

**CHILTERN DISTRICT COUNCIL
CABINET – 16 December 2014**

DELIVERY DEVELOPMENT PLAN DOCUMENT

Contact Officers: Peter Beckford (01494 732036) Graham Winwright (01494 732269); Sue Markham (01494 732203)

RECOMMENDATIONS

- 1. That Members note that the hearing stage of the Examination in Public for the Delivery Development Plan Document has been suspended by the inspector.**
- 2. That Members recommend to Council to withdraw the Submission Delivery DPD pursuant to section 22 of the Planning and Compulsory Purchase Act 2004.**

Relationship to Council Objectives

Having an up to date development plan is important for the promotion of sustainable development, meeting local development needs and providing a sound local basis for the determination of planning applications. This particularly relates to the following Council objectives:

Objective 1 - Efficient and effective Council focused services

Objective 2 - Safe, healthy and cohesive communities

Objective 3 - Conserve the environment and promote sustainability.

Implications

- (i) This is a Council decision so not a Key decision on the Forward Plan.*
- (ii) This matter is within the Policy and Budgetary Framework subject to the financial implications below.*

Financial Implications

There will have been some abortive costs in relation to the hearings which will be funded from the provision in the approved budget for the Delivery Development Plan Document (Delivery DPD) examination.

If the Delivery DPD is withdrawn work will continue on the preparation of a new single local plan, some of which will be incurred sooner than previously envisaged. However, as reported in July,

- a) *a significant part of the costs incurred for the Delivery DPD such as key parts of the evidence base will assist with future plan making;*
- b) *there will be some savings this financial year as the most costly part of the Delivery DPD (i.e. examination) will not be progressed further;*
- c) *it was always intended to start work on a new single local plan after adoption of the Delivery DPD (i.e. early 2015) so this is not an additional cost.*

A new single local plan will also present an opportunity to co-ordinate plan-making timetables with adjacent authorities, sharing some costs and potentially reducing costs by better facilitating duty to co-operate engagement and potentially reducing future examination costs.

Costs for either progression or withdrawal of the Delivery DPD and most stages of a single local plan preparation can be funded from a combination of the Local Development Framework revenue budgets and reserve.

Risk Management Implications

Key risks for the Council associated with the continued progression of the Delivery DPD are:

- *The Delivery DPD is found unsound for whatever reason at the resumption of the Examination in Public. The letter from the inspector indicates that overall the risk of being found unsound has increased.*
- *If the Delivery DPD is submitted and found sound at examination there is a high risk that the plan could be the subject of legal challenge by a developer or land owner.*

The key risks for the Council associated with the withdrawal of the Delivery DPD are:

- *Withdrawal will mean that the Council will not be able to complete the Local Development Framework to 2026 which presents risks that parts of the Development Plan may become out of date taking into account the Core Strategy, NPPF, the National Planning Practice Guide (NPPG) and changed circumstances before a new local plan is adopted. This can be mitigated against by having an expedited Local Development Scheme but will have at least 2 years delay.*
- *Reputation – withdrawal of the Delivery DPD will be disappointing for a number of stakeholders and the Council may be criticised locally, however this risk needs to be*

considered against the higher reputational risk if the Delivery DPD was found to be unsound or the plan is the subsequent subject of a successful legal challenge. This risk also needs to be considered against the benefits of bringing forward a new single local plan sooner in conjunction with adjacent authorities. This risk could be mitigated against by clear communication as to the reasons for withdrawal.

Overall conclusion on risks

- *There will always be a risk of being found unsound or for developer challenge as part of a DPD or Local Plan process*
- *This risk has increased for the Delivery DPD*
- *There are also risks to the Council for withdrawing the Delivery DPD and progressing the new local plan however these risks are considered to be significantly less than the risks associated with progressing with the Delivery DPD.*

Equalities Implications

Withdrawal of the Delivery DPD could delay the delivery of development policies aimed at addressing local equalities issues such as meeting the accommodation needs of Gypsy, Travellers and other groups in specialist housing needs. However delay has to be weighed against the risk of the Delivery DPD progressing and potentially being found unsound. Progressing the preparation of a new local plan will achieve a planned outcome sooner for such needs. In addition a new local plan with its potential for a wider development options could present different and more sustainable development solutions.

There are no other equalities issues identified as a result of the withdrawal of the Delivery DPD. The new local plan will be subject to an equalities impact assessment at key stages of plan preparation.

Sustainability Implications

There are no sustainability issues identified as a result of the withdrawal of the Delivery DPD (sustainability matters being picked up by a new single local plan) and the new local plan will be subjected to a Sustainability Appraisal and Habitat Regulation Assessment.

Report

Delivery DPD

1. Members will recall that the Council originally intended to submit the Delivery DPD for examination in May 2014. However, following a series of court decisions and direct contact from PINS, submission was delayed in

order to seek legal advice on the prospect of the Delivery DPD being found sound in the light of the matters raised.

2. Counsel's advice was obtained and was considered by the Local Plan/Sustainable Development Policy Advisory Group before being considered by Cabinet and Council.
 3. Cabinet considered a full report on 15 July 2014 which set out the various options available to the Council at that time in relation to the progression of the Delivery DPD. The report is attached as a **Private Appendix**.
 4. The Council decided to submit the Delivery DPD for examination whilst commencing work on the single local plan to address the areas of possible concern.
 5. The hearing programme of the examination in public commenced on 11 November 2014, starting with consideration of procedural matters and then moving on to issues relating to housing requirements and policy.
 6. On the second morning of the hearing the inspector announced that he was suspending the Examination in Public for up to six months, until 12 May 2015, unless the Council is ready for the Examination to recommence at an earlier date. The decision was followed up with a letter from the inspector which sets out his reasoning in full. The inspector's letter has been published on the Council's website and is attached as an **Appendix**.
 7. There are three possible courses of action available to the Council, as follows:
 - 7.1. To prepare evidence (and potentially to suggest further modifications) to address the concerns in the Inspectors letter which the Council believes addresses the concerns of soundness and to ask for the Examination to be reconvened on 12th May 2015;
 - 7.2. As above but to reconvene at an earlier point, if the Council is ready;
 - 7.3. To withdraw the Delivery DPD if the Council considers either
 - 7.3.1. that modifications are unlikely to be able to address the reasons for unsoundness or
 - 7.3.2. that modifications would be so extensive as to render the document substantially different from that submitted.
- There is no option to seek an extension to the suspension period.
8. Counsel's advice has been taken in respect of the available options. He recognises that the Council has already carried out significant amounts of work following the advice received in the summer in progressing positively worked-up position statements and proposals. Counsel notes that the

Examination Inspector's findings are "*multiple and unequivocally stark*" and that the inspector has concluded that, as a minimum, much further work must be undertaken to address those findings.

9. Counsel observes that "*The Examination Inspector's concern that the DDPD may be found unsound even taking into account proposed and additional modifications, significantly underscores the risks previously apparent before the Council's further work was undertaken post-June 2014.*"

10. In summary, Counsel concludes:

"On balance therefore, to the extent that I am able, I advise in favour of the withdrawal of the Submission DDPD pursuant to section 22 of the 2004 Act, in light of the Examination Inspector's extensive (and valid) criticisms, and given that the Council has already commenced work in respect of the Local Plan (with a plan period up until 2036) that will itself perform what I understand will be a full review of the CS.

My overall view obviously mirrors the Examination Inspector's conclusion that the Council could well elect to undertake what would amount to further, "significant work" to overcome the various identified deficiencies in order to ensure soundness, but that such work may well eventually prove duplicative and ultimately abortive."

11. The Sustainable Development Policy Advisory Group met on 8 December to consider the issues presented by the inspector's decision to suspend the Examination in Public and the options now available to the Council. The PAG considered the Inspector's letter, confidential briefing papers, and Counsel's advice and concluded to recommend to Cabinet and Council that there was no option other than to withdraw the Delivery DPD and develop a new Local Plan.
12. The revised Local Development Scheme 2014 to 2018 considered by Cabinet on 26 August and adopted by Council on 9 September 2014 contains a section on the preparation of the new Chiltern District Local Plan (2014 – 2036), including a profile of the work involved and a timetable of estimated target dates, as currently proposed. The LDS can be found at - <http://www.chiltern.gov.uk/CHttpHandler.ashx?id=5443&p=0>.
13. On the basis of the Inspector's letter and advice from Counsel, officers consider the only reasonable option open to the Council is to withdraw the Delivery DPD.

Background Papers: Confidential and subject to Legal Professional Privilege - Counsel's advice dated 6 December 2014