

Harborough District Council

Report to Council

Meeting of 11 December 2023



Title:	Harborough Local Plan - Leicester and Leicestershire Statement of Common Ground relating to housing and employment land needs
Report Author:	Head of Strategic and Local Planning, Tess Nelson
Portfolio Holder:	Cabinet Member for Strategic Planning - Cllr Phil Knowles, Leader Cabinet Member for Planning - Cllr Simon Galton
Appendices:	<ul style="list-style-type: none">A. Leicester and Leicestershire Statement of Common Ground relating to housing and employment needs, June 2022B. Leicester and Leicestershire Housing and Economic Needs Assessment, June 2022 ('HENA')C. Leicester and Leicestershire Housing and Economic Needs Assessment: Executive Summary, June 2022D. Leicester and Leicestershire Housing and Economic Needs Assessment: Housing Distribution Paper, June 2022E. Leicester and Leicestershire Housing and Economic Needs Assessment: Employment Distribution Paper, June 2022F. Leicester and Leicestershire Statement of Common Ground: Sustainability Appraisal Report, June 2022G. Leicester and Leicestershire Statement of Common Ground: Sustainability Appraisal: Non-Technical Summary, June 2022H. Frequently Asked Question regarding housing and employment needs, September 2023I. 13.10.2022 Communities Scrutiny Panel MinutesJ. 08.09.2023 Letter from the Minister of State for Housing and Planning - Rachel Maclean - to the CouncilK. 12.09.2023 Letter from Leicester City Council Mayor – Sir Peter Soulsby - to the CouncilL. 14.09.2023 Letter from District MPs – Alberto Costa MP, Alicia Kearns MP, Neil O'Brien MP - to the CouncilM. 31.08.2023 Intelligent Plans and Examinations Advisory Note on the Duty to Do-operate and Statement of Common GroundN. 15.09.2023 Intelligent Plans and Examinations Advisory Note on the Duty to Do-operate and Statement of Common Ground

	<p>O. 27.10.23 Letter from the then Minister of State for Housing and Planning - Rachel Maclean to Neil O'Brien MP, 3.11.23 Letter from the then Minister of State for Housing and Planning - Rachel Maclean to Neil O'Brien MP and 5.12.2022 Letter from the Secretary of State for Levelling Up, Housing and Communities – Michael Gove MP to colleagues</p> <p>P. 1.11.2023 Counsel advice to the Council and 6.11.23 Counsel Further Advice and 6.11.23 Supplementary Advice from Intelligent Plans and Examinations</p>
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Summary

- i. It is proposed that the Council enters into an agreement in relation to housing and employment needs, entitled “the Statement of Common Ground (“SoCG”)” with the other planning authorities in Leicestershire. This is a formal stage in the preparation of the council’s next local plan.
- ii. The local plan is at the heart of the planning system because planning decisions must be taken in line with it, other than in exceptional circumstances. If there is no up to date local plan in place, every planning application received by the Council must be considered in isolation, which can make it harder for the Council to actively manage development within the district. As these plans are complex and vitally important, local authorities spend a substantial amount of time, and money, ensuring that they are kept up to date and relevant.
- iii. The current Harborough Local Plan was adopted in April 2019. It has been reviewed and a new plan is required to allocate development in sustainable locations and protect important natural spaces and built heritage. Further, the implementation, monitoring and review provision of the existing plan have been triggered, which means that the Council will be in breach of its own planning policy (IMR1) if it does not update its local plan.
- iv. Councils can however only adopt a new plan after completing a number of statutory processes, meeting policy tests and satisfying an independent planning inspector that the proposed local development plan is sound.
- v. The Localism Act 2011 imposed on the Council a duty to work collaboratively with partner authorities on strategic cross boundary issues. This is known as the Duty to Cooperate (“the Duty”). It therefore applies to the preparation of development plan documents and other activities in relation to the sustainable development and use of land. Evidencing that this requirement has been met is one of the steps that must be complied with before the Council can progress the draft local plan to adoption.
- vi. This report summarises the local development plan process and focuses in particular upon the steps taken by the Council to evidence that it has discharged its duty to co-operate with partner authorities over housing and employment needs in the region.

Recommendation

That Council agrees to sign the Leicester and Leicestershire Statement of Common Ground relating to housing and employment needs (June 2022).

Reasons for Recommendations

- i. Agreeing to the Leicester and Leicestershire Statement of Common Ground will demonstrate ongoing constructive engagement with partner authorities across Leicester and Leicestershire. It will provide evidence of the Council's fulfilment of its statutory Duty to Cooperate and meeting the Tests of Soundness; both of which are a statutory requirement in order to adopt the next Local Plan.
- ii. The Statement of Common Ground is fair and reasonable for Harborough District and has previously been signed by 7 of the 9 authorities in Leicester and Leicestershire. The evidence underpinning it is clear, transparent and robust.
- iii. Not signing the Statement of Common Ground would place the Council at risk of being unable to adopt the next Local Plan. This would be harmful to Harborough District in the long term.
- iv. The advice of Kings Counsel is for the Council to sign the Statement of Common Ground. The advice outlines the considerable advantages in entering into the Statement of Common Ground and explains there are no obvious disadvantages in doing so. The Council is advised that not signing the Statement of Common Ground would be "irrational".
- v. The Statement of Common Ground has sufficient flexibility built into its terms to allow the distribution of unmet need to be reviewed should the scale of unmet need change significantly.
- vi. Working collaboratively with partner authorities across Leicester and Leicestershire maintains positive relationships with neighbouring and other partner authorities and assists in the preparation of the Local Plan, for example through joint working on evidence preparation.
- vii. Whilst the Government has indicated that future planning reforms will repeal the Duty to Cooperate, this is not expected to come into force until September 2024 at the earliest. The Duty to Cooperate remains a legal requirement for the foreseeable future and must be complied with.
- viii. Signing the Statement of Common Ground will provide greater certainty as to the housing and employment requirements of the district to inform the next Local Plan.

Purpose of Report

1. To seek Council's agreement to the Leicester and Leicestershire Statement of Common Ground relating to housing and employment needs.

Background

Local plans

2. In England there is a 'plan-led' approach to the regulation of land and development which places local plans at the heart of the town and country planning system. A local plan forms part of the statutory 'development plan' for an area and is the starting point for the determination of all planning applications in the area, unless material considerations indicate otherwise.
3. The 2004 Planning and Compulsory Purchase Act places a duty on local authorities to carry out plan-making with the "objective of contributing to the achievement of sustainable development" while the Planning Act 2008 puts an additional obligation on plan-making authorities to ensure their development plan documents (taken as a whole) include policies that are "...designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change."
4. The Harborough Local Plan was prepared and subsequently adopted in April 2019. It replaced the previous Harborough District Core Strategy adopted in 2011. The adopted plan provides at Policy IMR1 that:
 - “2. A full or partial update of the Local Plan will be commenced (defined as the publication of an invitation to make representations in accordance with Regulation 18 of The Town and Country Planning (Local Planning) (England) Regulations 2012) within 6 months of the following:
 - a. the adoption by the Council of a Memorandum of Understanding (MOU) or Statement of Common Ground (SoCG) which proposes a quantity of housing or employment development to 2031 that is significantly greater than the housing requirement or employment need identified in this Local Plan; or
 - b. in the absence of an adopted MOU or SoCG, 12 months from the date of publication of a Local Plan for Leicester City (defined as publication of an invitation to make representations in accordance with Regulation 19 of the Town and Country (Local Planning) (England) Regulations 2012) ('a Regulation 19') that includes satisfactory evidence of an unmet local housing need; or
 - c. conclusion of a review in response to specific trigger points as set out in the monitoring framework, including identification of significant and persistent shortfalls in the delivery or supply of housing against the housing requirement.
 3. Any full or partial update of the Local Plan triggered by 2. above will be submitted for examination within 30 months from the date it commenced.”
5. Whilst the current local plan remains up to date, the trigger set out at 2(b) above has been activated as a consequence of Leicester City Council publishing a Regulation 19 on

16 January 2023. This means that the Council must commence a full or partial update of its local plan in accordance with the Regulation 18 provisions – that is, publishing a notice inviting representations on the proposed plan in accordance with Regulation 18 of The Town and Country Planning (Local Planning) (England) Regulations 2012) (a “Regulation 18”). A new local plan is beneficial to provide long term certainty, allocate development in sustainable locations and protect important natural spaces and built heritage. When proposing a new plan, councils must demonstrate that legal requirements have been met, as well as policy tests known as the Tests of Soundness before a new local plan can be adopted.

6. The proposed plan is tested by an independent planning inspector during the local plan Examination. Examinations are a lengthy and forensic process of examining and testing both the draft plan itself and the evidence underpinning it. The inspector will determine whether the draft plan is:
 - a. Sound – meaning it can be adopted;
 - b. Sound with modifications – meaning it will be capable of adoption provided the Council incorporates the modifications identified by the inspector; or
 - c. Not Sound – this judgement means that the Council will effectively have to restart the whole local development plan process.
7. Local Planning Authorities are required, as part of the preparation of local plans, to identify sufficient sites within their area to meet future housing and employment development needs. Where an authority is not able to accommodate all of its needs then national policy requires that any unmet need be accommodated elsewhere within the respective Housing Market Area (HMA) or Functional Economic Market Area (FEMA).
8. Harborough District Council sits within the Leicester and Leicestershire HMA / FEMA. The local plan examination will therefore test that the proposed local plan makes adequate provision for local housing and employment needs and helps to ensure that any unmet needs from neighbouring areas are also met.

Duty to Cooperate

9. Local authorities have a duty to work together to address issues which extend across local authority boundaries. One such issue is housing needs. This is because the need for homes is not limited or defined by local authority boundaries. Whilst need may arise in one local authority area, in reality people will often move between areas to live and work. This is particularly common in localities which provide access to multiple opportunities, particularly when they are well served by transport links, such as the Harborough District.
10. Whilst in the past these cross boundary (or ‘strategic’) issues were dealt with through dedicated strategic planning documents (structure plans, then more latterly regional plans, such as the East Midlands Regional Plan), since 2011, this has been dealt with by local authorities through the Duty to Cooperate (‘the Duty’). This is a legal requirement on local authorities to work together to ensure strategic issues are tackled, including within local plans. This Duty, in respect of local plans, requires ongoing constructive

engagement on the preparation of the plan documents and other activities in relation to the sustainable development and use of land.

11. Statements of Common Ground (“SoCG”) are prepared in order to demonstrate that the Duty to Cooperate has been met and to record the outcome of collaboration. The statement can be used as evidence of the effective ongoing collaboration and engagement between partner authorities and is of particular importance when the Council’s local plan is being examined by a planning inspector. A SoCG is a written record of the progress made by strategic plan-making authorities during the process of planning for strategic cross-boundary matters and:
 - a. documents where effective co-operation is and is not happening through the plan-making process;
 - b. demonstrates at plan examination in public that plans are deliverable and based on effective joint working across local authority boundaries;
 - c. forms part of the evidence required to demonstrate that councils have complied with the duty to cooperate;
 - d. is a living document.

There may therefore be multiple SoCGs on a variety of subjects prepared for each local plan.

Unmet needs

12. Leicester City Council identified that they have insufficient land within their administrative area to meet their needs for future homes and jobs in February 2017. It is not uncommon for cities like Leicester to have unmet needs as they develop land right up to their boundaries and run out of land to develop.
13. In December 2020 the Government published a new method for calculating housing need, which is now the starting point for determining how much housing land is to be met through a Council's local plan. The new method required the 20 largest cities and urban centres to add an additional 35% to their local housing need. Leicester was included upon this list, resulting in their housing need increasing by 35% despite already having insufficient land available for housing needs.

Statement of Common Ground

14. The Leicestershire planning authorities worked together to address the unmet need within the HMA. Where there is an unmet housing need, the Duty to Cooperate and Tests of Soundness require neighbouring authorities to demonstrate that:
 - a. they have engaged constructively, actively and on an ongoing basis in relation to the unmet need;
 - b. the new plan is informed by agreements (such as the Statement of Common Ground for housing and employment needs), so unmet need is accommodated where practical and sustainable to do so; and

- c. the new plan is based on effective joint working on cross-boundary matters as evidenced by a statement of common ground.
- 15. The Leicester and Leicestershire SoCG relating to housing and employment needs (“SoCG”) attached at Appendix A is the outcome of collaboration between the Leicester and Leicestershire authorities. It resolves the issue of Leicester’s unmet needs and in so doing, can be used by each authority in preparing their next plan as evidence to fulfil their legislative and policy tests.
- 16. The SoCG sets out the apportionment of Leicester’s unmet housing and employment needs in the period to 2036. It has been prepared by the eight local planning authorities responsible for plan making (below) together with Leicestershire County Council:
 - a. Blaby District Council;
 - b. Charnwood Borough Council;
 - c. Harborough District Council;
 - d. Hinckley & Bosworth Borough Council;
 - e. Leicester City Council
 - f. Melton Borough Council;
 - g. North West Leicestershire District Council;
 - h. Oadby & Wigston Borough Council.
- 17. The SoCG is based upon a suite of evidence documents (Appendices B to G), as follows:
 - a. Leicester and Leicestershire Housing and Economic Needs Assessment, June 2022 (Appendix B)
 - b. Leicester and Leicestershire Housing and Economic Needs Assessment Executive Summary (Appendix C),
 - c. Leicester and Leicestershire Housing and Economic Needs Assessment: Distribution of Leicester’s unmet Housing (Appendix D)
 - d. Leicester and Leicestershire Housing and Economic Needs Assessment: Distribution of Employment Needs (Appendix E)
 - e. Sustainability Appraisal (Appendix F) and Non-technical summary (Appendix G).

Timeline

- 18. The SoCG in relation to housing and employment needs has now been considered and agreed by each of the planning authorities as follows:
 - a. Charnwood Borough Council (June 2022);
 - b. Oadby and Wigston Borough Council; (July 2022)
 - c. Melton Borough Council (July 2022);

- d. Blaby District Council (July 2022);
 - e. Leicester City Council (August 2022);
 - f. North West Leicestershire District Council (September 2022);
 - g. Leicestershire County Council (September 2022).
19. The SoCG was initially to be considered by Council at its meeting in June 2023, however this did not happen following the change in the Council's administration at the May 2023 local government elections. It was included on the agenda for the meeting of Council on 18 September 2023, but consideration of the report was deferred in order that the administration could explore with the district Members of Parliament what the basis of their objection to the proposal was. The district MPs did not agree to meet the Leader but rather organised a separate public meeting which took place on 3 November 2023. In light of further correspondence with the district Members of Parliament, Housing and Planning Minister, as well as Counsel advice, Council deferred the decision until December's Council meeting.

Details

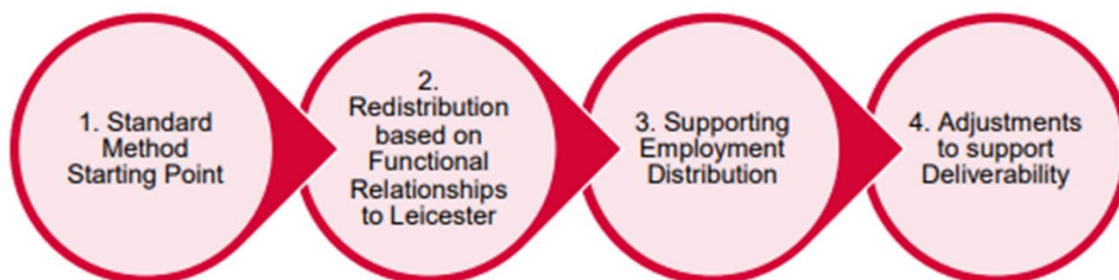
Need for the Statement of Common Ground for Housing and Employment Needs

20. The new method for calculating housing need published by the government in December 2020 resulted in the housing need for Leicester increasing by 35%. In reality, it means that Leicester City Council needs to develop a further 9,712 homes over and above the current planned provision by 2036. This works out as an additional 607 homes per year.
21. The City's housing need now stands at 39,424 homes between 2020 and 2036. Although the City is heavily constrained, their local plan plans for around 21,000 homes across the plan period to 2036 by:
- a. building on Brownfield sites;
 - b. building at high density (including building up where they can);
 - c. developing greenfield sites.
22. This leaves an unmet need of approximately 18,700 homes and 23 hectares of employment land to be accommodated in the wider Leicestershire HMA and FEMA.
23. Evidence associated with Leicester's local plan has been carefully assessed by officers and is considered to be comprehensive and robust. It provides confidence that every effort has been made to ensure their local plan accommodates as much growth as possible. Leicester City Council has recently submitted its local plan for independent examination, and it is expected that the examination will determine that the unmet need figures for housing and employment will be confirmed. However, should the unmet need change significantly through their Local Plan Examination, the Statement of Common Ground relating to housing and employment needs will be updated to reflect this, as set out in the document.

24. Whatever the outcome of the examination of Leicester City Council’s proposed plan, Harborough District Council continues to be obliged to demonstrate that it is meeting its Duty to Cooperate.

Evidence informing the Statement of Common Ground relating to housing and employment needs.

25. The Leicester and Leicestershire Housing and Economic Needs Assessment (the “HEDNA”) prepared in 2017 informed the housing and employment land provision of the current Harborough Local Plan. An updated assessment has been undertaken (June 2022) and therefore the HEDNA has been replaced by the new Leicester and Leicestershire Housing and Economic Needs Assessment (HENA) (Appendix B). It is the first comprehensive Leicester and Leicestershire study since 2017 and is summarised at Appendix C.
26. The HENA includes specific sections addressing the distribution of housing (Appendix D) and employment (Appendix E) needs. This provides the evidence base for the proposed redistribution of unmet need from the Leicester City Council administrative area to the other planning authorities.
27. The HENA Housing Distribution Paper (Appendix D) identifies the following steps in assessing the distribution of homes / unmet housing need across Leicester and Leicestershire:



28. Each of these steps is considered below along with commentary as to what this means for Harborough District.

1. The government’s standard method for calculating local housing need for each of the Leicestershire Districts / Boroughs has been adopted to determine the minimum level of housing provision required (in line with the NPPF).

The standard method results in a local housing need figure for Harborough district of 534 dwellings per annum (2022 based) – this figure will fluctuate as data is updated and used in the standard method calculation.

2. The functional relationship of each council with no unmet need is compared with that of the city of Leicester (being the only authority with unmet need), including migration and commuting relationships between the authorities. This generates an initial indication of the potential distribution of unmet need.

For Harborough, this sees an upwards adjustment of 123 dwellings per annum reflecting the fact that Harborough shares a boundary with Leicester City Council and

has a relatively strong relationship with it in terms of commuting and migrating flows both in and out of the city.

3. The potential distribution of housing need is then adjusted to take account of the spatial distribution of future employment growth over the period to 2036. This promotes a balance in the delivery of jobs and homes at a local level and limits the need to travel by locating houses close to where job opportunities arise to provide additional labour where it is needed.

This results in no further change for Harborough since the additional minor increase is covered by the second step.

4. The final consideration relates to the deliverability of the distribution of development.

No change for Harborough.

29. Application of the redistribution process set out within the HENA across the HMA gives a proposed distribution of unmet housing need across Leicestershire as set out in Table 1 below:

Table 1: Distribution of Unmet Local Housing Need 2020 to 2036

Local Planning Authority	Average Annual unmet housing need contribution 2020 to 2036 (dwellings)
Blaby District Council	346
Charnwood Borough Council	78
Harborough District Council	123
Hinckley & Bosworth Borough Council	187
Melton Borough Council	69
North-West Leicestershire District Council	314
Oadby & Wigston Borough Council	52
Total	1,169

30. The distribution of unmet housing need across the HMA as set out in the SoCG is therefore based upon a robust and transparent methodology. The outcome is considered to be fair, reasonable and achievable for Harborough District.
31. In terms of employment, the HENA concludes that Charnwood Borough Council is best able to suitably meet the unmet employment need of 23 Hectares to 2036 identified across the FEMA. This reflects the existing over-supply of employment land compared to the Borough's own needs and the availability of sites close to the city which can service the needs of Leicester-based companies to 2036.

Implications for Harborough

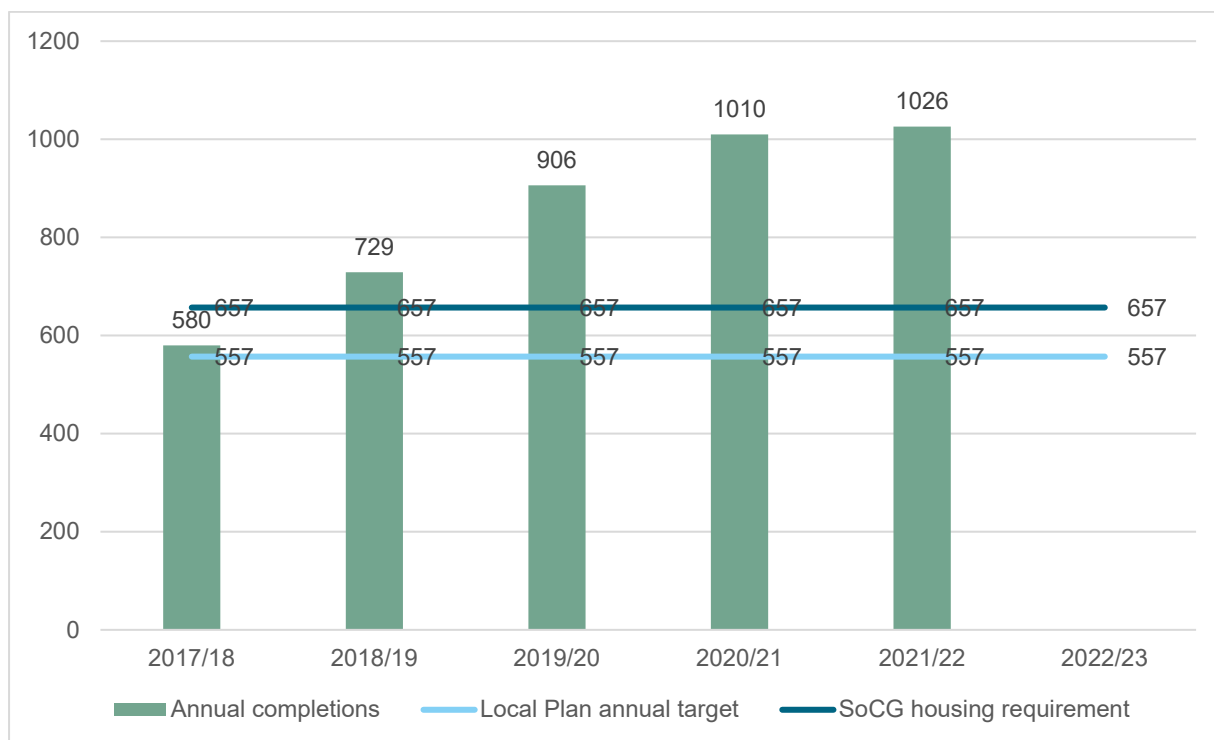
32. Government policy, as set out in the NPPF, requires local planning authorities to meet their own local housing need and also any needs that cannot be met within neighbouring areas. These two figures added together give the housing requirement, which is the amount of housing planned for through the local plan.
33. Harborough's local housing need is 534 dwellings per annum (2022 figure), calculated using the Government's standard method for calculating local housing need. The addition of 123 dwellings as Harborough's contribution to meeting unmet housing need results in a total housing requirement for Harborough of 657 dwellings per annum. The current Harborough Local Plan sets the target at 557 dwellings per annum.
34. The following table, Table 2, sets out the local housing need for each local planning authority (Column B), together with the proposed housing provision for each authority (Column D). The difference (Column E) shows each authority's contribution to meeting the unmet need.

Table 2: Leicester and Leicestershire Local Housing Need and Proposed Redistribution (Per Year)

A	B	C	D	E
Local Planning Authority	Local Housing Need (2022 figures)	Unmet need	Proposed Redistributed Housing Provision	Difference (D - B)
Leicester City Council	2,464	1,169	1,295	0
Blaby District Council	341		687	346
Charnwood Borough Council	1,111		1,189	78
Harborough District Council	534		657	123
Hinckley & Bosworth Borough Council	472		659	187
Melton Borough Council	231		300	69
North-West Leicestershire District Council	372		686	314
Oadby & Wigston Borough Council	188		240	52
Leicester & Leicestershire Total	5,713		5,713	1,169

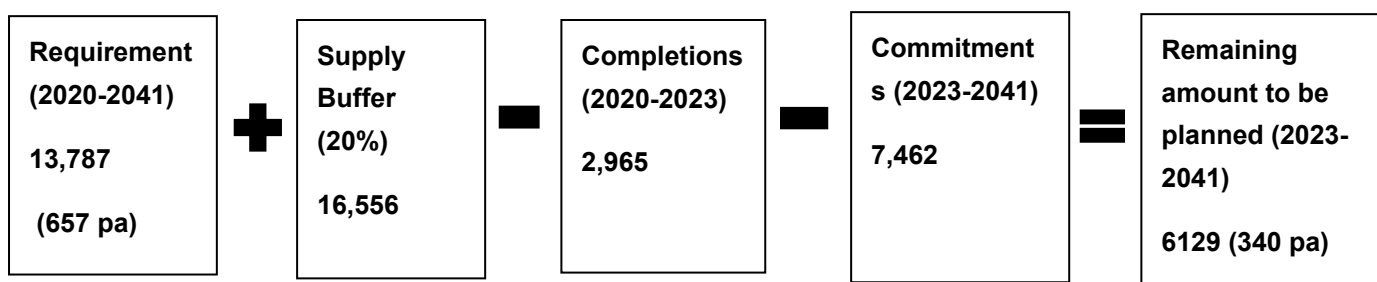
35. Within the Harborough District, significantly higher numbers of dwellings have been delivered in the district in 4 of the previous 5 years (over 700 in 2018/19, over 900 in 2019/20 and over 1,000 dwellings in both 2020/21 and 2021/22), compared to the new housing requirement of 657 dwellings, as shown in Table 3 below:

Graph 1: Annual housing completions in Harborough District from 2017/8 to 2021/22



36. Graph 1 above shows that since 2020 house building in Harborough has averaged about 1,000 per year (i.e., about 3,000 between 2020 and 2023). Officers are currently proposing a 2020 start date for the new local plan to align with the work under pinning the SoCG. Taking this level of supply off the requirement in the SoCG leaves about 580 homes per year to build to 2036. This is 23 homes per year higher than the housing target of 557 homes a year between 2011 and 2031 in the currently adopted Local Plan (2019). There is currently a pipeline of 7,462 homes committed with planning permission or allocated for development, including two strategic developments at Lutterworth and Scraftoft which are yet to start. Delivery of this pipeline throughout the remainder of the plan period will further reduce the amount of additional housing land to be found through the new local plan.
37. The SoCG covers the period up to 2036 but the new Local Plan will likely need to plan up to 2041 to meet government policy to plan 15 years from the date of adoption (currently scheduled for 2026). The SoCG does not cover the period after 2036. Further consideration will be given to the post 2036 period as the new local plan progresses. This is a separate matter to the SoCG currently being considered.

38. However, to illustrate the potential scale of growth which may need to be planned for, the housing requirement of 657 homes per year is assumed to continue to 2041 (i.e., 657 homes a year between 2020 and 2041). Taking housing completions since 2020 off this requirement would leave about 600 homes per year to build to 2041. This is 43 homes per year higher than the housing target of 557 homes a year between 2011 and 2031 in the currently adopted Local Plan (2019).
39. There is currently a pipeline of 7,462 homes committed with planning permission or allocated for development, including two strategic developments at Lutterworth and Scraptoft which are yet to start. If all commitments are built by 2041, this would leave 187 homes per year to be delivered to meet the requirement.
40. To ensure the requirement is met if build rates slow over the next 18 years or so (e.g., due to economic factors or site-specific issues) the plan will need to identify a supply of homes greater than the requirement (known as a supply buffer or contingency). If a supply contingency of 20% is added to the requirement we would need to identify a supply of 340 homes per year in addition to existing commitments to ensure the requirement is met by 2041.



41. Approving the SoCG would therefore commit the Council to testing whether it can realistically deliver 340 dwellings per year in addition to existing permissions and allocated sites. Testing delivery of this remaining amount will involve gathering evidence as to whether delivery of this scale of housing growth can be maintained within the district in addition to existing sites. This will examine issues including;
- a. site availability and sustainability;
 - b. infrastructure capacity and the ability of development to fund necessary infrastructure improvements;
 - c. the ability of the market to deliver and absorb housing growth.
42. The identification of sites to meet this requirement will be considered through preparation of the local plan. The recently published Strategic Housing and Economic Land Availability Assessment ('SHELAA') indicates there is sufficient suitable, available and achievable potential housing land to meet this requirement. The SoCG explains that the apportionment of unmet need is subject to review. In the event that an authority's local plan process demonstrates that it cannot meet the figures set out in the Statement, then the distribution of unmet need will be jointly reviewed and updated as necessary.

43. The Council is required to demonstrate as part of preparing the local plan that it has complied with the Duty to Cooperate, which is best evidenced by agreeing the Leicester & Leicestershire Authorities - Statement of Common Ground relating to Housing and Employment Needs (June 2022). It is for this reason that officers advise that the SoCG is agreed without further delay – see further the comments of the statutory officers in the 'Implications' section of this report.
44. If the Council rejects the SoCG, or delays signature of it, the timely delivery of the next local plan will be jeopardised as set out within the risk section of this report. This is because whilst the Council could demonstrate that it has cooperated on preparing the Statement, it may be unable to evidence that it had discharged its Duty to Co-operate with the other local planning authorities within the HMA and the FEMA.

Impact of Government's proposed planning reforms

45. In May 2022 the Government published the Levelling up and Regeneration Bill ('LURB'), setting out its proposed planning reforms. This Bill received Royal Assent in November 2023. It introduces a number of reforms to the planning system, including repealing the legal requirements of the Duty to Cooperate in respect of planning matters. Further legislation, policy and guidance is expected in order to implement these reforms. No details have yet been published in relation to the replacement policy test of 'Alignment' between local authorities. Whatever the mechanism for dealing with unmet need, the issue of large tightly constrained urban authorities being physically unable to accommodate their future needs will remain and will therefore have to be addressed on a local basis.
46. Recent Government consultations concerning the implementation of the LURB (now Levelling Up and Regeneration Act, 2023) suggest that it will not come into effect until at least Autumn 2024. The Duty to Cooperate will therefore remain in force until then and will continue to apply to plans being prepared under the current planning system.
47. In addition, Government consultation on changes to the NPPF (December 2022) retains the requirement for local plans to account for their own local housing need and any unmet need arising from neighbouring authorities. A draft version of the NPPF published in December 2022 retains at paragraph 11(b) the need for local plans to provide for "...any needs that cannot be met within neighbouring areas...", and specifically references statements of common ground in the footnote. This is reiterated at paragraphs 24 – 27 of the NPPF, with the latter paragraph referring to statements of common ground documenting cross-boundary matters and cooperation to address such issues. Paragraph 27 also reinforces the expectation that statements of common ground should be produced in accordance with the approach set out in national planning guidance. The continued need to consider the unmet needs of neighbouring authorities is reiterated by the advice of Kings Counsel (Appendix P). Further details are below.

Legal advice

48. The advice of Kings Counsel (KC) was sought in order to advise the Council in relation to the Statement of Common Ground. The KC advice is available in full (Appendix P). The advice confirms the advice of both Intelligent Plans and Examinations (see below) and the recommendation set out within this report. The KC advice concludes as follows (para 5):

“Having reviewed the advantages and disadvantages of the Council entering into the SOCG, I would also advise the Council that, having regard to the terms of the SOCG, there are no obvious disadvantages of entering into the SOCG at this point of time and considerable advantages in doing so. Indeed, given the wording of the SOCG, on the basis of the material before me, the balance of advantages is so great that it would at least be arguably irrational to refuse to do so.”

49. The KC advice summarises the requirements of national planning policy, contained within the National Planning Policy Framework (NPPF). This requires that unless there are strong planning reasons to the contrary, housing and other needs arising within a given plan area, together with any unmet needs from those areas unable to fully meet their own objectively assessed needs, should be met in full. The advice explains that in the absence of a clearly evidenced and weighty land use planning reason, any plan which fails to do so, will almost inevitably be found unsound.
50. The advice explains there is nothing unusual about cities, such as Leicester City, which are tightly constrained by administrative boundaries not being able to meet their Local Housing Needs and requesting assistance in neighbouring and nearby authorities to help it do so. The advice confirms that there no evidence has been provided which would support any contention that the City Council is materially underestimating its available capacity. The identified level of unmet need is very significant and meeting its own Local Housing Need would require the annual rate of delivery to more than double from the existing rate which is a good indication of the problems which the City Council faces.
51. The KC advice summarises the statutory requirements for the preparation of local plans in relation to the Tests of Soundness and legal requirements including the Duty to Cooperate. The advice explains that any breach of the Duty is irremediable and will inevitably lead to the Inspector conducting the examination into the plan to conclude that it must be withdrawn with the consequent reputational damage and waste of resources. Compliance with the Duty is therefore described as an ‘important statutory obligation’ and the earlier compliance can be evidenced, the less risk to the subsequent plan making process.
52. The flexibility built into the Statement of Common Ground at para 5.4 is highlighted:
- 5.4 “The authorities agree the Duty to Cooperate is an ongoing process, and should the amount of unmet need change significantly, the apportionment of unmet need will be jointly reviewed to assess whether it needs updating. The

process for updating and maintaining this statement will be managed through ongoing joint work between the authorities.”

The KC advice explains that this paragraph ensures that appropriate flexibility is built into the Statement of Common Ground. This provides for reconsideration of the extent to which any of the neighbouring or other authorities are required to meet the needs of Leicester City, in the event there are any material changes in circumstances.

53. The KC advice provides further explanation of the implementation of the Levelling Up and Regeneration Act (LURA 2023). It explains that the precise timetable for implementation is uncertain at present and advises that the intention is for plan making to continue in the meantime under the existing provisions, including meeting the Duty to Cooperate. The advice summarises the transitional arrangements for the implementation of LURA 2023. These allow for local plans to be prepared under the existing arrangements and submitted for Examination by 30 June 2025. This option will cease to be available to a local planning authority when the new provisions are commenced (currently scheduled for Autumn 2024) where it has a plan more than 5 years old and it is not working to submission of a new plan by 30 June 2025.
54. Given the current local plan will be 5 years old in April 2024, the KC advice explains that the Council therefore only has a short window to begin work on a new plan under these transitional arrangements. This is strongly recommended in order to avoid the risk of being made to wait for some period of time before being allowed to prepare a new plan under LURA 2023.
55. The KC advice is clear that the Duty to Cooperate must be complied with in accordance with the transitional arrangements. Once the Duty to Cooperate has been replaced by the ‘Alignment Policy’, the requirement for local planning authorities to meet the identified needs of their neighbours will continue. As such, waiting until after 30 June 2025 to submit the new local plan will not remove the need to contribute to meeting Leicester City’s unmet housing need.
56. The advice of Kings Counsel is that signing the Statement of Common Ground will allow for submission of the local plan by the deadline of 30 June 2025. This will avoid the disadvantage of waiting until after 30 June 2025 and not having an up-to-date local plan in place until 2029 or 2030. The Council is advised that signing the Statement of Common Ground has no obvious disadvantages. The Statement itself, has sufficient flexibility built into its terms to allow changes in circumstances affecting the scale and distribution of Leicester’s unmet needs to be taken into account.
57. The advice concludes (para 51) (my emphasis):

“I therefore agree with the advice which the Council has received both from IPE and its officers that the balance of advantage and disadvantage having regards to the interests of the Council as local planning authority are overwhelmingly in favour of signing the SoCG.”

Local concerns

58. There has been historic disquiet within the district over recent years in relation to the issue of unmet housing and employment, including suggestions that:
- a. Leicester City Council is not doing all it can to reduce its unmet housing and employment needs;
 - b. there is no longer a requirement to evidence the Duty to Co-operate.
 - c. the Council is being “forced” to accept additional houses;

The Council has sought and received external advice and clarification in relation to each of these concerns:

Leicester City Council – efforts to reduce its unmet need

59. The Council has sought further clarification from Leicester City Council regarding the work it has undertaken to maximise housing delivery (and therefore reduce unmet need) within its own boundaries. The letter from Sir Peter Soulsby, Leicester City Mayor dated 12 September 2023 (Appendix K) confirms:
- a. Housing delivery is a top priority for Leicester City Council;
 - b. Brownfield land is being prioritised as far as is possible;
 - c. Significant progress is being made on the preparation of the local plan in order to unlock further sites and promote delivery;
 - d. Significant regeneration, supported by the use of compulsory purchase powers, is bringing the Waterside regeneration programme towards successful completion;
 - e. The Council is acting as master developer at Ashton Green, and is working with Government, Homes England and Leicester and Leicestershire Enterprise Partnership (“LLEP”) to secure funding and support for this significant housing scheme;
 - f. Despite a number of ‘Calls for Sites’ being undertaken, few new unconstrained sites have been identified, due to the built-up nature of the city and tightly drawn boundaries;
 - g. Of the new local plan housing allocations, 71% (6,668) homes are proposed on brownfield sites within the city;
 - h. Housing delivery has averaged at 1,168 homes per year over the last 10 years;
 - i. A balance is being struck between the delivery of homes and jobs and protecting important heritage, biodiversity and greenspaces;
 - j. Around 60 sites are allocated within the draft local plan; the majority on council owned land due to the lack of available third party owned land, despite repeated Call for Sites exercises being undertaken.

Kings Counsel advice confirms that no evidence has been provided which would support any contention that the City Council is materially underestimating its available capacity.

The ongoing need to meet the Duty to Cooperate

60. The Government's intention to abolish the duty to cooperate has generated some uncertainty about the current legal position. The Council therefore wrote to the Secretary of State seeking clarification on the government's position. A response was received from Rachel Maclean MP, Minister of State for Housing and Planning, dated 8 September 2023 (Appendix J). The letter confirms that the duty to cooperate will be formally abolished after the Levelling Up and Regeneration Bill receives royal assent, but that existing legal requirements and duties, including the duty to cooperate, will continue to apply for plans being prepared under the current system.
61. Independent advice on this matter has also been received from specialist advisors from consultancy Intelligent Plans and Examinations (Appendix M). The detailed advice note confirms that at the present time, the Council continues to be subject to the legal requirements to comply with the Duty to Cooperate. Indeed, the advice note explains that the Duty to Cooperate is the first matter that the Planning Inspectorate will look at before considering whether a future local plan is 'sound'. This confirms officer advice.
62. The advice of Kings Counsel confirms the above. It explains that new provisions of the Levelling Up and Regeneration Act 2023 will come into force once proposed implementation and transitional arrangements have been finalised and brought into effect. The advice explains that whilst the Government has indicated that it intends the regulations, policy and guidance to support the new Act to be in place by Autumn 2024, this is subject to approval of the regulations by Parliament. The exact timetable for implementation is therefore not yet known. In the meantime, the duty to cooperate continues to apply.

The need to plan for Additional Homes

63. There has been, in the district, apparent public confusion for a sustained period of time in respect of the Council's duty to help meet some of the unmet housing need in the HMA, and specifically from within Leicester City.
64. The advice of Kings Counsel on this point is very clear. A local plan must be found 'sound' in order to be adopted. One of the Tests of Soundness requires that plans are 'effective'. This means that in order to be adopted, a local plan must deal appropriately with strategic cross boundary issues. This includes effectively dealing with unmet housing needs from neighbouring areas.
65. The letter from the Minister of State for Housing and Planning (Appendix J) is clear – there is no prescribed formula for distributing unmet housing needs (in this case arising from Leicester City). There remains a requirement for all planning authorities to co-

operate. The method for distributing such needs must therefore be agreed between partner authorities within the HMA and recorded in a SoCG.

66. The Leicestershire and Leicester planning authorities have negotiated the distribution of housing and employment need as set out at Table 2 above. The SoCG has been agreed by the majority of partner authorities as set out at paragraph 18 of this report.
67. Given local concerns about the course of action proposed by officers, the Council sought advice from expert independent advisors at Intelligent Plans and Examinations (“the Advisers”) in respect of the steps taken to evidence the Duty (Appendix M). The advisors reviewed the technical evidence which underpins the SoCG and concluded (para 3.5):

“For the matters which are the subject of this SoCG, it is, in our assessment, a clear and comprehensive statement reflecting the outcome of some significant DtC work between the Leicestershire authorities on the key strategic planning topics of housing and employment needs. Importantly, it is based upon up to date and robust evidence in the form of the HENA and an accompanying Sustainability Appraisal (which is at Appendices F and G to the above-mentioned report to the Council’s Cabinet).”

68. The advice note from Intelligent Plans and Examinations offers a thorough, independent examination of the SoCG and the implications of the Council signing it, together with the risks of not signing it. The advice note concludes very clearly that their recommendation is for the Council to sign the SoCG (para 5.3):

“Our advice to the Council, based on the assessments contained in this Advisory Note, is that the benefits of signing the L&L SoCG at this time very significantly outweigh the potential risks that would arise from a decision not to sign the SoCG. It will provide the Council with much greater certainty in the short-term for the ongoing preparation of its new Local Plan. A decision not to sign the SoCG will likely make the Council’s position increasingly fragile, with regard to its new Local Plan and the threat of speculative planning applications.”

69. In addition, Intelligent Plans and Examinations hosted a briefing session open to all Councillors, comprising a presentation and question and answer session. Thereafter, a further opinion was sought from Intelligent Plans and Examinations once the response of the Minister was received. This reiterated the original advice (Appendix N).
70. Concerns were also raised by the three local constituency MPs in a letter dated 14 September 2023 (Appendix L). The concerns focused on the timing of a decision on the SoCG and suggested that this decision can be delayed further. The letter refers to the fact that only around 40% of local authorities have an up-to-date local plan and suggests there is no reason why Harborough’s next local plan must be submitted by June 2025. The constituency MPs were invited to discuss their concerns with the Leader of the Council but declined to do so.

71. It is not clear in the letter the extent to which the MPs are aware of the detail of the LURA 2023 and the implications for Harborough district. Under the current proposals, authorities that do not submit their local plan for inspection by June 2025 are expected to be placed in 'waves' to begin preparation of a new local plan under the new planning system. The order will be determined by the age of their existing plan. Independent advice from Intelligent Plans and Examinations (Appendix M) suggests that the Council would be placed in one of the later 'waves' for starting their next local plan if they do not submit by June 2025. This would likely mean that preparation of the new local plan would not start until 2026 or more likely 2027, meaning adoption would be delayed until 2029 or 2030. This advice is supported by the advice of Kings Counsel (Appendix P).
72. For this reason, officers, supported by Intelligent Plans and Examinations and Kings Counsel, advise that the Council accelerate preparation of the new local plan with a view to submitting the local plan by 30 June 2025. This would put the Council in the best possible position to retain an up-to-date local plan and therefore resist potentially damaging speculative development. This is in accordance with the information confirmed by the Minister for Housing and Planning and based upon the evidence commissioned by the partner authorities across the HMA. It is considered by officers to be the fairest way of agreeing an appropriate distribution of unmet need across the county in the absence of a clear formula from Government.
73. Further correspondence has been received in a letter dated 27 October 2023 from the then Minister of State for Housing and Planning to Mr Neil O'Brien MP (Appendix O). The letter confirms there is no certainty as to which authorities might be allowed to make use of the proposed 'front runner' status to be first to prepare a local plan under the LURA 2023. The advice of Kings Counsel confirms that this introduces a risk that if the Council does not commit to progressing a local plan and working towards submission by 30 June 2025, it will 2026 or 2027 before it is allowed to do so. Further correspondence from the then Minister of State for Housing and Planning, dated 3 November 2023 again simply repeats details of the recent Government consultation into proposals for the implementation of new planning arrangements. The letter is not specific to Harborough, and as confirmed by Further Advice from the Kings Counsel, none of these letters affect the decision before Council.
74. Officers' advice in respect of the progression of the proposed Harborough Local Plan remains that agreeing to the SoCG is an essential step in the complex local plan process which can and should be taken by the Council at this point to address the issue of unmet housing and employment need in the HMA and FEMA.

Consultation

Cabinet on 4 September 2023

75. The Cabinet considered the Leicester and Leicestershire Statement of Common Ground in relation to housing and employment needs on 4 September 2023 and decided to recommend that Council sign the SoCG, based on the evidence available to it at the time.

Communities Scrutiny Panel on 13 October 2022

76. The Communities Scrutiny Panel considered the evidence and background to the SoCG on 13 October 2022, the minutes of which are attached as Appendix I. The Panel concluded that the policy background to the Statement of Common Ground was sufficiently clear and that there is unmet housing need in the Housing Market Area, which the district needs to play a role in helping to meet.
77. The Panel was clear that the risks to the Council of not proceeding to support and sign the SoCG are too great, with some members explaining their experience of operating without the support of a Local Plan, which they said they would not wish to repeat.
78. The Panel recognised the difficulty of the situation for the Council and for partners across Leicester and Leicestershire. However, it considered that not supporting and signing the SoCG would potentially put the Council in an isolated and weak position and could risk delivery of a sound new local plan for the district. Therefore, in the light of this the Panel recommended to Cabinet that it recommend to Council that the SoCG should be agreed by Harborough District Council.

Summary of Consultation and Outcome

79. Consultation on the scale and distribution of growth will be undertaken in accordance with the Regulations through the preparation of the next Local Plan. This will form an important element of testing the additional housing requirement arising from Leicester's unmet need and set out within the SoCG.
80. In addition to the consideration by Cabinet on 4 September 2023 and Scrutiny Communities Panel on 13th October 2022, five separate briefings for Members have taken place between October 2022 and September 2023 involving Council officers, officers from Leicester City Council and independent professional experts.

Options

81. As the duty to cooperate remains a statutory obligation at present, and Government planning policy is clear on the need to accommodate unmet housing needs from neighbouring areas, officers consider that there are no reasonable alternative positions for the Council to consider other than signing the SoCG. Approving the SoCG will accord with the approach taken by 7 of the 8 partner authorities in Leicester and Leicestershire and will support the preparation of the next local plan.

82. Rejecting the SoCG would put the Council at odds with most partner authorities across Leicester and Leicestershire. Not signing would also place the Council at risk of being unable to demonstrate the Duty to Cooperate and meet the Tests of Soundness, which would prevent the Council from adopting the next Local Plan. This could, in time result in a shortage of suitable housing land, with a less than five-year supply ultimately placing the Council and Harborough District at considerable risk from speculative unplanned housing development, a loss of planning control and risk damage to the high-quality environment Harborough District residents currently enjoy. It is not a recommended course of action.
83. All information required to determine whether to sign the SoCG has now been presented to councillors through various Overview and Scrutiny Panel, Cabinet and Council meetings. Further, frequently asked questions have been issued and updated, and member briefings arranged. There is no additional information which can be obtained and considered in relation to the decision, and no reason to defer the decision.

Implications of Decisions

Corporate Priorities

84. Approving the SoCG will support the preparation of the new local plan by providing evidence of the Council's compliance with the Duty to Cooperate and will provide certainty over the district's housing and employment requirement to 2036. It will contribute particularly to the "Place and Community" and "Economy" corporate priorities by delivering necessary housing and economic opportunities for the district.

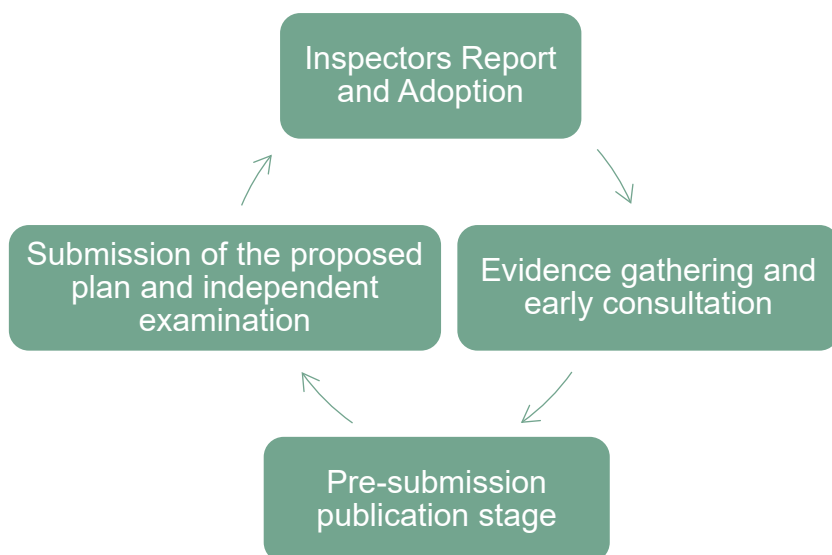
Financial

85. No financial implications directly arise from this report. However, not signing the SoCG could result in significant indirect costs for the Council by undermining the Council's ability to demonstrate compliance with the Duty to Cooperate and meet the Tests of Soundness. This raises the potential for significant abortive costs being incurred should a local plan be prepared and then not adopted due to a Duty to Cooperate or Tests of Soundness failure.
86. Currently, the council is anticipating that the cost of a "business as usual" local plan for the area to be circa £1.1m. If the process is aborted and the Council was required to restart preparation of the local plan, this could be very costly. It is difficult to estimate with a high degree of certainty what these costs would be as much depends on how much work is required to be repeated, but it is likely to be in the region of £500k to the full budget of circa £1.1m. In fact, it could be higher if, in the meantime, government guidance changes which attracts different, or stricter, preparation costs and the impact of recent inflationary increases.
87. Not signing would also significantly undermine collaborative partnership working with other local authorities across Leicester and Leicestershire. This is likely to make joint evidence collection more difficult, removing the financial benefits of joint working through

economies of scale, as well as the planning benefits of planning over a wider cross boundary area.

Legal

88. The Planning and Compulsory Purchase Act 2004 places a duty on local authorities to carry out plan-making. The process of making a plan involves four main stages:



89. Council adopted the Implementation, Monitoring and Review arrangements set out in policy IMR 1 at Chapter 12 of the current, adopted, local plan. This sets the conditions under which the Council must commence a full or partial update of the Local Plan. Failing to comply with these timescales will place the Council in breach of its own policy IMR1, and therefore increase the prospect that the Council's position will be subject to successful legal challenge.
90. Approving the SoCG provides evidence of the Council's ongoing constructive engagement with partner authorities across Leicester and Leicestershire in respect of Leicester's unmet housing and employment needs, as required by the Duty to Cooperate. It also discharges the Council's obligations to demonstrate cross boundary co-operation under the Localism Act 2011.
91. Failing to approve the SoCG will cause substantial disruption to the Council's aspirations for the district as it could hinder the adoption of the Council's local plan and tarnish the Council's reputation with its neighbouring authorities.
92. External advice has been received from Intelligent Plans and Examinations (see Appendices M and N) in relation to the proposal to sign the SoCG as well as advice provided by Kings Counsel (Appendix P, summarised at paras 48 – 57 above.)

Policy

93. Approving the SoCG commits the Council to testing an additional 123 dwellings per annum 2020 to 2036 through the next Local Plan. This is in addition to the district's local

housing need, calculated through the Government's standard method calculation, which currently results in a figure of 534 dwellings per annum, creating a total housing requirement of 657 dwellings per annum. This compares to the housing requirement in the current Local Plan (2011-2031) of 557 dwellings per annum.

Environmental Implications including contributions to achieving a net zero carbon Council by 2030

94. A Sustainability Appraisal has been undertaken in relation to the distribution of Leicester's unmet housing and employment needs (Appendix F and Non-technical summary at Appendix G). Sustainability Appraisal (SA) is a process for helping to ensure that plans, policies, and programmes achieve an appropriate balance between environmental, economic and social objectives. The process that is followed incorporates the requirements of a Strategic Environmental Assessment (SEA).
95. The SA concluded that a distribution of housing and employment needs based on the recommendations of the HENA (and the associated housing and employment distribution papers) would be appropriate. Further assessment will be required alongside Local Plan preparation to test the effects of the scale and distribution of growth on environmental, economic and social objectives.

Risk Management

96. Approval of the SoCG will place the Council in a significantly stronger position to demonstrate compliance with the Duty to Cooperate and Tests of Soundness through the Examination of the next Local Plan. It will also ensure that the Council is not in breach of IMR 1 of its current Local Plan.
97. Not signing the SoCG would result in the following significant risks to the Council:
- A breach of the requirements of IMR 1, which would expose the Council to increased risk of successful legal challenge as to its plan making process.
 - Potential inability to demonstrate the Duty to Cooperate has been met. This would result in a failure of the legal test and would prevent the next Local Plan being adopted.
 - Potential failure of the Tests of Soundness, resulting in the need to amend or re-do significant portions of the preparation of the next local plan, or potentially an inability to adopt the next local plan.
 - Significant financial costs in needing to redo abortive work to prepare a new local plan.
 - A detrimental impact on the Council's ability to demonstrate a five-year supply of housing land, as currently required by Government policy. This could eventually result in a lack of five-year supply, in which case the presumption in favour of sustainable development would apply and the

Council could find itself unable to resist speculative housing planning applications. This is likely to result in housing developments in areas of the district not considered the most appropriate locations for housing growth.

- Potential reputational damage and loss of support amongst partner authorities across Leicester and Leicestershire.

Equalities Impact

98. An Equalities Impact Assessment will be undertaken in conjunction with the preparation of the next Local Plan.

Data Protection

99. No issues arise given the lack of personal data within this report.

Background papers

100. Report to The Communities Scrutiny Panel 13 October 2022: Leicester and Leicestershire Statement of Common Ground (SoCG) Relating to Housing and Employment Needs (2022).