

**North East Derbyshire**

**Council**

**29 November 2021**

**North East Derbyshire Local Plan (2014 – 2034)**

**Report of Cllr C. Cupit, Portfolio Holder for Environmental Services**

**Classification:** This report is public

**Report By:** Helen Fairfax - Planning Policy Manager

**Contact Officer:** Helen Fairfax – Planning Policy Manager 01246 217168

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**PURPOSE / SUMMARY**

- To consider the Inspector’s final report following her examination of the North East Derbyshire Local Plan (2014 – 2034).
  - To consider the adoption of the North East Derbyshire Local Plan (2014 – 2034) to form part of the Statutory Development Plan for the District.
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**RECOMMENDATION**

1. Council notes the significant challenges of balancing meeting the District’s housing needs while protecting our environment and countryside. Council also notes that failure to adopt a Local Plan risks even greater speculative development, including on the Green Belt.
2. Council accepts and adopts the North East Derbyshire Local Plan (2014 – 2034) as modified and found sound by the Government appointed Inspector ([available here](#)) to form part of the Statutory Development Plan for the District; and that it replaces the previous adopted Local Plan (November 2005) and the saved policies within it.

Approved by the Portfolio Holder – Cllr C Cupit

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**IMPLICATIONS**

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**Finance and Risk:** Yes  No

**Details:**

There are no direct financial implications associated with adopting the Local Plan. This is part of the existing work plan and is budgeted for. There may be financial implications of not adopting the Local Plan, including the need to start afresh with preparation of a new plan.

On Behalf of the Section 151 Officer

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**Legal (including Data Protection):**

Yes

No

**Details:**

Any person who is aggrieved by the adoption of the Local Plan may make an application to the High Court under Section 113 of the Planning and Compulsory Purchase Act 2004 on the grounds that (a) the document is not within the appropriate power, or (b) a procedural requirement has not been complied with. Any application must be made no later than the end of the six week period starting from the day after the date of adoption. The Local Plan has been prepared in line with the relevant regulations and has been found sound and legally compliant by a Government appointed Inspector, so it is considered that the risk of a successful legal challenge is low.

The Council has also obtained independent legal advice relating to the risks of not adopting the Plan. This advice sets out the risks to planning application decision making and future plan making should the Local Plan not be adopted by the Council. This advice is attached in full at Appendix 1.

On Behalf of the Solicitor to the Council

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**Staffing:**

Yes

No

**Details:**

No staffing implications.

On behalf of the Head of Paid Service

## DECISION INFORMATION

Decision Information	
<p><b>Is the decision a Key Decision?</b> A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p><b>BDC:</b> Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/></p> <p><b>NEDDC:</b> Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/></p> <p><input checked="" type="checkbox"/> Please indicate which threshold applies</p>	No
<p><b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)</p>	No
<p><b>District Wards Significantly Affected</b></p>	All
<p><b>Consultation:</b> Leader / Deputy Leader <input checked="" type="checkbox"/> Cabinet <input type="checkbox"/> SAMT <input type="checkbox"/> Relevant Service Manager <input checked="" type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/></p>	Yes  Details:

### Links to Council Plan priorities or Policy Framework including Climate Change, Equalities, and Economic and Health implications.

The Local Plan identifies and promotes suitable areas for development and protects environmental assets. It assists local residents and stakeholders by providing certainty about the way the District will develop over the Plan period. In doing so it contributes to the following Council Plan priorities: Enhancing our residents' quality of life; Protecting and promoting the Character of our District; and Growing our local economy.

## REPORT DETAILS

### 1 **Background** (reasons for bringing the report)

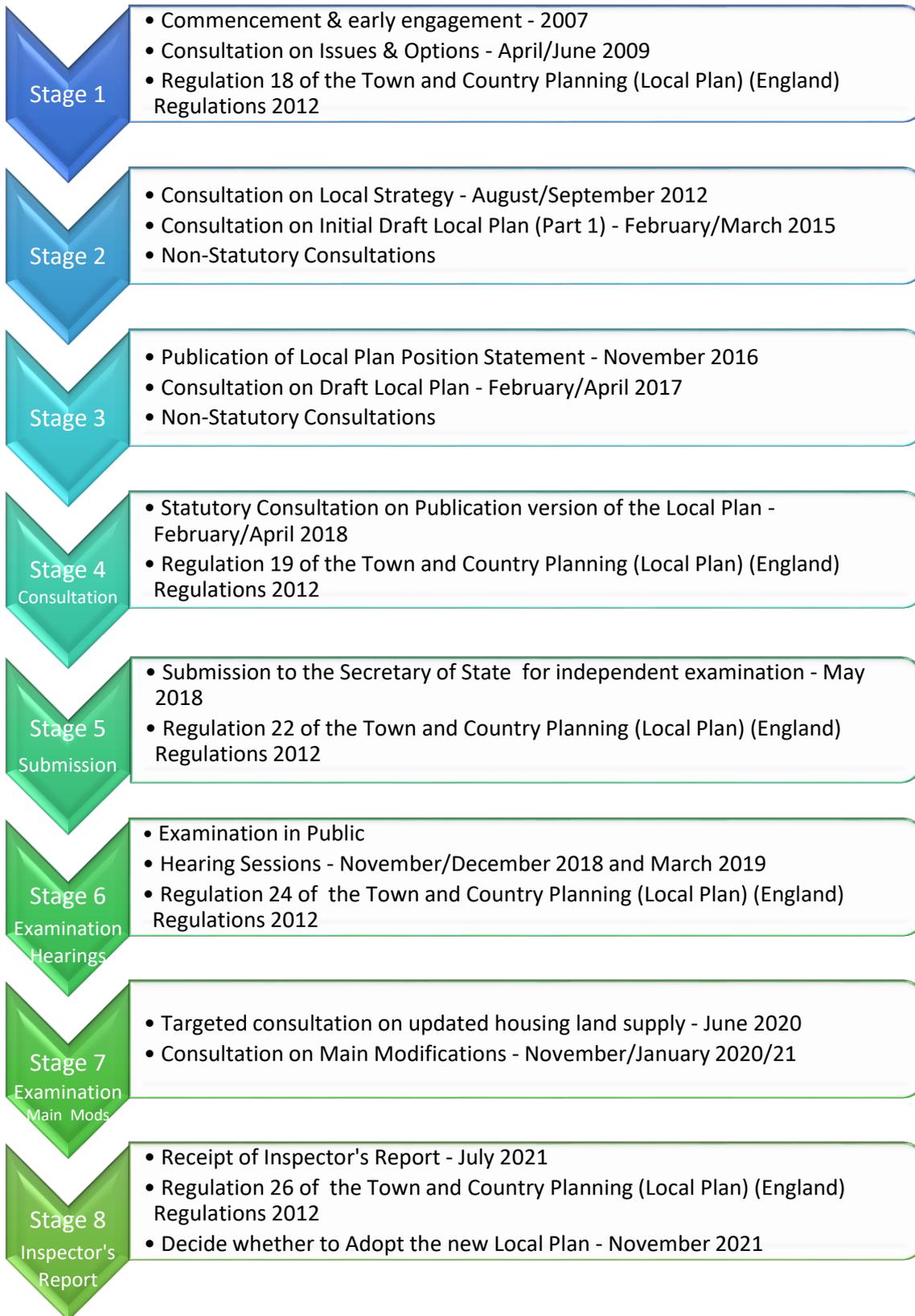
- 1.1 The Planning and Compulsory Purchase Act, 2004 (as amended) places a statutory duty on Local Planning Authorities to identify their strategic priorities and have policies to address these in their development plan documents (Part 2 Section 19 (1B) of the Act). The authority must also keep under review their local development documents (Part 2, Section 17 (6) of the Act).
- 1.2 The Council's current Local Plan was adopted in November 2005 providing a framework for development in the District up to 2011. The Plan is time expired and a number of policies therein are inconsistent with recent national planning guidance contained in the National Planning Policy Framework (NPPF, 2021)

- 1.3 Work commenced on the preparation of the new Local Plan in 2007 with the publication of the Sustainability Appraisal Scoping Report and early public engagement. See figure 1 for an illustration of the key milestones and periods of consultation involved in the preparation of the document.
- 1.4 The Plan was formally submitted to the Secretary of State on 24 May 2018. Inspector Sarah Housden DIPTP MA DIPMP MRTPI was appointed to undertake the independent examination and held a series of public hearing sessions between November 2018 and March 2019. The Inspector then identified a series of Main Modifications to the Plan that in her judgement were necessary to make the Plan sound and legally compliant. In some cases these changes led to amendments to boundaries on the Policies Map.
- 1.5 In May 2019, following a change in the Administration at the Council, the Examination of the draft Local Plan was paused to allow a review of the housing numbers allocated and to review the circumstances around the allocation of sites in the Green Belt in the draft Plan. In correspondence between the Council and the Inspector over 2019-2020, this review was considered. In a letter of response (Examination Document ED86) ([available here](#)) the Inspector outlined three options available to the Council and underlined the advanced stage of the Examination process. The Council decided on option 1 as outlined by the Inspector, to un-pause the Examination due to the risks and consequences of options 2 and 3. The consequences of option 3, withdrawing the Plan, are equal to those outlined in the attached legal advice. Following extensive analysis, it was determined that option 2 (to review the evidence base informing site allocations) would be of equal risk and challenge, and would ultimately lead to the withdrawal of the Plan from Examination. Due to the stage in the Examination process and the interconnected nature of the evidence bases, it was therefore not possible for the Council to allocate alternative sites without withdrawing the Plan from Examination and starting the process of preparing a new Plan.
- 1.6 In February 2020 the Council un-paused the Examination to proceed to the Main Modifications consultation (see the Council's letter to the Inspector, Examination Document ED89) ([available here](#)). Consultation took place on these Main Modifications between November 2020 and January 2021. At the same time the Council published a schedule of Additional Modifications for information purposes. These are relatively minor changes which would not materially affect the policies of the Local Plan and did not fall within the scope of the Examination.
- 1.7 All representations received on the Main Modifications were submitted to the Inspector for her to take into account before finalising her report. The Planning Inspectorate issued the Inspector's Report to the Council on 19 July 2021, marking the end of the examination process.
- 1.8 In line with regulatory requirements the Council published the Inspector's Report on the website and made it available to view at the Council's office at Mill Lane, Wingerworth, and at various local libraries throughout the district from 29 July 2021. In the following days, notice of publication was sent to all those

persons who made representations during consultation on the Publication Draft Plan in February/April 2018 and/or the more recent consultation on the Main Modifications.

- 1.9 The Council must now consider the recommendations and reasoning set out in the Inspector's report before making its decision on whether to adopt the Plan.

**Figure 1: Local Plan Consultation & Key Milestones**



## **2. Details of Proposal or Information**

- 2.1 The Inspector's final report (including her final schedule of Main Modifications) on the North East Derbyshire Local Plan concludes that the North East Derbyshire Local Plan, with her modifications, provides an appropriate basis for the planning of the North East Derbyshire District. The Inspector's report and schedule of Main Modifications is [available here](#).
- 2.2 The Main Modifications were subject to a 12 week period of public consultation. The Inspector has considered the representations made, alongside the findings of the sustainability appraisal and habitats regulations assessment. In some cases she has decided to amend the detailed wording of the modifications and she has inserted an additional consequential modification. The Main Modifications can be summarised as follows:
- Modifications to the spatial strategy in Policy SS2: Spatial Strategy to provide a less prescriptive distribution of housing between the level 1 towns, the strategic sites and the level 2 settlements;
  - Reduction in the size of the allocation on site DR1: Land off Shakespeare Crescent and Chesterfield Road Dronfield and delete housing allocations DR2: Land north of Eckington Road, Coal Aston, Dronfield and EC1: Eckington South (all Green Belt sites);
  - Deletion of Policy WC4: Development on Employment Land and modifications to the structure and criteria of Policies WC2: Principal Protected Employment Areas and WC3: Employment Areas;
  - Modifications to reflect changes in the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 relating to Class E;
  - A new policy to safeguard areas that may be required for education purposes; and
  - A number of other modifications to ensure that the plan is positively prepared, justified, effective and consistent with national policy.
- 2.3 An updated version of the Local Plan incorporating all of the Inspector's Main Modifications and the Council's Additional Modifications is [available here](#). In the period since consultation on the Main Modifications earlier this year, officers have identified a limited number of 'Further Additional Modifications', these changes consist of factual updates and corrections, have been included in the updated version of the Plan and are highlighted within a schedule [available here](#) in the interests of transparency.
- 2.4 An updated version of the Policies Map that incorporates the changes arising from both the Main Modifications and Additional Modifications has been prepared and is [available here](#).

## **3. Reasons for Recommendation**

- 3.1 All Councils are required to have an up to date Local Plan and are at risk of Government intervention if they fail to do so. The Council was one of 15 to receive a letter from the Government in November 2017 raising concern about 'persistent failure to get an up to date plan in place' and threatening

intervention if progress was not made. Since then progress on the Council's Local Plan has been closely monitored by the Government and there is the very real threat of intervention if the Local Plan is not adopted. The absence of an up to date plan also places the Council at significant risk of speculative development, in areas that the Council would not wish to see developed, including sites in the Green Belt. Further information of the risks associated with not adopting the plan are set out in the independent legal advice appended to this report.

- 3.2 The Local Plan has been prepared over a number of years and is based on extensive evidence. The Plan has been subject to a thorough examination process led by an Independent Inspector appointed by the Secretary of State. The examination included public hearing sessions giving all interested parties the opportunity to challenge the content of the Plan and have their say. The Inspector has fully considered all the issues raised in consultation, (including the most recent consultation on her proposed Main Modifications) before issuing her final report.
- 3.3 The Inspector's report concludes that, subject to her Main Modifications, the draft Local Plan is sound, legally compliant and an appropriate basis for planning in the district. This marks the end of the examination process and all that remains is for the Council to resolve to adopt the plan so it may form part of the district's statutory development plan, replacing the saved policies of the adopted local plan of 2005.
- 3.4 It is therefore recommended that the Council accepts and adopts the North East Derbyshire Local Plan (2014 – 2034) ([available here](#)) as part of the Statutory Development Plan for the District and that it replaces the previous adopted Local Plan (November 2005) and the saved policies within it.

#### **4 Alternative Options and Reasons for their Rejection**

- 4.1 Section 23(4) of the Planning and Compulsory Purchase Act 2004 indicates that the Council cannot make any modifications to the Local Plan that would impact on its meaning. Therefore, the only alternative available to the Council other than to adopt the Local Plan is to not adopt the Local Plan.
- 4.2 This alternative would not provide certainty to the communities of North East Derbyshire and would leave the District open to further speculative development. It would also significantly expose the Council to the threat of Government intervention to secure an up to date plan.
- 4.3 Furthermore, as highlighted in the independent legal advice appended to this report, given the advanced stage the Plan has reached, with Main Modifications and an Inspector's report considering it sound, it is highly likely that applications to develop the allocated sites would still come forward even if the Council choose not to adopt the Plan. In the absence of an up to date Plan there would

be a very strong case to grant permission for these sites and others not proposed to be allocated in the Plan.

## DOCUMENT INFORMATION

Appendix No	Title
1	Independent Legal Advice on the risks of not adopting the Local Plan– Cornerstone Barristers
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) you must provide copies of the background papers)	
Click here to enter text.	