

# Cabinet Report



Listening Learning Leading

Report of Head of Planning

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To: CABINET

Date: 5 March 2020

## South Oxfordshire Local Plan 2034 - options to progress

### Recommendations

That Cabinet recommends to Council to:

- (a) note the update on the submitted Local Plan 2034 and related matters set out in the report,
- (b) leave the submitted Local Plan 2034 at examination and confirms this position to the Secretary of State for Housing, Communities and Local Government.

### Purpose of Report

1. To report to councillors on the discussions with the Ministry of Housing Communities and Local Government (MHCLG); updates on the submitted Local Plan 2034 and related matters; and to consider, having assessed the risks, which option to progress for the submitted Local Plan 2034 (Local Plan).
2. Currently the Council cannot take any step-in connection with the adoption of the submitted Local Plan 2034 owing to a Temporary Direction being in place. However, following discussion with MHCLG and confirmation that the Secretary of State maybe minded to withdraw the Temporary Direction before this Cabinet meeting on 5 March, councillors will be able to consider this report on the Local Plan without being in breach of the Temporary Direction.

## Corporate Objectives 2016 - 2020

3. The submitted Local Plan contributes towards four of the Council's six strategic objectives:
  - invest in the district's future;
  - unlock the potential of Didcot;
  - homes and jobs for everyone; and
  - build thriving communities.

## Background

### Previous Cabinet Recommendation

4. Officers reported to Cabinet on 3 October 2019 regarding progress on the Housing Infrastructure Fund (HIF) and provided three options to progress the submitted Local Plan. These options were:
  - a) continue submitted Local Plan at examination,
  - b) withdraw submitted Local Plan and progress a revised version of the Local Plan through consultation and
  - c) withdraw submitted Local Plan and start a new plan.

Cabinet resolved, in summary, to recommend to Council that it wanted to withdraw the Local Plan and start a new plan as soon as practicable. The Cabinet report and resolution is attached as Appendix 1.

### Temporary Direction

5. Council was scheduled to consider the Cabinet recommendation on 10 October 2019. However, on 9 October, the Secretary of State issued the Council with a Temporary Direction under Section 21A of the Planning and Compulsory Purchase Act 2004 (as amended).
6. This means, whilst the Secretary of State considers his next steps, the Council cannot take any steps in connection with the adoption of the submitted Local Plan, and the submitted Local Plan has no effect while the Temporary Direction is in force.

### Oxfordshire County Council Decision

7. Oxfordshire County Council received a letter on 3 February from MHCLG regarding discussions on a potential invitation from the Secretary of State to prepare and potentially approve South Oxfordshire's Local Plan. The County Council considered this at a meeting on 11 February and how to respond in the event of an invitation by the Secretary of State. The County Council resolved that if they were invited to prepare the Local Plan, they would accept the invitation, subject to financial assurance that all costs would be reimbursed.

## Oxford City Local Plan

8. One of the influences on Cabinet's recommendation in October 2019 was the uncertainty regarding Oxford City unmet housing need. Since Cabinet made its recommendation, there has been a change in circumstances regarding the Oxford City Local Plan. The Oxford City Local Plan examination has progressed to the next stages, with hearing sessions held in December 2019. The Inspectors provided their interim conclusions to the City Council in January 2020. The Inspectors' interim conclusions made it clear that their preliminary view was the calculations of the overall housing need and supporting documents were sound. Oxford City Council, on behalf of the Inspectors, are currently consulting on main modifications from 14 February to 27 March 2020.

## Activities since the Temporary Direction

### Correspondence and meetings in relation to the Direction

9. Since the Secretary of State issued the Temporary Direction on the 9 October 2019, there have been a number of meetings and various exchanges of correspondence between officers, the Leader of Council and MHCLG.
10. To view the correspondence, please refer to the Council's website at the following link <http://www.southoxon.gov.uk/services-and-advice/planning-and-building/planning-policy/local-plan-2034>

### Housing Infrastructure Fund (HIF) Update

11. At a meeting on 15 October 2019, Oxfordshire County Council's Cabinet resolved to authorise the County Council's Chief Executive in consultation with a cabinet member and the Leader of the County Council to approve the grant determination agreement, subject to confirmation from Homes England that the contract pre-conditions relating to the South Oxfordshire Local Plan had been met. Homes England have not yet signed the agreement.

### The Oxfordshire Plan 2050

12. South Oxfordshire District Council has continued to engage actively in the production of the Oxfordshire Plan 2050, including attendance at the regular officer liaison meetings, Duty to Cooperate meetings and the councillor Oxfordshire Plan Sub-Group meetings. Officers have been proactively involved in the production of tender briefs for specialist evidence-based work streams and the assessment of the subsequent tender submissions, appointments and steering groups.
13. More recently, on 17 February 2020, a round table session on the Oxfordshire Plan 2050 was held to update councillors on the progress and scope of the Oxfordshire Plan 2050.

### Local Plan examination

14. Officers have continued to verbally update the Local Plan Programme Officer appointed to oversee the Local Plan examination. Officers also wrote to the Inspectors via the Programme Officer on 13 February 2020 to confirm that the

Temporary Direction was still in place and that there continued to be constructive dialogue between officers, councillors and MHCLG.

## **OPTIONS TO PROGRESS THE SOUTH OXFORDSHIRE LOCAL PLAN**

15. There are two options that officers believe would be currently open to the Council in relation to the Local Plan.
16. Councillors will recall from previous Cabinet Reports of July and October 2019, that there were three options presented with their associated advantages and risks. These were: Option A (continue submitted Local Plan at examination), Option B (withdraw submitted Local Plan and progress a revised version of the Local Plan through consultation) and Option C (withdraw submitted Local Plan and start a new plan). However, two of these options (B and C both involving withdrawing the Local Plan) may no longer be practical or prudent given the Secretary of State's clear intention to intervene to prevent this from happening. The Temporary Direction and correspondence with MHCLG leave little doubt that the plan will be progressing through examination, with or without the Council's support and involvement.
17. Notwithstanding the above comments, officers believe the Council now has two options which are as follows:  
  
Option A) leave the submitted Local Plan to continue through its examination;  
  
Option B) withdraw the Local Plan from examination.

### **Option A – support the submitted Local Plan to continue through its examination**

18. Option A would allow the submitted Local Plan to continue through its examination, with South Oxfordshire District Council participating in the process. There may be a conditional letter from the Secretary of State about the Councils approach towards the progression of the examination, particularly around the development of new evidence that could harm or undermine the Local Plan, which would not be considered appropriate.
19. The Local Plan examination has been on hold since the Secretary of State issued the Temporary Direction. The timetable for the submitted Local Plan at examination is steered by the Planning Inspectors. Although the appointed Inspectors for the examination provided the Council with some initial questions prior to the Temporary Direction, the Inspectors have not issued their Matters nor a timetable for the hearing sessions. The Council has not been able to respond to the Inspectors' questions because the Temporary Direction prevents the Council undertaking work on the Local Plan.
20. If the Secretary of State withdraws the Temporary Direction and no new Direction is given, the Local Plan examination could progress swiftly without further delay. Subject to the Inspectors' management of the process, we could potentially see an Inspectors' Report in late autumn, with adoption of the Local Plan by the end of the year, December 2020.
21. By progressing with the Local Plan examination under Option A, the Council would be recognising that this will allow Councillors' concerns about the Plan (for instance

the scale of growth and weight given to responding to the climate emergency) to be rigorously and independently tested by the local plan Inspectors.

22. This option also recognises that the Council's planning policy officers are best placed to take the Plan through examination, given they developed the draft Plan and have the best experience, local knowledge, depth of information of sites, understanding of issues and awareness of community concerns to bring to the examination process. The staffing of other options is uncertain.

### **Option B – withdraw the Local Plan**

23. Option B would seek the withdrawal of the Local Plan from examination. However, it is highly likely that if this Option is taken, it will result in another intervention by the Secretary of State, which could be wider than just the Local Plan. Although there are several types of intervention available, (e.g. just the local plan, plan-making, planning function), not knowing which one he would take, would delay progress of the examination and we would be vulnerable to more significant interventions which could have serious implications for the Council. The delay would also mean the commencement of any new local plan would be significantly delayed.

### **Advantages and Risks**

24. The advantages and risks of both options are set out below, and also in a tabulated form at Appendix 2.
25. All advantages and risks identified for Option B are based on the assumption that the Secretary of State will intervene, which is based on correspondence from both the Secretary of State and MHCLG.

### **Shared Advantages of Options A and B**

#### Development Certainty

26. Having an adopted Local Plan in place following examination provides greater certainty to all interested parties, local communities and businesses as to where and when new development will take place and certainty for neighbourhood development plans. It gives the Council greater influence over where development will take place, reducing the prospect for planning by appeal (speculative development) and associated costs.
27. The Core Strategy (2012) was adopted 8 years ago. There is a requirement in the National Planning Policy Framework (NPPF) (paragraph 33) to review local plans at least every 5 years. This is to ensure that the policies take into account any changes in circumstance affecting the area and/or any changes in national policy and guidance. The NPPF requires strategic policies to look ahead over a minimum 15 year period from adoption (paragraph 22), therefore, the Core Strategy runs to 2027. However, this has no bearing on whether a Plan is considered up to date.

#### Didcot Garden Town

28. The Garden Town Status of Didcot is underpinned by a commitment to deliver 15,000 homes by 2031. Proceeding with examination under these options provides the greatest protection to Garden Town Status. At this time, the Council is eligible for grant funding from Homes England to support and advance the garden town

implementation work. Having a Local Plan in place gives the Council a better opportunity for successful future funding bids.

Community Infrastructure Levy (CIL)

29. Continuing with examination under either option will enable the Council to update its CIL and capture land value increases.

Oxfordshire Housing and Growth Deal

30. The Deal agreed by all Councils and MHCLG provides funding towards some infrastructure projects in South Oxfordshire, such as at Watlington, Benson and Didcot. By continuing the examination under either option, the risk to the Deal is limited.

**Shared Risks of Option A and B**

Evidence Base

31. As time has progressed a number of evidence base documents are becoming more dated. They are likely to be satisfactory for the current examination, but this is a risk for examination.

**Advantages of Option A**

Local Democracy

32. Option A is likely to be the only option where the Council retains the authority to fully participate over the production, examination including modifications, and adoption of the Local Plan.

Timescales

33. Option A is the quickest and most certain route to an up to date Local Plan and to update the strategic policies of the Core Strategy (2012).
34. It is more likely under Option A that the Local Plan examination will precede the publication of the Oxfordshire Plan 2050 evidence base. This would minimise risk of it undermining the Local Plan and associated evidence base.

Duty to Co-operate

35. Since the previous Cabinet report dated 3 October 2019, the Oxfordshire authorities continue to support the Local Plan remaining at examination and leaving the Plan at examination under Option A helps to demonstrate that we have met the legislative requirements of the Duty to Cooperate.

Local Plan Soundness

36. Officers' believe the submitted Local Plan is legally compliant and it is sound.

**Risks of Option A**

Local Plan Soundness

37. There is a low risk that the submitted Local Plan is found unsound by the Inspectors, however Inspectors can, and do usually suggest Modifications to make the Local Plan sound if asked to do so by the Council and we have requested this. If the submitted Local Plan is found to be sound and is adopted or approved, there is a period of 6 weeks, post adoption, where the Plan is subject to legal challenge at the High Court. This is an inherent risk within any local plan process.

### **Advantages of Option B**

#### Cabinet Recommendation

38. Option B is more closely aligned with Cabinet's recommendation to Council on 3 October 2019.

#### Housing Infrastructure Fund (HIF)

39. If Oxfordshire County Council are invited to prepare and adopt the Plan under Option B, they, as custodians of the HIF, could be well placed to implement it, giving assurance to Government and our communities relying on HIF schemes being implemented.

#### Legal challenge to adoption

40. If the submitted Local Plan is found to be sound, it could be adopted or approved by another body. There is a period of 6 weeks, post adoption, where the Plan is subject to legal challenge at the High Court. In these circumstances, as the Council would not be the decision maker, any associated legal and financial risks would sit with the other body and eventually be reimbursed by the Council.

### **Risks of Option B**

#### Local Democracy

41. Option B is likely to trigger an intervention from the Secretary of State. Local decision making on the Local Plan (through examination and for adoption) would be lost. The Secretary of State can ask Oxfordshire County Council or another body to prepare and potentially approve the Local Plan. The County Council have determined that if asked by the Secretary of State, they will accept this invite.
42. There is a risk that another body recommends main modifications to the plan that are found sound, and these conflict with the Council's priorities.

#### Timescales

43. Option B would likely delay the examination of the Local Plan.

#### Duty to Cooperate

44. Option B could have a negative impact on our working relationships and reputation with neighbouring authorities, in particular Vale of White Horse District Council with shared officers for both Councils, as well as impacting on relationships, reputation and partnerships with Government and our communities. This could harm any successful outcome of future funding bids.

Local Plan Soundness

45. As stated above, an advantage of Option A is that officers' consider the submitted Plan to be sound. The soundness of the Plan is less certain under Option B as another body may not have the in-depth knowledge and background to justify policies that may undermine its soundness.

Legal challenge to adoption

46. If the submitted Local Plan is found to be sound the Secretary of State could ask the Council to consider adopting the Plan. There is a period of 6 weeks, post adoption, where the Plan is subject to legal challenge at the High Court. In these circumstances, the Council would be the decision maker and any associated legal and financial risks would sit with the Council.

Development Certainty

47. Option B is likely to delay the examination and the adoption of the Local Plan more than it would be under Option A. This may increase speculative planning applications, despite the Council having a strong five year housing supply. This could lead to planning appeals and associated applications for costs against the Council for perceived unreasonable behaviour.

Neighbourhood Development Plans

48. The risk is that uncertainty for Neighbourhood Development Plans will be more protracted under Option B that it would be under Option A.

Community Infrastructure Levy (CIL)

49. The risk is that an update to CIL will be more delayed under Option B that it would under Option A

Housing Infrastructure Fund (HIF)

50. The risk is that implementation of HIF could be slightly more delayed under Option B that it would be under Option A.

**Assessment of Options**

51. It is highly likely that regardless of whether the Council takes Option A or B, the result will be the continued progression of the Local Plan examination.
52. Progressing the Local Plan brings some important advantages. These include providing greater certainty to our communities, partners and neighbourhood plan steering groups about development in the District, and a lower risk of speculative applications and resultant appeals which are not policy complaint, unpopular with communities, and expensive and resource-hungry to service.
53. Option A is likely to be the quickest and most certain way to ensure that we have an up-to-date Local Plan since we adopted the Core Strategy in 2012.
54. Importantly Option A is likely to be the only option whereby the Council retains the authority to fully participate in the production, examination, modifications process, and adoption of the Local Plan.

55. Option B is more closely aligned with the Cabinet's previous recommendation to Council to withdraw the Local Plan; however, this option would likely trigger intervention from the Secretary of State and result in local decision-making on the Local Plan being lost. Oxfordshire County Council have determined that if asked they will accept an invitation from the Secretary of State to prepare and potentially adopt the Local Plan. There is a risk that another body recommends main modifications to the plan that are found sound and that could conflict with the Council's priorities.
56. Another key risk of Option B is that a Council decision for this option could have negative impact on our working relationships and reputation with neighbouring authorities, government and our communities.
57. If Option B is agreed and the Secretary of State invites Oxfordshire County Council to prepare and potentially adopt the Local Plan, all the costs incurred by the County Council could be reclaimed from this Council. We have no indication of what this might be, but it would be significant and could be beyond the Council's control, creating risks to the budget.
58. Option A is the quickest route to commencing a new local plan beyond the Local Plan 2034. The consequences of Option B are likely to mean a longer period before the Council could commence a new local plan.
59. Officers believe that the advantages and risks of Option A outweigh those of Option B and therefore, officers recommend Option A.

### Modifications

60. The Inspectors may suggest modifications to the plan through the course of the examination and the limitations of this process was set out in the previous Cabinet report, 3 October 2019.
61. Option A would give the Council the opportunity to recommend modifications following the Inspectors' questions and the outcome of the hearing sessions. Officers have already started a Schedule of Modifications following the Regulation 19 consultation.
62. Officers understand that Councillors have concerns with certain aspects of the Plan as described in previous reports, e.g. Cabinet 3 October 2019 and a letter from the Leader of Council to the Secretary of State, dated 17 January 2020.
63. To assist, officers will explore with Councillors how some of the concerns can be addressed through potential modifications through the examination process. However, councillors must be aware that such modifications must be made for soundness or legal reasons and it is at the discretion of the Inspectors whether they are agreed.

### **Financial Implications**

64. Any decision that has financial implications must be made with regard to the knowledge of the Council's overarching financial position.
65. The preparation of the Local Plan is primarily undertaken by the Planning Policy team and is supported by the production of an extensive evidence base with

significant input from other areas of the Council. Option A, to continue with the examination, would be met from the existing Planning Policy budget. Option B has unknown costs and it is not known if these can be met from the existing Planning Policy budget.

66. If the Secretary of State intervenes following a recommendation of Option B, the Council would be responsible for the costs associated with examination. At this time, it is unknown what form this intervention may take and therefore there is no precise estimate as to any costs that might be incurred. If the Secretary of State were to invite the County Council to prepare and potentially adopt the Plan then it is known from the letter of 3 February 2020 from the Director General of Decentralisation and Growth to the Chief Executive of the County Council that their costs would be fully recoverable. However, these costs could be a significant amount and it provides uncertainty for the Council.

## **Legal Implications**

67. The Publication version of the South Oxfordshire Local Plan has been produced under regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (“Local Planning Regulations”).
68. Councils 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 councils to notify and invite comments from a range of specified persons and organisations on their development plan proposals.
69. In the absence of an up to date local plan, our ability to decide the type and location of development that comes forward is significantly weakened. There is a requirement to review local plans every five years. The Core Strategy was adopted in 2012.

## Local Plan Intervention

70. The Temporary Direction was initially made under the provisions of Section 21A of the Planning and Compulsory Purchase Act 2004 (as amended). This means that the submitted plan has 'no effect whilst the direction is in force', this is set out in Section 21A(2) of the Planning and Compulsory Purchase Act 2004 (as amended).
71. The Secretary of State is also considering the use of powers under Section 27 of the 2004 Act. Section 27(1) and (2) of the 2004 Act provides:
- “(1) This section applies if the Secretary of State thinks that a local planning authority are 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.
- (2) The Secretary of State may— (a) prepare or revise (as the case may be) the document, or (b) give directions to the authority in relation to the preparation or revision of the document.”
72. Furthermore, he could exercise powers under Section 27A of, and paragraph 7B of Schedule A1 to, the 2004 Act and invite Oxfordshire County Council to prepare the Plan. Paragraph 7B of Schedule A1 to the 2004 Act provides:

“If the Secretary of State—

(a) thinks that a lower-tier planning authority are 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, and

(b) invites the upper-tier county council to prepare or revise the document, the upper-tier county council may prepare or revise (as the case may be) the development plan document.”

#### Power to withdraw the Local Plan

73. Section 22 of the Planning and Compulsory Purchase Act 2004 provides the mechanism for a local planning authority to withdraw a local plan at any point before adoption.
74. Officers believe that any decision to withdraw the plan should be based on sound planning reason(s) with a robust rationale.

#### Duty to Cooperate

75. Section 33A of the Planning and Compulsory Purchase Act 2004 (as inserted by the s110 of the Localism Act 2011) (“S.33A”) 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.
76. If the person(s) appointed to carry out the independent examination considers that the council has not complied with its duty under S.33A in relation to the preparation of its local plan, the person can neither recommend adoption nor modifications and in such cases, and the Council cannot then adopt the Local Plan.
77. The legal Duty to Cooperate will be examined by the appointed Inspectors in the examination. Relevant matters under the Duty would include the unmet need from neighbouring Oxford and infrastructure opportunities provided by the Growth Deal.

#### **Conclusion**

78. Cabinet is asked to note the updated position in relation to the Local Plan.
79. This report sets two options available to councillors with the associated advantages and risks. It also identifies the potential for modifications through the examination process. Cabinet is asked to consider the two options set out in this report and to make any recommendations to Council.
80. There are more advantages and less risks for Option A when compared to Option B, and significant uncertainties about the consequences of Option B. Therefore, officers recommend Option A.

## **Appendices**

1. Report to and decision of Cabinet of 3 October 2019
2. Advantages and risks to options A and B (Table)

## **Background Papers**

1. Report to and decision of Council of 18 July 2019
2. Report to and decision of Council of 20 December 2018
3. Report to and decision of Council of 28 September 2017
4. [Didcot Garden Town Housing Infrastructure Fund \(HIF\) Heads of Terms/Contract](#)
5. Oxford City Inspectors' Interim conclusions