



Strategic Planning & Research Unit

For and on behalf of
Linden Homes Strategic Land (Eastern)
New Road (Ashbrook) Ltd. and the Taylor Family

Examination of North Hertfordshire Local Plan
Representations to Inspector's MIQs Hearings
Matter 1

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1.0 MATTER 1 – LEGAL REQUIREMENTS

Q1.1 – Overall, has the Local Plan ('the Plan') been prepared in accordance with the 'duty to cooperate imposed by Section 33a of the Planning and Compulsory Purchase Act 2004 (as amended)?

1.1 No comment

Q1.2 - What are the strategic, cross-boundary issues of relevance to the Plan?

1.2 There are two clear strategic issues with the Plan:

- a. The undersupply in Luton which is being addressed directly by the "ring fenced" allocation in part b of Policy SP8: Housing;
- b. The undersupply emerging from Greater London which has not been addressed.

Q1.3 – What actions have been taken in relation to the 'duty to cooperate'?

1.3 The issue of Luton's undersupply has been addressed; the issue of London has been subject to a number of meetings between the Greater London Authority and the authorities for the wider South East, including three "summits" in 2014, 2015 and 2016.

1.4 As a result of these discussions, it was agreed to set up a small Political Steering Group to oversee the emerging discussions. This group has met on a number of occasions.

1.5 This Group is supported by another that is now known as the Strategic Spatial Planning Officer Liaison Group (SSPOLG), and this has focused mainly on housing, infrastructure and demography.

1.6 In reality there has been very little movement in securing any willing partners to assist in meeting London's needs. The SSPOLG Report (5th September 2017 - Item 3 London Plan and Potential Willing Partners for Growth) comments upon further work being undertaken in respect of both the likely level of need and urban capacity. This will hence indicate the size of any gap between demand and supply. The Report goes onto state:

1.2 Regardless of any gap, the GLA believes it is prudent to plan for a longer-term contingency. This is particularly the case given the uncertainties around the expected new national standardised methodology to assess housing need and the barriers to housing delivery that we all face. This means the search for potential willing partners for growth is important, and the Mayor would welcome any support from partners outside London that could facilitate his approach. What is broadly on offer to potential willing partners is set out in emerging policy and centres around investment in strategic infrastructure to support housing and business development in growth locations that will be required to meet need and secure mutual benefits for London and relevant partners. The promotion by the Mayor of good links with the capital to/from potential employment locations outside London to help meet employment need that cannot be met within London, is another example of mutual benefits.

- 1.7 In terms of those Counties and Districts that have been prepared to meet with the GLA, it should be noted that any meeting with Hertfordshire authorities has yet to be confirmed.
- 1.8 Given the very strong relationship between Hertfordshire and London, it is disappointing to note the lack of progress on one of the central issues facing planning at the present. Consequently, this is a matter that has been left unaddressed in this Plan, rendering it, in our view, in conflict with national policy which seeks to meet the housing needs of the nation (NPPF paragraph 17).
- 1.9 It is accepted that the legal duty to cooperate does not apply to the Mayor (Planning for the right homes in the right places: consultation proposals DCLG 2017, paragraph 60). It is noted that this is being identified as a shortcoming of the present DtC which the Government is seeking to address. In the consultation, the Government state that in order to ensure that the aims of the statement of common ground can be achieved in every area, the Government is seeking views on the most effective ways of introducing SoCG into areas where Mayors have plan making powers (question 7).

Q1.4 – What have been the outcomes of the actions taken in relation to the duty to cooperate’?

- 1.10 Allocation in SP8 of 1950 dwellings to meet Luton's needs.
- 1.11 Despite recognising in the Plan (paragraph 2.76) that the District has a considerable daily outflow of commuters, to highly skilled employment areas mainly in London (but also other Hertfordshire districts), there is no mention of the consequences of increased out migration from London or unmet need in the capital.
- 1.12 Nor is there any apparent recognition of the effect of Luton Airport as a significant regional employer and the influence that this is likely to have on North Herts in addition to the Luton housing market which the DtC addresses.

Q1.5 – How does the Plan address these outcomes?

- 1.13 It does not.

Q1.6 – Has the Plan been prepared in accordance with the Council's Statement of Community Involvement and met the minimum consultation requirements in the Regulations?

- 1.14 No comment.

Q1.7 – Has the Plan's formulation been based on a sound process of sustainability appraisal and testing of reasonable alternatives, and is the sustainability appraisal adequate?

- 1.15 In section 4 of our Reg19 submission, DLP highlight that there has been an inadequate consideration of reasonable alternatives. The SA 2016 is not legally compliant for the following reasons:
- a. The need to reference different documents to ascertain how decisions have been reached and options assessed is contrary to the Regulations, which suggest the documents that the SA relies upon should be made available together.

- b. The SA requires the reader to undertake a “paper chase” though various documents to understand how decisions have been reached.
 - c. The SA fails to consider in the appropriate way all reasonable alternatives such as meeting the higher OAHN figure; one such reasonable alternative would be meeting higher rates of out migration from London; another is the potential of South West Hitchin to deliver an increased level of housing together with substantive infrastructure benefits.
- 1.16 The fact that the Council have had to produce a supplementary paper (LP8) is an indication of the potential shortcomings of the submitted SA. The implications of these shortcomings may be that the Inspector should request the Council to provide further information to explain parts of the SA.
- 1.17 In order to prepare a legally compliant SA, the Council's consultants will need to update the SA Report (2016), ensuring that it contains all the information required by Annex I of the SEA Directive. The SA also needs to contain information about the alternatives considered in all previous stages of the SA, including why the alternatives were selected and why the preferred options were chosen. If this is not done, the SA will not be compliant with the Directive, the implementing Regulations and case law.
- 1.18 SA reports are very long and full of detail. They are also regularly scrutinised and sometimes challenged on their contents at Local Plan Examinations and through legal challenge in the High Court on the process of their preparation. It is therefore essential that the legislation is followed very carefully and that the SA Report is examined fully to ensure compliance.
- 1.19 It should not be necessary to undertake a “paper chase” of the evidence to find the necessary information required for an SA Report, and this has been the subject of a successful legal challenge in the past. The judgement in *Save Historic Newmarket Ltd v Forest Heath District Council* was specifically in relation to the handling of alternatives, but the principle was related to the need for a paper chase.
- 1.20 The submitted SA is not self-contained in this respect and to fully understand the choices made to reach the final strategy a number of documents have to be relied upon.
- 1.21 In respect of considering reasonable alternatives, Article 5.1 of the Directive states:
“an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives ... , are identified, described and evaluated.”
- 1.22 It is clear from High Court judgements (*Heard v Broadland District Council, South Norfolk District Council, Norwich City Council*) that alternatives should be assessed to the same level as proposed sites and that all SA documentation should be consulted on together.
- 1.23 CAG Consultants carried out the Sustainability Appraisal of the Pre-submission Local Plan. No specific assessment of the objection site as a reasonable alternative is given – indeed no assessment is made of any reasonable alternatives for the delivery of housing or indeed highway infrastructure and traffic solutions. In fact, the only reference to alternatives is in the reported consultation comments on a previous (February 2013) iteration.

- 1.24 Whilst LP4 Appendix 7 Non Preferred Sites identified SWH, it does so in relation to a composite of sites for which it considers the capacity to be 6-7000 dwellings. No assessment has been made of the more realistic scale of development that has been consistently promoted.
- 1.25 In fact, Site 209 (South West Hitchin – SWH) was recorded in the November 2014 SA of the Preferred Options noting that it was a site appraised previously in 2009 and 2013 - and was contained within a schedule of sites not taken forward.
- 1.26 This SA set out strengths and weaknesses, based upon a capacity of 2,800 – greater than that proposed in this objection. However, notwithstanding that Site 209 has consistently been put forward by our Clients in connection with the provision of a southern bypass for Hitchin, either in full or in part to enable staged delivery, the SA demonstrably makes no reference to the traffic relief that this would engage. To the contrary, amongst weaknesses the 2014 SA notes that the scheme could increase congestion, as well as light, air and noise pollution and cause disruption during construction.
- 1.27 Stripping out this misassumption and the adverse impacts that would be common to all the strategic scale allocations, the only material impacts would be:
- a. Location likely to increase commuting by car – it can be noted that the site is significantly closer to an East Coast Main Line station than the Great Ashby allocation and not materially further than the proposed strategic allocation in Hitchin;
 - b. The site contains wildlife sites, trees and hedgerows – which can be addressed through good design and appropriate management of the natural environment;
 - c. The site contains designated archaeological areas – which can be addressed through heritage assessment, design and layout;
 - d. There will be significant landscape impacts as the site borders the AONB – the site as proposed does not border the AONB, nor does it encroach upon it being clearly separated from the designated area;
 - e. There is potential surface water flooding – management of surface water flows would be a feature of any such strategic scale development.
- 1.28 Therefore, whilst the SA analysis is right to identify specific issues, none are exceptional to the extent that the site did not constitute a reasonable alternative at the time of the original appraisals. However, the Council has patently chosen not to consider the provision of development in the context of a bypass provision, the benefits of which must be set against the impacts.
- 1.29 Having regard for the need to identify additional land to meet housing needs, our Clients are of the view that there is no overriding reason why the objection site should not be allocated where matters of detailed masterplanning can address the principal identified site specific issues.
- 1.30 While the SA (LP8) seeks to address the issues raised by DLP's Reg19 submissions, and while the highlighted omissions in the 2014 SA have been addressed it still does not provide an indication as to how these changes have been taken into account in dismissing this site as a reasonable alternative.

Q1.8 - Has the Habitats Regulations Assessment been undertaken in accordance with the Regulations? Has Natural England confirmed that the information set out in the HRA is sufficient and that the conclusions drawn are supported?

1.31 No Comment.

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