

North West Leicestershire Emerging Local Plan

Prospects for 'soundness'

Update June 2016

1. INTRODUCTION

1.1 In September 2015 North West Leicestershire District Council (NWLDC/the Council) approved the draft Local Plan (LP) for formal consultation. It did so following consideration of a full report from its Director of Services and other background documents including a report from Malcolm Sharp of Sharp Planning Plus (SPP) and Simon Stanion of Shakespeare Martineau (formerly Marrons Shakespeares)(SM) on the prospects for the Plan being found 'sound' and to be legally compliant with the 'Duty to Co-operate' (DtC).

1.2 On 28 June 2016 the Council will be asked to agree to the publication of the LP development plan document together with the sustainability appraisal report and habitat regulation assessment, and to consult upon the same for a six week period following which the draft plan will be submitted to the Secretary of State for examination.

1.3 SPP and SM have been asked to update their advice to the Council on the prospects for the LP being found 'sound' and to be legally compliant with the DtC having regard to circumstances arising from the progress of the emerging plan through the public consultation process since September 2015, and any material changes in planning legislation and/or National policy or guidance in the intervening period.

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

2.1 By way of reminder, the four policy tests as to whether a plan can be found sound are set out in NPPF 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 regards the DtC (which is both a legal and policy requirement), the Council is reminded that whilst this is not a duty to agree, every effort should be made to secure the necessary co-operation on strategic cross boundary matters before the LP is submitted for examination.
- 2.3 Clearly, whether a plan is found ‘sound’ is a matter for interpretation against the above criteria, and as previously advised, continually evolving government planning policy can have a distinct bearing on that interpretation. In this regard, some important recent changes to National Planning Practice Guidance (NPPG), made in response to criticisms of the approach of examining Inspectors towards soundness issues, particularly in relation to the assessment of housing need and requirement (to which we alluded in our previous advice to Council¹), suggest a change in emphasis away from Inspectors recommending that ‘unsound’ plans be withdrawn, to giving local planning authorities every opportunity to respond to any concerns and address key issues that may lead the Inspector to conclude that the plan is not sound or that a legal requirement has not been met, and to suspension or partial suspension of an examination to give the local planning authority time to undertake further work to address the issues raised.
- 2.4 Indeed the recent changes to the NPPG include a requirement for an Inspector to work proactively with the local planning authority, and not only to fully consider the potential of suspending an examination, but also the option of the local planning authority making a commitment to review the plan or particular policies in the plan within an agreed period, where this would enable the Inspector to conclude that the plan is sound and meets the other legal requirements.
- 2.5 Whilst these changes should not lead the Council into complacency, we do consider that they are likely to herald a more flexible approach on the part of the Planning Inspectorate with an emphasis on getting more LPs adopted sooner than has hitherto been the case. The risk of this draft LP ultimately being found unsound, or, like the previous draft Core Strategy, having to be withdrawn, should, therefore be reduced as a result.

¹ See para 2.7 of our previous advice, referring to the report of Nathaniel Lichfield & Partners (“Signal Failure”: 2015 i.e. “There does not appear to be any firm pattern as to which components are considered by Inspectors when arriving at conclusions on OAN”).

2.6 Notwithstanding, the Council continues to follow best practice in keeping and regularly reviewing a risk register, and in identifying risks within which context the updated prospects for soundness and compliance with the DtC set out below are made.

3 SOUNDNESS

- 3.1 Undoubtedly a key area of risk of the draft LP being found unsound (in its current form) revolves around the housing requirement figure. This is because national planning policy requires local planning authorities to use their evidence base to ensure that their LP meets “the full objectively assessed needs for market and affordable housing in the housing market area”² and “should prepare a Strategic Housing Market Assessment (SHMA) to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries”³.
- 3.2 As matters stand, the housing requirement figure in the draft LP is not derived from an up to date HMA wide assessment of need but upon the Council’s own assessment of need based upon additional work carried out by an independent consultant, Justin Gardner who has also been involved in the emerging HMA assessment (“HEDNA”). Whilst the HEDNA is in the course of preparation, the timescale for being able to rely upon the outcome of the Assessment as a robust evidence base for the calculation of the housing requirement in this Plan, is uncertain.
- 3.3 The Council’s decision hitherto to continue to progress (and ultimately to submit for examination) the LP in advance of the publication of the HEDNA has met with opposition from a number of the other HMA local authorities including Charnwood Borough Council, Leicester City Council, Oadby & Wigston Borough Council and Harborough District Council, and it should therefore be anticipated that the proposed housing requirement figure is likely to be challenged both as to its soundness and on the basis of the Council’s compliance or otherwise with the DtC.
- 3.4 As to soundness, although national planning policy anticipates that housing requirements in LPs will be informed by an up to date SHMA the NPPG recognises that identifying a housing requirement is not an exact science, and as the timescale for the completion of the HEDNA is uncertain, the Council has also had to consider the impact of any delay in the publication of this information on its ability to submit its LP for examination by early 2017⁴ and has, in our view, reasonably concluded that the balance of the planning advantage lies in getting the LP approved as quickly as possible.

² NPPF para 47

³ Ibid para 159

⁴ Or face the possibility of intervention by the Secretary of State – see Ministerial Statement of Brandon Lewis, Minister for Housing and Planning July 2015

- 3.5 In taking this decision the Council has fully recognised the need to support the housing requirement figure in the draft LP with robust up to date evidence of housing need, hence the work undertaken by Justin Gardner (referred to above) which applies the same data currently being used to inform the HEDNA and adopts the same methodology and approach to that used in the SHMA and emerging HEDNA, albeit to derive a OAN figure specific only to North West Leicestershire District and solely for the purposes of informing the housing requirement in the LP, rather than across the whole of the HMA.
- 3.6 The Council has also committed itself in the draft LP to an early review in the event that its housing requirement is found to be significantly out of line with the HEDNA's OAN for the District in due course - which is consistent with the NPPG endorsed by the Housing and Planning Minister in a ministerial statement in July 2015.⁵
- 3.7 In our previous report we referred to the issue at Great Maldon in Essex where an Inspector had challenged the way an emerging Plan had approached issues relating to Gypsies and Traveller housing need. The approach was similar to that adopted in the NWLDC Local Plan.⁶ However, the Maldon Plan had, at the time, been 'called in' by the Secretary of State. Subsequently, the Secretary of State has endorsed the approach taken as proportionate. Whilst that view is specific to the Maldon Plan it is considered that the risk of this Plan being found unsound on this issue is lessened.
- 3.8 In our conclusion in the previous report we made three recommendations relation to soundness,⁷ - the need to keep the risk register up to date; the need to complete an infrastructure delivery plan (IDP) and the advisability of completing the PAS soundness checklist. We are pleased to note good progress on all these points. In respect of the IDP it will be important to ensure that it continues to be a 'live' up to date document and that the Council puts in place appropriate project and governance arrangements so that this is the case. It is noted that in this context further work updating the IDP in advance of submission will be required in order that the Council can fully demonstrate the deliverability of the Local Plan.
- 3.9 We would make one further comment regarding soundness to the effect that, as the plan progresses through the next stages. the Council should satisfy itself that all of the allocations in the Plan, including those already benefitting from planning permission or with resolutions to grant, remain realistically deliverable during the Plan period. Regular monitoring of

⁵ "As we have made clear in planning guidance a commitment to an early review of a Local Plan may be appropriate as a way of ensuring that a Local Plan is not unnecessarily delayed by seeking to resolve matters which are not critical to the plan's soundness or legal competence as a whole"

⁶ Prospects for soundness report para 3.5

⁷ Ibid paras 5.2 – 5.4

deliverability is advised to include, for example, progress with Section 106 Agreements relating to those sites that are subject to resolutions.

4 DUTY TO COOPERATE

- 4.1 In our previous report we alluded to the Charnwood Core Strategy Examination Inspector being 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, and had 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.
- 4.2 The Inspector had therefore been 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. We advised that inasmuch as the approach of NWLDC towards the DtC was closely aligned to that of CBC particularly in relation to the SHMA published in 2014 and the subsequent MOU there should be a reasonable expectation of the Council similarly being found to have so complied in preparing the draft LP.
- 4.3 The fact nevertheless remains that a number of the other HMA authorities have taken exception to the Council progressing its LP, and in particular its intention to submit a housing requirement figure for examination in advance of the publication of the HEDNA, and those Councils are likely to frame their opposition to the Council's strategy in terms of a failure to comply with the DtC.
- 4.4 As we have already noted above, the DtC is exactly that – it is not a duty to agree. The Council has co-operated at all levels with the other HMA authorities, and continues to do so, i.e. in explaining to those authorities its intended strategy and the reasons for it, and it has sought to obtain their agreement to the same. The lack of agreement to that strategy is not for the want of co-operation with those authorities on the part of the Council in the preparation of the LP.
- 4.5 Furthermore, as has already been mentioned above in the context of soundness, the Council has had to weigh in the balance waiting for the HEDNA before identifying its housing requirement and submitting the LP, with getting the Plan approved as soon as possible and in particular submitted for examination by 'early 2017' to avoid the possibility of intervention by the Secretary of State.

4.6 In all the circumstances, whilst it cannot of course be guaranteed that the Inspector will conclude that the Council has complied with the legal and policy DtC, we have no reason to change our original assessment that the Council should have a reasonable expectation of being found to have so complied in preparing the draft LP.

5 CONCLUSIONS

5.1 Subject to our comments, particularly in relation to housing need and the attitude of some other HMA authorities, we see no reason to depart from our previous conclusion that 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 government has recently published revised guidance as part of the National Planning Practice Guidance in which there is significant emphasis upon Inspectors seeking to work proactively with local planning authorities to try and ensure that plans can be found sound. Where necessary, this can include suspension of examinations and the Guidance also requires that consideration should be given to the option of the local planning authority making a commitment to review the plan or particular policies in the plan within an agreed period, where this would enable the Inspector to conclude that the plan is sound and meets the other legal requirements.

5.3 If, despite our optimism over the plan being found sound, the Inspector concludes that further work is required to enable such a finding to be made and that the examination should be suspended for this work to be undertaken, whilst this would not be the Council's preferred outcome, it would obviously be preferable to a finding of unsoundness and certainly would not be fatal to the plan's eventual adoption. Furthermore, the Council's commitment to an early review of the Plan if the housing requirement figure materially fails to meet the housing need identified in the emerging HEDNA should, in our view, be sufficient to persuade the Inspector that the Plan can be found sound on the basis of the currently proposed figure, although again this cannot be guaranteed.

5.4 In the meantime, the Council should, continue to demonstrate its willingness to co-operate and consult with the other HMA Authorities regarding its proposed housing strategy (even if it is unable to secure (all of) their agreement to the same) in line with the statutory DtC.

5.5 The Council should put in place appropriate project and governance arrangements in respect of the Infrastructure Delivery Plan and undertake

such updating as is necessary to demonstrate the deliverability of the Local Plan in advance of submission.

5.6 The Council should satisfy itself through regular monitoring that all of the allocations in the Plan, including those already benefitting from planning permission or with resolutions to grant, remain realistically deliverable during the Plan period.

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Malcolm Sharp

SHARP PLANNING PLUS
People & Places



Simon Stanion

 SHAKESPEAREMARTINEAU