



**Hearing Statement on Behalf of Jelson Homes Ltd
Oadby and Wigston Local Plan Examination
Matter 1: Legal Requirements and Procedural
Matters**

March 2018

1. Matter 1 – Legal Requirements and Procedural Matters

Question 3 – Has the Local Plan been subject to Sustainability Appraisal, including a final report on the published plan and is it clear how the Sustainability Appraisal influenced the final plan and dealt with mitigation measures? Has a Habitats Regulations Assessment under the Habitats Directive/Regulations been carried out to the satisfaction of Natural England?

1.1 The Council) has commissioned a Sustainability Appraisal (SA), which has been prepared by Land Use Consultants (LUC). However, it is not at all clear how the SA has influenced the final plan and dealt with mitigation. Our concerns about the SA can be summarised as follows:

a) the SA comprises LUC made judgements about the likely impacts or effects of each of the Council's proposed policies and allocations (and its rejected options), presented against a series of criteria or factors. These judgements are variously:

- without technical evidence (e.g. in respect of environmental and other impacts) and are clearly based on a very basic or a superficial, desk based assessment;
- ignorant of how developers design and deliver housing and employment developments and, in particular, how they are driven by national policy to select sites of the lowest environmental value, focus on locations that area well connected, design for the site's context, provide for infrastructure enhancements or reinforcement where necessary and provide for enhancements in terms of wildlife habitats and biodiversity (in other words, the judgements make no allowance for the types of mitigation that would inevitably be provided); and
- inappropriate (i.e. not relevant or related to the criteria being assessed) or simply bad.

b) there is no weighting of the sustainability criteria in the analysis (a positive effect in one respect might not be as beneficial, overall, as a positive effect in another respect);

c) there is no weighting of locational factors in the analysis;

d) there is no overall sustainability score attributed to the options assessed, whether they be policies or sites;

e) there is no 'relative merits assessment' within the SA – an assessment which compares the overall sustainability credentials of the policy or site options with each other and which, for example, indicates how sustainable the Plan will be if certain sites or combinations of sites are developed instead of others; and

f) the 'decisions' that have been taken in respect of both policy and site selection do not appear to have been based on the SA at all (see the reasons given for site selection / rejection in Appendix 6 and the reasons given for policy selection in Appendix 7, none of which can be directly related to the SA analysis).

1.2 Whilst, therefore, an SA has been produced, it (i) is totally unclear how it has influenced the form that the Local Plan has taken and (ii) is too crude to have enabled the Council to make robust decisions about the which policy and site options to propose and which to reject. In other words, has not enabled the Council to

develop a plan that is demonstrably justified, positively prepared, effective and consistent with national policy.

Question 4 – Does the Local Plan have regard to national planning policy, including consistency with the NPPF and the planning policy for traveller sites? Is there sufficient local justification for any policies that are not consistent with national policy? Does the submitted plan properly reflect the presumption in favour of sustainable development in the NPPF?

1.3 Policy 42 of the Local Plan (which we comment on in more detail in our Matter 10 Statement) appears to impose a blanket ban on all built development (that is, it only allows ‘uses’ within the Green Wedges). If this is correct, then Policy 42 is at odds with the NPPF which requires a balanced approach to be taken to the assessment of development proposals. For Policy 42 to be consistent with the NPPF it needs to allow for development to proceed where it can be demonstrated that it would not have an unacceptable adverse impact on the stated objectives of the Green Wedges or where the benefits of allowing the development would outweigh the harm that would be caused by it.

1.4 Paragraph 14 of the NPPF establishes a ‘presumption in favour of sustainable development’, the wording of which is now well-established. Paragraph 15 of the NPPF directs that policies in Local Plans should,

“follow the approach of the presumption in favour of sustainable development so that it is clear that development which is sustainable can be approved without delay. All plans should [have] clear policies that will guide how the presumption should be applied locally”.

1.5 Policy 1 of the Local Plan seeks to establish a ‘presumption in favour of sustainable development’. The final part of proposed Policy 1 states that,

“should there ever be a time when the Plan is deemed absent or silent or out of date, the Council will not look upon development proposals positively, where the proposal is deemed unsustainable, and / or the adverse impacts associated with the proposal significantly and demonstrably outweigh the benefits...”.

1.6 This is not consistent with Paragraph 14 of the NPPF. Indeed, it is completely at odds with what is a critical component of the Government’s policy – the ‘tilted balance’. This element of Policy 1 is therefore not sound and should be struck out of the Plan.

1.7 We note that in its response to our comments on the Submission Plan (document LP6/13), the Council has confirmed that it is willing to consider making an amendment to the wording of Policy 1 so that it aligns with the provisions of the NPPF. This would be acceptable.

Question 6 – Has the Local Plan been prepared in accordance with the Duty to Co-Operate and does it fully meet this legal requirement? What are the key outcomes from the co-operation with neighbouring authorities? In particular, how is it anticipated that unmet need in the City of Leicester authority area be addressed?

1.8 The provisions of the Duty to Co-operate (S33a of the Planning and Compulsory Purchase Act 2004) and the Government’s policies on planning strategically across boundaries (NPPF paragraphs 178-181) will be well known to the Inspector. As a consequence, it is not necessary to repeat them in full here. Suffice it to say that:

- the Council is required under the Duty to engage constructively, actively and on an on-going basis with adjoining authorities and other bodies in respect of strategic matters that impact on the preparation of development plan documents;
 - the Council is required under the Duty to have regard to any guidance given by the Secretary of State about how the Duty is to be complied with;
 - it is implicit in the Government's policy on the Duty that the collaborative working that is required should generate outputs that enable the authorities to determine what their development requirements are and to determine how strategic priorities across local boundaries should be addressed;
 - the Government's policy states that local planning authorities will be expected to demonstrate evidence of having effectively co-operated to plan for issues with cross-boundary impacts. It goes on to state that this could be by way of plans or policies prepared as part of a joint committee, a Memorandum of Understanding or a jointly prepared strategy which is presented as evidence of an agreed position; and
 - the Government's policy states that the result of the Duty should be plans that provide the land and infrastructure necessary to support current and projected future levels of development.
- 1.9 The Inspector will also be fully aware that councils are required to use their evidence base to ensure that their Local Plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the NPPF, including identifying key sites which are critical to the delivery of the housing strategy over the Plan period. Moreover, they are required, in accordance with Paragraph 14 of the NPPF, to produce plans that meet objectively assessed needs with sufficient flexibility to adapt to rapid change unless the adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole.
- 1.10 It is widely acknowledged that the Duty to Co-operate is not a duty to agree. However, for the Duty to be satisfied, the Council must have worked collaboratively with relevant authorities and other bodies and this collaboration must have generated outputs that enable the plan to address strategic, cross-boundary issues and satisfy the requirements of Government policy. If the Duty is satisfied simply by authorities talking to one another, but not identifying, understanding and attempting to grapple with strategic issues, then the Duty would be a pointless provision. That cannot be the intention.
- 1.11 In this instance, the Council has been working collaboratively with other authorities over several years and this has resulted in the authorities agreeing, through HEDNA, the level of housing need across the HMA in the periods 2011 – 2031 and 2011 – 2036. However, there is a critical residual issue which has not been addressed, and which will almost certainly have an impact on this Borough, and that is the matter of unmet needs.
- 1.12 The latest position on unmet need is set out in a 'Joint Statement of Co-Operation Relating to Objectively-Assessed Need for Housing' (Document LP2/04). This was published in November 2017 and is signed by the Leicestershire authorities. This confirms that Leicester City Council is unable to meet its objectively-assessed needs (as identified by HEDNA) up to both 2031 and 2036. At Paragraph 2.9, it records that OWBC is unable

to meet its needs up to 2036. Importantly, however, the document states that Leicester City Council (and, for that matter, OWBC) "*are yet to formally and finally evidence the extent of their unmet need*".

- 1.13 It has been asserted previously by the Leicestershire authorities that the matter of unmet needs, and how these might be accommodated across the HMA, would be addressed in the 'Strategic Growth Plan' that the authorities have committed to producing. However, a consultation draft version of that document was released in January this year and it makes no mention of unmet needs. A document published shortly before the Draft Strategic Growth Plan, entitled: a 'Joint Position Statement on Housing and Employment Land Supply' indicates the distribution of Leicester's unmet need will be confirmed in a 'Memorandum of Understanding' (MoU). It then goes on to state that the MoU had originally been expected to be published in January 2017, but has been delayed and will now probably be published "*in summer 2018*".
- 1.14 The uncertainty surrounding the unmet need issue is unacceptable. Moreover, it is a demonstration of the fact that although the authorities appear to be continuing to co-operate to resolve strategic issues, such co-operation has not yet generated critical outputs. This creates a substantial difficulty for Oadby and Wigston Council because, without clarity on the unmet need issue, it cannot demonstrate that its Plan meets the objectively assessed needs of the HMA and / or has the built-in flexibility to adapt to rapid change (indeed, as our Matter 2 Statement demonstrated, the Plan has no built-in flexibility at all).
- 1.15 The need for plan-making to be expedited is noted and understood. However, this cannot be at the expense of good planning. Indeed, a poorly prepared Plan will not provide the stability and certainty that the Government wants and expects the plan-led system to deliver. Instead, its weaknesses will be all too apparent and will further stimulate, rather than quell, an appeal-led system of development control. Unless, and until, the unmet need issue is resolved on an appropriate / sustainable basis, and the implications of that for this Borough are known, it will be premature and contrary to Government policy to progress the Plan to adoption.