



**WELWYN
HATFIELD**

**Colin Haigh
Head of Planning**

Reply to: address as below
Date: 24 August 2020

Melvyn Middleton
Planning Inspectorate
c/o Programme Officer
louise@poservices.co.uk

Dear Sir

Welwyn Hatfield Local Plan

The Council writes in response to your letter of 13 August 2020, and further to the Council's letter of 23rd July.

The Council continues to welcome the positive approach taken by the inspector to the examination. This letter, as others, is written against the backdrop of the obvious difficulties the Council has, as a Green Belt authority, in meeting its housing need without making significant changes in relation to Green Belt boundaries. The need for those changes has been well rehearsed in correspondence between the Council and the inspector during the examination and is not repeated here.

The Council is keen to bring the examination to a positive conclusion at the earliest available opportunity. With that in mind, the following chronology is suggested.

Chronology going forward

The Council anticipates that the provision of your interim report will be extremely useful for members in making what are politically sensitive decisions in relation to additional land that must go forward if the plan is to meet its OAN, whilst respecting a point that has been agreed within the examination from the start: Ultimately, it must be for the Council to decide which sites come forward in order to meet that need. It has to make those decisions in a situation where it finds itself, politically, in a situation of "no overall control". This represents a change from the position when the plan was submitted. The vote to submit the plan was not unanimous. Those decisions also need to be taken in the immediate context of updated population and household projections which indicate a prospect of the OAN being significantly reduced, potentially to a number around 14,300 units. The analysis commissioned on behalf of the Council bearing on those new data and whether there constitute a meaningful change is contained in the Council's other letter of today's date.

For example, having your detailed written views in relation to the overall strategy, vision, spatial distribution and approach to the strategic sites set out within the interim report will allow all those considerations to factor into the Council's conclusion of the

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consultation process. Otherwise, the risk is that the consultation process will have to be re-run once more with the benefit of your advice. The Council is, of course, mindful that no changes can be made to the emerging Local Plan unless and until the inspector decides they are required as main modifications.

Also, for the reasons set out in more detail below, if following consideration of the matters the Council has raised on the SA, you have remaining concerns as to its legality, it would be useful to have those in writing now so that appropriate advice and steps can be taken.

On the assumption that an interim report may be available in September or October, the consultation results can be taken to CPPP in October, progressing to Cabinet and Full Council thereafter in November. However, the Council is also mindful that the inspector may wish to hold a hearing session on the updated household formation information and any implications for the OAN, the Council's current thinking is that could be dealt with during any further necessary hearing sessions before the proposed main modifications are finalised and consulted upon.

The site selection decisions then taken can be considered during further examination sessions, with a view to firming up any main modifications required and proceeding to a main modifications consultation, a final report, and adoption of the plan.

The draft timetable is set out in more detail as an attachment to this letter.

The Council's concerns

In response to your letter, the Council notes that in previous correspondence it has set out some concerns in relation to (a) the approach to strategic sites and the test of exceptional circumstances (b) the need to test the plan against an evidence base which must be proportionate, but need be no greater than that; and (c) the appropriate approach to the tests of soundness.

The Council invited the inspector to take those concerns on board in the preparation of the proposed interim report (which had by then been mooted as a key element of the way forward). The same position exists in relation to the large number of sites which have been examined in great (i.e. more than strategic) detail through the examination process. The Council has, to date, not had formal feedback on that letter. I would therefore invite the inspector to consider them in drafting his interim report. Those points are all central to bringing the examination to the early conclusion that all parties desire. Similarly, the Council invites the inspector to take this letter into account in his interim report.

The Council would suggest that recent examination sessions have demonstrated to the necessary standards (a) that those sites could soundly be included within the local plan; (b) the level of objection to *actual sites* is, for a Green Belt authority, in fact relatively limited and confined to (i) omission site promoters; (ii) local residents and interests groups. Points put forward for consideration by objectors have not amounted to show-stoppers, or to demonstrate "death by a thousand cuts" across the plan as a

whole. The Council does *not* consider that, for a Metropolitan Green Belt authority seeking to meet a large OAN for housing, the level of objections to this plan is actually larger than might be expected.

The Council would repeat a point that risks being lost in the detail of the concerns which have been ventilated, and that is the lack of objection – across the piece - to these sites by statutory consultees (and indeed their positive support in relation to a number of choices made by the Council). This factor can rightly be regarded as important and supportive of the strategic choices and site allocations made by the Council.

The Council understands two concerns of the inspector's that have been present through the more recent examination sessions. First, that the Sustainability Appraisal ("SA") must be sufficient to meet the legal requirements imposed upon it. Second, that the evidence must be sufficient to support reasonable conclusions in relation to the presence of exceptional circumstances. The Council has borne in mind the case law relating to SA challenges and of course agrees with the need to ensure the plan, if adopted, is adopted on a sound footing.

The Sustainability Appraisal

On the first point, the Council is quite clear that the Sustainability Appraisal met (and continues to meet) the *legal* tests required of it. They are not the same as the soundness tests. The SA does not make or dictate site selection decisions which, as explained in the Council's evidence base, have a large number of inputs, many based on planning judgments that reasonable professionals might reach different views upon. Often, it is in the nature of the process that, those evaluative judgments are built one on top of another. That is why the guidance provided by Ouseley J. in the *Compton* case, referred to in our earlier material to you, is key to determining whether criticisms which go to the *soundness* of the eLP, rather than some of the individual judgments, can properly be made.

Site selection, on the other hand, will take in (amongst other factors) the SA, consultation comments, national policy and factors identified in the HELAA including deliverability of sites.

LUC have very considerable experience of providing SA in support of local plans. Table 1.1 of the 2016 SA report set out where the various legal requirements of the SEA Regulations were met within the SA. The Council is also confident that the SA complies with the guidance applicable to this transitional examination at PPG ID:11-025-20140306. We understand LUC has produced well over 100 SA/SEA documents using a similar methodology, assisting more than 70 local authorities to have plans found sound. I produce those high level numbers to illustrate the pedigree of the approach adopted by the Council, having done its own research on these matters prior to engaging consultants.

The level of objection to the SA is not, either in the experience of the Council or LUC, unusual. Forty-one of the Regulation 19 consultation responses actually commented

on the content of the SA or HRA. Of those 41, many simply refer back to the omission of a particular site and its inclusion or exclusion seeking different scoring for a particular site. Such comments are, of course, entirely normal in this situation. The basis for the scoring is set out in Appendix 2 to the SA report and what objectors have *not* managed to demonstrate is that the site scoring is internally inconsistent with those criteria (which were consistently employed over the area) in any meaningful way. In fact, on a review of objector comments to the SA very few make reference to the SA *itself* or its *methodology*. To rehearse a general point made above about statutory consultees but which also applies in this particular context, the statutory consultees for the SA – Environment Agency, Natural England and Historic England – commented at the scoping stage and did not object to the methodology proposed.

The Council invites the inspector to consider two particular criticisms levelled at the SA by objectors as exemplars: (i) the use of distance proxies; and (ii) the supposed wrong categorisation of some sites.

On the first point, the use of distance as a proxy for harm in a strategic level document which by necessity considers large amounts of sites (over 70), and alternative strategies, is unobjectionable in principle. There is no guidance against it, and inspectors elsewhere have accepted such an approach when used by LUC and other consultancies. An example of another consultancy recently using that approach successfully is Chesterfield and Staffordshire Moorlands (2020). Such an approach has benefits in enabling a consistent, transparent and objective way of assessing sites within a strategic process, using data that is available on a consistent basis across the plan area. The consistency of the data is important because it is legally important for the alternatives to be assessed in the same level of detail for SA purposes: ID:11-018 20140306 (site selection ultimately may, of course, be different). It would plainly be disproportionate to *require* SA objectives to each be informed by a detailed study across each of the large number of sites under consideration.

In relation to the categorisation of sites, this represents a prime example of planning judgments being made by an independent consultancy. None of those judgments have been demonstrated to be “irrational” or “off the wall” in terms of the criteria to be applied, or their individual application. Recent examination sessions have been littered with comments by objectors that issues have been given “*a little too much*” weight, or similar variants. But that does not come close to demonstrating an unreasonable judgment, still less an unreasonable judgment against published and transparent criteria; but rather simply a difference in professional evaluation. It is also important to bear in mind that the criteria operate as bands across a spectrum, rather than seeking to isolate with a numerical score (or otherwise) precisely where a site lands for any given objective. So, for example, there may be differences between sites which both score a double positive. One may lie at the cusp of meeting the double positive, and another may be comfortably within that part of the spectrum, yet another may lie at the far end of a double positive. All of this underlines why the proper function of the SA is to inform rather than dictate the plan making process, and that is the way the legislation and guidance is drawn. The importance of the SA to the overall plan making process should not, therefore, be overstated.

Lastly, there appears in some of the representations to be concern about the use of the terms “*likely*” and “*potential*” in the SA. But the use of (and contrast in) these terms is deliberate and a matter of judgment. Likely is the word used in the Regulations, but the SA also in its criteria and approach looks to account for uncertainties. Therefore, to recognise such uncertainties from time to time “*potential*” is used. The use of these alternative terms does not indicate any legal error in the document.

The Planning Practice Guidance on Strategic Environmental Assessment and Sustainability Appraisal uses both terms. For example ‘potential’ effects are referred to in the opening section to the guidance Paragraph: 001 Reference ID: 11-001-20190722 and again in Paragraph: 007 Reference ID: 11-007-20140306. Elsewhere in the guidance there is reference to ‘likely effects’ for example at Paragraph: 003 Reference ID: 11-003-20190722.

The Updated Sustainability Appraisal

For the reasons set out above the Updated Sustainability Appraisal uses the same methodological approach as the SA. It simply considers a different range of sites and uses updated evidence to inform some of the judgments in the Updated SA.

The Council will supply the Updated Sustainability Appraisal prior to your interim report should you still wish to have it, but would point out that because it is not yet an examination document no party has yet had the opportunity to comment upon it in the examination itself (in contrast to the 2016 SA). It therefore seems to the Council most appropriate for that document to be introduced to the examination once the additional sites consultation is concluded with the benefit of your interim report on the Regulation 19 plan as submitted. In any event we would invite you to make clear that any provisional observations you make on that document are made without the benefit of hearing parties to the examination upon it.

A Revised Sustainability Appraisal would be expected in due course to accompany the main modifications that you consider are required to render the plan sound. At that stage, any changes to the methodology that you decide are necessary in order for it to meet the legal tests can be made. The Council anticipated that a provisional statement of those concerns would appear in your interim report, thus allowing that part of the process to move towards completion.

The Exceptional Circumstances test

The Exceptional Circumstances test has been the subject of considerable discussion through the examination process to date, and your approach was set out in EX39. The Council agrees with that approach which it considers consistent with the up to date reaffirmation in *Keep Bourne End Green* [2020] EWHC 1984 (Admin) of the pre-existing guidance given in *IM Properties, Calverton, Compton* and the more recent *Leeds* cases. Paras 146-155 of that judgment rehearse the now familiar principles. Importantly, there is no sequential test (or anything akin to it) in the 2012 guidance: It is not necessary that Green Belt land is considered as a matter of last resort. The

Council's approach to this guidance (albeit prior to the reaffirmation provided by *Keep Bourne End Green*) was summarised in its note of 19th June 2020.

The Council draws attention to the fact that the observations Ouseley J. made in *Compton* about the correct approach to the examination process, in particular that an inspector is not conducting “a series of mini-inquiries into participants’/objectors’ proposed allocations” and that “A plan is not to be judged unsound by an inspector simply because there might be a better way of dealing with an issue, or because the inspector would have preferred a different approach, after hearing representations” (see *Compton* at [18] and *Cooper* (2017) at [28], referred to in *Compton* at [19]) were made and applied specifically in the context of a challenge to the release of Green Belt land by Guildford Borough Council. Therefore, they apply equally here.

Applying that approach, the Council is clear that the release of the Green Belt sites identified through the Local Plan process is based on rational judgments which allowed the Council to decide and place appropriate weight upon the need to meet housing and the appropriate distribution of housing across the borough, as well as a rational assessment of the site specific circumstances for the sites under consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Colin Haigh', written in a cursive style.

Colin Haigh
Head of Planning