

HEARING STATEMENT

Matter 1 – Procedural and legal requirements
including the Duty to Cooperate

On behalf of Campfield Farms Ltd

October 2024

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1 INTRODUCTION AND BACKGROUND

- 1.1. This Hearing Statement has been prepared on behalf of Campfield Farms Ltd (Respondent ID803), and in respect of Matter 1 of the Ashfield Local Plan (ALP) Examination.
- 1.2. Campfield Farms Ltd is promoting development of Land off Cauldwell Road, Sutton-in-Ashfield ('the Site') for strategic scale development. The Site formed a draft allocation in the Regulation 18 Draft Local Plan (2020 – 2038) (November 2021) as one of two new settlements proposed within the draft spatial strategy. Draft Strategic Policy S7 (Meeting Future Needs – New Settlement: Land at Cauldwell Road, Sutton-in-Ashfield) comprised the draft allocation as shown on the draft Policies Map for a mixed-use New Settlement to deliver 1,000 dwellings. However, the proposed allocation was not carried forward to the Regulation 19 iteration of the ALP, and the submitted ALP does not propose the Site be developed.
- 1.3. This Hearing Statement addresses Issue 2 of Matter 1 of the ALP Examination:

Whether the Council has complied with relevant procedural, legal and other requirements.
- 1.4. In short, we have concerns vis-à-vis preparation of the ALP and compliance with European Directive 2001/42/EC ('the SEA Directive'), the plan-making aspects of which are transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004 (Statutory Instrument 2004 No.1633) ('the SEA Regulations'),
- 1.5. These concerns are set out within this Hearing Statement, along with how that such defects could potentially be cured.
- 1.6. Our concerns principally relate to Question 1.15, but are also relevant to Question 1.18.

1.7. It is recognised that the ALP reached the Regulation 19 stage before 19 March 2024. Consequently, under the transitional arrangement of the current NPPF (NPPF December 2023) the ALP will be examined in relation to the NPPF September 2023. References to 'NPPF' within this statement are to the NPPF September 2023, unless otherwise specified.

2 MATTER 1 ISSUE 2 QUESTIONS

Q.1.15 Does the Sustainability Appraisal (SA) meet the requirements for a Strategic Environmental Assessment?

- 2.1. The preparation of the ALP is required to comply with the Environmental Assessment of Plans and Programmes Regulations 2004 (Statutory Instrument 2004 No.1633) ('the SEA Regulations'), which transposes the plan-making elements of European Directive 2001/42/EC ('the SEA Directive') into UK law.
- 2.2. The SEA Regulations require that for plans such as the ALP, an Environmental Report is prepared. In this case, the ALP Sustainability Appraisal ('the 2023 SA') (document SD.03) seeks to discharge this obligation.
- 2.3. The Environmental Report is required to identify, describe, and evaluate the likely significant effects on the environment of proposed options, as well as on reasonable alternatives (Regulation 12(2) of the SEA Regulations). Regulation 12(3) further sets out the information required to be included within the Environmental Report, referencing Schedule 2 of the SEA Regulations. Schedule 2 states that SA/SEA should consider short, medium and long term effects; permanent and temporary effects; positive and negative effects; and secondary, cumulative and synergistic effects.
- 2.4. As confirmed through case law (see *Heard*¹), whilst it is not necessary to keep open all options for the same level of detailed examination at all stages, at each stage the preferred option and reasonable

¹*Heard v Broadland District Council* [2012] EWHC 344 (Admin)

alternatives must be assessed to the same level of detail. This includes considering alternatives for any modifications to a plan, even if late in the plan-making process.

Our concerns

- 2.5. Our concerns in respect of the submitted ALP and its accompanying 2023 SA relate to how housing growth options have been considered.
- 2.6. In the case of the 2023 SA, it is noted that it appraises the submitted ALP on the basis that it proposes to set a housing requirement that reflects its minimum local housing needs, as calculated using the Standard Method², i.e. 446dpa. The results of this are summarised in Table 5.2 of the 2023 SA, which identifies 'standard methodology' (i.e. setting a housing requirement that is the minimum as per the NFPF and PPG) as the preferred option (i.e. the option the submitted ALP pursues).
- 2.7. In appraising the proposed approach to meeting housing needs the 2023 SA concludes:

"The findings of the appraisal are the same as identified for the preferred figure in the 2021 Draft Local Plan SA Report" (paragraph 5.3.5).
- 2.8. The 2021 Draft Local Plan in question is the October 2021 Regulation 18 iteration of the ALP which set out the Council's then preferred options. The 2021 Draft Local Plan was itself accompanied by Sustainability Appraisal ('the 2021 SA') (document CD.04).
- 2.9. In considering potential options for meeting the District's housing needs, the 2021 SA noted that the preferred housing growth option at that stage (i.e. using the Standard Method and seeking to meet

² PPG Paragraph: 004 Reference ID: 2a-004-20201216

needs based on this) would provide 8,226 dwellings over the plan period, and appraised the option on this basis.

- 2.10. In explaining the reason for selecting the preferred approach (delivering 8,226 dwellings over the plan period) the 2021 SA explained:

*“By adopting the Preferred Option, the Council is **accommodating it housing need**, based on the standard method, while minimising the impact on the environment. An allowance of approximately 10% has been built into the housing allocations to give flexibility and to meet the possibility of a change in circumstances”* (paragraph 5.3.18, emphasis added).

- 2.11. The above was set out under the sub-heading: ‘Reasons for the selection of the preferred housing growth option and rejection of the alternative’ within the 2021 SA.
- 2.12. Turning to the 2023 SA, it contains an identical sub-heading in which the reasons for selecting the preferred housing growth option at this stage are set out. However, within this explanatory text there is no longer reference to this option *“accommodating housing need”*. In one sense, the absence of such reference in the 2023 SA is logical, in that the approach to housing need in the submitted ALP no longer will meet housing needs – whilst ostensibly similar to the approach taken by the ALP Preferred Options, the submitted ALP states at paragraph 3.63 that it will only deliver approximately 13 years’ worth of housing need calculated using the Standard Method and at Table 2 it makes clear that the strategy will result in a shortfall of housing delivered over the period 2023-2040.
- 2.13. By no longer stating the selected option will meet housing needs in text explaining the reason for selection of the housing growth option, the 2023 SA appears to implicitly acknowledge that the submitted ALP differs from that in the ALP Preferred Options in its approach on this matter. The concern, however, is that despite this the 2023 SA fails to properly assess the key difference between the ALP Preferred Options and the submitted ALP in terms of its approach to meeting housing needs.

- 2.14. On the contrary, the 2023 SA appears to appraise the option being pursued in the submitted ALP as if it were the same as that in the Preferred Options ALP – as if there were no difference between the approach to meeting housing needs between the two iterations of the ALP.
- 2.15. A further concern with the 2023 SA is that within Section 6 (Conclusion, monitoring and next steps), at paragraph 6.14 under the sub-heading 'Housing Growth Option', the SA states that the submission ALP:
- "Sets out a preferred option of a minimum of 7,582 dwellings over the plan period based on the government's standard methodology for calculating housing need".*
- 2.16. This appears to entirely overlook that the housing growth option being pursued by the submitted ALP does **not** achieve this figure, as the submitted ALP itself acknowledges in Table 2. It would be entirely reasonable for a decision-maker to infer from the above that housing needs over the plan period **were** being met, when patently this is not the case. Clearly there are fundamental differences between a housing growth option that seeks to meet needs in full (the Preferred Options ALP) and one in which needs will not be met (the submitted ALP).
- 2.17. The 2023 SA's failure to acknowledge that the submitted ALP's housing growth strategy will not meet housing needs is particularly surprising, given that the 2021 SA **did**, as noted above, explicitly refer to meeting housing needs as part of its justification for the selection of that option at that stage.
- 2.18. Separately, it is noted that in considering a different aspect of the submitted ALP (the spatial strategy) the 2023 SA considers potential spatial options that would increase the number of homes provided.
- 2.19. At paragraph 5.5.80 the 2023 SA acknowledges that Ashfield District Council ('the Council') sought to take forward "***an amended scenario***" which "***sought to reduce the impact on the Green Belt and meet housing need***".

- 2.20. Reasons for rejecting what are described as “*alternative spatial strategies*” are set out in Table 5.5 of the 2023 SA. Notably, these reasons for rejecting alternative spatial strategies concentrated on spatial matters, pertaining to the suitability (or lack thereof) of various specific potential sites / growth areas. This is entirely as one would expect given that its purpose is to consider alternative spatial strategies, rather than housing growth options.
- 2.21. However, whilst the 2023 SA explains the reasons for the rejection of specific alternative strategies, we cannot see where the 2023 SA has expressly assessed the implications of the submitted ALP’s failure to meet housing needs over the plan period.
- 2.22. In our view all of the above give rise to two fundamental concerns vis-à-vis the submitted ALP and compliance with the SEA Regulations:
- a) That the effects of the housing growth option selected, in which only delivers 13 years’ worth of the minimum housing over a 17-year period, have not been properly assessed; and
 - b) That housing growth option of delivering the local housing need derived from the Standard Method across the entirety of the plan period (which is, at the very least, a reasonable alternative) has not been assessed at all within the 2023 SA, let alone to the same level of detail as the selected option.
- 2.23. Whilst for the reasons set out above, such concerns pertain to legal compliance, it should not be overlooked that they also go to the soundness of the submitted ALP, given the importance placed on sustainability appraisal in informing the Local Plans (NPPF paragraph 32).

Addressing the concerns

- 2.24. The *Cogent*³ judgment confirms defects in the SEA process can be resolved, even at a very late stage in the plan-making process. However, it should be recognised that an important lesson from *Cogent* was that additional work required to ensure the SEA process complies with the SEA Regulations does not simply amount to an *ex post facto* exercise which merely justifies the strategy already proposed.
- 2.25. Consequently, in the case of the ALP, we consider rectifying issues will require the preparation of a revised Environmental Report which assesses the implications of the housing growth option which results in a shortfall over the plan period (i.e. that proposed by the submitted ALP) and that in which needs as per the Standard Method are met in full over the plan period (i.e. the approach the Preferred Options ALP proposed).
- 2.26. Additionally, it will then be necessary for the Council to properly consider the findings of such an appraisal, and potentially propose modifications to the submitted ALP on the basis of these.

Q.1.18 Are the likely environmental, social and economic effects of the Local Plan adequately and accurately assessed in the SA?

- 2.27. Please see our response to Question 1.15 above, which raise matters relevant to Question 1.18 also.

³*Cogent LLP v Rochford District Council* [2012] EWHC 2542 (Admin)