



Report to Council

Date:	21 October 2020
Title:	Chiltern and South Bucks Local Plan 2036
Relevant councillor(s):	Cllr Warren Whyte, Cabinet Member for Planning and Enforcement
Author and/or contact officer:	John Cheston
Ward(s) affected:	All wards in the Chiltern and South Bucks areas
Recommendations:	That the Chiltern and South Bucks Local Plan 2036 be withdrawn.
Reason for decision:	Withdrawal of the Local Plan is the recommended option because, whilst the examination Planning Inspectors' initial findings on the duty to cooperate are not agreed and/or accepted, the likelihood is that this action may in any event be forced on the Council by the Inspectors. Therefore, to withdraw now would potentially save significant abortive costs and would allow efforts and resources to be concentrated on the preparation of the new Buckinghamshire Local Plan.

1. Executive summary

- 1.1 This report provides an update on the preparation of the Chiltern and South Bucks Local Plan and discusses possible options for taking it forward. On balance, it concludes that, whilst not agreeing or accepting the examination Planning Inspectors' initial findings on the duty to cooperate, the advantages of withdrawing the Plan now, in advance of any formal decision being reached by the Inspectors, would, on balance, outweigh the disadvantages of seeking to continue to progress it.

2. Content of report

- 2.1 The purpose of this report is to agree a way forward for the Chiltern and South Bucks Local Plan which was prepared, published and submitted by the legacy Councils, and is currently at public examination. The options which have been identified for this include:
1. To continue to progress the Local Plan through the examination process.
 2. To continue to progress the Plan through the examination process, but to propose modifications to make it acceptable to and reflect the corporate priorities of the new authority.
 3. To withdraw the Plan now in advance of any final decision being reached by the examination Planning Inspectors, to allow efforts to be focused on the new Buckinghamshire Local Plan.
- 2.2 The Publication version of the Chiltern and South Bucks Local Plan 2036 is currently at public examination. Public hearings for the examination were arranged to be held in March 2020. However, in view of the Government's response to the outbreak of Covid-19, the Planning Inspectors conducting the examination cancelled the hearings two days before they were scheduled to commence.
- 2.3 The first of the matters to be discussed at the cancelled hearing sessions would have been the statutory duty to cooperate on cross-boundary strategic planning matters in the preparation of the Local Plan. Whilst the rest of the examination was paused, the Inspectors decided to consider, through an exchange of written representations, the fundamental issue of whether the duty to cooperate had been suitably discharged.
- 2.4 The duty to cooperate requires a local planning authority, in preparing a local plan, to maximise effectiveness on strategic matters that have an impact on at least two planning areas. A council has a duty to engage constructively, actively and on an ongoing basis with any relevant local planning authority or prescribed public body on those strategic matters.
- 2.5 All tests conducted by the Planning Inspectorate into the 'soundness' of a local plan, other than the duty to cooperate, are capable of correction through the examination process. The duty to cooperate as an exception cannot in law be remedied through the examination process.
- 2.6 The Chiltern and South Bucks examination Planning Inspectors set out their initial findings on the duty to cooperate in a letter dated 7 May 2020. They considered that the legacy Councils had not engaged constructively, actively and on an ongoing basis with Slough Borough Council (SBC) in relation to the accommodation within the South Bucks area of SBC's unmet housing need of between 5,000 – 10,000 new

homes. They therefore provided their interim conclusion that the Council had failed the duty to cooperate and warned that *'it is important that we point out that there is a strong likelihood that the only option will be for the Council to withdraw the Plan'*.

- 2.7 The Planning Inspectors' initial findings have not been accepted or agreed. Indeed, the Council's legal advice was that the Inspectors had asked themselves the wrong question in determining if the duty to cooperate has been discharged. They had therefore drawn the wrong conclusion which is that the Council was under a duty to agree to provide for SBC's unmet housing need.
- 2.8 The Council's legal advice was to respond to the Inspectors' initial findings in two stages:
1. Write to dispute the initial findings and request that the matter no longer be conducted through an exchange of statements but through a face to face hearing (rather than a virtual hearing). A letter to request this was sent on 12 May 2020.
 2. Write a detailed rebuttal of the initial findings once a hearing date had been fixed.
- 2.9 The Inspectors indicated that they were happy to hold the requested hearing and arrangements were being put in place for this to be held over one day in October/November 2020. The Inspectors offered 5 October 2020 as a suggested date for this hearing. Because of the issues rehearsed in this report, this date was not accepted and officers requested more time for the Council to consider its position.
- 2.10 One of the options available to the Council would be to withdraw the Local Plan from examination now before any final decision is reached on the duty to cooperate by the Planning Inspectors. Legally, a local planning authority may withdraw a local plan at any time before it is adopted (under the provisions of section 22 of the Planning and Compulsory Purchase Act 2004). If the Inspectors' initial findings on the duty to cooperate were to be confirmed unaltered following a hearing, the Council would either need to withdraw the Local Plan or, alternatively, it could request a final report from the Inspectors which would inevitably recommend non-adoption of the Plan. To withdraw the Plan now, however, is an action which would require full Council approval.
- 2.11 Such a decision would draw a line under the costs which have been incurred thus far and allow the legacy Councils' budgetary reserves and staff resources to be diverted to the preparation of the Buckinghamshire Local Plan, work on which has already commenced. However, it could pose potentially serious planning problems for the Chiltern and South Bucks areas. It would leave them without either an up-to-date local plan or a confirmed five-year housing land supply until such time as the

Buckinghamshire Local Plan was adopted. This may expose the areas to an increased risk of speculative planning applications for housing on Green Belt sites.

- 2.12 In this respect, officers are aware that applications are being prepared for sites which the Plan proposes to release from the Green Belt. These schemes would not necessarily need to meet the high bars on design quality, living space, ecological security and affordable housing provision as set out in the Publication version of the draft Local Plan. These concerns would be mitigated, insofar as that is possible, if the Plan were to be withdrawn. Evidence of planning appeals and legal cases elsewhere is that the absence of an up-to-date local plan, and a five-year housing land supply, do not outweigh national planning policy to safeguard land from inappropriate or major development within the Green Belt or an Area of Outstanding Natural Beauty unless there are very special circumstances applicable to that particular proposal.
- 2.13 Withdrawal could also lead to reputational damage and criticism due to the significant costs incurred by the legacy Councils in the preparation of the Local Plan. It would also create a vacuum of approximately 5,200 homes (corresponding with the capacity of the proposed Green Belt site allocations in the Plan) in the early years of the housing supply trajectory for the emerging Buckinghamshire Local Plan.
- 2.14 Because the Government wishes councils to have up-to-date local plans in place by December 2023, there is a risk that the Secretary of State might intervene were the Plan to be withdrawn, perhaps in a similar manner to his recent threat of intervention in the South Oxfordshire Local Plan. Officers have therefore discussed the potential withdrawal of the Local Plan with senior officials in MHCLG. Following this meeting, MHCLG officials commented in an email as follows:

“In your circumstances, the Inspector has issued initial findings that there is strong likelihood that the only option will be for the Council to withdraw the Plan on the duty to cooperate issues. If this was to be the final conclusion of the Inspector then as with other local plans, the likelihood is that the plan would be withdrawn and a new plan would need to be progressed. In light of these findings you have said that you feel the best way to progress and to get a plan in place as soon as possible is to withdraw the current draft plan now rather than spend further time at examination and focus on a new plan for Buckinghamshire which would reflect the new larger authority. This will ensure that there is an up to date plan for Chiltern and South Bucks but also allow you to consider the strategic issues across the wider area of Aylesbury Vale and Wycombe.

Getting a plan in place as soon as possible is a priority and your proposed approach for achieving this is understandable. Clearly, the decision is for yourselves as the local planning authority and as with previous examples of

plans being withdrawn due to issues at examination, this would not in itself be grounds for intervention. The priority is to get up to date plans in place as soon as possible, it is important therefore if you conclude that a new plan is the right approach, that at the earliest opportunity a clear commitment to this new plan to be progressed at pace is set out in a Local Development Scheme.”

- 2.15 Having regard to this advice, officers consider the risk of Ministerial intervention to be low. This is probably now even more the case in the light of the uncertainty caused by Government’s proposed reform of the local plan-making system set out in its *Planning for the Future* White Paper published on 6 August 2020. These reforms envisage all local authorities having new-style local plans in place by the end of the current Parliament (December 2024). The unitary authority transitional regulations in any event require the Council to adopt a new local plan by April 2025.
- 2.16 The pause of the examination as a result of Covid-19 and the Inspectors’ letter have provided officers with the opportunity to review the way forward for the Local Plan in the light of the resources needed to prepare the new Buckinghamshire Local Plan. Whilst it is acknowledged that withdrawal of the Plan may put pressure on housing land supply in the short term, this would be mitigated by the fact that 87.5% of the overall Plan area is within the Green Belt and 43% in the Chilterns Area of Outstanding Natural Beauty. On balance, although we could proceed, if we were to end up with protracted legal arguments or substantial modifications being required to the Plan, it is likely that the new Buckinghamshire Local Plan would catch up. Such a scenario would be both confusing and resource intensive. On that basis, we recommend withdrawal.

3. Other options considered

- 3.1 **1. To continue to progress the Local Plan through the examination process** as set out in the indicative best-case scenario timetable below. This assumes that the Inspectors can be persuaded to reverse their initial findings on the duty to cooperate and that no major delays or problems were to emerge through the examination process thereafter. On the evidence of the Vale of Aylesbury Local Plan, which has been at examination since February 2018, such delays are not inconceivable and therefore this timetable may not be met.
- 3.2 Continuing on this timeline would lead to considerable overlap with the preparation of the Buckinghamshire Local Plan, early engagement on which may start in late 2020/early 2021. In addition, if delays were to arise during the examination, which would not be untypical for such a complex process, the period that the Chiltern and South Bucks areas would be without an up-to-date local plan could reduce to perhaps 12 months.

Stage	Estimated date
Duty to cooperate hearing	December 2020
Inspectors' findings on duty to cooperate	January 2021
Stage 1 examination hearings	March 2021
Stage 2 examination hearings	May - June 2021
Inspectors' interim/preliminary findings	July 2021
Public consultation on Main Modifications to the Plan	November - December 2021
Inspectors' report	March 2022
Adoption	April/May 2022

3.3 **2. To continue to progress the Local Plan through the examination process, but to propose modifications** to the version that was submitted for examination in September 2019 to make it acceptable to and reflect the corporate priorities of the new Council (for example, to remove or replace one or more of the housing sites identified for release from the Green Belt). To ensure that it is 'sound' and legally compliant, a local plan inevitably requires some modification by an Inspector through the examination process and this option is therefore possible. By proposing some modifications in advance of the examination hearings, the new Council could begin to take some ownership of this Plan and also address some of the more controversial sites contained within it. It would not be an easy or straightforward option, however.

3.4 A submitted local plan is intended to be a council's final say on the document and seeking to introduce major changes through the examination can undermine the soundness of its strategy or the evidence which underpins it. A rationale would be needed for the selective removal of a proposed site or sites, and the consequential reduction in the Plan's housing land supply would have to be made up, such as through the allocation of an alternative site. As it stands, no alternative available and deliverable sources of supply have been identified to obviate the need for 5,200 homes to be proposed on land in the Green Belt, and 5,725 homes to be accommodated within the Vale of Aylesbury Local Plan.

4. Legal and financial implications

4.1 There is a legal requirement for local authorities to review their local plans at least every five years. In this regard, the Chiltern and South Bucks Core Strategies were

put in place in 2011 and their Local Plans in 1997 and 1999. The existing plans are therefore significantly out-of-date.

- 4.2 If the Chiltern and South Bucks Local Plan were to be withdrawn, that would continue to leave the plan area without an up-to-date policy framework against which to consider planning applications for new development. It would also result in a continuation of the current lack of a deliverable five-year housing land supply which is a Government policy imperative. The forthcoming Buckinghamshire Local Plan will rectify these deficiencies though is unlikely to be in place before the end of 2024.
- 4.3 Legal Services have additionally commented on certain procedural matters as follows:
- Power to withdraw a local plan prior to adoption – Section 22 of the Planning and Compulsory Purchase Act 2004, which provides for a local planning authority to withdraw a local development document at any time prior to its adoption under section 23.
 - As soon as reasonably practicable after withdrawing it, the Council would have to make a statement about the withdrawal available on the Council’s website and for inspection at its offices for six weeks and give notice [under Regulations 27 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012, as amended].
 - A decision to withdraw is subject to challenge by way of Judicial Review if there are grounds to do so. If a challenge were to be successful, the Council would be liable for the other parties’ costs as well as its own. The Council would defend any such challenge and seek costs if successfully defended. Similarly, a decision to adopt a Local Plan is also capable of legal challenge. If the Plan were to reach adoption, officers consider that the risk of such a challenge would be greater because of the substantial local opposition which it has attracted.
- 4.4 Financial implications: Chiltern and South Bucks District Councils had £664k in earmarked reserves to fund the ongoing development of the Local Plan which are now held by Buckinghamshire Council. Not continuing with the Plan will enable the majority of this to be released to help ease pressure in 2020/21 on the Planning & Environment budget.
- 4.5 Local plans play a key part in the delivery of new housing, which impacts the amount of infrastructure investment needed, S106/CIL requirements, and ultimately Council Tax base projections. Withdrawing the Local Plan could therefore hypothetically impact on our future Medium Term Financial Planning process, but at this stage the impacts are not measurable.

4.6 As all future capital and revenue costs and income impacts will need to be submitted through the budget setting process for the Council, all material financial risks can be considered within the Medium Term Financial Planning process.

5. Corporate implications

5.1 The Chiltern and South Bucks Local Plan, if pursued, would be an important but short-lived Council strategy which could help to deliver all four of the priorities of the Corporate Plan, but particularly Strengthening our Communities, Improving our Environment and Increasing Prosperity. The Buckinghamshire Local Plan, however, being a wholly new rather than an inherited document, would more specifically accord with these priorities across the whole of the Council's area.

6. Consultation and communication

6.1 If the Council were to take the formal decision to withdraw the Local Plan, a media and communications plan, to include Frequently Asked Questions, would need to be prepared. The Council would also have to carry out appropriate publicity in accordance with the Local Planning Regulations referred to above. This would include informing the Local Plan examination participants as well as those individuals and organisations on the Local Plan consultation database.

7. Next steps and review

7.1 If Council agrees with the recommendation set out above, officers will carry out the required steps outlined above in paragraphs 4.3 and 6.1 and focus their efforts on the new Buckinghamshire Local Plan. They will also provide guidance to town and parish councils wishing to prepare neighbourhood plans in the interim.

8. Background papers

8.1 [Inspectors' Initial Findings on the duty to cooperate](#)

8.2 [Council's initial response to the Inspectors' letter](#)

9. Your questions and views (for key decisions)

9.1 If you have any questions about the matters contained in this report please get in touch with the author of this report or the relevant Cabinet Member.