

# **St Albans City and District Local Plan Examination**

## **Matter 1 – Legal/Procedural Requirements**

### **Responses on behalf of M Scott Properties Limited**

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**Turley**

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**Client**

M Scott Properties Ltd

**Our reference**

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# 1. Introduction

- 1.1 This Statement has been prepared by Turley on behalf of M Scott Properties Ltd (herein referred to as Scott Properties), pursuant to Matter 1 (Legal/Procedural Requirements) of the St Albans Local Plan Examination.
- 1.2 Scott Properties are promoting land to the west of Watling Street, Park Street, for the delivery of residential development, including a minimum of 50% affordable housing to be delivered within the first 5 years of the Plan. Scott Properties has submitted written representations in connection with the promotion of this sustainable site to all previous consultation stages of the emerging Local Plan.
- 1.3 The primary concern relating to Matter 1 is that the St Albans Local Plan Publication Sustainability Appraisal Report published September 2018, and its previous iterations have not adequately tested all reasonable alternatives and have thereby not demonstrated that the preferred strategy taken forward into the submission Local Plan is the most appropriate strategy for the scale of growth required.
- 1.4 The Sustainability Appraisal (SA) is not sufficiently robust and comprehensive to have properly evaluated all reasonable alternatives, based on current growth requirements. St Albans City and District Council (SACDC) have largely pre-determined the preferred strategy based on an earlier failed strategy, for a lower level of growth, ahead of the testing of reasonable alternatives. As such, they have tested only a very limited number of alternative options for the overall spatial strategy and the distribution of the site allocations, which would not seek to address the critical issue of affordability within the first 5 years of the Plan.
- 1.5 A key addendum to the main 2018 SA Report was published in March 2019, however to date we are unaware that SACDC have ever published this document for consultation. The failure to do so brings into question the robustness of the entire SA and reinforces the wider critique of the 2018 SAR raised above.
- 1.6 The remainder of this Statement responds directly to the questions raised by the Inspector. Scott Properties and its professional advisors have also requested to participate in the relevant Matter 1 Hearing Session to articulate the issues within this Statement.

## 2. Responses to the Sustainability Appraisal

### **Q2) Are the likely environmental, social and economic effects of the Plan adequately and accurately assessed in the Sustainability Appraisal (SA)?**

- 2.1 It is a primary requirement that a Sustainability Appraisal is undertaken in-line with the procedures prescribed by the Environmental Assessment of Plans and Programmes Regulations 2004, which was transposed into national law by EU Directive 2001/42/EC on Strategic Environmental Assessment (SEA).
- 2.2 In-line with the 2004 Regulations, a Sustainability Appraisal Report must be published for consultation alongside the Draft Plan that essentially ‘identifies, describes and evaluates’ the likely significant effects of implementing ‘the plan, and reasonable alternatives’.
- 2.3 Paragraph 32 of the National Planning Policy Framework (February 2019) states that Sustainability Appraisals ‘*should demonstrate how the plan has addressed relevant economic, social and environmental objectives (including opportunities for net gains)*’. The sustainability objectives for St Albans are set out at Section 3 of the SACDC Sustainability Appraisal Report (SAR) 2018. Table 3.1 of the St Albans SAR identifies 20 SA Objectives, which are listed as follows:

#### St Albans SA Objectives

1. To protect, maintain and enhance biodiversity and geodiversity at all levels, including the maintenance and enhancement of Biodiversity Action Plan habitats and species in line with local targets
2. To protect, maintain and enhance water resources (including water quality and quantity) while taking into account the impacts of climate change
3. Ensure that new developments avoid areas which are at risk from flooding and natural flood storage areas
4. Minimise development of land with high quality soils and minimise the degradation/loss of soils due to new developments
5. Reduce the impacts of climate change, with a particular focus on reducing the consumption of fossil fuels and levels of CO<sub>2</sub>
6. Ensure that developments are capable of withstanding the effects of climate change (adaptation to climate change)
7. Achieve good air quality, especially in urban areas
8. Maximise the use of previously developed land and buildings, and the efficient use of land
9. To use natural resources, both finite and renewable, as efficiently as possible, and re-use finite resources or recycled alternatives wherever possible
10. To identify, maintain and enhance the historic environment, heritage assets and their settings and cultural assets
11. To conserve and enhance landscape and townscape character and encourage local distinctiveness

12. To encourage healthier lifestyles and reduce adverse health impacts of new developments
13. To deliver more sustainable patterns of location of development
14. Promote equity & address social exclusion by closing the gap between the poorest communities and the rest
15. Ensure that everyone has access to good quality housing that meets their needs
16. Enhance community identity and participation
17. Reduce both crime and fear of crime
18. Achieve sustainable levels of prosperity and economic growth
19. Achieve a more equitable sharing of the benefits of prosperity across all sectors of society and fairer access to services, focusing on deprived areas in the region
20. Revitalise town centres to promote a return to sustainable urban living

- 2.4 The St Albans SA is required to identify and evaluate ‘likely significant effects’ of the Draft Plan on the baseline, drawing upon the sustainability objectives outlined above as a methodological framework.
- 2.5 The consideration and appraisal of alternative options is an integral part of the plan making and SA processes. Therefore it is vital that every effort should be made to predict likely effects as accurately as possible. However, the methodology used by the Council’s consultants (TRL) to undertake the St Albans SA is flawed, relying heavily on qualitative analysis to assess how the preferred site options (referred to as the Broad Locations) perform against the Sustainability Objectives.
- 2.6 The availability of site-specific data varies across the preferred site options, therefore making it impossible to simply discuss the merits of each site against the Sustainability Objectives by reference to ‘qualitative analysis’ alone. As such, work should have been undertaken to develop a robust methodology best suited to the purposes of options appraisal, whilst also reflecting the SA framework as closely as possible. By way of comparative example, within the recently adopted East Hertfordshire District Plan the methodology for that Sustainability Appraisal employed GIS data-sets to measure ‘quantitative analysis’ to show how each site option relates to various constraint and opportunity features.
- 2.7 The methodology and assessment of the Broad Locations in St Albans is presented at Appendix E of the 2018 St Albans SAR. For each SA objective the methodology however provides little in the way of appropriate explanation of the site appraisal criteria used to measure performance. For example, under the SA objective relating to the reduction of greenhouse gas emissions, the methodology does not attempt to set out the various thresholds used (distance to local services, train stations and local bus stops) to assess whether the development will result in additional vehicle trips. Rather the assessment presented at Appendix E relies on an over-simplified qualitative approach, making very generalised statements that sites are ‘located relatively close to local shops and bus services’, but with limited evidence to justify such findings.

- 2.8 The methodology employed in the 2018 St Albans SAR to assess the performance of each Broad Location against the Sustainability Objectives is far too subjective. There will be uncertainties when predicting effects as part of the SA process, i.e. a limited understanding of the baseline environment. However, this is why the methodology underpinning the SA should have drawn on both qualitative and quantitative analysis in order to make every effort to predict likely effects as accurately as possible.
- 2.9 For the reasons set out above, we do not consider that the likely environmental, social and economic effects of the Plan have been adequately and accurately assessed in the 2018 St Albans SAR. In particular, we are very concerned that that SA fails to evaluate the 'likely significant effects' of the Draft Plan on those Sustainability Objectives which seek to reduce the consumption of fossil fuels and levels of CO2 and promote the most sustainable patterns of new development.

**Q3) Does the SA test the Plan against all reasonable alternatives?**

- 2.10 For the reasons given above, it is patently clear that the SA was unable to adequately test all reasonable alternatives by reason of a fundamental flaw in the approach and methodology. In September 2016, the Inspector David Hogger, recommended that the St Albans Draft Strategic Local Plan (SLP) should be withdrawn after he found that the Local Planning Authority had failed to meet the duty to cooperate. SACDC challenged the Inspector's decision but following the decision in July 2017 by the High Court to dismiss the judicial review the Council instead decided to prepare a new Local Plan.
- 2.11 Although the decision was taken by SACDC to prepare a new Local Plan, this now included a much higher, step change in the housing requirement than had been identified in the Draft SLP, by reason of the Council's use of the Standard Methodology. Notwithstanding the major differences in assessed requirement between the new Draft Plan and its SLP predecessor, the Council decided to continue with the same basic approach for distributing housing development. As set out at Section 4.4 of the 2018 St Albans SAR, the decision was therefore taken by the Council not to identify or assess alternative spatial options, reflective of the higher housing requirement, but to rely on the assessment undertaken in 2014, which underpinned the failed 2016 SLP.
- 2.12 From the beginning of the plan making process the Council has therefore had a largely pre-determined Development Strategy. This has meant that sustainable areas of the District around settlements such as Park Street, which have good rail access, have been automatically discounted without reasonable and objective consideration. In contrast, a 'stepped' approach to spatial strategy-making, informed by an up to date evidence base, would have enabled the Council to identify a preferred spatial strategy and a number of alternative spatial strategies, better suited to the scale of growth required. However, the Council have not followed such an iterative approach and as a result the SA process undertaken by SACDC has not been undertaken in a comprehensive and robust manner, with the testing of reasonable alternatives, such as a more dispersed pattern of new growth, conspicuously lacking.
- 2.13 As set out on page 44 of the 2018 St Albans SAR, sites that were not identified as capable of accommodating residential development of a minimum of circa 500 dwellings or 14 hectares of developable land were simply not assessed as part of the SA process.

- 2.14 As a result, SACDC have tested only very limited alternative options for the distribution of site allocations, skewed by the application of a 'policy on' approach to the minimum scale of development to assess. Of the 12 site options that were tested 11 of these options were selected for inclusion in the Publication Draft Local Plan.
- 2.15 This approach is clear evidence that SACDC have not attempted to sufficiently evaluate all reasonable alternatives and the use of such an arbitrary size criteria has therefore prejudiced the findings of the SA. Consequently, in respect of the negative or minor negative effects identified in the 2018 St Albans SA against the SA objectives, SACDC cannot demonstrate that they have tested all reasonable alternatives to seek to avoid these effects and so it cannot be concluded therefore that they are unavoidable.

**Q4) Have any concerns been raised about the SA?**

- 2.16 Scott Properties submitted detailed representations to the Regulation 19 Draft Local Plan raising significant concerns with regards to the 2018 SAR. The concerns of all respondents, including Scott Properties are summarised, in the 'Council's response to representations to the Pre-Submission Plan' published on the Council's website. The key issues raised are summarised below:

- The SA/SEA does not test against all reasonable alternatives;
- The methodology currently excludes small to medium sites in sustainable locations, located in areas within walking distance of a train station and other supporting facilities / services, which would contribute towards the immediate housing need (most notably affordable housing) and allow the Council to address its housing shortfall within the first 5 years;
- There is no apparent justification for the inclusion of sites which can accommodate 500 or more dwellings or are 14 hectares minimum in area;
- There is no acknowledgement of the planning permission for the Strategic Rail Freight Interchange on the site of the proposed Park Street Garden Village;
- The Plan and the accompanying SA rely on much of the previous work undertaken to support the Strategic Local Plan (SLP) and draft Detailed Local Plan (DLP), the evidence base for which is out of date;
- The SA should provide an objective- led approach whereby the potential impacts of a development plan, its allocations and all reasonable alternatives are appraised to the same level of detail in order to identify their contribution to sustainable development;
- The SA doesn't currently provide any explicit commentary on the process the Council undertook to apply the sequential test based on the latest SFRA, taking future climate change into account; and
- The SA doesn't cumulatively assess the impact of development on the edge of Hemel Hempstead.

**Q5) Have the Council complied with the requirements of section 19(5) of the 2004 Act with regards to SA?**

- 2.17 Section 19 (5) of the Act states that the local planning authority must also:
- (a) Carry out an appraisal of the sustainability of the proposals in each [development plan document];
  - (b) Prepare a report of the findings of the appraisal.
- 2.18 For reasons set out above in response to Question 3, we do not consider that the 2018 SAR has tested the Plan against all reasonable alternatives. Therefore our view is that the Council has also not complied with the requirements of section 19(5) of the 2004 Act with regards to its obligations when preparing the SA.

**Q6) There is a Submission addendum to the SA Report dated March 2019. Has this been consulted on? If not, should it have been?**

- 2.19 To the best of our knowledge the addendum to the SAR Report dated March 2019 has not been consulted upon.
- 2.20 Paragraph 020 Reference ID: 11-020-20140306 of the PPG states that the
- “The sustainability appraisal report, including the non-technical summary, needs to be published alongside the draft plan for a minimum of 6 weeks”.*
- 2.21 As a key addendum to the main SA Report 2018, the Council should have published this document for consultation. The failure to do so brings into question the robustness of the entire SA and reinforces the wider critique of the 2018 SAR raised above.