

HARPENDEN GREEN BELT ASSOCIATION

**HEARING STATEMENT FOR EXAMINATION IN PUBLIC OF
ST ALBANS DISTRICT LOCAL PLAN**

MATTER 1 – LEGAL COMPLIANCE

1. For ease of reference, Harpenden Green Belt Association's ("HGBA's") response to the 2018 Consultation is at **Appendix 1**.
2. References to the appendices to this statement are given below as "**Appx 1, 2**" etc. Documents in the Examination Library are not included in the appendices but are identified by their reference number.
3. HGBA sets out below each of the Inspectors' questions; provides a summary answer to each question it wishes to respond to, with (where appropriate) additional explanation in numbered paragraphs.

Plan preparation

Q1: Is the plan compliant with (a) the Local Development Scheme? (b) the Statement of Community Involvement (c) the 2004 Act and the 2012 Regulations?

- A. No. The Council consulted prematurely, before it had compiled the evidence base and sustainability appraisal on which it wished to rely in this Examination. As a consequence, it did not make available to consultees the documents which it proposed to submit to the Examination. Consequently, the consultation which took place in 2018 was not compliant with Reg. 19 of the 2012 Regulations.

1. This question is dealt with in Section II, Part A of the HGBA consultation response (**Appx 1**).
2. By s.20 of the 2004 Act, a local planning authority must submit every development plan document for independent examination. By s.20(2)(a), the authority "*must not submit such a document unless they have complied with any relevant requirements contained in regulations under this Part*". The relevant regulations are the 2004 regulations. By s.20(3), the authority must also send to the Secretary of State "*such other documents (or copies of documents) and such information as is prescribed*".

3. By Reg. 19 of the 2004 Regulations:

"Before submitting a local plan to the Secretary of State under section 20 of the Act, the local planning authority must –

- (a) *make a copy of each of the **proposed submission documents** and a statement of the representations procedure available in accordance with regulation 35, and*
- (b) *ensure that a statement of the representations procedure and a statement of the fact that **the proposed submission documents** are available for*

inspection and of the places and times at which they can be inspected is sent to each of the general consultation bodies and each of the specific consultation bodies invited to make representations under regulation 18(1)” (emphasis added).

“Proposed submission documents” are defined by Reg. 17 and include:

“(a) the local plan which the local planning authority propose to submit to the Secretary of State...

(c) the sustainability appraisal report of the local plan...

(e) such supporting documents as in the opinion of the local planning authority are relevant to the preparation of the local plan.”

3. By Reg. 22, the documents which are prescribed for the purpose of s.20(3) of the 2004 Act (and therefore must be sent to the Secretary of State) include

“(a) the sustainability appraisal report...

(d) such supporting documents as in the opinion of the local planning authority are relevant to the preparation of the local plan.”

“The sustainability appraisal report” referred to in Reg. 22(a) is clearly “the sustainability appraisal report of the local plan” referred to in Reg. 17(c) – i.e. the same SA report must be available for consultation and then submitted to the Secretary of State. Equally, the “supporting documents” referred to in Reg. 22(d) are clearly the same supporting documents referred to in Reg. 17(e) – i.e. the same evidence base must be available for consultation and then submitted to the Secretary of State.

4. Taken together, the effect of these statutory provisions is that the local authority is obliged (a) to prepare a local plan, based on evidence; (b) to form an opinion as to which documents in its evidence base are relevant to the local plan (c) to prepare a SA of the local plan (d) to publish the local plan and allow consultation on the documents it has decided are relevant and the SA and (e) to then submit those documents and the SA, with the plan, to the Secretary of State for examination. The overall purpose of these provisions is that a local plan is published for consultation immediately before submission to the Secretary of State, giving consultees the ability to make representations on the plan, the completed evidence base and the SA which the authority intend to submit for examination. This in turn ensures that the Inspectors tasked with examination have the benefit of the consultation responses on all of the

evidence which they will review for the purpose of the examination: see PPG “Plan-Making – How are local plans produced?”.

5. The Plan was published for a six week period between 4 September and 17 October 2018. The documents which were made available to consultees are shown on the “supporting documents” tab for the consultation on the SADC Consultation Portal (stalbans-consult.objective.co.uk) and included an SA dated September 2018 plus appendices and a “Local Plan Document Library”.
6. However, it was always the intention of the Council that the main evidence-gathering process should not be completed until after the Plan was published: as shown in Table 1 to the Local Development Scheme 2017-2020, the date for “*pre-submission publication*” was given as September 2018, whereas the “*main evidence completion*” was Spring 2019, with “*submission*” in March 2019.
7. This is also apparent from the “work programmes” contained in Planning Policy Committee minutes. For example, the work programme for September 2018 (item 11 of the minutes, **Appx 2**) envisages key parts of the evidence would be gathered only after the consultation had taken place: this included evidence relating to housing need and delivery (scheduled for December 2018), traffic modelling (scheduled for February 2019) and a proposed “SA Submission Final Report” (scheduled for March 2019).
8. This is, indeed, what has occurred. Important documents in the evidence base submitted to the Secretary of State have been prepared only after the consultation in Sept-Oct 2018. They include:
 - (1) CD 012 St Albans Local Plan – SA Report Addendum March 2019
 - (2) CD 013 St Albans Local Plan – HRA Screening Update March 2019
 - (3) INFR 001 2018-2019 Infrastructure Delivery Plan (a FOI request confirmed that this was first published on 26 April 2019 and the inference is that it was only created following the Inspectors’ Initial Questions dated 17 April 2019)
 - (4) the results of traffic modelling: INFR Jun 2019 COMET LP4 Forecasting Report Final; INFR Sep 2019 SW Herts COMET Note Final Draft and INFR Oct 2019 COMET LP4 SADC Analysis V4 Final
 - (5) ENV 001 SW Hertfordshire Level 1 Strategic Flood Risk Assessment (although dated Oct 2018, this was not made available for consultation).

9. Thus, the Council has failed to comply with Reg. 19(a) and is in breach of its obligation under s.20(2)(a) of the 2004 Act, in that it did not “*make a copy of the proposed submission documents*” available for consultation. In particular:
- (1) the SA report which was available at the time of the consultation was not the final report on which the Council intended to rely in the Examination: it submitted (and always intended to submit) the SA Addendum Report of March 2019 to the Secretary of State but did not make that report available for consultation;
 - (2) it did not make available for consultation all the “*supporting documents*” which in its opinion are relevant to the preparation of the local plan.
10. The consequence of non-compliance with Reg. 19 is that the Inspectors cannot conclude that the Plan satisfies the statutory requirements set out in s.20(5)(a) of the 2004 Act. Consequently they are obliged by law to recommend non-adoption of the Plan under s.20(7A) of the 2004 Act.

Sustainability Appraisal

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

A: No.

- 1. Questions of sustainability of the Harpenden Broad Locations are dealt with in Sections IV and V of the HGBA consultation response (**Appx 1**).
- 2. As explained above, HGBA has not had the opportunity previously to comment on CD 012 St Albans Local Plan – SA Report Addendum March 2019.
- 3. As regards the sustainability assessment of NE Harpenden as now shown at Appendix D to the SA Addendum of March 2019:
 - (1) Flood risk should be shown as adverse, rather than uncertain, given that ENV 001 SW Hertfordshire Level 1 Strategic Flood Risk Assessment identifies risks of flooding (as recorded in Appendix F to the SA Addendum);
 - (2) The effect on air quality should be shown as “significantly adverse”, given the increase in traffic on roads around the Broad Location and having regard to the proposed expansion of Luton Airport and the proposed Lea Bank Energy Park.
 - (3) Adverse scores should be given for sustainable location and equality/social inclusion. This site is on the isolated edge of an isolated and relatively

disadvantaged community, which is disconnected from main services in Harpenden by the River Lea and detached from employment opportunities, transport connections, shops, sports facilities and medical and other infrastructure.

- (4) It is difficult to see how any proper assessment can be made of the quality of the housing to be provided, when Policy S6(vii) prescribes a minimum, but no maximum, capacity/density.
4. As regards the sustainability assessment of NW Harpenden as now shown at Appendix D to the SA Addendum of March 2019:
- (1) The effect on the historic environment should be shown as “significantly adverse”. Policy S6(viii) makes no mention of retention of the listed building at Cooters End Farm and the capacity calculations appear to assume that it will be demolished: please refer to Section V paras. 5-9 of the HGBA consultation response (**Appx 1**). If it is to be retained, its setting will be destroyed. These adverse effects cannot be considered “minor”.
 - (2) The effect on air quality should be shown as “significantly adverse”, given the increase in traffic, particularly down small country lanes around the Broad Location.
 - (3) The site is scored as partly beneficial against “landscape/townscape” because it is required to include recreation space and public open space, but this is likely to be minimal given the density at which it would need to be developed to deliver 580 homes (see again Section V paras.5-9 of the HGBA consultation response at **Appx 1**).
 - (4) Flood risk should be shown as “uncertain”, given that ENV 001 SW Hertfordshire Level 1 Strategic Flood Risk Assessment identifies some risks of flooding (as recorded in Appendix F to the SA Addendum).
 - (5) It is difficult to see how any proper assessment can be made of the quality of the housing to be provided, when Policy S6(viii) prescribes a minimum, but no maximum, capacity/density.

Q3: Does the SA test the Plan against all reasonable alternatives?

- A. No. For the reasons given in Section III part B of the HGBA Consultation response, the Green Belt Review was inadequate and the SA has not properly considered any sites

other than those identified via the Green Belt Review, and the Park Street Broad Location.

Q4: Have any concerns been raised about the SA?

A. Concerns have been raised in HGBA's consultation response about sustainability issues – see above.

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

A. Yes.

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

A. It has not been consulted on, but should have been – see above.

Habitats Regulations Assessment

Q7: Have the Council complied with the requirement of the Conservation of Habitats and Species Regulations 2017 with regards to Habitats Regulations Assessment (HRA)?

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Q8: Has the assessment taken account of the EU Court of Justice Judgment (12 April 2018) and the updated PPG? Have any concerns been raised about the HRA and are there any outstanding concerns from Natural England?

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Q9: Are the likely environmental, social and economic effects of the Plan adequately and accurately assessed in the HRA?

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Q10: There is a HRA screening update March 2019. Has this been consulted on?

A. It has not been consulted on but should have been – see above.

Other matters

Q11: Having regard to paragraphs 20-23 and 27 of the NPPF are there any policies in the strategic section of the Plan that should be in the non-strategic section?

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Q12: 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 s.19(1A) of the Planning and Compulsory Purchase Act 2004? If so, which are the relevant policies?

A. No. The volume of building on green field sites fails to pay any regard to the evidence regarding the environmental capacity of the District: see ENV 005 Environmental Capacity of St Albans City & District: Defining a Sustainable Level of Development.

Q13: How have issues of equality been addressed in the Plan?

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Q14: Why is the Plan start date in the future?

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Q15: Do the revisions to the National Planning Policy Guidance (PPG) introduced in June and July 2019 (after the submission of the Plan) have any implications for any policies in the Plan?

A. The Inspectors should have regard to PPG whenever it was published, since it serves to provide guidance on the application of NPPF 2019, which is applicable to the Plan.

Conclusion

The Council has failed to comply with its legal duties and the Inspectors are obliged to recommend the Plan for non-adoption.

APPENDICES

1. Harpenden Green Belt Association's 2018 Consultation Response
2. PPC Work Programme, Sept 2018