

Chichester District Council

Overview and Scrutiny Committee

15 September 2020

Local Plan Progress and Process

1. Contacts

Report Author:

Toby Ayling – Planning Policy Divisional Manager
Telephone: 01243 521050 E-mail: tayling@chichester.gov.uk

Nicholas Bennett – Monitoring Officer
Telephone: 01243 534657 E-Mail NBennett@chichester.gov.uk

2. Recommendation

- 2.1 The Committee is invited to note the contents of this report and make any comments.**

3. Background

- 3.1 The Council is bringing forward a review of the Local Plan. This process began with the publication for consultation purposes of the *Issues and Options* document in 2017 and the *Preferred Approach Plan* in 2018. A report on the outcomes of the second consultation was considered by Cabinet and Council in December 2019.
- 3.2 The Council has a statutory obligation to prepare a Local Development Scheme (LDS). This document sets out the current Development Plan for the Chichester Local Plan area. It provides a profile for each of the Development Plan Documents to be prepared and a timetable for each main stage of documentation production, including public consultation stages.
- 3.3 In September 2019, the Council adopted a revised Local Development Scheme which set out the following timetable for the Local Plan Review:

| | |
|--|--|
| Approval of Statutory Public Consultation DPD for consultation (Publication) | Cabinet - March 2020 Council – March 2020 |
| Statutory Public Consultation document (Reg 19) (Publication) | March – May 2020 |
| Submission to Secretary of State | June 2020 |
| Examination Hearings | September 2020 |
| Adoption | March 2021 |

- 3.4 The previous local plan was adopted in July 2015. It contains, at the direction of the Planning Inspector, an undertaking to review the Plan within five years of adoption. In addition, national planning policy states that where a plan is more than five years old, then housing need should be considered against more recent assessments of Local Housing Need.
- 3.5 The process of reviewing the adopted local plan commenced in 2016 with work on background studies including the production of the Sustainability Appraisal Scoping report. This led to an '*Issues and Options*' consultation in June 2017 which identified the broad options available to the Council for distributing development across the plan area. This was followed by consultation on the *Preferred Approach Plan* in December 2018. During this time, the Site Allocations Development Plan document was also prepared, with a consultation on the draft document in January 2016 and a *Proposed Submission* document in December 2016, with the document being adopted by the Council in January 2019.
- 3.6 The Chichester plan area is subject to a number of challenging environmental and infrastructure constraints which were highlighted in the responses to the Plan consultations and particularly to the Preferred Approach Plan, referred to in paragraph 3.5. In light of the complexities in bringing forward a review of the adopted Local Plan, the Council sought an extension to the five year deadline from the government. No extension was forthcoming but senior officers met with officials from the Ministry for Housing, Communities and Local Government (MHCLG) and the Planning Advisory Service (PAS). A PAS-sponsored advisor met with officers in November 2019 to consider the remaining work to progress the Plan as quickly as possible, and provided advice on the best way forward. In short, the advice received was that submitting a plan in line with the published timetable (i.e. June 2020) was not recommended, as:
- It will increase the risk of the Plan being found unsound at the outset, due to neighbouring authorities or others establishing the duty to cooperate has not been fulfilled;
 - It will result in increased costs and delay for the Council, due to necessary work and additional consultations being undertaken on the Plan post-submission; and
 - The implications for planning decisions through the development management process, as it will extend the period the Council is without an adopted Plan.
- 3.7 The initial advice was presented verbally to the Development Plan and Infrastructure Panel (DPIP) in January 2020, with a full report in February. The report in February 2020 included the recommendation *that DPIP notes the advice received from the Planning Advisory Service with regards to...the implications for the Local Plan Review content and timetable*. Based upon the response by DPIP members it was clear that the Planning Advisory Service advice was considered by them to be persuasive. It should be noted that another decision maker cannot act contrary to a decision of Full Council, but a delay to respond to changing events can be made without needing to return to Council where that second decision is within the delegated authority of a relevant committee or officers as in this case.
- 3.8 Following this, interested parties, including all parish councils and all organisations and individuals who commented upon the previous iterations of the Plan, were

contacted to advise them of the delay. A new Local Plan Timeline page was added to the Council's website providing updates to the anticipated timeframe for the remainder of the process for preparing the Plan, and for each stage, setting out what is needed before the process can proceed to the next stage.

4. Preparing a Plan

- 4.1 Preparing a Plan is a complex, process supported by evidence covering a wide range of social, environmental and economic issues. Unlike many other Council documents and strategies, the Local Plan is the subject of a Public Examination where that evidence is tested against relevant legislation and national planning policy.
- 4.2 Preparing a Local Plan is also an iterative process, informed by an extensive range of evidence and consultation responses at key stages. Not all the evidence and work can be undertaken concurrently – there is a sequence to the process so that each step is informed by evidence. To facilitate the review of the Local Plan timetable, the input of a specialist project planner has been secured to update the project plan and ensure key dependencies are captured.
- 4.3 Since the advice was received from PAS, significant further work has been undertaken, including refining the housing and employment needs of the plan area; the availability and suitability of land to accommodate development; water quality and waste water capacity; and strategic transport options. This work requires liaison with key stakeholders such as Southern Water, the Environment Agency, Natural England and Highways England. In some cases, delays in receiving timely information have slowed progress. However, it should be recognised that the fundamental environmental and infrastructure issues facing development in a highly constrained area like Chichester are the main reason why the Local Plan review is not yet finalised.
- 4.4 Although it is the case that the plan area is subject to significant constraints which require bespoke work to address, it should also be noted that this position is not unique to Chichester. Many planning authorities are in a similar position and this is manifesting itself in protracted Local Plan preparation timescales. It is understood that not one of Chichester's neighbouring Local Planning Authorities adopted a Local Plan review within five years, and the recent White Paper *Planning for the Future* notes it "takes an average of 7 years".

5. Oversight and decision making

- 5.1 Primary oversight of the content and progress of the Local Plan is with the Development Plan and Infrastructure Panel (DPIP). DPIP meets on a regular basis and considers reports on progress. It is consulted upon outcomes of the technical work and its views are sought on ways forward. Typically DPIP will make recommendations to Cabinet on key decisions.
- 5.2 In addition to DPIP, the Local Plan is monitored as a strategic risk. In accordance with the governance arrangements as set out in the Council's Risk Management Strategy and Policy, the Strategic Risk Group (SRG) reviews the strategic and programme board risk registers, and the high scoring organisational risk register bi-annually. The outcome of their review is then reported to the Corporate Governance

and Audit Committee. The most recent Strategic Risk Update Report was considered by the committee in October 2019.

- 5.3 The primary mechanism for the Council to set the Local Plan timetable is through the Local Development Scheme (LDS). This was most recently considered by Cabinet and Council in September 2019. There is no prescribed standard for updating the LDS – the LPA must revise it *at such time as they consider appropriate*, but it is considered that the requirement to prepare and maintain the LDS means it should be kept up to date. Because of the need for the LDS to be approved by full Council, it is often the case that the document does not contain the most recent information. For that reason planning authorities often supplement this with a more frequently updated “position statement” or note on the website. This is envisaged in the relevant legislation, which requires Local Planning Authorities to make available to the public *up-to-date information showing the state of the authority's compliance (or non-compliance) with the timetables*. The Council now has such a page on its website. Nevertheless, it is anticipated that an update to the LDS reflecting revised timescales for completion of the Local Plan review will be reported to Members by the end of this year.

6. Resource and Legal Implications

- 6.1 Members will be very familiar with the “Wednesbury” case that decision making is required to be lawful, and as for any decision by the authority this means that it has to be made based on proper, logical factual bases, by the right person or group in statutory and constitutional terms and for a proper purpose. The ways in which statutory authority are applied have been the subject of significant court consideration and the broad principle of lawful decision making was stated in a case called **Credit Suisse v Allerdale** that *“Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say it can be used only in the right and proper way”*.
- 6.2 Decisions as to who should make decisions is also established by general public law, several specific statutes including the **Local Government Act 2000, the Local Authorities (Functions and Responsibilities) (England) Regulations 2012 (SI 2000/2853) and the Executive Decisions Regulations (as amended)** along with other related legislation.
- 6.3 Operational decisions will be executive decisions to be made by Cabinet or officers in accordance with the scheme of delegation in the Constitution. The need to amend the timetable to comply with the direction of Full Council is an executive decision capable of being made by properly delegated persons. This power of delegation was set out under s.101 of the Local Government Act 1972 as set out in Part 4 of the Constitution.
- 6.4 In the case of the Local Plan there are various constitutional delegations regarding responsibility as to who should make decisions as to the Local Plan. Under the Constitution, Senior Planning officers are authorised to “exercise such powers as are shown in this scheme of delegation including those reasonably implied or reasonably incidental to the matters specified.” This includes decisions to delay or otherwise make necessary amendments to the Local Plan procedure if the context required it.

- 6.5 There are also some overarching responsibilities for decision making, for example Cabinet which the Constitution establishes “*is the part of the Council which is responsible for operational decisions.*” This reflects the broad way in which the “general power of competence” described in the Localism Act 2011 and delegations from Cabinet are set out in the Constitution.
- 6.6 As outlined above, the executive (operational) decisions about the local plan are informed by DPIP through their constitutional oversight role, with consultation as described in this report and with the decisions as to timing made by the Cabinet as outlined at section 5.1, again as above. Senior planning officers considered all of the above information from the Planning Advisory Service, along with members of DPIP within the context of delivering the Local Plan against the decision of Full Council.
- 6.7 The Monitoring Officer has a role in overseeing all decision making. As again described in the Constitution, he must ensure “lawfulness and fairness of decision making.
- 6.8 The Monitoring Officer reviewed the processes as to the decision making and has indicated that he is content that the decision to delay the timetable, by senior planning officers, with the full awareness of members through the DPIP process was a proper use of their express delegated authority to make “reasonably implied” changes.

7. Consultation

- 7.1 The Council has already advised all parties who responded to the previous local plan consultations of the delay in the Local Plan timetable, and has published a new *Local Plan Timeline* page on its website. No further consultation is considered necessary at this time.
- 7.2 As set out at section 5, significant member involvement has been ensured in this process.

8. Community Impact and Corporate Risks

- 8.1 The Local Plan has a direct framing impact upon the community and their built environment, and as a statutory requirement, failure to ultimately deliver a sound local plan would be a significant corporate risk.

Other Implications

| | Yes | No |
|--|------------|-----------|
| Crime and Disorder The NPPF requires that local plans should develop robust and comprehensive policies that set out the quality of development that will be expected for the area, and that planning policies should ensure that developments create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. | x | |
| Climate Change and Biodiversity The NPPF identifies the mitigation and adaptation to climate change, | x | |

| | | |
|---|---|--|
| <p>and improvements to biodiversity, as fundamental issues to address in order to deliver sustainable development. Local plans are expected to adopt proactive strategies to mitigate and adapt to climate change in line with the provisions and objectives of the Climate Change Act 2008, and to co-operate to deliver strategic priorities which include climate change. Plans should also seek to minimise the impacts on and provide net gains for biodiversity</p> | | |
| <p>Human Rights and Equality Impact – The Equality Act 2010 sets statutory duties on public bodies such as local authorities with regard to promoting equality and reducing inequalities of outcome. To ensure that the statutory requirements are achieved, it is intended to undertake and publish an equality impact assessment which will be published as one of the supporting documents when the Local Plan Review is submitted to the Secretary of State for formal examination</p> | x | |
| Safeguarding and Early Help | x | |
| General Data Protection Regulations (GDPR) | x | |
| <p>Health and Wellbeing The NPPF states that planning policies and decisions should aim to achieve healthy, inclusive and safe places</p> | x | |