

# Local Plan Update

Councillor Alex Farrell - Cabinet Member for Housing & Local Plan

Date:	17 October 2023
Agenda Item:	10
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Key Decision?	YES
Local Ward Members	All wards.



**FULL COUNCIL**

## 1. Executive Summary

- 1.1 The Local Plan 2040 (LP2040) was submitted for examination in June 2022, with that examination currently paused following initial comments and queries received from the inspectors until November 2023. The purpose of this report is to provide an update to Full Council on the progress of responding to those queries and, importantly, to reflect on the continued appropriateness of the key approaches developed through the plan in its current draft, in the context of the local elections which took place in Lichfield District in May 2023.
- 1.2 The council has choices over how to proceed with the LP2040, even though it has been formally submitted for examination. This report introduces and considers those options and following from Cabinet's consideration on 5 September 2023, on balance, recommends to Full Council that the plan is withdrawn from its examination in public in accordance with section 22 of the Planning and Compulsory Purchase Act 2004 and that a new, appropriate, Local Plan for Lichfield District is prepared in its place.
- 1.3 To decide this, it is important that members have all relevant information and details of the risks and implications of withdrawal, as well as the opportunities a withdrawal would present, and these are set out in detail in this paper.

## 2. Recommendations

- 2.1 That Full Council notes the progress made in responding to initial comments and queries received from the examiner, as part of the current progress of the plan submitted for examination in June 2022.
- 2.2 That Full Council approve and instruct officers to take all necessary steps, including giving the required notice under the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended), to withdraw the Local Plan 2040 from examination, in accordance with section 22 of the Planning and Compulsory Purchase Act 2004.
- 2.3 That Council approves the draft statement of withdrawal as set out at **Appendix A** for release.

## 3. Background

- 3.1 As a local planning authority, Lichfield District Council understands that government requires all councils to have an up-to-date local plan contributing to the achievement of sustainable development and has reiterated the requirement for plans to be in place by December 2023<sup>1</sup>. The adopted Lichfield

<sup>1</sup> The Department for Levelling Up, Housing and Communities (DLUHC) are currently consulting on reforms to the local plan process. Within the consultation is a proposal that authorities would need to submit a Local Plan by June 2025 under the current system or prepare a plan under the reformed system once that is introduced.

District Local Plan is made up of two parts; the [Local Plan Strategy](#) (adopted in 2015) and the [Local Plan Allocations](#) (adopted in 2019). These documents set out how the district would grow across the plan period to 2029. The Local Plan Allocations document includes a policy commitment to carry out an early review of the Local Plan for Lichfield that will be submitted to the Secretary of State for examination in accordance with the latest Local Development Scheme or no later than the end of December 2021. Where plans are not progressing or are severely delayed, government has powers to intervene in plan preparation and directly appoint government officials, at the council's expense, to prepare a plan for its area and take away the responsibility from the local authority.

- 3.2 Our plan, which would replace the adopted Local Plan, the Lichfield District Local Plan 2040 (LP2040), was developed over a period of approximately five years and has been the subject of four formal consultation stages as set out below:
- [Local Plan Review: Scope, Issues & Options](#) (April 2018).
  - [Local Plan Review: Preferred Options & Policy Directions](#) (January 2019).
  - [Local Plan Review: Preferred Options](#) (November 2019).
  - [Local Plan 2040 Publication](#) (July 2021).
- 3.3 The decision to submit the LP2040, taken by [Cabinet on 10 May 2022](#), was contentious, opinion was divided and support for its submission was only achieved following a deferral until May 2022 (rather than the originally planned 31 December 2021), to allow time to further consider whether:
- the plan adequately addresses the council's climate change aspirations and,
  - the plans current spatial strategy, and reliance on urban expansions and use of the green belt, was right for the district.
- 3.4 During that deferral period, advice on how to proceed was commissioned from independent specialists (through a critical friend review) and tested with the Planning Inspectorate (through an advisory visit) as detailed in the [10 May 2022 Cabinet report](#). The consequence of the decision to delay submission of the plan, a scenario where elements of the adopted Local Plan may be considered out-of-date (i.e., where a plan is out-of-date, less weight may be attributed to certain policies when the council is determining planning applications), was also weighed.
- 3.5 The LP2040 was submitted to the Planning Inspectorate on behalf of the Secretary of State for examination in June 2022.
- 5.6 A [Local Plan Update report](#) was presented to Cabinet on 5 September 2023. This report provided the issues and matters within this report for Cabinet's consideration. Cabinet recommended that, having considered such matters, Full Council consider the withdrawal of the Local Plan 2040 from examination.

#### **Status of the Lichfield District Local Plan 2040 in examination.**

- 3.7 Following the submission, the appointed inspectors issued an [Inspectors' Initial Letter](#) (IL) on 8 August 2022 which set out a series of approximately forty initial queries to which the inspectors were seeking clarification. The IL made clear that whilst the inspectors were in the early stages of their preparation and reading for the examination, responses to the questions within the letter would enable them to determine how the examination should proceed.
- 3.8 The council provided an [initial response](#) to the IL on 23 September 2022, along with a proposed timeline of works for the council to undertake in order to provide comprehensive responses to the remaining matters raised in the IL. This was followed by a [request from the council's Chief Executive](#) to 'pause' the examination of the plan for a period of up to twelve months, in order for that work to be resourced and undertaken. A pause was confirmed by the inspectors on 11 October 2022
- 3.9 At present the examination of the LP2040 remains 'paused'. Following the consideration of [the Local Plan Update Report](#) in September 2023 the 'pause' of examination was extended to 10 November 2023.

### **Revisions to the National Planning Policy Framework (NPPF).**

- 3.10 On 22 December 2022, the Department for Levelling Up, Housing and Communities (DLUHC) published a consultation on proposed revisions to the National Planning Policy Framework (NPPF) which ran until 2 March 2022. The outcomes of the consultation, including a revised NPPF are still awaited. Further to this, DLUHC are currently consulting on further reforms to the plan-making process, including introducing a new approach to the preparation of local plans. The proposed revisions to the NPPF include several changes to national policy which could have implications for the development and content of Local Plans in the future, including changes to green belt policy and the Duty to Cooperate.
- 3.11 With the LP2040 having been submitted under the current version of the NPPF (2021), it falls to be tested against that version of the NPPF, not the revised NPPF. As such any changes to future national policy would not necessarily be reflected within the submitted plan.

### **Impact of the District and Parish Elections 2023.**

- 3.12 Undoubtedly the impact of the current spatial strategy, and reliance on urban expansions and use of the green belt, was an issue raised by residents with candidates of all political affiliations (and none) in the run up to the election held in May 2023.
- 3.13 Since the election, the new Cabinet Member for Housing and the Local Plan (the portfolio which now has responsibility for the Local Plan) has indicated publicly a desire on the part of the council to explore a different spatial approach to that set out in the submitted Local Plan, in respect of the use of significant urban extensions and the use of green belt land to meet the needs of the district and neighbouring authorities. Given that clear intent, it is highly likely the council would not now adopt the current submitted plan on completion of its examination; the appropriate course of action is therefore to withdraw the existing plan from examination and begin preparation of a new local plan for Lichfield District.
- 3.14 It is important any decision to withdraw the Local Plan 2040 from examination (and possibly to commence the preparation of a new one) is informed, with all the implications, issues and risks understood and accepted by members making that decision. The decision whether or not to withdraw a Local Plan is one which must be made by Full Council. The following paragraphs seek to provide Full Council with the necessary information to make such a decision.

### **Adverse issues and risks associated with withdrawing the plan.**

- 3.15 Firstly, withdrawal of the submitted Local Plan would mean there will not be a 'sound' replacement local plan, capable of adoption for the district in place by central Government's deadline of December 2023 nor the proposed deadline of June 2025 within the current local plan reform consultation. However, it should be noted that in any case due to the pause in the examination process, realistically LP2040 could not successfully complete examination and be ready for adoption by the Council by December 2023.
- 3.16 One impact of this will be a reduced level of certainty for stakeholders in respect of where development to meet future needs will and will not be directed to; nor will there be a suite of up-to-date policies to be used when determining planning applications. Paragraph 11(d) of the NPPF sets out the 'presumption in favour of sustainable development' which is at 'the heart' of the NPPF and states that where a local plan is not in place or relevant policies are out-of-date then an application should be approved unless it is in a protected area (as defined by the NPPF) or the harms caused by the application significantly outweigh its benefit. This is often referred to as the 'tilted balance'. This will potentially make it more difficult for the council to resist planning applications for unacceptable development proposals, as some policies of the current adopted Local Plan may be given reduced weight in the 'tilted balance'. This in turn may present a greater risk of decisions to refuse applications being overturned at appeal. This scenario is sometimes referred to as 'planning by appeal', as opposed to a plan-led system.

- 3.17 On the other hand, the council's confidential 'critical friend' review of the submitted LP2040 identified several areas of the plan which may not currently be sound and as such would require modifications during the examination process. Even after the council completes its responses to the initial queries contained within the IL, and if the examination was resumed, inspectors could therefore still raise further matters, or call hearing sessions into the main matters they wish to explore. A common result of the examination process is that inspectors recommend main modifications to the Local Plan to make the plan sound. Any such modifications would not however enable the council to make fundamental changes to the submitted plan which do not relate to the matters of soundness raised by the inspectors.
- 3.18 Withdrawal of the plan from examination effectively sends the council back to the start of the plan-making process. This would enable the preparation of a plan in accordance with the revised NPPF, which is expected to be published in Autumn 2023 and potentially the reformed plan-making system which is currently being consulted upon by DLUHC. The council would be required to undertake significant further evidence base work to underpin a new Local Plan, which subject to resource available, may take a several years to complete. More specifically though, a restart of the process will mean:

**a) The council will be without an up-to-date Local Plan for longer than if the plan were not withdrawn.**

The withdrawal of the Local Plan will result in the district being without an up-to-date plan for longer than would be the case if the submitted Local Plan were pursued to adoption. The policies within a withdrawn LP2040 will have no weight in determining planning applications or during any planning appeals. As set out at paragraph 3.16 in respect of decision-taking the Council will need to consider whether the 'titled balance' is engaged.

**b) Requirement to prepare a new Local Plan & likely time period involved in preparing and adopting a new sound plan.**

The NPPF and associated legislation requires Local Planning Authorities to prepare and maintain up-to-date Local Plan's to cover their administrative areas. Local Plans are required to be reviewed and updated where necessary at every five years. As noted in paragraph 3.3 the adopted Local Plan Allocations document included a policy which required the council to undertake a review of its Local Plan and achieve submission no later than 31 December 2021.

Withdrawing the Local Plan 2040 will require us to begin the process of drafting a new version to replace the adopted plan. A Local Plan is underpinned by a very extensive evidence base which is used to inform the plan and the strategy and policies contained within it. Such evidence must be collected throughout the production of the plan and inform its various stages. In addition to the collection of the evidence base, a local plan is required to go through several statutory stages, including public consultation, which informs the production of the plan. Whilst there is no statutory timetable to produce a new Local Plan, based upon the production of the adopted Local Plan and the time it has taken to get to the current stage with Local Plan 2040, it can be anticipated that the production of any new plan would likely take a minimum of 3 years.

The withdrawal of the Local Plan 2040 and commencement of a new one will require the production of a new Local Development Scheme (LDS). The LDS is a timetable for the preparation of the documents which, when prepared, will comprise the development plan for the area. This will include any Local Plan document(s) and any other development plan documents (for example area action plans or tier 2 plans) an authority is intending to prepare. Should the LP2040 be withdrawn as is proposed, then officers will be required to prepare an updated LDS which sets out the proposed timetable for any new local plan and keep this updated as the plan progresses.

**c) Addressing development needs and meeting the requirements to provide five years supply of housing land and the housing delivery test.**

A key requirement of a Local Plan is to provide a spatial strategy and allocations which meet the identified development needs for the district. With the new plan route, there will be a potential delay in allocating and delivering development to meet the needs of the district beyond the end of the adopted Local Plan's timeframe (to 2029).

This will have implications for the council's ability to demonstrate a five-year supply of housing land against its housing requirements. The NPPF requires council's to annually assess whether it has a sufficient supply of sites to provide for this requirement. At present the district can demonstrate a 9.5 year supply of sites to meet our housing requirements as set out in the [Five Year Supply Paper 2023](#). Whilst this represents a strong current position, members should be aware that this position is likely to decrease in the coming years. Indeed, the supply decreased from approximately 13 years in 2021 to 9.5 years in 2023. As the allocations made through the adopted Local Plan are built-out and completed, further supply is required to be identified and permitted to maintain a healthy five-year supply. However, without further allocations being made through the local plan process in the medium term, it is unlikely that windfall permissions will prevent the council's overall supply from decreasing and potentially falling below the required five years. The lack of a demonstrable five-year supply of housing land can impact upon our ability to refuse developments which do not conform with the adopted plan and defend planning appeals.

On the other hand, it is recognised that some members have expressed opposition in the past to the spatial strategy and land allocations contained in LP2040; and these concerns appear to have become more widespread following the elections in May 2023. Furthermore, the 'critical friend review' of LP2040 also questions the soundness of some policies and allocations in the document.

In addition to the question of housing supply, Government has put in place a Housing Delivery test (HDT) which applies to all local planning authorities. This tests overall housing delivery against an authority's housing requirement, across the preceding three-year period. The [latest results](#), published by central government, demonstrate that Lichfield District currently passes the HDT with a result of 192%. This is a result of high levels of housing completions recorded in the district between 2018 and 2021, which is primarily driven by several strategic allocations of the adopted Local Plan delivering concurrently.

Where an authority fails the HDT then several consequences may be applied including the preparation of an action plan to improve housing delivery, the application of a 20% buffer to the five-year housing land supply and ultimately the presumption in favour of sustainable development (NPPF paragraph 11) being applied. Given the current level of housing delivery and supply of housing sites it is not considered likely that the council will fail the HDT in the short/medium term. However, as housing supply decreases (as set out above), it is likely that housing delivery will consequently start to decrease over time.

**d) Future financial implications and the cost of preparing a new Local Plan.**

These are set out below in the 'Financial Implications' section of the report. It should be noted however, that whilst significant expense has been incurred in progressing the LP2040 much of this work will be able to be reviewed and revised and will assist in informing the progression of any new local plan for the district. Nevertheless, restarting the Local Plan review process will incur significant additional expenditure to progress a new plan to adoptions stage.

At the same time, if significant changes are made to the NPPF as anticipated, the new plan would have a longer 'shelf life' and be more likely to avoid the need for early review in the future.

**e) Impacts on planning service.**

As a result of withdrawing the Local Plan, there is the potential for increased workload in some services including the Place function in the Policy and Strategy Service of the Core Team and the Development Management function of the Resident and Business Services Team. Should the adopted plan be considered to be out-of-date in part and/or the five-supply of land decreases then there is the potential for an increased number of planning appeals, particularly for major developments as applicants pursue unallocated sites.

**f) Potential negative impact on infrastructure.**

The lack of up-to-date policy in a revised Local Plan supported by relevant evidence may restrict the capacity of the council to secure all necessary and cumulative infrastructure. Therefore, there is a potential loss of section 106 contributions for necessary education, highway, healthcare, and green infrastructure. This reflects that:

- The LP2040 contains policies which form the basis of requesting planning obligations/contributions.
- This could lead to an uncoordinated approach to infrastructure delivery. Particularly in respect of education and the provision of new and expanded schools/academies.
- Infrastructure requirements identified within the emerging Local Plan and its evidence base may not be delivered.
- It may impact upon opportunities to seek other funding streams to support infrastructure delivery as an up-to-date plan is not in place.

**g) Possible consequences of government intervention.**

As noted, central government has the powers under the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') to intervene in plan making where it concludes an authority is not making satisfactory progress in the preparation, revision and modification, examination and adoption of its development plan documents; or indeed if it considers that a development plan document should be withdrawn. Under sections 21, 21A, 27 and 27A of the 2004 Act, the Secretary of State (SoS) can issue directions with several different outcomes. These can include the Secretary of State pausing or taking over the plan preparation, submission, examination and adoption stages; or requiring approval of changes to be made to the plan before it can proceed further. The Secretary of State can also involve a higher tier authority to prepare the plan, such as a County Council. The Secretary of State can recover from the local planning authority the Government's costs of such interventions.

In considering any intervention, the government would need to be satisfied that the requirements in section 27(1) of the 2004 Act are met. Also relevant to this assessment are the following factors which had been set out in the '2017 Fixing our broken housing market white paper' and have been referenced where intervention has been made in other authorities:

- The council does not have an up-to-date Local Plan in place.
- The council has failed to meet the milestones in at least five Local Development Schemes since 2006; and
- has failed to plan for and deliver the homes people need in the district.

The implications of Secretary of State intervention would be that local plan making would be taken out of council control to a greater or lesser degree. Outcomes could include the imposition of a very compressed timetable to produce a plan, with the government monitoring progress closely.

Members should note that such intervention has previously taken place in [South Oxfordshire District](#) where in October 2019 a holding direction under s21A of the 2004 Act was placed upon the local planning authority following its decision to withdraw its emerging Local Plan. In a letter to the Council on 3<sup>rd</sup> of March 2022 several reasons as to why the Secretary of State had made the intervention and instruction were provided. This included that those factors set out

section 27(1) of the 2004 Act had been met. Other factors considered were that; intervention would have the greatest impact in accelerating Local Plan production; wider planning context in the region and that withdrawal of the plan would negatively impact on other emerging local plans; potential impact a delay in local plan production would have upon the progression of neighbourhood plans. In the 3<sup>rd</sup> of March letter the Secretary of State removed the holding direction and intervened in the plan-making process, instructing South Oxfordshire District Council to continue to progress its Local Plan through examination to adoption, and to provide monthly progress reports to the Ministry. The council progressed the plan under this direction to adoption in late 2020.

### **Opportunities associated with withdrawing the plan.**

- 3.19 Paragraphs 3.15 to 3.18 (above) have summarised the adverse issues and risks associated with withdrawing the submitted LP2040. However, doing so and starting again with the plan also offers opportunities for the council.
- 3.20 Currently, although the Local Plan 2040 is not an adopted part of the statutory development plan, it has reached an advanced stage of development, having been submitted for examination. Whilst this means that it is not possible to give the emerging LP2040 policies full weight in decisions on planning applications, at present those policies can be given some weight in appropriate circumstances. Upon withdrawal of Local Plan 2040 the council would no longer place any weight upon the policies of the submitted plan in accordance with paragraph 48 of the NPPF.
- 3.21 Withdrawal of Local Plan 2040 would mean that the proposed strategy including the four strategic housing allocations at North of Lichfield, Fradley, West of Fazeley and at Whittington, would no longer form part of the emerging policy framework being pursued by the council. This includes no longer proposing to release land from the Green Belt to accommodate those sites at Fazeley and Whittington.
- 3.22 Instead, in respect of ‘decision-taking’ the council would continue to use the policies within the adopted local Plan Strategy and Allocations documents, along with any relevant neighbourhood plan when determining planning applications. The council would continue to make decisions on planning proposals in accordance with its adopted Local Plan; and this will mean that when making decisions on applications the council will not evaluate any differences between the adopted Local Plan and the LP2040.
- 3.23 In the longer term, the key benefit of the withdrawal of the plan is that it will enable the council to develop a new local plan, and so have full and fresh consideration of all the potential options available to it to meet the needs of the district. This will enable the consideration and development of a new plan which will set:
- The key issues and priorities which the council wants the new local plan to address.
  - The overall spatial strategy of the new local plan, where development should and shouldn’t be permitted including new allocations for land uses including housing and employment.
  - The levels of growth which are needed to meet the needs of the district’s residents and business including what assistance can be provided to neighbouring authorities where they can demonstrate an inability to meet their own needs.
  - Areas of land, buildings and other assets which are to be protected and enhanced within the district.
- 3.24 A new local plan will be developed across a number of years and in conjunction with a wide range of stakeholders. This will include several opportunities for further formal consultation with our communities, which will enable the council to develop a plan which meets resident’s needs in a way which engages with local stakeholders. By their nature, local plans tend to be contentious. Whilst there will remain opposing views it is important for the council to progress a plan in a manner that is

positive, evidence based, objective and collaborative to secure the best outcomes for the future of the district’s residents and their needs.

- 3.25 As noted above there is an expectation that government will publish a revised NPPF during 2023 which could include changes to national policy in relation to plan-making. Indeed, further changes to the planning system are anticipated in the longer term through legislation such as the Levelling-up and Regeneration Bill (LuRB). By progressing a new local plan in this context, it will enable the plan to reflect the latest national government policy and guidance ensuring the plan is robust as possible and in accordance with the most up to date national policy.
- 3.26 In addition to being able to better align a new Local Plan to the latest national policy and legislation, a new local plan will be developed having full regard to and integration with the latest council policy, including the latest strategic plan, Lichfield 2050, and emerging documents such as the Lichfield District Design Code. The Council has undergone significant change in recent years and is advancing several key projects including those at Birmingham Road and a new Leisure Centre all of which can be integrated into a new Local Plan.

**Next steps.**

- 3.27 We will need to begin preparation of a new Local Plan as expeditiously as possible, having regard to the implications summarised above as there is an existing government requirement for Local Plans to be in place by the end of 2023. The council will need to consider the resource and capacity available to commence the new plan, realistically in Autumn 2023, and recognise this will take a minimum of 3 years to complete, unless additional capacity is introduced.
- 3.28 An Autumn 2023 restart would align well with the expected publication of the revised NPPF and enable the plan to be progressed in that context. Whilst it is not now possible to meet the government’s deadline of the end of 2023 with the existing LP2040 or as a result of withdrawal, it remains important to prepare a new local plan as soon as possible, particularly to enable all stakeholders to be engaged in shaping the Local plan for the district and to provide certainty for our communities, business, and other stakeholders and Cabinet should commit to doing just that.

Alternative Options	<ol style="list-style-type: none"> <li>1. To not withdraw but proceed with the examination of the submitted Local Plan 2040. Officers would be required to continue to progress work in relation to the matters identified in the IL to ensure a resumption of the examination as expeditiously as possible. Should the examination recommence then officers will be required to provide responses to issues raised by the inspectors throughout the examination. Should the examination be progressed the LP2040 would likely remain fundamentally the same with a similar strategy and many policies remaining largely or wholly intact. Should the examination continue the submitted plan would likely be subject to further changes, known as main modifications, to assist with matters of soundness raised by the inspectors. Such modifications would be required to be formally consulted upon and reported to Members. Should issues and modifications be identified at examination then the Local Plan 2040 would not be able to be adopted without such modifications being made. It is also possible that should the examination be progressed that the matters of soundness may not be solvable through modification. In such circumstances the examination would be unable to continue, and the plan would fail.</li> </ol>
Consultation	<ol style="list-style-type: none"> <li>1. All stages of the Local Plan 2040 (formerly Local Plan Review) were presented to Overview &amp; Scrutiny Committees and Cabinet. Cabinet was consulted upon the consultation and submission of the publication version of the Local Plan 2040.</li> </ol>



	<ol style="list-style-type: none"> <li>2. The Local Plan 2040 has been subject to four formal stages of consultation, undertaken in accordance with the Regulation 18 and Regulation 19 of the <a href="#">Town and Country Planning (Local Planning) (England) Regulations 2012</a>, including additional stages of consultation undertaken in accordance with regulation 18.</li> <li>3. The publication version of the Local Plan was consulted upon, often called the Regulation 19 consultation, between the 5th of July 2021 and the 30th of August 2021. All representations received during the Regulation 19 consultation have been submitted to the Planning Inspectorate as part of the Examination in Public.</li> <li>4. Cabinet considered the Local Plan Update report in September 2023 and have recommended the decision to withdraw the plan to Full Council.</li> <li>5. Subject to that decision the Council will be required to publish notification of the withdrawal of the Local Plan and undertake necessary steps to withdraw the plan as set out at section 27 of the Local Planning Regulations (2012).</li> </ol>
<p><b>Financial Implications</b></p>	<ol style="list-style-type: none"> <li>1. The development of a local plan and its associated evidence base represents a significant cost to the authority. Between 2018/19 and 2022/23, the Council incurred significant costs of approximately £436,000 (not including staff costs). As noted at paragraph 3.21 a proportion of this resource will be lost. However, it should be noted that a significant degree of this expenditure has been upon evidence-based studies which, whilst may need updating, will continue to underpin and inform a new Local Plan.</li> <li>2. Payment of outstanding committed expenditure for the appointed Programme Officer and Planning Inspectorate costs for the examination of the Local Plan 2040. Sufficient budget is in secured for committed expenditure (see below).</li> <li>3. There is an earmarked reserve set aside for the Local Plan examination and review costs on 1 April 2023 of £241,040. The MTFS to 2026/2027 includes a total budget of £360,000 (£90,000 per annum for four years). Therefore, the total available budget is £601,040.</li> <li>4. Following withdrawal and the payment of committed expenditure relating to the examination of the LP2040 the council will not then need to fund the remainder of the examination including legal costs. As such that budget will be available for further activity in relation to any new local plan.</li> <li>5. Appropriate budget will need to be considered and set aside for the progression of a new Local Plan including staff resources, budget for evidence base and ultimately to finance any future examination in public. Based upon the progression of the LP2040 it is anticipated that the progression of a new Local Plan will cost significantly more than that noted at point 1.</li> <li>6. As set out at paragraph 3.18(g) of this report, should Government intervention take place the Secretary of State is able to recover any costs incurred because of that intervention.</li> <li>7. Members are reminded of their duty to consider best value and the implications of the withdrawal of the Local Plan having regard to the associated costs which have been set out above in progressing the Local Plan 2040 to this stage.</li> </ol>
<p>Approved by Section 151 Officer</p>	<p>Yes</p>
<p><b>Legal Implications</b></p>	<ol style="list-style-type: none"> <li>1. There is a statutory duty in the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations</li> </ol>

	<p>2012 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. The current Local Plan Strategy was adopted in 2015, and the Allocations document adopted in July 2019. It is possible, though perhaps unlikely, that LP2040 could be adopted prior to July 2024, even if the examination is resumed in October 2023. However, withdrawal of LP2040 is likely to delay the adoption of a new Local Plan further. There is no automatic sanction for failure to meet the statutory deadline, though a delay could be a factor in the decision of the Secretary of State whether to use his intervention powers; and potentially for a third party to seek judicial review of the decision to withdraw the plan. The risk of such actions is greatly reduced by clearly establishing planning reasons for the decision to withdraw LP2040. The council would seek to robustly defend any such challenge if there are reasonable grounds for doing so. The potential costs of which would depend upon the council's ability to resist any such challenge, and which cannot be accurately quantified at this point.</p> <ol style="list-style-type: none"> <li>2. The Local Plan has been submitted in accordance with Regulation 22 of the the Town and Country Planning (Local Planning) (England) Regulations 2012.</li> <li>3. The power to withdraw a local plan prior to adoption is set out in 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. The statute does not prescribe or limit the reasons for withdrawal, though the risk of intervention by the Secretary of State or a legal challenge by a third party will greatly reduced by clearly establishing planning reasons for the decision to withdraw LP2040.</li> <li>4. As soon as reasonably practicable after resolving to withdraw LP2040, in accordance with regulation 27 of the Town and Country Planning (Local Planning) (England) Regulations 2012 the council must: <ol style="list-style-type: none"> <li>i. make a statement about the withdrawal available on the council's website and for inspection at its offices for six weeks.</li> <li>ii. give notice of the withdrawal to general and specific consultation bodies which were notified of the submission of the plan; <b>and</b></li> <li>iii. cease to make any documents published in relation to LP2040 available on the Council's website and at its offices.</li> </ol> </li> </ol>
Approved by Monitoring Officer	Yes

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 previous stages of Local Plan preparation.</li> <li>2. Withdrawal of the Local Plan 2040 will mean that there is a delay in adopting an up-to-date policy framework which makes provision for the delivery of specialist accommodation for the needs of people with a protected characteristic. The adopted Local Plan includes policies which provide support for such provision. Therefore, it is concluded that withdrawal of LP2040 will not have significant implications for equality, diversity and human rights.</li> </ol>
EIA logged by Equalities Officer	Equalities Officer confirmed not required.
Crime & Safety Issues	<ol style="list-style-type: none"> <li>1. There are no crime and safety issues.</li> </ol>
Environmental Impact (including Climate Change and Biodiversity).	<ol style="list-style-type: none"> <li>1. Withdrawal of the Local Plan 2040 from examination will mean there is a delay in adopting an up-to-date policy framework for planning decisions. Policies related to environmental impact and climate change are included within the emerging Local Plan 2040. In making planning decisions it will still be possible to engage the policies of the adopted plan and refer to national guidance. A new plan will be progressed to adoption within as short a timescale as possible.</li> </ol>
GDPR / Privacy Impact Assessment	<ol style="list-style-type: none"> <li>1. A Privacy Impact Assessment has not been undertaken.</li> </ol>

	Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
A	Legal challenge to decision to Withdraw from examination from site promoters.	Likelihood: Yellow Impact: Red Risk: Yellow	Ensure withdrawal is undertaken in accordance with 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. Ensure that members are fully aware of the planning basis for withdrawal when taking this decision. Undertake all duties as soon as is practicably possible after withdrawal in accordance with the above act.	Likelihood: Green Impact: Yellow Risk: Green
B	Risk of government intervention	Likelihood: Yellow Impact: Red Risk: Yellow	Prepare and update Local Development Scheme (LDS) with a realistic proposed timetable for Local Plan production and keep DLUHC informed of plan progression. Progress a new Local Plan in accordance with updated LDS and maintain updates to ensure programme reflected is correct.  Submitted Local Plan unlikely to be adopted by of the December 2023 government deadline. Many authorities are in this position and as such it is considered unlikely that government would be able to intervene in all such cases.	Likelihood: Green Impact: Yellow Risk: Green
C	Loss of control over development, risk of speculative planning applications and loss at planning appeal	Likelihood: Red Impact: Red Risk: Red	By withdrawing the Local Plan 2040 from examination there will be a longer period where the council is without an up-to-date local plan and as such will continue to rely on the adopted Local Plan, parts of which may be out of date.	Likelihood: Red Impact: Yellow Risk: Yellow

Determination of planning applications takes account of diminished weight of some local plan policies and other material considerations having regard to the lack of up-to-date policies.

Where planning appeals are made, the council will need to defend such appeals appropriately having regard to the policy context at the time of any such decision.

### **Background documents**

[Local Plan 2040 Publication \(Regulation 19\) Consultation – Cabinet Report 9 February 2021](#)

[Local Plan 2040 Submission – Cabinet report 10 May 2022](#)

[Local Plan 2040 Submission document](#)

[Inspectors Initial Letter](#)

### **Relevant web links**

[Local Plan 2040](#)

[Local Plan 2040 Examination](#)

[Planning and Compulsory Purchase Act 2004](#)

[The Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#)

[National Planning Policy Framework](#)

[National Planning Policy Framework 2022 consultation document](#)

[Letters from SoS to South Oxfordshire District Council in respect of Local Plan intervention](#)