 2001/42/EC requires an 'environmental assessment' of plans and programmes prepared by public authorities that are likely to have a significant effect upon the environment. This process is referred to commonly as 'Strategic Environmental Assessment' (SEA) and has been given effect in UK law by the Environmental Assessment of Plans and Programmes Regulations 2004 (SEA Regs).

57. The Planning and Compulsory Purchase Act 2004 also requires sustainability appraisal (SA) of all emerging DPDs and therefore the Aylesbury AAP too. SA and

SEA are similar and to some extent overlapping processes that involve a comparable series of steps. If there is a difference between them, it lies in the fact that SEA focuses on environmental effects whereas SA is concerned with the full range of environmental, social and economic matters. It is acceptable for the same SA document to deal with both SA and SEA aspects providing that there is a clear and substantive audit trail of compliance with both.

58. The SA has undergone a number of iterations throughout the development of the AAP and most recently in light of the revised preferred options. The revised housing provision in the AAP publication version appears to score more highly against the relevant sustainability criteria. The SA is therefore deemed compliant with the relevant law and SEA Regs.

General Conformity of the Revised Preferred Options on the Aylesbury AAP

Legal Provisions

59. Section 24(1)(b) of the Act requires that local development documents (LDDs) issued by the council, such as this AAP, must be in general conformity with the spatial development strategy, namely the London Plan (consolidated with alterations since 2004). On submission of the final draft of the AAP to the Secretary of State for independent examination, the council will be required to simultaneously seek the Mayor's opinion in writing as to whether the AAP is in general conformity (Reg 30, the Regulations). The purpose of the independent examination is to ensure legal compliance with the legislative framework, including consultation and soundness of the AAP (Section 20(5)(b) of the Act). General conformity must be determined as a matter of law and policy practice. This issue was considered at the preferred options stage in Spring 2008 and in light of the revisions to housing in the revised preferred options report has been considered afresh.
60. General conformity is not a defined term anywhere within the legislative framework. However, the Court of Appeal decision of *Persimmon Homes (Thames Valley) Ltd & Oths v Stevenage Borough Council* [2005] EWCA 1365 considered the judicial construction of the term and contains authoritative guidance. The terms is to be given its ordinary meaning and take into account the practicalities of planning control and policy, namely the long lead times for the implementation of planning policy and the exigencies of good planning policy which are liable to change. The 'general conformity requirement must accommodate these factors and in its true construction allow a 'balanced approach' favouring 'considerable room for manoeuvre within the local plan (the Southwark Plan 2004 and in future the Local Development Framework) in the measures taken to implement the structure plan (the London Plan) so as to meet the changing contingencies that arise. In other words the word general is designed to allow a degree of flexibility in meeting London Plan objectives within the local development plan. The fact that the statutory regime makes provision for the possibility of conflict in the London Plan and local plan to be resolved in favour of the latter subject to general conformity envisages that 'general conformity' allows for flexibility at local level and not strict compliance with every aspect of the London Plan (Section 46(10) of the 1990 Act as substituted by the Act) provided that the effectiveness of the London Plan strategic objectives on housing are not compromised and there is local justification for any departure.

The Policy Considerations

61. London Plan Policy 3A.15 requires LPAs to ensure that DPDs such as the Aylesbury AAP prevent the loss of housing, including affordable housing except

where there are acceptable plans for its replacement. In the event of estate renewal, as is the case here, Policy 3A.15 states the Mayor will take into account overall regeneration benefits to the local community, the proportion of affordable provision in the surrounding area and overall affordable housing provision elsewhere in the borough. Accordingly on submission of the AAP, the council will aim to demonstrate that once the affordable housing provision from other regeneration schemes in the borough is aggregated the objective should be little or no overall loss of affordable housing.

62. The Mayor's Housing Supplementary Guidance 2005 (SPG 2005) in respect of Policy 3A.15, reinforces the point that 'there should be no net loss of housing provision or affordable housing provision' (paragraph 20.1) and further envisages that provision is to be in the same estate area (paragraph 20.2). The more flexible 'borough wide approach' of Policy 3A.15 is in contrast to the more prescriptive 'on site provision approach' in the SPG 2005. It is noted that the SPG is but one material consideration to be taken into account and must be balanced against borough wide provision of housing and the flexible approach to general conformity advocated by the Court of Appeal in *Persimmon Homes*. Also, the new Mayor of London has indicated by publishing "Planning for a better London (July 2008) that there will be a new direction on strategic planning policies in the London Plan. Although this does not deal specifically with estate renewal or loss of affordable housing and is not at present a policy, it is sufficient to note to keep the policy situation of the Mayor under review.

63. The Deputy Mayor's response to consultation on the revised preferred options in December 2008, has been positive namely that:

"the principle of the development of the Aylesbury Area Action Plan is supported from a strategic planning perspective. The design concept and level of affordable housing is considered acceptable in strategic planning terms. The revised housing mix, family focus and increased number of houses are welcomed".

64. This is a strong indication from the GLA that the AAP is likely to be in general conformity with strategic London Plan policies subject to further work on implementation and ensuring the affordable housing in the borough is generally deliverable in line with the core strategy.

65. In light of the above and the extensive consultation undertaken to date, the draft AAP Publication Version is deemed to meet 'the general conformity' and soundness requirements set out in PINs Guidance on soundness.

Equality Impact Assessment (EqIAs)

66. The Race Relations (Amendment) Act 2000 places a duty on local authorities to promote race equality in their policy-making, service delivery, regulation, enforcement and employment. This includes three overlapping areas of responsibility:

- To eliminate unlawful discrimination (direct or indirect)
- To promote equality of opportunity
- To promote good community relations

67. During the policy and decision making process, The Disability Discrimination Act 2006 places a similar positive duty on local authorities to have regard to the promotion of equality for disabled groups and individuals. This is in addition to the duty to eliminate or prevent unlawful discrimination (whether direct or indirect).

68. To meet these responsibilities, Southwark published its Equality Scheme 2005-2008 approved by the Executive in October 2005. This sets out our overall policy for addressing equality, diversity and social cohesion in the borough. This policy recognises that people may face discrimination, or experience adverse impact on their lives as a result of age, disability, ethnicity, faith, gender or sexuality.
69. The preparation of equality impact assessments (EqIA) is part of Southwark's wider commitment to equalities, which is set out on the Corporate Equalities Action Plan 2003-2006. EqIAs examine the aims, implementation and effects of policies, practices and services to ensure that (i) no groups are receiving or are likely to receive less favourable treatment or outcomes that are discriminatory or unfair in nature (whether directly or indirectly) and (ii) regard is had to the need to promote equality among such groups.
70. The EqIA ensures and records that individuals and teams have thought carefully about the likely impact of their work on the residents of Southwark and take action to improve the policies, practices or services being delivered. Throughout the process of developing the Aylesbury AAP and the associated sustainability appraisal, the council has had regard to equalities issues by producing and updating its EqIAs in light of revisions to the AAP. The revised EqIA annexed to this report has been updated in line with successive iterations of the AAP culminating in this publication version. The latter has responded to previous consultation replies, namely a desire for a greater level of family housing, different types of housing, more private gardens and public open space, and less intensive development. Taken together with the EqIA, the AAP Publication Version has adequately addressed equality issues and should reduce the risk of unforeseen direct or indirect discriminatory effects on groups or individuals in the community and promote equality. Members should note that planning decisions and policies are not required to ensure absolute equality but to have regard to the need and mechanisms for promoting equality (*R (on the application of Baker) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141).

Human Rights Implications

71. The policy making process for the Aylesbury AAP engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant. In the case of the Aylesbury AAP, a number of rights are potentially engaged. These are namely:
- **The right to a fair trial (Article 6)** – giving rise to the need to ensure proper consultation and effective engagement of the public in the process;
 - **The right to respect for private and family life (Article 8)** – the Aylesbury AAP proposes to demolish and regenerate the Aylesbury Estate, leading to the re-provision of new homes and relocation and potential loss of some others; and
 - **Article 1, Protocol 1 (Protection of Property)** – this raises the potential for interference with individuals' right to peaceful enjoyment of existing and future homes upon adoption or implementation of the AAP.
72. It is important to note that not all rights operate in the same way. Few rights are absolute and cannot be interfered with under any circumstances. Other 'qualified' rights, including the aforementioned Article 6, Article 8 and Protocol 1 rights, can be interfered with or limited in certain circumstances. The extent of legitimate interference is subject to the principle of proportionality whereby a balance must be struck between the legitimate aims to be achieved by a local planning authority in the policy making process against potential interference with individual human

rights. Public bodies have a wide margin of appreciation in striking a fair balance between competing rights in making these decisions. This approach has been endorsed by *Lough v First Secretary of State* [2004] 1 WLR 2557 and clearly shows that human rights considerations are also material considerations in the planning arena which must be given proper consideration and weight. It is acceptable for the council to strike a balance between the legitimate aim of regeneration for the benefit of the community as a whole against potential interference with some individual rights.

73. Providing that the council, its members and officers understand human rights considerations and take them into account throughout the decision making process by striving to strike a balance between competing rights no unlawful interference should be caused. The Aylesbury AAP has the legitimate aim of improving housing provision and is not deemed to interfere unlawfully with any of the aforementioned rights. Before making any decisions members should have proper regard to these considerations and strike a balance between the legitimate aims of the AAP and individual human rights.

Function of Planning Committee

74. Under Part 3F, paragraph 7 of the constitution, planning committee's has the function of commenting on successive drafts of the local development framework and make recommendations to the executive as appropriate. Accordingly, members of committee are requested to consider the Aylesbury AAP publication version and provide any comments before proceeding to publication and submission. The planning committee has made comments on the publication / submission AAP which are noted in the main body of the report.

Functions of Executive and Council Assembly

75. On January 14 2009, executive considered the Aylesbury AAP publication / submission version, including comments of the planning committee. Accordingly, the executive recommend to council assembly the publication and submission for EIP by the SoS together with any representations received on the publication document.
76. Under Part 3B of the constitution, the executive has responsibility for formulating the council's policy objectives and making recommendations to council assembly. More specifically, the function of approving the preferred options of DPDs (including AAPs) is reserved to full executive (Para 20, Part 3C).
77. The Aylesbury AAP publication version is at the publication / submission phase. By virtue of Regulation 4, paragraph 3(c) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ("the 2000 Regulations") (as amended by the Local Authorities (Functions and Responsibilities) (Amendment) (No 2) (England) Regulations 2005 - Regulation 2, paragraph 4), the approval of a development plan document for submission to the Secretary of State for independent examination is a shared responsibility with council assembly and cannot be the sole responsibility of the executive. It is noted that minor textual changes have been made to the AAP publication version for reasons of clarity or accuracy following its consideration by executive on January 14 2009. These changes are not deemed to be material and do no present new policy or legal implications. Members of council assembly are simply made aware of these changes and advised that they must be confident about the final content of the AAP before proceeding to publication and submission to the SoS.
78. Under Part 3A, paragraph 9 the function of agreeing development plan documents

is reserved to council assembly. Accordingly, the council assembly is requested to approve the Aylesbury AAP publication version for publication and submission for examination in public by the SoS. The purpose of publication is to allow for any representations on the soundness of the document to be made. Any such representations received during publication of the Aylesbury AAP publication version are to be submitted to the Secretary of State for consideration at EiP.

COMMENTS OF THE FINANCE DIRECTOR

79. This report presents the Aylesbury area action plan - publication version. Delivery of the plan is anticipated to be in four main phases. The funding of Phase 1a has already been agreed. Funding of further phases, including a public sector commitment of around £299m is being sought, as shown in paragraph 36 of this report and in more detail in section 7 of the AAP. The finance director considers that securing funding for each of the further stages of the Aylesbury programme will continue to be challenging.
80. The strategic director of legal and democratic services has noted a concern about potential blight claims that may be triggered when the AAP is submitted to the Secretary of State. The cost of these leaseholder acquisitions has been factored into the financial model, although the timing of such acquisitions would need to be reviewed if any claims were made. The council should develop a strategy for dealing with such claims. Subject to this, no financial commitment will be entered into until the necessary funding for that element has been secured.

REASONS FOR LATENESS

81. The closing date for the consultation on the revised preferred option was January 2 2009. This report is late as the consultation responses needed to be considered and changes required incorporated into the publication / submission version for a special planning committee on January 13 and a special executive on January 14 2009. Comments by planning committee and executive needed to be included within this report and concurrents reviewed and updated. This led to the report being late.

REASONS FOR URGENCY

82. The Aylesbury AAP needs to be considered by the council assembly on January 28 2009 to ensure that the programme continues to timetable and to meet the requirements of our Local Development Scheme. Failure to meet the time table would lead to financial penalties in the form of reduction in the housing & planning delivery grant.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Aylesbury Area Action Plan Consultation Strategy	Planning Policy Team Chiltern House	Tim Cutts 020 7525 5380
Aylesbury Area Action Plan Baseline Report	Planning Policy Team Chiltern House	Tim Cutts 020 7525 5380

APPENDICES

No.	Title
Appendix A	Aylesbury Area Action Plan Publication Version
Appendix B	Consultation Plan (available to view on the website)
Appendix C	Sustainability Appraisal (available to view on the website)
Appendix D	Equalities Impact Assessment (available to view on the website)
Appendix E	Consultation Statement (available to view on the website)
Appendix F	Table of responses to the Revised Preferred Options (available to view on the website)

AUDIT TRAIL

Lead Officer	Richard Rawes, Strategic Director of Regeneration And Neighbourhoods	
Report Author	Julie Seymour, Planning Policy Manager	
Version	Final	
Dated	January 16 2009	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Legal and Democratic Services	Yes	Yes
Finance Director	Yes	Yes
Date final report sent to Constitutional Support Services	19.1.09	

**AGENDA DISTRIBUTION LIST (OPEN)
COUNCIL ASSEMBLY (ANNUAL MEETING) – SUPPLEMENTAL**

MUNICIPAL YEAR 2008-09

NOTE: Original held by Constitutional Team; all amendments/queries to
Lesley John Tel: 020 7525 7228/7236

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John Bibby, Labour Group Political Assistant	1		
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		Last Updated: January 2009	
		Total:	105