

FLINTSHIRE COUNTY COUNCIL

Date of Meeting	Tuesday, 26 th January 2021
Report Subject	Flintshire Local Development Plan (LDP) Examination in Public Delegated Authority for Officers
Cabinet Member	Cabinet Member for Planning and Public Protection
Report Author	Chief Officer (Planning, Environment and Economy)
Type of Report	Operational

EXECUTIVE SUMMARY

This report seeks the Council's agreement for a proposed scheme of delegation for officers to act on behalf of the Council should the Inspector propose changes arising out of the Examination of the soundness of any aspect of the Local Development Plan (LDP) during Examination hearing sessions.

A critical factor in ensuring that the forthcoming LDP Examination in Public (EiP) is as efficient as possible, relates to the appropriate level of delegated authority being afforded to officers to agree (in principle) to changes that are proposed by the Inspector as and when they arise during the examination hearings. The ability for officers to be able to agree to the principle of proposed changes is strongly advised by both the Planning Inspectorate and the Welsh Government.

The degree to which this delegated ability is vested solely with the Council's lead officers at the EiP, depends on the level of significance of the change being proposed by the Inspector. Where a change of more significance is proposed, for example the deletion or addition of a site, then it is appropriate that such a view is given to the Inspector only when officers have had the opportunity to consult and seek agreement from Senior Members of the Council.

The Planning Strategy Group considered a draft scheme of delegation at its meeting held on 12th November 2020 and following their consideration and amendment of the scheme, endorsed and recommended the scheme presented in this report for Council approval.

Given that no such scheme presently exists within the Council's constitution, then the scheme presented in this report requires Council approval ahead of the EiP.

RECOMMENDATIONS

1	That Members approve the recommended scheme of delegation in this report in order to provide officers with a framework to act at the LDP EiP, should the Inspector propose changes to the Plan.
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REPORT DETAILS

1.00	The Need for a scheme of Delegation to support the LDP
1.01	Members will be aware that the LDP was approved for submission for Examination in public by the Council at its meeting on 29 th September 2020. The plan was then formally submitted to the Welsh Government and the Planning Inspectorate Wales (PINs) on 30 th October 2020 in accordance with the timetable within the Delivery Agreement. PINs formally acknowledged that submission was complete by letter dated 11 th November 2020 and in essence the Examination of the Plan began as of that date, with two Inspectors appointed to examine the plan, lead Inspector Mrs Sian Worden and assistant Inspector Ms Claire MacFarlane. Officers then firstly responded to 31 preliminary questions issued by the Inspectors as well as setting up an Examination Website . The whole of the Examination will be conducted via virtual Zoom meeting sessions and the Inspectors have already held a Pre-hearing meeting on 12 th January 2021 to set out the process to be followed in carrying out the examination, and are currently finalising the start date and programme for hearing sessions, which provisionally was intended to begin in the week beginning 22 nd February, but where the Inspectors have indicated that this may be put back slightly, to allow all those potentially involved to be able to respond fully to the programme when published, and issues they identify for discussion.
1.02	As part of the Council's role in participating in and defending the plan at hearing sessions, a degree of delegated authority is required in order to maintain the efficient running of the LDP Examination in Public, and to be able to respond to changes that are proposed by the Inspector without adding significant delays for adjournments, whilst matters are raised outside of hearing sessions. That said, it is important to set in context the scope and likelihood of changes that may arise and what the Council's position should be to these. It should also be particularly noted by Members that any changes being proposed will be generated by the Inspector and what, or all that the Inspector will be seeking from the Council is an agreement in principle for the proposed change. In whatever way that agreement in principle is considered and made, it would not disenfranchise either local members or indeed the community that the change had the potential to affect (e.g. if it were site related), as all changes that emanate from examination hearing sessions must be published as Matters Arising Changes (MACs) following the hearing sessions and then published for a formal 6 week public consultation exercise, to allow comments to be made and submitted to the Inspector.

	Further hearing sessions may result depending on the outcome of the response to this consultation.
1.03	To provide Members with further reassurance, it is clearly not the Council's position or that of officers that the LDP needs to change. The recommendation agreed at the meeting of the County Council on 29 th September 2020 was that following consideration of representations made to the Deposit LDP, no significant changes are proposed as the plan remains 'sound' and is capable of being examined as such and adopted.
1.04	This is therefore the stance that officers will take at the EiP in 'defending' the Plan as submitted for examination. It would only be in the instance that having discussed the evidence relating to a particular matter at an examination session, and where the evidence had clearly become discredited, that the Council would be put in the position by the Inspector that the plan may need to change to remain sound. It is for these (at present hypothetical) situations that the scheme of delegation is required to appropriately respond to the Inspector, in order to maintain the efficient running of the examination.
1.05	Officers have queried the need for such a scheme at all with Welsh Government, given that the Plan is unchanged following deposit and there are no Focussed Changes put forward, and that it is the role of officers to 'defend' the plan as submitted for examination. In response Welsh Government have acknowledged the Council's position but advise that "yes, you defend the plan submitted by the Council but, where the case to support a policy/proposal has been scrutinised through the hearings and the Council is struggling to justify the position, a quick decision, supported by a senior member group, would prove very helpful to the process. This has been the case with other LPAs across Wales going through the examination process" . The proposed scheme that follows delivers on this advice and the scheme, following consideration, amendment, and endorsement by the Planning Strategy Group, follows a similar format to that used by other Local Authorities in recent examinations including Wrexham, Swansea, and Powys.
1.06	The purpose of the scheme of delegation is to allow officers to agree, in principle, to the Inspector making changes to the LDP during the hearing sessions in consultation with Members, depending on the nature of the changes proposed. Changes of a minor typographical or factual nature are proposed to be delegated to the Service Manager Strategy (or in his absence or inability to act or for operational expediency, exercised by the Team Leader Planning Policy), but more significant changes, such as the deletion of an allocation or introduction of a new site or sites, would require consultation with Members, as is set out below. The following schedule proposes a scheme of delegation for Members to consider, providing types or examples of the sort of change envisaged, and the level of delegation that is appropriate to enable a response to made to the Inspector. Members should also note that this scheme was discussed by the Planning Strategy Group at its meeting on 12 th November 2020 who endorsed the scheme with the addition of the Chair of the Planning committee to the second and third categories, adding that the matters of 'Fundamental Significance' be discussed by the Planning Strategy Group, and that the Planning Strategy Group are advised of any changes arising

out of the 'Minor' and 'Some significance' change categories – these have been incorporated into the recommended Scheme in table 1 below.

Table 1. Proposed scheme of delegation

Type of Change	Examples of the types of issues falling into this category	Proposed Delegated Authority
Minor	Typographical, factual, wording of policies and reasoned justifications for clarification, order of policies	Service Manager Strategy (or in his absence or inability to act or for operational expediency, exercised by the Team Leader Planning Policy). Inform the Planning Strategy Group.
Changes of Some Significance	Deletion of an LDP site, or inclusion of a new site (non- strategic in scale i.e. less than 300 units) for residential or employment, changes to green barrier or minerals sites boundaries, changes to the settlement limit as a result of any new site proposed, changes to the wording of policies or reasoned justification affecting purpose.	Service Manager Strategy (or in his absence or inability to act or for operational expediency, exercised by the Team Leader Planning Policy) in consultation with the Lead Member for Planning and Public Protection and the Chair and Vice Chair of the Planning Strategy Group, The Chair of Planning Committee, and the Chief Officer (Planning, Environment, and Economy). Local Members will be notified of any significant changes for information purposes. Inform the Planning Strategy Group.
Fundamental Changes	Alterations to the spatial or growth strategy or inclusion of alternative key strategic housing sites (i.e. 300 units or more)	Service Manager Strategy (or in his absence or inability to act or for operational expediency, exercised by the Team Leader Planning Policy) in consultation with the Lead Member for Planning and Public Protection and the Chair and Vice Chair of the Planning Strategy Group, the Chair of Planning Committee, the Leader and Deputy Leader, and the Chief Officer (Planning, Environment, and Economy). Discuss changes proposed at this level with the Planning Strategy Group. Local Members will be notified of any fundamental changes for information purposes.

1.07 Clearly this scheme is designed to ensure that if it is required to be enacted, any change proposed by the Inspector of any significance, cannot be agreed to in principle by officers without reference to appropriate elected Members of the Council. This has to be the correct approach and is one where officers would not be comfortable to represent the Council at EiP without such a scheme of reference in place.

1.08 A key point to reiterate for Members in relation to changes that may emanate from the examination process is that they will be Inspector driven and that any changes which are proposed, known as 'Matters Arising

	Changes' (MACs), will be subject to a separate, 6-week public consultation process, once the initial round of hearing sessions is completed. There will therefore be ample opportunity for Members and the wider public to respond to any proposed changes as part of this formal consultation. The need for such a scheme emanates from the lack of such a scheme being present when our neighbours Wrexham carried out their first examination into their LDP, which was aborted after just one week and where one of the contributory factors was the lack of ability for officers and appropriate Members to respond to changes proposed by the Inspector in order to try to make the plan sound.
1.09	It should also be borne in mind that the use of such a scheme would only be in the last resort if, for whatever reason, any aspect of the plan or its supporting evidence is not found to be sound by the Inspector. It should also be reiterated that the Welsh Government, who will be represented at all examination sessions, have no fundamental issues with the soundness of the submitted LDP.

2.00	RESOURCE IMPLICATIONS
2.01	None.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	The proposed scheme of delegation was discussed and endorsed by the Planning Strategy Group on 12 November 2020, who endorsed the scheme with the additional points set out in paragraph 1.04 above.

4.00	RISK MANAGEMENT
4.01	The main risk in not approving a scheme of delegation is the delay that may result in the programme for the Examination of the LDP thereby also delaying the potential date for adoption of the plan, which may result in renewed vulnerability of Flintshire's communities to speculative unplanned development pressures.

5.00	APPENDICES
5.01	None.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	The LDP Examination website can be accessed here: Examination Website

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7.00 GLOSSARY OF TERMS

7.01 Local Development Plan: The Council is required to produce and keep up to date a Local Development Plan which is a land use plan that sets out policies and proposals that identify what development will happen where, and also contains policies to control and protect the more sensitive areas of the County from inappropriate development.

Examination in Public: In order to adopt a Local Development Plan the Council must first submit its draft plan for Examination by the Planning Inspectorate, who will assess the degree to which the plan is a sound plan and capable of adoption.

Soundness: A key part of producing a Local Development Plan as well as its Examination, is to ensure it is a sound plan. There are three tests of soundness which the Welsh Government define in LDP guidance, which the plan needs to satisfy in order to be found sound. These tests are defined within the [Development Plans Manual Edition 3](#).

Matters Arising Changes: Any changes that an Inspector proposes during Examination sessions in order to make a plan sound will be published at the end of all examination sessions as Matters Arising Changes, which are made publicly available for a 6 week period of consultation. The views received are then taken into account by the Inspector as part of producing recommendations within an Inspectors.

Focused Changes: Any changes that the Council wishes to make to a deposit LDP following public consultation are known as focused changes which need to be published for a 6 week consultation period. These changes along with the consultation responses would then form part of the documentation submitted to the Planning Inspectorate with the original deposit plan. The Council did not propose any focussed changes to its deposit LDP.