

Examination of the North Hertfordshire Local Plan 2011 – 2031

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By email only

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Dear Mr Smith

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As you know, during the examination hearings the Council put forward a significant number of draft main modifications for my consideration. During that period, and subsequently, it also undertook to produce a substantial amount of additional work, largely at my request. Both this work and the draft main modifications were the subject of public consultation earlier this year, ending in April.

Since then, I have been reviewing the representations made. This has proved time consuming, as a result of the sheer number of representations and volume of material involved, and this is a task I have not yet completed. I have also been looking again at some of the evidence produced in the context of the representations made. In the light of the work I have been undertaking, I am now writing to set out the way forward for the examination, and to draw your attention some issues and reservations I have.

I have numbered to following paragraphs to assist with any necessary cross-referencing.

1. Firstly, I am acutely aware that the Council is keen to progress the examination as expediently as possible. I fully understand the reasons for that. Indeed, it is a desire I wholeheartedly share.
2. Through the recent consultation exercise, a number of the examination's participants have requested that further hearings be held. My starting point here – as set out in the Planning Inspectorate's guide '*Procedure guide for local plan examinations*' (June 2019, 5th edition) – is that further hearing sessions will not usually be held unless they are necessary to resolve a fundamental soundness issue, to deal with substantial issues raised in the representations or to ensure fairness. However, in the light of the representations, the new evidence produced during the examination and since I closed the hearings, and my re-consideration of evidence in the context of the representations, I have decided that some further hearing sessions must now take place.
3. I anticipate that this news will be received by the Council and others supporting the submitted plan with both frustration and disappointment. It is not a decision I have arrived at lightly. But I consider that there are compelling reasons for holding some further hearings, albeit on clearly defined and limited matters. I set out those reasons below.

The objective assessment of housing need ('the OAN')

4. As you are aware, the new National Planning Policy Framework 2019 ('the 2019 NPPF') includes 'transitional arrangements' whereby local plans submitted on or before 24 January 2019 are to

be examined on the basis of the National Planning Policy Framework 2012 ('the 2012 NPPF'). That is the basis for this examination. Consequently, the 2012 NPPF and the Planning Practice Guidance ('PPG') supporting it remain 'in force' for the purpose of this examination.

5. In relation to identifying the OAN, the PPG says:

"Wherever possible, local needs assessments should be informed by the latest available information. The National Planning Policy Framework is clear that Local Plans should be kept up-to-date. A meaningful change in the housing situation should be considered in this context, but this does not automatically mean that housing assessments are rendered outdated every time new projections are issued." (Paragraph: 016 Reference ID: 2a-016-20150227)

6. This gives rise to two questions: whether the OAN is informed by the latest available information; and if it is not, whether the latest available information would give rise to a 'meaningful change' in the housing situation. Since the last hearing sessions, 2016-based population and household projections have been published. These projections represent the latest available information and the OAN underpinning the Local Plan is not informed by them. My task, then, is to establish whether these projections lead to a 'meaningful change' in the housing situation.
7. There are two points to raise here. Firstly, my consideration of this point is critical to the examination – my conclusions regarding the OAN and the soundness of the Local Plan's housing requirement depend on it. But because of the timing of the publication of the 2016-based projections, this point is not one that has been discussed at any hearing session. This is such a fundamental issue that it would, in my view, be unfair to participants to proceed without a hearing.
8. Secondly, I am not entirely clear about the evidence and arguments made out in writing on this issue. The Council's note '*Implications of new household projections for NHDC Local Plan*' [ED159] considers the 2016-based household projections. At Table 1, figures are presented taking the 2016-based household projections as the starting point, then adding vacancy rates and market signals uplifts in line with the method used to calculate the two OANs on which the Local Plan is based. These suggest that the OAN for the Stevenage HMA part of North Hertfordshire is 10,900, and that the OAN for the Luton HMA portion is 100 homes. This is 2,800 homes fewer than the OAN figure of 13,800 on which the submitted Local Plan requirement of 14,000 is founded. I will say now that, taking these figures at face value and considering the context here, I regard this to amount to a 'meaningful change'.
9. However, I am not adequately certain about the appropriateness of the method used to arrive at the figures in Table 1. In particular:
- it would help if the precise vacancy rates and market signals uplifts applied were set out and briefly explained;
 - I am not clear as to whether the vacancy rates and market signals uplifts previously applied remain appropriate for the purpose of establishing an OAN based on the 2016-based household projections; and
 - in order to identify an appropriate OAN for North Hertfordshire based on the 2016-based projections, I cannot tell whether the figures should be adjusted in order to address any issues there may be with the 2016-based household projections, including in relation to household formation rates and the issues on which the Government has expressed concern.

In short, I have reservations as to whether the Council's note sets out appropriate and robust OAN figures on the basis of the 2016-based projections. Considering the task with which I am charged in relation to the aforementioned 'meaningful change' issue, this is a shortcoming that must be resolved.

10. I note that Table 2 in the Council's note provides figures referred to as the 'potential 20-year standard method figures using 2016-based household projections'. This appears, in effect, to generate OAN figures by inputting the 2016-based household projections into the standard method formula set out in the PPG supporting the 2019 NPPF. However, it is plain from the revised PPG supporting the 2019 NPPF that the 2014-based household projections should be used in conjunction with the standard method formula. I am concerned that these figures are therefore not consistent with national policy, and as such I have doubts about their usefulness. It may, though, be instructive for the purpose of comparison to present the OAN figure derived from the standard method formula using the 2014-based projections.
11. Considering the above, I regard exploration of the OAN at a further hearing to be essential.

The Green Belt Review Update

12. Also among the new evidence produced by the Council during the examination is the 'Green Belt Review Update 2018' [ED161 A and B] ('the Green Belt Update'). The Green Belt Update essentially revisits the original Green Belt Review (July 2016) [CG1] in the light of the Court of Appeal judgement in the Samuel Smith Old Brewery case¹, and aims to ensure that the visual dimension of 'openness' is fully considered.
13. The Green Belt Update reaches some conclusions which differ to those in the original Review. Notably, it concludes that some sites proposed for allocation which were previously considered to make a 'moderate contribution' to the Green Belt actually make a 'significant contribution'. I note the Council's overall view on this point, being in each case that exceptional circumstances still exist to justify the allocation proposed. Nonetheless, the Green Belt Update alters the context here – it is not the evidential basis on which the previous hearings were held. As with the question of the OAN, this is a matter of fundamental importance. Consequently, I consider that it would be unfair to interested participants to proceed without exploring this point at a further hearing session.
14. In the light of the representations, I have reviewed again some of the evidence underpinning the selection of sites for allocation. I am not clear from this, or from the previous hearing sessions, precisely how the exercise of reviewing the Green Belt has affected the site selection process. In particular, I am struggling to understand how, or indeed whether, the contribution – whether it be moderate, significant, or whatever – made to the Green Belt by any individual parcel of land has influenced its selection or rejection. Put simply, I cannot see how the conclusions of the Green Belt review exercise have informed the selection of sites. The Sustainability Appraisal (2016) [LP4] does not appear to draw on the outputs of the Green Belt Review to any meaningful extent or make any distinction between land that contributes moderately to the Green Belt and land that contributes significantly. This may be a problem in itself. Similarly, in the Green Belt Update, there is little in the way of justification for the conclusion that while some land is now considered to make a significant contribution to the Green Belt, it should nonetheless remain allocated for development (or, in one case, for 'safeguarding').

¹ Samuel Smith Old Brewery v North Yorkshire County Council [2018] EWCA Civ 489

15. If the Council's stance on this is that the contribution made by land to the Green Belt really makes no difference, then it should say so. If that is the case, the Council should also clearly explain why it has reached this conclusion – that is to say, to unambiguously state the imperative for allocating land irrespective of the contribution made by it to the Green Belt. Whatever the Council's view on this, it is a point on which greater clarity is essential in taking the examination forward, and a further hearing is necessary in this regard.

The proposed 'East of Luton' sites

16. Three sites are proposed primarily for housing development adjacent to Luton in order to provide 1,950 homes to assist in addressing Luton's unmet need for housing. They are on land that is currently Green Belt. Much evidence has been produced in relation to these sites, and they have been the subject of extensive discussion at hearing sessions. In the light of this discussion, the Green Belt Update, the responses to the recent consultation exercise and my further review of the evidence, I have reservations about the justification for the allocation of these sites.
17. As a brief aside, paragraph 39 of the Council's note [ED159] appears to indicate that the East of Luton sites "... *would still be required to make a positive contribution towards housing needs from the wider [Luton] housing market area ...*". So far as I am aware, the purpose of these sites is in specific relation to the identified unmet needs of Luton Borough, rather than those of the wider Luton HMA. That is, at least, what I have heard at the hearings so far and is what is set out in paragraph 4.9 of the Council's Updated Statement of Common Ground with Luton Borough Council [ED18]. For the avoidance of any doubt, I ask that the Council clarifies the situation here.
18. These three East of Luton sites are among those where re-evaluation through the Green Belt Update has led to a change in the Council's view. Rather than making a moderate contribution to the Green Belt, the Council now considers their contribution to be significant. Consequently, the development of them proposed through the Local Plan would be more harmful than previously considered by the Council to be the case. This is a factor that is relevant to the consideration of whether or not exceptional circumstances exist to warrant the 'release' of the Green Belt land involved.
19. More fundamentally, though, I have misgivings about the Council's current demonstration of exceptional circumstances in respect of these sites. I recognise that they would make a valuable contribution in relation to the unmet need for housing in Luton, and I do not underestimate the acute and pressing nature of that need. In aiming to assist Luton Borough Council, the Council's intentions are undoubtedly laudable and strike a harmonious chord with the objectives of national policy. Indeed, helping neighbouring authorities in this way is precisely the kind of outcome the Duty to Cooperate ('the DtC') is intended to secure. That said, the fact that a local plan allocation is borne of engagement through the DtC does not absolve it from the requirement of being evidentially based, or somehow lessen the imperative in that respect, particularly where it is necessary to demonstrate exceptional circumstances.
20. I note that these sites have been considered through the '*Luton HMA Growth Options Study*' (2016) [HOU7] ('the Growth Options Study'). This, in essence, assesses the suitability of 'locations' in relation to deliverability, viability, environmental constraints and accessibility. But unless I have misunderstood or missed something here, neither this document nor any other produced to the examination provides a comparative assessment of the numerous options

considered for addressing the unmet housing needs of Luton – by which I mean an assessment that analyses the site options and then, through comparison, arrives at recommendations or conclusions founded on a clearly reasoned justification. The *'Luton HMA and Site Selection Assessment Report'* (2016) [HOU8] by Peter Brett Associates also considers site options for meeting Luton's needs, but the area of search is confined to areas within North Hertfordshire. From my understanding of it, the *'Strategic Housing Land Availability Assessment 2016 Update'* [HOU9] does not cast the net any further afield. Consequently, all comparative analysis is limited to land within North Hertfordshire – that is to say, it is predicated on the Council's decision that North Hertfordshire should set out to provide land to meet Luton's needs.

21. In different circumstances, that might not be a shortcoming. The problem here, however, is that the land proposed for that purpose is in the Green Belt, and exceptional circumstances must be demonstrated to exist to justify its 'release'. This is a high bar. I am concerned that, in order to overcome it, it may be necessary to show (through a comparative assessment of the kind I have described above) that the sites involved are preferable to all other potential options. It is difficult to see any particular reason why the consideration of alternatives to meet Luton's unmet needs should be limited to North Hertfordshire. Indeed, I am concerned that the Luton HMA may represent the most appropriate 'area of search' for this purpose. I am struggling to understand how exceptional circumstances can exist if one is left wondering whether there might be preferable options elsewhere within the applicable housing market area.
22. This is a point that was taken up by Natural England in its response (dated 30 November 2016) to the Proposed Submission Local Plan consultation. In section 8 of that letter, Natural England says "*There hasn't been an adequate assessment of alternatives [to the East of Luton sites]. The Sustainability Appraisal should set out alternative locations/sites considered to meet the housing need elsewhere ... Thus alternatives [to the East of Luton sites] should be presented [in the Sustainability Appraisal] both within Luton and other neighbouring local authorities*". Paragraph 4.12 of the Statement of Common Ground between the Council and Natural England [ED52] reiterates Natural England's stance on this matter. I note the Council's view, set out in the 'Sustainability Appraisal Supplementary Paper' [LP8] that "*... it is not in the authority's jurisdiction to make judgements regarding the acceptability of these alternative sites [within the Luton HMA but outside of North Hertfordshire]*". That may be so. It is, perhaps, for this very reason that local authorities are required to cooperate on cross boundary issues and to this end are encouraged to undertake joint studies where relevant.
23. On this point, I will say that I do not regard the apparent deficiency of an even and consistent comparative assessment of options within the Luton HMA to be a failing under the DtC. Rather, so far as I can tell and in the absence of any compelling evidence to the contrary, it seems that the undertaking of a Luton HMA-wide comparative analysis of this sort has not been thought necessary by any of the local authorities concerned. However, it does lead me to doubt the evidential justification for allocating the East of Luton sites and the robustness of the Sustainability Appraisal in this respect.
24. As I have said at the outset of this letter, my commentary here should not be taken as 'interim findings' as such, and I have not reached a firm view on these matters. I set them out here to alert the Council and other participants that I do presently have reservations. However, I am not satisfied that the specific points raised above have as yet been adequately explored at a hearing session and, as such, I am not currently able to reach a final and fully informed conclusion.

Consequently, I have decided that a further hearing session considering these matters is absolutely necessary.

25. I ask the Council to consider carefully my misgivings. To assist, I would suggest that there are several possible ways forward.
- a) If I have either misunderstood the evidence supporting the Council's demonstration of the exceptional circumstances relating to the East of Luton sites, or have missed something, the Council should produce a concise note to enlighten me.

If I have not misunderstood the evidence or missed something, the Council could:

- b) seek to explain why an even and consistent comparative assessment of the site options across the Luton HMA (with conclusions drawn on a clearly reasoned basis) is not necessary to demonstrate that exceptional circumstances exist to warrant the 'release' of the East of Luton sites from the Green Belt; or
- c) if, in the light of this letter the Council concludes that such an assessment is necessary but is absent, the Council could request that I suspend the examination to allow it to be undertaken; or
- d) put forward a main modification deleting the East of Luton sites from the Local Plan. If this path is pursued, it is highly likely that, in order to be sound, the Local Plan should include a commitment to further joint working with the other local authorities in the Luton HMA to identify the most appropriate sites for meeting Luton's unmet housing need and to bring forward a development plan document allocating any sites in North Hertfordshire identified through this analysis.

There may, of course, be other options and I leave the Council to consider the alternatives.

26. If the Council finds itself considering options c) and d) listed above, I would strongly recommend d). This has already been a complicated and lengthy examination. Of the two, option d) has the benefit of avoiding what could prove to be – given the joint working likely to be required – a very prolonged suspension, which in turn would run the risk of elements of the evidence base becoming outdated.

Safeguarded land to the West of Stevenage

27. I also have reservations about the demonstration of exceptional circumstances in relation to the land to the West of Stevenage currently in the Green Belt that is proposed to be identified as 'safeguarded land'. The Green Belt Update also alters the assessment of the contribution made by this land to the Green Belt – it is now considered by the Council to make a significant contribution, rather than a moderate one. Again, this is a factor that is relevant to the consideration of whether or not exceptional circumstances exist to warrant the 'release' of the Green Belt land involved.
28. Added to this, I have doubts about the strength of the arguments underpinning the Council's justification for identifying this as 'safeguarded land'. The planning history of the land in question is unlikely to amount to an especially forceful argument – the fact is that the land is presently in the Green Belt and does not have planning permission for development. The need to provide opportunities for future growth is a valid point, but is one that could apply in support of any land adjacent to any settlement. The continuing disagreement between the Council and Stevenage Borough Council about which local authority's future housing needs the land should

address muddies the waters somewhat. The Council's rather non-committal stance on this adds to the ambiguity, which also does not help. Indeed, these latter factors suggest that important decisions remain to be made by the two authorities. Given that this all relates to yet unknown future housing needs, that is perhaps not surprising. Nevertheless, in the context of this degree of uncertainty, and taking account of the significant contribution the land in question is now judged by the Council to make to the Green Belt, there is a risk that the exceptional circumstances necessary to warrant the 'release' of the land from the Green Belt may not exist.

29. Again, this commentary is not a 'finding' of any sort. I am not presently able to reach a conclusion on this matter without a further hearing session.

The main modifications proposing to allocate new land for development

30. A number of the draft main modifications put forward by the Council which have now been consulted upon propose the allocation of new land for development that was not included in the submitted Local Plan. Numerous representations have been made about these draft modifications. People's lives can be affected by the allocation of land for development, for example where they live next to or nearby a proposed site. It is, therefore, only right that those who have submitted written representations in this regard should be able to have their say at a hearing, as would have been the case if the land had been included at submission.

The way forward

31. I ask the Council to now carefully consider all of the issues and reservations I have set out in this letter. Before the further hearing sessions I have identified as being necessary can take place, both I and participants will need to know the Council's position on the points raised. Indeed, I am not able to formulate the focussed Matters and Issues for the further hearings until I have clarity in this respect.

32. I therefore request that the Council produces concise papers setting out:

- a) what the Council considers to be the most appropriate OAN figure founded on the 2016-based projections, including any uplifts and the reason for them, explaining the alternatives and why the selected figure is considered to be the most appropriate. This should indicate the Council's view as to whether the most appropriate 2016-based OAN figure represents a 'meaningful change' from the OAN currently underpinning the Local Plan housing requirement. It should also respond to my comment above about the consistency with national policy of using the 2016-based household projections in the applications of the standard method formula;
- b) how the assessment of the Green Belt contribution made by any given parcel of land has influenced the choice of sites for allocation, and particularly how the Council's site selection process has distinguished between land that makes a moderate contribution to the Green Belt and land that makes a significant one. If it is the case that the degree of contribution made has had no influence, then this should be unambiguously stated. This paper should also explain the justification for the conclusion reached in the Green Belt Update that land now identified as making a significant contribution to the Green Belt should nonetheless be allocated for development;
- c) in the light of my reservations, the Council's stance in relation to the East of Luton sites. This paper should address all the issues I have raised in this respect, and should clarify the

position in relation to the unmet housing need that the three sites concerned are intended to provide for – those of Luton Borough, or those of the wider Luton HMA.

- d) in the light of my comments above, the Council's position in relation to the safeguarded land to the West of Stevenage. If the Council intends that this site should remain in the Local Plan, it would assist to set out comprehensively in this paper the full justification for it and the Council's case in relation to the existence of the exceptional circumstances necessary;
- e) the justification for each area of new land proposed for allocation through the draft main modifications, including the demonstration of exceptional circumstances where relevant.

It is difficult for me to second guess how long it may take the Council to undertake the actions I have identified above. I would therefore be grateful if you would provide me with a realistic timescale at the earliest opportunity, to assist me with programming for this examination and other work. I am keen to establish a timeline for taking the examination forward, and to begin to identify possible dates for hearing sessions, which I intend to hold as soon as it is possible to do so. Once matters are clearer from your perspective, I ask that you discuss scheduling with my Programme Officer, Mrs St John Howe.

As I have already mentioned, I have yet to complete my review of the representations submitted in response to the consultation undertaken earlier this year, although it is well progressed. I anticipate concluding this work within the next few weeks or so. If I do identify any additional areas where a further hearing will be necessary, I will inform you at that time.

For the avoidance of doubt, while I am completing my review of the representations and as the Council undertakes the tasks I have set, I will not be accepting any further correspondence from other participants. There will be a full opportunity for others to have their say once the Council has completed and published the papers I have requested. Indeed, as I have indicated, I will set out further focussed Matters and Issues for the examination, and I will invite participants to provide statements addressing the questions therein, in due course. I ask the Council to place a message explaining this on the examination web page.

Finally, I would reassure the Council that I remain committed to progressing the examination to a point where a sound plan can be adopted. While this may mean modifying the Local Plan further, depending on the conclusions I reach following the further hearing sessions, I am optimistic that this examination can reach a positive outcome, one way or another.

I hope that this letter is self-explanatory and of assistance. However, if you do have any questions then please do not hesitate to ask, as always via Mrs St John Howe. Please place a copy of this letter on the examination web page.

Yours sincerely

Simon Berkeley

Inspector