

CABINET

31 May 2006

WINCHESTER DISTRICT LOCAL PLAN REVIEW: ANALYSIS OF REPRESENTATIONS
ON PROPOSED MODIFICATIONS AND PROPOSED ADOPTION OF LOCAL PLAN

REPORT OF THE CHIEF EXECUTIVE

Contact Officer: Joan Ashton Tel No: 01962 848442

RECENT REFERENCES:

WDLP49, "WDLPR Inspectors' Report – Local Plan Chapters 1 - 5 WDLPR Committee 17 October 2005

WDLP50, "WDLPR Inspectors' Report – Local Plan Chapters 7 - 14 WDLPR Committee 27 October 2005

WDLP52, "WDLPR Inspectors' Report – Local Plan Chapter 6 and other outstanding matters WDLPR Committee 15 November 2005

WDLP54 – Winchester District Local Plan Review Inspector's Report Local Reserve Sites – WDLP Committee 9 December 2005

WDLP55 – Draft Local Plan Policies on replacement Policy H3 and Local Reserve Housing Sites – WDLP Committee 9 December 2005

WDLP56 – Policy H5 and "In Perpetuity" – WDLP Committee 9 December 2005

EXECUTIVE SUMMARY:

This report analyses the representations received on the Proposed Modifications to the Local Plan Review. The report concludes that the representations do not raise any issues which would warrant further modifications to the Plan, or the holding of a further Public Local Inquiry. The report recommends that the Local Plan Review, as modified, be adopted by the Council.

This report also outlines the options for the Council for dealing with representations on the Proposed Modifications and any issues arising. It sets out the options and their implications, including factors which may lead to delays in the Local Plan programme. This report emphasises the importance of securing adoption of the Plan by 21 July 2006, given the requirements that exist for undertaking Strategic Environmental Assessment of plans adopted after that date.

RECOMMENDATIONS:

- 1 That having regard to the representations received, Council be recommended to resolve to adopt the Winchester District Local Plan Review, as proposed to be amended by the Proposed Modifications published in January 2006, as the statutory Local Plan for Winchester District.
- 2 That the necessary statutory notices and procedures be undertaken to enable adoption of the Local Plan Review as soon as possible following Council's resolution to adopt the Plan.
- 3 That the Chief Executive in consultation with the Portfolio Holder for Planning and Transport be given delegated powers to approve minor editorial and updating changes to the Local Plan Review text as necessary, prior to publication, including the additional minor changes referred to in this report.

CABINET

31 May 2006

WINCHESTER DISTRICT LOCAL PLAN REVIEW: ANALYSIS OF REPRESENTATIONS ON PROPOSED MODIFICATIONS AND PROPOSED ADOPTION OF LOCAL PLAN

Report of The Chief Executive

DETAIL:

1 Introduction

- 1.1 Following the receipt of the Inspectors' Report into the Winchester District Local Plan Review, the Council considered the Inspectors' recommendations in detail at three meetings of the Local Plan Committee, on 17 October, 27 October and 15 November 2005. The Proposed Modifications were subsequently considered at the Local Plan Committee meeting of 9th December 2005 (Reports WDLP 54, 55 and 56 refer). That meeting recommended a series of Proposed Modifications to Cabinet and Council for approval.
- 1.2 The Proposed Modifications were recommended for publication at the Cabinet meeting of 14th December 2005 (CAB 1162). The Proposed Modifications were subsequently approved for publication by full Council on 11 January 2006. They were then published for a 6-week period for formal representations to be made. This period ran from 26 January to 9 March 2006.
- 1.4 This report considers the representations that were made and recommends the adoption of the Local Plan, incorporating the Proposed Modifications. The recommendation is that no further modifications be published, with only a few minor changes being necessary. These changes are considered so minor as to not materially affect the content of the Plan or require additional consultation. Once the Local Plan is approved by the Council, a Notice of Intention to Adopt the Review Plan (with Modifications) is published and the Plan, as modified, can be adopted 28 days later, subject to their being no intervention by the Secretary of State nor any legal challenge to the Review Plan.
- 1.5 If the Council does not adopt the Local Plan by 21 July 2006 it may be subject to challenge because it has not undertaken a "Strategic Environmental Assessment" of the Plan. There is not time within this period to accommodate either any further modifications or a further Public Local Inquiry. The minor changes recommended do not materially affect the content of the Plan and do not raise any new issues. They do not, therefore, require the publication of further proposed modifications. If any new issues were to be introduced at this stage, further proposed modifications would need to be published for consultation. Members are advised that the possible need for, and implications of, a Strategic Environmental Assessment should also be taken into account in considering whether any further modifications should be proposed.

2 Summary of Representations on Proposed Modifications and Draft Supplementary Planning Documents

- 2.1 The Proposed Modifications contained changes to all of the Chapters of the Plan except Chapter 1, mostly as recommended in the Inspectors' Report. The main

important area of change was in Chapter 6 (Housing), where the Inspectors had recommended substantial changes in two areas in particular.

- 2.2 The first of these was the identification of four Local (Housing) Reserve Sites (named in the Inspectors' Report) that could be released for development if housing provision failed to keep pace with housing requirements. The Report also recommended the production of a Supplementary Planning Document (SPD) to explain how these Local Reserve Sites would be triggered for release.
- 2.3 The second important recommendation was the replacement of the Council's proposed H3 Policy (Development Frontages) with a criteria-based infilling policy to assess appropriate development outside the designated H2 settlements. Again the Inspectors recommended the development of SPD to explain in detail how the criteria-based policy would work.
- 2.4 Revised text relating to the new Local (housing) Reserve Sites and the new Infilling policies were incorporated within the Proposed Modifications (MODs 6.11-6.16 and 6.19-6.28 respectively). The two SPDs that relate to these two new policies were also prepared and published for consultation at the same time as the Proposed Modifications. Analysis of the representations on the draft SPDs, is contained within a separate Cabinet report (CAB 1273 refers).
- 2.5 The other main area of change in Chapter 6 relates to housing need and the proportions of affordable housing sought. A revised Policy H5 was proposed together with a substantial amount of change to the supporting text on housing needs in the District (MODs 6.30 – 6.55 refer).

3 Format for Analysis of Representations and Recommended Responses

- 3.1 Appended to this report is a Schedule of Officers' analysis of comments on the Proposed Modifications (Appendix 1). Similarly to the representations made at previous stages of the Plan, each person or organisation that has made a representation on the Plan at this Proposed Modifications stage has been given a unique reference number, separately identifying each issue they have commented upon. The Schedule only provides a shortened version of the representation number for ease of reference (eg 1234/1). The full reference number would read as below:

eg 1234/1/WDLPR/**MODIFS**

- 3.1 The analysis of representations and the draft recommended responses have been prepared to a similar standard format to those on the Deposit and Revised Deposit Plans. The text is set out in two columns, and the first column lists the respondents by name and representation number and contains a summary of their comments. The comments are analysed in the order of the Chapters of the Plan
- 3.2 It has not generally been necessary to subdivide the analysis of comments into issues within the Chapters, due to the relatively small number of comments on each Chapter. There are however, two exceptions to this approach. It has been considered useful to analyse the comments on Chapter 6 (Housing), in terms of separate issues, due to the number of responses received and the complexity of the comments. Secondly, in relation to some of the Local Reserve Sites proposed, there have been a sufficient number of comments and issues raised to require sub-dividing the comments and responses into a number of separate issues

- 3.3 The second column sets out officers' recommended response to the representation, indicating whether any further change should be made to the Plan as a result of the representation.
- 4 Summary of Recommended Responses
- 4.1 403 representations have been registered by the Council on the proposed Modifications. Of these, 353 have been classified as objections and 50 as support. In addition 32 responses have been received that were 'not duly made' because they were received after the closing date for representations and can therefore not be taken into account as valid representations.
- 4.2 The following paragraphs summarise the main issues raised by the representations. In the majority of cases officers are recommending that no changes be made to the Plan as a result of the representations, however, where new changes are proposed these are highlighted. The representations are considered in Plan order. There were no Proposed Modifications on Chapter 1.
- 4.3 **Chapter 2, Chapter 3, Chapter 4, Chapter 5, Chapter 11**
These Chapters received only 26 comments in total of which 14 were in support of the Proposed Modifications and 12 were objections. No new issues were raised, as most of the objections re-iterated points that have already been considered by the Inspectors.
- 4.4 **Chapter 7, Chapter 8, Chapter 9, Chapter 10, Chapter 14**
No comments were received on the Proposed Modifications relating to these Chapters.
- 4.5 **Chapter 6 (Housing)**
This Chapter received by far the greatest number of comments with some 311 responses, of which 289 were objections and 22 supports. The majority of these comments (220) were in relation to MOD6.12, the Local Reserve Sites policy and its associated text, and particularly with reference to the 4 sites identified. It should be noted that there were also related objections to the details contained within the associated SPD on the Implementation of Local (Housing) Reserve Sites Policy. Objections to the SPD are covered within report CAB1273.
- 4.6 Objections in relation to the policy itself, questioned the need for any Local Reserve Sites (LRS), due to the amount of housing currently coming forward as illustrated in the Annual Monitoring Report. Some objections called for the bringing forward of the Strategic Reserve Site at Winchester City North Major Development Area as an alternative. Objections also made links between the need for the LRS and housing delivery at West of Waterlooville Major Development Area. Some respondents objected to the lack of description of the trigger mechanism in the proposed Policy. There were also objections to the actual sites that were recommended by the Inspectors and the mechanism for choosing those sites.
- 4.7 In summary, officers' conclusion on the principle of the Local Reserve Sites is that the concerns which led the Inspectors to identify the need for such sites are still relevant and that there is, therefore, still a need for the sites to be identified. While the recent Annual Monitoring report indicates that housing requirements for the District are expected to be met, this relays to a large extent on small sites and the West of Waterlooville MDA being developed.

4.8 Accordingly, it is recommended that the Local Reserve Sites policy be retained. The Council's Local Development Scheme indicates that work will start on the Core Strategy for the Local Development Framework (LDF) as soon as the Local Plan Review is adopted, and this will be followed by the Development Provision and Allocations Local Development Document. These new documents will form part of the LDF and provide the opportunity for the Council to review the need for the continued allocation of the Local Reserve Sites. This exercise will need to be undertaken in the light of the housing requirements of the South East Plan and may result either in the sites being deleted, retained as reserve sites, or converted to 'full' allocations.

4.9 Many comments were received in relation to the particular Local Reserve Sites, objecting to potential development of the sites. The site-specific issues that were raised can be summarised as follows, and are dealt with in detail in Appendix 1:

Little Frenchies Field, Denmead.

4.10 This received 107 objections. Specific issues raised regarding this site were – concern about possible pressure for further development in this area with the designation of the LRS, pressures on local transport infrastructure, the visual and landscape impact of any development, effect on the nature conservation value of the site and the suggestion that there is a greater need for additional recreational land to be provided on the site.

Francis Gardens, Winchester

4.11 This received 69 objections. Specific issues raised regarding this site were – that alternative sites should have been considered, such as on MOD land, possible impacts on local transport infrastructure, that designation would lead to pressure for further development on the fringes of Winchester, that there may be an extension into the surrounding countryside and local gap, and concerns regarding the visual impact on the landscape.

4.12 The issue has also been raised as to whether an 'Appropriate Assessment' under the EU Habitats Directive should be carried out, due to possible adverse impact on River Itchen Special Area of Conservation (SAC). There was also concern about the impact on the River Itchen Site of Special Scientific Interest (SSSI). Although the Directive does not come into force until September 2006, Government advice strongly recommends that an Appropriate Assessment should be carried out in the meantime if it would be relevant. Therefore an Appropriate Assessment of this site has been carried out in response to the concerns of respondents. The conclusion of the Assessment is that the allocation of the site as a LRS is not likely to have a significant adverse effect on the SAC and that such effects can be considered and mitigated at the planning application stage. The Appropriate Assessment is attached as Appendix 2 to this report. The allocation of the site as a LRS does not commit the Council to granting permission for its development. Any future planning application would need to satisfy all relevant policies and criteria of the Plan, including the impact on nature conservation and ecology.

4.13 Although officers recommend that the allocation of Francis Gardens LRS should remain, the Appropriate Assessment issue has highlighted the need to address all relevant policies of the Plan when considering the development of a LRS. Officers are therefore recommending that MOD 6.15 be amended by the addition of some new explanatory text stressing the requirement to take full account of other policies, as well as that relating to the LRS. The proposed new text is shown under the

consideration of responses on MOD 6.12 (Francis Gardens), at Issues 10-12. This new text alerts potential applicants to some likely issues and to the need to consider other Local Plan policies. As such it does not materially affect the content of the Plan and is therefore a change which can be made without putting forward further Proposed Modifications. This report therefore recommends that Cabinet endorse this change to the Proposed Plan text.

Pitt Manor, Winchester.

- 4.14 This received 23 comments. Specific issues raised regarding this site were – the designation will pre-empt its development, that if this LRS were deleted an alternative site could be designated if and when the need arose, the site had already been discussed at Inquiry and rejected in the past, and the designation would lead to pressure for further development in the vicinity. Several respondents raised the impact on the rural landscape and setting of Winchester, the separation between the rural area and the urban fringe, and the effect on wildlife and ecology. Other issues raised by several respondents were the impact on local traffic, location of a park and ride facility, and the suitability of the area for further development due to a perceived lack of local facilities and services.

Spring Gardens, New Alresford

- 4.15 No objections were received relating specifically to this Local Reserve Site.
- 4.16 The Proposed Modifications relating to the proposed new Infilling Policy and explanatory text received 22 representations, mostly of objection. Concerns were raised that the policy would result in the extension of villages into the countryside. Other responses called for infill development to be limited to previously developed land. There was concern that the Policy and its associated text does not make adequate reference to government guidance on housing provision and the countryside, nor to other policies within the Plan. Some respondents suggested particular sites as being suitable for infill and there were also some comments which raised matters of detail which are more appropriately addressed in assessment of the SPD. Comments made in relation to the Implementation of Infilling Policy SPD are dealt with in report CAB 1273.
- 4.17 The Proposed Modifications relating to housing need and Policy H5 received several comments questioning the percentages of affordable housing that should be sought in developments, particularly in relation to the MDAs and the LRSs.

4.18 Chapter 12 (New Communities)

A number of responses were received on this Chapter, relating to the two Major Development Areas (MDAs) identified.

West of Waterlooville MDA

- 4.19 There were representations questioning the references to reserve housing provision and suggesting a number of word changes which related to specific details of the site.

Winchester City North (Reserve) MDA

- 4.20 Some respondents questioned the need for this MDA within the Plan period. Comments were made regarding the preparation of a masterplan for the site and the role of the community in its presentation. Many objections re-iterated issues that had already been discussed at the Local Plan Inquiry and/or the recent Section 78 Inquiry on the site.

- 4.21 Additional wording is proposed at the end of paragraph RD12.65. This addition had already been proposed as a 'Pre-Inquiry Change', but the Inspector failed to make a recommendation on this point. As the additional wording does not materially affect the meaning of the Policy, this report recommends that this addition should be included as part of the updating of text which will be carried out during the preparation of the Plan for publication. The new text is shown in the Schedule attached at the end of consideration of MOD12.46 (NC3).
- 4.22 **Chapter 13 (Settlements)**
A number of responses were received on this Chapter relating to site specific issues, mainly relating to Abbey Mill in Bishops Waltham.
- 4.23 **Chapter 15 (Appendices)**
There were a number of representations on this section of the Plan, most objecting to site allocations and other details shown on the Proposals and Inset Maps. One respondent suggested that Appendix 3 (Sustainability Appraisal) should be updated to reflect the proposed modifications to the Plan. It is accepted that this should be done as part of the updating that will be needed as a result of agreed modifications to the content of the Plan. As this will not involve changes to the Plan's policies or text, such changes can be made without the need for further Proposed Modifications.
- 5 Next Steps – The Options
- 5.1 The Council now has to decide how to respond to the representations it has received on the Proposed Modifications and what action to take. Appendix 1 sets out a summary of the representations and a recommended response to them. The options potentially open to the Council, and their implications, are discussed below. Advice from Counsel has been taken, and the advice received has been taken into account in preparing this section of the report.
- 5.2 There are essentially four potential options open to the Council following the publication of the Proposed Modifications to the Local Plan Review in January 2006 and the receipt of public comments on those Modifications.
- 5.3 **Adopt the Plan as proposed to be modified.** This would allow the Plan to be adopted without having to carry out a Strategic Environmental Assessment (SEA), as it would be adopted before 21 July 2006. This is procedurally a straight-forward option and with relatively low risk and cost. The Council would need to publish statutory notices and inform respondents of its intention to adopt the Local Plan. A four week period is allowed in which the Secretary of State could 'call-in' the Plan, after which the Plan is adopted.
- 5.4 Costs would be limited to advertising statutory notices, which would have to be done whichever option was followed. The risks are also limited, but are twofold – firstly that the Secretary of State 'calls-in' the Plan or directs a change to the Plan, and secondly that a legal challenge is mounted by an aggrieved party (either before or after adoption). There is currently no indication either that there is likely to be any intervention by the Secretary of State, or that any legal challenge is imminent or planned.
- 5.5 It is, therefore, almost certain that the Plan could be adopted by 21 July, thus avoiding the risks involved with the requirement to undertake SEA of Plans adopted

after this date. This is the fastest way to achieve adoption of the Local Plan, thus ensuring that the District has an up to date Development Plan and that attention can then focus on progressing other aspects of the Local Development Framework.

- 5.6 **Publish further Proposed Modifications.** Such Modifications may cover any of the matters raised in representations, but the Local Reserve Sites issue is clearly the most contentious. In relation to Local Reserve Sites, further proposed modifications could either delete Local Reserve Sites as a principle, or delete certain of the sites themselves. However, in order to justify this, the Council would have to put forward arguments to counter those used by the Inspector to justify Local Reserve Sites. Although the housing 'trajectory' shown in the Annual Monitoring Report suggests that the Structure Plan housing requirement will be exceeded by 2011, this is based on several key assumptions, e.g. about the delivery of housing from windfall sites and the West of Waterlooville MDA. As indicated in Appendix 1, the level of certainty that these sites will delivery the required housing has not improved since the Local Plan Inquiry.
- 5.7 The risks involved with this option are high, as could be the potential costs. It would not be possible to adopt the Local Plan before the SEA deadline of 21 July if this option were to be pursued. Further Proposed Modifications would be required for any variation to the Local Reserve Sites policy (e.g. to delete one or more sites), and are also likely to be required to delete the Local Reserve Sites policy entirely. Such Further Proposed Modifications would need to be approved by Council and published for a 6-week consultation period. After that, the Council would need to consider the representations received and decide whether to adopt the Plan, propose further Modifications, or hold a further Public Inquiry.
- 5.8 As it would not be possible to undertake the statutory processes before the 21st July deadline, the requirement to carry out a SEA would have to be considered. Carrying out a SEA could be very difficult to do at the end of the Plan process but, if it could be done, it is estimated that it may add a further 6-9 months to the process and cost about £80,000 (using specialist consultants). Because SEA requires options to be considered, there is a danger that fundamental tenets of the Plan would have to be re-examined, potentially requiring the Council to re-consult on aspects of the Plan, or even to 'start again'.. This could clearly have much greater cost and other implications.
- 5.9 Officers have sought advice on whether it would be possible to argue that it would be 'not feasible' to undertake an SEA, given the late stage of the Plan process. However, the advice received would suggest that pursuing this argument would be a high risk strategy. Any delay beyond 21st July would make it difficult, if not impossible, to continue with the adoption process, leading to the problems resulting from a lack of an up to date local plan, and the risks of "planning by appeal" discussed below.
- 5.10 **Hold a Public Inquiry into the objections received.** Officers do not consider there is a need for this, given the content of the objections received, and it is therefore difficult to see what could be gained by this. If an inquiry were to be held, the Council would have to argue a case against the objections and for the Proposed modifications (as otherwise it would be looking to accept them).
- 5.11 It would be difficult to limit the scope of an Inquiry to just the Local Reserve Sites. This could result in an Inquiry of the proportions mentioned in report WDLP54 (Local Plan Cttee 9.12.05). In fact, because any decision to call a further Inquiry would

push the adoption date well beyond July 2006, the additional requirement to undertake an SEA could require an even more extensive Inquiry the effect could be similar to a decision to withdraw the plan, as discussed below.

- 5.12 **Abandon the adoption process and withdraw the Plan.** This would mean that the Council would be operating under the 1998 adopted Local Plan for the foreseeable future. This option is included only for completeness, as it is not likely to be a realistic option. It would mean that the District would be relying on a very old Local Plan (adopted 1998), with no likelihood that it would be able to produce and adopt more up to date policies for at least 3 years. A decision to withdraw the Local Plan may be challenged through the Courts or by the Secretary of State (because this is not seen as a realistic option, Counsel's advice on the risks of this was not sought).
- 5.13 With no up to date development plan and no likelihood of one being in place in the near future, the Council would be very susceptible to 'hostile' planning applications and appeals. These may not only be on the current Local Reserve Sites, but could be on any site that applicants sought to argue could remedy a shortfall in housing provision. There are also a range of other policies in the Review Plan which the Council would wish to see put in place, and major developments which the Council wants, or is required, to plan for would remain contrary to the adopted Local Plan (e.g. Silver Hill and West of Waterlooville). There is a high risk of 'planning by appeal', with substantial cost implications and the risk of the Council losing control of the planning process in the District.

5 Conclusion

- 5.1 A substantial number of representations have been received on the Proposed Modifications to the Local Plan Review, published in January 2006. These covered a large number of the Proposed Modifications, but the proposed Local Reserve Sites have produced the largest response, mainly in the form of local residents' objections to the four sites concerned. Detailed responses to all of the representations are set out in Appendix 1.
- 5.2 Having carefully examined all of the representations, officers have concluded that they do not raise any issues which would either require the Public Local Inquiry to be re-opened or further proposed Modifications to be published. Officers therefore recommend that the Council should proceed to adopt the Local Plan, as modified, without any further changes which would materially affect its content. Cabinet is recommend to agree this approach and recommend that Council resolves to adopt the Local Plan.

OTHER CONSIDERATIONS:

6 CORPORATE STRATEGY (RELEVANCE TO):

The Local Plan Review contains policies on a range of issues which are relevant to many of the Council's key priorities, including Homes & Jobs and High Quality Environment.

8 RESOURCE IMPLICATIONS:

Provision has been made for the District Plan Reserve to meet the costs of producing the Local Plan. No provision has been made for the potential costs associated with options which fail to achieve adoption of the Local Plan by 21 July 2006. The costs

and risks associated with this are summarised in section 5 above and discussed in more detail in report WDLP54 (Local Plan Committee 9.12.05).

BACKGROUND DOCUMENTS:

None.

APPENDICES:

- 1 Schedule of representations on the Proposed Modifications to the Winchester District Local Plan Review and recommended responses.
- 2 Francis Gardens Local Reserve Site – Appropriate Assessment