CABINET
16 MARCH 2021

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: LOCAL PLAN – FURTHER MAIN MODIFICATIONS

REPORT OF THE SERVICE DIRECTOR - REGULATORY

EXECUTIVE MEMBER: EXECUTIVE MEMBER FOR PLANNING & TRANSPORT

COUNCIL PRIORITY: RESPOND TO CHALLENGES TO THE ENVIRONMENT / ENABLE AN ENTERPRISING AND CO-OPERATIVE ECONOMY / SUPPORT THE DELIVERY OF GOOD QUALITY AND AFFORDABLE HOMES

1. EXECUTIVE SUMMARY

1.1 The purpose of this report is to inform Members of the progress with the examination of the new Local Plan and to seek approval to conduct a consultation upon the Inspector's proposed Further Main Modifications to the Plan and documentation produced under delegated authority.

2. RECOMMENDATIONS

2.1. That the range of additional documentation produced for the Examination since the Cabinet decision of 10 December 2018 and listed in Appendix 1 is noted and endorsed.

2.2. That officers are authorised to conduct a consultation on the proposed Further Main Modifications and relevant supporting documents, subject to the receipt of a schedule of modifications from the Inspector which do not raise materially different issues from those discussed in this report or reported orally at this meeting.

2.3. That the Service Director: Regulatory in consultation with the Executive Member for Planning and Transport make any such necessary arrangements for that consultation including final review of any detailed modifications issued by the Inspector.

3. REASONS FOR RECOMMENDATIONS

3.1. To ensure that North Hertfordshire continues to progress a new Local Plan for management of development in the District.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1. None. Members will be aware that the Council has a statutory duty to keep its Local Plan under review and that failing to continue preparation of the Local Plan in a timely fashion carries significant risks. It is the view of officers that the outcomes from the latest rounds of hearing sessions presently appear unlikely to alter the agreed 'direction of travel' from the previous decisions of Full Council on 11 April 2017, Cabinet on 10 December 2018 and Full Council on 08 October 2020. Any alternate would represent a significant and unexpected change of position.

4.2. Members do not have the power to add to, amend, remove or otherwise change any proposed Further Main Modifications as only the Inspector may recommend changes to the submitted Plan at this stage.

4.3. If Members were minded for any reason at this meeting that a consultation on any Further Proposed Main Modifications should not proceed, Officers would recommend that Members were very clear as to their reasons for doing so in order that the Inspector might be alerted to the outcome and rationale.

4.4. Any substantive delay to this decision or the associated proposed consultation risks undermining the positions set out to the Inspector at the examination hearings in November & December 2020 particularly on the matters of housing supply and delivery which were recognised as being time critical.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1. Members, external organisations and the public have been consulted and kept informed throughout the Local Plan examination process:

- Cabinet receives reports at each meeting on Strategic Planning Matters within which the Local Plan is a standing update on progress and issues. Both the Full Council decision of April 2017 and the Cabinet decision of December 2018 on the proposed Main Modifications requested that Members be kept informed on the progress of the Examination in this way;
- The proposed Main Modifications consultation in 2018 provided the public with further opportunity to comment on the changes proposed to the Plan;
- Cabinet approved a Housing Delivery Action Plan in both 2019 and 2020 within which progression of the Local Plan is a key action;
- The Extraordinary Full Council meeting of 08 October 2020 considered two of the key issues of principle underpinning the plan that were subsequently scrutinised by the Inspector in the latest rounds of hearing sessions, namely the matters of housing need and housing supply;
- A Local Plan Project Board was set up in February 2016 to provide the necessary strategic guidance and direction for the production of the Local Plan within the Council;
- The Executive Member and Deputy are regularly kept up to date with regard the Local Plan at fortnightly briefings.

6. FORWARD PLAN

6.1 This report contains a recommendation on a key Executive decision that was first notified to the public on 14 September 2020.

7. BACKGROUND

7.1. Members will be aware of, and familiar with, many of the issues surrounding the Local Plan from the regular Strategic Planning Matters reports and the reports to the Cabinet and Full Council meetings of 17 April 2017, 10 December 2018 and 08 October 2020 referenced above.

7.2. However, for the purposes of placing the proposed Further Main Modifications and the remainder of this report in context, the following dates and steps are highlighted:

7.3. On 10 December 2018 Cabinet approved consultation upon the proposed Main Modifications to the submitted Local Plan. Main Modifications are the mechanism by which an Inspector may fix, or 'make sound' those parts of the Local Plan submitted for examination which are not considered fit for purpose. The consultation approved by Cabinet in 2018 was upon the Main Modifications to the Local Plan that, at that point, the Inspector considered necessary following hearing sessions held between November 2017 and March 2018.

7.4. Following this decision, consultation on the proposed Main Modifications took place between January and April 2018. The responses to the consultation were then returned to the Inspector for his consideration.

7.5. In July 2019, and following consideration of the responses to the above consultation, the Inspector wrote to the Council identifying a series of 'issues and reservations' with the Plan. The Inspector wrote a further letter to the Council in August 2019 setting out a range of additional questions. Responses to the Inspector's letters were prepared in consultation with the Local Plan Project Board and submitted to the Inspector for consideration in late 2019 under the delegated authority granted by Full Council in April 2017.

7.6. Further hearing sessions to consider the matters raised in the Inspector's letters were scheduled to be held in March 2020. However, these were postponed due to the Covid-19 pandemic. Prior to the hearings being rescheduled, new household projections for England were released. These are a key input into the Plan's assessment of future housing requirements. In July 2020, the Inspectors for the Central Bedfordshire and North Hertfordshire local plan examinations wrote to both local authorities asking for additional information on this matter.

7.7. A response was submitted in August 2020 and resumed hearings were scheduled to commence on 28 September 2020. However, these were again postponed following the calling of an Extraordinary meeting of Full Council on 08 October 2020 to further consider the Council's August 2020 response. At that meeting, Council resolved <u>not</u> to amend the position that had been put to the Inspector.

<u>Progress since Extraordinary Full Council meeting of October 2020</u>

7.8. Following the resolutions of the Extraordinary Full Council meeting, the hearing sessions were rearranged and commenced on 23 November 2020. The sessions were held virtually on Zoom and live streamed on the Council's YouTube channel. Prior to Christmas, 11 days of hearings were held. These considered a range of matters from the overall assessment of housing need, to Green Belt, to proposed alterations to a number of sites that had been proposed through the original Main Modifications. Following those hearings, a small number of further papers were prepared by the Council at the Inspector's request and submitted to the Examination.

7.9. At the conclusion of the pre-Christmas hearings, the Inspector held a 'wash-up' session with the Council to discuss the matters arising and next steps. This session was held in public following the same arrangements as above. At that session the Inspector stated that, going forward, the Council could expect one of two things to happen; either to receive a letter setting out any concerns or going out consultation on further main modifications. The Inspector undertook to write to the Council raising any concerns in relation to the issues heard to date by the end of January at the latest. He further undertook that he would indicate to the Council through the Programme Officer if the Council should expect to receive a letter in advance of this point. The Inspector was clear that any further main modifications would be those that he considered necessary for the soundness of the Plan and that he would not allow modifications with which he was not happy to be consulted upon.

7.10. By the end of January 2021, no letter had been received from the Inspector setting out any concerns and no indication was received through the Programme Officer that any such letter should be expected to be received. Officers therefore consider that the Inspector is now unlikely to raise any substantive concerns on the matters he heard evidence on during November and December 2020. The Inspector has not requested the drafting of any Modifications that would result in a substantive change to the positions presented by the Council.

7.11. To allow further consideration of matters that arose in the run up to and during the 2020 hearings, two further sessions were arranged and held on 1 and 2 February 2021 to consider one of the proposed housing allocation sites in Barkway and the Council's proposed approach to the masterplanning and delivery of the largest proposed sites in the Plan. These hearings did not go to key matters of principle in the same way as those matters discussed prior to Christmas. Following these sessions, the Inspector has advised Council officers that the site in Barkway should remain in the Local Plan.

8. RELEVANT CONSIDERATIONS

8.1. Progressing the examination towards a conclusion in a timely fashion is a priority for both the Council and the Inspector.

8.2. Where the Inspector recommends that Main Modifications are required to the Plan, the authority must adopt the Plan with those Modifications. In this regard, Members do not have the discretion to amend or otherwise change any proposed Further Main Modifications either at the point they are issued by the Inspector or at any future adoption of the Plan. A decision on any consultation on modifications is therefore largely procedural. If Members were unhappy with the direction of travel at this point, they would need to resolve to not proceed with any future consultation and notify the Inspector of their intentions and reasons.

8.3. For the reasons set out in this report, officers are of the view that Members can have sufficient comfort to enable an 'in principle' decision to be made now on the holding of a consultation. This position has regard to the facts that there appears to be an appropriate degree of certainty (i) as to the likely nature of the Further Main Modifications once issued and (ii) that the nature of those modifications appears likely to largely align with the positions considered by Members at Full Council and set out by the Council at the Examination.

8.4. At the time of writing, the Inspector's modifications have yet to be published. Should this position change in advance of the meeting, any modifications (and other relevant supporting documentation) will be tabled as an addendum to this report, including any updated recommendations. Should it become clear the modifications will not be received by the time of the meeting, officers in consultation with Members will consider whether the tabled recommendations provide sufficient latitude to allow consultation to proceed in a timely fashion upon their receipt (and after the local elections) given there will not be a further scheduled meeting of Cabinet until June.

Additional documentation produced under delegated powers

8.5. The ongoing nature of the Local Plan examination has seen a range of additional information produced by the Council since the decision of Cabinet in December 2018. This has included papers in response to queries from the Inspector, hearing statements and statements of common ground with other parties such as Hertfordshire County Council and Luton Borough Council.

8.6. These have been produced and submitted under the delegated authority granted to the Service Director and Executive Member by Full Council in April 2017. In many instances, the Council's response has been formulated in consultation with the Local Plan Project Board which meets informally to provide strategic guidance and cross-party input prior to delegated authority being exercised.

8.7. A list of the additional document produced by the Council is attached at Appendix 1. It is requested that this is noted by Cabinet.

Likely nature of the proposed modifications

8.8. At the Inspector's request, Council officers prepare a draft schedule of proposed Further Main Modifications based upon the information submitted prior to the hearings, matters discussed at the hearings themselves, and matters on which the Inspector requested additional information having heard evidence at the hearings. These have been sent to the Inspector for his review and approval. Through the Programme Officer, the Inspector has requested some minor drafting changes. As set out above, he has not raised any significant issues of concern. The Inspector is yet to formally publish the schedule of proposed Further Main Modifications for consultation. However, in broad terms, the draft modifications requested by and submitted to the Inspector do not require changes to the position set out by the Council in relation to the matters below.

8.9. Of the matters specifically considered by Extraordinary Full Council on 08 October 2020, and to date the Inspector has not requested any modifications (or changes to the submitted draft modifications) or raised any concerns substantively affecting:

- The objectively assessed need for housing within the District over the period 2011-2031 of 11,500 homes;
- A housing supply to meet that need in full, from a range of sites that might deliver over 13,000 homes during the same period;
- The resultant 'buffer' between the housing requirement and the housing supply; and
- The release and use of sites presently in the Green Belt in order to achieve this.

8.10. Of the other matters considered by the Inspector between November 2020 and February 2021, the Inspector has not requested any modifications (or changes to the submitted draft modifications) or raised any concerns substantively affecting:

- The Council's proposed approach to masterplanning of significant development sites (which is also subject to a separate report to this meeting);
- Assisting in meeting unmet housing needs from Luton by allocating land to the east of the town within North Hertfordshire for development;
- The approach to the selection and allocation of housing sites;
- The deletion of allocations for those sites which now benefit from planning permission and are being implemented;
- A proposed allocation for Gypsy and Traveller provision at Danesbury Park Road in the south of the District, a site which presently benefits from a temporary planning permission;
- Biodiversity; or
- Changes arising from the Government's changes to the Use Class Order (which sets out how different uses of land are classified for planning purposes).

8.11. The majority of the anticipated proposed Further Main Modifications will be to change the Plan in order to reflect the latest position on the above matters.

8.12. The main changes arising from the November and December 2020 and February 2021 hearings and anticipated to be included in the proposed Further Main Modifications for consultation upon their publication are:

- The re-labelling of the proposed "villages for growth" (Barkway, Codicote, Ickleford, Knebworth and Little Wymondley) to address concerns that this might suggest a more permissive approach to development outside of the sites specifically allocated for new homes;
- The retention of site BK3 in Barkway (which is not in itself a modification but is counter to the position presented by the Council at examination) and
- The deletion of a proposed allocation for Gypsy and Traveller provision at Pulmer Water near Codicote as the Council was unable to demonstrate evidence of this site being occupied for this purpose or clear evidence of future need.
- The deletion of a number of proposed housing allocations in locations such as Royston, Whitwell and Ashwell where development has now commenced or been completed making the relevant policies obsolete.

8.13. Should further information on the modifications be made available in advance of the meeting, this will be published as an addendum or reported verbally.

Potential next steps

8.14. Subject to the agreement of Cabinet to the recommendations in this report and satisfying of the relevant conditions, a consultation will be held on the proposed Further Main Modifications. This will be hosted and administered by the District Council. The consultation would be available on the Council's website with a prominent link from the homepage throughout the consultation period. The start of the consultation would additionally be publicised through use of the Council's social media channels and press releases.

8.15. The length and format of the consultation is not prescribed in regulations. Guidance issued by the Planning Inspectorate is that consultation on Main Modifications should generally reflect that undertaken at the proposed submission stage. It is therefore recommended that consultation should run for a period of six weeks. Due to the restrictions associated with the pre-election period, it is proposed that consultation would start after the planned local elections in May 2021 though the proposed modifications themselves will be published on the Council website in advance of this time once they are published by the Inspector.

8.16. Any consultation will be upon the latest proposed changes to the Plan only. It is not an opportunity for interested parties to (re-)submit comments upon general principles or policies within the Plan which are not subject to proposed amendments, or upon those (parts of the) Modifications previously consulted upon in 2019 which are not subject to further change. Any Modifications are put forward without prejudice to the Inspector's final conclusions on the Plan. Alongside the consultation on the latest proposed changes to the Plan, respondents will also be able to comment on other relevant documents produced since the first Main Modifications consultation in 2019.

8.17. All representations received during the six-week consultation period will be collated by the Council and sent to the Inspector. At this point it is for the Inspector to determine what additional actions (if any) are required to address the issues raised in the consultation responses. The progress of the examination remains at the Inspector's discretion. Once any such further steps have been completed to the Inspector's satisfaction, he will complete and issue his final report. This will set out his findings on key issues relating to the Plan and his recommendations. Subject to a positive outcome and recommendation, the Plan (incorporating any modifications required by the Inspector) will be brought to Full Council for adoption. Although it is not possible to provide a definitive timetable, it is presently anticipated that this would be in the second half of 2021.

8.18. In terms of planning decision-making, Paragraph 48 of the 2019 NPPF states that local planning authorities may give weight to relevant policies in emerging plans subject to three conditions, summarised as: the stage of preparation; the extent of unresolved objections; and consistency with national policy.

8.19. The examination is now at a very advanced stage. Key issues of principle (such as housing numbers, sites and Green Belt) have been thoroughly re-examined through the latest hearings and the Inspector has made clear public commitments as to the next steps and the nature of any modifications issued at this stage (see paragraphs 7.9 and 7.10). In this context, it is considered that the Plan as proposed to be modified will – without prejudice to the outcomes of the consultation and the Inspector's report – provide a clear direction of travel and indication as to the likely content of the Plan at the conclusion of the examination process. This will be reflected appropriately in Development Management reports and decisions on a case-by-case basis.

8.20. Officers will continue to provide updates on progress with any consultation and subsequent steps through the regular Strategic Planning Matters reports presented to each meeting of the Cabinet.

9. LEGAL IMPLICATIONS

9.1 Under the Terms of Reference for Cabinet, paragraph 5.6.18 of the Constitution states that the Cabinet may exercise the Authority's functions as Local Planning Authority …. (except to the extent that those functions are by law the responsibility of the Council or delegated to the Service Director: Regulatory).

9.2 The legal framework for the preparation, submission, examination and adoption of Development Plan Documents is set out in the Planning & Compulsory Purchase Act 2004 (as amended). Detailed regulatory requirements are contained in the Town & Country Planning (Local Planning) (England) Regulations 2012.

9.3 The powers of the Inspector to recommend modifications at the request of the Local Planning authority are established in Section 20 of the Planning & Compulsory Purchase Act 2004 (as amended). The Council requested that the appointed Inspector exercise these powers when the Plan was submitted in June 2017.

9.4 To date, the Examination of the emerging Local Plan has been conducted in accordance with the resolutions of Full Council of 11 April 2017 and 08 October 2020 and Cabinet of 10 December 2018.

9.5 During the period between the date on which the Notice of Election is published 29 March and polling day there are restrictions that apply to the way in which the Council operates, including use of Council resources and to the publicity which it can issue, and taking 'sensitive'/ controversial decisions. PERP is sometimes also referred to under the old terminology of purdah, but the two terms have the same meaning. PERP runs from **29 March** until **6 May 2021** (polling day) inclusive of both dates.

9.6 The main statutory provision are Sections 2 and 4 of the Local Government Act 1986 and the guiding principle is whether a proposed course of action may cause the Council to be perceived as favouring a particular political party or candidate in the elections

9.7 The Council's business should continue as normal during PERP subject to the guiding principle and a number of restrictions for example the Council should not commence any consultations during PERP unless they are unavoidable or required by law, in which case they should be presented neutrally and not associated with any political party or candidate.

10. FINANCIAL IMPLICATIONS

10.1. The costs of submitting and examining the Local Plan and associated work are covered in existing revenue budgets for 2020/21 of approximately £140k. These budgets are supplemented by an accrued reserve of approximately £100k. It is anticipated that expenditure in 2020/21 will exceed the revenue budget but fall comfortably within the buffer of the accrued reserve. The remaining reserve will be carried forward into 2021/22 to cover any further costs.

10.2. Since the Full Council decision in April 2017 the total expenditure to date on the Local Plan Local Plan Examination has been approximately £845k excluding officer time. Within this amount, key costs include approximately:

- £400k on legal support as detailed in the recent delegated decision published in the Members' Information Service (MIS);
- £150k for the Inspector;
- £235k for consultancy support, including statutory environmental assessment and the preparation of updated evidence; and
- £60k for administrative support, venue and equipment hire (due, in part, to the refurbishment of the Council Offices)

10.3. Any decision on the Local Plan must be made on its planning merits but there are potentially significant financial risks attached to not having a plan in place.

10.4. Without an up to date Local Plan the Council is increasingly vulnerable to planning applications in areas where it may wish to resist development. The cost of trying to resist developments is generally far higher than the cost of negotiating developments by an up to date Local Plan.

10.5. Without an up-to-date Local Plan, the Council is unable to introduce a Community Infrastructure Levy (CIL) (which is subject to a separate report to this meeting), thus limiting future options for how the Council may wish to secure financial contributions from development.

10.6. The Council Tax income from a new property exceeds the direct costs of providing services (e.g. waste collection) to that property. The net additional available funding could be estimated at over 50% of the Council Tax income, which can be used to improve the sustainability of the Council and invest in services. The report to Full Council of October 2020 identified that the proposals in the Local Plan could equate to additional Council Tax income of almost £3m (NHDC element).

10.7. The Council currently receives some funding from New Homes Bonus for growth in housing numbers. It was announced that the New Homes Bonus would be phased out and replaced with an alternative mechanism for encouraging housing growth. A consultation was launched in February on the future of New Homes Bonus. This consultation addresses a lot of the themes that have been consulted on previously, and therefore it looks like the change will be more of a refresh than a completely new model. This consultation again includes whether New Homes Bonus should be withheld from those Authorities that either do not have a Local Plan or are not making satisfactory progress towards adopting a Local Plan. The extent of any lost New Homes Bonus income from not having a Local Plan is impossible to estimate as the consultation also considers changes to the tier splits, deadweight, using it to support investment in areas with low land values and incentivising modern methods of construction..

11. RISK IMPLICATIONS

11.1. The Council's new risk Management Framework specifies that we will now actively manage and monitor risks scoring 4 or higher on the risk matrix. As of the latest assessment (October 2020), the Local Plan is assessed as one of the highest risks that the Council currently faces with a risk score of 9. The identified consequences on the Local Plan risk – largely related to the risks for not getting a Plan approved - include:

- Failure to have sound Development Policy Documents;
- Failure to have a 5-year land supply;
- Failure to recognise the long term needs for Town Centres;
- Failure to meet the requirements under Duty to Cooperate;

11.2. These risks then are identified as leading to:

- Increased uncertainty of planning policy base;
- Intervention by the Secretary of State;
- Legal challenge to the Local Plan;
- Detrimental effect of economic situation on New Homes Bonus.

12. EQUALITIES IMPLICATIONS

12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.2 An Equality Impact Assessment has been produced assessing the plan's compliance with relevant legislation and requirements. The Planning Inspectorate specifically requested that this document accompanied submission of the local plan.

13. SOCIAL VALUE IMPLICATIONS

13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

14.1. The Local Plan is subject to extensive, statutory environmental assessments which consider the social, economic and environmental implications of proposed policies and allocations. Any consultation on proposed Further Main Modifications would be accompanied by a further environmental assessment. Any proposed Further Main Modifications will be 'screened' to determine if they are likely to have significant effects and if necessary, will be subject to full appraisal which may lead to recommendations to alter the wording of policies to address any identified likely significant effects.

15. HUMAN RESOURCE IMPLICATIONS

15.1 There are no new human resource implications as a direct result of this report. The Planning Policy team is not fully staffed with one permanent vacancy. The Principal Planning Officer post, approved as a Budget growth bid in February 2020, was recruited to in November 2020. Temporary staff and/or consultants have helped progress the Local Plan to its current point.

16. APPENDICES

16.1 Appendix A - Examination Documents Submitted by NHDC to the Examination between July 2019 and March 2021

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18. BACKGROUND PAPERS

18.1. Report to Full Council 11 April 2017 - Submission of the Local Plan

18.2. Report to Cabinet 10 December 2018 - Main Modifications Consultation

18.3. Report to Extraordinary Full Council 08 October 2020

18.4. North Hertfordshire Local Plan Examination Documents

18.5. National Planning Policy Framework 2012

18.6. Planning Inspectorate Procedure Guide for Local Plan Examinations

18.7. Strategic Planning Matters reports to Cabinet:

- 11 June 2019
- 30 July 2019
- 24 September 2019
- 31 October 2019
- 17 December 2019
- 28 January 2020
- 24 March 2020 (Cancelled)
- 23 June 2020
- 21 July 2020
- 15 September 2020
- 15 December 2020
    - 26 January 2021