

HEARING

STATEMENT

St Albans City and District Local Plan

Matter 1 – Legal Compliance

On behalf of
Beechwood Homes Contracting Ltd
(Respondent no.332)

April 2025

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1. INTRODUCTION

- 1.1 This Hearing Statement has been prepared on behalf Beechwood Homes Contracting Ltd (hereafter Beechwood Homes) in response to questions set out in Matter 1 (Legal Compliance) of the Matters, Issues and Questions published in respect of the examination of the St Albans City and District Local Plan ('the Draft Local Plan' or 'DLP').
- 1.2 This Hearing Statement includes responses to specific questions under Issue 3 (Sustainability Appraisal).
- 1.3 Beechwood Homes have land interests at Verulam Golf Club ('the Site') which is proposed for allocation in the DLP (Allocation M8) for residential development.
- 1.4 Representations were made on the Regulation 19 Publication Draft Local Plan by Beechwood Homes and in respect of the Site (respondent no.332), through which changes to the plan were sought.
- 1.5 Matters raised within this Hearing Statement seek to avoid repeating points already made in the representations made on the Regulation 19 iteration of the DLP, unless they expressly relate to the Matters, Issues and Questions published.
- 1.6 Our position is that the DLP is capable of being made sound, but that modifications are required to ensure this is the case.
- 1.7 Under the 2024 NPPF transitional arrangement, it is recognised that the DLP will be examined in relation to national policies contained in the December 2023 NPPF. Consequently, unless expressly stated otherwise, references to the NPPF in this Hearing Statement refer to the December 2023 NPPF.

2. ISSUE 3 – SUSTAINABILITY APPRAISAL

Question 1

The SA tests a range of housing growth options in Table A, from 300 dwellings per annum to 1,200 dwellings per annum. What are the figures based on and do they represent an appropriate range of reasonable alternatives to the submitted Plan? How does the SA consider the potential for wider unmet housing needs?

- 2.1 The core issue relating to legal compliance is the level of discretion that Local Planning Authorities have in identifying reasonable alternatives for appraisal through the Sustainability Appraisal (SA).
- 2.2 Regulation 12(2) of the Environmental Assessment of Plans and Programmes Regulations 2004 ('the SEA Regulations') requires the SA to identify, describe, and evaluate the likely significant effects on the environment of the proposed options, as well as those of reasonable alternatives.
- 2.3 High Court judgments have confirmed that Local Planning Authorities have wide discretion in determining which options are reasonable alternatives. For example, in *Ashdown Forest*¹ it was established that Local Planning Authorities have a "*substantial area of discretion*" in determining the extent of inquiries necessary to identify reasonable alternatives, and that these decisions are "*deeply enmeshed with issues of planning judgment, use of limited resources and the maintenance of a balance between the objective of putting a plan in place with reasonable speed ... and the objective of gathering relevant evidence and giving careful and informed consideration to the issues to be determined*".
- 2.4 In general, provided the reasons for the identification of alternatives are rational and that the Local Planning Authority has not sought to avoid its obligation to evaluate alternatives by improperly restricting the range of options it has identified, then it is unlikely that the approach to identification of alternatives will result in a breach of the SEA Regulations.
- 2.5 It is considered that the site assessment within the SA Report is robust insofar as it confirms strong support for the allocation of the Site acknowledging that it benefits from very good proximity to the town centre. Whilst there are considered to be areas in which the site could have scored higher within the site assessment overall it is determined that the site is suitable for allocation and this is not disputed.

¹ *Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government* [2014] EWHC 406 (Admin)

- 2.6 Even if there were any concerns arising in relation to the current SA and the SEA Regulations, as was established in **Cogent**² it is possible to rectify any defects, even at this stage. In the case of **Cogent** the Court held that the Local Planning Authority's Addendum SA Report was sufficient to overcome the defects in the earlier report. The Addendum SA Report was made public and all parties were given the opportunity to respond to it, ensuring transparency and allowing public participation in the decision-making process. The Addendum Report was published and consulted on after the Examination in Public had closed but before adoption of the Core Strategy.
- 2.7 It is of course perfectly possible for the preparation of a Local Plan to be legally compliant, and for its preparation to accord with the requirements of the SEA Regulations, but to still be unsound. As such, whilst the question has been posed here in the context of legal compliance, we consider there is still merit in commenting here on the potential soundness implications of the issues raised.
- 2.8 In this context, it is relevant to note that St Albans City and District has one of the most outdated Local Plans in the country, and an acute market and affordable housing shortage. The District is in urgent need of a new up-to-date Local Plan that will provide a plan-led approach to addressing housing need, and facilitating the delivery of sustainable development.
- 2.9 If ultimately there was a need to examine higher growth options, and the results of this exercise determined that the DLP were required to be amended to support such higher numbers, there may well be additional sustainable and deliverable sites that can be included for allocation without necessitating any fundamental changes to the DLP or its strategy.
- 2.10 Alternatively, if it were to be found that a higher housing requirement was necessary (e.g. in addressing wider unmet housing needs), and that even with main modifications to increase the number of new homes provided the DLP still did not meet this, it would clearly be counterproductive to prevent the DLP from proceeding to adoption, in the context of such a significant housing shortage. Instead, we suggest the Inspectors' approach to the consideration of the Brentwood Local Plan provides a useful example of a pragmatic solution to such an issue. In this case the Inspectors concluded the following:

"Overall, this [updates to the housing trajectory] results in an updated housing land supply figure for the Plan period of 7,146 new dwellings. Accordingly, the Plan is not able to meet the identified housing requirement of 7,752 new dwellings, resulting in a shortfall of 606 dwellings over the Plan period..."

"Fundamentally, the Plan supports the delivery of much needed housing within Brentwood, significantly boosting supply in accordance with Government policy. This includes providing more affordable

² *Cogent Land LLP v Rochford District Council* [2012] EWHC 2542 (Admin)

housing, which has historically been under-delivered within the Borough, affecting overall affordability.

"It is imperative that there is a Plan in place to enable housing to come forward now, including the removal of land from the Green Belt to facilitate this, otherwise there would be a significant shortage of housing land supply in the Borough, due to limited opportunities outside the Green Belt. This would not help to meet the identified housing need. Furthermore, we conclude later in this report, under issue 11, that an immediate review of the Plan needs to be carried out, with the objective of meeting in full the identified housing needs. This is a necessary and pragmatic approach"³

- 2.11 There are clear parallels between Brentwood and St Albans in terms of the extent of housing need and the limitation of options to address this outside of the plan-making process due to Green Belt constraints. For reference, in 2020 Brentwood's Housing Delivery Test measurement was 51% whilst they could demonstrate only a 2.36 years supply of housing.

Question 2

Do any of the spatial options test a scale of housing growth that would enable affordable housing needs to be met in full? If not, what are the reasons why?

- 2.12 Please see our response to Question 1, which we consider applies equally to this question.
- 2.13 In particular, whilst this is a potential soundness concern, we do not consider it likely to go to the matter of legal compliance. Even if it was to be concluded to be a legal compliance issue, *Cogent* confirms it can still be addressed at this stage.
- 2.14 Furthermore, failure to progress the DLP to adoption would clearly have a negative impact on the provision of affordable housing. There may however be opportunities for additional sites to be allocated through main modifications to the DLP, this would still ensure a Local Plan to address acute affordable housing needs comes forward in a timely manner.

³ Report on the Examination of the Brentwood Borough Local Plan (23 February 2022) [245] [247] [248]

3. ISSUE 5 – STRATEGIC FLOOD RISK ASSESSMENT

Question 1

Where sites were identified in areas at risk of flooding as part of the sequential test, what was the reason for taking them forward to be assessed against the exceptions test? Are there reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding?

- 3.1 The judgment in *Scottish Widows*⁴ confirmed that Local Planning Authorities have discretion in interpreting both what constitute reasonably available sites, as well as the findings of the sequential test, provided the decision-maker's reasoning is rationale.
- 3.2 The more recent judgment in *Mead*⁵ reaffirms the latitude Local Planning Authorities have in determining reasonably available sites as part of the sequential test. Additionally, it confirms that decision-makers have broad discretion to weigh site suitability and other material considerations alongside flood risk issues, i.e. flood risk does not have to be a sole determinative.
- 2.15 Insofar as concerns the Site at Verulam Golf Club (Allocation M8), the majority of the Site is within Flood Zone 1 (land least at risk of flooding from tidal or fluvial sources) with a small proportion at risk of surface water flooding. The SA Report notes that the Site significantly intersects a surface water flood zone but confirms that this part of the site can be utilised for car parking and access. It is not correct that there is a significant area of the site within a surface water flood risk zone.
- 3.3 The Council's Flood Risk Sequential Test and Exception Test (December 2024) confirms that there is only a small proportion of the Site with a surface water flood risk and there is no need to consider alternative sites in Flood Zone 1 and that the Site therefore passes the sequential test.
- 3.4 Consequently, allocation of the Site gives no rise to concerns regarding flood risk.

⁴ *Aegon UK Property Fund & Scottish Widows plc v Cherwell District Council* [2013] EWHC 2572 (Admin)

⁵ *Mead Realisations Ltd v The Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 279 (Admin)