

North West Leicestershire Emerging Local Plan

Prospects for 'soundness'

1. INTRODUCTION

1.1 In order for Local Development Documents (LDD) to be adopted they must first be found 'sound' by an Inspector appointed by the Secretary of State. In October 2013 North West Leicestershire District Council (NWLDC/the Council) withdrew its emerging Core Strategy (CS), (a LDDⁱ, which had been intended to replace the strategic element of the existing Local Plan, including an indication of directions of growth). For the purposes of this report it is worth emphasising the conclusions of the appointed Inspector who commented on the submitted CS following an exploratory meeting. He invited the Council to withdraw the CS as it was very likely to be found 'unsound' for two principal reasons set out below.

1.2 Firstly, the housing numbers which were being used in the CS were below the numbers set out in the previous Regional Planⁱⁱ and were based on an interim housing needs assessment which was undertaken by consultants GL Hearn.ⁱⁱⁱ The housing requirements in the GL Hearn study had been accepted at previous appeals but the NWL Inspector concluded the evidence base for housing numbers was not up to date nor was it a Strategic Housing Market Assessment (SHMA) and a new housing assessment needed to be undertaken before the Plan could proceed.

1.3 Secondly, the CS did not contain any 'allocated' sites. This meant that whilst the CS showed the broad directions for growth in each area of the District, it did not show the detailed, allocated sites. The Council had argued that most of the sites in the plan now had planning permission and therefore allocating sites was not necessary. The Inspector did not accept this as the Council was not able to demonstrate it had a 5 year supply of housing land, and therefore asked the sites to be allocated in the Plan before proceeding.

1.4 Having a 5 year supply of housing land is very important. The National Planning Policy Framework (NPPF) makes it clear that Local Planning Authorities (LPAs) should plan for a 5 year housing land supply^{iv}, where this is not the case the 'presumption in favour of sustainable development' will apply and applications for planning permission should normally be approved^v.

1.5 In addition to these two issues, the Inspector also raised concerns regarding the 'Duty to Co-operate'^{vi} (DtC). Whilst he said this was not a fundamental concern the Inspector was not convinced that the Council had adequately engaged with neighbouring councils, particularly on the setting of housing requirements. The DtC is a legal requirement as well as a 'soundness' issue, and if an Inspector is not satisfied it has been met a plan cannot proceed. In the case of NWLDC's Core Strategy, the Inspector raised concerns but in the end he did not draw any conclusions, as the other two issues above meant the plan should, in his view, be withdrawn in any case.

1.6 Following the withdrawal of the emerging Core Strategy the Council appointed Sharp Planning Plus Ltd (SPP) in respect of the Core Strategy:

"to advise on the Council's process and timelines, assist in reporting to, and liaising with, Members and assist with the meeting of core milestones on the Core Strategy"^{vii}

Subsequently it also appointed Marrons Shakespeares (MS) to advise on any legal issues appertaining to the emerging replacement document.

1.7 SPP made a number of recommendations in the light of the Core Strategy Inspector's findings and in order for the risks regarding soundness to be minimised. Principal amongst these was to produce a more comprehensive Local Plan, rather than a Core Strategy containing only the strategic elements, which would, in any case, need in due course to be followed by detailed allocations and policies. A further key recommendation was that the Council ought to work urgently with its neighbours to complete an up to date and robust evidence base, work on which had already begun, especially concerning objectively assessed housing and employment needs (OAN). Recommendations were made concerning governance and project management of the process. SPP has also been tracking emerging policy and practice in respect of the preparation, submission and adoption of Local Plans nationally.

1.8 The Council resolved to prepare a new Local Plan, and refreshed project management and governance structures were put in place as recommended. Extensive new and updated studies have been undertaken and critically these have included a new Strategic Housing Market Assessment (SHMA), carried out in partnership with all LPAs in Leicestershire and resulting in a 'Memorandum of Understanding' (MoU) concerning the distribution of growth throughout the SHMA area. The Council has consulted key stakeholders and has involved Councillors through a formal Advisory Committee. The Council has also adopted a flexible approach in response to the learning that has emerged from practice nationally.

- 1.9 The emerging Local Plan has now reached the stage for the Council to consider if it is in a form in respect of which it wishes to undertake a formal round of consultation and potential amendment, prior to it being submitted to the Secretary of State for examination. SPP and MS have been asked to comment on the prospects for the Plan being found 'sound' and to be legally compliant with the 'DtC'

2. REQUIREMENTS FOR SOUNDNESS AND THE DUTY TO CO-OPERATE

- 2.1 The four policy tests as to whether a plan can be found sound are set out in NPPF^{viii} as follows:

"Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;

Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;

Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and

Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework."

- 2.2 As mentioned above the DtC is a legal requirement as well as a 'soundness' issue. The legal requirement, introduced by the Localism Act 2011^{ix}, which amended the Planning and Compulsory Purchase Act 2004^x, places a duty on LPAs, county councils in England and public bodies, to engage constructively, actively and on an ongoing basis to maximise the effectiveness of Local Plan preparation in the context of strategic cross boundary matters.

- 2.3 The legal duty is complemented by a policy requirement for public bodies to co-operate on planning issues that cross administrative boundaries, particularly relating to strategic policies to deliver homes and jobs needed in the area, the provision of retail, leisure and other commercial development, and the provision of infrastructure. The Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities^{xi}.

2.4 The DtC is not a duty to agree. But LPAs should make every effort to secure the necessary co-operation on strategic cross boundary matters before they submit their Local Plans for examination.

2.5 LPAs must demonstrate how they have complied with the duty at the independent examination of their Local Plans. If a LPA cannot demonstrate that it has complied with the duty then the Local Plan will not be able to proceed further in examination.

2.6 Clearly, whether a plan is found 'sound' is a matter for interpretation against the above criteria. It is also the case that government planning policy continues to evolve and this can have a distinct bearing on that interpretation, this is all the more significant given the length of time that it takes to assemble a robust evidence base, engage stakeholders, consider alternatives and produce a final plan. Indeed, since embarking on the production of this Plan there have been examples of amended policy and interpretation of requirements as the 'new' planning arrangements have been applied in practice and subject to legal challenge.

2.7 Recent research has been undertaken^{xii} to assess the progress in terms of local plan production nationally. It found, based on information published by the Planning Inspectorate, that of the 126 Plans examined since the publication of NPPF in 2012, 62 have now been found sound and 21 withdrawn. Even then, 32% of the adopted plans have been found to require an early review. The research also found one third of the 43 on-going examinations had been suspended in relation to OAN issues. The report also noted variation in the application of soundness tests for example in relation to OAN and economic aspirations. It concluded:

"There does not appear to be any firm pattern as to which components are considered by Inspectors when arriving at conclusions on OAN".

LPAs have been finding getting their plans found sound in this new environment challenging. This remains the case for this Plan a situation likely to continue.

2.8 It is therefore important that throughout the period of plan preparation a LPA seeks to manage risk. In preparing this Local Plan the Council has been following best practice in keeping and regularly reviewing a risk register. It is in this evolving context and identified risks that the prospects for soundness and compliance with the DtC in later paragraphs are made.

3. SOUNDNESS

- 3.1 Undoubtedly a key element of minimising the risk of being found unsound is the extensive collaborative work that has been undertaken by the Leicestershire SHMA authorities in assessing objectively assessed housing need (OAN). Moreover the authorities have indicated that up until 2031 they are each individually capable of meeting their own OAN in a sustainable manner and have therefore signed a Memorandum of Understanding (MoU) as to the sustainable distribution of housing development throughout the SHMA area. It is worth noting that, this has already been tested at the resumed hearings into the emerging Charnwood Plan and although it must be acknowledged that each case will be considered on its own merits the Inspector in that case has indicated that, with some modification, the Plan is capable of being found sound based on that evidence base.
- 3.2 There is a recent example where an inspector has challenged an agreed distribution between authorities in Cambridgeshire, but assuming any Inspector finds that the proposed distribution of development in Leicestershire is based on sustainable principles (as was the case at Charnwood) it should give confidence that the MoU together with the SHMA will be strong evidence under pinning the NWL Local Plan.
- 3.3 In presenting the Local Plan, officers have also given attention to emerging employment strategy and prospects and as a result are recommending the allocation of sufficient additional development to meet that locally assessed need over and above the terms of the MoU, indicating a flexible, proportionate and positive approach which will assist minimising risk. This is in line with emerging national policy and practice - including as interpreted through Inspector's reports.
- 3.3 Given the period where the Council has neither had a up to date plan in place nor, for much of that time, been able to demonstrate a five year housing supply, much of the need going forward to 2031 has/ is being satisfied through ad hoc planning permissions granted in light of the 'presumption in favour of sustainable development' as judged against policies in NPPF rather than through new allocations. The 'room for manoeuvre' therefore, in terms of alternative strategies for the distribution of growth across the District in the emerging Local Plan, is limited. Nevertheless, the Local Plan does consider alternatives against the evidence base.
- 3.4 In terms of deliverability the fact that significant permissions have already been granted is only part of the story, since it is important that the Council can demonstrate that these and other allocations are capable of delivery within the plan period^{xiii}. Here risk has been minimised by adopting the recommendation, by SPP, to take expert advice concerning viability. Another key aspect of deliverability is the availability of appropriate

infrastructure^{xiv}. The Council has been consulting with a variety of infrastructure providers. This is work in progress and whilst it need not delay this stage of consultation, by the time the Plan is submitted it will need to be supported by an Infrastructure Delivery Plan.

3.5 Accepting the caveats in paragraphs 2.6 – 2.8 above, the risks relating to compliance with NPPF have been identified and managed, and this will need to be on-going. For example, recently an Inspector challenged the way an emerging Plan at Maldon in Essex was approaching issues relating to Gypsies and Traveller housing need. The approach was similar to that adopted in the emerging NWD Local Plan. However, the Maldon Plan has now been called in by the Secretary of State, on the request of that Council, to review the Inspector's position. This situation will need to be kept under review along with other developments in national policy and practice.

4. DUTY TO COOPERATE

- 4.1 Reference has already been made to the Charnwood Core Strategy Examination, where, in relation to the DtC, the Inspector noted that whilst there were a number of cross-boundary issues, the overall provision for housing was of particular significance given patterns of commuting and migration interrelationships in housing markets and the role that Charnwood Borough had in accommodating growth on a sub-regional level. The same could undoubtedly be said of North West Leicestershire District.
- 4.2 The Inspector was satisfied that Charnwood Borough Council (CBC) had demonstrated a history of co-operation and joint working with the other authorities in the Leicestershire HMA in relation to strategic housing matters, notable examples of this being the 2008 Leicester and Leicestershire Strategic Housing Market Assessment (SHMA) and the 2011 Leicester and Leicestershire Housing Requirements Project (HRP).
- 4.3 He found that there had been clear and ongoing mechanisms for co-operation between authorities at both member and officer level, and was satisfied that during the preparation of the Core Strategy, CBC had also shown a continued willingness, in principle, to plan positively for the housing needs of the wider HMA, illustrated by the fact that in June 2013 it had joined with the other authorities in the HMA to commission a new SHMA.
- 4.4 The Inspector was, therefore, satisfied that CBC had engaged constructively, actively, and on an ongoing basis in terms of overall housing provision, and indeed other strategic matters, and concluded that CBC had complied with the DtC.

4.5 The approach of NWLDC towards the DtC is closely aligned to that of CBC inasmuch as it has also participated in the 2008 joint SHMA, the 2011 HRP, and the 2013 SHMA, which was published after the Charnwood Inspector's above conclusions in relation to the DtC, and as already referred to above, NWLDC has also signed up to the MoU.

4.6 Given that the Council's approach towards the DtC is so demonstrably consistent with that of a neighbouring authority that has been found by an independent Inspector to have complied with the duty, there should be a reasonable expectation of the Council similarly being found to have so complied in preparing the draft LP.

5. CONCLUSIONS

5.1 In preparing its emerging Local Plan NWLDC has been proactively managing risk to ensure that it has a good prospect of being found to have complied with the DtC and of the Plan being found 'sound' on examination.

5.2 The Council is recommended to continue to keep its Local Plan risk register under regular review and monitor national policy, guidance and practice in respect of Local Plans.

5.3 The Council should complete an Infrastructure Delivery Plan to accompany the emerging Local Plan when it is submitted to the Secretary of State.

5.4 The Council would be advised to satisfy itself that the emerging Local Plan continues to follow good practice by the application of the Planning Advisory Service 'soundness checklist'^{xv} prior to formal submission.



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Endnotes

- ⁱ Report to Full Council October 2103
- ⁱⁱ East Midland Regional Plan Mar 2009 (now revoked)
- ⁱⁱⁱ Leicester and Leicestershire Housing Requirements GL Hearn and Partners with j g consulting Sept 2011
- ^{iv} NPPF para 49
- ^v NPPF para 14
- ^{vi} Localism Act 2011 Sec 110
- ^{vii} Agreement Jan 2014
- ^{viii} NPPF para 182
- ^{ix} Section 110
- ^x Section 33A
- ^{xi} NPPF paras 178-181
- ^{xii} Nathaniel Lichfield and Partners Signal Failure? 2015
- ^{xiii} NPPF paras 47 & 173
- ^{xiv} NPPF para 177
- ^{xv} PAS Local Plan Soundness checklist Jan 2013