



Epping Forest Local Plan

Examination Hearing Statement

Matter 1 – Legal Compliance

Prepared by Strutt & Parker on behalf of Scott Properties (Stakeholder ID 19LAD0086)

January 2019

Context

1. This Hearing Statement is prepared by Strutt & Parker on behalf of M Scott Properties Ltd (Stakeholder ID 19LAD0086) hereon referred to as 'Scott Properties', who have engaged in the preparation of the Emerging Local Plan (eLP) throughout the plan-making process.
2. Scott Properties' specific interest is in land at Chigwell Garden Centre, Chigwell, which is proposed to be allocated (CHIG.R5) in the Local Plan Submission Version (Regulation 19) (the LPSV) for 65 homes.
3. The site has been assessed by Epping Forest District Council (EFDC) in the plan-making process as site references:
 - a. SR-0478B (the CHIG.R5 allocation comprising 1.66ha);
 - b. SR-0478A (7.49ha);
 - c. SR-0586 (5.46ha)
4. CHIG.R5 forms part of the area proposed for allocation with the LPSV by Scott Properties (SR-0586). As per our representations on the LPSV (reference 19LAD0086-1 – 6), the principle of the allocation of land for development at this location is sound; but the extent of the site boundary is not. The LPSV has artificially divided the built form found on the site; by taking this approach the Local Authority has failed in its sequential approach to prioritising the redevelopment of previously development land, prior to developing green field sites.
5. An amendment to CHIG.R5 on this basis has been the subject of discussions with EFDC (see correspondence in Appendix 1) and is supported by a Landscape Note and Plan included within Appendix 1. The requested amendment would prevent the part of Chigwell Garden Centre artificially excluded from CHIG.R5 from going into disrepair as a result of development of the remainder of the site. This amendment also seeks to maximise the redevelopment of existing built form.

6. In addition, our principle concern with the LPSV is its failure to ensure the District's specialist accommodation needs are met, given the acute unmet need in the District. This is demonstrated the attached Needs Assessment (Appendix 2).
7. As set out within our LPSV representations, we consider that modifications can be made to the LPSV to ensure a sound Local Plan.
8. This Hearing Statement addresses Matter 1, Issue 4. We have sought to avoid repeating points made in our LPSV representation, but do expand upon these here where relevant.
9. Matter 4, Issue 1 concerns legal compliance of the Local Plan. Accordingly, our response is framed within this context.
10. appendices accompany this Hearing Statement:
 - Appendix 1: Letter and appendices to EFDC 21 January 2019 regarding CHIG.R5 Site Assessment
 - Appendix 2: Needs Assessment – Carterwood
 - Appendix 3: Scott Properties' LPSV Supplementary Representations
 - Appendix 4: Cogent Land LLP v Rochford District Council [2012] EWHC 2542 (Admin)
11. The LPSV was submitted for examination before 24 January 2019 – the deadline in the 2018 National Planning Policy Framework (NPPF) transitional arrangements for Local Plans to be examined under the 2012 NPPF. As such, these representations are made within the context of the 2012 NPPF; and references to the NPPF refer to the 2012 version, unless stated otherwise.

Issue 4

Has the Plan been informed by an adequate process of Sustainability Appraisal (SA)? Have the requirements of the SEA Directive and Regulations been met?

Question 1

Is the SA comprehensive and satisfactory and has it sufficiently evaluated reasonable alternatives? In particular, I understand that a “dispersed” pattern of development was pursued as a result of the Community Choices consultation. Were alternative distributions considered through SA, such as a more concentrated pattern, or different dispersal patterns?

12. We have a number of concerns relating to the LPSV SA, which are listed below and discussed further in this Statement:
 - a. The production of the Environmental Report to support the SA
 - b. The production of the Site Selection Report;
 - c. The accuracy and consistency of assessing proposed sites;

The production of the Environmental Report to support the SA

13. The requirement to undertake SA in respect of the Local Plan 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). We do not consider the failures to be fatal.
14. The SEA Regulations require preparation of an Environmental Report, that all reasonable alternatives be considered and assessed to the same level of detail as the preferred approach, and list the elements which should be included within the Environmental Report.

15. The SEA Regulations also require that every draft plan or programme for which an environmental report has been prepared and its accompanying environmental report (“the Relevant Documents”) be made available for consultation (Regulation 13). Consultation requirements of Regulation 13 include bringing the preparation of the Relevant Documents “to the attention of the persons who, in the authority’s opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned”. (Regulation 13, Paragraph 2 (b))
16. In addition, Regulation 16 of the SEA Regulations requires that the reasons for the selection of preferred alternative, and the rejection of others, be set out (Regulation 16).
17. The Council’s approach to preparing to undertaking SA, including consultation arrangements, gives rise to concerns in relation to legal compliance, as discussed below.
18. It is clear that an Environmental Report which seeks to meet the requirements of the SEA Regulations has been produced for the Local Plan (EB204: Sustainability and Equalities Impact Appraisal Non-Technical Summary (AECOM December 2017) (the ‘LPSV SA’)). As such, this requirement of the Regulations has been met.

The production of the Site Selection Report

19. It is noted that the LPSV SA placed reliance on a separate document (the Report on Site Selection (2017)), and makes a number of references to this separate report. This document was not available in its entirety during the consultation period on the LPSV.
20. The Report on Site Selection (EB805) was belatedly published for consultation independently of the LPSV SA and LPSV in early 2018, though it is unclear whether such consultation was in accordance with Regulation 13 of the SEA Regulations, or even if the Council consider that it was required to be.

The accuracy and consistency of assessing proposed sites

21. In respect of the Report on Site Selection, in our view it does not succeed in demonstrating why sites which *have* proposed to be allocated in the LPSV have been selected. The SA consistently highlights the benefits associated with allocating development close to the main transport nodes, specifically the underground stations along the central line.

“Additionally, much of the strategic option is in a sustainable location, located in close proximity to Chigwell Underground Station”. SA Report (December 2017)

22. However, where it is lacking is in its failure to explain why sites *not* selected have been rejected. We consider this particularly problematic given the LPSV does not propose to meet housing needs in full, and the purported justification for this appears to be a lack of sustainable, deliverable sites. This can be specifically demonstrated within Chigwell, where the SA highlighting that Chigwell is expected to accommodate between 410-430 homes, and the LPSV seeks to deliver 376 homes – with a number of these sites having identified delivery issues, such as The Limes Estate (100 homes).
23. As set out within our LPSV Supplementary Representations (provided here for completeness as **Appendix 3**) there were inconsistencies in how sites have been assessed – errors which appear to have been carried forward and resulted in the rejection of sites. As explained with the LPSV Supplementary Representations, there is nothing to suggest that evidence provided to the Council through the plan-making process in respect of sites SR-0478A and SR-0478B has been duly considered as part of the site selection process – neither has there been a proactive to maximising the opportunity of previously developed land in a location that has been identified as sequentially preferable.
24. The Report on Site Selection (EB805), which is dated March 2018, was published after consultation on the LPSV closed included assessment of a configuration of Chigwell Garden Centre which was contiguous with the site submitted earlier in the Local Plan process – site SR-0586.

25. Of particular relevance is the fact that the March 2018-dated assessment of this site was only published *after* the Council had resolved to submit the LPSV for examination (December 2017), and after the formal consultation on the LPSV had ended. As such, it cannot have been properly considered in the plan-making process.
26. Appendix B1.1 of the Report on Site Selection (EB805A) confirms that site SR-0586 *is* considered suitable for development; but then goes on to state that the site “was considered to be suitable but is ranked lower in the land preference hierarchy”. This appears to be the sole reason for the rejection of this site, and the reason why the site was not progressed to the next stage in the site assessment process, i.e. why it was not assessed to the same level of detail as the sites ultimately selected. Whilst primarily a matter of soundness, as opposed to legal compliance (and one which we will address in response to other Local Plan Examination Matters), the fact that the site was not assessed to the same level of detail as those which have been selected, and the reason for this – again, within the context of failure to meet housing needs in full – is considered highly questionable, does give rise to concerns in respect of legal compliance.

Curing defects in the SA process to ensure legal compliance

27. As established through the judgment in the case of Cogent Land LLP v Rochford District Council [2012] EWHC 2542 (Admin) (copy provided as **Appendix 4**), defects in the SA process can be cured through additional SA work. This judgment also confirms such additional work can be undertaken post submission and after the examination has commenced.
28. As such, we are of the view that the Local Plan can be made to be legally compliant and that it is not irretrievably flawed.
29. We consider it is particularly important to ensure the Local Plan for Epping Forest District can be made to be legally compliant given that the severity of the District’s housing needs; the fact that only a fraction of these needs can be met without Green Belt release; and that alterations to the Green Belt are only possible through the Local Plan process.

30. We suggest the following action is required to be undertaken before the Local Plan can be considered legally compliant in relation to the SA:
- a. The site assessment work undertaken to date be updated to address factual inaccuracies and other matters raised during previous consultation stages. Sites should not be rejected purely on the basis of their position in a 'land preference hierarchy' (particularly important in the event that there are insufficient sites higher within the 'land preference hierarchy' to meet housing needs – including but not limited to Specialist Housing for Older People).
 - b. Updated site assessment work to be integrated into the SA process.
 - c. Decision-makers to consider the results of the updated site assessment work, and reconsider rejection of sites based on the previous, flawed, evidence.
 - d. Revised SA, or Addendum to the LPSV SA, to be produced in which site assessment work is fully integrated, and in which the reasons for the rejection or selection of sites is set out.
 - e. List of modifications to the LPSV be prepared, accounting for the revised SA / LPSV Addendum, and published for consultation alongside the revised SA / LPSV Addendum, in accordance with Regulation 13 of the SEA Regulations.