

St Albans City & District Local Plan 2020-2036

Examination Hearing Statement

Matter 1 – Legal Compliance

Context and Introduction

1. Strutt & Parker has participated in the preparation of the St Albans City & District Local Plan ('the Local Plan'), on behalf of Taylor Wimpey Strategic Land (Representor ID 1187472) and in relation Land at Hill Dyke Road, Wheathampstead ('the Site').
2. Such participation included representations on the St. Albans City and District Detailed Local Plan Publication Draft 2018 ('the LPPD'), which was published for consultation under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. For ease of reference, a copy of our LPPD representations are provided again as **Appendix A** to this Hearing Statement.
3. Prior to representations on the LPPD, submissions were also made to the St. Albans City and District Local Plan Regulation 18 consultation.
4. As set out in our representations, the Site is considered to afford the opportunity to deliver a sustainable extension to the settlement of Wheathampstead without undermining the strategic purposes of the Green Belt, providing approximately 100 homes to help meet the District's acute housing need.
5. Notwithstanding the Site's potential, the LPPD does not propose allocation of the Site for residential development.
6. As per our representations on the LPPD, we have a number of concerns with the soundness of the process that has been used to determine proposed allocations in the LPPD, and consider the rejection of the Site exemplifies a flawed approach to the selection of sites, which is neither justified nor consistent with national policy.
7. In addition, and again as set within our LPPD representations, we have a number of concerns with regards to the Local Plan's approach to Wheathampstead which we consider renders it ineffective and contrary to the requirement to be positively prepared.
8. Furthermore, we identified concerns relating to the legal compliance of the Local Plan within our LPPD representations, including in relation to issues that may have prejudiced our client's interests in respect of the Site. Notwithstanding these being raised at the

Regulation 19 stage, we have not seen anything since from the Council which suggests our concerns were misplaced. Indeed, we note that the Council's Regulation 22 (c) Consultation Statement does not appear to have even acknowledged that some of the concerns we raised were registered, let alone provide a satisfactory response.

9. This Hearing Statement concerns Matter 1 (Legal/Procedural Requirements (Introduction)) of the Local Plan Examination Stage 1 Matters, Issues and Questions (ED26).
10. In particular, we have sought to address the Inspectors' questions in respect of plan preparation (Question 1) and Sustainability Appraisal (SA) (in respect of Questions 3, 4 and 6).
11. Our responses to questions 3, 4 and 6 concern issues of legal compliance in respect of the SA. It should be recognised that case law clarifies that defects in the SA process can be cured through subsequent SA work (see the judgment in the case of *Cogent Land LLP v Rochford District Council* [2012] EWHC 2542 (Admin) (copy provided as **Appendix B**)) and that such additional work can be undertaken post submission and after the examination has commenced.
12. We consider additional SA work is required in this instance, in order to address deficiencies in the SA undertaken to date. This should include the assessment of reasonable alternatives to the same level of detail as preferred options; and the integration of the findings of this into the Local Plan.

Question 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?

The Statement of Community Involvement

13. We raised concerns in respect of legal compliance within our LPPD representations. Such concerns included that the Council had failed to comply with its own Statement of Community Involvement (SCI) in respect of the preparation of the Local Plan. Specifically, that an entire stage of consultation which the SCI commits the Council to undertaking (Regulation 18 – Preferred Options) had been missed out.
14. Section 19(3) of the Planning and Compulsory Purchase Act 2004 (as amended) ('the Act') requires the Council to comply with its Statement of Community Involvement in the preparation of its Local Plan. It is manifestly the case that it has not done so in this instance.
15. Within our representations we urged the Council to consider this issue and undertake the further necessary consultation. Despite the Council having been alerted to this issue, we can find no evidence that it has considered it, let alone sought to address the concern.
16. We seek to avoid repeating the points made in respect of this issue that are set out at paragraphs 3.11 – 3.15 of our previous representations but confirm that these concerns remain.
17. Further to the points raised within our LPPD representations, we note the Council's Regulation 22(c) Consultation Statement (CD005) confirms that there was only one Regulation 18 consultation in the preparation of this Local Plan, contrary to the SCI's requirement to undertake two.
18. At page 51 of the Council's submitted Self-Assessment of Soundness and Legal

Compliance of the Plan (April 2019) (CD025), the Council confirm the SCI – updated in 2017 – is considered up-to-date. Notably, there is no suggestion that there are circumstances that could justify a departure from it.

19. The Council's Issues and Options consultation undertaken under Regulation 18 was a high level consultation, asking respondents to rank their priorities for the District and asking consultee to indicate how they felt about various high-level issues by selecting the appropriate 'emoji'.
20. The Council progressed from such a stage in the preparation of its Local Plan, directly to the Regulation 19 iteration. It entirely missed out the Preferred Options iteration the SCI commits the Council to producing and consulting upon.
21. This failure to adhere to Section 19(3) of the Act denied Taylor Wimpey Strategic Land (as well as other stakeholders and consultees) the opportunity to comment on a preferred strategy at an early, informative stage, prior to the finalisation of a Local Plan for submission.

Question 3

Does the SA test the Plan against all reasonable alternatives?

22. The requirement to undertake Sustainability Appraisal / Strategic Environmental Assessment (SA/SEA) in respect of Local Plans derives from the European Directive 2001/42/EC (SEA Directive), the relevant aspects of which in relation to plan-making are transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004 (Statutory Instrument 2004 No.1633) (SEA Regulations).
23. The Environmental Assessment of Plans and Programmes Regulations (2004) ('the SEA Regulations') require that all reasonable alternatives be considered and assessed to the same level of detail as the preferred approach (Regulation 12). It also requires that the reasons for the selection of the preferred approach, and the rejection of others, be set out (Regulation 16).

24. The SA which accompanies the LPPD did not consider development of the Site, development within the broad location of Wheathampstead, or any alterations to the Green Belt around Wheathampstead. As set out within our LPPD representations (paragraphs 2.82 – 2.84), it is not feasible to suggest that none of these are reasonable alternatives.

Question 4

Have any concerns been raised about the SA?

25. We raised concerns regarding the SA in our LPPD representations (paragraph 2.82 – 2.84 and 3.1 – 3.10), including matters pertaining to legal compliance. These concerns remain.

Question 6

There is a Submission addendum to the SA Report dated March 2019.

Has this been consulted on? If not, should it have been?

26. We are not aware of the Submission addendum to an SA Report having been subject to consultation.
27. Case law confirms the requirement to consult on SA/SEA extends to consultation on SA updates. We consider the case of (*Kendall vs Rochford District Council* [2014] EWHC 3866 (Admin)), is of particular relevance in this instance. A copy of the judgment is provided as **Appendix C**.
28. In this case, Rochford District Council had prepared a Sustainability Appraisal (SA) update in relation to the Discussion and Consultation iteration of its Allocations Development Plan Document, which it had previously consulted upon. The SA update was prepared ahead of, and independent to, the Regulation 19 draft which was

subsequently published and consulted upon. The process undertaken by the Council in respect of consultation on this update is discussed at paragraph 22 of the judgment.

29. The judgment went on to conclude that failures in consultation on the SA update did constitute a breach of the SEA Regulations in relation to the preparation of the Local Plan. It was not the case that the SA update was exempt from having to comply with the SEA Regulations in respect of consultation, simply by virtue of being an update.
30. As such, it is clear that St Albans City and District Council was required to consult on its Submission addendum to the SA Report, as per Regulation 13 of the SEA Regulations. We consider it is for the Council to demonstrate they have undertaken such consultation, and in such a way as to comply with the SEA Regulations.