AUDIT AND GOVERNANCE COMMITTEE

DATE	05/11/2026
REPORT OF	Simon Jones Assistant Director Law and Governance (Monitoring Officer)
SUBJECT	Statutory Intervention: North East Lincolnshire Local Plan
STATUS	Open

CONTRIBUTION TO OUR AIMS

This report supports the Council's commitment to good governance, openness, accountability and lawful decision-making.

Its purpose is to ensure that the Audit and Governance Committee is properly sighted on the statutory intervention concerning the Council's emerging Local Plan and, in particular, on the governance circumstances which resulted in that intervention and the arrangements subsequently put in place to secure lawful compliance.

The report is not intended to revisit the planning merits of the emerging Local Plan, nor the democratic decision taken by Full Council on 24th September 2026. Rather, it provides assurance to the Committee as to the governance, constitutional and legal position arising from an unusual exercise of central Government statutory powers.

EXECUTIVE SUMMARY

On 24th September 2026, Full Council considered whether the emerging Local Plan should proceed to consultation under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. Full Council did not support progression of the Draft Local Plan.

Importantly, from an Audit and Governance perspective, that decision was taken following detailed advice to elected Members. The Monitoring Officer's "Member Briefing Note Draft Local Plan" of 15th September 2026 , explained the respective constitutional responsibilities of Cabinet and Full Council, made clear that the decision rested with Full Council, incorporated independent external planning advice from Counsel, and expressly addressed the consequences of declining to proceed.

Members were advised before making their decision that failure to proceed would mean that the Council could not meet the Government's 31st December 2026 submission deadline and would consequently risk having to restart plan preparation under the new plan-making system. Members were also specifically advised about the continuing absence of a five-year housing land supply, greater exposure to speculative development and reduced local control over the pattern and infrastructure consequences of future development.

Independent planning Counsel had separately advised that the choice facing Members was effectively binary: approve the Plan for Regulation 19 consultation, subject to minor changes, or decline to approve it. Counsel advised that non-progression would leave the Council unable to submit by 31 December 2026 and exposed to speculative development while a replacement plan was prepared.

Members nevertheless exercised their democratic judgment and resolved not to progress the Plan.

The following day, 25th September 2026, Rt Hon Matthew Pennycook MP, Minister of State for Housing and Planning, exercised statutory intervention powers pursuant to section 27 of the Planning and Compulsory Purchase Act 2004. The Minister expressly identified Full Council's failure to support Regulation 19 consultation as the act giving rise to intervention, concluding that it constituted a failure to do something necessary in connection with preparation of the Plan and therefore satisfied the statutory test.

That distinction is important. The intervention did not arise from any identified defect in the Council's constitutional machinery or from a failure to place the matter before Members. It arose because Full Council, having been advised of the consequences, exercised its democratic decision-making responsibility in a way which triggered the statutory intervention power available to Government.

The subsequent governance question was materially different: once Government had exercised its statutory power and issued the Direction, did implementation require a further Council, Member or officer decision?

The Monitoring Officer advised that it did not. The Direction was a binding statutory requirement imposed upon the Council and took precedence over inconsistent provisions or decision-making requirements within the Council's own constitutional arrangements.

Given the significance of that issue, independent confirmation was obtained from a nationally recognised and eminent King's Counsel (KC). In his written Opinion of 30th September 2026, KC confirmed that the Direction was binding upon NELC, Members and officers; prevailed over the Council's Constitution; and could lawfully be implemented by officers without a further Full Council or other resolution. He further confirmed that the Direction itself provided sufficient authority for officers to commence the consultation.

The Regulation 19 consultation was consequently commenced on 30th September 2026 in compliance with the Direction.

RECOMMENDATIONS

It is recommended that the Audit and Governance Committee:

1. notes the circumstances leading to the statutory intervention by the Minister of State for Housing and Planning;

2. notes that Full Council's decision on 24th September 2026 was taken having

received detailed constitutional, governance and independent legal advice as to the consequences of not progressing the emerging Local Plan;

3. notes that the subsequent intervention arose from the exercise of statutory powers under section 27 of the Planning and Compulsory Purchase Act 2004 following Full Council's democratic decision not to progress the Plan, rather than from any identified failure in the Council's governance arrangements;

REASONS FOR DECISION

To ensure that the Audit and Governance Committee is formally sighted on the circumstances surrounding the statutory intervention, and is assured that the Council's governance arrangements operated appropriately throughout. Full Council's decision of 24th September 2026 was taken by the constitutionally appropriate body, following clear professional and independent legal advice as to the consequences. The subsequent statutory intervention arose from that democratic decision rather than from any identified governance failing. Following intervention, officers acted to secure compliance with the statutory Direction, with the legal basis for doing so without further Member approval independently confirmed by Counsel. Reporting the matter to the Committee provides transparency, assurance and an appropriate governance record of these exceptional circumstances.

1. BACKGROUND AND ISSUES

Full Council decision

1.1 The Local Plan is part of the Council's Policy Framework. Members had been expressly advised that, under the Council's constitutional arrangements, the relevant decision rested ultimately with Full Council and that Cabinet could neither frustrate Full Council's consideration nor usurp that responsibility.

1.2 That distinction matters for the purposes of this report. The Council's governance arrangements operated as intended: Member and officer responsibilities were identified; independent legal advice was commissioned; that advice was made available to Members; the relevant material risks were identified; and the decision was placed before the constitutionally appropriate body.

1.3 Members were expressly told that they were not being asked finally to adopt the Local Plan or personally to endorse every allocation within it. They were being asked whether to publish the Draft Plan for Regulation 19 consultation and continue the statutory process towards independent examination.

1.4 Members were also clearly advised of the consequences of saying "no".

1.5 Independent Counsel advised that a failure to proceed would prevent submission by 31st December 2026, leave the Council without an up-to-date plan and five-year housing land supply, and expose the area to speculative development while a replacement plan was prepared.

1.6 Full Council nevertheless resolved not to support progression.

1.7 That was a democratic decision. The existence of significant legal or planning consequences did not prevent Members from making it, and the Monitoring Officer's pre-decision briefing explicitly recognised Members' entitlement to reach that conclusion provided that they did so understanding its consequences.

Government intervention

1.8 The Government's response was immediate.

1.9 Minister Pennycook wrote to Cllr Freeston, under cover of a letter dated 25th September 2026. Matthew Pennycook MP stated that 31st December 2026 remained the deadline for plans progressing under the legacy regime and that failure to progress Regulation 19 risked losing that timetable, wasting previous investment and maintaining the Council's exposure to speculative development.

1.10 The statutory basis was section 27 of the Planning and Compulsory Purchase Act 2004.

1.11 Section 27 applies where the Secretary of State considers that a local planning authority is "*failing or omitting to do anything it is necessary for them to do*" in connection with the preparation, revision or adoption of a development plan document. The statutory scheme is extensive. Among other things, it permits the Secretary of State to prepare or revise the document himself or give directions to the authority about its preparation or revision; provides for independent examination; and ultimately enables the Secretary of State to approve, require consideration of adoption, or in specified circumstances reject the document.

1.12 The significance of this wider statutory architecture should not be understated. The power exercised in North East Lincolnshire was not simply a request to reconsider Full Council's position. Parliament has provided a statutory mechanism through which central Government may assume progressively greater control over the plan-making process where the statutory threshold is met.

1.13 The Minister expressly concluded that Full Council's failure to support Regulation 19 was evidence of a failure to undertake something necessary in connection with preparation of the Plan. In reaching that view he also referred to the Plan having been adopted in 2018, the proximity of the legacy-system deadline and the Council's inability to demonstrate a five-year housing land supply.

Requirements of the Direction

1.14 The Direction required the Council to:

- commence Regulation 19 consultation no later than 30th September 2026 for a minimum of six weeks;
- submit the emerging Plan by 31st December 2026, subject to the arrangements specified for proposed modifications;
- take no steps to withdraw the Plan;
- report progress monthly to Government;
- progress the Plan through the end of examination; and
- publish a revised Local Development Scheme reflecting the directed timetable.

1.15 The Direction remains effective until withdrawn by the Secretary of State. The Minister expressly reserved the possibility of further action in the event of non-compliance.

Governance following the Direction

1.16 Concern was raised by some Members as to whether implementation of the Direction itself required a further democratic decision or officer decision accompanied by Member oversight.

1.17 In ordinary circumstances that is a proper governance question. However, the intervention fundamentally changed the legal position.

1.18 Before 25th September, the question was whether the Council should progress Regulation 19 and the Council's constitutional allocation of decision-making responsibility applied.

1.19 After 25th September, the question had become one of compliance with a binding statutory direction issued pursuant to an Act of Parliament.

1.20 The Monitoring Officer advised that the Council's Constitution could not operate so as to negate or frustrate a statutory requirement imposed upon the authority. Put another way, the Constitution regulates the Council's internal exercise of functions within the law. It cannot confer a power to disregard an obligation which Parliament has authorised the Secretary of State to impose.

1.21 Because the issue was of unusual constitutional significance, further independent assurance was obtained from the said KC.

1.22 His Opinion is particularly clear. He advised that:

- the Direction was binding upon the Council, its Members and officers, and prevailed over the Council’s statutory Constitution.

- Asked specifically whether he accepted the Monitoring Officer's propositions that the Direction was binding, took precedence over the constitutional position and rendered a contrary Member or officer decision unconstitutional and ultra vires, KC answered: "I do."

- He was then asked whether officers could lawfully implement the Direction under existing delegations without obtaining another Full Council or other resolution. His answer was "Yes."

- Finally, he was asked whether the Council, Members and officers could rely upon the Direction itself as authority to commence consultation. Again, his answer was "Yes."

1.23 Accordingly, requiring a further Council resolution purporting to decide whether or not to obey the Direction would have misunderstood the nature of the legal position. There was no longer a lawful discretionary choice available to the Council on that question while the Direction remained in force.

1.24 That does not diminish democratic accountability. Members remained able to scrutinise implementation, engage politically with Government and advance the exceptional circumstances invited by the Minister. What neither Members nor officers could lawfully do was use an internal decision-making mechanism to override the statutory Direction.

2. RISKS AND OPPORTUNITIES

2.1 The principal governance risk following intervention is non-compliance with the Direction. Government expressly warned that failure to comply could result in further action.

2.2 More significantly, section 27 itself demonstrates that the statutory intervention regime extends considerably beyond the Direction presently issued. The legislation permits the Secretary of State, where the statutory conditions apply, to prepare or revise the development plan document; direct its preparation or revision; control its passage to independent examination; and exercise powers concerning its ultimate approval, adoption or rejection.

2.3 There is therefore a material governance and strategic interest in continued compliance and constructive engagement with MHCLG. This is not simply because the Council must comply with the existing Direction, but because Parliament has provided materially more interventionist powers should circumstances require their use.

2.4 The opportunity is equally significant. Compliance preserves the possibility of the Plan being independently tested through examination rather than bringing the legacy process to an end. The Minister expressly said that his purpose was to give the Plan the best possible opportunity of adoption under the legacy system and allow the Inspector to determine whether it is legally compliant and sound.

3. OTHER OPTIONS CONSIDERED

3.1 Before intervention, the alternative available to Full Council was not to progress Regulation 19. Members chose that alternative with knowledge of its potential consequences.

3.2 The pre-decision advice made clear that this was likely to result in the Council losing the 31st December 2026 timetable and commencing plan preparation again under the new system.

3.3 Following statutory intervention, however, the range of legally available options materially narrowed. Unless and until the Secretary of State withdraws or varies his Direction, non-compliance is not a lawful governance option.

3.4 The Minister did provide the Council with an opportunity to put forward exceptional circumstances by 2nd October, but expressly stipulated that this opportunity neither altered nor removed the Direction in the meantime.

4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

4.1 The circumstances are politically and publicly sensitive because Full Council's democratic decision was subsequently displaced in practical effect by statutory intervention.

4.2 It is therefore important that public communications accurately distinguish between:

- the democratic decision properly taken by elected Members on 24th September;
- the statutory decision subsequently taken by Government;
- officers' legal obligation to implement the latter; and
- the continuing role of elected Members in scrutiny, representation and political engagement.

4.3 The Regulation 19 consultation commenced on 30th September 2026.

4.4 Transparent reporting to Audit and Governance itself provides additional institutional assurance by placing the circumstances, statutory framework and subsequent governance response formally on the record.

5. FINANCIAL CONSIDERATIONS

5.1 Considerable officer time and financial resource has already been invested in preparing the emerging Plan. The Minister specifically identified the risk that failure to progress it would waste that accumulated time, effort and investment.

5.2 There is also a statutory financial exposure associated with deeper intervention. Section 27 expressly provides for reimbursement to the Secretary of State of expenditure incurred where the Secretary of State undertakes preparation or revision which the authority had failed or omitted to undertake.

5.3 Those considerations reinforce the financial importance of maintaining effective compliance and programme management.

6. CHILDREN AND YOUNG PEOPLE'S IMPLICATIONS

6.1 There are no specific direct implications for children and young people arising merely from this governance report.

7. CLIMATE CHANGE, NATURE RECOVERY AND ENVIRONMENTAL IMPLICATIONS

7.1 There are no direct climate change implications arising from the act of reporting the intervention to Audit and Governance.

8. PUBLIC HEALTH, HEALTH INEQUALITY AND MARMOT PRINCIPLES

8.1 There are no identified direct public-health or health-inequality consequences arising from the governance action considered in this report.

9. FINANCIAL IMPLICATIONS

9.1 There are no new direct financial commitments arising from the recommendations in this report.

9.2 The wider financial consequences associated with the Local Plan programme will continue to be managed through the appropriate budgetary and programme arrangements.

9.3 It should nevertheless be noted that section 27(9) of the Planning and Compulsory Purchase Act 2004 provides a statutory mechanism for the authority to reimburse expenditure incurred by the Secretary of State when the Secretary of State undertakes relevant plan-preparation or revision activity which the authority has failed or omitted to undertake.

10. LEGAL IMPLICATIONS

10.1 The principal statutory provision is section 27 of the Planning and Compulsory Purchase Act 2004.

10.2 The statutory threshold is engaged where the Secretary of State considers that an authority is failing or omitting to do something necessary in connection with preparation, revision or adoption of a development plan document. The provision confers broad consequential intervention powers.

10.3 In this case the Minister expressly concluded that Full Council's failure to support progression to Regulation 19 satisfied that statutory threshold.

10.4 The Direction required the Council to undertake specified steps and stated that

those requirements remained effective until withdrawn.

10.5 The Monitoring Officer's advice was that the Direction, being imposed pursuant to primary legislation, prevailed over inconsistent internal constitutional arrangements and did not require a separate Member decision authorising compliance.

10.6 That position was independently confirmed by eminent Kings Counsel, who advised that the Direction binds the Council, Members and officers, prevails over the Constitution and could be implemented by officers without obtaining a further Full Council or other resolution. He also confirmed that the Direction itself was sufficient authority to commence Regulation 19 consultation.

10.7 The essential governance distinction is therefore between the exercise of discretion and compliance with law. On 24th September, Full Council possessed a democratic discretion whether to support progression of the Draft Plan, which Members exercised having been advised of the consequences. Following the statutory intervention on 25th September, that particular discretion was displaced for so long as the Direction remained legally effective.

10.8 The subsequent actions of officers in implementing the Direction were therefore not a substitution of officer judgment for a democratic decision. They constituted the Council, as a body corporate, giving effect to a binding statutory requirement.

11. HUMAN RESOURCES IMPLICATIONS

11.1 There are no direct employment or workforce implications arising from the recommendations in this report.

12. WARD IMPLICATIONS

12.1 Applicable to all wards.

13. BACKGROUND PAPERS

25th September 2026 Statutory Direction.

14. CONTACT OFFICER(S)

Simon Jones
Monitoring Officer:
simon.jones1@nelincs.gov.uk

Simon Jones
Assistant Director, Law and Governance
Monitoring Officer

Ministry of Housing, Communities & Local Government

Rt Hon Matthew Pennycook MP
Minister of State for Housing and Planning
2 Marsham Street
London
SW1P 4DF

Cllr Oliver Freeston
Leader of North East Lincolnshire Council
Municipal Offices, Town Hall Square,
Grimsby,
North East Lincolnshire,
DN31 1HU

25 September 2026

Dear Cllr Freeston,

I am writing to you regarding the progress of the emerging North East Lincolnshire Council Local Plan ('the Plan'), following the meeting of your Council on 24 September.

The plan-led approach is, and must remain, the cornerstone of our planning system. This government remains determined to drive local plans to adoption as quickly as possible in order to achieve our ambition of universal plan coverage and to ensure that plans contribute positively to increasing rates of housebuilding and infrastructure delivery.

As you know, the benefits of an up-to-date local plan are significant. Local Plans are the best way for communities to shape decisions about how to deliver the housing and wider development their areas need. They enable local areas to set their strategy for future growth and their approach to protecting and enhancing the environment, and they provide the certainty and confidence required to bring development forward across the country. In the absence of an up-to-date plan, there is a high likelihood that development will come forward on a piecemeal and speculative basis, with reduced public engagement and fewer guarantees that it will make the most of an area's potential.

I note the Council's request for an extension to the current submission deadline. However, I have been clear that December 2026 remains the deadline for plans progressing under the legacy system. Any delay to plan progress risks jeopardising the Council's ability to submit its plan by that date. I am therefore concerned by the Council's decision not to progress the Regulation 19 Local Plan for consultation and subsequent submission for examination. As you know, considerable time, effort and investment has gone into the preparation of this emerging Plan. The decision not to progress it would not only see that time, effort and investment wasted, but would create further uncertainty and leave the Council exposed to ongoing speculative development as a result of not having an up-to date plan.

In light of these circumstances, I have considered the options available to me under the Planning and Compulsory Purchase Act 2004 (the 2004 Act), including exercising the Secretary of State's powers of intervention.

Section 27 of the 2004 Act provides the Secretary of State with broad default intervention powers where they believe a local planning authority is failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of its Local Plan.

I consider the Council's failure to support the Regulation 19 Local Plan consultation to be clear evidence of a failure to do something necessary in connection with the preparation of the Plan, particularly taking into account the very limited time to prepare a plan in the legacy planning system, Taken together, I consider that this meets the statutory test for intervention.

I have also considered the criteria laid out in the Planning Practice Guidance (PPG), which states that intervention under s.27 of the 2004 Act "should have regard to plan progress and local development needs":

- **Plan Progress:** The Council has not adopted since 2018 and accordingly the plan is over 5 years old. Given the proximity of the deadline for submission in the legacy planning system any delay to consultation risks the plan not being able to progress in this system and delaying the point at which there will be an adopted up to date plan.

- **Development Needs:** While the Council has a positive record of delivering against the Housing Delivery Test it does not currently able to demonstrate a five-year housing land supply. This is unlikely to change without an up-to-date local plan. As a result, the Council remains vulnerable to piecemeal and speculative development, with reduced public engagement and fewer guarantees that it will make the most of North East Lincolnshire's potential.

Taking the above into account, I have had regard to the intervention criteria and consider that intervention is justified for the reasons set out in this letter.

Pursuant to the powers in s.27 of the 2004 Act I am directing the Council as follows:

1. **Commence a Regulation 19 consultation on the emerging Plan that was published for consideration by Council on 24 September and to do so by no later than 30 September 2026 for a minimum period of 6 weeks;**

2. **Submit the emerging Plan consulted on under the above direction by no later than 31 December 2026 with any proposed minor modifications necessary after full consideration of representations received at consultation. Should proposed modifications be more significant this should be set out to the Secretary of State, to consider whether further action is necessary;**

3. **Not to take any step to withdraw the Plan and report monthly (from the date of this letter) to my officials on the progress of the Plan;**

4. **Progress the Plan up to the end of the examination process.**

Pursuant to s.27(8) of the 2004 Act, the Secretary of State has issued directions under s.27 in order to ensure that the Plan is afforded the best possible opportunity to be adopted under the legacy plan-making system. The intention is to ensure that local communities can comment on the draft Plan and to enable the Inspector to determine whether the Plan is legally compliant and sound.

Local planning authorities are required to publish and maintain a Local Development Scheme (LDS), as set out in s.15(1) of the 2004 Act and s.15(4) of the 2004 Act provides that the Secretary of State may direct changes to a local development scheme where they consider amendments necessary to ensure that the authority's development plan documents fully and effectively cover the whole area.

To ensure full and effective coverage, avoid delays to plan-making and allow for submission of the Local Plan for examination before the December 2026 deadline as per s.15(4) of the 2004 Act, I am directing the Council to:

5. **Publish on your website a revised Local Development Scheme by latest 30 September 2026 to reflect directions set out above. For avoidance of doubt this should include the following specific milestones:**

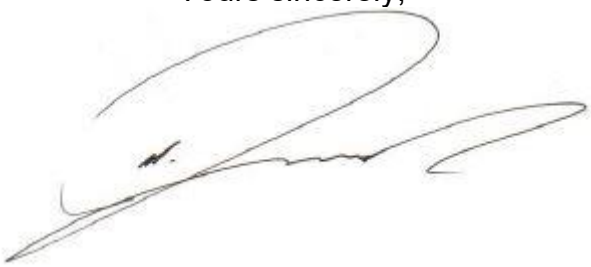
    - **Regulation 19 consultation to commence by no later than 30 September 2026**
    - **Submission of the Plan for examination should be no later than 31 December 2026.**

The above directions will remain in force until withdrawn by the Secretary of State. Should you fail to comply with the directions in this letter, I will consider taking further action.

Notwithstanding this direction I would like to give you an opportunity to set out by 2 October any exceptional circumstances which in your view suggest that intervention is not appropriate in this case. To be clear, this neither alters nor removes the direction set out in this letter.

My officials will maintain ongoing engagement with your officers and will be in touch shortly to discuss next steps.

Yours sincerely,



RT HON MATTHEW PENNYCOOK MP
Minister of State for Housing and Planning