

# Cabinet Report



REPORT NO:

Report of Head: Head of Planning

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To: CABINET

Date: 4 October 2019

## Local Plan 2031 Part 2 – options for adoption

### Recommendation(s)

That Cabinet recommends to Council to:

- (a) note the conclusions, including the Main Modifications, of the independent Inspector who was appointed to examine the Local Plan 2031 Part 2
- (b) note the process followed to develop the options in relation to the Local Plan 2031 Part 2, and
- (c) accept the Inspector's report and recommendation and adopt the Local Plan 2031 Part 2.
- (d) delegate to the Head of Planning in consultation with the Cabinet Member for Planning any minor amendments, typographical and grammar corrections to the documents prior to publication.

### Purpose of Report

1. To provide Cabinet with the latest position regarding the Local Plan 2031 Part 2.
2. To inform, review and consider the implications to progress the Local Plan 2031 Part 2.

## Corporate Objectives

3. The Local Plan is central to the achievement of the 2016-2020 Corporate Plan's objectives for:
  - A strong local economy
  - Housing for people who need it

## Background

4. The Local Plan 2031 Part 1: Strategic Sites and Policies was adopted in December 2016. Part 1 deals with the larger 'strategic' sites and the associated policies. Local Plan 2031 Part 2: Detailed Policies and Additional Sites was submitted for Examination on 23 February 2018. Local Plan 2031 Part 2 (LPP2) sets out the strategic policies and locations for the agreed quantum of housing to meet Oxford City's unmet housing need within the district. It also contains policies for the part of Didcot Garden Town that lies within the district as well as detailed development management policies to complement the Local Plan Part 1, replacing the saved policies of the Local Plan 2011, and allocating additional development sites for housing and other uses.
5. The Inspector held an Examination which comprised a series of hearing sessions over the summer of 2018 and identified a number of proposed Main Modifications to the Plan to make it sound. In accordance with the Planning Inspectorate's Procedural Practice, a public consultation on the proposed Main Modifications was undertaken in early 2019, closing on 1 April. In preparing LPP2, the Council has undertaken consultations in accordance with the Planning and Compulsory Purchase Act 2004 and The Town and Country Planning (Local Planning) (England) Regulations (2012).
6. Following the conclusion of the Main Modifications consultation, the Council collated the 105 representations that it received and sent them to the Inspector for his consideration, in accordance with the process. Prior to the Inspector issuing his final Report setting out 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, feeding back any fact changes to the Inspector.
7. The Inspector issued his final report to the Council on 25 June 2019 and this has been published on the Council's website. The report concludes that, with the recommended Main Modifications, LPP2 satisfies the requirements of Section 20(5) of the Planning and Compulsory Purchase Act 2004 and meets the tests of 'soundness' as set out in National Planning Policy Framework 2012.
8. Government guidance on plan-making, following the Inspector's final report, is clear on the expectation of the Council, noting;

*'While the local planning authority is not legally required to adopt its local plan following examination, it will have been through a significant process locally to engage communities and other interests in discussions about the future of the area, and it is to be expected that the authority will proceed quickly with adopting a plan that has been found sound.'*<sup>1</sup>

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<sup>1</sup> Paragraph 058 <https://www.gov.uk/guidance/plan-making>

This report helps to set out the options to progress the LPP2 and seeks to address the concerns raised by Scrutiny Committee at its meeting 19 September 2019 when it considered a similar report.

## Process for developing LPP2 Options

9. Once an Inspector's final report on the soundness of the local plan is received, usually, the next step for a Council is to make a prompt formal decision on the available options by virtue of the Regulations i.e. to adopt (with modifications, where recommended by the Inspector) the local plan, or to withdraw the local plan where it does not accept **all** the Main Modifications made by the Inspector examining its local plan.
10. Regulation 26 (adoption of a local plan) sets out the steps that a local planning authority needs to take if it adopts the plan under the provisions of Section 23 of the Planning and Compulsory Act 2004 (the Act). Regulation 27 sets out the steps to follow if it is withdrawing a local plan under Section 22 of the Act.
11. The Council agreed the Main Modifications to LPP2 for consultation on 13 February 2019. A new administration was elected following the May local elections and the Inspector produced his final report on 25 June. The Council has effectively paused the process for adopting LPP2 to enable an understanding of the implications in this final stage of plan making. It is important for the Council to understand what its options are and whether options in addition to those identified in paragraph 9 above existed.
12. While the Regulations and the Act make clear that a council may (if it does not wish to adopt) withdraw a local plan at any time up until its adoption (through a formal Council resolution) no provision [either in the Act or the Regulations] is made for any other option except the two above options. Nevertheless, officers have explored whether alternative options exist and set out below what we believe are the available options.
13. Officers through their professional bodies, networks and through contact with MHCLG have investigated what alternative options may be available and under what circumstances these may be applicable in our case. While it is not uncommon for a council to seek to revise or withdraw an emerging local plan from examination based on a variety of reasons<sup>2</sup>, the withdrawal of a local plan following receipt of an Inspector's report is very rare.<sup>3</sup>

## Options

14. The choices available to a Council once an Inspector's report is received are restricted to a binary option as set out in the section above. The choices are; to adopt (with the Main Modifications) or not to adopt (either through, deferring a decision, passing a resolution to withdraw or by resolution to not adopt). The Council, as a matter of law, is not entitled, nor has any power, at this stage in the Local Plan process to make material or Main Modifications to LPP2.
15. However, in the process of developing options, two variations of not adopting LPP2 were considered as being not viable options. The option of adopting LPP2 without

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<sup>2</sup> In 2019 examples include: Amber Valley (Council decided to withdraw), Inspector's suggestion to withdraw and re-submit at an appropriate time (Windsor and Maidenhead, Welwyn Hatfield Borough Council)

<sup>3</sup> East Cambridgeshire Local Plan, withdrawn 21 February 2019 because the local planning authority did not agree with the Inspector's Main Modifications

following on with a review (immediate) was discounted since it would not provide the opportunity to the Council to prepare a new local plan to reflect its priorities.

16. A second variation is to delay making the decision on LPP2. While, on the face of it, deferring the decision on LPP2 until the conclusion of the Examination into Oxford City's Local Plan as suggested by the Campaign to Protect Rural England (CPRE) may appear to be a separate option for consideration, it could be considered as seeking to bring about further Main Modifications to LPP2. The Regulations make no provision for such modifications and attempting to do so would be considered as arguments in favour of not adopting LPP2. Similarly, a decision to 'do nothing' can be interpreted in favour of not adopting LPP2. Furthermore, a period of four months has passed since the Inspector's report was received by the Council and a decision to delay further would need to be viewed in light of the risks under Options One & Two.
17. While a decision to adopt LPP2 would be fairly straightforward, the option (and therefore any decision) to not adopt LPP2 can be taken in one of two ways. Although presented as two separate options in this report because of the subtle differences between them, the risks and benefits for both will overlap in many cases.
18. The options, in summary, available are as follows;

**Option One)** Withdraw LPP2

**Option Two)** Do not adopt LPP2

**Option Three)** Adopt LPP2

19. Under the options, officers have sought to identify the key advantages and risks to the Council, as well as the timescales for progression of the next local plan. Officers have, under each option, made a recommendation as to whether to proceed with that option.

#### **OPTION ONE: WITHDRAW LPP2**

20. Under this option the Council takes an active decision to withdraw LPP2. While the Council may withdraw LPP2 at any time prior to its adoption, to withdraw it following the Inspectors' final report, a sound planning reason(s) and a rationale should be provided as a basis for such a decision, including how or why the plan, which has been found by the Inspector as being sound, is not sound. Although not relevant in the case for the examination of LPP2, examples of potential planning reasons could include how the Inspector failed to follow procedure in relation to LPP2, e.g. not keeping the Council informed, not giving opportunities to respond to his queries, modifications which the Council did not accept, or that the Council did not agree with the Main Modifications, etc.
21. By withdrawing LPP2 the Council makes clear that LPP2 will not form part of the development plan for the district. This would mean that no weight could be attached to policies or site allocations in LPP2. Any LPP2 document, including supporting evidence studies, made available by the council would need to be removed, but recognising that these documents are already in the public domain and would continue to be available from sources other than the council.

## **OPTION ONE: BENEFITS**

22. There are a number of benefits associated with the withdrawal of LPP2, and the preparation of a new Local Plan. It enables Councillors of the new administration (May 2019) to establish their key priorities for planning in the district. The Council, to act as a place shaper for local communities, should set out its long-term vision through a Local Plan. As such it should respond to the latest challenges set out by government and reflect the aspirations of the Council.
23. Another benefit of withdrawing LPP2 is that with the introduction of the Standard Methodology for calculating housing need, starting again by withdrawing LPP2 would provide an opportunity to revisit the housing numbers amongst other matters that were identified by Councillors as being deficient in LPP2.

## **OPTION ONE: RISKS**

24. Where the decision taken is to withdraw LPP2, then there would be a period between the decision to withdraw LPP2 and the adoption of a new Local Plan. During this time there would be significant implications for planning decisions as set out below.

### *An uncertain planning environment*

25. A risk is the absence of an up to date Local Plan. The position would default to reliance upon the Adopted 2011 Local Plan for Development Management decisions. Policies which are dated will be relied upon when taking decisions on planning applications. While LPP1 continues to be in place, there would however be a policy vacuum left at the local level with the withdrawal of LPP2. The likelihood of this risk being realised is high given the timetable for preparing a new plan.

### *Lack of Five-Year Housing Land Supply*

26. Withdrawal of LPP2 would leave the Council vulnerable to speculative development with the erosion of a five-year housing supply. As a consequence, the potential ad hoc development would cause concern for our communities potentially increase instances of planning by appeal as well as the associated costs to the Council. Based on the available information and government guidance, Appendix 1 sets the projections for a five-year housing land supply under several scenarios. The likelihood of this risk being realised is high.

### *Didcot Garden Town status*

27. A decision to withdraw LPP2 might also undermine the Garden Town status for Didcot (DGT) should we no longer be able to demonstrate our contribution to the achievement of 15,000 homes by 2031. Although no sites relating to DGT are allocated in LPP2, annual grant funding, including to support the development plan, could be put at risk. The risk is considered to be medium-low.

### *Potential negative impact on infrastructure*

28. The lack of a plan led approach and supporting Infrastructure Delivery Plan may also lead to situations where the required infrastructure is not delivered or for infrastructure funding not being secured. There is potential for a loss of section 106 contributions necessary for helping to deliver infrastructure including education, highway, healthcare and green infrastructure.

29. The 'tilted balance' and NPPF provisions means that the delivery of housing has prime importance when considering applications for residential development and there is potential for permission to be granted even if the infrastructure which the Council seeks to secure is not delivered as part of the scheme. The likelihood of this risk being realised is medium to high.

#### *Government intervention*

30. Under section 21(1)(a) the Secretary of State has the power to intervene and issue a holding direction to prevent the Council from doing anything further in relation to the Local Plan Part 2 before it is adopted by the Council. Further, under section 21(4) of the 2004 Act the Secretary of State may require that the plan is submitted to him for approval, thus taking the decision out of the Council's hand. The Secretary of State also has powers under section 27(5)(b) to direct the Council to consider adoption of the plan.

31. Intervention by government could come in one of several ways. There could potentially be intervention by government if the decision taken is to withdraw LPP2, which has been found sound by an independent Inspector. While the circumstances are different, the case of Maldon District Council's Local Plan is an example of where the Secretary of State has intervened to take over the plan making process directly. The Council invited him to intervene following the interim findings of the Inspector appointed to examine the Plan. The Secretary of State appointed a different Inspector and following its examination approved the plan.<sup>4</sup> A similar request, made by an interested party, could invite/request the Secretary of State to intervene in the case of LPP2 which is found to be sound. Intervention could seek to instruct the Council to follow a course of action set by the Secretary of State in the form of a Direction.

32. In November 2017, the then Secretary of State wrote to 15 local planning authorities expressing his concerns about their lack of local plan making under the 2004 Act. The letter asked the councils to "*outline any exceptional circumstances, by 31st January 2018, which, in your view, justify the failure of your Council to produce a Local Plan. In addition to this explanation, I would like to hear of any measures that the authority has taken, or intends to take, to accelerate plan publication.*"

33. On 26 March 2018, the Secretary of State made a Written Ministerial Statement setting out the progress and latest position of the authorities that had been subject to his November letter. Crucially, for three authorities his concerns were not allayed, and he set out measures to step up the intervention process, as well as stating that he would actively examine what his intervention measures might be.<sup>5</sup>

34. The risk of intervention by the Secretary of State in the case of LPP2 is considered to be low based on information that intervention is almost always seen by government as a last resort, there is still the possibility that this assessment of low risk could be higher with the current national government.

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<sup>4</sup> See letter dated 21 July 2017,

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/632156/Letter\\_to\\_Leader\\_of\\_Maldon\\_District\\_Council.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/632156/Letter_to_Leader_of_Maldon_District_Council.pdf)

<sup>5</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-03-26/HCWS580/>

## *Neighbourhood Plans*

35. Neighbourhood Plans have to be in general conformity with the Local Plan. Parish Councils or Neighbourhood Groups are responsible for preparing these plans and withdrawing LPP2 will mean that those neighbourhood plans which have been prepared to be in conformity with LPP2, may become non-compliant with the New Plan and its strategic policies. Additional housing, potentially through speculative development could be brought forward in Neighbourhood Plan Areas which was not anticipated since LPP2 sites are no longer allocations. For those areas which have a 'made' neighbourhood plan the risk of their plan no longer being in conformity is medium to high and will to an extent be dependent on the new local plan.
36. Additional work would also need to be undertaken in relation to neighbourhood plan areas, as the NPPF 2019 requires, as part of the strategic plan, a housing requirement figure to be set for neighbourhood areas.

### **OPTION ONE: TIMETABLE**

37. The Council would need to identify the sound planning reason(s) and rationale for withdrawing LPP2 and then notify the Planning Inspectorate of this intention.
38. The Council remains under a duty to prepare and set out a planning framework for the whole of our district. As such, if the Council withdraws LPP2, the Council will be required to start work on preparing a new Local Plan immediately.
39. An estimated timetable for progressing a new Local Plan is set out below.

<b>October 2019</b>	<b>Withdraw LPP2</b>
<b>November 2019 – April 2021</b>	Draft Reg 18 Local Plan production
<b>April 2022</b>	Consultation on Reg 19 Local Plan (six weeks)
<b><sup>6</sup>October 2022 – April 2023</b>	Submission and Examination in Public
<b>June 2023</b>	Inspector's report
<b>July 2023</b>	Adoption

### **OPTION ONE: CONCLUSIONS AND RECOMMENDATIONS**

40. To progress Option 1, the reasons for and against the decision to withdraw LPP2 as well as risks of withdrawing LPP2 need to be set out clearly. This is because the decision to withdraw LPP2, which has been found sound by the Inspector is likely to be challenged by interested parties through the High Court.

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<sup>6</sup> Once the Plan is submitted for Examination the timetable for the examination is set by the Inspector and may be longer than that indicated

41. It is considered that the benefits of this option do not outweigh the risks and officers, therefore, recommend that this option is not taken forward.

## **OPTION TWO: DO NOT ADOPT LOCAL PLAN PART 2**

42. There is no statutory requirement, under the 2004 Act, for a local planning authority to adopt a Local Plan that has been found 'sound' and no statutory timeframe is set within which the decision (to adopt or withdraw a plan) must be made. However, a decision would have to be made since the Council cannot delay indefinitely.<sup>7</sup> It will be about what is reasonable in timescale. Having received the Inspector's final Report, the expectation is, as stated in paragraph 8, for LPP2 to be considered for adoption by the Council under section 23(5) of the 2004 Act.
43. Neither the Act nor the Regulations make provision for taking a decision to not adopt a local plan that has been found sound. However, since the decision would have the same effect as withdrawing a local plan, sound planning reasons and rationale would need to support this decision.
44. Were the Council decision to not adopt LPP2, it could effect this by either actively deciding not to adopt LPP2 through a resolution or it could make no decision on whether or not to adopt LPP2 and thus in effect delay making a decision. As per Option 1, sound planning reasons and a rationale for not adopting LPP2 will need to underpin the decision.
45. In seeking to delay making a decision on LPP2 until the level of Oxford City Council's unmet housing need is determined through the Examination of its Local Plan the Council would need to take into account the Minister's response to the Council's Deputy Leader's letter, in which the Minister ascribes "great weight to the fact that the housing need has been identified through a Strategic Housing Market Assessment (SHMA) of Oxfordshire" and states that these have "been found sound at two plan examinations...[and] described as 'robust'...in the examination of a third". A decision to delay adoption of LPP2 could impact on the Council's 5-year housing land supply, recognising the requirements in Core Policy 2 in LPP1 and thus lead to speculative development.<sup>8</sup>

## **OPTION TWO: BENEFITS**

46. The non-adoption of LPP2 would mean that a certain amount of weight would continue to be attached to its policies. This would allow time for a new Local Plan to be prepared while planning decisions could be taken cognizant of the LPP2 policies. Councillors would be able to set out their long-term vision and establish their key priorities for planning in the district through the preparation of a new Local Plan, in the knowledge that a decision to adopt LPP2 had not been made.
47. Preparing a new local plan immediately without adopting LPP2 would provide an opportunity for the new Local Plan to revisit, amongst other matters the housing numbers (unmet housing needs) and the underpinning supporting evidence base by using the Standard Methodology for calculating housing need; that the re-use or

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<sup>7</sup> The risk of any unwelcome government intervention is set out in the earlier section of the Report

<sup>8</sup> <http://www.whitehorsedc.gov.uk/sites/default/files/2019-09%20letter%20frpm%20MHCLG%20re%20Oxf%20need.pdf>

redevelopment of previously developed land or brownfield land to meet housing needs is maximised or to retain land in the Green Belt.

48. The new local plan would need to reflect the provisions on the revised NPPF, published February 2019 and any other changes until its submission. While there will be implications in relation to housing and employment land requirements, the revised NPPF places a higher bar on meeting the exceptional circumstances for taking land out of the Green Belt.

## **OPTION TWO: RISKS**

49. There are fewer risks in not adopting LPP2, compared to a decision to withdraw LPP2. These are set out below. Nevertheless, it cannot be completely ruled out that other risks identified under option 1 would also not apply under option 2 as well.

### *Government intervention*

50. The Secretary of State for Housing, Communities and Local Government has substantial powers to intervene and suspend, prepare or otherwise control the plan making process.<sup>9</sup> Details of how and when government intervention may occur are provided in the relevant section under option 1. The likelihood of this risk being realised is low-medium.

### *Time and costs for preparing a new local plan*

51. At this stage, it is not possible to estimate the financial costs of not adopting LPP2 and needing to develop a new local plan, but potentially these costs might be substantial. Costs will include:

- Defending potential judicial review
- Costs of appeals – this only becomes an issue if major planning applications are appealed against a refusal or non-determination
- Developing a new local plan – including staffing resources, costs of studies and evidence gathering for a new plan at Regulation 18 stage, including consultation and examination costs. The Council could expect total costs to be in the region of £3m, based on previous experience, however a base budget already exists for the local plan and staffing resources, that could meet just over half of these costs.

### *Legal challenge*

52. A legal challenge can be made by aggrieved land owners/developers with an interest in bringing forward their development in conformity with LPP2. Challenging the grounds for the decision would be through judicial review. Legal challenge could also be brought by other parties who did not agree with the decision to not adopt LPP2. The likelihood of this risk being realised is medium.
53. Where a judicial review was granted and the outcome of the hearing was successful against the decision made by the Council, the Court could make a Quashing Order

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<sup>9</sup> Housing and Planning Act 2016 amends provisions of the 2004 Act.

resulting in the Council having to make a new decision as the original decision to not adopt LPP2 would no longer stand.

## **OPTION TWO: TIMETABLE**

54. The timetable for preparing a new local plan, where the decision taken is to not adopt is similar to the timetable for Option 1, since the starting point would be the same, i.e. starting from a Regulation 18 stage.

<b>October 2019</b>	<b>Decision to not adopt LPP2</b>
<b>November 2019 – April 2021</b>	Draft Reg 18 Local Plan production
<b>April 2022</b>	Consultation on Reg 19 Local Plan (six weeks)
<b><sup>10</sup>October 2022 – April 2023</b>	Submission and Examination in Public
<b>June 2023</b>	Inspector's report
<b>July 2023</b>	Adoption

## **OPTION TWO: CONCLUSIONS AND RECOMMENDATIONS**

55. A decision to not adopt LPP2 would mean the benefits of adopting LPP2 outlined under Option Three would not be realised.
56. If the Council does not adopt LPP2, it will have to rely on a dated Local Plan and would likely face speculative planning applications, which could be difficult to resist. The Council would then find it difficult to defend planning appeals, particularly in terms of demonstrating that it has a five-year, or three-year housing land supply.<sup>11</sup> On current projections this would not be possible beyond this current financial year. Further, preparation of a new Local Plan will need to be commenced from the start (Regulation 18) immediately after the decision is made to not adopt LPP2.
57. Officers advise that the benefits of this option do not outweigh the risks and therefore it is not recommended to take this option forward.

## **OPTION THREE: ADOPT LOCAL PLAN PART 2**

58. Once LPP2 is adopted, it will form part of the development plan and carry full weight in the determination of planning applications. Adopting LPP2 would also formally replace a number of existing Local Plan 2011 Policies.

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<sup>10</sup> Once the Plan is submitted for Examination the timetable for the examination is set by the Inspector and may be longer than that indicated.

<sup>11</sup> A freedom granted by the Oxfordshire Housing and Growth Deal allows the authorities to only demonstrate a housing land supply for three years while the Oxfordshire Plan is being prepared.

59. On the basis that LPP2 has undergone significant scrutiny and has been found to be sound, a decision to adopt is the logical outcome.

### **OPTION THREE: BENEFITS**

60. The following benefits are over and above those set out in the preceding paragraphs.

#### *Development certainty*

61. Having an adopted Local Plan in place provides greater certainty to all interested parties, including local communities and businesses, as to where new development will take place. By the same token it gives the Council greater control over where development will take place, reducing the prospect of speculative development and for planning by appeal. Planning Appeals take direct control of planning decisions away from the Council due to the fact that planning appeals are determined by the Planning Inspectorate. Planning Appeals can be expensive for Councils in that they require additional in-house and external resources together with the fact that the developers may also choose to submit an application for costs.

62. This option is likely to be the quickest way of adopting a new Local Plan, provides greater control to the Council, provides certainty and potentially reduces the number of future speculative planning applications and planning appeals.

63. Progressing with LPP2 provides strength and certainty on the requirement for neighbourhood plans, allowing them to progress and shape development in their area, avoiding the need for early review and allowing them to contribute towards the delivery of housing to meet the need.

#### *Partner support*

64. An advantage of this option is that the emerging Local Plan is widely supported by adjoining Councils which helps to meet the legislative requirement of the Duty to Cooperate. The Statements of Common Ground included in LPP2 evidence base set this out, and they provide the evidence that the Council has in the preparation of LPP2 discharged its duty to cooperate. Additionally, an adopted Local Plan in place helps to address the County's development needs as a whole and therefore reduce planning risk to our partners.

#### *Up to date basis for planning application decision making*

65. The NPPF (paragraph 11) states that policies which are most relevant for determining planning applications are considered out-of-date for applications involving housing where the Council cannot demonstrate:

- A five-year housing land supply, or
- A Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the past three years.<sup>12</sup>

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<sup>12</sup> Transitional arrangements apply whereby in November 2018 and 2019, NPPF para 11 will apply where delivery was below 25% and 45% respectively. The threshold of 75% would apply from November 2020.

66. In adopting LPP2, the Council would ensure its five-year housing land supply for the next three years.<sup>13</sup> A flexibility and freedom granted to the participating authorities in the development of the Oxfordshire Plan 2050 is that only a 3-year housing land supply needs to be demonstrated. In this regard, policies that are most important for determining planning applications will not be considered out of date and the presumption in favour of sustainable development would not apply. This in turn would have the (immediate) effect of:

- Reducing the likelihood of alternative speculative development sites coming forward;
- increasing the Council's ability to refuse inappropriate applications as well as its chances of success in defending appeals for inappropriate applications successfully.

67. While this is particularly relevant for housing development, having a local plan with a suite of up-to-date development management policies will lead to good, consistent decision making.

#### *Drawdown of secured funding*

68. Where the HIF is signed and in place, it enables County Council to draw down HIF monies to deliver several infrastructure projects. Details of these projects is provided under the 'Other Relevant Factors' section in this report.

69. Funding which has been attached to the delivery of 2,200 houses in our district under the Growth Deal would also be secured. Further details are set out in the section on Other Relevant Factors in this report.

### **OPTION THREE: RISKS**

#### *Policies may not reflect new Council's priorities*

70. LPP2 was prepared and submitted for examination under the previous Council administration to reflect the priorities of Council at that time and therefore in areas it is not reflective of the present Council's emerging priorities.

#### *Potentially delivering higher number of houses should Oxford unmet need change/reduce/increase*

71. With Oxford City Council yet to have its exact unmet housing need figure tested, there is a risk that in adopting LPP2, provision is made for housing for which the need has not been identified. Should the Examination of the Oxford City Plan find the unmet need to be lower than the working assumption basis for allocating housing need, the allocations in LPP2 may turn out to be not necessary to meet the requirement.

#### *Legal challenge*

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<sup>13</sup> The 5-year housing land supply includes sites which are linked to/dependent upon Housing Infrastructure Fund and/or Oxford Growth Deal. If decisions taken external to the Council impact on these in a negative way, it could impact on the 5-year housing land supply.

72. Interested parties aggrieved by the decision to adopt LPP2 may seek to challenge the decision through judicial review as set out in the Regulations. The likelihood of this risk being realised is medium.

### **OPTION THREE: TIMETABLE**

73. A decision to adopt LPP2 would complete the LPP2 plan making process. Following the adoption of a local plan, it is normal for a period of time to elapse (during which the adopted plan is embedded) before a new plan is prepared. Although, it is now a statutory requirement to review a plan at least every 5 years and to review as necessary to consider changing circumstances affecting the area, the guidance is silent on when to commence preparing a new plan.

74. As identified under the Benefits sections for options One & Two (paragraphs 23 and 47), work to commence a new local plan immediately following the adoption of LPP2 would enable the new administration to set out its priorities for planning. Since the starting point for the new local plan would be that of a recently adopted plan, it is not anticipated that a Regulation 18 stage will be necessary. However, if material changes are proposed and the development of new policies with supporting evidence, then a Regulation 18 consultation would be required. The timetable for preparing the new plan to include a Regulation 18 stage would be as set out under options One & Two.

75. The indicative timetable for preparing a new plan at Regulation 19 stage immediately following the adoption of LPP2 is as:

<b>October 2019</b>	<b>Decision to adopt LPP2 (returning to Reg 19)</b>
<b>November 2019 – November 2020</b>	Draft Reg 19 Local Plan production
<b>Spring 2021</b>	Consultation on Reg 19 Local Plan (six weeks)
<b><sup>14</sup> April 2021</b>	Submission and Examination in Public
<b>June 2021</b>	Inspector's report
<b>July 2021</b>	Adoption

### **OPTION THREE: CONCLUSIONS AND RECOMMENDATIONS**

76. Adoption of LPP2, which meets the criteria for soundness, would provide the Council with the opportunity to focus development in areas that meet the wider strategic objectives.

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<sup>14</sup> Once the Plan is submitted for Examination the timetable for the examination is set by the Inspector and may be longer than that indicated

77. LPP2 provides a coherent approach to meeting future development needs and allocates sites to accommodate sustainable development in the district to 2031. In adopting LPP2, the additional sites and detailed policies will become part of the Council's development plan and carry full weight in the determination of planning applications.
78. Where the Council resolves to adopt LPP2, a 6-week period will begin to run during which any person aggrieved by the decision may bring an application for statutory review of the decision in the High Court. Such a challenge can only be brought on the basis that there is material error of law in the Council's decision to adopt LPP2. In such circumstances the Council would robustly defend the plan and its validity.

## **Financial Implications**

79. There are no immediate implications flowing from the adoption of the Local Plan 2031 Part 2.
80. Any decision that has financial implications must be made with the knowledge of the council's overarching financial position. This is as reflected in the council's medium-term financial plan (MTFP) as reported to Full Council each February as part of the budget setting report. The February 2019 MTFP and the budget report showed that the council was due to receive £474,000 less in revenue funding than it planned to spend in 2019/20 (with the balance coming from accumulated New Homes Bonus). This funding gap is predicted to increase to over £5.6 million per annum by 2023/24. Every decision should be made in recognition of the need to eliminate this funding gap during the next five years.
81. Where the decision taken is to either not adopt the Local Plan 2031 Part 2 or to withdraw it, then paragraph 51 of this report identifies some of the potential financial implications.

## **Legal Implications**

82. This report has regard to the legal advice provided by counsel engaged to advise the council on the Local Plan. A copy of the advice has been circulated to all Councillors on a confidential basis. This is not for publication or discussion in public 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.
83. On adoption, the Council must consider all relevant planning applications against the policies in the Local Plan 2031 Part 2. It should be noted that, whilst the risk is low, there is a short window for an aggrieved party to challenge the decision to adopt LPP2 once a decision to adopt is taken. Should this occur, officers will communicate with Councillors as appropriate. Looking to the future the Council must review the Local Plan within 5 years of adoption. Options for the timing of such a review have been set out under each of the options above in this report. However, if Councillors wish to pursue a new plan imminently, officers will bring back a report regarding timescale, consultation and costs for Councillors to consider.

## Risks

84. The risks to taking a decision on the options are set out under the relevant sections of each option.

## Other implications

85. The Local Plan 2031 Part 2 will have implications for all sectors of society and all wards and parishes of the local authority area. The Sustainability Appraisal systematically ensures that all potential implications – based on socio-economic and environmental criteria - are taken into account when preparing a Local Plan.

### **LPP2: Other relevant factors**

#### ***Oxfordshire Housing and Growth Deal (the Deal)***

86. In March 2018, the Council and the other authorities in Oxfordshire signed the Oxfordshire Housing and Growth Deal. This committed the Councils to planning for and supporting the delivery of 100,000 new homes across Oxfordshire between 2011 and 2031. In return, Government provided £215m of funding; £150m for infrastructure projects, £60m for affordable housing, and £5m for the preparation of an Oxfordshire wide plan to 2050 and the administration of the Deal. The Deal committed the Oxfordshire authorities to submitting their local plans for examination by 1 April 2019.

87. The Deal also provided a three-year housing land supply test for the purposes of decision taking while the Oxfordshire Plan 2050 is under preparation. The Deal also introduces a bespoke Housing Delivery Test for Oxfordshire to apply after 2020, in the first three years following adoption of the Joint Statutory Spatial Plan. The Housing Delivery Test is an annual measurement of housing delivery in each Council area. There are consequences, such as a presumption in favour of sustainable development, for not meeting the Housing Delivery Test.

#### ***Housing and Infrastructure Fund (HIF)***

88. In addition to the infrastructure funding received through the Deal, Oxfordshire County Council (OCC) has been successful in securing £218 million of funding from the Government's Housing and Infrastructure Fund (HIF). This will contribute toward providing new infrastructure costing £234 million across the Vale of White Horse and South Oxfordshire districts. OCC are finalising an agreement before they will be in receipt of any funding from Government. The infrastructure projects that will be delivered by HIF are:

- a Didcot Science Bridge on the A4130 – going over the railway line and Didcot A Power Station site and join the A4130 Northern Perimeter Road;
- improvements to the A4130 from the Milton Interchange by making it a dual carriageway;
- a new river crossing at Culham; and,
- a bypass at Clifton Hampden.

89. These HIF schemes are identified in both district Councils' emerging Local Plans to enable and support delivery of growth across Southern Oxfordshire. They are

inextricably linked to some of the committed and planned development in the Didcot and Science Vale area. The HIF and the Deal's transport infrastructure schemes are intrinsically interlinked as they form a package of improvements to the Didcot area. Both funding streams are essential to a wider highway strategy to deliver growth but to also to mitigate the impact of permitted developments.

### ***Oxford's Local Plan and unmet housing needs***

90. Oxford City Council submitted their Local Plan 2016 to 2036 for examination on 22 March 2019. Their plan is being examined by the same Inspectors as the South Oxfordshire Plan. Oxford's plan contains a housing need of 1,400 homes per annum, with a capacity-based housing requirement of 8,620 homes. Their plan is based on the rural districts accommodating unmet need, stating that Vale of White Horse district is accommodating 2,200 homes.
91. The 2,200 homes figure is based on a Memorandum of Cooperation (Appendix 2), prepared by the Oxfordshire Growth Board in September 2016. The LPP2 has been progressed to plan for this unmet housing need and the Inspector concluded that this approach was 'sound.' This Council has agreed, through a Statement of Common Ground (Appendix 3), to accommodate 2,200 homes of unmet housing need from Oxford City Council.
92. This unmet need from Oxford City would include housing that would contribute towards some of the 100,000 houses committed in the Deal. In other words, the unmet need from Oxford City is based on the Deal commitments, and not from their "standard method" housing need.
93. On 29 May 2019 and 15 July 2019, the Inspectors for the Oxford City Local Plan published a set of questions and comments (Appendix 4 and 4a). These comments are directed to the Oxford City Local Plan but could be relevant to consider when making a decision on LPP2. Councillors should bear in mind that they do not represent conclusions. They state the following:
  - a) **Housing calculation:** The Inspectors state that the Deal can be used as a justification for uplifting housing need. They recognise that the Deal's housing targets are based on the SHMA 2014. However, they draw attention to the Deal's delivery plan, which states this must be supported by an appropriate update to support plans through an examination (under the new NPPF). They also state that the SHMA figures, on which the Deal is based, are "now quite a few years old".

The Inspectors also highlight some concerns with Oxford City's Objectively Assessed Need Update (2018). This document attempted to provide a SHMA update just for Oxford, to validate the housing figures in the original SHMA, and hence the Deal. They identify that the document could show the housing needs of Oxford are falling below the 1,400 homes per annum in their plan. They state this could have a bearing on the level of unmet need for each neighbouring authority to accommodate.
  - b) **City's housing capacity:** The Inspectors have asked the City to confirm the capacity of Oxford to meet their housing need. They state the Deal identified a capacity of 10,000 homes, yet the plan indicates a capacity of 8,620 homes.

- c) **Site capacities:** The Inspectors have commented on Oxford's assessment of each of their proposed sites' housing capacity (how many homes can be built on each site).

**Other matters:** The Inspectors have identified questions regarding: whether the plan has been positively prepared; the effectiveness of the plan; affordable housing provision; policies making distinctions on the basis of the nature of the applicant; car parking; academic facilities and student accommodation; employment sites; local employment; and sustainable design and construction.

## Conclusion

94. The process of preparing the Local Plan has been lengthy, costly, and resource intensive. Local Plan Part 1 (adopted in 2016) and LPP2 have included substantial community and stakeholder engagement in conjunction with their preparation. The Inspector has now issued his final report on LPP2, and the examination process is now formally complete.
95. The Inspector concludes at paragraph 130 of his report, that with recommended main modifications, LPP2 is sound and capable of adoption. It is noteworthy, that LPP2, with the Inspector's main modifications, would largely be consistent with the Council's submission to the Secretary of State.
96. The Council's options are limited to those set out in this report – either to adopt LPP2 with the Inspector's modifications or not adopt/withdraw LPP2. A decision to adopt would enable LPP2 to become part of the Council's development plan and carry full weight in the determination of planning applications. It will also provide a framework for development in the district to ensure that growth is sustainable and meets the needs of the existing and future populations.

## Background Papers

1. Vale of White Horse Housing LPP2 Housing Land Supply Note July 2019