

NORTH WARWICKSHIRE BOROUGH COUNCIL
LOCAL PLAN EXAMINATION

ADDITIONAL QUESTIONS

Introduction

1. This note follows my initial questions and the Council's response [INSP1, NWBC1, NWBC2 and associated documents]. It should also be read in conjunction with the examination guidance and the drafts of the programme and the schedule of matters, issues and questions ('MIQs') [INSP3, INSP4, INSP5].
2. Examination hearings are scheduled to begin on 25 September, the first phase of which will consider strategic matters. Hearings in respect of site allocations and development management policies will be arranged subsequently. This approach seeks to ensure that abortive work is avoided in the event that significant issues arise with the strategic elements of the Local Plan ('LP') which require some form of remedy.
3. In addition to administrative matters, this note therefore focuses primarily on matters related to housing needs and requirements, Sustainability Appraisal ('SA') and the Duty to Co-operate ('DtC') which will be addressed during the first week of hearings. Questions seek to clarify my understanding of the approach taken in the LP and to ensure that associated evidence is available in an accessible format.
4. I also identify several areas of concern and explain my current thinking. That is with the aim of ensuring focussed discussion during the initial hearings on issues central to legal compliance and soundness. The Council will want to reflect on my reasoning in preparing position statements for the relevant hearing session. It is also open to the Council to propose undertaking further work to address such issues.
5. However, as with INSP1, nothing in this note indicates a pre-disposition towards the outcome of the examination or in respect of a specific issue. My thinking will evolve as the examination progresses, and it is the purpose of that process to robustly test the LP and evidence.

Administrative matters, modifications to the LP

6. The Council have invited me to recommend Main Modifications ('MMs') where necessary [NWBC2]. Paragraph 44 of INSP1 asked that North Warwickshire Borough Council ('NWBC') maintain a schedule of any proposed modifications to the LP. Those may be MMs or Additional Modifications ('AMs') which do not go to soundness, my remit being limited to the former.
7. Paragraph 10 of INSP1 contained some guidance as to how documents should be named to ensure they are clearly referenced in the examination

library. Q10 of INSP1 asked whether examination document CD0/1, the version of the LP for examination, contained any proposed amendments compared to the version of the LP published under Regulation 19.

8. NWBC explained that there have been some minor changes between the Regulation 19 version of the LP and CD0/1 [NWBC2]. There are 180 changes referenced in examination document NWBC8.
9. Examination document NWBC8 is, however, entitled 'changes from the Draft Local Plan to Draft Submission version'. Whilst, from an initial reading, many of the changes proposed appear to relate to corrections rather than matters of soundness, some are recorded simply as 'wording altered' and others may amount to MMs (for example alterations to the plan period).
10. The Planning Inspectorate's Procedural Practice in the Examination of Local Plans document of June 2016, explains that any changes to the plan sought by the Council following Regulation 19 stage should be prepared as an addendum to the plan (subject to further consultation and, if necessary, to sustainability appraisal, see paragraphs 1.2, and 3.3 to 3.4). I therefore need to establish clearly the extent of any modifications proposed to date, to assess their effects and how they should be taken account of as part of the examination process.

Q15. Can the Council confirm whether NWBC8 relates to changes proposed between Local Plan Regulation 19 stage and the version of the LP for examination [CD0/1]?

Q16. The Council are requested to provide a version of the LP with any changes to the plan between publication and submission stage marked up within it.

Plan period and housing shortfall

11. In response to Q4 of INSP1 NWBC confirmed that 2011 is intended to be the base year proposed for the LP. That is the same as the Core Strategy adopted in October 2014 ('CS'), which superseded the former West Midlands Regional Spatial Strategy ('WMRSS').
12. The CS set an annual housing requirement of 175 dwellings, excluding an additional 500 over the CS period redistributed from neighbouring Tamworth Borough Council's administrative area. Table 2 of the LP advocates a significantly higher annual housing requirement of 264 dwellings (setting aside any issues related to that figure directly).
13. In that context taking the base year of the LP to be 2011 would mean that any undersupply in housing delivery since should be considered relative to the emerging LP requirement rather than that formerly in the CS or WMRSS. Amongst other issues, that approach will have implications for the calculation of NWBC's five year housing land supply ('5YHLS').
14. The issues of undersupply and of whether there has been a record of persistent under delivery of housing to necessitate a 20% 5YHLS buffer with

regard to paragraph 47 of the NPPF are both inter-related and distinct issues. Examination document CD8/13, the Council's 5YHLS calculation document as at 31 March 2017 does not appear to specify the requirement against which an approximate supply of 5.1 years was calculated.

15. Nevertheless on 2 July 2018 NWBC uploaded document CD8/13A to the examination website. That is an updated 5YHLS document reflecting housing delivery in 2017/2018. CD8/13A shows annualised housing completions since 2011/2012, which amount to delivery of 1255 dwellings in total.
16. That has led NWBC to calculate a shortfall of approximately 593 dwellings since 2011 relative to the annual housing requirement of 264 dwellings currently in the LP. NWBC have also projected forward a required 5YHLS on the basis of addressing that shortfall within the next five years, consistent with the approach recommended in the Planning Practice Guidance ('PPG', often referred to as the Sedgefield approach).¹
17. CD8/13A also proposes a 20% 'flexibility factor'. That, I presume, is the buffer referred to in paragraph 47 of the NPPF which applies where there has been persistent under-delivery of housing previously. The NPPF explains that such a buffer for delivery should be moved forward from later in the plan period to provide a realistic prospect of achieving the planned supply sooner.

Q17. Can NWBC confirm that (a) it is intended that any shortfall in housing provision since 2011 relative to the requirements of the LP are to be met within the next five years, and (b) that the 20% flexibility factor applied to 5YHLS calculations is on account of a record of persistent under delivery of housing.

Q18. With regard to establishing the buffer that should apply to the 5YHLS, the Council are asked to create a table which sets out annual housing delivery over the last 15 years relative to the development plan target that applied in each year (whether of the CS or WMRSS).

Establishing housing needs and requirements

18. In response to Q8 of INSP1 the Council produced NWBC5 detailing the Council's approach to establishing objectively assessed housing need ('OAHN'). I am concerned that the approach taken to establishing OAHN and housing requirements is inconsistent with the NPPF and PPG.
19. LP table 1 sets out that some 940 homes of the proposed LP housing requirement are attributable to 'economic uplift' from the Coventry and Warwickshire Housing Market Area ('CWHMA') and Greater Birmingham Housing Market Area ('GBHMA') in which North Warwickshire falls. That is further expressed as a 35%/ 65% split, or 320 and 620 homes respectively.
20. NWBC contend that the 620 homes attributable to economic uplift from the GBHMA, incorporated into the LP housing requirement, would provide for 500 dwellings which the Council previously agreed to deliver for Tamworth

¹ Reference ID: 3-035-20140306.

Borough Council during the development of the CS (with some additional headroom). That is setting aside any housing delivery to date [CD8/13A].

21. That assumption has carried through into the Greater Birmingham Housing Market Area Strategic Growth Study published in February 2018 (the 'SGS', examination document CD/23, paragraph 3.18). It is also of relevance to the exercise of the Duty to Co-operate in the preparation of the LP ('DtC').
22. However, based on the evidence before me, that approach appears to be flawed. The latest Strategic Housing Market Assessment published in September 2015, covering CWHMA authorities states that it does not take account of any proposed planning policies or strategic economic objectives of the Local Enterprise Partnership or of local planning authorities (the 'SHMA', CD8/10, paragraph 4.48).
23. It therefore appears that the 'economic growth' referred to in the SHMA is not related to the redistribution of housing from elsewhere to North Warwickshire as is implied in the LP. Instead the evidence indicates that it is merely attributable to North Warwickshire falling within an area which is forecast to take a particular economic and demographic path (setting aside any active policy interventions).
24. The PPG reiterates that development needs should be assessed in relation to the relevant functional area, i.e. the housing market area(s) of which a local planning authority is a component part.² In that context the SHMA establishes a demographic starting point of 163 homes annually, but 237 as representative of OAHN (47 of which relate to forecast economic growth trends and 27 to improving affordability based on market signals).
25. Moreover the SHMA's forecast economic growth trajectory for North Warwickshire has been revised downwards from that anticipated across the CWHMA. That is in order to ensure that the development of logistic sites of Hams Hall and Birch Coppice are treated as exceptions to the baseline economic growth that can be expected to occur (SHMA paragraph 4.52).
26. Accordingly my provisional view is that the only concrete contribution that the LP intends to make to addressing unmet needs from elsewhere is for 540 homes redistributed from other authorities within the CWHMA who are unable to meet needs within their administrative boundaries (in accordance with the Memorandum of Understanding between them [NWBC4]). I address unmet needs in the GBHMA below.
27. Notwithstanding the above, the PPG sets out that the Government's household projections should provide the starting point estimate of overall need.³ The PPG explains that a meaningful change in the housing situation should be considered, although clarifies that housing assessments are not automatically rendered outdated every time new projections are issued.⁴

² Reference ID: 2a-008-20140306.

³ Reference ID: 2a-015-20140306.

⁴ Reference ID: 2a-016-20150227.

28. Since the latest version of the SHMA, 2014-based household projections have been published. They may, or may not, alter assumptions regarding housing needs supporting the LP. The Council will want to reflect on those projections and my reasoning above in their position statements for hearings based on the schedule of MIQs [INSP5].

Accommodating unmet need from the wider GBHMA and housing requirements

29. In response to INSP1, Q8 the Council produced NWBC6. That explains the rationale for aspiring to deliver an additional 3,790 homes via the LP redistributed from the wider GBHMA (10% of the unmet need forecast to arise over the plan period of Birmingham City Council's Local Plan adopted on 10 January 2017).

30. There is a Memorandum of Understanding before me agreed bilaterally between NWBC and Birmingham City Council ('BCC') in that respect [NWBC4]. I note that there are some differences in overall predicted levels of unmet need that will arise in the GBHMA in the future, and potential remedies, in the SGS compared to the evidence supporting BCC's Local Plan. Notwithstanding that it does not purport to present findings at local authority level (paragraph 3.24), the relevance and significance of the SGS will be for examination hearings [INSP5].

31. Paragraph 7.42 of the LP explains that the provision of an additional 3,790 homes in North Warwickshire will be 'challenging' and a 'major change'. 3,790 homes expressed as an annual figure over the LP plan period of 2011 to 2033 is, in itself, essentially equivalent to the former CS requirement (172 homes compared to 175). In that context I am concerned that the substantive viability evidence related to the LP pre-dates the CS and therefore does not take account of levels of development currently proposed [NWBC2, Q9].

32. NWBC6 explains that the figure of 3,790 homes was arrived at as a pragmatic approach, drawing reference from 2011 Census and associated travel to work data. There are similar references to associated evidence in the Sustainability Appraisal [CD1/2, paragraph 4.5]. As I understand it, that data indicates that in 2011 approximately 5151 unique commuting trips were made from Birmingham to North Warwickshire.

33. Numerically, based on NWBC's figures, 5151 is approximately 13.6% of the predicted unmet housing need figure in the GBHMA of 37,900 established via BCC's Local Plan. However if it is assumed that each trip relates to a single household, based on local Census data of an average of 2.39 individuals to a household, that would equate to 2155, approximately 5.7% of the predicted unmet need in the GBHMA. The 10% that NWBC aspire to deliver is roughly the mid-point between 13.6% and 5.7%.

34. I do not fault the Council for looking to move forward with developing its Local Plan, nor its openness to considering accommodating development from elsewhere. However I am concerned with the robustness of the approach here. Aside from a passing reference in the Sustainability

Appraisal, I am not aware that the justification for the figure of 3,790 homes has, other than in NWBC6, previously been publicised.

35. Moreover the basis for the 10% calculation compares the number of commuter flows into North Warwickshire from Birmingham rather than the proportion of all commuting journeys from Birmingham that this represents. It is based on data which is now some 7 years old. It is furthermore unclear whether or not all such journeys originate in Birmingham City Council's administrative area (noting that logistics is a significant economic sector). Those issues, and whether this approach to apportionment has been agreed amongst GBHMA authorities as an outcome of the DtC, will be matters for discussion during hearings.
36. In terms of its intended operation, LP policy LP6 explains that the delivery of the 3,790 homes is an aspiration. It sets out that 'the actual amount of development delivered over the plan period will be governed by the provisions of infrastructure to ensure developments are sustainable' (my emphasis).
37. Accorded its ordinary definition, aspiration is synonymous with 'hope'. NWBC6 confirms that not all of that figure may be delivered should infrastructure provision fall short, for whatever reason. I will therefore consider in detail the Infrastructure Delivery Plan ('IDP') and the robustness of evidence regarding future provision [CD6/5].
38. I acknowledge that the aspiration in policy LP6 has been established out of pragmatism and mutual agreement with BCC. However for three principal reasons I have concerns as to whether such an approach is sound.
39. Firstly, paragraph 47 of the NPPF establishes that local planning authorities should seek to ensure that plans meet full objectively assessed housing needs in the housing market area. Within its own terms an aspiration may legitimately not be met. Moreover were other GBHMA local planning authorities to adopt a similar approach, there is the strong likelihood that housing delivery in aggregate would fall short of the needs of that area.
40. Secondly, paragraph 154 of the NPPF sets out that plans should include clear policies on what will, or will not, be permitted and where. I am concerned that an aspiration is inconsistent with that approach by introducing ambiguity in practice as to what level of development is necessary. That appears to be compounded by the lack of recently-produced viability evidence related to the LP, and the reference in paragraph 9.67 of the SGS that there is limited market ability to deliver substantial further growth within the Borough.
41. Thirdly, Sustainability Appraisal ('SA') should be an iterative process informing the development of a plan.⁵ Case law has reflected that although certain defects in SA may be rectified at examination, that cannot amount to a 'bolt-on' exercise which serves to justify a predetermined strategy.⁶ Related to my concerns regarding the evidential basis for accommodating

⁵ PPG Reference ID: 11-001-20140306.

⁶ Satnam Millenium Ltd v Warrington Borough Council [2015] EWHC 370 (Admin).

10% of unmet need in the GBHMA, there is limited evidence before me to indicate that alternative levels of housing, rather than its distribution, have been assessed via SA or discussed in the context of the DtC.

42. In addition to the questions below I would welcome any comments from NWBC regarding my concerns above in their position statements for hearings related to the schedule of MIQs [INSP5].

Q19. Can NWBC clarify when the updated viability evidence referred to in NWBC2 will be available on the examination website?

Q20. Can NWBC clarify whether or not the evidence referred to in NWBC6 in support of accommodating an additional 3,790 homes in the Borough was previously set out for public consideration, and how any alternative levels of housing have been assessed?

Habitats Regulations Assessment

43. The Habitat Regulations Assessment ('HRA') supporting the LP is examination document CD1/7. That, alongside the submission of the LP for examination, pre-dates the judgement handed down on 12 April 2018 in *People Over Wind and Sweetman v Coillte Teoranta*.⁷ The essence of that judgment was that measures to avoid or reduce effects of plans or programmes on protected habitats should be considered via appropriate assessment, as opposed to integrated with an earlier screening assessment.
44. Paragraph 5.7 of the HRA notes that consideration has been given to the potential for mitigation measures through the LP to avoid significant adverse effects to the Cannock Extension Canal Special Area of Conservation. However paragraph 5.10 of the HRA explains that such effects, in combination with others, have been considered in the subsequent Appropriate Assessment.

Q21. Given the above context, I would be grateful for the Council's views as to whether its HRA report is legally compliant?

Next steps

45. As with INSP1, I ask that NWBC acknowledge receipt of these additional questions swiftly and provide a date by which responses will be returned, which should be before 10 August to enable sufficient opportunity for those preparing position statements to consider any responses. If the Council has any comments or questions, I would be happy to receive them.

Thomas Bristow

INSPECTOR

18 July 2018

⁷ Environment – Conservation of natural habitats, [2018] EUECJ C-323/17.