

## **Cherwell District Council**

### **Executive**

**6 February 2023**

## **'Regulation 10A' Planning Policy Review and Housing Land Supply Statement**

### **Report of Assistant Director – Planning and Development**

This report is public.

### **Purpose of report**

To seek approval of an updated review of planning policies under Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 and a Housing Land Supply Statement for publication.

### **1.0 Recommendations**

The meeting is recommended:

- 1.1 To approve the review of planning policies under Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 (Appendix 1)
- 1.2 To approve the Housing Land Supply Statement for publication (Appendix 2) noting the implications and conclusions of the report to the Executive.
- 1.3 To authorise the Assistant Director - Planning and Development in consultation with the Portfolio Holder for Planning to make any necessary minor and presentational changes to the Regulation 10A Review and the Housing Land Supply Statement if required prior to publication in consultation with the Portfolio Holder for Planning.

### **2.0 Introduction**

- 2.1 In December 2022 the Council published a Housing and Economic Needs Assessment (HENA 2022) produced jointly with Oxford City Council to inform their respective Local Plan processes.
- 2.2 The HENA is new up-to-date evidence of housing need, which provides an assessment of housing need which is materially different to that in the 2014 Strategic Housing Market Assessment (SHMA). It indicates that the 2014 SHMA is now out of date.

2.3 The implications of this have been considered in a new review of planning policies under Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012. The review is presented at Appendix 1 to this report. Upon approval, the review would replace that approved by the Executive in January 2021 (see background documents).

2.4 The review indicates that the policy affected by publication of the HENA 2022 (Policy BSC1 District-wide Housing Distribution) needs updating – a process that will be undertaken through work on the emerging Cherwell Local Plan Review.

2.5 The NPPF (paragraph 74) requires local planning authorities to:

*'identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies<sup>38</sup>, or against their local housing need where the strategic policies are more than five years old<sup>39</sup>.'*

2.6 Footnote 39 explains that the housing requirement in adopted strategic policies may continue to be used if the policies have been reviewed and found not to require updating. This is known as a 'Regulation 10A review' (under regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012. Footnote 39 states:

*'Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five-year supply of specific deliverable sites exist, it should be calculated using the standard method set out in national planning guidance.'*

2.7 Accordingly, where adopted policies are five years old and in the absence of a review finding them to be up to date, LPAs should use the Standard Method figure for housing land supply monitoring purposes. This necessitates a review of the district's land supply position which is presented in the Housing Land Supply Statement at Appendix 2.

### **3.0 Report Details**

3.1 The Cherwell Local Plan 2011-2031 was adopted in 2015 and hence is over five years old. A 'Regulation 10A' review of the Plan's policies was presented to the Executive in January 2021. The review concluded that the majority of the Plan's policies were generally up to date. This included the Local Plan requirement of 1,142 homes per annum (22,840) which then remained the starting point for the purposes of calculating the five year housing land supply.

3.2 In January 2022, the 2021 Annual Monitoring Report was presented to the Council's Executive. The Executive resolved (1.2):

*'To note the district's housing delivery and five-year housing land supply positions (for conventional housing and for Gypsies and Travellers) at Section 5 of the AMR and the need for updating of the land supply positions should these materially change, including consideration of the Vale of White Horse Council's 3 December 2021 Cabinet decision relating to the Regulation 10A review of its Part 1 Plan'.*

- 3.3 The Local Plan for Vale of White Horse District Council is based on the 2014 Strategic Housing Market Assessment (SHMA). This is the same evidence which underpins the Cherwell Local Plan 2011-2031.
- 3.4 Vale of White Horse District Council had presented its 'Regulation 10A' review of policies to its Cabinet, concluding that its housing requirement required updating and proposing using the national 'standard method' for the purposes of monitoring housing land supply, plus an annual requirement from Part 2 of its Local Plan for contributing to Oxford's unmet housing need. Vale of White Horse Council approved its 'Regulation 10A' review [insert date].
- 3.5 The Cherwell 2021 AMR published in January 2022, noted:
- '5.37 In finalising this AMR we are aware the Vale of White Horse DC, one of the 5 district councils within Oxfordshire, has suggested that their plan requirement cannot be considered to be up-to-date and that they propose reverting to Local Housing Need (LHN) also known as the 'standard method' for the calculation of the five-year land supply. Furthermore, a new housing need assessment is emerging to support the Oxfordshire Plan process and this will also inform the Cherwell Local Plan review. A draft was published alongside the Summer 2021 consultation on the Oxfordshire Plan and finalisation is pending. The Secretary of State has also indicated that the means by which housing need is calculated is under review (Housing, Communities and Local Government select committee, 8 November 2021)'*
- and
- '5.38 There may therefore be a need in the near future to consider the basis from which the five-year land supply calculations for Cherwell are derived including whether or not LHN is appropriate'.*
- 3.6 The HENA 2022 presents a change of circumstances. It comprises new up to date evidence of housing need, which provides an assessment of housing need which is materially different to that in the 2014 SHMA. It indicates that the 2014 SHMA is now out of date.
- 3.7 Consequently, a new 'Regulation 10A' review of the Council's policies in the Cherwell Local Plan 2011-2031 and saved policies of the Cherwell Local Plan 1996 has been undertaken (Appendix 1).
- 3.8 The Regulation 10A Review of Local Plan Policies (February 2023) shows that nearly all policies are generally consistent with government policy and/or local circumstances do not indicate that the policy needs updating at this time with the exception of Policy BSC1 District-wide Housing Distribution within the Cherwell Local Plan 2011-2031.
- 3.9 This updating will take place through the on-going Cherwell Local Plan Review process which is being prepared to provide new planning policies to address the identified issues, needs and opportunities that face the district.
- 3.10 Therefore, in accordance with national policy, it is appropriate to apply the district's local housing need figure as calculated by the Standard Method for the purpose of assessing housing land supply for Cherwell's needs. This is currently 742 dwellings

per annum. Government guidance on applying the standard method is available on-line at: <https://www.gov.uk/guidance/housing-and-economic-development-needs-assessments>.

- 3.11 It is important to note that applying the Standard Method for the purposes of assessing housing land supply does not mean that the Council is identifying its housing need for the purpose of progressing its new Local Plan. The HENA represents a material change of circumstances leading to a new 'Regulation 10A' review and a 're-basing' of the housing land supply calculation but the housing need scenarios within the HENA still need to be tested through the Local Plan process. The Standard Method figure also appears in the HENA at Table 7.4 (see background papers).
- 3.12 The Partial Review of the Local Plan, which provides for housing to help meet Oxford's unmet housing needs, is not yet five years old (having been adopted in September 2020). The policy of the NPPF at paragraph 74 and footnote 39, to apply local housing need where the strategic policies are more than five years old and to use the standard method, is therefore not applicable to that Plan.
- 3.13 Furthermore, Policy 12a of the Partial Review states:
- 'The Council will manage the supply of housing land for the purpose of constructing 4,400 homes to meet Oxford's needs. A separate five-year housing land supply will be maintained for meeting Oxford's needs'* (emphasis added).
- 3.14 Therefore, the calculation of the five year housing land supply for the unmet housing needs for Oxford will continue to be applied separately using the Partial Review's housing requirement: 340 homes per annum for the period 2021 to 2026 and 540 homes per annum for the period 2026-2031.
- 3.15 The 'Standard Method' figure for Cherwell of 742 homes per annum is therefore only applied to the land supply calculation for Cherwell's needs.

### **Five Year Housing Land Supply**

- 3.16 The two assessments of the five year housing land supply from 'deliverable' housing sites are presented in Housing Land Supply Statement (Appendix 2) which is supported by a Housing Delivery Monitor. The statement includes the NPPF's definition of 'deliverable'.
- 3.17 The supply side of the housing land supply calculation will usually involve having regard to housing completions as well as a forward projection of expected housing delivery. In applying the standard method there is no requirement to apply the annual housing need figure retrospectively; whereas applying a Local Plan requirement involves measuring delivery to date from the start of the Local Plan period and having regard to any shortfall or surplus.
- 3.18 It should also be noted that the NPPF requires a land supply 'buffer' to be included in the calculation. This is explained within the Housing Land Supply Statement.
- 3.19 The review of expected future housing supply from deliverable sites is informed by consultation with individual site promoters or developers and others. The review takes into account housing completion and permission data as at 31 March 2022

and a forward assessment of delivery thereafter for the period 2022-2027 based on the latest information available in December 2022.

- 3.20 The conclusion is that for Cherwell's needs, the district has a **5.4** year housing land supply (for 2022-27). This is an increase from 3.5 years reported in the 2021 Annual Monitoring Report and is largely the result of applying the standard method housing need figure of 742 homes per year from 2022 rather than the Local Plan figure of 1,142 from 2011.
- 3.21 For the requirements of the Partial Review of the Local Plan for Oxford's unmet needs, there is a presently a negligible housing land supply of **0.2** years (for 2022-27) because very little housing is currently expected to be delivered by 2027. However, development briefs are being adopted and some planning applications and pre-application discussions are progressing. The expectations of future delivery will be kept under review.

## Implications

### *Cherwell's Land Supply*

- 3.22 In general, having a demonstrable five year housing land supply of deliverable sites for Cherwell's needs places the Council in a stronger position to refuse permission for development not provided for by the Development Plan and which is considered to be unacceptable.
- 3.23 The so-called 'tilted balance' in deciding whether or not to grant planning permission does not become effective for reasons of housing land supply. Without a five year housing land supply, the balance moves in favour of granting permission unless the likely harm should significantly and demonstrably outweigh the benefits of permission. There remains, however, a need to consider the Development Plan as a whole.
- 3.24 Upon approval of this report, the Planning Committee would be advised of the positive change of position in respect of the land supply position for Cherwell's needs.
- 3.25 The Housing Delivery Monitor (HDM) is appended to the Housing Land Supply Statement and summarises the evidence for all included sites. At 1 April 2022 there were extant permissions for 7,626 homes. The assessment of supply from sites considered to meet the NPPF's definition of 'deliverable' is for 4,244 homes to be constructed from 2022 to 2027.
- 3.26 Nevertheless, economic conditions are challenging and it is important that officers continue to seek Local Plan compliant housing delivery to maintain supply and deliver the district's planned development. Having a five year land supply position does not mean that development allowed for by the Local Plan should halt. Indeed, not progressing planned development considered to be acceptable could undermine the land supply position.

### *Land Supply for Oxford's Unmet Housing Needs*

- 3.27 The Partial Review allocates sites to deliver 4,400 homes to help meet Oxford's unmet housing needs and necessary supporting infrastructure by 2031.

- 3.28 Policy PR12b of the Partial Review includes the following: *‘Applications for planning permission for the development of sites to meet Oxford’s needs that are not allocated in the Partial Review will not be supported unless... Cherwell District Council has taken a formal decision that additional land beyond that allocated in the Partial Review is required to ensure the requisite housing supply...’*
- 3.29 Officers do not recommend that such a decision is taken at the current time for the following reasons taken as a whole:
1. The Plan has a specific focus on meeting the identified and unmet needs of Oxford city to 2031. It will not be followed by a replacement plan in the usual way. Particular care is needed not to release more land than is required to deliver the Plan;
  2. The Plan (and therefore its delivery) was delayed by an Examination which ran from March 2018 to July 2020;
  3. The Plan was ‘adopted’ in September 2020 following the receipt of an Inspector’s Report on the examination of the plan which required consideration of the then NPPF’s tests on deliverability and developability;
  4. The residential sites continue to be actively promoted;
  5. Development briefs have been approved by the Planning Committee for all sites bar one (Land East of the A44 - PR8) – which is at an advanced stage of preparation. The briefs ‘front load’ the design process in the interests of providing certainty and clarity and supporting delivery. They should assist in avoiding prolonged pre-application discussions on design principles;
  6. Planning application have been received site PR9 (Land West of the A44), PR7a (South East Kidlington), and PR7b (Stratfield Farm). Pre-application discussions are occurring on most other sites. Planning Performance Agreements have been signed for three sites.
  7. The infrastructure requirements to support all sites are set out within the Infrastructure Schedule accompanying the plan. The County Council was engaged closely in developing site policies and infrastructure needs;
  8. The five-year supply ‘shortfall’ is not a land supply issue as such. The issue is one of timing. Presently, it is considered that the potential release of additional land within the parameters of the Plan’s strategy could be counterproductive to delivering the Plan and its infrastructure requirements.

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 A Housing and Economic Needs Assessment (2022) has been produced which is materially different to that in the 2014 Strategic Housing Market Assessment (SHMA). It indicates that the 2014 SHMA is now out of date. The Cherwell Local Plan 2011-2031 is over five years old and a new ‘Regulation 10A’ Review of Local Plan Policies has been undertaken (February 2023). This shows that nearly all policies are generally consistent with government policy and/or local circumstances

do not indicate that the policy needs updating at this time with the exception of Policy BSC1 District-wide Housing Distribution.

- 4.2 In accordance with the National Planning Policy Framework and planning guidance a Housing Land Supply Statement has been produced which applies the national defined 'Standard Method' of calculating local housing need for the purposes of land supply monitoring for Cherwell's needs. A comprehensive review of expected housing delivery has also been undertaken. It is shown that the district now has a 5.4 year housing land supply (for 2022-2027) which will need to be taken into account in decision making.
- 4.3 The Partial Review of the Local Plan is less than five years old and its housing requirements continue to apply for housing land supply monitoring. Although the sites allocated in that Plan are progressing, there is presently a negligible land supply assessment of 0.2 years (for 2022-2027). Whilst regard to that should be made in decision making, the Partial Review has a specific policy (Policy PR12b) requiring the Council to make a formal decision that additional land beyond that allocated in the Partial Review is required to ensure the requisite housing supply. For the reasons, set out at paragraph 3.29 of this report, officers do not recommend that such a decision is taken.
- 4.4 Members are invited to approve the Regulation 10A Review and the Housing Land Supply Statement.

## **5.0 Consultation**

- 5.1 Councillor Colin Clarke – Portfolio Holder for Planning.

## **6.0 Alternative Options and Reasons for Rejection**

- 6.1 *Not to approve the Regulation 10A Review or Housing Land Supply Statement*

Officers consider the material change in circumstances arising from publication of the HENA 2022 to have been appropriately considered and the Regulation 10A Review and the Housing Land Supply Statement to be in accordance with national planning policy and guidance and to be robust and defensible positions.

Not to approve Review and Statement would leave the 2021 Regulation 10A Review and the Housing Land Supply position set out in the 2021 AMR unchanged. Officers would need to take further advice in the Council's interest.

## **7.0 Implications**

### **Financial and Resource Implications**

- 7.1 There are no direct financial implications arising from this report. The work has been undertaken existing budgets and there are no implications arising from the recommendations. There is some potential risk of costs associated with unsuccessfully defending refusals of planning permission at appeal and this risk can

be reduced through having a robust housing land supply position published annually.

Comments checked by:

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### **Legal Implications**

- 7.2 The review of local plans five years from adoption is a legislative requirement under Regulation 10A of the Town and Country (Local Planning) (England) Regulations 2012 (as amended). Upon approval the 'Regulation 10A Review' here presented would replace that approved by the Executive in January 2021. A decision to approve the Housing Land Supply Statement and thereby apply the Standard Method for the purpose of housing land supply monitoring is considered to be a legitimate and reasonable one, having regard to legislation, national planning policy and guidance and in the circumstances explained in the report. The Review and the Housing Land Supply Statement would, if approved, need to be considered where relevant in development management decision making.

Comments checked by:

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### **Risk Implications**

- 7.3 Planning decisions can be challenged through planning appeals and in the courts. Having an up-to-date housing land supply position reduces the risk of challenges related to land supply being successful. The risk is also reduced by having an approach to assessing land supply that complies with national policy and guidance and is which drawn from a comprehensive review of the components of supply.
- 7.4 Planning officers consider the application of the Standard Method to be consistent with national planning policy and guidance and to be appropriate in the circumstances explained on the report. The review of future housing supply has been undertaken on the basis of the best information available and in consultation with respective developers / site promoters.

Comments checked by:

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### **Equality & Diversity Implications**

- 7.5 There are no equality and implications. The report considers housing land supply matters.

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## 8.0 Decision Information

### Key Decision:

**Financial Threshold Met** No

**Community Impact Threshold Met:** No

### Wards Affected

All

### Links to Corporate Plan and Policy Framework

This report directly links to the strategic priorities from the Business Plan 2021/22:

- Housing that meets your needs
- Leading on environmental sustainability
- An enterprising economy with strong and vibrant local centres
- Healthy, resilient and engaged communities

### Lead Councillor

Councillor Colin Clarke – Portfolio Holder for Planning

### Document Information

#### Appendix number and title

Appendix 1 Regulation 10A review of Local Plan Policies

Appendix 2 Housing Land Supply Statement

### Background papers

None

### Executive Papers

1. Housing and Economic Needs Assessment 2022  
<https://modgov.cherwell.gov.uk/documents/b11237/Supplement%20-%20Appendix%203%20-%20Housing%20and%20Economic%20Needs%20Assessment%20December%202022%20Thursday%2019-Jan-2023%20.pdf?T=9>
2. Report to the Executive 4 January 2021 and decision: Annual Monitoring Report 2020 and Regulation 10A Review of Local Plan Policies  
<https://modgov.cherwell.gov.uk/ieListDocuments.aspx?CId=115&MId=3371&Ver=4> (Minute 86)
3. Report to the Executive 10 January 2022 and decision: Annual Monitoring Report 2021  
<https://modgov.cherwell.gov.uk/ieListDocuments.aspx?CId=115&MId=3534&Ver=4> (Minute 90)

4. Report to Cabinet of Vale of White Horse District Council 3 December 2021  
<http://democratic.whitehorsedc.gov.uk/ieListDocuments.aspx?CId=507&MId=2854> (Minute 63)

### **Supporting Documents**

National Planning Policy Framework (July 2021)

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Government guidance on applying the standard method (December 2020):

<https://www.gov.uk/guidance/housing-and-economic-development-needs-assessments>.

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