

25 April 2019

By email

Our ref C2/GALLIMOM/7425767
Matter ref 161941/000001

Ms Louise Phillips MA MSc MRTPI
c/o Louise St John Howe
Programme Officer
P O Services
P O Box 10965
Sudbury
Suffolk, CO10 3BF

Dear Ms Phillips

PEER GROUP PLC- LAND AT NORTH WEALD BASSETT

We are instructed by Peer Group plc in respect of the site which it has advanced through the Local Plan process for allocation in the Epping Forest District Council Local Plan. That site comprises approximately 15 hectares (38 acres) immediately adjacent to the settlement of North Weald Bassett.

We attach herewith our client's statement in respect of Matter 15. This statement together with our client's Regulation 19 submissions are important representations which require careful consideration.

In your Matter 15 MIQs, you ask the Council whether the development known as North Weald Golf Club on Rayley Lane was considered as an alternative to sites allocated within the Master Plan area. That site was identified as SR-0179 in the Allies and Morrison Master Plan study (September 2014) [EB1003 page 73] and it was clearly stated in that study [page 101] "*These sites [SR-0179 and SR-0467] are not considered to be appropriate for new development as they are located a considerable distance from existing development, so will not integrate effectively with North Weald Bassett's existing settlement form*". Site SR-0179 was not therefore carried forward for further analysis in either Scenario A or Scenario B [EB1003 pages 135 and 137] of the Allies and Morrison study. The opposite is true in respect of our client's site, which was favourably assessed and carried forward by Allies and Morrison for allocation in Scenario A [EB1003 page 135].

The Council has made plain in its draft Local Plan and in its submission Plan that its site selection process will be based on (i) the Allies and Morrison Master Plan study (September 2014) and (ii) its sequential approach to site allocations as stated in paragraph 3.54 of its Draft Local Plan and Policy SP2 of its submission Local Plan. However, the Council has not applied either of these tests to the site allocations contained in the submission Plan. This is a significant failure of soundness.

Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639 and is authorised and regulated by the Solicitors Regulation Authority of England and Wales. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG.

"Hogan Lovells" is an international legal practice that includes Hogan Lovells International LLP and Hogan Lovells US LLP, with offices in: Alicante Amsterdam Baltimore Beijing Birmingham Boston Brussels Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Minneapolis Monterrey Moscow Munich New York Northern Virginia Paris Perth Philadelphia Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Warsaw Washington, D.C. Associated Offices: Budapest Jakarta Riyadh Shanghai FTZ Ulaanbaatar Zagreb. Business Service Centers: Johannesburg Louisville.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Furthermore, EFDC has made clear that it has rejected any consideration of sites to the south of North Weald Bassett simply because it is not a preferred "strategic option". Such an approach has no standing in the NPPF, no standing in Government policy and runs counter to relevant High Court judgments.

You have asked the Council to explain why it has not allocated North Weald Golf Club (SR-0179), but you have not asked the Council why it did not allocate our client's site (identified as 1C and 2D in the Allies and Morrison Master Plan study). This represents a serious prejudice to our client's site because the Golf Club site was rejected in the Allies and Morrison Master Plan study for good reason and it also fails many of the sequential tests stated in Policy SP2 (page 31) of the submission Plan. Conversely, our client's site scored very well in the Allies and Morrison Master Plan Study and it achieves a significantly higher score in the Council's sequential test than many of the other sites which have actually been allocated in North Weald Bassett.

The Council has also failed properly to apply even the most basic tests of sustainability in the NPPF to the assessment of our client's site (in fact, the Council has repeatedly assessed the wrong location and scale of our client's site) and the Council has failed to apply the approach adopted in the case of *Calverton Parish Council v Nottingham City Council* [2015] EWHC 1078 (Admin).

At paragraph 51 of the judgement Mr Justice Jay states that the planning judgments involved in the ascertainment of exceptional circumstances should identify and then grapple with a range of matters including "the inherent constraints on supply/availability of land *prima facie* suitable for sustainable development" and "the nature and extent of the harm to *this* Green Belt (or those parts of it which would be lost if the boundaries were reviewed)". We recognise that the Calverton judgment is not government policy, but it has been adopted as the appropriate test by Inspectors in other Green Belt examinations and our client is entitled to expect that a consistent approach will be adopted to the consideration of Green Belt boundaries at Local Plan examinations.

We would also draw particular attention to paragraphs 85, 86 and 91 of the CK Properties judgment (EB127), where The Honourable Mr Justice Supperstone stated "*the independent examination of the draft plan will provide the Claimant with an adequate alternative remedy*". That judgment therefore highlights the importance of considering, as part of the Local Plan examination, all reasonable alternatives to the Council's proposed site allocations, particularly where the Council's own evidence supports an alternative strategy and alternative site allocations. If such consideration does not take place there would be a vacuum in terms of the consideration of sites, which would not be consistent with the expectation set out in the High Court judgment.

As we understand it, there are other parties at the Examination with similar concerns and grievances to those being expressed by our client. This is because EFDC's site allocation policy lacks credulity, transparency or consistency, contrary to the NPPF, government policy, relevant court judgments and the approach adopted by many other local planning authorities which have land in the Metropolitan Green Belt.

A further concern for this Examination is the Council's recent admission that the elected Members of the Council did not formally approve the site allocations which are contained within the submission Local Plan prior to the decision to submit the Plan for Regulation 19 consultation and to this Examination, which was quite clearly driven by a desire to submit the Plan in haste in order to avoid higher housing numbers within the borough. It therefore appears that site allocations in the submission Plan have been selected without due process.

One course of action would be for you to suspend the Examination and to require the Council to reconsider its site allocations and, in particular to properly assess and consider the omitted sites in accordance with the NPPF and the Calverton judgment. However, we are concerned that the Council having adopted such an entrenched position, will replicate that approach in any such reconsideration. As an alternative we urge you to consider directing the Council to produce new, consistent, objective, fair and transparent site allocation assessments at a site specific level, with assistance from an independent consultant. In order to ensure that such work is appropriately based we consider that it would be important for you to approve the instructions for and scope of that work and that all drafts produced by the consultant as well as the final report should be made available to you and to the public, to ensure a transparent process.

We conclude by repeating that the preparation and submission of the Local Plan and the unreasonable and unjustified omission of our client's site due to the Council's failure to properly identify, assess or consider the proper extent of our client's site and to fairly apply the Allies and Morrison Mater Plan Study, together with the Council's failure to apply its own sequential test for site allocations has caused the submitted Plan to be unsound and caused serious prejudice to our client. The Examination is now the only opportunity for these significant acts and omissions to be properly and thoroughly addressed and resolved. These are matters which go to the heart of soundness and to compliance with the NPPF and relevant government guidance.

We should be obliged if you would confirm that a formal slot within the Examination, at least equal to your question in respect of North Weald Golf Club, will be afforded to our client at the Matter 15 Hearing Session.

Yours sincerely



Michael Gallimore
Partner
michael.gallimore@hoganlovells.com
D 0207 050 3400