

HEARING

STATEMENT

St Albans City and District Local Plan

Matter 1 – Legal Compliance

On behalf of

Pigeon Capital Management 4 Limited
(Land Northwest of Batchwood Drive, St
Albans)
(Respondent no.365)

April 2025

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1. INTRODUCTION

- 1.1 This Hearing Statement has been prepared on behalf Pigeon Capital Management 4 Limited (PCM4L) 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) and Issue 5 (Strategic Flood Risk Assessment).
- 1.3 PCM4L is promoting the residential development of Land northwest of Batchwood Drive ('the Site') through the plan-making process.
- 1.4 The Site forms the land referenced SA-16-18 & SA-16-21 in the Council's Housing and Economic Land Availability Assessment (HELAA) (2021/22).
- 1.5 The Site is not proposed to be allocated in the DLP.
- 1.6 Representations ('the Regulation 19 representations') were made on the Regulation 19 Publication Draft Local Plan by PCM4L and in respect of the Site (respondent no.365), through which changes to the plan were sought.
- 1.7 Matters raised within this Hearing Statement seek to avoid repeating points already made in the representations on the Regulation 19 iteration of the DLP, unless they expressly relate to the Matters, Issues and Questions published.
- 1.8 Our position is that the DLP is capable of being made sound, but that modifications are required to ensure this is the case.
- 1.9 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

- 2.1 As a general observation regarding the Sustainability Appraisal (SA), we consider it important to distinguish between two separate but related considerations: firstly, whether the SA complies with the legal requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 ('the SEA Regulations'); and secondly, whether the SA has been robustly used to inform and justify the Draft Local Plan (DLP), which is ultimately a matter of soundness.

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?

- 2.2 At the heart of this question, insofar as legal compliance is concerned, lies the issue of how much discretion local planning authorities (LPAs) have in determining the range of reasonable alternatives to be assessed through the SA process.
- 2.3 Regulation 12(2) of the SEA Regulations requires the SA to identify, describe, and evaluate the likely significant environmental effects of both the plan's proposals and its reasonable alternatives.
- 2.4 In broad terms, provided that the rationale for selecting and appraising alternatives is sound, and that the authority has not unduly narrowed the scope of alternatives to circumvent its responsibilities under the SEA Regulations, then the approach is unlikely to constitute a legal failing.
- 2.5 However, should it be found that the process of identifying and evaluating alternatives does breach the SEA Regulations, we note—drawing on *Cogent*¹—that such breaches can still be remedied at this stage in the plan-making process. Any such remedy must be genuine and must not amount to a retrospective justification of the currently preferred approach. It is imperative that the Council remains open to the potential outcomes of any further appraisal and to the implications of such outcomes for the emerging DLP.

¹ *Cogent Land LLP v Rochford District Council* [2012] EWHC 2542 (Admin)

- 2.6 It is entirely possible for a Local Plan to be legally compliant—having followed the procedural and regulatory requirements—yet still be found unsound due to deficiencies in its evidence base, reasoning, or overall strategy.
- 2.7 While this particular question is posed primarily in the context of legal compliance, we believe it is both relevant and helpful to also consider the implications for the soundness of the Plan.
- 2.8 If, through further analysis or examination, it were concluded that higher growth options should have been tested more fully, and that the DLP requires amendment to accommodate this, we are of the view that there are additional sustainable and deliverable sites that could be allocated to support such an uplift.
- 2.9 The consideration and potential allocation of additional sites at this stage in the plan-making process would not be unusual. Indeed, we note that in the examination of the Ashfield Local Plan², the Inspectors directed the Council to undertake such an exercise following hearings that established a need for greater housing provision.
- 2.10 As set out in our Regulation 19 representations, we are concerned that the site selection process has been overly restrictive, resulting in the exclusion of sustainable and deliverable sites—such as the Site - without clear justification. We anticipate that other similarly suitable sites may have also been dismissed without proper consideration.
- 2.11 Given the acute and pressing need for housing, and the current constraints imposed by the existing Development Plan, we consider it particularly important that the DLP is amended through main modifications in order to be made sound, rather than being found unsound and subsequently withdrawn.
- 2.12 Should the inclusion of the Site, together with any other reassessed and deliverable sites, still fall short of addressing an identified housing shortfall, then—rather than concluding that the DLP is incapable of being made sound—we suggest that an additional policy could be inserted. This would require an immediate review of the DLP post-adoption, focused specifically on identifying further housing land opportunities. We note that a similar approach was endorsed by Inspectors examining the Brentwood Local Plan³, where it was described as a “necessary and pragmatic approach” to address housing supply issues.

² Ashfield Local Plan Examination: Initial Findings following hearing sessions for Matters 1-3 (3 December 2024) (INS05)

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

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?

- 2.13 Many of the points raised in our response to Question 1 are equally relevant to this question, particularly in relation to the identification and appraisal of reasonable alternatives.
- 2.14 We consider that there are clear opportunities for the Draft Local Plan (DLP) to go further in seeking to meet affordable housing needs, even if those needs cannot be addressed in full.
- 2.15 While this is primarily a matter of soundness rather than legal compliance, we consider that additional sustainable and deliverable sites—such as the Site—exist and could be included through main modifications to help address the shortfall in affordable housing provision. Their inclusion would represent a proportionate and pragmatic response to the challenges faced in meeting identified housing needs.
- 2.16 Any such modifications could then be assessed through an updated Sustainability Appraisal, which includes an option explicitly designed to enhance the delivery of affordable housing. It is, of course, entirely routine for main modifications to a submitted Local Plan to be accompanied by further appraisal to ensure continued compliance with the SEA Regulations and to support the soundness of the Plan.

Question 3

How does the SA consider different spatial options for housing and employment growth over the plan period and test reasonable alternative strategies?

- 2.17 Please see our response to Question 1.

Question 6

How were reasonable alternative site options defined and considered as part of the SA process? Does the SA adequately test a suitable range of reasonable alternatives to the sites allocated in the Plan, including for housing and employment sites?

- 2.18 While we do not repeat those points in full here, we wish to emphasise that the concerns raised relate primarily to matters of soundness—specifically, the justification for the rejection of alternative sites, particularly in the context of the pressing need to significantly boost housing land supply. These concerns also relate to how effectively the Sustainability Appraisal has informed the spatial strategy and site selection process, as required by paragraph 32 of the National Planning Policy Framework (NPPF).

- 2.19 We consider this to be a matter that can be suitably addressed through main modifications to the DLP. It does not, in our view, amount to a fundamental flaw that would render the Plan incapable of being made sound.

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 We are aware of at least one site—Land northwest of Batchwood Drive—that lies entirely within Flood Zone 1 and can be developed without any vulnerable elements impinging on areas identified as being at risk of surface water flooding.
- 3.2 While this is primarily a matter of soundness rather than legal compliance, we note that the Council's Flood Risk Sequential Test and Exception Test (document reference SADC/ED64) identifies a number of sites in St Albans, including several around St Albans, where a significant proportion of the land is at risk of flooding. It is unclear how the Council has justified the allocation of such sites over alternatives—such as the Site—that are demonstrably at lower risk and are capable of supporting sustainable development.
- 3.3 As set out in our representations to the Regulation 19 draft of the DLP, our position is that the Plan needs to identify **additional** sites for allocation, rather than simply replacing existing allocations. From a flood risk perspective, there are sites—acknowledged in the evidence base as reasonable alternatives—that are available and at demonstrably lower flood risk than at least some of the proposed allocations. These sites should be prioritised for consideration as part of the main modifications process, in order to help ensure the DLP is both sound and deliverable.