
**PRE-HEARING STATEMENT
ON BEHALF OF THE MARDEN ASH ACTION GROUP
FOR WEEKS 1 and 2**

1. This statement has been prepared on behalf of the members of the Marden Ash Residents Group (“MAAG”) (both individually and collectively) in connection with the extremely late inclusion (and without prior public consultation) of sites ONG.R6 and 7 (“the two sites”) within the Plan as proposed for removal from the Green Belt¹ in order to facilitate residential development of these green field sites. MAAG is aware of the judgment of Supperstone J in *R (oao CK Properties (Theydon Bois) Limited v Epping Forest DC* [2018] EWHC 1649. However, that case involved a factual scenario that is the diametric opposite of MAAG’s objection in relation to the two sites – in the *CK Properties* case the developer was challenging the non-inclusion of its proposed development site from the Plan whereas MAAG seeks to protect the current, lawful and long-established status of the two green field sites as Green Belt land. Nevertheless, MAAG notes the observation of the Supperstone J at paragraph 85 of his judgment that it falls to the Inspector examining the Plan to be satisfied as to the soundness and legal compliance of the Plan. This statement therefore has been prepared on the basis of, and reflects issues raised in, both Supperstone J’s judgment and, more particularly, the Inspector’s Matters, Issues and Questions (November 2018).

2. MAAG does not oppose the general objectives of the Plan. However, MAAG opposes the specific release of the two green field sites (ONG.R6 and 7) which have been designated within the Green Belt for very many years and the following comments in this statement should be viewed in this context.

¹ See email exchanges with the Programme Officer starting on 15 December 2018.

3. This Statement deals with Matters 1-4 only and which are due to be debated in weeks 1 and 2. It does not cover Matters 5, 6 and 15 which are to be debated in weeks 3 and 5 for which separate statements will be prepared in due course. This statement has also been prepared with the benefit of information received from the Council pursuant to a request under the Freedom of Information Act 2000 (FoI 523). From the information disclosed by the Council, or otherwise contained within the Evidence Base, the following points are relevant to MAAG.
4. On 13 July 2016 Nathaniel Lichfield & Partners produced the latest iteration of its Strategic Land Availability Assessment for the Council which included references to the two sites as being suitable for residential development but noting that they were both in the Green Belt.
5. In September 2016 Arup produced its Report on Site Selection for the Local Plan (EB801) which showed that the two sites were included in the Stage 2 assessments as SR-0391 (which appears to have been a larger site than ONG.R6) and SR-0053. There is also reference to the land being potentially in the Best and Most Versatile Agricultural Land category.
6. However, significantly, in October 2016 the Council published its Background Paper on Green Belt and Open Land (EB1603) in which neither ONG.R6 or ONG.R7 were identified as being suitable for release from the Green Belt.
7. Furthermore, between 31 October 2016 – 12 December 2016, the draft Local Plan (October 2016) was put out for consultation. It is clear that neither of the two sites ONG.R6 nor ONG.R7 were identified for release from the Green Belt. Therefore, the public were not consulted upon this possibility. Indeed it is arguable that, given the observations in paragraphs 4-6 above, it is clear that the public were informed that the Council had rejected the notion of deleting the two sites from the Green Belt and were consulted on that basis. The section starting at page 138 of the consultation draft covers Chipping Ongar and it is clear from this that the only nearby site identified as a potential residential site under Draft

Policy P 4 Chipping Ongar was the car park of The Stag public house for approximately 10 homes under reference SR-0842. This site is now ONG.R8 in the Submitted Plan. It was shown on the accompanying plan (Figure 5.11) on page 141 as not being within the Green Belt. Paragraph 5.81 of the draft Local Plan sets out the intended approach with regard to revisions of the Green Belt boundary and these are indicated on Figure 5.12. It is clear from this that the Council did not, at this stage, envisage removing either ONG.R6 or ONG.R7 from the Green Belt. It was on this basis that the public were consulted and therefore there was a legitimate expectation (in the public law sense) that the status of the two sites as Green Belt land was to remain unaltered.

8. As Supperstone J noted in paragraph 7 of his judgment, the draft Local Plan stated at paragraph 5.5: “The Council has identified potential sites for allocation for residential development and traveller accommodation, details of which are provided in the following sections. These sites have been identified following a rigorous application of the site selection methodologies and represent those sites the Council considers to be suitable, available and achievable within the Plan period based on available information.” This reinforces the argument that the two sites would not be deleted from the Green Belt as a direct result of “a rigorous application of the site selection methodologies”. This can be contrasted with the complete absence of any justification for the sudden *volte face* by the Council.
9. In September 2017 the Government (then the Department for Communities and Local Government) announced a proposal to introduce a new standard methodology for the calculation of housing needs which would result in the Council’s housing requirement rising significantly from 514/518 dwellings per annum to 923 dwellings per annum thereby increasing housing provision over the plan period from 11,400 to 20,306 homes.
10. During 2017 the Council held various workshops relating to the site selection process. On 28 November 2017 the Council held an all-member briefing on the local plan.

11. On 6 December 2017 the Council published online the Non-Technical Summary of the Sustainability Appraisal as Appendix 4 to the Extraordinary Meeting Report.
12. On 7 December 2017 the Council's Cabinet received a report (C-036-2017/8) "Resourcing the delivery of the Local Plan" which stated that, because of the publication of the Government's proposed standardised methodology for the assessment of housing need, "the Council has decided to bring forward the publication of the Regulation 19 Plan to December 2017, in order to ensure submission of the final Plan for Examination before the end of March 2018". The report described the preparation of the Regulation 19 Plan as having been "accelerated" and was to be taken to the full Council on 14 December 2017 for approval.
13. On 12 December 2017 the completed version of the Site Selection Report was published on the Council's website together with appendices including Appendix A covering the residential and employment site selection methodology. However, Appendix B (Assessment of Residential Sites) was not available and it was stated that it would be published once completed.
14. On 14 December 2017 the Council held its ECM and on 18 December 2017 the Submitted Plan was published for consultation which closed on 29 January 2018. The Submitted Plan included, for the first time, sites ONG.R6 and ONG.R7 as being ones proposed to be released from the Green Belt for residential development. These sites were shown in Appendix 6 to the Submitted Plan. It is to be noted that the plans and accompanying text on pages 99-102 contain no justification or explanation for releasing these sites or identify any "exceptional circumstances".
15. It follows that the Council has confirmed that neither of sites ONG.R6 and R7 had been identified as (and the public consulted thereafter on) suitable for release from the Green Belt in earlier iterations of the Plan. More specifically, these sites

were not included in the October 2016 draft Local Plan that was put out for consultation. Thus, MAAG were not consulted at that time (or at all) about the possibility of these two sites being released from the Green Belt. The Council's Background Paper on Green Belt and Open Land (EB1603) did not identify either site as suitable for release from the Green Belt. Thus, a previous public assertion by a member of the Council to the effect that the draft Local Plan put out for consultation in 2016 showed "the site in question [ONG.R7] was proposed for allocation" cannot be correct.

16. Furthermore, the Council's Evidence Base shows that the first time that the public was made aware (but not consulted on beforehand) that these two sites were now to be included as sites to be released from the Green Belt was after the Council's EGM on 14 December 2017 although the plan itself was not made available for public consultation until 18 December 2017 with the consultation period closing on 29 January 2018. More significantly, the relevant associated Appendix B (Assessment of Residential Sites) was not available to the public until 14 March 2018 (some 6 weeks after the consultation period closed) and so could not have been taken into consideration, and any relevant comments made, by those consulted.

17. In the light of the above facts and issues, MAAG submits:

(1) Matter 1: Legal compliance- Issue 1:- Q.1. the Council is in breach of section 19 of the Planning and Compensation Act 2004 in that there is no evidence to demonstrate with regard to the release of either of these two sites from the Green Belt that the Council has had due regard to national planning policy issued by the Secretary of State and contained in *inter alia* section 9 of the National Planning Policy Framework (March 2012) concerning the need for the Council to demonstrate the existence of "exceptional circumstances" as required by paragraph 83 to justify the removal of these two sites from the Green Belt. A similar concern is also raised in relation to the adverse effect that the release and development of these two sites will have on designated heritage assets.

(2) Matter 1: Legal compliance - Issue 2: Q1. the LDS (October 2017) requires the Plan to be “consistent with national planning policy and planning practice guidance”. In relation to these two sites it is clear that the Plan is inconsistent with national planning policy and therefore it has not been prepared in accordance with the LDS.

Q2. In addition to the requirements of section 19 regarding national planning policy, section 19(3) requires the Council to also comply with their Statement of Community Involvement. (“SCI”) adopted in 2013. MAAG has raised numerous complaints regarding the manner and timing of the public notification of the Plan between 18 December 2017 and 29 January 2018.

Q3. At no stage were the public, including those individual members of MAAG most adversely affected by the release of these two sites from the Green Belt, informed, let alone consulted about, the proposed release and which also flew in the face of previous statement in paragraph 5.5 of the 2016 draft and which it is submitted amounted to a legitimate expectation (in the public law sense) that these two sites would not be released from the Green Belt. Furthermore, in the absence of detailed identification of “exceptional circumstances” to justify the release of these two sites, given the content of paragraph 5.5, the sudden inclusion of these two sites in the Plan was both irrational and manifestly unfair. Furthermore, it has deprived MAAG and the public of any effective consultation as the SCI paragraph 29 makes clear the restricted purpose of the consultation i.e. restricted to “soundness” issues only as opposed to more general planning merits arguments. Further, it follows that, with regard to the two sites, there has been no effective Stage 5 consultation as set out in paragraphs 25 and 26 of the SCI and therefore the Plan has not been prepared in accordance with the SCI

(3) Matter 1: Legal compliance – Issue 4: Q1 and Q2. It is difficult to see how, in light of the comments in paragraph 5.5 of the draft Plan how it can be considered that the SA is comprehensive and satisfactory given the sudden inclusion of two sites that had previously been rejected following “a rigorous

application of the site selection methodologies and represent those sites the Council considers to be suitable, available and achievable within the Plan period based on available information”.

(4) Matter 3: The Quantitative Requirements for development – Issue 1: Whilst this issue is likely to be covered in some details by other participants, the factual background referred to in paragraphs 9-14 above are relevant especially given the absence of any justification for the release of the two sites from the Green Belt.

(5) Matter 4: The Spatial Strategy – Issue 4: Q1 Q2 Q4 Q5. These questions can be considered together. With regard to Q1, in the light of the factual background including the clear statement in paragraph 5.5 of the draft Local Plan and the absence of any justification for the *volte face* with regard to the two sites, it is impossible to see what exceptional circumstances exists and how the “tension” has been resolved, at least in relation to the two sites. In line with national policy, it is for the Council to demonstrate this. With regard to Q2, there has been no “robust assessment” justifying release of the two sites. Given the comment in paragraph 5.5 of the draft Local Plan and the non-inclusion of the two sites, the only logical conclusion is that, following a “robust assessment” the Council considered that there was no justification for including the two sites in the draft Local Plan. Q4 and Q5 are matters for the Council to provide details on. In the absence of adequate answers, it must be concluded that the Council is unable to demonstrate exceptional circumstances.

MARTIN EDWARDS

Cornerstone Barristers

2-3 Gray’s Inn Square

London WC1R 5JH

On behalf of MAAG

18 January 2019