



**CABINET - 17 DECEMBER 2024**

**STRATEGIC TRANSPORT PLANNING ISSUES ASSOCIATED WITH  
THE EMERGING CHARNWOOD LOCAL PLAN**

**SUPPLEMENTARY 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 an update on the issues associated with the emerging Charnwood Local Plan (the Local Plan), following recent correspondence from the Local Plan Inspectors and implications for the County Council as Local Highway Authority (LHA). The Cabinet is asked to approve the recommendations set out below.

**Recommendations**

2. It is recommended that:
  - a) The latest position in respect of the Local Plan be noted including:
    - i. The correspondence between the County Council and Charnwood Borough Council (the Borough Council) summarised in paragraph 18.
    - ii. The Borough Council's approach to the s.106 agreement in respect of planning application P/22/1224/2 and associated implications for the County Council as set out in paragraphs 32-35.
    - iii. The issue of a letter dated 29 November from the Borough Council to the Local Plan Inspectors published as EXAM 88 A on the Local Plan website, in response to their letter (EXAM 88) dated 5 November, and a further response from the Inspectors' dated 4 December 2024 published as EXAM 88 B, which are appended to this report.
    - iv. The publication of a report for consideration by the Borough Council's Cabinet on 12 December 2024, entitled 'Charnwood

Local Development Scheme December 2024' and that following the Borough Council's Cabinet meeting, which is not livestreamed, draft minutes have been provided to the County Council by the Borough Council which confirm agreement to all four recommendations. [Charnwood Borough Council Cabinet 12 December Agenda and Draft Minutes](#)

- v. The potential implications for the LHA in its role as statutory consultee arising from the Local Plan process as set out in paragraphs 26 to 27 and paragraphs 29 to 39.
  - vi. The publication of the new National Planning Policy Framework (NPPF) on the 12 December. This will have implications for all local plans in Leicestershire, not least because it will significantly increase the level of housing which local authorities have to plan for and may mean that many more local authorities without an up-to-date local plan will no longer be able to demonstrate a five-year housing land supply. The impacts for this Local Plan are currently being assessed.
- b) That in line with previous recommendations and delegations, 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:
- i. work alongside, support, and co-operate with the Borough Council as necessary, through a more appropriate governance structure than the current Infrastructure Board, to develop the further viability evidence requested by the Inspectors as speedily as possible, now the Borough Council has formally confirmed via a resolution of its Cabinet on 12 December that it is seeking to take up the option put forward by the Inspectors to progress the inclusion of a Community Infrastructure Levy (CIL) in the Local Plan.
  - ii. Review the viability evidence to be provided by the Borough Council's consultants and repeat the County Council's request to meet the consultants to discuss the evidence before it is finalised, which has not yet been confirmed by the Borough Council, noting the need for expediency as the Borough Council has committed to providing this information to the Inspectors in the week beginning 13 January 2025.
  - iii. Participate appropriately in the development and implementation of a CIL charging schedule in line with national guidance and seek to influence the adoption of a CIL as soon as possible, recognising the potential for work to be undertaken at risk ahead of possible further Local Plan examination sessions.

- iv. Seek to mitigate the impacts arising from the potential further delays to adoption of the Local Plan as far as reasonably possible.
- c) That, given the continued difficulty in securing clear and consistent responses from the Borough Council on key issues, with a number of questions asked of the Borough Council still requiring answers, the already protracted Local Plan process and the potential delay in adopting a Local Plan, the County Council is yet to be assured that an adopted Local Plan will provide the necessary infrastructure to support growth sustainably. Should the Borough Council fail to ensure there is a suitable mechanism to secure sufficient and timely funding through developer contributions, this will adversely impact the highways and transport provision in Charnwood which will be felt by the residents and businesses of Charnwood.

### **Reasons for Recommendations**

3. The County Council has a duty to cooperate in the development of the Local Plan. The 'duty to cooperate' was created in the Localism Act 2011 and places a legal duty on local planning authorities, county councils in England and public bodies to engage constructively, actively and on an ongoing basis to maximise the effectiveness of local plan preparation in the context of strategic cross boundary matters. This will continue over the extended Local Plan examination period. The County Council has proactively contacted the Borough Council in the context of this duty and received a response to letters of the Chief Executive sent on the 27 November and 3 December on 9 December, which was in turn responded to on 11 December.
4. The Borough Council has recently taken the highly unusual step of excluding the County Council from a s.106 agreement in relation to planning application P/22/1224/2. This has several potentially negative implications for the County Council as set out in paragraphs 27-33.
5. The Inspectors' letter (EXAM 88) sets out the latest position regarding the emerging Local Plan. The Inspectors have made clear that, in order for the Local Plan to be modified in the manner suggested by the Borough Council, further evidence is required, including viability evidence. The Borough Council has commissioned a viability study without any input from the County Council. However, following the recent exchange of correspondence referred to above, the County Council has been invited to review the viability work before it is submitted to the Inspectors. The County Council has proposed a meeting with the viability consultants once their work has been shared, although this has yet to be confirmed by the Borough Council. The Borough Council has committed to submit this evidence to the Inspectors by the week commencing 13 January 2025. Although the County Council was not consulted on this date, it will prioritise this work, given the urgent need to adopt the Local Plan and associated CIL schedule in the best interests of Charnwood residents. It would have been far better for the County Council to have been able to contribute to the development of the brief for this evidence to help make the process as efficient as possible, given the risks of delays.

6. The County Council believes this regrettable situation could have been avoided. In relation to the efficacy of the current Infrastructure Board, the Chief Executive advised the Borough Council in correspondence that the County Council believed it to be unproductive and *“would wish to see a refresh of the governance and oversight structure, jointly agreed, so focussed and effective work can take place on providing the Inspectors with the CIL-related evidence and development. We would need to make the best use of what resources the County Council has for such work, recognising there are demands from other district Local Plans. I support my colleagues in their view the current ‘Infrastructure Board’ needs to be replaced with a new body with tighter terms of reference and attendance restricted to key officers. The County Council would also expect to approve the brief and associated programme of delivery for any consultants appointed to lead the viability work.”* The County Council’s concerns with communication over the Borough Council’s intentions to introduce a CIL are a matter of record. The Borough Council’s response to the County Council’s request, reported above, was that focus on governance would cause delay. Whilst they were prepared to consider suggestions for change, they have proceeded to reconvene the infrastructure Board and did not consult the County Council on a brief for consultants leading on the viability work.
7. The latest correspondence from the Inspectors, EXAM 88 B, confirms the dependence of the successful progression of the Local Plan examination on the provision of satisfactory viability evidence. It highlights that it is only when this has been reviewed by the Inspectors, and a decision made that the examination can progress, that a draft timetable would be issued, setting out the remaining stages of the examination. This has potentially significant impacts on the County Council as LHA, including potential further delays in the adoption of the Local Plan. The risks associated with delays to adoption remain as previously set out.
8. Following a previous report to this Cabinet, it was resolved that ‘until the County Council is formally notified of the Borough Council’s decision following the Inspectors’ letter, and the reasons behind recommendations to its Cabinet, the County Council is unable to take any action to assist in progressing the Local Plan’. The resolution to approve revisions to the Local Development Scheme by the Borough Council’s Cabinet on 12 December 2024 is significant in setting out the Borough Council’s position and therefore informing the County Council’s next steps.
9. The County Council recognises the potentially negative impacts of lack of strategic transport investment to support growth on Charnwood residents and businesses and will therefore seek to mitigate these impacts as far as practically possible, with the primary means of mitigation the expedient adoption of a CIL. These impacts include those associated with any further delays to the adoption of the Local Plan and approval of allocated sites in advance of an agreed mechanism to secure contributions to (and subsequent

delivery of) strategic highways and transport measures. The County Council therefore proposes to support the Borough Council to implement a CIL schedule. The Chief Executive has reiterated this commitment, made in previous approved Cabinet recommendations to Charnwood Borough Council in correspondence dated 11 December 2024. Progress, however, will be dependent on the view of the Inspectors on the further viability evidence to be submitted by the Borough Council.

10. It is likely that the new NPPF will have significant implications for plan making in Leicestershire. As more information becomes available Officers will consider the implications for the Charnwood Local Plan and act accordingly.

### **Timetable for Decisions (including Scrutiny)**

11. It was anticipated that the Local Plan would be adopted by the Borough Council around the end of the 2024 calendar year, but the Borough Council's report to Cabinet on 12 December sets out it is now anticipating this will be delayed until September 2025, subject to confirmation from the Inspectors.

### **Policy Framework and Previous Decisions**

12. These have previously been set out in the main report.

### **Resource Implications**

13. The County Council has committed significant resources to engaging in, and supporting, a collaborative approach to strategic planning in order 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.
14. The extended Local Plan examination process, together with ongoing input into various other emerging local plans, is a significant draw on resources across the County Council. Further extension of the Local Plan process in addition to other Regulation 19 consultations expected in the new year will put considerable pressure on these already stretched resources, as will the need to develop and maintain CIL schedules. Officers will work together to develop an appropriate resource plan with reference to the County Council's statutory duties, risks associated with Local Plan development and the financial position of the County Council. However, with additional pressures arising from the new NPPF requirements, it is unlikely that the County Council will be able to provide the resources which every district council may seek and there will have to be early discussions in regard to prioritisation.
15. The Director of Corporate Resources has been consulted on the content of this report.

### **Legal Implications**

16. 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.

### **Circulation under the Local Issues Alert Procedure**

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

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## **PART B**

### **Background**

18. Further to the last report considered by the Cabinet on 22 November 2024, the Chief Executive wrote to the Borough Council's Chief Executive on 27 November and 3 December and received a response on 9 December, which in turn was responded to on 11 December. It was hoped the issues raised would be addressed in full by the Borough Council when officers presented a report to its Cabinet on 12 December. However, although draft minutes have been produced, the Borough Council's Cabinet meetings are not live streamed and so a further update will be given at the meeting.

### **Update on the Local Plan**

19. On 29 November the Borough Council submitted a further letter to the Inspectors, confirming its officers would be recommending to its Cabinet on 12 December 2024 that the Borough Council prepare a CIL to mitigate the impact of growth on the highway network in Charnwood. The letter also confirmed the Borough Council had commissioned a further viability study from consultants, with a commitment to submit that evidence to the Inspectors by the week commencing 13 January 2025. This letter is available on the examination website in full (EXAM 88A) and is appended to this report. The County Council had not, at that stage, been invited to contribute or review this evidence, which was concerning as the authority responsible for both education and highways and transport matters, both of which have significant impacts on Local Plan viability. The County Council has now been informed that it will be sent the consultants' work when draft conclusions have been produced. The County Council has asked to meet with the consultants.
20. The Borough Council published a report to its Cabinet entitled 'Charnwood Local Development Scheme December 2024' relating to the information to be provided to the Inspectors in response to their EXAM 88 letter and also providing an update on the timetable for adoption of the Local Plan and proposed CIL schedule. The recommendations were as follows:
  - '1. To approve the preparation [of] a Community Infrastructure Levy.
  2. That the revised programme for the preparation of local development documents as set out in the Local Development Scheme attached to this report be approved.
  3. That the Local Development Scheme comes into effect and is published by Friday 20 December 2024; and
  4. That authority is delegated to the Head of Planning and Growth in consultation with the Lead Cabinet Member for Planning to make any minor typographical/graphical amendments to the Local Development Scheme prior to its publication.'

21. In addition, the report contains details of the proposed timetable for the Local Plan with adoption now expected by the Borough Council in September 2025 and adoption of a CIL schedule in December 2025. It should be noted however that these dates are subject to decisions by the Local Plan Inspectors and progression of the Local Plan is conditional on the submission of satisfactory viability evidence.
22. Whilst this information is helpful and sets out a way forward, as adopted by the Borough Council's Cabinet on 12 December, it is the view of the County Council that the Cabinet report did not fully set out the risks around adoption of the Local Plan nor did it sufficiently address the concerns raised by the County Council over the potential for development which comes ahead of the Local Plan adoption undermining the overall viability and deliverability of the Local Plan, particularly in relation to sufficient highways and transport mitigation.
23. In light of the above, the County Council requested that a copy of the recent correspondence dating from 22 October be shared with the Borough Council's Cabinet members before the meeting. It is understood this has happened, but the Borough Council did not agree to put the County Council's concerns on the record.
24. The County Council remains concerned that the Borough Council's continued approach to determining planning applications will further undermine the viability of the Local Plan. Whilst the County Council recognises that the determining of relevant planning applications is a matter for the Borough Council as the LPA, the County Council has sought clarification from the Borough Council on why it disagrees with the County Council (in its role as LHA), on whether the issue of prematurity, set out in previous reports, is relevant to the decision making of its Plans Committee, and is still awaiting a detailed response on this issue.
25. The Inspectors have responded to the Borough Council and this letter is available in full on the examination website (EXAM 88B) and appended to this report. In summary, the Inspectors note the Borough Council's Cabinet report and intention to submit evidence by the week commencing 13 January 2025. The Inspectors also highlight the dependence of the progression of the Local Plan on the receipt of satisfactory viability evidence, and that the examination timetable will not be set out until such time as the Inspectors have reviewed the viability evidence and decided that the examination can progress.

### **Implications for the County Council as LHA**

26. As previously set out, the delays to the adoption of the Local Plan and confirmation of the appropriate mechanism for securing strategic contributions means an increased risk that planning applications will be approved without contributing to the strategic transport requirements identified as part of the Local Plan development. The longer this goes on, the more applications will be processed through the planning system and the greater the funding gap for identified infrastructure.



27. In addition, it is likely that the County Council will be required to commit further resource to the examination process and the development of a CIL schedule.

### **Next Steps in relation to the Local Plan**

28. As formal confirmation from the Borough Council to the County Council on its approach to progressing the Local Plan has now been received, officers across the County Council will continue to work together to participate as appropriate, in accordance with Cabinet resolutions, in the development of the Local Plan, including on the evidence base and associated CIL Schedule if required.

### **Implications for the County Council as LHA in the Planning Process**

29. In October 2024 Cabinet received an update on the LHA's view 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. The LHA committed to review this position on receipt of the examining Inspectors' report. At this time, the Borough Council expected the report would be published by the end of November 2024.
30. In November 2024 Cabinet received an update on the Borough Council's view of the above following the Inspectors letter dated 5 November 2024. At that time, it was the view of the County Council in its role as LHA that the issue of prematurity had become even more critical. However, the Borough Council concluded that "the latest letter from the Inspectors on the Draft Local Plan does not change the weight to be afforded to the relevant emerging policies in decision making at this time. As such, the letter from the Inspectors does not have a material impact on the assessment of the appeal proposal and the recommendation".
31. The County Council therefore sought clarification as to the reasons for this, in the context of relevant legal precedents on this matter, including whether the applications should be returned to Plans Committee for consideration due to the Inspectors' letter being a new material consideration. In particular, the County Council sought clarification in respect of the four applications (P/23/1235/2, P/22/1224/2, P/23/1085/2 and P/22/1154/2) that had recently been approved by the Borough Council's Plans Committee, subject to the completion of the necessary s.106 agreements. S.106 agreements are legal agreements which are entered into in order to mitigate the impacts of a development proposal. The County Council did not refuse to enter into these s.106 agreements, as has been asserted by the Borough Council, but had instead requested the necessary clarification before signing the agreements.
32. However, in respect of planning application P/22/1224/2 the County Council's solicitor was advised by the applicant's solicitor on 28 November that "Charnwood are proceeding with the s. 106 without the County being a party". Following a request for further information, the County Council's solicitor was advised on 3 December 2024 that the agreement had been completed. A copy of the completed agreement was provided to the County Council by the

Borough Council's solicitor on 6 December 2024. At that time, the County Council had received no correspondence from the Borough Council on this approach or whether the intention was to apply it to any other applications.

33. The exclusion of the County Council from s.106 agreements, which is contrary to national Planning Policy Guidance (PPG) on how an LPA should work with infrastructure providers, could have several implications including:
  - i) The County Council will not have an opportunity to undertake due diligence on matters such as land ownership.
  - ii) The County Council cannot ensure that the contributions set out in the agreement are as requested or that the trigger points for payment are in line with the County Council's assessment of when they become necessary.
  - iii) The County Council is unable to rely on the agreement or enforce it.
  - iv) The County Council will not be able to clarify terms within the agreement leading to uncertainty.
  - v) The County Council is unable to secure contributions to monitor the requirements within the s.106 despite it being harder to do so under this arrangement.
34. A number of these issues have arisen in the first agreement that the County Council has been excluded from. If more agreements continue to be made in this manner, the risks will increase that contributions will not reflect the position of the County Council, particularly in relation to education and highways.
35. Therefore, as part of the recent correspondence, the County Council expressed its disappointment at this approach and confirmed to the Borough Council that it does wish to be party to relevant s.106 agreements, subject to reserving its future position. It is now understood the Borough Council will resume the inclusion of the County Council in s.106 negotiations.
36. However, the issue of prematurity remains, and it is the view of the County Council that the Borough Council has not given sufficient weight to the observations of the LHA as a statutory consultee, which could be supported by attaching weight to EXAM 88, which the Borough Council has now conceded is a material consideration, contrary to its initial view. The County Council has asked if the initial view was based on legal advice but has received no reply. Whilst the County Council accepts that prematurity will not routinely be a valid planning objection, the circumstances here are unusual and significant. The planning applications in question rely for their policy validity on the draft Local Plan. The County Council's long stated concern with both the draft Local Plan strategy and these planning applications is that they do not address the cumulative transport impacts and needs to which, collectively, they give rise.
37. It had been hoped that this deficiency could have been addressed through the Interim and finalised Transport Strategies, but both the County and the Borough

Council accept that there are legal difficulties about that, owing (in summary) to the CIL Regulations. This matter has, quite properly, been raised with the Local Plan Inspectors, as it is an issue going to the soundness of the emerging Plan. The inspectors have not yet decided whether or not the Borough Council's acceptance of the difficulty and intention to produce a CIL Schedule will achieve a sound Plan and, if it can in principle, what changes are required to the draft Plan to achieve this.

38. These are important matters which relate to the Plan's strategy and the soundness or otherwise of its delivery. As these are strategic matters affecting the future planning of growth Borough-wide, they do require resolution, at least to the extent of having clarity about the Inspectors' suggested way forward, before these planning applications should be determined. As has been accepted by both the County and Borough Councils, at the moment it is not known whether the draft Local Plan will be found sound as a result of this issue. It is therefore premature to grant planning permissions which would, effectively, set the direction of development in advance of the Inspectors' determination.
39. Therefore, until that date, the County Council's representations on prematurity remains that these applications are contrary to the adopted local plan, instead relying on the emerging Local Plan, which the Inspectors are yet to confirm can be found sound.

#### **Next Steps in relation to the Local Plan**

40. The County Council will consider its position in relation to the above risks and implications with reference to any further information arising from the Borough Council's Cabinet meeting on the 12 December 2024 and will proceed on the basis of the Cabinet's decision.

#### **Equality Implications**

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

#### **Human Rights Implications**

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

#### **Environmental Implications**

43. 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**

44. 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>

Reports to the Cabinet on 22 October 2024: Strategic Transport Planning Issues Associated with the Emerging Charnwood Local Plan and minutes of that meeting  
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=135&MID=7510>

Report to Charnwood Borough Council on 12 December 2024: Local Development Scheme -  
<https://charnwood.moderngov.co.uk/ieListDocuments.aspx?CId=137&MId=980&Ver=4>

## **Appendices**

Appendix 1 – Inspectors’ Post Main Modifications Letter

Appendix 2 – Charnwood Borough Council’s Response to Exam 88

Appendix 3 – Inspectors’ Response to Charnwood Borough Council Letter