

# Cabinet Report



Listening Learning Leading

Report of Head of Planning

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To: CABINET

Date: 8 December 2020

## South Oxfordshire Local Plan 2035 adoption

### Recommendations

Cabinet to recommend to Council:

- (a) to adopt the South Oxfordshire Local Plan 2035, as set out in Appendix A to this report and modified by the Schedule of Main Modifications in Appendix B and the Schedule of Minor Modifications in Appendix C, and the updated Policies Map in Appendix D.
- (b) to delegate authority to the Head of Planning, in consultation with the Cabinet Member for Planning, to make any necessary further minor modifications prior to publication of the South Oxfordshire Local Plan 2035, and any further updates to the Policies Map.

### Purpose of Report

1. To progress the South Oxfordshire Local Plan 2035 to adoption in order to provide a new development plan document for making planning decisions.

## Corporate Objectives

2. The South Oxfordshire Local Plan 2035 was developed under different Corporate Plan priorities. However, the adoption of the Local Plan will help deliver along a number of the new Corporate Plan 2020-2024 themes:
  - Improved economic and community wellbeing
  - Homes and infrastructure that meet local needs
  - Protect and restore our natural world
  - Action on the Climate Emergency

## Background

3. The Council is under a statutory duty – pursuant to the Planning and Compulsory Purchase Act 2004 - to prepare a development plan for its area.
4. A local plan is important because it is the starting point in making decisions on planning matters including applications: planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
5. Under regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans every 5 years from their adoption date to ensure that policies remain relevant and effective.
6. The new Local Plan, once adopted, will replace the South Oxfordshire Core Strategy which was adopted in December 2012, and the saved policies in the South Oxfordshire Local Plan 2011, which was adopted in 2006. South Oxfordshire's plan is therefore overdue for replacement.
7. The Local Plan 2035 covers the full range of planning policy topic areas: planning for homes, jobs, retail, climate change, biodiversity and the protection of the district's nationally and locally important assets. It contains strategic policies, land allocations, a policy framework for neighbourhood plans, and development management policies.
8. Unlike previous local plans which had a housing target provided by a higher tier statutory plan (e.g. the Oxfordshire Structure Plan or the South East Plan), this new local plan was produced under the national system where a district determines its own housing number and has a Duty to Cooperate with neighbouring authorities. Meeting the Duty to Cooperate is a key test for a local plan at examination; failure to meet it is a reason several plans across the region have failed. In our case the Council has cooperated closely with neighbouring authorities. The housing number was developed through the Oxfordshire Strategic Housing Market Assessment (SHMA, 2014), produced jointly with the other Oxfordshire authorities. The Plan allocates sufficient land to meet the district's housing needs identified in the SHMA and agreed in the Oxfordshire Growth Deal. It also contains the agreed amount of housing to meet our proportion of Oxford's unmet housing need.

***Plan preparation stage***

9. The Council began preparing the new Local Plan in 2014.
10. The Plan is supported by an extensive evidence base, with around 120 technical studies on the district's future needs and the Plan's impacts<sup>1</sup>. These range from housing needs to transport assessment, infrastructure delivery plans, assessment of flood risk, ecology and village facilities.
11. The Plan has been through seven rounds of public consultation and refinement (the normal number is two or three rounds).

***Examination stage of the Local Plan***

12. Council approved the submission of the Local Plan to the Secretary of State for independent examination on 20 December 2018. The Plan was submitted for examination on 29 March 2019, and in accordance with section 20(7C) of the 2004 Act, the Council requested the Inspector to recommend any modifications necessary to make the Plan sound. Meeting the end of March 2019 submission deadline was a requirement of the Oxfordshire Housing and Growth Deal. When the current administration was formed, Cabinet made a recommendation to Council to withdraw the Local Plan. Prior to Council considering the matter, the Secretary of State (SoS) stepped in and issued a Temporary Direction on 9 October 2019. This was followed by a SoS Direction on 3 March 2020 to the Council to progress the Plan through examination and adoption by December 2020, and to report monthly to MHCLG officials on progress of the Plan. This monthly monitoring has taken place, the Plan has been through examination, and work is on track for the Council to take a decision on adoption in December 2020.
13. The Local Plan has been examined by an independent Inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. The tests of soundness are set out in the NPPF at paragraph 35: plans are sound if they are positively prepared, justified, effective and consistent with national policy. An Examination in Public was held in July-August 2020. The Council broke new ground as this was the first virtual local plan examination to be held in the UK. The hearings were livestreamed on the internet and there were over 15,000 views over the four weeks of the hearings. Over 2,000 people watched live the session on the spatial strategy. The technology meant that far more people were involved than a conventional physical hearing, and this was widely viewed as a success for the Council.
14. As is normal for a local plan, the content of the Plan has evolved to some extent during the examination. As part of the local plan publication stage (January-February 2019), the public were invited to set out their concerns and propose modifications to the Plan. The Inspector also gave officers of the Council the opportunity to suggest modifications to the Plan before the hearings and to discuss these during the hearings. Where these involved 'main modifications' the Inspector made it clear which were required to make the Plan 'sound'. The Council was also able to make 'minor modifications' (for example minor updates and corrections). Minor modifications are changes which "do not

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<sup>1</sup> These are available to view in the [Submission Document Library](#).

materially affect the policies that would be set out in the document if it was adopted with the main modifications but no other modifications”<sup>2</sup>.

15. After the virtual hearings the Local Plan Inspector issued a letter entitled ‘Inspector’s Preliminary Conclusions and Post-Hearings Advice’ on 28 August 2020. This set out the more significant Main Modifications that the Inspector identified as necessary to make the Plan sound. He invited the Council to prepare and consult on Main Modifications to address these and gave instructions on what these should contain.
16. The Council held a six-week public consultation on the Main Modifications to the Plan between 21 September and 2 November 2020. Following the end of the Main Modifications consultation, the Council collated all the representations that were received and sent these to the Inspector for his consideration. A total of 259 respondents participated in the Main Modifications consultation collectively making a total of around 1,170 comments. This is fewer responses than were received at previous consultation stages of the Local Plan (for example 2,561 respondents made 17,136 comments at the Regulation 19 stage in Jan-Feb 2019). The Main Modifications consultation responses are available on the Council’s [Forthcoming Local Plan webpage](#). Prior to the Inspector issuing his final Report containing his recommendations, there was a quality assurance check (peer review) by the Planning Inspectorate and a fact check of the draft Report by the Council, with officers feeding back any factual changes to the Inspector.
17. The Inspector has issued his final report to the Council, published on the Council website on 30 November 2020. The report concludes that, with the recommended Main Modifications, the Local Plan satisfies the requirements of Section 20(5) of the Planning and Compulsory Purchase Act 2004 and meets the criteria for soundness in the National Planning Policy Framework. The Inspector’s Report is attached as Appendix E. The formal issuing of the Inspector’s Report marks the end of the examination, and start of the next phase, consideration of Plan adoption.

***Modifications made to the Plan during the examination***

18. With the Main Modifications, the Local Plan is now different from the Plan submitted for examination in 2019. While all the strategic site allocations remain in the Plan, there are some notable changes resulting from the participation of councillors, officers, stakeholders and members of the public at the Regulation 19 stage (Jan-Feb 2019) and during the examination. Some key changes now in the Plan are set out below:
  - a) A new local plan should plan ahead for 15 years from the date of adoption, so the end date for the new South Oxfordshire Local Plan has been extended to run until 2035. This meant adding an extra year’s worth of housing requirement to the plan (775 homes) in Policy STRAT2. However, no new site allocations needed to be added because the Plan already proposed strategic allocations which would deliver beyond the end of the Plan period (2035).
  - b) The policy on density STRAT5 has been reviewed and changed from requiring relatively high minimum densities to be achieved in new development (for example 70 dwellings per hectare in major centres, sustainable transport hubs and at two of the edge of Oxford strategic allocations) to a policy that now requires proposals to optimise the density, with an expectation that well-located sites will achieve

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<sup>2</sup> S.23(3)(b) of the Planning and Compulsory Purchase Act 2004

densities of more than 45 dwellings per hectare unless there is a clear conflict with delivering a high-quality design or other clearly justified planning reasons for a lower density. This helps address concerns raised about new development fitting in with the character of South Oxfordshire's towns and villages.

- c) Policy H9 on affordable housing has been modified to require 40% affordable housing to be delivered for developments in the C2 Use Class (care homes) where these are for self-contained units. This addresses concerns that South Oxfordshire has been attracting retirement living schemes that did not contribute towards meeting the needs of those unable to afford to buy.
- d) The process for masterplanning the strategic sites and other major developments including in the garden communities (Didcot and Berinsfield), has been improved. Changes to Policy STRAT4 require each development to provide low carbon development and renewable energy, while changes to Policy DES4 include a new requirement to involve the community and other stakeholders in the masterplanning process. This will help both the sustainability of the design and the integration of the proposed developments.
- e) Climate change has been brought into sharper focus in the period since the Plan was submitted in March 2019. The Council declared a climate emergency on 11 April 2019 and then in October 2019 passed a motion to aim for net-zero carbon emissions for the whole district by 2030. The Plan has been amended through the examination process and now contains new provisions on climate change, including climate change forming a key part of the Plan's spatial strategy. There is also an amended Policy DES9 on Promoting Sustainable Design, an amended DES10 on Renewable Energy, and a brand new Policy DES11<sup>3</sup> on Carbon Reduction which sets out higher requirements than the Building Regulations. DES11 establishes the stringent reductions in carbon emissions as soon as the Plan is adopted, and progressively tightens these reductions until 31 March 2030 when net zero carbon is required. This new Policy DES11, which was not in the 2019 submission plan, will see an improvement on the environmental performance of new developments than is currently being required or achieved. It set the highest standards in Oxfordshire (jointly with Oxford City) for carbon reduction in new buildings. The Plan also now contains a new Appendix 16 which sets out how climate change is addressed in the Plan.
- f) Firmer requirements for net biodiversity gain on the strategic allocation sites, with bespoke proposals set out for each site.

## **Options**

- 19. The choices available to the Council at this stage are restricted to the binary options of adopting the Local Plan (with the Main Modifications) or not adopting the Local Plan.
- 20. The Council is not entitled - as a matter of law - to make further Main Modifications to the local plan. There is also no middle ground option of adopting parts of the Plan.
- 21. The Inspector's Report must be given strong consideration in the adoption decision. The merits of the Plan's policies and strategic site allocations are all matters that have been considered at depth through the examination in public. The content of the Plan

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<sup>3</sup> DES11 will be re-numbered DES10 in the final plan

and its soundness is the remit of the Inspector at this stage, not the Council. The decision of Council must be to adopt the Plan, subject to the Main Modifications set out by the Inspector, or not to adopt it with reasons.

***Merits of adopting the Local Plan***

22. There are a number of positives that would arise from the Council deciding to adopt the Local Plan. Having an adopted Local Plan in place provides greater certainty to all interested parties, including local communities and businesses, about where new development will take place. It gives the Council greater control over the location and quality of development, reducing the prospect of speculative development and for planning by appeal. Adopting the Local Plan provides greater control to the Council, provides certainty and potentially reduces the number of future speculative planning applications and costly planning appeals.
23. The climate change provisions of the new Local Plan (see paragraph 18e) would be an improvement on the situation without the new Plan. Currently the Council's planning decisions do not require new homes to be any greener than the standards set by the Building Regulations 2013. Under the new Plan, Policy DES11<sup>4</sup> will immediately require at least a 40% reduction in the carbon emissions from a code 2013 Building Regulations, then the requirement will increase from 31 March 2026 to at least a 50% reduction in carbon emissions, and again from 31 March 2030 to a 100% reduction in carbon emissions (zero carbon). However, officers acknowledge that the climate change provisions of the Plan are stepped over time and do not require zero carbon in new developments until 2030. Therefore, some non-zero carbon new development will have been built in the intervening years to 2030, which will make the Council's target for a carbon neutral district by 2030 more challenging to meet. On balance, the situation will be improved with the adoption of the new Plan (a 40% reduction straight away) compared with not adopting the Plan (no improvement over current Building Regulations).
24. The Plan provides for a large number of affordable homes to be built in South Oxfordshire. The Plan sets the framework for the delivery of approximately 11,300 new affordable homes over the plan period. These will be homes for sale or rent, for those whose needs are not met by the market. The affordable housing policy H9 seeks 40% of all new homes on qualifying sites to be affordable, and this now includes self-contained accommodation in the C2 use class such as retirement living. It also makes provision for self-build and custom-build, requiring 3% of all homes delivered on the strategic allocation sites to be self-build and custom-build plots.
25. In terms of housing supply, the new allocations in the Plan inject a large amount of new supply which will maintain the supply going forward to 2035. Without the new Plan, the Core Strategy allocations will start to dwindle through being built out, eventually affecting the district's 5 year housing land supply position. Although under new Plan Policy STRAT2 the annual housing requirement figure rises to 900 homes per annum (for the period to 2025/26), then 1,120 homes per annum (for 2026/27 to 2031/32) and then drops to 1,110 for the final years (2032/33 to 2034/35), this is lower than the number of homes built in the last few years in South Oxfordshire, which was 1,361 in 2018/19 and 1,477 in 2019/20.

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<sup>4</sup> re-numbered DES10

26. There are also wider considerations in favour of adoption beyond the content of the Plan. Decision-making in respect of this Plan would remain with the Council. Future plan-making should also remain with the Council. Reputational damage would be avoided with central government. Shared agreements with other Oxfordshire authorities e.g. the funding for infrastructure to support the development in the Plan through the Housing & Growth Deal and the Housing and Infrastructure Fund (HIF) (which the Council has previously publicly acknowledged its support for) would not be jeopardised along with any future funding opportunities.
27. Having a recently adopted Plan with up to date policies would avoid debate on whether a plan or its policies are up to date (important for Council success at appeals). If the Plan is adopted swiftly the Council will be able to move on to preparing the next plan aligned with the Council's new Corporate Objectives 2020-2024.
28. With Government reforms to the planning system on the horizon there would be advantages to adopting an up-to-date local plan before the system changes to, for example, a zoning-based plan (growth, renewal, protection zones) designed to further increase the quantity and pace of development. Under the suggested transitional arrangements, having a recently adopted Plan would put the Council into a category of qualifying for a 42-month period for producing and adopting a new style local plan, rather than a 30-month period.
29. Some neighbourhood plan examinations are currently underway and awaiting the outcome of the Local Plan. These can be concluded once the Local Plan is adopted (e.g. Wallingford), ensuring that affected neighbourhood areas can start to gain the advantages e.g. higher CIL revenue and having a plan with robust policies and reasonable longevity. The emerging neighbourhood plans have all been prepared to be in general conformity with the Local Plan 2035, not the Core Strategy. If Local Plan adoption is delayed, progress on neighbourhood plans currently at examination may be affected (timetable slippage, lack of new parent plan). It would also affect the longevity of neighbourhood plans: if they are modified and then 'made' based on the Core Strategy, when a (delayed) Local Plan is adopted at some future point, the Local Plan would be the latest plan and could supersede some policies in neighbourhood plans.

## **Financial Implications**

30. There are no immediate financial implications flowing from the adoption of the Local Plan, as they can be funded from within the existing planning policy budget.
31. If the decision taken is not adopt the Local Plan, there would be potential financial implications and risks. Firstly, the Council could be challenged in the High Court and exposed to the risk of having to pay the legal costs of third parties. The Council could face penalties in terms of powers and functions being removed, with associated loss of funding and income streams. The Council could lose out on future funding opportunities. Finally, the money and time that has been spent on the Plan since 2014 (in the region of six million pounds) would have been wasted. This includes the costs of staff time, evidence base studies, consultation costs, examination costs and legal costs. Preparing a local plan is a significant financial investment for a Council.

## Legal Implications

32. The adoption of a Local Plan is governed by s.23 of the Planning and Compulsory Purchase Act 2004 and regulation 26 of the Town and Country Planning (Local Planning) (England) Regulations 2012.
33. As the examination process is complete, adoption is the final stage of putting a Local Plan in place. This requires confirmation by a meeting of the Full Council [Regulation 4(1) and (3) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000].
34. On adopting a Local Plan, the local planning authority has to make a copy of the Plan, an adoption statement and the Sustainability Appraisal publicly available as soon as reasonably practical in line with regulations 26 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.
35. It is important to meet the December deadline for a decision on adoption. It is reasonable to assume that the Secretary of State would consider the further exercise of his powers to intervene in the Plan making process if this deadline is not met.

## Risks

36. The risks of taking a decision to adopt the Local Plan are low. The Plan as modified has been found sound by the Inspector. It should be noted that, whilst the risk is low, there is a six week window for an aggrieved party to challenge the decision to adopt the Local Plan. Should this occur, officers will communicate with Councillors as appropriate.
37. The risks of taking a decision not to adopt the Local Plan are high. The SoS has power himself to step in and approve the Local Plan, or to pass that decision of approval to Oxfordshire County Council. The County Council has previously agreed, in the event of an invitation by the Secretary of State, to progress our Local Plan, subject to the recovery of its costs<sup>5</sup>. The consequences of non-adoption are potentially serious and wide ranging, not just in respect of planning powers but also in regard to wider ramifications for the Council.
38. It is the view of officers that the risks of non-adoption outweigh any perceived disbenefits of adopting the Plan. The Plan was prepared for submission and examination two years ago under the previous Council administration. It reflected the priorities of the Council at that time rather than the present Council's priorities. Officers acknowledge that some Councillors may not support some parts of the Plan, but it should be noted that significant cumulative improvements (for example on tackling climate change, masterplanning, strengthened consultation, and sustainable design) have been proposed through the Examination in Public and Modifications process, that have resulted in an improved Plan than the one that was submitted in March 2019.

## Conclusion

39. The process of preparing the Local Plan has been lengthy, of significant cost, and resource intensive. Plan preparation has included substantial community and

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<sup>5</sup> There is an extant decision taken by OCC on 11 February 2020 to accept the powers if asked by SoS to take over South Oxfordshire's Local Plan

stakeholder engagement. The Inspector has now issued his final Report, and the examination process is now formally complete.

40. The Inspector concludes at paragraph 310 of his report, that with recommended main modifications, the Local Plan is sound and capable of adoption. As outlined in this report, the Council's options are limited to either adopting the Local Plan with the modifications or not adopting the Plan with reasons. A decision to adopt would enable the Local Plan to become part of the Council's development plan and carry full weight in the determination of planning applications. It will provide a framework for development in the district and allow the Council to move on to the preparation of the next Plan. Looking to the future the Council must review the Local Plan within 5 years of adoption.
41. Adoption of the South Oxfordshire Local Plan by the Council is officers' recommended course of action.

## **Background Papers**

- None

## **Appendices**

- Appendix A – South Oxfordshire Local Plan 2034 submission version from 2019
- Appendix B – Schedule of Main Modifications, November 2020
- Appendix C – Schedule of Minor Modifications, November 2020
- Appendix D – Policies Map, November 2020
- Appendix E – Inspector's Report, November 2020
- Appendix F – South Oxfordshire Local Plan 2035 non-track changes version containing Inspector's Main Modifications and the latest work on the Minor Modifications (as a reading aid for information only, latest version, November 2020)