

TEWKESBURY BOROUGH COUNCIL

Report to:	Council (Extraordinary)
Date of Meeting:	8 June 2022
Subject:	Tewkesbury Borough Plan – Report of the Inspector and Adoption of the Plan
Report of:	Interim Planning Policy Manager
Corporate Lead:	Head of Development Services
Lead Member:	Lead Member for Built Environment
Number of Appendices:	Six

Executive Summary:

This report recommends that Members formally adopt the Tewkesbury Borough Plan 2011 – 2031, incorporating the Inspector's recommended Main Modifications, so that it forms part of the statutory Development Plan for Tewkesbury Borough.

All local authorities are under a statutory obligation to prepare a development plan. Tewkesbury Borough Council has chosen to do this through the preparation of two development plan documents; namely the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) and the Tewkesbury Borough Plan. Together the two plans will provide the planning framework for the Borough until 2031, along with Gloucestershire Minerals and Waste Plan and any Neighbourhood Plans made. Adoption of the Tewkesbury Borough Plan 2011 – 2031 will have the effect of revoking all extant 'saved' policies from the existing Tewkesbury Borough Plan to 2011 (adopted in 2006).

Work to progress the Tewkesbury Borough Plan has been underway since 2013 and has been subject to several rounds of public consultation. The Plan was submitted for independent examination in May 2020, with examination hearings held between 16 February and 18 March 2021.

The Examination Inspector's Report was received on 12 April 2022 and concludes that the plan as submitted is unsound, but would be made sound and may be adopted by the Council provided his recommended Main Modifications are included.

Having received the Inspector's Report, the Council may now therefore elect to adopt the Plan incorporating all the necessary Main Modifications, or alternatively to withdraw the Plan in its whole.

The adoption of the plan will provide more certainty for local communities, will reduce pressure from speculative development and will be an important step in being able to demonstrate a five-year supply of deliverable housing sites. It is therefore being recommended that Members resolve to adopt the Plan as modified.

Recommendations:**That Members:**

- a) note the conclusions of the Tewkesbury Borough Plan Inspector's Report (Appendix 1);
- b) note the content of the Sustainability Appraisal adoption statement at Appendix 6;
- c) note that the adoption of the Tewkesbury Borough Plan 2011 – 2031 will revoke all saved policies of the Tewkesbury Borough Local Plan to 2011;
- d) resolve to adopt the Tewkesbury Borough Plan 2011 – 2031 (Appendix 4), incorporating all of the Main Modifications recommended by the Inspector (Appendix 2) together with the additional modifications as set out in Appendix 3, as part of the Council's statutory Development Plan;
- e) delegate authority to the Head of Development Services, in consultation with Lead Member for the Built Environment, to make minor spelling, grammatical, cross-referencing or typographical errors and presentational changes (including the addition of a Foreword) to the Tewkesbury Borough Plan prior to publication; and to prepare and publish an updated and consolidated version of the Policies Map as it relates to the Tewkesbury Borough Plan.

Reasons for Recommendation:

It is a statutory requirement to have an up to date development plan in place for the Borough. Adopting the Tewkesbury Borough Plan with Main Modifications will provide the Borough with an up to date and appropriate basis for making planning decisions and will be an important step in being able to demonstrate a five-year supply of deliverable housing sites (5YHLS).

National guidance expects that authorities will proceed quickly with adopting a plan that has been found sound.

Resource Implications:

The preparation of the TBP and its progression through Examination in Public has already involved a significant amount of Officer resource from within the Planning Policy team as well as support from the wider Council.

Further officer time will be required to progress the preparation of the final Plan document and the accompanying policies map for publication as well as any Officer and Member training needed in relation to the new Plan. This will come from within existing budgets.

Legal Implications:

Under Section 23 of the Planning and Compulsory Purchase Act 2004, it is not possible to adopt a development plan document that an Inspector has only found to be sound with main modifications without all the main modifications as recommended in an Inspector's final report. Save for any minor amendments, which (taken together) do not materially affect the policies set out in the development plan document, the exact wording must be as the main modifications set out within the Inspector's final Report.

Under Regulation 26 of the Town and Country Planning (Local Planning) (England) Regulations 2012, where a local planning authority adopt a local plan they must prepare an adoption statement specifying the date on which the local plan was adopted, any modifications made pursuant to section 23 of the Planning and Compulsory Purchase Act 2004, that any person aggrieved by the local plan may make an application to the High Court under section 113 of that Act and the grounds on which and the period within which an application can be made.

As soon as reasonably practicable after adoption the Council must send a copy of the adoption statement to any person who asks to be notified of the adoption of the local plan and to the Secretary of State. The Council must also, again as soon as reasonably practicable, make the following available by publishing them on its website and making them available for inspection at their principal office and at such other places within their area as it considers appropriate during normal office hours:

- The Local Plan.
- The Adoption Statement.
- The Sustainability Appraisal report.
- Details of where the Local Plan is available for inspection and the places and times at which the document can be inspected.

Under Section 113 of the Planning and Compulsory Purchase Act 2004 any application for leave to challenge an adopted plan (in whole or part) must be made before the end of the period of six weeks beginning with the day after adoption. The Tewkesbury Borough Plan 2011 - 2031 will form and remain part of the Development Plan on adoption unless and to the extent any challenge under Section 113 of the Planning and Compulsory Purchase Act 2004 has been successful.

Risk Management Implications:

Any decision not to adopt the new Tewkesbury Borough Plan at this stage of the process would create a policy vacuum leading to increased pressure from speculative development.

There is a risk of legal challenge upon adoption of the Plan under Section 113 of the Planning and Compulsory Purchase Act 2004 on the ground that the document is not within the appropriate power or a procedural requirement has not been complied with. Any such legal challenge must be made within six weeks of the plan being formally adopted.

Performance Management Follow-up:

The effects of implementing the policies of the Tewkesbury Borough Plan will be monitored on an ongoing basis through authority monitoring reports and other relevant documents, in line with government policy.

Environmental Implications:

The Tewkesbury Borough Plan directly addresses environmental issues in the Borough, including biodiversity, habitats, energy usage, waste and recycling and protected species. The Plan has been subject to a Sustainability Appraisal (SA Adoption Statement at Appendix 6 of this report) which has tested the extent to which the policies contained in the Plan will help to achieve environmental, economic and social objectives, when judged against reasonable alternatives.

1.0 INTRODUCTION/BACKGROUND

- 1.1** All local authorities are under a statutory obligation to prepare a development plan. Tewkesbury Borough Council has chosen to do this through the preparation of two development plan documents; the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) and the Tewkesbury Borough Plan (TBP). Together the two plans will provide the planning framework for the Borough until 2031¹, along with Gloucestershire Minerals and Waste Plans and any Neighbourhood Plans made.
- 1.2** The current Tewkesbury Borough Local Plan 1991 – 2011 was adopted in 2006, however since this time, national planning policy and guidance has been updated and condensed. Alongside these changes, the government has abolished regional and county strategic level planning and the Council has entered collaborative working on the JCS.
- 1.3** Whilst having an end-date of 2011, a number of policies contained in the currently adopted Tewkesbury Borough Local Plan have been formally 'saved' under transitional arrangements and are still used to determine planning applications alongside the JCS and the government's National Planning Policy Framework (NPPF).
- 1.4** Work on a replacement Tewkesbury Borough Plan to 2031 has been ongoing for several years, with the Council having commenced with a scoping (Issues and Options) consultation in October – November 2013. A second Regulation 18 consultation, focusing on draft policies and site options, was held in February – April 2015. Events hosted across the two consultations were attended by over 1,000 people.
- 1.5** A consultation on the Preferred Options TBP took place over a seven-week period from October – November 2018 and generated over 1,100 individual comments by approximately 430 separate respondents.
- 1.6** The Council subsequently consulted on a Pre-Submission Draft TBP in September - October 2019 during which over 900 individual comments were received from approximately 545 separate respondents.
- 1.7** The TBP was submitted to the Secretary of State for Housing, Communities and Local Government on 18 May 2020 for independent Examination. A Planning Inspector was appointed to undertake the Examination.
- 1.8** The Examination hearing sessions were held over 12 sitting days between 16 February and 18 March 2021 with 10 different matters being discussed.
- 1.9** In June 2021, the Inspector wrote to the Council setting out his preliminary findings in relation to the TBP and concluding that, subject to a series of main modifications (MMs), the plan was likely to be capable of being found legally-compliant and sound.

¹ The JCS (now referred to as the Joint Strategic Plan, or JSP) is currently under full review and when adopted will provide the strategic planning framework for the City and Borough Councils up to 2041.

- 1.10** Consultation took place on the main modifications to the Tewkesbury Borough Plan between November 2021 and January 2022. Approximately 90 comments were received from over 40 respondents. Following the close of the main modifications consultation, all of the responses were collated and sent to the Inspector.
- 1.11** The Inspector has taken the responses into account in writing his final report (Appendix 1) which he issued to the Council on 12 April 2022.
- 1.12** A track changed TBP adoption version is also attached to this report (Appendix 4). This incorporates all main modifications required for soundness as well as the additional modifications (further information on the AMs is provided in section 3 of this report).

2.0 THE INSPECTOR'S REPORT AND RECOMMENDED MAIN MODIFICATIONS

Inspector's Overall Findings

- 2.1** The Inspector's Report (Appendix 1) sets out his overall view on the legal compliance and soundness of the Local Plan. It is accompanied by an appendix containing a schedule of the main modifications (Appendix 2).
- 2.2** In terms of legal compliance, the Report concludes that the Sustainability Appraisal (SA) work, undertaken to support the plan preparation, is adequate. It also concludes that the Council has engaged constructively, actively and on an on-going basis and as such the duty to cooperate has been met. The Inspector is also satisfied that adequate consultation on the TBP and the main modifications was carried out in compliance with the Council's Statement of Community Involvement.
- 2.3** In terms of 'soundness', the Report concludes that the TBP as submitted in May 2020 provides an appropriate basis for the planning of Tewkesbury Borough, provided that the recommended main modifications are made to it.

Inspector's Key Findings

- 2.4** The following summarises the Inspector's key findings.
- 2.5** The main modifications which the Inspector recommends are mostly the same as those which were agreed by Council on 20 October 2021 and which were subject to public consultation from November 2021 to January 2022, as summarised from Paragraph 2.7 below.
- 2.6** The Inspector has made the following amendments to the main modifications as previously consulted on:
- a minor wording change to modified policy GRB4 to add development under a Neighbourhood Development Order to the forms of development that are not inappropriate in the Green Belt under point 2(f).
 - Within the modified Reasoned Justification for Policy RCN2, the Inspector has replaced the term "Floodlighting" with "Sports lighting" to take into account the representation made by Sports England. The Inspector has also strengthened the requirements around the operation of sports lighting.

Housing provision – general

- 2.7** The Inspector is satisfied that the Tewkesbury Borough Plan allocates sufficient and suitable housing sites to meet the JCS requirement for TBP identified in the adopted Joint Core Strategy (JCS).

- 2.8** Importantly, since the JCS only gives the TBP a limited role, and was adopted notwithstanding a built-in shortfall, the Inspector has advised that in assessing soundness, it is not necessary for him in this instance to conclude whether a 5YHLS exists. Nevertheless, the Inspector observes that, in updating the calculation in the JCS as at April 2020 to include the RES1 allocations, this would indicate 7.15 years supply for Tewkesbury Borough. For the avoidance of doubt, he also acknowledges that the position will have changed further since April 2020. The exact up-to-date land supply position will need to be informed by a fresh annual housing land availability survey, preparation for which is already underway.
- 2.10** As well as the overall housing requirement for the TBP, the Inspector has confirmed that the minimum housing requirements, as set by the JCS for the Rural Service Centres and the Service Villages respectively, have also been met.

Proposed Housing Allocations

2.11 *Winchcombe (Housing Allocation Site WIN1)*

The proposed allocation of the Area of Outstanding Natural Beauty (AONB) site at Winchcombe under Policy WIN1 is found to be sound subject to precise boundary stipulations and requiring good pedestrian/cycling links with the town. **MM3** sets out the main modification required to make Policy WIN1 sound. An amendment to the Policies Map is also required as a result of this MM.

2.12 *Shurdington - Housing Allocation Site SHU1 (Land at corner of Badgeworth Lane and A46)*

Housing site SHU1 would significantly extend housing development along the A46 into sensitive Green Belt countryside. No exceptional need has been demonstrated to release Green Belt land so this proposed allocation has not been accepted by the Inspector. **MM5** is required, deleting the allocation from the plan.

2.13 *Shurdington - Housing Allocation Site SHU2 (Land north of Westhampton Lane)*

In contrast to SHU1, the Inspector finds that proposed housing site SHU2 would not comprise an encroachment into the countryside and would only require minor amendments to the boundaries of the Green Belt so is accepted by the Inspector. **MM2** is necessary however to include reference to the need to take account of requirements to address flood risk.

2.14 *Minsterworth (Extent of settlement boundary)*

Minsterworth is an unusually linear village. Although no allocations are included in the TBP, the Inspector has found that the proposed extension of the settlement boundary (included in the pre-submission draft Plan) would not accord with the Council's definitional criteria and would compromise the intermittent character of the village. Instead, the Inspector indicated that the undeveloped gap between Ellis Bank Lane and Enderley should be excluded.

The Council duly published an alternative settlement boundary for consultation alongside the main modifications, adopting the Parish Council view that more in-depth development would be appropriate and that this should be concentrated near the Church, Village Hall and Old School. The Inspector has endorsed that amendment and recommends the revised settlement boundary for Minsterworth should be reflected in the final Policies Map.

2.15 *Forthampton - Housing Allocation Site FOR1 (Land at corner of Bishops Walk and School Lane)*

The village is not a Service Village and, in the absence of continued community support for the allocation of 10 dwellings, the Inspector has found it to be unsuitable for significant development and indicated it should be deleted from the Plan as set out in **MM6**.

2.16 *Omission of settlement boundaries (SBs)*

A number of substantially built-up areas on the edges of Gloucester and Cheltenham extend into Tewkesbury Borough but are not included within SBs. As a result, the Inspector is concerned that rural housing and employment policies would apply to any proposals for development which would not be justified. The Inspector therefore proposes that these areas should be included and defined on the Policies Map. **MM7** is therefore required to reflect this and the additional SBs will be included in the final Policies Map.

2.17 *Gypsies, Travellers and Travelling Showpeople*

The TBC needs to make provision both for those that meet the government's planning definition of Gypsies and Travellers and those that do not. The Inspector finds that the reasons for excluding a site for seven pitches at Brookside stables, Badgeworth are unconvincing and therefore proposes that the site should be allocated, thus reducing the shortfall to be found. He is satisfied that the outstanding shortfall can be addressed through windfall development and JCS Policy SD13. **MM16** is necessary to allocate the Brookside Stables site and for effectiveness to delete the site adjacent to Fieldview at The Leigh which is no longer available.

2.18 Employment Land

B4063/Cheltenham Road East/Airport Employment Sites

The expansion of the existing employment sites at Ashville Business Park, Meteor Business Park and Bamfurlong Industrial Park, and consequent removal of those sites from the Green Belt as originally proposed by the Council, have not been found to be justified by any exceptional circumstances. The latter two sites would also reduce the Essential Operational Area of Gloucestershire Airport. Consequently, the Inspector has required that the sites are deleted from the plan and the Green Belt designation retained (**MM17** and **MM24**).

2.19 *Toddington, Coombe Hill and Isbourne (Greet) Employment Sites*

The Inspector has found the proposed expansions of Orchard Industrial Estate, Toddington to be in an open rural landscape just to the south of the Cotswolds AONB and Special Landscape Area and is detached from any built-up area with poor road connections and little opportunity for sustainable modes of transport.

The proposed expansion of Knightsbridge Business Centre at Coombe Hill (The Leigh) is found to be well connected to the M5 but is in open countryside and would more than double the size of the industrial estate.

Both sites are found to be prominent and intrusive and the Inspector has required their deletion. Main Modifications are necessary to address this (**MM18**).

The land associated with the proposed expansion of Isbourne Business Centre (Winchcombe) is no longer available and has also been recommended for deletion under **MM18**.

2.20 *Use Classes Order (UCO) and general employment policies*

Recent changes to the UCO aim to increase flexibility in changes of use. The JCS definition of B-class employment land includes uses which now form part of Class E. Accordingly, the Inspector has required main modifications to be made to the Plan's Economy & Tourism and Retail & Town Centres policies to reflect the changes to the revised UCO (**MM17-22**).

The Inspector also considers main modifications necessary to ensure that satisfactory waste management arrangements are included in the scope of the general employment policies EMP5 and EMP6 (**MM21 and MM22**).

In relation to agricultural development, the Inspector has required added considerations of biodiversity, ecological impact and water quality (**MM23**).

3.0 **ADDITIONAL MODIFICATIONS**

3.1 As noted above, the Inspector's Report focuses on the changes that are needed to make the TBP sound – referred to as main modifications. In addition to these, in adopting the Plan the Council may also make additional modifications to the Local Plan provided they do not, alone or in combination, materially alter the policies of the plan. Such changes include alterations to the supporting text consequential to the main modifications, minor factual updating and the correction of typographical errors etc.

3.2 Attached at Appendix 3, is a schedule of additional modifications which were published alongside the main modifications for consultation in November 2021 – January 2022.

3.3 Members are recommended to resolve to delegate authority to the Head of Development Services, in consultation with Lead Member for the Built Environment, to correct any further minor spelling, grammatical, cross-referencing or typographical errors and make presentational changes for publication of the Plan.

3.4 This is likely to include the addition of a 'Foreword' and deletion of reference to the timetable for the preparation of the Tewkesbury Borough Plan in Paragraph 2.3 of the Plan.

3.5 Members should also note that the track changed TBP adoption version at Appendix 4 contains several references to the Landscape Protection Zone (LPZ)². Given that the Inspector has recommended deletion of Policy LAN2 as submitted (**MM36**), the retention of these references appears to have been in error and should be removed prior to publication of the Plan.

4.0 **POLICIES MAP**

4.1 The purpose of the Policies Map is to illustrate geographically the application of the policies in the Tewkesbury Borough Plan.

4.2 On adoption of the Plan, a consolidated Policies Map will be published to accompany the TBP. It is also anticipated that an interactive Policies Map will be produced which will consolidate all the standalone maps published as PDFs during the course of the TBP preparation.

² Reference to LPZ remain in policies EMP5, AGR1, AGR3, ENV3, RCN2, RCN4, COM3 and in the Reasoned Justification for policy TOR1

5.0 OTHER OPTIONS CONSIDERED

5.1 The options open to the Council are limited by legislation. The Council can either:

- (i) adopt the Tewkesbury Borough Plan 2011 – 2031, with the main modifications recommended by the Inspector (with any additional modifications which taken together would not materially affect the policies contained in the Plan with just the recommended main modifications); or
- (ii) not adopt.

In the case of (ii) the Council would need to begin the preparation of a new plan, leading to continued speculative rather than plan-led development until a new plan has been prepared and adopted. The Inspector has found the Tewkesbury Borough Plan, with main modifications, sound and (ii) is not recommended.

6.0 CONSULTATION

6.1 Throughout all stages in the preparation of the Tewkesbury Borough Plan, communities and stakeholders have been engaged so that the plan reflects their aspirations wherever possible whilst also having regard to the parameters and requirements set by national legislation and guidance as well as the context set by the JCS.

6.2 Paragraphs 1.4 to 1.10 of this report set out further information including a broad timeline of consultation stages and the level of response to each consultation.

7.0 RELEVANT COUNCIL POLICIES/STRATEGIES

7.1 Tewkesbury Borough Council Plan (2020 – 2024).

Adopted Joint Core Strategy (December 2017).

Adopted Tewkesbury Borough Local Plan to 2011 (March 2006).

Tewkesbury Borough Economic Development and Tourism Strategy.

Tewkesbury Borough Housing Strategy.

8.0 RELEVANT GOVERNMENT POLICIES

8.1 National Planning Policy Framework.

9.0 RESOURCE IMPLICATIONS (Human/Property)

9.1 The preparation of the TBP and its progression through Examination in Public has already involved a significant amount of Officer resource from within the Planning Policy team as well as support from the wider Council.

9.2 Further Officer time will be required to progress the preparation of the final Plan document and the accompanying policies map for publication. Officer and Member training in relation to the new Plan may also be necessary.

10.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

10.1 The Tewkesbury Borough Plan has gone through Sustainability Appraisal / Strategic Environmental Assessment (SA/SEA) process and Habitats Regulation Assessment (HRA), which considers the environmental, economic and social outputs of the Plan, when judged against reasonable alternatives. A Sustainability Appraisal Adoption Statement is attached to this report at Appendix 6.

11.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

11.1 Each version of the Tewkesbury Borough Plan has been accompanied by a Health Impact Assessment and an Equality Impact Assessment as an integral part of the SA/HRA process.

12.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

12.1 None.

Background Papers: None.

Contact Officer: Interim Planning Policy Manager Tel: 01684 272172
Email: ian.bowen@teWKesbury.gov.uk

Appendices:

- 1 - Report on the Examination of the Tewkesbury Borough Plan 2011-2031.
- 2 - List of Main Modifications to accompany Final Report.
- 3 - Schedule of Additional Modifications.
- 4 - Tracked Change Tewkesbury Borough Plan 2011 – 2031 Adoption Version incorporating MMs and AMs.
- 5 - Schedule of Changes to the Submitted Tewkesbury Borough Plan 2011-2031 Policies Map.
- 6 - Sustainability Appraisal adoption statement.