

# Local Plan 2040 - Submission

Cabinet Member for Economic Development, Leisure & Local Plan

Date:	10 <sup>th</sup> May 2022
Agenda Item:	4
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Key Decision?	YES
Local Ward Members	All

Cabinet

## 1. Executive Summary

- 1.1 Members of Cabinet considered the Submission of the Local Plan 2040 at a meeting on 7<sup>th</sup> December 2021 and decided to defer submission to allow the Local Plan to be reviewed against the Council's stated climate change aspirations.
- 1.2 The Council has undertaken a review and also taken informal soundings from the Department of Levelling Up, Housing and Communities (DLUHC), the Planning Inspectorate and the Council's advisers as part of this review. In summary, the views taken suggest the Council should now proceed with the Submission of the Local Plan, and also prepare a Supplementary Planning Document (SPD) for Climate Change, ready for submission after the Examination in Public (EIP).
- 1.3 The version of the Local Plan 2040 to be submitted was initially approved at the Cabinet meeting on [9<sup>th</sup> February 2021](#) and the current version is now accompanied by the responses from the consultation that took place between 5<sup>th</sup> July 2021 and 30<sup>th</sup> August 2021, as all representations need to be passed to the Inspector for consideration as part of the Examination in Public.
- 1.4 This report also includes (at Appendix B) a list of suggested modifications to be submitted alongside the plan, in the interests of ensuring clarity and accuracy.
- 1.5 Finally, the Local Plan has to be submitted with an up to date Local Development Scheme (LDS) which sets out the updated anticipated timescales for Local Plan preparation and other Supplementary Planning Documents (SPDs) and Development Plan Documents (DPDs). An updated draft LDS is at Appendix G.

## 2. Recommendations

- 2.1 It is recommended that Cabinet:-
  - 2.1.1 agree that the [Local Plan 2040](#) and accompanying [Proposals Map](#) should be submitted to the Planning Inspectorate, together with the summary comments and officer responses at Appendix A, the list of suggested modifications at Appendix B and the updated Local Development Scheme (LDS) attached at Appendix G.
  - 2.1.2 delegate authority to the Cabinet Member for Economic Development, Leisure & Local Plan, in consultation with the Interim Director of Regeneration and the Leader of the Council, to agree the finalised Regulation 22 – Statement of Consultation, the overall Duty to Cooperate Statement and individual Statements of Common Ground (SoCG).

## 3. Background

- 3.1 The Local Plan 2040 sets out the Council's strategic policies, including the levels of development to be delivered to 2040 (and sites to deliver these requirements), with a suite of 'Local Policies' which are principally focussed on development management issues relevant to the determination of planning applications. The plan and the specific policies and proposals can be viewed at [Local plan 2040 \(lichfielddc.gov.uk\)](http://lichfielddc.gov.uk).
- 3.2 Cabinet approved the Publication (Regulation 19) version of the Local Plan for formal consultation purposes on 9<sup>th</sup> February 2021. Due to the pandemic restrictions, the report delegated authority for the Cabinet Member to agree the final details of the consultation strategy and its timing with the then Head of Economic Growth & Development. The report also contained a safeguard that the Local Plan 2040 publication document should be brought back to Cabinet if any outstanding evidence was gathered that indicated the need for significant changes to the Local Plan, or that work itself could not be progressed further (due to the pandemic) and the implications needed to be reported back.

### The outcome of the Consultation

- 3.3 Formal consultation took place over 8 weeks between 5<sup>th</sup> July 2021 and 30<sup>th</sup> August 2021. Due to the pandemic restrictions, the consultation strategy involved a letter / email circulation from records held on the Council's database and a combination of physical meetings (with Covid secure measures) and virtual consultation methods (including a presentation video and the offer of virtual drop-in sessions). Officers were available throughout the consultation period via phone and email to assist with queries. This consultation strategy was in accordance with, and went beyond, the consultation requirements set out within the Council's adopted [Statement of Community Involvement](#) (SCI).
- 3.4 The Regulation 19 consultation is a statutory consultation and asked whether the plan could be considered to be legally compliant and whether the tests of soundness required in the National Planning Policy Framework have been met. It then asks representors to set out how the plan should be amended, with justification for any changes. A copy of the standard proforma which consultees were asked to complete can be found at Appendix C.
- 3.5 Appendix A summarises all 718 representations received from 213 representors to the consultation, together with summary officer responses. Only a few submissions, mainly from professional planning organisations, actually followed the proforma. Most submissions from the general public did not answer the questions on the proforma but instead made comments either for or against the plan. In such circumstances, the questions are registered as unanswered as it is not appropriate to try to second guess an answer from free-flowing script. However, the comments may still be valid for examination purposes, so they will be forwarded on to the Inspector in full for their consideration. Where the questions have been answered, Appendix A captures whether the representation related to Duty to Cooperate, Legal Compliance or to the tests of Soundness. The vast majority of representations relate to tests of soundness. At this stage in proceedings, all the representations received will be submitted with the Plan to the Planning Inspectorate for consideration at the Examination in Public. All representations can be viewed in full via the Council's [consultation portal](#).
- 3.6 Six representations were received after the close of the consultation period. These have been summarised and a summary officer response prepared and are set out at Appendix H. Late responses can be submitted to the planning inspector alongside all those responses made prior to the close of the consultation and it will be for the planning inspector to determine whether to consider such responses.

- 3.7 Following the regulation 19 consultation and in response to the comments received, a list of suggested modifications to the plan have been identified at Appendix B. It is recommended that this list should be submitted to address factual corrections, changes to government policy/regulations since December 2021 and any graphical, spelling and grammatical errors noted by the representations received.

#### Evidence base

- 3.8 Since the February 2021 report, pandemic restrictions have been lifted and the outstanding transport modelling evidence collection (in non-restrictive conditions) has been progressed (during Autumn 2021). Transport infrastructure that is required to address evidential requirements to mitigate the impact from the housing allocations proposed in the Local Plan 2040 will (like other justified infrastructure requirements) normally be provided via Highways Authority funding sources, but could possibly be funded from either CIL or negotiated Section 106 contributions. Other external funding opportunities will also be explored. An appropriate balance of contribution requirements will be necessary to ensure proposals mitigate transport impacts, deliver social and environmental infrastructure but also remain viable and deliverable. Moving forward, the Local Plan 2040 and its evidence base can and will be tested at the Examination in Public. Given this context it is considered the plan can now be submitted.

#### Regulation 22 Statement, Duty to Cooperate Statement and Local Plan 2040 Submission

- 3.9 A Regulation 22 Statement (setting out how Lichfield District Council has engaged with the community and stakeholders in preparing the plan and how this meets the requirements of the SCI and national regulations) will be submitted with the plan. The regulations require the Council to set out how it has undertaken this work and the Regulation 22 Statement can only be completed after the decision of Cabinet, so that it captures the reporting undertaken. A draft Regulation 22 Statement can be found at Appendix D and this will be updated to take account of the Cabinet meeting decision and minutes using the delegated powers requested.
- 3.10 The plan will be accompanied by a Duty to Cooperate Statement, demonstrating how Lichfield District has worked with neighbouring authorities and other statutory bodies in preparing the submission version of the plan. The Duty to Cooperate is a legal and soundness test that requires cooperation between local planning authorities and other prescribed bodies to maximise the effectiveness of policies for strategic matters in Local Plans. Under Duty to Co-operate requirements, the Council has to prepare an overall Duty to Cooperate Statement on the work undertaken with neighbouring authorities and other prescribed bodies on cross boundary strategic issues. A draft is attached at Appendix E and a final version will be submitted to reflect an updated position on the Statements of Common Ground that have been agreed.
- 3.11 Individual Statements of Common Ground cover matters such as housing, infrastructure and the environment and are being finalised for submission following analysis of the representations received from relevant bodies at the regulation 19 consultation stage and subsequent discussions. A template for the individual Statements of Common Ground is attached at Appendix F, and the Statements of Common Ground will also be submitted.
- 3.12 Accordingly, it is recommended that delegated authority is given to the Cabinet Member for Economic Development, Leisure & Local Plan in consultation with the Interim Director of Regeneration and the Leader of the Council to agree the finalised Regulation 22 – Statement of Consultation, the overall Duty to Cooperate Statement and individual Statements of Common Ground (SoCG). This approach is consistent with the approach undertaken by other authorities we will enter into Statements of Common Ground with. It ensures that technical requirements for submission are dealt with expediently prior to plan submission as discussions continue and subsequent to submission, should it become apparent in the lead up to and during the Examination in Public that amendments to or further Statements of Common Ground are required.

## Local Plan Submission

- 3.13 The Council agreed with the Planning Inspectorate to submit its Local Plan for examination by the end of December 2021. However, the submission of the plan was deferred by Cabinet at its meeting on 7<sup>th</sup> December 2021, to provide time for a review of the Submission version of the Local Plan against the Council's stated climate change aspirations to be a carbon zero district by 2050.
- 3.14 Since then, the approach to climate change in the emerging Local Plan has been closely reviewed, and informal soundings were also taken from DLUHC, the Planning Inspectorate and from the Council's advisers. The Council is having to balance climate change aspirations against the need to meet its development requirements and also to ensure that its approach can be justified against national policy requirements and legislation.
- 3.15 The Council's climate change aspirations are reflected throughout the plan - either in specific policies such as SP10 and SD2, or in the criteria contained in policies and proposals or in the respective supporting text to policies and proposals. Planning case law is clear that a plan should be read as a whole when considering proposals and all relevant policies should be taken into consideration in the determination of development proposals. As such, it can be considered that references throughout the plan provide suitable hooks for the council to work towards its climate change aspirations within the Local Plan period to 2040, particularly if supported by a subsequent Supplementary Planning Document (SPD) on Climate Change, which is the approach informally suggested by the Planning Inspectorate and DLUHC. It is generally considered that an SPD provides the most agile and efficient way for a Council to provide up to date guidance on a topic subject and respond to changing legislation and targets. The proposed timetable for the Climate Change SPD is set out in paragraph 2.10 of the LDS at Appendix G.
- 3.16 The Council has also undertaken a comparative review of other Local Plans submitted and adopted in the last two years to determine which plans have set carbon zero targets in policies and which have set out local plan policy guidance compliant with national regulations in Supplementary Planning Documents. The review shows that there were 8 adopted plans during this period and only 1 (Lambeth) indicated carbon net zero targets, and this was informed by the Greater London Plan. Bath & North East Somerset has also now submitted a Local Plan that sets targets focussed on reductions in energy use related to carbon-creation (although not technically a "Carbon Zero" target) but it has not yet been tested by Examination in Public.
- 3.17 One consideration about setting policy requirements and targets above national legislative requirements is that it may not be sustained at Examination in Public as the additional associated costs will reduce the viability of housing and other types of development, making it harder to impose planning obligations (including affordable housing and other community requirements) on developers. As an example, the Bath & North East Somerset plan acknowledges that its policies will create an additional cost of between 5% and 7% (consistent with the view of our own Local Plan viability consultants). It is not therefore surprising to see that the areas (from the comparative review) that were seeking net zero carbon targets are in London and Bath & North East Somerset – areas where developments typically have higher sales values and therefore greater viability.
- 3.18 A further consideration is that a delay in submission could increase the risk of the Council being vulnerable to applications for development which do not accord with the adopted Local Plan and that these might be lost at appeal, given the commitment in the Adopted Local Plan Allocations document (2019) to submit a new Local Plan by the end of December 2021 date. Furthermore, the government has reiterated the requirement for Local Planning authorities to have up to date plans in place by December 2023 and that they will intervene where plans are not in preparation.

- 3.19 The informal advice received from the Department for Levelling Up, Housing and Communities (DLUHC) and from the Planning Inspectorate (following an informal review of the Local Plan 2040) was that the Council should submit the plan and support its climate change policies via the Supplementary Planning Document route. The Council’s advisers were also approached and their views were partly to follow the same path, and partly that we should not submit until more work is done.
- 3.20 In summary, following the review and the advice taken, it is recommended that the Council should now proceed with the submission of the Local Plan 2040 and associated documents to the Planning Inspectorate, but should also continue to provide further support to its climate change aspirations through the subsequent completion of a Supplementary Planning Document for Climate Change.
- 3.21 The Local Plan should also be submitted with an up to date Local Development Scheme (LDS). The LDS reflects an updated delivery timescale (summarised below) although it should be noted that the timetable will actually be determined by how quickly the appointed planning inspector progresses the EIP and preparation of their subsequent report. The dates may therefore eventually differ from the dates below and in the LDS (attached as Appendix G).

<b>Local plan 2040 key stage</b>	<b>Date</b>
<a href="#">Local Plan Review: Scope, Issues and Options</a>	April 2018
<a href="#">Local Plan Review: Preferred Options and Policy Directions</a>	January 2019
<a href="#">Local Plan Review: Preferred Options</a>	November 2019
<a href="#">Local Plan 2040 publication</a>	July-August 2021
Submission for examination in public	May-June 2022
Examination in public	Autumn/Winter 2022
Adoption of Local Plan 2040	Summer 2023

- 3.22 The updated LDS also includes timescales for the Burntwood Area Action Plan, based on the emerging Local Plan timescales, as set out below.

<b>Burntwood Area Action Plan key stage</b>	<b>Date</b>
Burntwood AAP Scope, Issues and Options	Winter/Spring 2023
Burntwood AAP publication	Autumn / Winter 2023
Submission for examination in public	Spring / Summer 2024
Examination in Public	Autumn / Winter 2024
Adoption of Burntwood AAP	Spring 2025

- 3.23 The timescales for the SPDs is also informed by the Local plan timetable. Early preparation of the SPDs such as consideration of their scope, issues and options could commence and be informed by the Submission version of the plan, and reviewed once the Planning Inspector’s report following the EIP is received and modifications are consulted upon. However the new and updated SPDs should not be

consulted upon or adopted until the Local Plan is adopted if they are to be consistent with the national planning practice guidance.

<b>Supporting planning document</b>	<b>Date adopted</b>	<b>Consideration for update or new document</b>
<a href="#">Rural Development SPD</a>	December 2015	Update to follow Adoption of Local Plan
<a href="#">Historic Environment SPD</a>	December 2015	Update to follow Adoption of Local Plan
<a href="#">Sustainable Design SPD</a>	December 2015 <sup>1</sup>	Update to follow Adoption of Local Plan
<a href="#">Biodiversity and Development SPD</a>	May 2016	Update to follow Adoption of Local Plan
<a href="#">Developer Contributions SPD</a>	May 2016	Update to follow Adoption of Local Plan
<a href="#">Trees, Landscape and Development SPD</a>	May 2016	Update to follow Adoption of Local Plan
<a href="#">Rugeley Power Station Development Brief</a>	April 2019	Update to follow Adoption of Local Plan
<a href="#">Climate Change and Zero Carbon SPD</a>	-	New document – Scope / Issues – Autumn / Winter 2022 Consultation summer 2023 Adoption Autumn 2023
<a href="#">Air Quality SPD</a>	-	New document – Scope / Issues – Autumn / Winter 2022 Consultation summer 2023 Adoption Autumn 2023
<a href="#">North east of Lichfield Strategic Housing Allocation Development Brief/master plan</a>	-	New document – Scope / Issues – Autumn / Winter 2022 Consultation summer 2023 Adoption Autumn 2023
<a href="#">Area specific design code(s)</a>	-	New document – Scope / Issues – Autumn / Winter 2022 Consultation summer 2023

<sup>1</sup> Appendix A of the Sustainable design supplementary planning document was updated in spring 2019.

Supporting planning document	Date adopted	Consideration for update or new document
		Adoption Autumn 2023

Alternative Options	<ol style="list-style-type: none"> <li>1. To not submit the plan. This would result in the plan going back to an earlier stage of progress and would delay the plan making process. The Council would not be in accordance with its published Local Development Scheme and will not have addressed the commitment made when the Local Plan Allocations document was adopted. The decision could lead to a significant amount of the evidence base work becoming out of date with additional financial implications for subsequent updating of the evidence. There is an increased risk that planning proposals will be submitted and would be approved on appeal if refused as time progressed and the existing adopted Development Plan was found to be time expired. The government has indicated it may intervene where plans will not be prepared by December 2023.</li> <li>2. To delay submission. The Council would not be in accordance with its published Local Development Scheme and will not have addressed the commitment made when the Local Plan Allocations document was adopted. The decision could lead to a significant amount of the evidence base work becoming out of date with additional financial implications for subsequent updating of the evidence. There is an increased risk that planning proposals will be submitted and would be approved on appeal if refused as time progressed and the existing adopted Development Plan was found to be time expired.</li> </ol>
Consultation	<ol style="list-style-type: none"> <li>1. Consultation has been undertaken on the previous stages of the Local Plan Review.</li> <li>2. The Regulation 19 Publication version of the Local Plan was consulted upon between the 5<sup>th</sup> July 2021 and the 30<sup>th</sup> August 2021. All representations received during the Regulation 19 consultation will now be submitted to the Planning Inspectorate as part of the Examination in Public. It should be noted that as such representations are, as required by the regulations are made to the Inspector and the District Council has not responded back to each representor.</li> </ol>
Financial Implications	<ol style="list-style-type: none"> <li>1. The District Council is required to enter into a Service Level Agreement with the Planning Inspectorate and pay their fees for undertaking the Examination.</li> <li>2. The District Council is required to appoint an Independent Programme Officer to manage the administration of the Examination in Public</li> </ol>

	<ol style="list-style-type: none"> <li>3. There is an earmarked reserve set aside for the Local Plan examination and review costs at 1 April 2022 of £238,500. At present, taking into account committed costs, £169,000 remains in the earmarked reserve in addition to the £90,000 budget for 22/23, giving a total of £259,000 available to fund legal advice, a programme officer and the fees of the planning inspectorate and any additional work that the Inspector may recommend to the Council it undertakes in order for the plan to be found sound.</li> <li>4. If any of the proposals within the Local Plan 2040 require third party land in order to secure delivery, acquisition will be by negotiation or if necessary by Compulsory Purchase Order (CPO), the details of which will be subject to further reports to Cabinet if required. The costs of such acquisition would be addressed by developer contributions / CIL from those developments giving rise to the need. It is also proposed that the Council will explore any external funding opportunities that could potentially be opened up as a result of this proactive and strategic approach</li> </ol>
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Approved by Section 151 Officer	Yes
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Legal Implications	<ol style="list-style-type: none"> <li>1. There is a statutory duty for the Local Authority to prepare a Local Plan and to review and keep it up to date by review at least every 5 years.</li> <li>2. The Local Plan is required to be submitted in accordance with Regulation 22 of the of the Town and Country Planning (Local Planning) (England) Regulations 2012</li> <li>3. The Council will enter into legal agreements for the acquisition and transfer of land if required. These terms will be considered in detail (if required) in future Cabinet reports.</li> <li>4. The making and advertising of a Compulsory Purchase Order (CPO) would need to be carried out in compliance with all the relevant legislation which, again, would be considered as part of a future Cabinet report if necessary</li> </ol>
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Approved by Monitoring Officer	Yes
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Contribution to the Delivery of the Strategic Plan	<ol style="list-style-type: none"> <li>1. Supports the priority of 'Enabling People' through Local Plan preparation which makes provision for growth in housing and other land uses informed by public consultation so they can live healthy and active lives.</li> <li>2. Supports the priority of 'Shaping Place' through the Local Plan preparation for allocation of new land uses, preserving the districts assets and ensuring growth is done sustainably and with balanced infrastructure provision.</li> <li>3. Supports the priority of 'Developing Prosperity' through the Local Plan preparation which makes provision for land use allocations including employment and residential use, thereby encouraging economic growth, enhancing the district and providing certainty for investment.</li> <li>4. Supports the priority of being a 'Good Council' by accountability, transparency and responsiveness as the update enables the community, business, developers, service and infrastructure providers and other interested organisations to know how the Local Plan review is progressing.</li> </ol>
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Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> <li>1. An Equality Impact Assessment has been undertaken at all previous stages of the Local Plan Review process including the Regulation 19 Publication version of the plan which is to be Submitted to the Planning Inspectorate.</li> </ol>
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Crime & Safety Issues	1. There are no crime and safety issues.
Environmental Impact	The Council is required to assess the environmental impacts of any plan which it produces. Accordingly, a Sustainability Appraisal Scoping report accompanied the Issues & Options version of the plan and a Sustainability appraisal appropriate to each stage of the plan has subsequently been published including at the Regulation 19 Publication plan stage. The Council has also published a Habitat Regulations Assessment at each relevant consultation stage including the regulation 19 Publication stage. These evidence base documents will be tested at Examination.

GDPR / Privacy Impact Assessment	A Privacy Impact Assessment into the plan has been undertaken
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	Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
A	Objections from omission site promoters results in changes to the plan	Likelihood: Red Impact: Yellow Risk: Red	Use evidence base and prepare topic papers and hearing statements for consideration at examination to provide additional narrative for Local Plan strategy and site selection to counter objections made during the Reg 19 consultation.	Likelihood: Green Impact: Yellow Risk: Yellow
B	Objections from neighbouring authorities re the quantum and location of development result in changes to the plan	Likelihood: Red Impact: Yellow Risk: Red	Under the Duty to Cooperate and undertake meetings and agree SoCG. Use evidence base and prepare topic papers and hearing statements for consideration at examination to provide additional narrative for Local Plan strategy and site selection.	Likelihood: Green Impact: Yellow Risk: Yellow
C	Objections from statutory consultees re the quantum and location of development result in changes and or delay to the plan	Likelihood: Red Impact: Red Risk: Red	Under the Duty to Cooperate, undertake meetings and agree SoCG. Use evidence base and prepare topic papers and hearing statements for consideration at examination to provide additional narrative for Local Plan strategy and site selection.	Likelihood: Green Impact: Red Risk: Yellow
E	Submission doesn't meet statutory requirements and results in delay	Likelihood: Yellow Impact: Red Risk: Red	Use PAS & PINS templates and use Counsel for best practice advice as a checklist for submission.	Likelihood: Green Impact: Red Risk: Yellow

### Background documents

[Agenda for Cabinet on Tuesday, 9th February, 2021, 6.00 pm \(lichfielddc.gov.uk\)](#) - Agenda item 3

### Relevant web links

[Agenda for Cabinet on Tuesday, 9th February, 2021, 6.00 pm \(lichfielddc.gov.uk\)](#) - Agenda item 3

[Local plan 2040 \(lichfielddc.gov.uk\)](#)

[Evidence base \(lichfielddc.gov.uk\)](#)