Examination of the St. Albans City & District Council Local Plan
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Mr. Chris Briggs,
Spatial Planning Manager,
Planning & Building Control,
St Albans City and District Council

By email only

Dear Mr Briggs

St Albans City and District Local Plan Examination

1. Thank you for your letter dated 2 July 2020, which responds to our letter of 14 April 2020. We have fully considered all of the points you make before responding. In this letter we will focus on the Duty to Cooperate (DtC), since unlike soundness problems this cannot be remedied once the Plan has been submitted for examination. This is clear from the case of *Samuel Smith Old Brewery (Tadcaster) v Selby DC [2015] EWCA Civ 1107* and in particular, paragraphs 38 and 40.

2. Section 33A of The Planning and Compulsory Purchase Act 2004 requires a local planning authority to cooperate with, among others, other local planning authorities, and engage constructively, actively and on an ongoing basis in the preparation of development plan documents, so far as relating to a strategic matter.

3. Paragraph 25 of the National Planning Policy Framework (the Framework), says 'strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans'. We have no evidence of any meetings between the Council and other strategic policy making authorities to identify any of the relevant strategic matters during the preparation stage of the Plan.

4. There is no dispute that the Council did not identify the SRFI as a strategic matter during the preparation stage of the Plan, but we note that the Council now concede that this is a strategic matter and are seeking to allocate it through a main modification to the Plan. It must follow therefore that it should have been a matter for DtC during the plan preparation stage, in addition to housing.

5. The Framework at paragraph 26 says, 'joint working should help to determine where additional infrastructure is necessary and whether

development needs that cannot be met wholly within a particular plan area can be met elsewhere'. Even if the Council knew that the SRFI could not be accommodated in another local authority area, it should have at least been discussed in meetings as a strategic matter and some acknowledgement made that it needed to be accommodated. Whilst it may not have been possible for other local authorities to accommodate the SRFI, they may have been able to assist with accommodating some of St Alban's housing need. Moreover, it is quite feasible that constructive engagement at the Plan preparation stage might have led to the Council reaching a different conclusion on allocating the site as an SRFI, especially given this is now the Council's intention.

6. Indeed, there is no evidence of the SRFI even being discussed as a potential issue to be resolved as part of the Plan making process, despite the very considerable history to the identification of the Radlett site for an SRFI, the fact there was clear and compelling evidence that indicated this was the only place in the region it could be sited and the strong objection to its omission by the site promotor. It is clear that the Council had no intention of allocating the Radlett site for a SRFI in the Plan and that in allocating the site for housing, to help meet its housing need, it knew that would prevent the creation of the regionally and nationally important SRFI.

7. The 'Plan making' section of the PPG provides guidance in relation to the duty to cooperate. Paragraph 022 states that strategic policy making authorities are expected to have addressed key strategic matters through effective joint working, and not deferred them or be relying on an Inspector to direct them. It advises, '*Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or are not relying on the inspector to direct them. Where a strategic policy-making authority claims it has reasonably done all that it can to deal with matters but has been unable to secure the cooperation necessary, for example if another authority will not cooperate, or agreements cannot be reached, this should not prevent the authority from submitting a plan for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any outcomes achieved; this will be thoroughly tested at the plan examination'. (our emphasis) (Paragraph: 022 Reference ID: 61-022-20190315).* We have no evidence of the efforts made.

8. Turning to the issue of housing allocations. Paragraph 137 of the Framework requires that before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic planning authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development, including through discussions with neighbours. However, the LPA carried out a GB review and reached conclusions about exceptional circumstances without first having asked its neighbours if they could accommodate any of their housing need. In these circumstances, meeting housing need is clearly a strategic cross-

border issue and there is no evidence of cooperation having taken place as required by the duty. As we have set out previously this is contrary to the advice in paragraph 137 of the Framework which requires that before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic planning authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development.

9. The Council argues that DtC discussions about housing and/or the SRFI, with other neighbouring Councils would have been an academic exercise that would have served no purpose. Whilst that may have been so in relation to the SRFI because of its specific locational requirements, not necessarily so in relation to housing. Moreover, there is nothing in legislation or guidance which requires there to be a realistic potential to achieve a positive outcome. As the Council will be aware, in the case of *R(on the application of St Albans City and District Council v SSCLG [2017] EWHC 1751 (Admin)*, it was found that the duty is not a duty to agree and discussions should be active and on-going even when they seem to have 'hit the buffers'.

10. It is not unusual for planning authorities and their neighbours to be constrained and to find meeting housing needs difficult. This is not to say that the matters should not be discussed. These are issues at the heart of the DtC since the cooperation is about maximising the effectiveness of plan preparation. The cooperation needs to go beyond an agreement not to seek to address an issue because it is considered too difficult. Attempts to engage still need to be made. There is no evidence of any constructive, active on-going engagement regarding these matters during Plan preparation.

11. Whilst it is not a duty to reach a particular outcome, in relation to the provision of the SRFI, the Council could have arrived at a situation where the SRFI was not allocated but the DtC had been met because it had engaged constructively. However, it is clear that the Council did nothing constructive with its neighbours to explore addressing unmet housing need, so it could provide the SRFI or indeed potentially release less Green Belt land, during the preparation of its Plan and there is no contention that it did so. Whilst the discussions may not ultimately have fully resolved the strategic matters, given the constrained nature of the neighbouring authority areas, they should nonetheless have taken place in order to satisfy the legal requirement of the DtC; namely to engage constructively, actively and on an ongoing basis in the preparation of development plan documents, so far as relating to a strategic matter. Moreover, the evidence provided relating to a different plan (the emerging Joint Strategic Plan for the South West) does not demonstrate any active or constructive engagement in relation to the preparation of the Plan we are examining.

12. It is suggested in paragraph 23 of the Council's letter that the lack of Statements of Common Ground (SoCGs) and documentary evidence from the period prior to the submission of the Plan being submitted for examination can be remedied now through retrospective SoCGs. As set out

above, defects in compliance with the DtC at plan preparation stage cannot be remedied during examination.

13. In conclusion, having regard to all the previously submitted written evidence, the discussions at the hearings and your response to our last letter, in our judgement it is clear that the Council has not met the DtC. Moreover, this failure cannot in law now be remedied through the examination process by, for example, SoCGs or main modifications, even if such an approach were to be supported by those examination participants who raised concerns in respect of the DtC.

14. This is clearly a very unfortunate situation and we appreciate that it will be deeply disappointing to the Council and other examination participants. However, we wish to emphasise that we have not reached these conclusions lightly and have, throughout, sought to be as pragmatic as is possible within the constraints set by legislation.

15. The Council therefore have two options available to them. The Plan can be withdrawn from examination or we can write our report recommending that it not be adopted because of a failure to discharge the DtC. We appreciate that the Council may need to take some time to consider its preferred way forward, but we would be grateful if you would then advise us which route you wish to take.

Yours sincerely,

Louise Crosby and Elaine Worthington

Planning Inspectors