

ST ALBANS CITY AND DISTRICT LOCAL PLAN EXAMINATION

MATTER 1:

LEGAL/PROCEDURAL REQUIREMENTS (INTRODUCTION)

**ON BEHALF OF: BLOOR HOMES AND THE DEPARTMENT OF HEALTH
AND SOCIAL CARE**

Pegasus Group

Pegasus House | Querns Business Centre | Whitworth Road | Cirencester | Gloucestershire | GL7 1RT

T 01285 641717 | **F** 01285 642348 | **W** www.pegasusgroup.co.uk

Birmingham | Bracknell | Bristol | Cambridge | Cirencester | East Midlands | Leeds | Liverpool | London | Manchester | Newcastle | Peterborough

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INTRODUCTION

Pegasus is instructed by Bloor Homes and the Department of Health and Social Care to submit a Statement in respect of Matter 1, pursuant to the Matters and Questions identified by the Examination Inspectors.

Separately additional Statements have been submitted in respect of the following Matters:

- Matter 2
- Matter 3
- Matter 4
- Matter 5
- Matter 6
- Matter 7
- Matter 8

Pegasus previously submitted representations in response to the Reg 19 Publication Plan in October 2018 and the Draft Issues and Options and Call for Sites in February 2018. The Hearing Statements should be read alongside our representations and supporting evidence.

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1. MATTER 1 – LEGAL/PROCEDURAL REQUIREMENTS (INTRODUCTION)

Plan preparation

1.1 Is the Plan compliant with:

(a) The Local Development Scheme?

(b) The Statement of Community Involvement?

(c) The 2004 Act and the 2012 Regulations

1.1.1 Pegasus has no issues with the above.

Sustainability Appraisal

1.2 Are the likely environmental, social and economic effects of the Plan adequately and accurately assessed in the Sustainability Appraisal (SA)?

1.2.1 The NPPF para 32 states that:

“Local plans and spatial development strategies should be informed throughout their preparation by a sustainability appraisal that meets the relevant legal requirements. This should demonstrate how the plan has addressed relevant economic, social and environmental objectives (including opportunities for net gains). Significant adverse impacts on these objectives should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where significant adverse impacts are unavoidable, suitable mitigation measures should be proposed (or, where this is not possible, compensatory measures should be considered).”

1.2.2 It is considered that these have not been adequately assessed in the SA. As the Addendum to the SA was only published in March 2019, the Addendum compares the assessment for the approved Strategic Rail Freight Interchange alongside the proposed Park Street Garden Village at the same location. However, it does not consider the impact on economic and environmental objectives of the SRFI not being built in this location. As this is a national facility the implications of it being replaced by a Garden Village is significant, particularly as its requirements are location specific.

1.3 Does the SA test the Plan against all reasonable alternatives?

1.3.1 The issue is whether the SA tests all reasonable alternatives in terms of the quantum of development and the options to meet that quantum.

1.3.2 The SA states that the Local Plan is in effect a continuation of the same strategic planning process to replace the 1994 Local Plan, rather than a completely 'new' plan. Consequently, the Plan and the accompanying SA rely on much of the previous work undertaken to support the Strategic Local Plan (SLP) and the draft Detailed Local Plan (DLP). Whilst it is acknowledged that the process of SA is an iterative process, there is concern about the length of time taken to prepare the Plan.

1.3.3 The Procedure Guide for Local Plan Examinations (June 2019) produced by the Planning Inspectorate states that evidence base documents:

"Especially those relating to development needs and land availability, that date from two or more years before the submission date may be at risk of having been overtaken by events, particularly as they may rely on data that is even older."

1.3.4 The SA process for the Plan commences with the preparation of the previous plan that failed to proceed due to the fact that the Duty to Cooperate was not satisfied, it can therefore be argued that much of the evidence is out of date.

1.3.5 As set out in our representations to the Plan in October 2018, we consider that the SA is fundamentally flawed as it is not consistent with government guidance as it does not assess all reasonable alternatives.

1.3.6 As part of the Regulation 18 stage the Council has assumed that it would seek to meet its identified needs in full (capped needs) i.e. 913 per annum. The justification being that during the preparation of the previous plan in 2014 a range of housing options were considered and assessed by the SA (Reference SA Volume 2 Appendix E). The highest of those options was 900 dwellings per annum, at that time this was referred to as: *"this would enable the Council to meet its full housing needs and make additional provision for unmet need from region/sub-region/London"*. This figure closely equates to the 913 dwellings per annum figure proposed in the new Submission Plan (2019).

1.3.7 The Council in preparing the new Submission Plan (2019) tested one additional option, of 1,200 dwellings per annum, enabling the consideration of a higher level of housing delivery and/or potential to help neighbouring authorities to meet any unmet need. It is not clear how the figure of 1,200 dwellings was determined, as opposed to 1,300. It is therefore debatable whether the SA tests all reasonable alternatives in terms of the overall quantum of dwellings.

- 1.3.8 Whilst it is noted that the Council state that *"SA has informed the process and that it is not the purpose of the SA to decide the alternative to be chosen for the Local Plan, nor is it the role of the SA to determine what is and what isn't a reasonable alternative as those decisions are made the by the local planning authority"*; the fact is the SA has focussed on the Broad Locations - only 12 Broad Locations were assessed which were already "filtered" as a result of the Green Belt assessment (Green/Amber/Red). The Green Belt assessment was informed by the site selection work, Pegasus have objected to the way in which the evidence base has been used to inform the strategy and the SA.
- 1.3.9 For example, the evidence base from the Green Belt Review does not support the Park Street Garden Village, yet this is included in the Plan as a proposed Broad Location. This location within parcel GB 30 scores significantly in 3 of the purposes of the Green Belt and yet it was assessed as "Amber", whilst parcel GB 31, south and west of London Colney (location of omission site Harper Green) only scored significantly in 1 of the purposes of the Green Belt and yet it was assessed as "Red".
- 1.3.10 Unfortunately, because Harper Green (the site is promoted on behalf of Bloor Homes and the Department of Health) was assessed as "Red" in the evaluation of the Green Belt, it did not proceed to be considered in the strategic site evaluation; in which case it was not assessed against a range of likely economic, environmental and social impacts/benefits/costs. Neither was the deliverability of the site assessed.
- 1.3.11 Pegasus objected to the re-evaluation of the alternative strategies to the Park Street Garden Village in our representations to the Submission Plan in October 2018. At the Planning Policy Committee on 12th June 2018, Appendix 1 of item 10 set out the *"Draft Park Street Broad Location - re-evaluation following the gathering of evidence on the relative merits of housing and the SRFI as well as alternative strategies which would deliver the identified housing elsewhere."* However, it is considered that there are alternatives to the Park Street Garden Village which have not been considered in the SA. This is set out in our representations to the Plan and although omission sites are not discussed at the Hearing Sessions the purpose here is to make the point that there are alternatives which should have been assessed even based on the Councils own evidence and particularly in light of the Park Street Garden Village being the

- location for a Strategic Rail Freight Interchange; a decision made by the Secretary of State after a lengthy appeal process.
- 1.3.12 The SRFI is in the national interest and was granted on appeal by the Secretary of State who concluded that very special circumstances applied to the SRFI; these cannot be applied to the Garden Village.
- 1.3.13 It is considered that the SA is fundamentally flawed as it gives no weight to the decision or the reasoning of the Secretary of State in granting planning permission for the development of the SRFI to serve London and the South East in the national interest. The SRFI is being actively pursued as evidenced by the recent planning applications and decisions.
- 1.3.14 It is only in the Addendum to the SA (March 2019) which was not subject to consultation, that an assessment is made of the SRFI alongside the proposal for the Park Street Garden Village.
- 1.3.15 The PPG Paragraph: 018 Reference ID: 11-018-20140306 Revision date: 06 03 2014:
- “The sustainability appraisal needs to consider and compare all reasonable alternatives as the plan evolves, including the preferred approach, and assess these against the baseline environmental, economic and social characteristics of the area and the likely situation if the plan were not to be adopted. ”**
- 1.3.16 The same paragraph of the PPG provides guidance on how the SA should be prepared, that the SA should provide conclusions on the reasons the rejected options are not being taken forward and the reasons for selecting the preferred approach in light of the alternatives.
- 1.3.17 Reasonable alternatives are the different realistic options considered by the plan-maker in developing the policies in the plan. They need to be sufficiently distinct to highlight the different sustainability implications of each so that meaningful comparisons can be made.
- 1.3.18 It is considered that the Strategy is heavily focussed on the Broad Locations which have long lead in times to delivery, these Broad Locations should be supplemented by a range and choice of sites and this option should have been assessed in the SA, based on the proposed housing requirement.
- 1.3.19 Paragraph 4.4 of the SA Non-Technical summary states that:

“Due to the change in planning context and the ‘passage of time’ some of the options considered at the earlier stages during the development of the SLP and LP can no longer be considered as reasonable alternatives. For example some of the locations considered for inclusion in the Plan have already been developed or granted planning permission, whilst others have a limited capacity which falls below the criterion for a Broad Location that does not make them appropriate for inclusion in the Local Plan.” (my emphasis)

1.4 Have any concerns been raised about the SA?

- 1.4.1 It is noted that the Council’s response to this question dismisses whether any significant concerns have been expressed.
- 1.4.2 The SA related representations are summarised in CD 012 Appendix A. Several representations have made the point that the SA/SEA does not consider other/all specific sites that have been put forward and that it fails to provide an assessment for those sites, explaining why they have been rejected.
- 1.4.3 The issue of the Park Street Garden Village being proposed on the site of the Strategic Rail Freight Interchange which has an extant planning permission is considered to be a significant issue, sufficient for the Council to compare the SRFI with the proposed Park Street Garden Village in the Addendum to the SA (CD 012)
- 1.4.4 The Council’s opposition to the site for the purposes of the SRFI is well documented, but the fact remains that this was a decision by the Secretary of State.
- 1.4.5 It should be noted that on the basis of the Council’s own assessment: Table 4-1 Comparison of predicted effects in the Addendum to the SA, that the location of the SRFI scores more significant positive effects as a SRFI than as a Garden Village. This issue will be addressed in Matter 7.

1.5 Have the Council complied with the requirements of Section 19(5) of the 2004 Act with regards to SA?

- 1.5.1 This is a matter for the Council to explain.

1.6 There is a Submission addendum to the SA Report dated March 2019. Has this been consulted on? If not, should it have been?

1.6.1 The Submission Addendum has not been subject to consultation. Whether it should be consulted on or not, according to the PPG depends on the issues.

1.6.2 The guidance in paragraph: 021 Reference ID: 11-021-20140306 Revision date: 06 03 2014 states that;

"The sustainability appraisal report will not necessarily have to be amended if the plan is modified following responses to consultations. Modifications to the sustainability appraisal should be considered only where appropriate and proportionate to the level of change being made to the plan. A change is likely to be significant if it substantially alters the plan and/ or is likely to give rise to significant effects.

Further assessment may be required if the changes have not previously been assessed and are likely to give rise to significant effects. A further round of consultation on the sustainability appraisal may also be required in such circumstances but this should only be undertaken where necessary. Changes to the plan that are not significant will not require further sustainability appraisal work. (my emphasis)

1.6.3 The Council are clearly of the view that none of the representations have resulted in major changes being made to the information of findings that were included in the SA (September 2018).

1.6.4 The purpose of the SA is stated in the introduction, covering four main areas:

- Analysis and responses to the representations made during the consultation on the Publication Local Plan and its accompanying sustainability appraisal;
- Assessment of Proposed Minor Modifications to the Local Plan:
- Assessment of the proposed Strategic Rail Freight Interchange and
- Updates to the information in the SA Report (September 2018)

1.6.5 However, Appendix C of the Addendum has been prepared in response to representations to the Submission Local Plan and the SA, that questioned why the SA had not taken into consideration the fact that the site of the proposed Park Street Garden Village has an extant planning permission for use as Strategic Rail Freight Interchange.

- 1.6.6 Given that these issues are of a strategic nature and have raised considerable concern it is arguable whether the SA Addendum should have been published for consultation, instead any concerns about the assessment will need to be made in Hearing Statements.
- 1.6.7 The Procedure Guide for Local Plan Examinations (June 2019) produced by the Planning Inspectorate states that evidence should not be collected retrospectively in an attempt to justify pre-conceived conclusions. It could be argued that the Addendum is an attempt to do just this, in response to objections to the proposed Park Street Garden Village.
- 1.6.8 The point has been made at other Examinations that it is of crucial importance that any additional evidence base work/documents which the Council have undertaken (particularly in relation to HRA and SA) is carried out with an “open mind” and does not seek to simply justify the approach/policies currently set out in the draft plan. In the West of England JSP a consolidated Sustainability Appraisal was produced after the plan was submitted and this was the subject of public consultation before the hearing sessions commenced.

Habitat Regulations Assessment

1.7 Have the Council complied with the requirement of the Conservation of Habitats and Species Regulations 2017 with regards to Habitats Regulations Assessment (HRA)?

- 1.7.1 Pegasus has no comments on the HRA.

1.8 Has the assessment taken account of the EU Court of Justice Judgement (12 April 2018) and the updated PPG? Have any concerns been raised about the HRA and are there any outstanding concerns from Natural England?

- 1.8.1 This is not a point we submitted any representations on and therefore Pegasus has no comments on this question.

1.9 Are the likely environmental, social and economic effects of the Plan adequately and accurately assessed in the HRA?

- 1.9.1 This is not a point we submitted any representations on and therefore Pegasus has no comments on this question.

1.10 There is a HRA screening update March 2019. Has this been consulted on?

1.10.1 The HRA screening update has not been the subject of public consultation.

Other matters

1.11 Having regard to paragraphs 20-23 and 28 of the NPPF are there any policies in the strategic section of the Plan that should be in the non-strategic section?

1.11.1 The submission version of the Plan does not clearly set out what is policy and what is the justification for policy and there are no paragraph numbers. However, it is noted that in responding to the Inspectors letter of 2nd July 2019 that the Council have prepared a version of the Plan that addresses these points (ED 25F). Pegasus does not have any comments on whether some of the policies in the strategic section should be in the non-strategic section.

1.12 Does the overarching strategy of the Plan secure the development and use of land which contributes to the mitigation of, and adaptation to, climate change consistent with S19(1A) of the Planning and Compulsory Purchase Act 2004? If so, which are the relevant policies?

1.12.1 This is a matter for the Council.

1.13 How have issues of equality been addressed in the Plan?

1.13.1 This is not a point we submitted any representations on and therefore Pegasus has no comments on this question.

1.14 Why is the Plan start date be in the future?

1.14.1 Pegasus consider that the plan is unsound as the plan period should start from 2018.

1.14.2 The PPG Paragraph: 008 Reference ID: 2a-008-20190220 states that:

“Strategic policy-making authorities will need to calculate their local housing need figure at the start of the plan-making process. This number should be kept under review and revised where appropriate.”

1.14.3 It is considered that the approach taken by St Albans is not consistent with the NPPF and associated guidance as the Council seeks to use a base date of 2020. By setting the housing requirement to commence in 2020 the Council are in effect removing at least two years of assessed housing needs from the point at which needs are set. (The standard method identifies a minimum annual housing need figure. It does not produce a housing requirement figure).

1.14.4 Pegasus consider that the plan should be consistent with the NPPF and PPG and be prepared to meet the needs from 2018-2036 and consequently additional sites are required to be allocated to meet these needs. Failure to commence the Plan at 2018 results in two years’ worth of housing need that is not addressed.

1.15 Do the revisions to the National Planning Practice Guidance (PPG) introduced in June and July 2019 (after the submission of the Plan) have any implications for any policies in the Plan?

1.15.1 There have been a significant number of changes to the PPG in June and July 2019, this is a matter for the Council to assess whether the Plan is compliant with government policy.

1.16 Are there any ‘made’ Neighbourhood Plans or any being prepared or in the pipeline? If so, how have these been taken into account and where is this evident?

1.16.1 This is a matter for the Council to address.

1.17 In light of the Council’s response to the Inspectors’ letter of 2 July 2019, please can a running list of draft Main Modifications be provided and put on the Examination website?

This is a matter for the Council to address.