

Cabinet Report



Report of Head of Planning

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To: CABINET

DATE: 20 March 2018

South Oxfordshire Local Plan

Recommendations

That Cabinet recommends Council to:

(a) retain Chalgrove Airfield as a proposed allocation in the South Oxfordshire Local Plan

(b) agree to undertake the necessary site selection work and evidence base to support the inclusion of an additional site or sites in the South Oxfordshire Local Plan as set out in Option 3 of this report

Purpose of Report

1. To inform councillors of the latest position regarding the emerging Local Plan for South Oxfordshire.
2. To provide councillors with a series of options and recommendations for moving forwards with the Local Plan.

Strategic Objectives

3. The delivery of the South Oxfordshire Local Plan will contribute towards four of the Council's six strategic objectives.

4. The Local Plan has a key role to play in delivering the district's future as it sets out the level and distribution of development to 2033, which will help to shape the future of South Oxfordshire.
5. The potential of Didcot, is a strategic objective, which is supported by the retention of the existing allocations of land at Didcot for residential and employment related development. To further support this, additional allocations for residential development have been proposed which reflect extant planning permissions.
6. A key role of the South Oxfordshire Local Plan is to identify sufficient employment and housing land for existing and future communities. This directly supports the strategic objective to deliver 'homes and jobs for everyone.'
7. The emerging Local Plan supports the strategic objective to 'build thriving communities'. In addition to the provision for different land uses, the policies within the plan will ensure that developers provide the necessary infrastructure to support the new communities.

Background

8. The South Oxfordshire Local Plan is the key document in the Development Plan for the district between 2011-2033 and, on its adoption, will replace the existing adopted Core Strategy and adopted Local Plan.
9. The Local Plan sets out the overall level and distribution of development required for the district. It sets the framework within which Neighbourhood Plans can be produced and steers the future pattern of development across South Oxfordshire. The Local Plan includes a full suite of planning policies which are used in the determination of planning applications.
10. The South Oxfordshire Local Plan was approved by Council in September 2017 as the version of the Local Plan for publication and to be submitted to the Secretary of State for independent examination. The Council report clarified that the council cannot make substantive changes to the Local Plan at this stage unless it chooses to not submit the Plan for examination, modify, re-consult and re-submit.
11. The South Oxfordshire Local Plan was published under Regulation 19 for public consultation for a period of seven weeks which closed on 30 November 2017. The intention was to then submit the Local Plan late January/early February 2018 for examination.
12. The publication version of the South Oxfordshire Local Plan includes a number of sources of housing land supply across the district and identifies key strategic allocations which make a significant contribution towards the overall quantum of housing development to be delivered.
13. Following the close of the consultation period on the Publication version of the South Oxfordshire Local Plan, the council has been advised (5 December 2017) that the Homes and Communities Agency, now Homes England (HE) as landowners have been unsuccessful in their latest attempt to reach an

agreement with the tenants, Martin Baker, to secure the land at Chalgrove Airfield for housing. Land at Chalgrove Airfield is one of our strategic allocations (3,000 homes). Martin Baker's representation to the Publication version of the Local Plan is attached at Appendix 1 and the subsequent letter is attached at Appendix 2.

14. We invited HE to provide us with their position and their letter is attached at Appendix 3. HE have confirmed that they will continue to seek to reach an agreement through commercial negotiations, but in the event this cannot be reached, they are prepared to seek to use their statutory powers which includes Compulsory Purchase Order (CPO) powers.
15. We responded to HE in February and asked for clarification regarding the anticipated programme for the delivery of Chalgrove Airfield and the timescales involved for each stage from making a draft CPO through to the delivery of homes on the site. This letter to HE is attached at Appendix 4.
16. HE provided details on their likely timetable for delivering the site including a twin tracked approach for a planning application and for seeking to use their CPO powers. They confirmed that Homes England's Board had approved the commencement of preparatory work to include the purchasing of any additional land and rights to ensure the effective delivery of the scheme.
17. Correspondence has been ongoing and this is attached in the later appendices numbered 5-8.
18. We also received a representation to the Regulation 19 public consultation of the South Oxfordshire Local Plan from Oxfordshire County Council which is attached at Appendix 9. The representation raises a number of concerns, including to the proposed development at Chalgrove Airfield. The key issue relates to transport infrastructure and the requirement for a substantial investment in additional infrastructure which is likely to be needed. Oxfordshire County Council are concerned about whether such investment will be forthcoming. The response advises that further evidence is needed to be confident that the infrastructure challenges associated with development at Chalgrove Airfield are able to be addressed.
19. Further to a meeting held on 20 February 2018 between Homes England, Oxfordshire County Council and South Oxfordshire District Council, we wrote to Homes England (attached at Appendices 6 and 7) and also to Oxfordshire County Council which is attached at Appendix 10.
20. All parties remain committed to working together to seek to resolve the outstanding concerns in respect of transport infrastructure.
21. Legal advice has been sought on the potential impact on the South Oxfordshire Local Plan of this updated information and the options for progressing the Local Plan.
22. In the circumstances where there is a possible change in the likely delivery of a strategic housing site and new information made available we need to review how best to proceed with the Local Plan. In advance of moving forward with the Local Plan, officers have initially set out a series of potential options and their resultant impact and timescales for consideration.

23. Officers have informed the Planning Inspectorate (PINS) that there is a delay with the anticipated programme towards submission and will continue to update PINS on progress. It should be noted that PINS require six weeks' notification of the intention to submit a Local Plan for examination.
24. The Ministry for Homes, Communities and Local Government (MHCLG) published a revised National Planning Policy Framework for consultation on 5 March. Whilst it remains a draft for consultation, it provides an indication of how national policy may change.
25. The details of the standard methodology for calculating housing need are expected to be published in national guidance following the publication of this report, but prior to its consideration at Cabinet. The Secretary of State confirmed in the House on Monday 5 March that it will be published as consulted, which should remove uncertainty about the methodology.
26. The supporting documentation published alongside the draft NPPF clarifies the position regarding the transitional arrangements for Local Plans under development. It confirms that transitional arrangements will apply the provisions of the previous National Planning Policy Framework to the examining of plans which are submitted on or before the date which is six months after the date of the publication of the new Framework. It is anticipated that the new Framework will be published before the summer, which would indicate that, in the event that the Local Plan is submitted before the end of the calendar year, it will be examined on the basis of the existing Framework. This is a relevant point to be considered alongside the options below.
27. There will be a requirement to prepare and maintain one or more statements of common ground as evidence of the statutory duty to cooperate. With reference to the duty, the draft Framework has been amended to state that this duty cannot be deferred. In South Oxfordshire a number of statements of common ground have been prepared to evidence the engagement and areas of agreement with neighbouring authorities and statutory consultees.
28. Whilst there exists a disagreement between South Oxfordshire and Oxford City Council regarding unmet housing needs, we consider that the duty has been discharged, but that our approach in part defers the level of contribution pending examination of Oxford City's Local Plan. However it is not clear whether the disputed 1,200 shortfall in homes between our contribution and the apportionment of the working assumption will exist when the standard method for the local housing need assessment is calculated.

OPTION 1 - NO CHANGE TO THE SOUTH OXFORDSHIRE LOCAL PLAN

29. Full Council could decide to maintain the Local Plan proposals and timescales for submission as is and rely on the commitment from HE to deliver the site.
30. This option would enable the council to proceed to the formal submission of the Local Plan by June 2018.
31. Information provided by PINS clarified that the new standardised methodology for calculating the local housing need would apply after 31 March 2018 or when

the revised NPPF is published, whichever is later. As at the time of writing, the new standardised methodology has yet to be published.

32. The Objectively Assessed Need contained within the emerging Local Plan aligns to the mid-point of the range of Oxfordshire's Strategic Housing Market Assessment which is 775 dwellings per annum. The Government publication on 'Planning for the right homes in the right places' consulted upon a standard methodology for calculating housing need. For South Oxfordshire this annual need was 617 dwellings per annum.
33. In addition, a draft Housing Delivery Test has also been published. It is unclear how this test and the new local housing need might impact upon the housing land supply for South Oxfordshire. However further uncertainty and delay may give rise to further speculative planning applications.
34. The draft NPPF sets out proposals for national policy which, if taken forward into the final version, could impact upon the approach taken by an Inspector examining the Local Plan.
35. Submitting the Local Plan prior to the proposed transitional arrangements outlined in the supporting documentation to the draft NPPF would reduce the uncertainty that this would bring.
36. It should be noted that if HE decides to use its compulsory purchase powers to deliver Chalgrove Airfield the CPO process may add delay to the delivery of the site. The council would need to adjust its housing trajectory accordingly, which, depending on the extent of such timing, could present a housing shortfall in the plan period. Chalgrove Airfield can remain a developable site in the Local Plan, but its trajectory for housing delivery may need to be altered to reflect the likely timescale of the CPO process.
37. However, it also introduces a significant element of risk, insofar as the Local Plan inspector may find relying on a CPO process to secure the land for development for a strategic allocation unsatisfactory and potentially not meeting the requirement for available and deliverable sites for development and therefore not effective, rendering the Plan 'unsound'.
38. During examination, if the Inspector did indicate that the submitted version of the Local Plan is likely to be unsound then the council would have the option of requesting the Inspector to recommend modifications to the Plan to make it sound.
39. The Inspector could conclude through the examination that an additional or replacement site should be added to the Local Plan. This would require the council to consult on this additional or replacement site(s) through a modifications process during the examination.
40. Once the Local Plan is submitted, the timetable is largely steered by the Planning Inspectorate, including any potential delay created by any route that might be chosen to address concerns.
41. This suggested outcome to Option 1 would create additional delay in the Local Plan timetable to adoption of at least six months. This would include a need to update the evidence base. In the event that the Inspector directed the Chalgrove

Airfield site to be removed, then any risk that this could impact on the Local Plan's overall spatial strategy for development could be discussed at the hearing sessions.

42. The next steps in the process under this option are subject to the findings of the Inspector, but could follow the below:

June 2018 Submission to Secretary of State (Regulation 22)

September 2018 Examination in Public (Regulation 24)

Winter 2018 Main modifications consultation

Early 2019 Inspector's report (Regulation 25)

Spring 2019 Adoption (Regulation 26)

43. There may be scope for the council to commit to an early review of the plan to address any concerns raised by the Inspector. This could be done by way of a main modification to the submitted plan. The scope for this, and the structure of the proposed review mechanism (e.g. the timing and extent of the review) would require careful consideration. The Local Plan already includes a commitment to undertake an early review once Oxford City has adopted its Local Plan. Nevertheless, there is already a requirement to regularly review Local Plans.
44. The programme for this, and the other options, would require an additional year to be added to the end of the Plan period to ensure a 15 year horizon from the point of adoption.
45. It is considered that the 'no change' approach places the Local Plan at risk in respect of its deliverability. It is at risk of failing the examination on the grounds of its soundness and its effectiveness to deliver.
46. An alternative option is to be more proactive now and would involve the Council choosing to include an additional or replacement site before the Plan is submitted for examination.

OPTION 2 – REMOVE CHALGROVE AND REPLACE THE SITE

47. Turning now to the practicalities of adding or replacing a site, full Council would need to determine whether it wished to continue to include the Chalgrove Airfield site in the Local Plan as an allocation.
48. Council could choose to remove the site in its entirety and replace it with one or more sites elsewhere in the district.
49. This approach would alter the existing Local Plan strategy to such an extent that Council would need to reconsider the Local Plan and undertake a further two rounds of public consultation prior to submission for examination, namely a regulation 18 and regulation 19 consultation. This is because the council must demonstrate that it has undertaken meaningful consultation prior to producing the final version of its Local Plan. It is considered that this would add at least 12 months to the timetable. This will also impact on the life of the plan as we would not have the required 15 years remaining after Plan adoption.

50. This approach would place the Local Plan beyond the provisions of the transitional arrangements afforded to the emerging NPPF. The Local Plan would be submitted beyond the six month period after the publication of the final NPPF.
51. This option would significantly weaken HE's case for CPO as the site would no longer be included as an allocation in an emerging Local Plan. It is not likely that that HE can progress their CPO with the council taking this approach.
52. This would not necessarily preclude the site coming forward at a later date, subject to its availability.
53. It is considered that the removal of the Chalgrove Airfield as a proposed allocation would add greater delay to the production of the Local Plan.

OPTION 3 – RETAIN CHALGROVE BUT ADD AN ADDITIONAL SITE

54. This option assumes that Chalgrove Airfield remains in the Local Plan, but that an additional reserve site or sites be included and provides an option for housing delivery in the event that the site at Chalgrove Airfield does not come forward in a timely manner or at all.
55. This would involve the council undertaking the necessary work to identify an additional site(s) and ensure the necessary evidence is produced before the Plan is consulted upon again under Regulation 19 and then submitted for examination.
56. The availability of a reserve site in the Local Plan could weaken HE's case for CPO. The wording regarding the additional 'reserve' site or sites will be important in this regard. The status of the site or sites will need to be written in the policy and the trigger mechanisms for releasing this land for development. However, HE can progress their CPO with the Council taking this approach.

Process

57. Essentially the Local Plan and its evidence base would need to be updated to reflect additional site(s). By way of example, if the additional or replacement site was one which has already been consulted upon, then the requirement would be for the plan to be updated, to go back through the democratic process (Cabinet, Scrutiny and Council) and then to go out for a second Reg. 19 consultation.
58. The implication of this would be that the Local Plan would then likely be submitted under the proposed transitional arrangements for the NPPF. The Government's new housing need calculations, which are expected to be published following the publication of this report, but prior to its consideration,

could then be used as the basis of local housing need, although without this published information, it is not clear the extent to which any additional need to factor in economic forecasts would have to be undertaken. This would add significant uncertainty to the Local Plan process.

59. The next steps in the process, based on this option (3), are set out below

Start March - June 2018 - update Local Plan, update evidence base.

June/July 2018 Cabinet and Scrutiny

July 2018 Council

September 2018 – Publication of the Local Plan (Regulation 19) Focussed Changes

December 2018 Submission to Secretary of State (Regulation 22)

March 2019 Examination in Public (Regulation 24)

May 2019 Inspector's report (Regulation 25)

June 2019 Adoption (Regulation 26)

60. This option would not necessarily preclude both Chalgrove Airfield and the additional site(s) coming forward and the 'reserve' site may well seek to progress regardless of their 'reserve' status. The triggers for releasing a 'reserve' site or sites must be clear in the policy to ensure that this does not occur.
61. It is considered that this option provides an efficient and proactive route for the Local Plan whilst reducing the risk to the overall soundness of the Local Plan. Councillors may wish to include one or more of these reserve sites within the Local Plan.

Additional work

62. To support the inclusion of one or more additional sites in the Local Plan, additional evidence base will need to be completed, which would include the following:
- Updating the Sustainability Appraisal (SA),
 - Updating the Habitats Regulations Assessment (HRA) – including traffic flow data,
 - Additional Evaluation of Traffic Impacts study,
 - Updating the Infrastructure Delivery Plan,
 - Updating the Viability report,
 - Updating the Strategic Flood Risk Assessment,
 - Updating Historic Impact Assessment,
 - Updating the Leisure Studies report,
 - Updating the landscape work to include a new site(s)
 - Updating the retail study report.
63. To undertake these tasks, it would likely take three months and much of this can run concurrently, though the SA and HRA would follow at a staggered pace. The

Local Plan itself can be updated, including supporting topic papers, during this time.

64. The revised Local Plan would need to go through the democratic process (Cabinet, Scrutiny and Council) before a further Reg. 19 consultation. The second Reg 19 consultation should invite comments only on the new approach and additional site(s).

Steps to adoption

65. In any event, whether submitting the Publication Local Plan as consulted upon or following a second publication consultation, the council would submit the Local Plan to the Secretary of State for independent examination, together with the supporting evidence base studies and reports. If a second consultation stage were required, the supporting material would include a summary of the representations made to both publication stages of consultation.
66. Following the examination, the Inspector may recommend changes to the Local Plan, which the council would then consider (and usually accept unless there was a good planning reason not to). A 'Modifications' version of the Local Plan would then be published for consultation, incorporating any recommended changes the council agrees. The Local Plan would then be finalised and adopted.

Financial Implications

67. The preparation of the South Oxfordshire Local Plan is undertaken by officers within the Planning Policy team and is supported by an extensive evidence base. The activities of this team are met from the existing Planning Policy budget. Clearly any delay will mean further updates which each have a cost as the evidence base will start to become increasingly dated. The length of the delay will have a direct relationship with this cost as some reports and assessments have a different tolerance to the duration of time. If either option 2 or 3 are taken forward this will have a certain cost implication. Many of the documents which support the Local Plan will require to be updated by the inclusion of a replacement or additional site(s). Much of the technical supporting evidence base has been prepared by external consultants and the additional work required will vary across the evidence base. By way of example, the addition of a new site or sites will require a re-run of the Evaluation of Transport Impacts and significant site specific updates to the Infrastructure Delivery Plan. However, officers believe updates can be covered from with the existing policy budgets as much of the evidence base can have addendum reports rather than necessitating a complete rewrite.
68. Option 2 or 3 will require officer resource to support the necessary contractual requests for additional work and to review additional material. There will be a

requirement for officers to revisit some of the statements of common ground and to update the Local Plan itself. Under option 2 this will require officers to review against the NPPF requirements because this approach will fall outside of the transitional arrangements. As the work programme for the team was focussed on the necessary preparatory work for the examination, it shifts the timescale back and will create some management challenges which will require a flexible approach to officer resource.

Legal Implications

69. The Publication version of the South Oxfordshire Local Plan has been produced for publication under regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (“Local Planning Regulations”).
70. Local authorities are required by law to prepare a development plan for their administrative area and the process for doing that is governed by statute. The regulations require local authorities to notify and invite comments from a range of specified persons and organisations on their development plan proposals.
71. In the absence of an up to date Local Plan, South Oxfordshire remains vulnerable to challenge given that they are unable to demonstrate a robust five year housing land supply (HLS). In the absence of a five year HLS, local authorities are having imposed upon them by decision of the Secretary of State, planning permissions which need not necessarily comply with the current or emerging Local Plan. It is therefore essential that the Local Plan is progressed expeditiously if the threat of adverse planning decisions is to be avoided.
72. Section 33A of the Planning and Compulsory Purchase Act 2004 (as inserted by the s110 of the Localism Act 2011) (“s33A”) provides that local planning authorities must co-operate with other local planning authorities in maximising the effectiveness with which activities such as the preparation of local plan/development plan documents are undertaken so far as they relate to strategic matters. This ‘duty to cooperate’ requires the local authority to engage constructively, actively and on an ongoing basis in any process by means of which activities such as the preparation of Local Plan are undertaken.
73. If the person appointed to carry out the independent examination considers that the South Oxfordshire has not complied with its duty under s33A in relation to the preparation of its Local Plan the person can neither recommend adoption nor modifications and in such cases, South Oxfordshire cannot then adopt the Local Plan.
74. Legal advice has been sought from the QC and counsel engaged by the council to advise on the Local Plan. A copy of the full advice is attached in the confidential appendix 11. This is not for publication because it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings and in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

75. Councillors must take the legal advice into account before exercising their judgment. Officers could not exercise their delegation from Council to submit the Local Plan without bringing the new information to Cabinet and Council. In light of this, officers are recommending option 3 but do not have delegated authority to agree this. A decision on which option to pursue must therefore be taken by Cabinet and Council but pursuing any option would be lawful provided that there are reasonable reasons for doing so.
76. Cabinet is asked to make a recommendation to Council on which option to pursue. If Cabinet recommends option 2 or 3, officers could start work immediately on updating the Local Plan and evidence base to ensure that the timetable could be met if Council agreed it.

Risks

77. Specific risks relating to the delivery of strategic allocations and the overall level of delivery have been raised elsewhere in the report.
78. Risks relating to the extent to which the unmet housing needs are initially planned for and the consistency of approach to taking land out of the Green Belt have previously been raised and are included in the report to Council of September 2017. There is no additional risk.
79. More generally, a failure to progress a Local Plan that identifies future development requirements for the area and strategic locations where these requirements can be accommodated will result in a policy vacuum, increasing the risk of ad hoc development proposals being submitted and potentially, to decisions being secured by appeal.
80. The absence of a Local Plan could result in an uncoordinated approach to development, leading to inappropriate and incremental development being allowed on appeal that does not take account of cumulative implications and requirements for supporting infrastructure, with the potential for adverse environmental impacts.
81. The council is currently in a position where it cannot demonstrate a sufficient level of land for housing and there are planning applications pending which have been submitted on this basis. It is therefore critical that progress is made on agreeing the emerging Local Plan. Any delay in progressing the Local Plan to submission and examination increases the risk of inappropriate development and lack of delivery of key infrastructure.

Other Implications

82. The implication of Option 2 would be that the Local Plan would then likely be submitted beyond the proposed transitional arrangements for the NPPF. The timing of the publication of the final version of the NPPF will be important for Option 3 as it may be possible to submit under the proposed transitional arrangements. The Government's new housing need calculations could then be used as the basis of local housing need, although without this published

information, it is not clear the extent to which any additional need to factor in economic forecasts would have to be undertaken. This could create uncertainty at a time when a second Publication version of the South Oxfordshire Local Plan is being considered. This would be a new risk at that time.

83. In addition, if the Council sought to pursue a lower housing number at this stage, this would contradict the direction currently under discussion regarding the Oxfordshire housing and growth deal, which has now been signed by all Oxfordshire Districts, and could have a direct impact upon this.

Conclusion

84. Cabinet is asked to consider the updated information available and to recommend to Council on which option to adopt to progress the Local Plan.

Appendices

1. Representation to SODC LP on behalf of Martin Baker dated 30/11/2017
2. Letter on behalf of Martin Baker dated 5/12/2017
3. Letter from Homes England dated 16/01/2018
4. SODC response to Homes England 09/02/2018
5. Letter from Homes England and attachments 15/02/2018
6. SODC response to Homes England dated 27/02/2018
7. SODC letter to Homes England dated 05/03/2018
8. Letter from Homes England dated 06/03/2018
9. Representation to SODC LP from Oxfordshire County Council dated 30/11/2017
10. SODC letter to Oxfordshire County Council dated 27/02/2018
11. CONFIDENTIAL Legal Advice - subject to legal professional privilege

Background Papers

None