



CABINET – 22 OCTOBER 2024

STRATEGIC TRANSPORT PLANNING ISSUES ASSOCIATED WITH THE EMERGING CHARNWOOD LOCAL PLAN

REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT, CHIEF EXECUTIVE AND DIRECTOR OF LAW AND GOVERNANCE

PART A

Purpose of the Report

1. The purpose of this report is to provide a further update on the issues associated with the emerging Charnwood Local Plan (the Local Plan), and the associated implications for the Local Highway Authority (LHA) following the publication of the main report. This report should be read in conjunction with the previously published report. The Cabinet is also asked to approve the recommendations set out in this report to support future management of these issues.

Recommendations

2. In addition to the recommendations set out in the main report, it is also recommended that:
 - a) The latest position regarding the Charnwood Borough Council Local Plan Examination and associated implications for the planning process be noted, including:
 - i. Recent communications between the County Council and the Borough Council included in Appendix C and the regrettable apparent misrepresentation of the Local Highway Authority's (LHA) position at the recent Borough Council's Plans Committee.
 - ii. The recent resolutions to approve planning applications relating to sites allocated in the emerging Local Plan by Charnwood Borough Council Plans Committee.
 - iii. That these approvals were given despite the recommendations of the LHA, as a statutory consultee, to defer making the determinations at this time.

- b) The Chief Executive, the Director of Environment and Transport, and the Director of Law and Governance, following consultation with the appropriate Cabinet Lead Members, be authorised to take appropriate and necessary steps to address the concerns set out in paragraphs 18–26, including continuing to bring these concerns to the attention of the Borough Council.

Reasons for Recommendation

3. As previously set out, there are a substantial number of sites allocated in the emerging Local Plan that have been (or could be in the near future) granted planning permission, without contributing to the delivery of the identified highways and transport measures, which have the potential to undermine the delivery of the necessary infrastructure over the life of the Local Plan.
4. The County Council understood that it had the support of the Borough Council in addressing this issue in advance of adoption of the Local Plan, following the concerns raised by the LHA over recent years. However, in practice, this issue is yet to be addressed by the Borough Council, with no previous consideration of the benefits of introducing a Community Infrastructure Levy (CIL). The implications flowing from this omission were recently highlighted by the recommendations made to the Charnwood Plans Committee on 17 October 2024, where a significant number of dwellings allocated in the emerging Local Plan were recommended for approval, equating to a potential £3.3m of highways and transport contributions, subject to viability assessments.
5. Whilst the Plans Committee was provided with the LHA's advice, the additional information, supplied via a supplementary Extras report to the Plans Committee in response to further questions on the matter, gave rise to several concerns from the LHA's perspective. Details of these concerns are set out within this report. The approach to managing planning applications is critical to the future operation of the highway and transport network and so a shared commitment between the Local Planning Authority (LPA) and the LHA is vital to mitigate the impacts of growth. Therefore, the County Council will continue to seek to ensure that the issues are properly understood by the LPA, with the aim of addressing the risks associated with this issue.

Timetable for Decisions (including Scrutiny)

6. It is currently anticipated that the Local Plan will be adopted by the Borough Council around the end of the 2024 calendar year.

Policy Framework and Previous Decisions

7. These are set out in paragraphs 9 -16 of the main report.

Resource Implications

8. The County Council has committed significant resources to engaging in, and supporting, a collaborative approach to strategic planning, which is intended to

facilitate the delivery of growth within the County and mitigate the negative impacts of development, to the extent that it is reasonably possible to do so.

9. The County Council has so far taken a balanced view and offered its in principle support to the proposed Local Plan, on the basis that there would be an appropriate mechanism to secure developer contributions towards the identified highways and transport infrastructure, thereby minimising the gap in funding and the associated risks to the County Council as far as possible. Whilst all of the contributions would be subject to individual viability assessments if they are needed, evidence commissioned to support the Local Plan and the previously proposed Charnwood Transport Contributions Strategy (CTCS) indicates that the decision to approve just three of the sites allocated in the emerging plan, ahead of an agreed mechanism to address the severe cumulative impact of the planned growth, may have resulted in lost contributions of £3,305,536. This helps to illustrate the scale of the issue and the reason for the County Council's concerns.
10. The Director of Corporate Resources has been consulted on the content of this report.

Legal Implications

11. There are potential legal implications for the LHA in its role as statutory consultee. The Director of Environment and Transport is authorised to respond to planning applications in line with the responsibilities of this role. In consultation with the Director of Law and Governance, the Director of Environment and Transport will continue to review the approach, and any associated risks set out in both this and the main report.

Circulation under the Local Issues Alert Procedure

12. A copy of this report will be circulated to all Members.

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PART B

Background

Charnwood Local Plan and Transport Evidence

13. The background to these issues is set out in paragraphs 22 – 33 of the main report.

Updated Information Since Publication of the Main Report

14. In line with the position set out in the main report, on 11 October 2024 the LHA issued updated highways observations to the LPA in respect of the planning applications to be considered by the Charnwood Plans Committee on 17 October 2024. These observations set out the position of the LHA, namely, that to determine further applications in advance of the examining Inspectors' Report would be premature in light of the identified severe cumulative impact of the proposed Local Plan growth and a lack of a mechanism to secure contributions to mitigate this impact.
15. These observations were referenced in the Extras Report provided to the Plans Committee, which covers any new information after the agenda is published, with both reports presented to the Committee by the Borough Council's Head of Planning & Growth. However, on publication of the Extras Report, the County Council has identified that the position of the LHA appeared to have been misrepresented whilst being summarised. A statement was made that the LHA's position on prematurity "effectively puts an embargo on development while the local plan is settled and a Community Infrastructure Levy is prepared". The LHA's actual representation asked the Borough Council to defer determination of the planning applications until the publication of the Local Plan Inspectors' letter, at which point it would be reviewed. This was expected to be within a matter of weeks, as opposed to the preparation of a CIL which is likely to take 12-18 months. As the time frames referred to are significantly different, the County Council considered this to be a key material issue and requested that the Plans Committee be provided with the opportunity to consider the position of the LHA in full. This was set out in a letter and is attached as Appendix C to this report.
16. This request was granted, and the Plans Committee was adjourned to allow the Members to have an opportunity to review the information that was submitted by the LHA. Unfortunately, the LHA's reinforced position was presented to the committee by the Head of Planning & Growth as a "slight shift in position" and a "subtle difference" which was caused "as a consequence of the ambiguity of what they've been saying in their formal comments as opposed to what they've been saying in the letter to the inspector". The language used did not reflect the significance of the difference between being recommended to defer determination of planning applications for a 12–18-month period, as opposed to the reality of recommending a deferral of a few weeks and referred to an ambiguity of approach by the County Council which was not present in reality. A question-and-answer exchange followed, and the information provided by the

Head of Planning & Growth as part of this has caused further concern for the County Council. These concerns are set out below in paragraphs 18 – 26.

17. Following this, the Plans Committee proceeded with the planned agenda and considered four planning applications (P/23/1235/2, P/22/1224/2, P/23/1085/2 and P/22/1154/2). These consisted of proposals for a significant number of new dwellings of which have been identified as additional growth proposed through the emerging Local Plan. Despite the LHA's advice the Plans Committee resolved to approve the applications.
18. Although as individual sites the applications are capable of mitigating their own impacts, the issue as previously set out remains. The greater the number of applications granted without contributing to the delivery of the identified highways and transport measures, the greater the potential to undermine the delivery of the necessary infrastructure over the life of the Local Plan. It is the view of the LHA that if the necessary infrastructure cannot be provided, the soundness of the Local Plan is also undermined.
19. The County Council has previously acknowledged the viability challenges associated with the proposed Local Plan and acknowledged that this could be managed over the life of the Local Plan, as it was reasonable to suppose some public funding would be available during this period. This was in line with the basic fundamental principle that public funding would not be used as a substitute for developer funding, but only where there was a genuine shortfall. To illustrate the extent of the issue and highlight the reason for the position of the LHA, it is worth noting that the decision to approve the applications listed above may have resulted in 'lost contributions' of up to £3.3m. This is based on evidence commissioned to support the Local Plan and the previously proposed CTCS. It should be noted that each site would have undergone an individual viability assessment which may have reduced the available contribution. However, irrespective of the individual site viability, the point remains that applications approved prior to resolving the issue of mitigating the severe cumulative impact has a significant impact on the LHA's ability to deliver the identified infrastructure as presented in the proposed Local Plan examination.
20. Overall, the information supplied on behalf of the Borough Council to the committee members at the Plans Committee, together with the financial implications of the decisions, gives the County Council cause for concern. The full Plans Committee meeting is available for public viewing from the link on the Charnwood Borough Council website. The LHA's concerns can be summarised into three broad categories:
 - a) Misleading information was provided to committee members regarding the evidence of severe impact on highways and transport networks;
 - b) The assertion was made that 'lost contributions' can be managed by use of public funding and future Local Plan growth;
 - c) There was a lack of acknowledgement of the LPA's responsibility to ensure that they promote a sustainable, viable and deliverable Local Plan strategy and an apparent overall failure to provide clear and compelling reasons for disregarding the views of a statutory consultee.

Misleading statements regarding the evidence of severe impact on highways and transport networks.

21. Members of the Plans Committee were informed by officers of the Borough Council that the LHA did not consider the applications being considered as having a severe cumulative impact. Whilst it is acknowledged that the individual sites do not, of themselves, give rise to a severe impact, when considered as a whole, the planned growth for Charnwood to 2037 gives rise to a severe impact. The Borough Council is clearly aware of this and in fact confirmed this as its own position in correspondence with applicants. The issue has been and remains that there is not a suitable mechanism to achieve mitigation. The County Council recommended that the Borough Council defer the determination of the relevant planning applications until a commitment to an expedited CIL process is in place, potentially endorsed by a clear policy directive by the Planning Inspectorate as part of its findings on the Local Plan. The situation was not fully represented in the answers that were given to the Members' questions regarding severe impacts.

22. The Borough Council further suggested that additional evidence is needed as the evidence base for demonstrating a severe cumulative impact is incomplete. The Head of Planning & Growth stated that the LHA needed to undertake work to identify what the 'tipping point' was for when the impact of development became severe. The LHA assumes that this is because the Borough Council believes that development coming forward before the 'tipping point' can be approved, on the basis it does not have a severe impact, and only development that comes forward after the 'tipping point' will be required to mitigate its impact. This is disappointing as the LHA and the Borough Council have been working on this issue for a considerable period of time. The LHA has explained on a number of occasions that this is not an appropriate evidential strategy in the case of the proposed Charnwood Local Plan because it will not work in practice. As the proposed development is dispersed over a wide area in smaller sites there are several barriers to this approach:
 - a) Across such a large number of geographically dispersed sites it is not possible to accurately identify which sites will be built out in what order over the life of the Local Plan. Therefore, it is not possible to accurately track when and where severe impact will occur as it might be if assessing a smaller number of sites of strategic scale.

 - b) It is already acknowledged that the remaining development cannot fund the entirety of the identified infrastructure and therefore if only development after the 'tipping point' contributes to its delivery, the funding gap would be so significant that very little infrastructure would be delivered.

 - c) Most of the allocated sites are relatively small and so can only contribute a proportion of the cost of the measures to be implemented. Without a pooling mechanism, the contributions may be agreed and collected, but across several schemes all would only be partially funded. Therefore, the mitigation would not be delivered in practice and would therefore be contrary to the Local Plan.

The assertion made that ‘lost contributions’ can be managed by use of public funding and future Local Plan growth.

23. Of further concern to the LHA was the assertion made by the Head of Planning & Growth that it is the ‘highway authority’s strategy’ to ‘secure the shortfall through public subsidy’. This statement was made in response to a question on how the shortfall relating to the applications being considered would be made up. It is the LHA’s view that the statement made appears to be a misrepresentation of the approach agreed at the Local Plan examination.
24. The LHA agreed that it would continue to support the proposed Local Plan recognising there was a shortfall in viability, on the basis that the Borough Council had agreed to work towards a suitable contributions mechanism to maximise developer contributions which would in turn minimise the financial burden to the County Council. The County Council has set out this principle in a number of previous reports and communicated this regularly to officers at the Borough Council, most recently in December 2023, based on the information at the time and the known quantum of ‘lost contributions’ at that stage. Whilst the County Council was prepared to seek public funding to support a genuine viability gap supported by the LPA’s commitment to maximise developer contributions, it did not commit to making up further shortfalls caused by a continued lack of an identified mechanism for securing strategic transport contributions.
25. This is because it is simply not appropriate for a public body to use public funding for infrastructure that could be paid for by development. It should only be used where there is robust evidence that the planned growth could not mitigate its impacts. Therefore, the County Council considers the statements made in relation to the funding strategy were also potentially misleading.
26. In addition, the Plans Committee was also informed that a CIL can run through subsequent local plan periods until required mitigation is fully delivered and therefore, contrary to the LHA’s view, there should be no concern over a ‘diminishing pot’ of contributions at this stage. The LHA considers this also has the potential to mislead members because it is highly likely that future local plans will also give rise to the need for further mitigation. Therefore, if future growth is still providing contributions to the current proposed Local Plan’s identified infrastructure, the additional infrastructure required for future plans will simply be added to the backlog and increase the likelihood that adequate mitigation for infrastructure will never be delivered.

The lack of acknowledgement of the LPA’s responsibility to ensure that they promote a sustainable, viable and deliverable Local Plan strategy and an overall failure to provide clear and compelling reasons to disregard the views of a statutory consultee.

27. All the issues arising from the proposed distribution strategy set out in the proposed Local Plan have been known by the Borough Council for some considerable time. The LHA has been requesting a suitable mechanism to secure strategic contributions for over two years. During this time, the Borough

Council has not addressed these concerns or previously proposed introducing a CIL. The letter to the Inspectors dated 4 October 2024 and appended at Appendix A of the main report is the first time the Borough Council has proposed a solution; by proposing now, at this late stage, to bring forward a CIL. At this stage there is no confirmation this will be accepted by the Inspectors and no firm plan for how development will be managed in the interim. It is the LHA's view that these aspects are critical to the delivery of a sustainable Local Plan. Without them, the LHA does not consider the Local Plan can be found to be sound and it is disappointing that a decision to reject these critical views of the LHA, as a statutory consultee, were not addressed by providing clear and compelling justification at the committee.

Combined Effect of these Concerns

28. The County Council considers that when taken together, the above areas of concern, together with the longstanding lack of solutions for the issues mentioned, raise doubts as to whether the Borough Council fully understands and/or takes seriously the concerns of the LHA. As a result, the County Council also has doubts that the Local Plan is capable of being successfully delivered or can be considered to be sound, or that a CIL schedule could be successfully implemented at the necessary pace to make an impact. The County Council will continue to work in good faith to achieve a positive outcome and will take advice on how best to achieve this.

Conclusion

29. Overall, it remains the County Council's position that it is in the best interests of Charnwood communities to have an up-to-date Local Plan in place and thus, for the County Council to continue to work with the Borough Council to seek to achieve this, within the previously agreed principles and those set out above, recognising the inherent challenges associated with this approach.
30. However, it is also the responsibility of the LHA to ensure that the potentially negative impacts associated with the delays to the adoption of the Local Plan and an evolving position of the LPA in regard to CIL implementation are minimised, as far as possible. Therefore, the LHA will continue to take appropriate action to reflect this responsibility. The LHA considers that any further relevant planning applications seeking to be determined in advance of the examining Inspectors' report should be considered as premature and as such, should be deferred for the time being.
31. The County Council has significant concerns regarding the Borough Council's approach to the challenges associated with highways and transport both through the proposed Local Plan and the planning process, and the resulting impact on whether the Local Plan can be considered to be sound. The County Council will therefore continue to take advice on the most appropriate steps to resolve these issues and will take all reasonable actions to ensure the best possible outcomes for residents of Charnwood.

Equality Implications

32. There are no equality implications arising from this report.

Human Rights Implications

33. There are no human rights implications arising from this report.

Environmental Implications

34. The LPA has produced several documents assessing the environmental impacts of the Local Plan and these have been considered as part of the Local Plan's examination process. However, it is important that the necessary highways and transport measures are delivered as set out in the Local Plan, to ensure those assessments are reflective of the Local Plan strategy in practice.

Partnership Working and Associated Issues

35. The County Council has worked collaboratively and with good faith with the Borough Council to support the development of the Local Plan.

Background Papers

Report to the Cabinet on 24 June 2022: Charnwood Local Plan (2021 to 2037) – Highways and Transportation Matters and Supplementary Report
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6775&Ver=4>

Report to the Cabinet on 23 September 2022: Charnwood Local Plan (2021 – 2037) Latest Position
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6776&Ver=4>

Report to the Cabinet on 25 November 2022: Managing the Risk Relating to the Delivery of Infrastructure to Support Growth
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6751&Ver=4>

Report to the Cabinet on 10 February 2023: Interim Approach to Planning Issues in Charnwood Borough
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=7073&Ver=4>

Report to the Cabinet on 9 February 2024: Provisional Medium Term Financial Strategy 2024/25 – 2027/28
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=7503&Ver=4>

Report to the Cabinet on 13 September 2024: Proposed Response to Consultation on the National Planning Policy Framework
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=7509&Ver=4>

Appendices

Appendix A – Charnwood Borough Council's letter to the Planning Inspectors
 Appendix B – Leicestershire County Council's letter to the Planning Inspectors
 Appendix C – Letter from Leicestershire County Council to Charnwood Borough Council

**Via Email**

Mr Richard Bennett
Charnwood Borough Council

Date: 17 October 2024
My Ref: JW/msb
Contact: Janna Walker
Phone: 0116 3050785
Email: janna.walker@leics.gov.uk

Dear Richard

Thank you for your email. I can confirm:

1. Our position is as per our observations - these are the formal submissions of the LHA to the Borough Council in respect of the applications being considered.
2. We believe the statement within our observations is clear and highlights that our position on prematurity will be reviewed upon receipt of the Inspectors' report. We do not believe the statement left any room for doubt and note you did not contact the County Council to check our position before publishing your interpretation.
3. We believe the wording in the Extras report to the Plans Committee has the potential to significantly mislead the committee on what is a key, material issue. It is therefore imperative that this is properly corrected in the report to committee later today or you risk any decision being open to subsequent legal challenge.

The statement relating to the LHA reviewing its position, as per point 2 above, is also contained within our letter to the Inspectors and it is equally important that this letter is represented correctly to the committee. I will not reiterate our position, as both the letter to the Inspectors and our observations are clear and unambiguous and in line with the concerns we have been raising over a period of years now. We formally request that the contents of the LHA's submitted observations, and the letter to the Inspectors, are clearly and accurately presented to the committee, together with our exchange of emails and this letter, in hard copy. The Monitoring Officer has written to the Borough Council's Monitoring Officer to confirm that formal request, which we expect to see respected.

I have set out some points that illustrate the difference between our stated position and the representation in your email and the Extras report, all of which should be made clear to the Plans Committee:

Con't...

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- The sentence you reference needs to be read in full and in the context of the whole letter as it is not an accurate representation to select the highlighted sections in isolation. For example, the section I have highlighted in the sentence is also important because if proportionate contributions can be achieved in the meantime our concerns can be addressed. *“Therefore, an intervention is required to prevent development coming forward, ahead of local plan and CIL adoption, **without proportionate contributions to the necessary infrastructure** and to ensure that a CIL can be an effective means of mitigating the impact of growth on the highways and transport network”.*
- The County Council considers there is a need for an intervention to the Inspectors – we have not outlined what form that should take, as we hope the inspectors will be able to guide us to a positive conclusion. We have certainly not stated that the intervention should be an total embargo on development in Charnwood.
- We have all agreed that development needs to contribute proportionately to the delivery of highways and transport interventions on the basis of an agreed position that there is a significant cumulative impact across the borough arising from the distribution strategy set out in the proposed Local Plan. However, if the majority of development has already been granted permission ahead of the implementation of a CIL, or a suitable interim mechanism, the plan will not be delivered as presented. We have therefore highlighted to the Inspectors the opportunity to ensure a CIL is as effective as possible by ensuring that contributions are not ‘missed’ in the interim period and the plan can be delivered, at least to some extent, in practice.
- Whatever the Inspectors’ response, we have been clear we will take the Inspectors’ views on this into account and review our position in both our observations and the letter to the Inspectors. Your email and the wording used in the Extras report appears to predetermine the outcome of such a review and also fails to address (or respond to in any way) whether prematurity is relevant in the context of a much more imminent review point, the Examination Report. A planning officer’s report, where it elects to go against the views of a statutory consultee, should provide cogent and compelling reasons for doing so. We would expect to see such reasons also presented to the committee later today.

Yours sincerely



Janna Walker
Assistant Director Development & Growth (Panel Chair)
Environment and Transport
Leicestershire County Council