



## **Epping Forest Local Plan**

### **Examination Hearing Statement**

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#### **Matter 5 - Site Selection Methodology and the Viability of Site Allocations**

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**Prepared by Strutt & Parker on behalf of Croudace Homes (19LAD0025)**

**January 2019**

## Context

1. Strutt & Parker have participated in the plan-making process on behalf of Croudace Homes (Local Plan Examination Stakeholder ID 19LAD0025) throughout the preparation of the Epping Forest Local Plan, including in relation to the promotion Land east of Epping Road, Roydon for residential development. This has included representations on the Local Plan Submission Version (LPSV) (Regulation 19) consultation (Representation ID 19LAD0025-1 and 19LAD0025-2) in respect of proposed policies SP2 and P9.
2. The LPSV proposes allocation of a small proportion of land which has been promoted through the plan-making process and which is under the control of Croudace Homes (ROYD.R3).
3. Two configurations of Land east of Epping Road, Roydon were considered through the preparation of the Local Plan, identified as sites SR-0306 and SR-0890 (the latter forming a smaller part of the former) in the plan-making process. However, the proposed allocation ROYD.R3 is not commensurate with either. A plan showing how these sites relate to one another is provided as **Appendix A**.
4. This Hearing Statement seeks to avoid repeating matters already raised within our representations on the Regulation 19 iteration of the Local Plan; and in respect of other Hearing Statements already submitted in respect of other Matters.
5. This Hearing Statement addresses Matter 5 - Site Selection Methodology and the Viability of Site Allocations.
6. This Hearing Statement follows confirmation by the Council at Day 3 of the Local Plan Examination Hearing Sessions, that the submitted Local Plan will not provide enough homes in the early years of the plan period to meet needs. We consider this alone renders the current LPSV unsound, and necessitates modifications to ensure housing needs are met to enable the Local Plan to be capable of being consistent with national policy and positively prepared.

7. One Appendix accompanies this Hearing Statement:

- Appendix A: Map showing sites assessed and proposed allocation  
ROYD.R3

**Issue 1: Have the Plan's housing allocations been chosen on the basis of a robust assessment process?**

**Question 1**

8. Whilst we are conscious that Question 1 is directed at the Council, we have the following comments to make in respect of questions b), d) and e).

***b) How was the Site Selection Methodology (SSM) utilised in the Site Selection Report 2018 (EB805) established and is it robust?***

9. We do not consider the Site Selection Report 2018 is robust insofar as it purports to explain the reason for the rejection of sites. Our concerns fall under the following headings:

- Failure to update / correct issues for the final Site Selection Report (2018) (EB805), in response to issues identified in the previous iteration (EB801).
- Sites rejected on the basis of factually incorrect assertions / spurious grounds.
- Concerns regarding the approach to determining capacity of sites (having regard to the proposed allocations and accompanying proposed quantum).

10. Taking each of these in turn:

Failure to update / correct the final Site Selection Report

11. The final Site Selection Report (2018) (EB805) followed an earlier iteration dated September 2016 (EB801), which was made available alongside the Regulation 18 draft Local Plan (EB123).
12. EB801 had a key role in the sites proposed for allocation in EB123.
13. In our representations on EB123 we raised a number of concerns in respect of how sites SR-0306 and SR-0890 had been assessed. In addition, we also

provided detailed, robust evidence, demonstrating concerns expressed within EB123 relating to landscape impacts and access were unfounded. We referred to these Regulation 18 representations, and the failure for these to be considered, in our Regulation 19 supplementary representations (reference 19LAD0020 (supplementary)) at paragraphs 3.6 to 3.10. We do not repeat these comments here, but we do wish to emphasise that material provided to the Council included a Landscape and Green Belt Assessment for the site.

14. However, as we set out within our Regulation 19 supplementary representations, there was no evidence that the information that was provided was given any consideration before the publication of the Local Plan Submission Version (2017) or the Site Selection Report (2018), the former said to have been informed by the latter.
15. On publication of Appendix B to the Site Selection Report (EB805) following the Regulation 19 consultation, it became apparent that EB805 included a factually inaccurate statement that the site is not adjacent to a settlement (discussed further below). Crucially, this erroneous characterisation of the site appears to have been one of the determinant factors in the decision to reject it. We responded to the Council's invitation to supplement our Regulation 19 representations, and within our response (19LAD0020 (supplementary)) alerted the Council to this error. However, there is no evidence that the Council has rectified this, or considered the impact of this error on how the site was assessed.
16. We noted that site SR-0306's relationship with the settlement boundary is the same as SR-0890's (i.e. adjoining) – a site against which no such concerns were raised in EB805.
17. SR-0890 is proposed to be allocated, albeit only a small proportion of the site. As we made clear within our representations at the Regulation 19 stage (paragraph 10.3 of representation 19LAD0020), site SR-0890 is not available for development in the form it is proposed to be allocated.

18. We also noted in our representations (paragraph 10.4) that the 14 dwellings proposed through the LPSV for ROYD.R3 could not be delivered on the site unless in the form of development that would be of a density vastly exceeding that of the surrounding area, and in a manner which would be entirely unsympathetic to the existing character of the area, contrary to the NPPF and other policies within the Local Plan.
  
19. However, despite this – and the issues being raised being fundamental to the site’s assessment as to its availability, achievability and suitability in the form proposed through the LPSV – there is no evidence that these issues have been given any consideration.

Sites rejected on the basis of factually incorrect assertions / spurious grounds

20. The Overview of Assessment of Residential Sites in the Site Selection Report 2018 (Appendix B1.1) (EB805A) seeks to set out the justification for rejecting site SR-0306, stating:
  - a. “This site did not proceed for further testing at Stage 3 as it is ranked lower in the land preference hierarchy which, based on the Council's Local Plan Strategy, as set out in the Site Selection Methodology, states the order in which sites should be identified for allocation. The site was less preferable because it is greenfield land not adjacent to a settlement and there are a sufficient number of sites within the settlement that are ranked more favourably.
  
  - b. “This site was re-considered as part of Stage 6.3 in 2017 since it was identified as potentially being able to contribute to the Council's five year housing land supply. Although the site could potentially contribute to the five year housing land supply, it was considered that this benefit did not override the constraints identified, including landscape sensitivity and harm to the Green Belt, and therefore the site did not proceed any further.”

21. Taking the first element of the purported justification for site SR-0306's rejection, as noted earlier within this Hearing Statement, it is simply factually incorrect to suggest the site does not adjoin a settlement. Its western boundary adjoins the settlement of Roydon. It is correct to note that this is a greenfield site, but this in itself cannot be a determinant factor, as a number (indeed, the majority) of proposed allocations are greenfield sites. In terms of the view that the site is "less preferable", this must be seen within the context of the LPSV's failure to meet objectively assessed needs and the need for additional allocations.
  
22. In respect of the second element of the reason for the site's rejection, our rebuttal was set out at paragraphs 3.18 to 3.20 of our Regulation 19 supplementary representations. We do not repeat these here, though we wish to emphasise that evidence provided to the Council did include a detailed Landscape and Green Belt Assessment which demonstrated how development of the site could be delivered without harm to the purposes of the Green Belt or to landscape. We note that to date the Council has still not produced an assessment at an equivalent scale, or indeed rebutted the findings of the Landscape and Green Belt Assessment that was provided to them.
  
23. Further to these representations, it important to note that a key change in circumstances since the assessment of the site in the Site Selection Report (2018): at Day 3 of the Local Plan Examination Hearing Sessions, the Council confirmed that the submitted Local Plan will not provide enough homes in the early years of the plan period to meet needs, and that the housing delivery trajectory prepared for the LPSV has had to be revised (as per EB410A). This is of particular relevance in this instance because part of the justification for the rejection of SR-0306 is that there are, suggests EB805, *sufficient* more favourable sites. In light of the Council's admission that the submitted Local Plan will not meet housing needs in the early years of the plan period and the publication of the revised housing trajectory in EB410A, it is now evident that *insufficient* sites have been allocated. This is of further relevance to the consideration of SR-0360, as – as confirmed within Appendix B1.1 of EB805 – the site "could potentially contribute to the five year housing land supply".

24. The same issues apply to SR-0890. Whilst a small proportion of the site was allocated, the majority of it is not. The reasons why the rejection of the rest of the site is clearly unjustified is set out at paragraphs 3.21 to 3.32 of our Regulation 19 supplementary representations. Again, we do not repeat these here but do wish to emphasise that technical studies were provided to the Council confirming the concerns cited were unfounded.
25. The Council's acknowledgement that there is a lack of sufficient sites to meet housing needs is also of relevance given the absence of an assessment of the Green Belt to inform the LPSV at a sufficiently fine grain to conclude that no sites in addition to those already proposed to be allocated through the LPSV could be allocated without harm to the purposes of the Green Belt. We noted the findings of the Inspector in the recent examination of the Welwyn Hatfield Local Plan in our Matter 1 Hearing Statement, concerning the need for an assessment of the Green Belt at a sufficiently fine grain before the Local Plan could conclude housing needs could not be met. Such findings are also relevant in respect of Matter 5, and in particular in relation to site SR-0360, given that its allocation is supported by a Landscape and Green Belt Assessment prepared by the promoter of the site, and the absence of any equivalent assessment from the Council rebutting its findings.

#### Capacity of sites

26. ROYD.R3 is proposed to be allocated to deliver 14 dwellings. The site area is 0.41 ha.
27. It is far from clear how the site selection process has accounted for the need for new development to be sympathetic to the character of the area, or how it has accounted for the relationship between such a development and the existing village. The delivery of 14 dwellings on this site would require development at a gross density of 34.1 dwellings per hectare, the net density would be higher still. Such a density would be at odds with that of the locality, and the adjoining existing dwellings the new development would abut.



28. We cannot see how a development of 14 dwellings could be delivered on the site proposed to be allocated without being totally out of character with existing development in the village, contrary to policies in the NPPF and proposed in the LPSV promoting good design.
29. It should be noted that the proposed allocation in the LPSV would not allow for any landscaping measures to be provided, nor could a new robust Green Belt boundary be provided. Not, at least, without having to focus the 14 dwellings on the western side of the allocation, increasing the net density of development further still.

#### Overview and Requested Modifications

30. It is clear that the Site Selection Report (2018) (EB805) should have concluded that site SR-0360 (incorporating SR-0890) was suitable, available and achievable for development.
31. The need for the inclusion of additional sites as modifications to the LPSV has been confirmed through the Council's acknowledgement that the LPSV in its current form will not provide a sufficient number of homes to meet need in the early years of the plan period (EB410A).
32. A modification comprising the enlargement of allocation ROYD.R3 such that it is commensurate with Site SR-0360 could not be said to in any way undermine the proposed overarching spatial strategy in the LPSV – in terms of the strategy for the growth of the District, it would represent a very modest change. In any case, if the Local Plan strategy fails to meet housing needs, this does not constitute a valid justification for such failure – merely an indication that there is a deficiency in respect of the strategy.

33. Accordingly, the aforementioned modification to ROYD.R3, and corresponding revisions to the policy wording to Policy P9 to confirm the site's capacity as approximately 180 homes, is respectfully requested.

***d) What was the role of the Sustainability Appraisal in selecting between the various sites?***

34. The Council confirmed at the afternoon session of Day 1 (12 February 2019) of the Local Plan Examination Hearings, that Site Selection Report (2018) (EB805) forms part of the Sustainability Appraisal.

35. Accordingly, preparation of the Site Selection Report (2018) was required to comply with the Environmental Assessment of Plans and Programmes Regulations 2004 (Statutory Instrument 2004 No.1633) (SEA Regulations), as well as guidance pertaining to Sustainability Appraisal.

36. Such requirements include:

- The need to assess reasonable alternatives (Regulation 12), and to the same level of detail as those selected (as established through case law).<sup>1</sup>
- The need to bring to consult those affected or likely to be affected by the decisions involved in the assessment and adoption of the plan (Regulation 13 of the SEA Regulations).
- The need to provide the reasons for the selection of options, and the reasons for the rejections of others (Regulation 16).

37. In respect of the above it is clear that:

- The Site Selection Report (EB805) contained errors in respect of the assessment of rejected sites – it cannot be said that alternatives have been

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<sup>1</sup> Heard v Broadland District Council and others [2012] EWHC 344 (Admin)

properly assessed, and therefore the requirement in relation to Regulation 12 has not been met.

- As confirmed by the Council (paragraph 4.21 of EB115), only 71 respondents were invited to comment on the Site Selection Report Appendix B – this cannot be said to have encompassed all those who are affected or may be affected by its findings.
- As noted within our response to Question 1b), the reasons set out for the rejection of sites are based on an erroneous assessment of them, and rely on circumstances which have subsequently changed (i.e. the fact the Council now acknowledges its submitted Local Plan will not meet housing needs within the early years of the plan period).

38. As addressed within our Matter 1 Hearing Statement (and within our Regulation 19 supplementary representations), these defects can be cured without needing to withdraw the plan.

39. As was made clear in the *Cogen*<sup>2</sup> judgment, post-submission work on the SA (and, in this case, the Site Selection Report which forms part of it) cannot simply provide an ex post facto justification for decisions taken by the Council in respect of the Local Plan. Accordingly, in revisiting the SA (including Site Selection Report) the Council must reconsider its decision to reject sites such as SR-0360.

***e) Was any other evidence taken into account in the site selection process? In particular, how has the historic environment been taken into account? Have Historic Impact Assessments been undertaken as recommended by Historic England and, if not, is this necessary?***

40. As noted in our response to Question 1 b), the Site Selection Report has not accounted for evidence submitted in response to information submitted to the Council.

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<sup>2</sup> *Cogent Land LLP v Rochford District Council* [2012] EWHC 2542

***Question 2: How were the conclusions reached about individual sites checked for accuracy and consistency? Were sites visited or were they assessed through a desktop process? What has been done to check the assessments in specific cases where their accuracy has been challenged e.g. Site SR-0596? (Reps 19LAD0012).***

41. Concerns raised in respect of inaccuracies in the assessment of sites SR-0306 and SR-0890 have evidently not been addressed, despite the Council having been alerted to such issues, as discussed within our response to Question 1b).

## **Overview**

42. We consider that whilst the Local Plan in its current form is neither legally compliant nor sound, it can be made so through modifications without the Local Plan having to be withdrawn.
  
43. We would urge the Council to make such modifications as, whilst it is imperative that the Local Plan is sound and legally compliant, it is also critical that a Local Plan is adopted to replace the out-of-date Development Plan, in order to ensure the District's growth can be sustainably managed.