

# Brighton & Hove City Council

## Tourism, Equalities, Communities & Culture Committee

## Agenda Item 83

**Subject:** City Plan Part 2 – Consultation on Modifications arising from Examination Hearings

**Date of meeting:** 10 March 2022

**Report of:** Executive Director, Economy, Environment & Culture

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**Ward(s) affected:** All

### For general release

#### 1. Purpose of the report and policy context

- 1.1 This report provides an update on the City Plan Part Two (CPP2) Examination, outlines the next steps and seeks Member agreement to publish a list of main modifications to the Plan for public consultation.
- 1.2 The main role of CPP2 is to support the implementation and delivery of City Plan Part One (adopted March 2016) which sets out the strategic planning framework for the city to 2030. Part Two builds upon and complements the strategic plan and will help facilitate the delivery of high quality, sustainable development by setting out an up to date suite of detailed development management policies and additional site allocations.

#### 2. Recommendations

- 2.1 That Committee agrees the Schedule of Proposed Main Modifications set out in Appendix 1 along with supporting documents (the Sustainability Appraisal and Health and Equalities Impact Assessment) for a seven week period of public consultation;
- 2.2 That Committee notes the schedule of consequential changes that will impact on proposed change to the Policies Map and the schedule of Additional Modifications set out in Appendix 2.

#### 3. Context and background information

- 3.1 Following Council approval 23 April 2020, the Proposed Submission City Plan Two (CPP2) was published for final formal Regulation 19 consultation September – October 2020. The representations received were collated into a Statement of Consultation along with a summary of Main Issues. Appendix 3 provides further details. The CPP2 was submitted in May 2021 to the

Secretary of State for formal examination. An Examination Inspector was appointed in June 2021 to carry out the plan examination. Public hearings were held in November 2021.

- 3.2 The examination started from the basis that the council had submitted a 'sound' Plan (that it met the government's defined tests of being positively prepared, justified, effective and consistent with national policy). In its submission, the Council requested the Inspector to make changes/modifications, as necessary, to address any deficiencies in the soundness of the Plan. This is a standard approach and allows for parts of the Plan which are identified through the examination as unsound to be made sound through modifications to allow it to move forward to adoption. The Inspector has now written to the council indicating a number of proposed changes/main modifications to the Plan may be necessary for her to find it sound and legally compliant. Public consultation on these modifications is required before the Inspector can conclude the examination and issue her final report.

### **Examination Hearings**

- 3.3 Thirteen public hearing sessions took place between 2 and 16 November online via Microsoft Teams Those residents, groups, organisations and other stakeholders who responded to the Regulation 19 consultation in Autumn 2020 were given the opportunity to further participate by responding through participant matter statements to the Inspector's examination matters, issues and questions and / or by appearing at the public hearing sessions.
- 3.4 For the development management policies, the focus of the examination was whether the policies were justified by the evidence, consistent with national policy and the adopted CPP1, whether they would be effective, clearly written and unambiguous for the decision maker.
- 3.5 For the site allocations the Inspector did not consider that revising the city's overall housing requirement (to deliver a minimum of 13,200 dwellings by 2030) was within the scope of the CPP2. The focus was whether the Plan allocates sufficient housing land to deliver *at least* the minimum housing requirement as set out in the adopted City Plan Part 1. For all site allocations, the Inspector looked at how sites and capacity had been identified, how constraints or mitigation requirements had been addressed and the benefits of the development. Additional site-specific questions were posed for a number of the site allocations.
- 3.6 The hearing sessions took the form of online round table discussions led by the Inspector. They were live broadcast via the council's YouTube channel. Public viewing appeared to be largely the same as at 'in person' hearings.
- 3.7 During the hearing sessions participants were given full opportunity to discuss their representations and, where related to matters of soundness, if representations could be addressed by way of main modifications. The Inspector also considered a number of proposed modifications put forward by the council at the submission stage or in response to her matters, issues

and questions. In her Post Hearing Action Points the Inspector asked the council to prepare a revised composite schedule of MMs that would need to be consulted upon.

### **Schedule of Main Modifications**

- 3.8 The Schedule of Main Modifications (MMs) is set out in Appendix 1. The majority of the MMs propose either factual updates or improve the clarity of the wording for the decision maker and ensure policy wording remains consistent with the government's National Planning Policy Framework (NPPF, July 2021). Some MMs are also required to reflect changes to the Use Class Order that came into effect 1<sup>st</sup> September 2020.
- 3.9 Those MMs that relate to a change in the wording of policies include:
- **DM1 Housing Quality, Choice and Mix** – additional wording in criterion e) to clarify when the council will seek 'wheelchair accessible' homes to reflect planning policy guidance.
  - **DM10 Public Houses** – additional criterion proposed to ensure that where proposals involve loss of floorspace (eg gardens) and facilities ancillary to the operation of a public house, the impact on the future viability of the pub is considered.
  - Revising the **retail policies (DM12-DM16)** to address changes to the Use Classes Order that came into effect 1st September 2020 and the introduction of the single E Use Class Commercial, Business and Service Use. The proposed changes recognise the changing nature of the high street, encourage a range of uses that maintain and enhance the vitality, viability and character of the shopping area, retain active ground floor uses and ensure appropriately designed shop fronts.
  - **DM18 High Quality design and Places** - changes proposed clarify that an artistic element is required to be incorporated in major development on strategic and/ or prominent sites.
  - For a number of **heritage policies (DM26-29)** and relevant Strategic Site Allocations (**SSA 1, 3, 5 and 7**) additional wording to refer to the need for Heritage Impact Assessment and also to refer to the heritage balance considerations as set out in the NPPF.
  - Amending and restructuring parts of **Policy DM37 Green Infrastructure and Nature Conservation** to ensure more robust policy wording regarding the mitigation hierarchy and seeking measurable net gain. Amendments to part C. locally protected sites to clarify and improve the effectiveness of the policy
  - **DM39 Development on the Seafront** – additional wording to refer to the assessment required if development would be likely to have an adverse impact on designated sites including the Beachy Head West Marine Conservation Zone.
  - **DM44 Energy efficiency and renewable energy** – changes proposed clarify the types of development that the standards set out in the policy will apply to and information requirements of applicants. Changes include

reference to the Future Homes Standards and Future Building Standards due to come into effect in 2025 with an interim uplift coming into effect 15 June 2022. These will supersede and exceed DM44.

- **SSA1 Brighton General Hospital** - amended wording to the supporting text, drafted with participants (RSPB, Sussex Ornithological Society and Sussex Wildlife Trust) during the hearings on the need to safeguard, protect and support swift colonies throughout the entirety of development.
- **H1 Housing and Mixed Use Sites** – updates to the tables of site allocations (Tables 6 and 7) will remove 6 sites where housing has now been completed and one site no longer available for development due to its current use (**2-16 Coombe Road**). Two new housing sites put forward during the consultation are proposed to be included (**Land at Preston Road / Campbell Road, Brighton and 154 Old Shoreham Road, Hove**). The removal of the site allocation between **Marine Drive and The Cliff** is proposed as it could not be demonstrated to the satisfaction of the Inspector that the delivery of 10 dwelling units would not have a significant impact on the Local Wildlife Site or that adequate ecological mitigation and biodiversity net gains would be possible.
- **H2 Housing Sites – urban fringe** - modifications propose the deletion of one site: **Site 16 (land at and adjacent to Horsdean Recreation Ground)** in light of updated evidence (UFA Update 2021) that development for 10 dwellings would be unlikely to achieve the required ecological mitigation and biodiversity net gain. A boundary amendment is also proposed to **site 46a Land at former nursery, Saltdean** and a reduction in the potential number of dwelling units from 24 to 18 units to respond to a landowner representation and the need to retain existing vegetation around the northern and western boundaries.
- The Inspector having considered all the evidence, representations, submitted matter statements and the hearing discussions has not asked the council in the Post Hearing Note to make any other changes to the list of H2 urban fringe sites or the housing allocation at Benfield Valley.
- The proposed MMs have been subject to Sustainability Appraisal and Health and Equalities Impact Assessment, and these are summarised in section 9 and 10 of this report. The documents can be viewed on the council's website: ([Examination documents from the council \(brighton-hove.gov.uk\)](https://www.brighton-hove.gov.uk)). An update to the Habitats Regulation Assessment is not considered to be required with respect to the MMs since they do not increase the cumulative level of development proposed in the Plan.

3.14 Consequential changes to how the CPP2 policies and allocations will be shown on the adopted Policies Map have also been prepared and included at a separate schedule in Appendix 2. These supporting documents will be available as part of the consultation.

3.15 As part of the examination process a number of proposed Additional (Minor) Modifications have been identified (factual updates or editorial corrections). These additional modifications, included in Appendix 2 are not subject to the formal examination and address minor issues of clarity and will be published

for completeness. Comments on the schedule of Additional Modifications will only be considered by the council and not by the Inspector.

#### **4. Analysis and consideration of alternative options**

- 4.1 The CPP2 is still under examination – the Inspector’s post hearing note does not represent her full findings on the matters raised. Consultation on the proposed Main Modifications is necessary to inform her final consideration on whether the plan can be found sound and is the only practicable option if the Plan is to progress towards adoption and ensure the council has an up-to-date set of development management policies and site allocations to support the City Plan Part One (CPP1).
- 4.2 Without public consultation on the Main Modifications the Inspector would not be able to conclude the examination of the Plan. If consultation on the Main Modifications requested by the Inspector is not approved the council would need to go back several stages in the City Plan Part Two preparation at significant financial cost and time delay. It would also impact on the review of the City Plan Part 1 which is due to commence this year.

#### **5. Community engagement and consultation**

- 5.1 Three phases of consultation have taken place to inform the preparation of the City Plan Part 2 (Issues and options consultation in 2016, draft Plan consultation in 2018 and formal soundness consultation in 2020) with full details set out in published Statements of Consultation. The May 2021 Statement of Consultation details the consultation undertaken on the Proposed Submission City Plan Part Two in 2020, the consultation responses received through formal written representations and provides a summary of main issues and officer response.
- 5.2 Consultation on the Schedule of proposed Main Modifications will be for a period of seven weeks. Consultation will take place in accordance with the council’s adopted Statement of Community Involvement (SCI) and temporary addendum which sets out policy and standards for engaging residents, local groups, stakeholders and statutory consultees in the preparation of planning-related documents, including supplementary planning documents.
- 5.3 Those who made representations at the previous Regulation 19 consultation and Planning Policy consultees will be notified by email of the details of the consultation; where documents are available to view (online and hard copies at the libraries and Brighton Customer Service Centre) and how and when to make comments. The CPP2 Examination webpage will be updated and press and social media will be used to advertise the consultation.
- 5.4 The Inspector has specified that the consultation relates solely to the proposed Main Modifications. It is not an opportunity to re-open debate on matters that the Inspector has already considered or on parts of the Plan not subject to main modifications.

5.5 Following consultation, the representations received will be collated and forwarded to the Inspector along with a summary of main issues raised. She will consider these representations and, if no issues arise from the consultation on the main modifications, then write her final Report on the Examination of the CPP2.

## **6. Conclusion**

6.1 The City Plan Part 2 is still under examination by a government appointed Inspector. This report provides an update on the CPP2 examination and seeks Member approval to publish the Schedule of Main Modifications to the Plan as requested by the Inspector for public consultation.

6.2 The Inspector has indicated that consultation on these Main Modifications is necessary to inform her consideration on whether the plan can be found sound / or how it could be made sound by main modifications. Public consultation will ensure the Inspector is able to conclude her consideration and examination of the Plan. This is the only practicable option if the Plan is to progress towards adoption.

6.3 It is important that the Council has a complete, up to date and robust planning policy framework. Whilst the City Plan Part One provides the overarching strategic planning framework for the city, including the eight Development Areas and 23 strategic allocations, it does not allocate all of the sites that will be required to meet the city's identified needs such as housing. Nor does it include a full set of up-to-date detailed development management policies to guide future development in the city.

## **7. Financial implications**

7.1 There are no direct financial implications arising from this report. The cost of officer time, document production and consultation associated with the recommendations in this report will be funded from existing revenue budget within the Planning service. Any significant variations to budget will be reported as part of the council's monthly budget monitoring process.

Finance Officer Consulted: John Lack

Date consulted: 03/02/22

## **8. Legal implications**

8.1 Section 20 of the Planning and Compulsory Purchase Act 2004 allows the person carrying out an independent examination of a development plan to recommend "main modifications" to the plan to make it sound. The local planning authority must publish the recommendations and the reasons for the same. Section 23 of the Act provides that where main modifications are recommended the plan may only be adopted with those main modifications or with those modifications and any additional modifications if the additional modifications do not materially affect the policies in the plan.

Lawyer Consulted: Hilary Woodward:

Date consulted 31/01/22

## **9. Equalities implications**

- 9.1 The Plan will help deliver equalities outcomes from new development. A Health and Equalities Impact Assessment (HEQIA) has been carried out on the draft City Plan Part 2 and revisited to consider the Main Modifications to ensure that the policies are coordinated to address equalities, health and well-being outcomes throughout the city. This is set out in an addendum to the HEQIA. The HEQIA concludes that CPP2 represents a comprehensive and inclusive suite of policies geared to fostering a healthy, vibrant, cohesive and sustainable population. The plan addresses various health objectives, with certain policies specifically addressing some of the health needs of people with protected characteristics, including disabled, BME, LGBTQ+, younger and older people.

## **10. Sustainability implications**

- 10.1 A Sustainability Appraisal (SA) incorporating the requirements of Strategic Environmental Assessment (SEA) has been prepared to inform and support the City Plan Part Two. This included assessment of options at draft stage to ensure the Plan is the most sustainable approach and will therefore support the delivery of sustainable development and outcomes. The SA also tested the suitability of site allocations and policies against the principles of sustainable development. The SA has assessed the proposed Main Modifications to the City Plan Part 2 and concludes that the plan provides a policy framework that seeks to avoid, reduce and mitigate the risk of any adverse effects, thereby resulting in positive social, economic and environmental effects overall. The Plan contributes positively to delivering a Carbon Neutral City by 2030.

## **11. Other Implications**

### **Social Value and procurement implications**

- 11.1 Within respect to Policy DM45 Community Energy, developers of medium scale and major development schemes are encouraged to actively seek community energy partners to deliver low carbon energy solutions which are 'led by' or 'meet the needs' of communities through full community ownership and control of a low carbon energy solution or project and that can add social value.
- 11.2 There are no procurement implications.

### **Crime & disorder implications:**

- 11.3 During the preparation of the City Plan Part 2 the site assessment and sustainability assessment process has considered crime and disorder issues. A number of policies also address crime and public safety issues (DM8, DM18, DM20, DM23, DM24, and DM40).

### **Public health implications:**

- 11.4 A HEQIA assessment has been carried out to inform the draft version of the City Plan Part Two to ensure that the policies are co-ordinated to address health and well-being outcomes throughout the city and revisited to consider the proposed Main Modifications to the policies to ensure that the policies are coordinated to address equalities, health and well-being outcomes throughout the city. This is set out in an addendum to the HEQIA.

## **Supporting Documentation**

### **1. Appendices**

1. Schedule of Main Modifications
2. Schedules of Additional Modifications
3. Further Details of Regulation 20 Consultation and Submission

### **2. Background documents**

1. 23 April 2020 Full Council Report – Proposed Submission City Plan Part 2 ([Brighton & Hove City Council - Agenda for Council on Thursday, 23rd April, 2020, 4.30pm \(brighton-hove.gov.uk\)](#))
2. Inspector Note 9 Post Hearing Action Points 3 December ([Examination documents from the Inspector \(brighton-hove.gov.uk\)](#))