
Hearing Statement Matter 1 – Legal Compliance



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1. Introduction

- 1.1. This Pre-Hearing Statement has been submitted by Cirrus Land Ltd as part of the Examination of the Epping Forest District Local Plan (2011-2033). Savills has prepared Pre-Hearing Statements on behalf of Cirrus Land Ltd and L&Q New Homes Ltd for a number of Matters as identified in the Inspector's Matters, Issues and Questions;
- Matter 1 - Legal Compliance (Issues 2 & 4 – this document)
 - Matter 4 - The Spatial Strategy
 - Matter 5 - Site Selection Methodology and the Viability of Site Allocations
 - Matter 14 - Infrastructure & Delivery
 - Matter 15 - Places and Sites
- 1.2. This Statement will have a particular focus on Matter 1, Issues 2 and 4 published by the Inspector in the Schedule of Matters and Issues for the Examination document in November 2018. Full details of the questions to which this Statement responds are detailed as follows:
- **Issue 2: Is the Plan legally compliant in respect of how it accords with the Local Development Scheme (LDS) and the Statement of Community Involvement (SCI); and has the consultation carried out during its preparation been adequate?**
 - Question 2: Has the Plan been prepared in accordance with the adopted SCI, 2013, particularly in respect of the following:
 - f. Does the absence of Appendix B of the Site Selection Report (and potentially other documents) at the Regulation 19 stage contravene the requirements of the SCI? If so, what are the implications of this for the test of legal compliance?
 - **Issue 4: Has the Plan been informed by an adequate process of Sustainability Appraisal (SA)? Have the requirements of SEA Directive and Regulations been met?**
 - Question 1;
 - Question 2.
- 1.3. Cirrus Land made representations to both the Regulation 18 and Regulation 19 consultations of the draft plan in December 2016 and January 2018 respectively. This Statement will not repeat information previously submitted, on the understanding that the Inspector will take into consideration all previous representations made to Epping Forest District Council (EFDC), but instead will provide additional evidence in relation to Matter 1. This statement also responds to new information published by EFDC in support of the Local Plan Examination, which was not available at the time of the Regulation 19 consultation.

- 1.4. Please refer to the Regulation 19 representations submitted by Cirrus Land Ltd and L&Q New Homes Ltd, 19LAD0109-1 through to 19LAD0109-6. These representations address the concerns set out by the inspector in Matter 1, Issue 3: *Has the Duty to Cooperate, as required by S33A of the Planning and Compulsory Purchase Act, been met?* Under Paragraph 5.8 of the Regulation 19 representation under site reference SR-0914 it is argued that the duty to co-operate has not been met and therefore the Plan must be considered unsound. It is understood that Harlow Council withdrew their Regulation 18 and 19 objections in June 2018. However, EFDC has still not provided evidence to show how concerns raised by Harlow Council in their June 2018 letter will be overcome with regards to the Garden Town Affordable Housing Strategy, the Garden Town wide Infrastructure Delivery plan or Sustainable Transport Corridor and Spatial Vision.

- 1.5. The Government revised the National Planning Policy Framework (NPPF) in July 2018 following a series of consultations. The 2018 NPPF states, within Annex 1 Paragraph 214: *“The policies in the previous Framework will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019”*. EFDC submitted its plan for Examination in June 2018, therefore, in accordance with the 2018 NPPF, the policies within the 2012 Framework should be used to examine the Epping Forest Local Plan.

2. Issue 2: Question 2

f. Does the absence of Appendix B of the Site Selection Report (and potentially other documents) at the Regulation 19 stage contravene the requirements of the SCI? If so, what are the implications of this for the test of legal compliance?

- 2.1. Section 18 of the Planning and Compulsory Purchase Act 2004 requires Local Planning Authorities to produce a Statement of Community Involvement (SCI), and this was undertaken by EFDC at the start of the Local Plan preparation in 2013.
- 2.2. It is noted that this was completed partly prior to the adoption of the National Planning Policy Framework in 2012, against which this emerging Local Plan is to be examined. However, the details contained within the SCI appear to correspond with the requirements of national policy in relation to plan making, and therefore the document is still relevant.
- 2.3. Largely it appears that EFDC have complied with the processes contained within the adopted SCI.
- 2.4. However, in 2018 it became apparent that Appendix B to the Site Selection Report was not included within the Regulation 19 consultation. Appendix B of the Report contains a significant amount of information, including new sites, how each site proposed for residential development was assessed at each stage of the site selection, the reasons for why certain sites were discounted, whether sites needed to be split to allow for a more meaningful assessment, and how the sites scores against the six major policy constraints.
- 2.5. Although it was identified by EFDC that these elements had been left out of the consultation, we question whether the Council sufficiently rectified this mistake in order to meet the requirements of the SCI.
- 2.6. Before the deadline of the 29th January 2018, 991 Regulation 19 Publication Period Representations were made and a further 28 late representations, a total of 1,019 Regulation 19 Representations. In comparison approximately 80 Supplementary Representations and a further 30 late Supplementary Representations were made in response to the publication of the Appendices to the Report on Site Selection in March 2018.
- 2.7. The letter which has now been published on the EFDC Local Plan website regarding this supplementary consultation states:

“Thank you for making your Regulation 20 representations to the publication of the Epping Forest District Local Plan Submission Version. We note that your comments made reference to the fact that, as some of the appendices to the Site Selection Report had not been published, you were not able to comment on them”
- 2.8. This indicates that the Council only sought to contact those people who made specific reference to Appendix B within their Regulation 19 or Regulation 20 representations.
- 2.9. However, this is not in accordance with the SCI which explicitly states that the Council “will try and increase the number of responses received” (Paragraph 3) to consultations on Local Plans, and that “members of the public that have also previously responded to a Forward Planning consultation will be held on our database and will also be notified of any consultation period” (Paragraph 6).

- 2.10. By only contacting a certain group of the Regulation 19 responders EFDC have failed to comply with the requirements of the SCI, and of the National Planning Practice Guidance with regard to the process of Local Plan preparation.

3. Issue 4: Question 1

Consideration of Up to Date Evidence

- 3.1. In respect of the SA process undertaken by EFDC, the first consideration must be the production of the SA documents throughout the emerging plan process. The SA Scoping report was published alongside the Issues and Options consultation in 2010 (as considerable time ago), followed by an Interim SA Report and Non-Technical Summary published in 2016 and an SA of the OAHN Spatial Options in 2016. In 2017 a further Sustainability Appraisal (EB04) was published.
- 3.2. EFDC consulted on their Regulation 19 Local Plan from 18th December 2017 to 29th January 2018, this was further extended to 23rd April 2018, following a legal challenge, allowing certain representors to make further comment on the Site Selection Report and Appendices (March 2018), this is referenced above under Issue 2, Question 2.
- 3.3. The Site Selection Report and Appendices (March 2018) contains the detailed methodologies used by EFDC to assess potential allocation sites and the assessment of sites. This is a key part of the evidence base for the emerging Local Plan site allocations. This has not been taken account in the SA as it was not available at the time of the SA publication. Therefore, the SA (2017) has not taken into account the most up to date evidence base and cannot be considered to be comprehensive.

Spatial Strategy and Housing Sites

- 3.4. The SA (2016) outlines that the process of examining non-strategic site options included a bespoke methodology including:
 - Major policy constraints;
 - Quantitative and qualitative assessment;
 - Identifying candidate preferred sites;
 - Deliverability;
 - SA Assessment.
- 3.5. Sites were initially considered in the Strategic Land Availability Assessment (SLAA March 2016) and those considered unsuitable were not taken forward for further assessment. Having undertaken this assessment and presenting a preferred distribution of sites, a reasonable alternatives exercise was undertaken.

- 3.6. Five reasonable alternatives were tested, including the preferred strategy. All of these aimed to meet the 11,400 homes target. Whilst the Objectively Assessed Need (OAN) and housing target for each of the Local Authorities in the HMA has been determined and tested through the West Essex and East Hertfordshire SA (2016), EFDC have not tested through their own SA, or any alternative strategies which would increase housing delivery above 11,400 over the plan period. This is not in the spirit of the NPPF (2012) which aims to “*boost significantly the supply of housing*” (Paragraph 47). The SA (2017) outlines that the SHMA update (2017) led to a revised OAN for the HMA which rose to 51,710 dwellings from 46,100 dwellings and that these were tested in the SA of Strategic Spatial Options published in 2016 (for the HMA). It is now common practice for an SA to test a range of housing growth scenarios to inform the preferred strategy. However, given additional work undertaken by EFDC in respect of potential development sites, it cannot be concluded that the District could not accommodate a higher level of sustainable growth, due to evidence and alternatives not being robustly tested.
- 3.7. The alternatives tested against the preferred strategy included:
- Lower or high growth at North Weald Bassett;
 - Lower growth at urban greenspaces;
 - Higher growth along the central line.
- 3.8. As is clear, the alternatives tested were very focused and only consider a small number of factors which departed insignificantly from the preferred strategy. For example, the alternatives assessed only consider the potential impact of different development distributions for North Weald Basset and did not clearly assess the potential impacts of a different distribution strategy on any other settlements within the District. This in turn results in the impact of potential different strategies not being tested against factors such as transport infrastructure, economics and employment.
- 3.9. The NPPF (2012) and PPG outline clearly the methodology for preparing an SA and outline that the assessment of reasonable alternatives in an SA should be undertaken to: “*make sure that the proposals in the plan are the most appropriate given reasonable alternatives*” (PPG: Paragraph: 001 Reference ID: 11-001-20140306). The testing of reasonable alternatives should be identified and considered at an early stage in the plan making process and the assessment of these should inform the choosing of the preferred approach (Paragraph: 017 Reference ID: 11-017-20140306). EFDC has not followed the correct approach outlined in respect of testing reasonable alternatives and coming to a preferred approach.
- 3.10. It is clear that the preferred approach in the SA (2016) has been pre-determined prior to the testing of reasonable alternatives, undermining the overall alternative assessment and the alternatives tested are not varied enough in scope to comprehensively test the most appropriate strategy. The alternatives tested instead simply test a minor departure from the pre-determined preferred strategy in each case. There is no credible range of alternatives outlined or tested throughout the SA process.
- 3.11. It is therefore considered that the Interim SA (2016) has not adequately or comprehensively assessed the reasonable alternatives in respect of the spatial strategy. The subsequent SA (2017) is based on the assessments undertaken in 2016 testing only variances of the preferred strategy. This is a fundamental flaw in the preparation of the Local Plan.

- 3.12. The SA (2017) outlines that the distribution of growth in the District was informed by the Community Visioning Exercise undertaken in 2010/11 and on the basis of the responses to this consultation and “available evidence” a number of alternative distribution strategies were not progressed through plan making and SA process. This is not considered to be a robust methodology for discounting alternative strategies, which have not been technically assessed by the SA. The SA (2017) outlines a number of reasonable alternatives that were tested through the SA process at Paragraph 5.13. However, these are not outlined in the SA 2016. The SA (2017) is broadly a descriptive document which outlines how EFDC has undertaken previous iterations of the SA and how reasonable alternative have been selected and tested however these remain based on the reasonable alternatives outlined above which are considered to be flawed and to not test an adequate range of alternatives. The SA (2017) concluded that “*it was not considered necessary to re-visit broader district-wide spatial strategy alternatives*” (Paragraph 7.18).
- 3.13. The SA (2017) did consider alternatives to enable further consideration of latest evidence (outlined at Paragraph 7.29). Three alternatives were identified and did consider different spatial distributions of development across the District against the strategy outlined in the Draft Local Plan. This testing of alternatives however focuses on “local level” alternatives and their impacts and does not overcome the flaws of previous SA assessments of alternatives on which the 2017 SA is based upon.
- 3.14. Overall, as outlined above the testing of reasonable alternatives within the SA (2016) and SA (2017) has not been adequate due to the following reasons:
- Alternative strategies for overall housing delivery have not been tested;
 - Alternative strategies for spatial distribution have not been tested;
 - The preferred strategy was decided upon by EFDC prior to testing reasonable alternatives;
 - Only “local level” alternatives for individual settlements have been tested within the context of the preferred strategy.
- 3.15. In order to overcome these issues in the SA testing, EFDC must consider:
- Testing a range of housing growth scenarios;
 - Testing combinations and distribution of growth including a greater proportion of growth to “medium sized” settlements.

4. Issue 4: Question 2

- 4.1. The testing of reasonable alternatives within the SA (2016) and SA (2017) has not been adequate. The testing of reasonable alternatives in the SA (2017) is based on flawed testing undertaken in previous SA's and therefore is limited by this. In respect of biodiversity and green infrastructure, the historic environment, land and waste, and landscape the SA (2017) only provides commentary on the potential impact of reasonable alternatives in respect of Land and Waste. Reasonable alternatives are not commented on in respect of any of the other objectives outlined above.
- 4.2. The "local level" alternatives outlined in Table 7.2 were assessed against the SA objectives and alternatives scored more favourably than the preferred strategy in respect of biodiversity and green infrastructure and all of the alternatives had significant long term positive effects on community and wellbeing, economy and employment and housing. This does not appear to have been taken into account when weighing up the alternatives against the preferred strategy.
- 4.3. Overall the SA (2017) and its previous iterations have not adequately tested reasonable alternatives and have not demonstrated that the preferred strategy taken forward into the submission Local Plan is the most appropriate strategy.
- 4.4. As outline above in respect of Issue 4: Question 1, the SA process must be revisited by EFDC in order to ensure that the submission Local Plan includes the most appropriate stagey and is therefore justified and consistent with national policy.

5. Conclusion

- 5.1. Cirrus Land Ltd and L&Q New Homes Ltd has raised concerns about the rectification of the error in omitting documents as part of the Regulation 19 consultation. It is considered that this process has not been undertaken in accordance with the Council's Statement of Community Involvement (SCI) or the National Planning Practice Guidance in relation to Local Plan preparation.
- 5.2. The Sustainability Appraisal (SA) is not considered to be comprehensive and to have sufficiently evaluated reasonable alternatives. Throughout the SA process reasonable alternatives have not been considered in line with the NPPF and PPG. EFDC appear to have determined the preferred strategy ahead of testing reasonable alternatives and have tested only very limited alternative options for the overall spatial strategy and distribution of site allocations. Whilst the SA (2017) considers some alternatives, these are local level changes and do not overcome the previous flaws made in the SA assessment process. An updated (and revisited) SA is even more important in light of the approach taken to site selection as part of the Green Belt Exceptional Circumstances justification.
- 5.3. The SA process undertaken by EFDC has not been undertaken in a comprehensive and robust manner and the testing of reasonable alternative is lacking. In respect of the negative or minor negative effects identified in the SA (2017) against SA objectives, EFDC cannot demonstrate that they have tested reasonable alternatives to seek to avoid these effects and cannot conclude therefore that they are unavoidable. There is no evidence presented that can robustly determine therefore that the Plan is the most appropriate strategy and therefore justified.
- 5.4. Therefore, it can be concluded that presently the Plan does not meet the tests of soundness as set out in Paragraph 182 of the NPPF with regards to the Statement of Community Involvement or the Sustainability Appraisal.

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