



# **ST ALBANS CITY AND DISTRICT LOCAL PLAN (2020-2036) EXAMINATION**

## **MATTER 1 – LEGAL/PROCEDURAL REQUIREMENTS (INTRODUCTION)**

**December 2019**

**CONTENTS**

1.0 INTRODUCTION ..... 1

2.0 MATTER 1 – LEGAL AND PROCEDURAL REQUIREMENTS..... 3

3.0 CONCLUSIONS ..... 8

## 1.0 INTRODUCTION

- 1.1 This Hearing Statement has been prepared by DLA Town Planning Ltd in response to the Inspector's Matters, Issues and Questions for the St Albans City and District Local Plan 2020-2036.

### Overview of DLA representations

- 1.2 DLA Town Planning is instructed by a group of around 10 landowner/developer clients with interest in a total of 16 sites across St Albans district. These sites range in size from 10 to 200 dwellings and are in a range of locations. These sites are not included within the draft Local Plan, despite being suitable and deliverable, and this reflects the fact that these sites have not been adequately assessed by the Council. The representations made by each client are similar in many respects and primarily focus on the weaknesses in the Council's chosen strategy, inadequacies in the evidence base and a lack of consistency with government guidance. This statement draws together clients' views into a combined position. The key points cut across many of the Inspectors' Matters and Issues and are summarised below for ease of reference:

- **Procedural issues** – we do not consider the draft Local Plan to be sound in terms of the way the strategy has been devised, the alternatives considered and relied upon, and the evidence that underpins both;
- **Housing provision east of Hemel Hempstead** – there is a strong argument advanced by Dacorum Borough Council, among others, that some or all of the housing proposed to the east of Hemel Hempstead should contribute to meeting Dacorum's housing need, rather St Albans' need; this raises a fundamental question as to whether this Local Plan can sustainably rely upon that housing to meet its own needs;
- **Park Street Garden Village** – this site has planning permission for a Strategic Rail Freight Interchange. This is common knowledge. This permission was granted by the Secretary of State on the basis of "very special circumstances", mainly around the specific need for this use. This planning permission has now been implemented and its delivery is outside of the control of the council. On this basis, it plainly follows that it is not deliverable as a housing site and should be deleted;
- **The 'stepped' approach is flawed** – The draft Local Plan is unable to demonstrate a five-year supply of housing land due to the lack of any proposed small and medium-size site allocations. The exclusive focus on strategic sites means that a

“stepped” housing trajectory is required which defers housing delivery, contrary to government policy;

- **There is conflict with Paragraph 68 of the NPPF** – A specific conflict with government policy arises in respect of the Framework’s requirement at paragraph 68 that 10% of the housing requirement be met on sites of less than one hectare.

1.3 In view of these soundness issues, modifications are needed to the Local Plan to enable it to be found sound. It is clear that additional housing provision is needed and such provision needs to be found particularly from small and medium-sized sites. These additional allocations should be made from the following sources as a priority:

- The small scale sub-areas already identified in the Council’s Green Belt Review but not taken forward;
- Medium-sized allocations around the main towns where these relate well to the urban area and where robust new Green Belt boundaries can be identified or where brownfield opportunities exist;
- Extensions to allocations already proposed in the draft Local Plan;
- A specific allowance for Neighbourhood Plans to allocate small and medium-scale housing sites in the Green Belt.

1.4 A short postponement to the hearing sessions may be necessary while the Council compiles the list of additional sites and produces additional policy wording. However, these changes can be made in the context of the current Local Plan examination and should **not** require the withdrawal of the Plan, particularly since much of the evidence base needed already exists.

## 2.0 **MATTER 1 – LEGAL AND PROCEDURAL REQUIREMENTS**

- 2.1 The Main Issue identified by the Inspectors for discussion under this matter is “Whether the Council has complied with the relevant procedural and legal requirements”.

### **Sustainability Appraisal**

*Question 2 – Are the likely environmental, social and economic effects of the Plan adequately and accurately assessed in the Sustainability Appraisal (SA)?*

- 2.2 Some of the likely environmental, social and economic effects of the plan have been assessed in the SA published by the Council. However, in our view the SA does not adequately address the full range of sustainability effects of the Plan.
- 2.3 One of the defining features of the draft Local Plan is the strategy to focus solely on strategic housing sites. These are defined by the Council as being able to accommodate 500 or more dwellings. While this strategy has some positive effects as noted in the SA (see for example, section 4.3.3.1 of the January 2018 note), there are also disadvantages with focusing on strategic sites, including the reliance on new strategic infrastructure, the lack of flexibility, the vulnerability of large sites to delays and the inability of the Local Plan to demonstrate a five-year housing land supply. These disadvantages are not recognised in the SA.
- 2.4 The SA does not set policy nor decide on which strategy to adopt. However, it does play an important role in setting out for the decision maker the positive and negative consequences of various options. If the consequences have not been accurately recorded, flaws are introduced into the decision-making process.
- 2.5 If the Council chose to adopt a strategic sites-only strategy in the knowledge that it would prevent them being able to demonstrate a five-year housing land supply, for example, that would be a soundness issue but not necessarily a legal compliance issue. However, the fact that the negative consequences of the strategy weren’t recorded in the SA does raise legal compliance issues.

*Question 3 – Does the SA test the Plan against all reasonable alternatives?*

- 2.6 The testing of the Plan against reasonable alternatives is a requirement under the SEA Regulations. The SA is legally deficient for the purposes of these Regulations, in particular in relation to Regulation 12 and Schedule 2. To adopt the plan in these circumstances risks breaching Regulation 5 and 8.

- 2.7 In explaining how the SA has dealt with reasonable alternatives, the SA Report refers to previous SA work dating back to May 2006. However, much of this material is largely irrelevant because of the change in circumstances since then. The submitted draft Local Plan provides a strategy to meet a housing need of 913 homes per year and the Council is required therefore to have considered reasonable alternative strategies to meet that housing target. Alternative strategies to meet a housing target of 250 homes per year or 436 homes per year (2016 Strategic Local Plan) are of very little relevance. It is only work since 2018 and based on the current housing target that is relevant.
- 2.8 The SA has so far failed to address the fundamental failings which flow from relying upon dated evidence base.
- 2.9 Regulation 12(2) sets out a requirement that:
- (2) The report shall identify, describe and evaluate the likely significant effects on the environment of –*
- (a) implementing the plan or programme; and*
- (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme*
- 2.10 Schedule 2, paragraph 8 then requires that the environmental report include:
- An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.*
- 2.11 The Council's assessment of reasonable alternatives since 2018 has been confined to strategic sites. A total of 12 reasonable alternatives were identified (May 2018 Working Note 2) but these were all strategic sites of 500 homes or more. There is no consideration of an alternative strategy that involved smaller sites. The assessment of the 12 potential locations did not highlight the potential delay to housing delivery that such options necessitate. Nor did the assessment acknowledge Government requirements to deliver a five-year housing land supply (NPPF paragraph 67a) and to accommodate 10% of the housing requirement on sites of less than 1 hectare (paragraph 68a).
- 2.12 In our view, there is a reasonable alternative to that chosen by the Council in the submitted Plan. This alternative would follow an approach adopted by countless local authorities across the country, including North Hertfordshire, Welwyn Hatfield

and Central Bedfordshire Councils to name a few local examples. The alternative would involve a greater mix of small, medium and large sites to provide a balanced and resilient housing supply that will bring a boost to housing delivery in a significantly shorter period of time.

- 2.13 The lack of consideration of such an alternative is demonstrated by the fact that sites below the 500-dwelling threshold have not even been assessed in an up to date SHLAA. As set out in our Regulation 19 representations, the 2018 SHLAA update was simply a list of submitted sites with no analysis on suitability or deliverability. The 2016 version of the SHLAA assessed certain sites that had been submitted since 2009 but for sites submitted earlier (and resubmitted in response to Call for Sites opportunities) there was no update of the previous assessment in 2009. In any event, many of the sites on which DLA is instructed were found to be worthy of further consideration in the 2009 SHLAA yet were not considered further by the Council.
- 2.14 This lack of knowledge by the Council about promoted sites that stems from failures of the SHLAA undermines any confidence that the reasonable alternative of including more smaller sites has been properly considered in the plan-making process.
- 2.15 In summary:
- a. It is not at all clear how the Council aims to meet its needs over the plan period by being overwhelmingly reliant on strategic sites;
  - b. No clear and credible reasons have been given for selecting sites of 500 or more and for discounting alternatives of the (1) greater mix of small, medium and large sites to provide a balanced and resilient housing supply; (2) for rejecting an approach adopted by other local authorities; (3) and how an assessment of the aforementioned has been appraised;
  - c. There has not been sufficient clarity as to the likely ramifications of relying upon strategic sites, and the consequences of not properly considering suitable alternatives.

*Question 4 – Have any concerns been raised about the SA?*

- 2.16 A number of concerns were raised in response to the October 2018 version of the SA, including by DLA Town Planning on behalf of its clients. Although these comments are summarised in the SA Addendum report March 2019 and a brief response provided, the substantive issues raised remain unaddressed.

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

- 2.17 In our view, while “an appraisal of the sustainability of the proposals” required in Section 19(5) has been carried out, the flaws in this process identified above means that additional work is required in respect of the submitted Local Plan before it can be found to be legally compliant.

*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?*

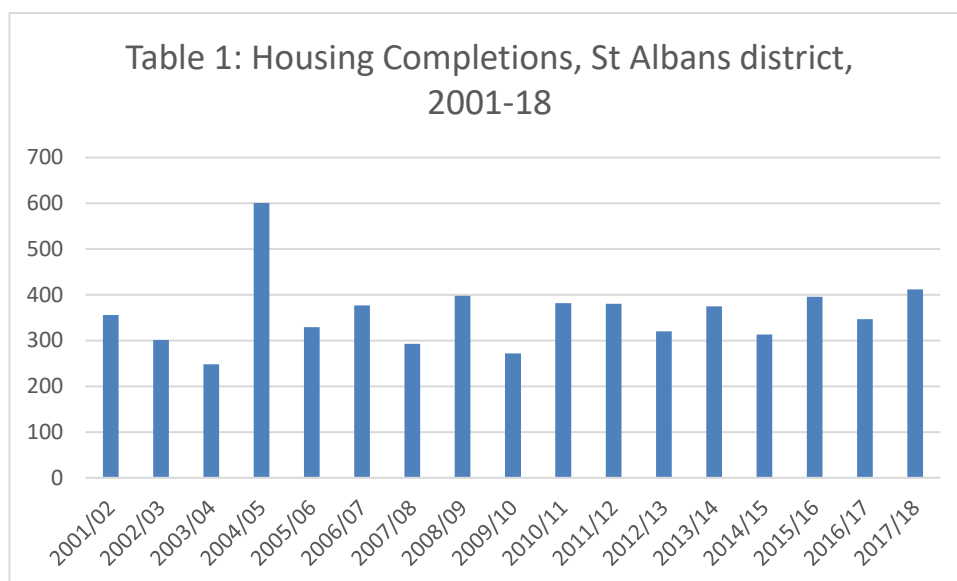
- 2.18 Some elements in the March 2019 Addendum could not have been published with the submitted plan in September 2018 (such as a response to consultation comments). However, certain elements could and should have been published at Regulation 19 stage. There are a number of instances where documentation or supporting evidence was not available to respondents in October 2018. Some of this material has been submitted subsequently but some has not. As examples, no Duty to Cooperate evidence was available at Regulation 19 stage and evidence to support key assumptions on housing delivery (e.g. windfall allowances) was not, and is still not, available. It appears the SA work is another such example.

### **Other matters**

*Question 14 – Why is the Plan start date be in the future?*

- 2.19 Although this question is procedural, it has important ramifications, particularly in terms of housing delivery. A combination of Green Belt constraints and reportedly having the second oldest Local Plan in the country have meant that housing delivery has been severely constrained over the years since 1994. Housing completions over that period has been “propped up” by the delivery of three large former hospital sites, brought forward through planning applications rather than allocations in a Local Plan. More recently, delivery has been heavily reliant on office to residential conversions; the 2018 AMR indicates that 249 homes will be delivered through office to residential conversions, which is 52% of the total supply in 2018/19. However, despite these developments, housing completions have been running at an average of around 359 homes per year over 17 years.





- 2.20 The Government’s Housing Delivery Test results provide a graphic illustration of the undersupply. The homes required 2015-18 was an average of 662 per year, whereas homes delivered averaged 385 over this period – just 58% of the requirement. However, this problem has not just occurred since 2015. Only once since 2001 (in 2004/5) have housing completions exceeded 400 in any one year. The shortage of sites caused by the lack of a local plan has severely constrained housing delivery in St Albans.
- 2.21 This is relevant to the question of the start date for the Local Plan because the Council’s proposed start date of 2020 discounts any historic shortfall. Not only this, but the Council’s proposed “stepped” housing trajectory defers any significant uplift in housing delivery until 2025 at the earliest. In doing so, the “stepped” trajectory also delays the provision of much-needed affordable housing.
- 2.22 In our view, a reasonable starting point for the Local Plan time period should be 2017, when work on the latest Local Plan started. Housing delivery calculations should be adjusted accordingly.

## 3.0 CONCLUSIONS

- 3.1 The draft Local Plan's exclusive focus on strategic-scale sites has substantial negative consequences, including the reliance on new strategic infrastructure, the lack of flexibility, the vulnerability of large sites to delays and the inability of the Local Plan to demonstrate a five-year housing land supply, and these consequences have not been adequately addressed in the SA. The proposed Local Plan and its lack of provision for small and medium-sized sites differs from the approach adopted by most other councils and particularly other draft Plans in Hertfordshire.
- 3.2 The SA's consideration of reasonable alternatives is limited and flawed and did not properly consider a development strategy that includes smaller sites, despite government policy promoting such sites. No clear and credible reasons have been given for selecting sites of 500 or more and for discounting alternatives.
- 3.3 It is our view that if the Sustainability Appraisal process was carried out correctly and the results properly balanced with Government policy then a more diverse portfolio of proposed housing sites would result.
- 3.4 On a detailed point, the start date of the Local Plan has a big impact on its ability to create a significant boost to housing delivery in line with Government policy. The Inspectors have already highlighted the relevant section of the government's Planning Practice Guidance in paragraph 008 Ref ID 2a-008-20190220 suggesting housing need should be calculated at the start of the plan-making process. The deferral of the start date and the accompanying uplift in housing delivery is not sound.

### **Changes needed for soundness**

- A revised Sustainability Appraisal is required and this should lead to a more balanced development strategy;
- The start date of the Plan needs to be changed and revert back to at least 2017. This will have consequential impacts on the calculation of the housing requirement.