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Maria Bailey
Interim Planning Policy Manager
Ashfield District Council
(By email)

Dear Ms Bailey

Ashfield Local Plan Examination – Exploratory Meeting

- 1 As you know I wrote to you on 29 January setting out some potentially serious concerns about the soundness of the Local Plan. You provided a written response to these concerns on 24 February and they were discussed at an Exploratory Meeting held on 11 March. At the end of that meeting, I said that I would write to you with my conclusions regarding the Examination, once I had received your formal response.
- 2 You have confirmed in your formal response dated 18 March that you propose to prepare an Addendum to the Sustainability Appraisal (SA) relating to the assessment of development sites and alternatives. I understand that this would include a written commentary for each site to help explain why various sites were selected and others rejected. You intend to put this work out to consultation for 6 weeks and to provide any consultation responses and an analysis of them by 27 May 2014.
- 3 Even taking the proposed SA work into account, I have two significant concerns regarding the potential soundness of the Plan. These relate to the assessment of development site options and the Green Belt. However, I want to turn first to matters relating to the plan period.

Plan period

- 4 You have preferred a 10 year plan period in order to ensure sufficient land is available for housing, particularly in the first 5 years and to allow scope to develop neighbourhood planning. Once the Local Plan is adopted, your intention is to carry out an early review, aiming at adoption in 2017.
- 5 The Framework identifies a need to provide a 5 year supply of housing land and sets out policy on neighbourhood plans. Nevertheless, it still prefers a 15 year time horizon. Furthermore, the Framework emphasises that neighbourhood plans must be in conformity with the strategic policies of the Local Plan and that to facilitate this LPAs should ensure that an up-to-date plan is in place as soon as possible.

- 6 Consequently, I am not entirely convinced that the arguments you have advanced provide a robust justification for a plan period of around 10 years. Nevertheless, the national Planning Practice Guidance states that “Local Plans can pass the test of soundness where local planning authorities have not been able to identify sites or broad locations for growth in years 11-15.”¹ Accordingly, a Plan which does not identify sites or broad locations for years 11-15 is not inevitably unsound and this is not a matter which would, in itself, prevent the examination proceeding to the hearing sessions.
- 7 However, this matter does potentially have some bearing on options for the examination. The Plan is intended to cover the period up to 2024. Consequently, if it were to be adopted in the middle of this year it would have a lifespan of around, or a little under, 10 years. I appreciate that your intention is to complete the consultation on the addendum to the SA and analyse the results by 27 May. However, even so, at the earliest adoption of the Plan could not be until late in 2014. This would reduce the lifespan of the Plan to a little over 9 years. Furthermore, this pre-supposes that the new SA work would justifiably lead to a conclusion that the Plan is sound. However, if the SA does indicate that main modifications are necessary to make the Plan sound or if main modifications arise later in the Examination this would delay adoption so reducing the plan period still further.
- 8 At the Exploratory Meeting you noted that the Plan would provide 10.7 years of housing supply, that a conservative approach has been taken to density and to developable sites areas and that windfalls have not been taken into account (although I note the housing trajectory in the *Housing Technical Paper* does state that projected completions include “minor SHLAA sites deemed deliverable”²). However, these matters have not been tested through hearing sessions and at this stage there appears to be very little scope for suspending the Plan without reducing its forward lifespan to less than 10 years. This would be significantly less than the 15 years preferred by the Framework and could mean that the Plan would fail to provide for developable housing sites or broad locations for growth in the latter part of years 6 to 10.

Assessment of site options

- 9 My fundamental concern here is that it is not clear from the SA of sites or from other documents why the allocated sites have been selected and alternative sites have been rejected.
- 10 The National Planning Policy Framework requires that to be sound the Plan should be the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence (para 182). The SA is part of the evidence base in terms of the assessment of site options. There is also a legal requirement to comply with Regulation 12(2) of *The Environmental Assessment of Plans and Programmes Regulations 2004*.³

¹ ID 3-027-20140306

² The Housing Technical Paper also indicates that there is a reliance on windfall sites in Selston, Jacksdale and Underwood

³ “The report shall identify, describe and evaluate the likely significant effects on the environment of – (a) implementing the plan or programme; and (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.”

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- 11 The Courts have confirmed that it should be clear from the SA why the preferred option came to be chosen and this should be based on analysis on a comparable basis of the preferred option and reasonable alternatives.⁴

The use of the SA Site Assessment Framework

- 12 The Site Assessment Framework sets out 14 SA criteria. Each potential site has been given a 'value' against these criteria ranging from major positive (green++) to major negative (red-). However, it is not clear how this assessment has been used to inform choices regarding site allocations. In my initial written questions I gave an example of rejected sites which appear to perform as well as or better against all 14 criteria than some sites which had been selected.⁵ You have told me that other factors have been taken into account in reaching conclusions and that these are set out in various documents, including the *Strategic Housing Land Availability Assessments (SHLAA)*, the *Infrastructure Delivery Plan 2013* and the *Housing Technical Paper*. However, it is not clear from any of these documents what the key factors were in making individual site selection choices or how these factors were weighed against others to reach conclusions. Consequently, I cannot be certain how the choices were made.⁶
- 13 I appreciate that the *Sustainability Appraisal for the Local Plan Preferred Approach 2012* included explanatory text for each site but that this was subsequently not included in the SA on the submitted Local Plan. However, while this text helps explain how some of the 'values' were arrived at for each SA criterion in terms of the earlier version of the Plan, it does not appear to clearly explain how overall conclusions were reached or which factors were of key significance. Consequently, simply re-instating this text as part of an Addendum to the SA would not overcome my fundamental concerns about the selection of sites. Furthermore, the SA for the submitted Plan appears to include an assessment of far more sites than the earlier version.⁷ Consequently, the explanatory text for the additional sites would have to be prepared from scratch. Furthermore, addressing all the concerns expressed in this letter is likely to require a fundamental re-assessment of the sustainability appraisal and site selection work.

Landscape and visual effects

- 14 My second concern relates to the way potential landscape and visual effects have been assessed and factored into the decision making process. It seems to me that the 'SA Criteria' 7 for 'Environment and Landscape' relates mostly to open space, cultural activities and historic sites.⁸ I appreciate that the SHLAA entry for each site does include a section on 'impact on landscape and biodiversity'. However, the entries tend to be brief, mainly setting out the relevant Landscape Character Assessment Draft Policy Zone (DPZ) and a very

⁴ Heard v Broadland District Council, SNDC and NCC [2012]

⁵ Exploratory Meeting – Inspector's questions and concerns – para 86

⁶ See *Save Historic Newmarket Limited and other v Forest Heath District Council [2011]* - "In my judgement, Mr Elvin is correct to submit that the final report accompanying the Core Strategy to be put to the inspector was flawed. It was not possible for consultees to know from it what were the reasons for rejecting any alternatives to the urban development where it was proposed ..."

⁷ Looking at Kirkby – the Preferred Approach SA (2012) lists 24 sites whereas the SA on the submitted Local Plan (2013) lists some 36.

⁸ As do the four 'decision making criteria' for SA Criteria 7

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short description.⁹ The summary text for each site provided in the previous iteration of the SA (as referred to above) does not always make any reference to potential visual or landscape effects. However, even where it does, the reference is usually brief and without any substantive analysis.¹⁰

- 15 You have explained that insufficient capacity exists to meet development needs within existing settlement boundaries and so it has been necessary to consider sites on the edge of settlements. Many of these will inevitably be countryside.
- 16 I understand that Ashfield does not include any national landscape designations (National Parks or AONBs). However, one of the core planning principles of the Framework is to recognise the intrinsic character and appearance of the countryside (para 17). In order to comply with the Framework and given the potential need to consider development outside settlement boundaries, it is important that the relative merits of site options in terms of landscape and visual effects should be evaluated to a reasonable degree and the conclusions clearly factored into the decision making process. I am not clear that this has been done.
- 17 I appreciate that account has been taken of the *Greater Nottingham Landscape Character Assessment 2009*. However this focuses on wider character areas rather than on specific sites. I am also aware that you intend to prepare Planning Briefs for proposed site allocations informed by the design policies in the Plan. However, this would clearly be on the basis that the sites have already been allocated and so is not part of the selection process.

Effect on town centres

- 18 It is clear from your answers to my written questions¹¹ that an important part of your site selection process has been about locating housing so that it would maximise benefits in terms of regenerating town centres. Indeed, looking at the appraisal of spatial options for Sutton and Kirkby in Appendix 1 of the SA it would appear that the only distinction between Option KS2 (spread development throughout organic sites) and Option KS3 (no growth in the Green Belt) is that the latter scores Green+ on the 'Social' criteria whereas the former scores Green++. The supporting text explains that not allocating sites in the Green Belt would result in a missed opportunity to aid town centre regeneration. However, the reasons for reaching this conclusion are not clearly explained in the SA and so it is not immediately clear why development options elsewhere in or around Kirkby and Sutton, outside the Green Belt, could not also assist in regenerating the town centre.
- 19 Furthermore, the projected impact on town centres does not appear to be set out clearly in the SA of sites or elsewhere. Arguably it could be enshrined in both the social and transport criteria which relate to access to services and multi-modal accessibility. In addition, during the Exploratory Meeting you told me that criteria relating to employment, innovation and economic structure

⁹ For example SHLAA site S337 (allocated as HG1Ss) – there is a reference to the DPZ (which defines the landscape condition as 'good' and the landscape strength as 'strong') and brief notes stating that the site is "Open countryside. Hedgerows on boundary" and "The site is open in character". The SA 'scores' the site as 'neutral' for 'environment and landscape'.

¹⁰ For example, Derby Road (off Abbey Road/Richmond Road) – "On the edge of the main urban area and, if designed well, could be successfully integrated into the existing community."

¹¹ For example, see response to para 70 in terms of justifying exceptional circumstances for taking the two Derby Road sites out of the Green Belt in Kirkby

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were also relevant. However, none of these criteria specifically refer to the potential effect on town centres and there appears to be no substantive analysis of this matter. Consequently, it is unclear how the potential benefits to town centres have been assessed, why some sites might have a greater beneficial effect than others and how this has been weighed against other criteria to reach conclusions.

Options considered

- 20 You have considered and rejected options to allocate Sustainable Urban Extensions (SUEs) to the west of Kirkby and to the east of Sutton/Kirkby because of concerns about deliverability and developability over the plan period, the relationship with town centres and in the context of local opposition.
- 21 You have also confirmed that you have not assessed the potential to allocate smaller parcels of land within the SUEs because of concerns that this might lead to the sterilisation of wider areas of land (i.e. it might prevent the SUEs coming forward in future) and could lead to difficulties securing appropriate infrastructure contributions. However, in the absence of any firm evidence to indicate why this might be the case, I am not persuaded that this provides a robust justification for not assessing smaller parcels of land within the SUEs on their own merits. Indeed at the Exploratory Meeting you accepted that there could be some potential to look at smaller parcels of land, particularly within the east of Sutton SUE (which is comprised of several smaller SHLAA sites – for example, K23, K33, S62 and S67).
- 22 Accordingly, I am not convinced that all reasonable alternatives have been evaluated on a comparable basis. Given the size of the potential SUEs, it is conceivable that individual sites within the larger parcels might provide reasonable alternatives that should be considered against other site options. It is also possible that a smaller parcel of land within a SUE might perform differently in terms of sustainability than the SUE when considered as a whole.

Conclusion on SA

- 23 The Courts¹² have found that an Addendum to a SA (as you now propose) can, as a matter of law, be used to remedy defects. It is, therefore, possible to justify choices even at a later stage of the process. However, this pre-supposes that the choice made was “on its merits, the correct one or best one ...”¹³
- 24 Para 8.16 of *Examining Local Plans Procedural Practice* states that the commissioning of new evidence suggests that the evidential base for the plan is not sound and so could lead to major changes to the submitted Plan. In this case, there must at least be some possibility that a revised SA, addressing the concerns set out above, could result in different site options being preferred. This would necessitate main modifications which would require consultation. This would delay adoption leading to further problems in respect of the time period of the Plan, as identified above.
- 25 I appreciate that you have developed the SA through close working with neighbouring authorities, that you have taken external advice on it and that similar methodologies have been applied elsewhere. Nevertheless, even taken

¹² *Cogent Land LLP v Rochford District Council* [2012]

¹³ See para 125 of ‘Cogent’

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together with the other submitted evidence, I am not convinced that the SA demonstrates that the Plan is justified and so represents the most appropriate strategy when considered against the reasonable alternatives.

Green Belt

26 You have carried out a strategic review of the Green Belt which has resulted in a conclusion that six sites should be taken out of the Green Belt and allocated for housing. Two of these are in Kirkby and four in Underwood. Your conclusions have been informed by a 'Strategic Green Belt Review' dated August 2013. This, in effect, involved a two stage assessment. Initially, 34 parcels of land were reviewed against the five Green Belt purposes set out in the Framework. Following this you considered which parcels might be suitable for housing development. At the Exploratory Meeting you confirmed that you consider these assessments to be robust. My concerns are set out below.

Outcomes where parcels do not meet Green Belt purposes

27 Appendix 4 to the Strategic Review shows that 9 parcels of land "do not meet Green Belt purposes". Five of these parcels are proposed, in part, to be allocated for housing (parts of two parcels in Underwood are allocated as one site – HG1Vg). The Plan shows that the remaining 4 parcels and significant parts of some of the other 5 parcels would be retained in the Green Belt.

28 At the Exploratory Meeting and in your subsequent letter you have advised that some of the land which you are intending to retain as Green Belt does, at least partially, meet some Green Belt purposes. In this context you have advised that para 5.5 of the *Strategic Green Belt Review* indicates that a 'red' score actually indicates that parcel of land "does not fully meet the purposes of the Green Belt" and that this nuance should have been reflected in Appendix 3 (and 4). However, Table 1 in Appendix 3, which contains the detailed assessment of each parcel, clearly indicates that 9 parcels do not meet any Green Belt purposes and this conclusion is reflected on the map in Appendix 4. The Conclusions in section 7.0 also state that "nine parcels make a negligible or no contribution to the Green Belt and could be removed from the Green Belt without harming its integrity." In addition, para 7.4 says that these 9 parcels "do not contribute significantly" and para 7.5 states that the map in Appendix 6 "indicates the areas of Green Belt land which may be suitable to accommodate development without long term detrimental impacts on the overall Green belt designation".¹⁴ It seems clear to me, therefore, that your review has concluded that these parcels have negligible value as Green Belt.

29 I appreciate that you wish to defer decisions about any future designation or allocation of these parcels to an early review of the Local Plan taking into account 'community empowerment' and so, for now at least, you consider that they should be retained as Green Belt. For this reason you have not considered any alternative designations such as countryside or 'safeguarded land'.

30 However, the Framework advises that when defining boundaries, LPAs should not include land which it is unnecessary to keep permanently open. As it

¹⁴ Appendix 6 shows 8 parcels (parcel 25 is omitted because of major constraints relating to flood zone and public open space)

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stands, it appears that either, the Plan is not justified by the evidence, or that the evidence on which the Plan is based is flawed.

Exceptional circumstances

31 The Framework states that, once established, Green Belt boundaries should only be altered in 'exceptional circumstances' (para 83). It also advises that Local Plans should meet objectively assessed needs, unless specific policies in the Framework indicate that development should be restricted. One of the specified policies relates to land designated as Green Belt (para 14, footnote 9).

Consequently, it is clear that there must be a robust and compelling justification for allocating Green Belt land for housing in preference to sites which are not in the Green Belt. However, I am not persuaded that such 'exceptional circumstances' have been clearly set out in the evidence provided. This is primarily due to the concerns I have expressed above about the assessment of sites which can be summarised as follows:

1. From the evidence base provided, it is not possible for me to reach a clear understanding of how decisions have been arrived at to allocate some sites and not others.¹⁵ Nor is it clear how important factors relating to town centre regeneration and landscape/visual effects have been considered.

2. I am not convinced that all reasonable site options outside the Green Belt have been evaluated, in particular smaller parcels of land within the potential SUEs.

32 Consequently, I cannot be sure that all possible options for development outside the Green Belt have been exhausted or that the development of Green Belt land would represent a significantly more sustainable option than development of land which is not in the Green Belt. For these reasons, the evidence does not clearly demonstrate that there are exceptional circumstances to justify altering the Green Belt boundary, particularly in relation to Kirkby.

33 Issues relating to options for housing numbers, community infrastructure and neighbourhood planning in Selston, Jacksdale and Underwood were discussed briefly at the Exploratory Meeting in relation to the Green Belt and the question of 'exceptional circumstances'. This is a matter which I would want to discuss further if the examination were to proceed to hearing sessions.

Green Belt boundaries beyond the end of the plan period

34 The Framework states that Councils should satisfy themselves that Green Belt boundaries will not need to be altered at the end of the plan period and that, where necessary, safeguarded land should be identified between the urban area and the Green Belt to meet longer term needs stretching well beyond the plan period. (para 85)

35 You have identified that development needs to 2024 cannot be accommodated within existing settlement limits and that you are committed to meeting annual housing need from 2024 to 2029 (nominally at a rate of 546 dwellings/year but subject to any subsequent SHLAA) and that this would be addressed in an early

¹⁵ For example, in the SA of sites for Kirkby, several rejected sites which are not in the Green Belt appear to perform as well or better against all 14 sustainability criteria/objectives than preferred site HG1ke at Derby Road which is currently in the Green Belt.

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review of the Plan (with adoption in 2017). However, the submitted Plan does not include any safeguarded land and existing Green Belt boundaries tend to closely follow the edge of settlements in the part of the District which includes Green Belt. In this context, and even accepting that some allocations may not be fully developed by the end of the plan period, there is some uncertainty about whether the Green Belt boundaries in the Plan are capable of enduring beyond the plan period without the need for further review. Indeed your answer to my question 61 indicates that your early review of the Local Plan would be informed by your Strategic Green Belt Review.¹⁶

Conclusion on the Green Belt

36 For these reasons I am not convinced that the submitted Plan is consistent with national policy for the protection of the Green Belt or based on the most appropriate strategy when considered against the reasonable alternatives.

Other concerns

37 In my letter of 29 January I raised a number of other concerns.

Duty to cooperate

38 Most of the studies prepared jointly with neighbouring authorities date back to the period between 2007 and 2010. However, I understand that since then the Council has been actively involved in various working and partnership groups and advisory boards. You have confirmed to me that these have been used to consider various strategic cross border issues and that notes of these meetings exist and so could form part of the examination library if need be.

39 I also understand that you continue to be involved in a dialogue with neighbouring authorities. For example, this includes Mansfield District Council in relation to proposed development sites. However, that does not necessarily mean that there are no outstanding areas of disagreement. Nevertheless, as the recent national Planning Practice Guidance states “the duty to cooperate is not a duty to agree”.¹⁷

40 On this basis, my initial assessment is that you have complied with the legal duty to cooperate on strategic matters when preparing the Plan.¹⁸

Gypsy and traveller sites

41 It is clear that the Local Plan is not consistent with the Government’s ‘*Planning policy for traveller sites*’ because it only makes provision for sites until 2016. However, I understand that you are working collaboratively with neighbouring Councils to assess needs up to 2028 and that you subsequently intend to prepare a separate DPD on this topic which you aim to have adopted in 2015. You have noted that a similar approach has been accepted recently by Inspectors examining plans in nearby local authorities. Consequently, this is not a matter which would, in itself, prevent the examination proceeding to hearing sessions.

¹⁶ Response to ‘Exploratory Meeting – Inspector’s questions and concerns Inspector’s questions and concerns’ – page 36

¹⁷ ID: 9-001-20140306

¹⁸ Section 33A of the Planning and Compulsory Purchase Act 2004

Objectively assessed housing needs

42 My main concern is that it is not entirely clear how the objectively assessed need of 546 dwellings a year has been arrived at. However, I do appreciate that it is based on various scenarios which derive from population projections and that it has been benchmarked against the 'What Homes Where' figure of 550 dwellings/year and the requirement of 560 dwellings/year in the former Regional Strategy. This is a matter that I would need to consider at a hearing session before reaching any firm conclusions.¹⁹

Sherwood Forest – possible potential Special Protection Area (ppSPA)

43 Following the '*Rushley Farm West – Habitats Regulations Assessment*' (HRA) and your suggested post-submission modifications to the Plan, Natural England has withdrawn its objections. The HRA concluded that the Rushley Farm West allocation could be developed provided that appropriate mitigation is put in place. Amongst other things this would involve the developer securing management agreements with the landowner of the possible potential Special Protection Area.²⁰

44 The effectiveness and deliverability of the proposed mitigation is something that would need to be considered at a hearing session. The same applies to the effect of the proposed allocations of housing land on the western side of Derby Road on the ppSPA. However, it is not a matter which would prevent the examination going ahead.

Conclusions

45 Given my significant concerns regarding the selection of sites and in connection with the Green Belt, I consider there to be a significant risk that the Plan would be found unsound. As these concerns are about the evidence base, I am far from certain that this can be rectified by carrying out additional SA work as you propose. '*Examining Local Plans Procedural Practice*' states that the need to commission new evidence raises an issue about the basis on which the plan has been prepared. It is a self-evident possibility that further work on the SA, addressing the serious concerns I have raised, could lead to different conclusions about which sites should be preferred for allocation. This would then need to be reflected in main modifications which would further delay the adoption of a Plan which already has a short time horizon.

46 Consequently, a suspension of the Examination would not be appropriate. The most appropriate course of action would, therefore, be for the Council to give serious consideration to withdrawing the Plan.²¹ '*Examining Local Plans Procedural Practice*' advises that, in these circumstances, it is not in anyone's interest if time and money is spent on the examination of a Plan.

47 If the Plan is withdrawn this would allow you to review the evidence base, including in respect of site options in order to arrive at a submitted Plan that would be justified and consistent with national policy. It would also provide an

¹⁹ This includes the issue of how any past under or over supply should be taken into account as raised in your letter dated 18 March.

²⁰ At the Exploratory Meeting you explained that the relevant landowner is the Forestry Commission

²¹ Under S22 of the Planning and Compulsory Purchase Act 2004

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opportunity to consider options to plan over a longer time period, so providing an effective strategic context for neighbourhood planning. It could also allow you to incorporate the forthcoming work on gypsy and traveller needs.

48 I know that you will be disappointed by my conclusions. However, I feel it is the only realistic way forward. In saying this, I do appreciate the hard work that has gone into preparing the Local Plan, the difficult choices that have to be made and the positive aspirations that have informed your work. I would also like to thank you for the time and effort you have put in to answer the questions I put to you before and during the Exploratory Meeting. I have found that most helpful.

49 I would be grateful if you could confirm the Council's position via the Programme Officer as soon as possible.

Jeremy Youle

INSPECTOR