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PDW/08064

19 August 2013

Dear Sirs



## MID DEVON LOCAL PLAN REVIEW SCOPING REPORT

We act as agents for Mr. Christian and Mr. Force who are joint owners of land north and south of Colebrook Lane Cullompton. We appeared at the 2010 Examination into the Allocations and Infrastructure Development Plan Document in respect of the Colebrook Contingency site (AL/CU/20) and adjoining land. The same land was duly submitted for further consideration as a housing site in your recent SHLAA 'Call for Sites' consultation in June this year.

These comments on the Local Plan Scoping Report are not site specific to the land at Colebrook but it nevertheless provides a planning context for them. We have reviewed policy in the National Planning Policy Framework in respect of Plan Making. Our comments are set out below and deal with the Introduction, Strategic Matters - Housing and Land Allocations – Cullompton sections of the Scoping Report.

### i) The NPPF

The NPPF is clear that in Plan Making a Council should set out the strategic priorities for its area in a Local Plan to deliver the homes and jobs needed in the area. It should be based on adequate and up to date and relevance evidence and should have a clear understanding of housing needs in their area. Paragraph 159 explains that a Strategic Housing Market Assessment will be an important tool in assessing the housing needs of an area and joint working with neighbouring authorities will be necessary where housing market areas cross administrative boundaries. Paragraph 178 also refers to the duty to cooperate principle introduced as a result of Section 33A of the Planning and Compulsory Purchase Act 2004 which itself came into effect in November 2011.



This duty to cooperate has been an issue for other Councils which fall within part of a wider housing market area and in this regard we attach a copy of a letter from the Inspectorate in respect of Hart District's own Local Plan. The letter dated 26 July 2013 concluded in this recent case that the Council had not complied with the duty to cooperate because it had not clearly identified the full housing needs of the market area as two of the constituent Districts within the market area declined to take part in the SHMA update.

Because the duty to cooperate had not been complied with, the Inspector also concluded that the Council Plan also failed the test of soundness in respect of overall housing provision. As paragraph 20 of the letter points out:

**'Put simply, for a local plan to be considered sound in terms of overall housing provision it is first of all necessary to have identified the full objectively assessed needs for housing in the SHMA. Having done this it is necessary, working collaboratively and through co-operation with other authorities where appropriate, to seek to meet these needs in full and to demonstrate how they will be met or alternatively to provide robust evidence that they can't'.**

## **ii) Mid Devon Local Plan Scoping Report - Introduction**

In light of the findings of the Hart Local Plan Examination Inspector, we believe Mid Devon's own Local Plan is likely to suffer the same fate in respect of the duty to co-operate and its overall housing provision. We have concluded this with reference to paragraph 1.14 of the Scoping Report which states that

**'The Council intends to commission a new strategic housing market assessment in partnership with some of our neighbouring district council's'.**

In our view, to involve some, not all of the neighbouring Council's if they fall within the same housing market area will mean that the duty to cooperate has not been fulfilled nor will the housing needs of the area have been fulfilled.

## **iii) Strategic Matters - Housing**

The Council must therefore ensure that the Strategic Housing Market Assessment (SHMA) Update is prepared in partnership with **all** not **some** of its neighbouring District Council's. The Mid Devon Local Plan should therefore not proceed unless such agreement with all its neighbouring authorities has been reached. Similarly it is pointless to comment on the 2 options for future housing growth in the Scoping Report without knowing a) what the SHMA housing market is, b) whether all the constituent Districts within the market area have participated in the review and c) what the recommendations for future housing growth in the SHMA have been.

## **iv) Land Allocations**

Suffice to say from the Strategic Housing Land Availability 'Call for Sites' exercise, we can confirm that the housing contingency site AL/CU/20 with the other adjoining land shown on the Master Plan is immediately

deliverable. All the land should be included in the new Local Plan as a strategically important housing allocation because:

- The contingency site and the adjoining land is in the same ownership.
- The land is highly sustainable within 1 km of the town centre facilities of Cullompton with scope for local travel by sustainable non car borne modes.
- As noted by the Inspectors Report into the last Local Plan in 2010, a satisfactory access with improvements to Colebrook Lane can be achieved, and there is no impediment to the ultimate delivery of the site.
- The Inspectors Report commented that the southern element of the site would extend into the open countryside and would be visually prominent, particularly from nearby housing and Colebrook Lane. However this potential constraint has been overcome in the new master plan layout for the site.
- The **Option 2** scenario to investigate a different location for an urban extension to Cullompton is therefore supported.

We trust this information is helpful in the preparation of your emerging Local Plan. Please also update your records so that all future correspondence regarding this matter is sent to Genesis Town Planning at the above address rather than the previous Exeter address.

Please do not hesitate to contact me should you have any questions regarding the matter.

Yours faithfully  
**for Genesis Town Planning Ltd**

**Paul D White BA (Hons) DipTP MRTPI**  
**Director of Planning**

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Daniel Hawes  
Planning Policy Manager  
Hart District Council

Our Ref:

PINS/L2250/429/5

Date:

26 July 2013

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Dear Mr Hawes,

**Hart District Local Plan (Core Strategy) Examination:**

- **Duty to co-operate**
- **Soundness in terms of overall housing provision**

1. Further to the initial hearing sessions held on 9 and 10 July 2013 I set out below my conclusions in respect of the duty to co-operate (Matter 1) and soundness in terms of overall housing provision (Matter 2) and explain the implications for the Examination. Whilst the Council's approach to overall housing provision lies at the heart of my concerns in relation to both matters, I must stress that the legal duty to co-operate is distinct from issues of soundness and accordingly I have dealt with these matters separately.

**Background**

2. The Council acknowledges that Hart forms part of a wider Housing Market Area (HMA) which also includes Rushmoor and Surrey Heath. It also accepts some links with housing markets in other neighbouring authorities, although these are not as strong. The North West Surrey and North East Hampshire Strategic Housing Market Assessment 2009 (the 2009 SHMA) covered the local authority areas of Hart, Rushmoor and Surrey Heath and identified the demand for affordable and market housing. Significant doubts have been expressed about the relevance of the 2009 SHMA, particularly given the age of evidence underpinning it and the relatively limited timeframe it was intended to cover. The Council itself clearly has substantial doubts as to the methodology employed in the 2009 SHMA and does not consider the assessment of market housing need to be reliable in the context of preparing the Core Strategy.

3. The Council approached both Rushmoor and Surrey Heath Borough Councils with a view to updating the 2009 SHMA. Both authorities declined on the basis that they had recently adopted Core Strategies. The Council proceeded with a SHMA covering Hart only (the 2012 SHMA). The 2012 SHMA updated the evidence relating to Hart on affordable housing need and household projections. It identified a need for an average of 236 dwellings per annum in the District based on the use of a zero net migration model. The Council accepts however that zero net migration is not a true reflection of reality and that this level of provision would not meet full, objectively assessed needs for housing in the District.



4. The 2012 SHMA does not identify the full, objectively assessed needs for housing in the HMA. The Addendum to the 2012 SHMA produced by the Council in June 2013, identifies the Government's household projections for 2011-2021 as a benchmark for objectively assessed housing needs up to 2029 across the three authorities within the HMA and compares this with housing provision in adopted Core Strategies in Rushmoor and Surrey Heath and the proposed provision in the Hart Core Strategy. Rushmoor and Surrey Heath Borough Councils were not involved in the preparation of this Addendum, expressed surprise that it had been produced at such a late stage and considered it inappropriate to simply compare household projections with adopted levels of housing provision. The household projections for 2011-2021 indicate an average of 356 additional households per annum in Hart. The 2008 based projections indicated an average of 444 additional households per annum.
5. Therefore, other than with reference to the Government's household projections as a benchmark, the Council has not clearly identified the full, objectively assessed needs for housing within the District. There is no up to date and reliable SHMA covering the HMA and again other than with reference to the Government's household projections there is no assessment of the full, objectively assessed needs for housing in the HMA.
6. There is no agreement between relevant authorities as to the level of overall housing need within the HMA, how it could be accommodated and how any unmet need from one authority could be met elsewhere.

#### **Duty to co-operate**

7. Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended) imposes a duty to co-operate in terms of the preparation of a development plan document as far as it relates to a strategic matter. The duty to co-operate came into effect in November 2011 and the Council does not dispute that it is required to meet it in relation to overall housing provision within the Core Strategy, amongst other strategic matters. The duty to co-operate requires the Council to have engaged constructively, actively and on an ongoing basis.
8. It is also of relevance that the National Planning Policy Framework (NPPF) was published in March 2012, a year before the Core Strategy was submitted for examination. The NPPF clearly sets out the approach that should be taken in terms of identifying and meeting needs for development including housing and emphasises the need for co-operation and collaboration, particularly where housing markets cross administrative boundaries and where local planning authorities may not be able to accommodate development requirements wholly within their own areas.
9. The Council has demonstrated a history of working with other local authorities and organisations. There are examples of a constructive outcome to this joint working, notably the 2009 SHMA, discussions and co-operation on Strategic Housing Land Availability Assessments through the Housing Market Partnership and the production of the Delivery Framework for the Thames Basin Heaths Special Protection Area (TBHSPA). I am also satisfied that the Council has consulted and engaged widely in general terms during the preparation of the Core Strategy.
10. However, turning to the specific issue of overall housing provision, this is clearly a matter of relevance beyond Hart District. As I have set out above, the full, objectively assessed needs for housing have not been properly identified for either Hart District or the wider HMA involving Rushmoor and Surrey Heath. It is difficult to see how constructive and effective discussions on meeting housing needs across boundaries could take place with neighbouring authorities on this basis given that the scale of potential unmet needs was not identified.

11. I acknowledge that the Council sought without success to persuade Rushmoor and Surrey Heath Borough Councils to undertake a joint SHMA update. However, whilst I appreciate the potential implications of carrying out an assessment of the housing market across the wider HMA without input and funding from other authorities, there is no reason in principle why such an exercise could not have been undertaken.
12. Although the Council has engaged generally throughout the preparation of the Core Strategy, it was only relatively late in the process that the specific issue of potentially accommodating unmet housing needs appears to have been raised with other authorities. Indeed it was not until November 2012 (when the Pre-Submission Draft was published for public consultation) that efforts were made to arrange meetings to discuss the issue and the duty to co-operate generally. Meetings did not take place until January and February 2013 and Surrey Heath Borough Council declined the opportunity to meet. It was not until March 2013 that a specific request for information and discussion on housing provision was made to the other authorities forming the TBHSPA Joint Strategic Partnership.
13. By the time the specific issue of potentially accommodating housing needs across local authority boundaries had been raised, the Council had already determined the level of housing it was intending to plan for and published the Pre-Submission Draft of the Core Strategy. Meetings with other local authorities on the specific issue of accommodating housing needs did not take place until just before the Core Strategy was submitted for examination (28 March 2013).
14. The duty to co-operate is not a duty to agree and in terms of a jointly produced SHMA or arrangements for accommodating housing needs across boundaries, the Council is clearly reliant to a large extent on other local authorities. In itself, the absence of a jointly produced up to date SHMA and the lack of an agreement on meeting housing needs would not necessarily be a reason to conclude that the Council had failed to comply with the duty to co-operate. However, it is the actions of the Council in seeking to comply with the duty which are critical to my consideration of the matter. Having failed to persuade Rushmoor and Surrey Heath Borough Councils to work jointly on an update of the SHMA, the Council has not clearly identified the full housing needs of the HMA or even the District (other than using the household projections as a benchmark). It has pursued a strategy that by its own admission would not meet full, objectively assessed needs for housing with no indication as to how or even if, unmet needs could be met elsewhere.
15. The Council only initiated discussion on meeting housing needs very late in the process, after it had already determined the level of housing it was intending to plan for. Discussions only took place a short while before the Core Strategy was submitted for examination. There was little basis for truly effective discussion and co-operation at this stage, particularly given that the scale of potentially unmet need was not actually identified.
16. For these reasons I consider that the Council has not engaged constructively and on an ongoing basis in terms of the preparation of the Core Strategy. It is with regret therefore that I must conclude that the Council has not complied with the duty to co-operate.

### **Soundness in terms of overall housing provision**

17. Notwithstanding the above, I consider it appropriate to also set out my findings in respect of soundness, insofar as it relates to overall housing provision given that I held an initial hearing session on the matter.

18. In order to be considered sound the Core Strategy must be positively prepared, justified, effective and consistent with national policy. The NPPF makes it clear that local plans should be based on adequate, up to date and relevant evidence about the economic, social and environmental characteristics and prospects of the area (Para 158). Specifically in terms of housing, local planning authorities are expected to have a clear understanding of housing needs in their area and to prepare a SHMA to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The SHMA should identify the scale and mix of housing needed which meets household and population projections, taking account of migration and demographic change (Para 159).
19. To be positively prepared local plans should be based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet needs from neighbouring authorities where it is reasonable to do and consistent with achieving sustainable development (Para 182). In terms of housing, local planning authorities should use their evidence base to ensure that the local plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies in the NPPF (Para 47). The need for joint working and collaboration where there are cross boundary issues and where development requirements cannot wholly be met within individual local authority areas is emphasised (Paras 178-181).
20. Put simply, for a local plan to be considered sound in terms of overall housing provision it is first of all necessary to have identified the full, objectively assessed needs for housing in the HMA. Having done this it is necessary, working collaboratively and through co-operation with other authorities where appropriate, to seek to meet these needs in full and to demonstrate how they will be met or alternatively to provide robust evidence that they can't.
21. As I have set out above, I consider that the full, objectively assessed needs for housing have not been properly identified for either Hart District or the wider HMA. The Council accepts that the annual average provision of 236 dwellings would not reflect the reality of migration patterns and would not meet the full housing needs of the District (using the household projections as a benchmark). The Council has not sought to meet full housing needs within its own boundaries and there are no arrangements in place with other authorities to accommodate unmet needs from Hart. Again, as set out above, I consider that there has not been effective and constructive co-operation on this matter. The Council's position, as confirmed at the initial hearing sessions, is that the full housing needs will remain unmet.
22. The key question is whether there is sufficient justification for the Council's approach. The Council's case rests largely on the presence of the TBHSPA and the effect that this has on planning for housing development.
23. The Council takes the view that it is unable to plan for a level of housing provision significantly above that set out in the South East Plan (now revoked other than Policy NRM6) as this is the only level of housing which has been subject to a strategic Appropriate Assessment across local authority boundaries. It also points to uncertainty as to the effectiveness of mitigation measures, particularly Suitable Alternative Natural Greenspace (SANG).
24. I do not underestimate the significance of the TBHSPA and the constraints and obligations it places on the Council in terms of preparing the Core Strategy. However, I do not consider that the Council's position in relation to the effect on the overall level of housing that can be planned for is sufficiently justified.



25. The Pre-Submission Draft does not explicitly set out the case that the Council now relies upon. The specific argument that the need for a strategic Appropriate Assessment for housing provision above the South East Plan level rules out a higher figure does not appear to have formed part of the Council's thinking in the early stages of plan preparation.
26. The TBHSPA Delivery Framework and the Council's own Interim Avoidance Strategy acknowledge the principle that subject to the provision of adequate mitigation measures, housing development can be delivered without the likelihood of significant effect on the SPA. Policy CS18 of the submitted Core Strategy includes robust safeguards in respect of the effects of development on the SPA and the requirements for adequate mitigation in the form of SANG and Strategic Access Management and Monitoring (SAMM). Natural England and other local planning authorities take the view that subject to adequate mitigation, the presence of the SPA does not necessarily mean that housing provision should be limited to the level set out in the South East Plan in the absence of an Appropriate Assessment across local authority boundaries. Indeed the adopted Rushmoor Core Strategy plans for a higher level of housing on this basis.
27. Notwithstanding this, I have taken seriously the Council's arguments in terms of a lack of definitive evidence regarding the effectiveness of mitigation measures and the need to apply the precautionary principle in relation to likely significant effect on the SPA. However, the Council's position is inherently flawed. In effect it argues that the only level of overall housing provision that can be justified at this point in time is that set out in the South East Plan. This made provision for a total of 4,400 dwellings in Hart between 2006 and 2026. Taking account of completions to date and the planned provision within the Core Strategy up to 2029, this would result in at least 4,983 dwellings between 2006 and 2029. The total amount of housing would exceed the level set out in the South East Plan by at least 583 dwellings (13%) and potentially more given the approach to additional housing land beyond the site allocations. Therefore the Core Strategy in fact plans for a significantly higher level of housing than that set out in the South East Plan.
28. The Council's Habitat's Regulations Assessment considered this level of housing provision and concluded that adequate mitigation was built into the Core Strategy to avoid a likely significant effect on the SPA and that a full Appropriate Assessment was not required. The principle of housing provision significantly above the overall level set out in the South East Plan has already been established therefore. The Council has not tested other, higher levels of provision in the same way.
29. In terms of soundness therefore the Council has not identified the full, objectively assessed needs for housing in the HMA or indeed the District. It has not sought to meet these needs in full and has not demonstrated how they will be met, either within its own boundaries or elsewhere. In fact its position is that they will remain unmet. There is not a robust justification for this position.
30. In relation to overall housing provision, the Core Strategy has not been positively prepared, it is not justified or effective and it is not consistent with national policy. It is therefore not sound.

### **Overall conclusions**

31. You will appreciate that there is no mechanism to rectify a failure to comply with the duty to co-operate. Accordingly I must recommend non-adoption of the Core Strategy and give reasons for the recommendation.

32. In terms of soundness, there would be a need for a substantial amount of additional work, both in terms of identifying full housing needs and then considering how they could be met. This would require significant cross boundary co-operation with a number of other authorities and is likely to take some considerable time, particularly given the difficult issues that would need to be addressed. There is a significant prospect that modifications required to make the Core Strategy sound would result in a fundamentally different plan to that submitted in terms of its overall strategy and the approach to the amount and distribution of housing. In the light of this, a suspension of the Examination would be inappropriate.
33. Under the circumstances this leaves two options. Firstly the Council could choose to receive my report. Given my findings, I must recommend non-adoption of the Core Strategy. Alternatively the Council may choose to withdraw the Core Strategy under S22 of the Planning and Compulsory Purchase Act 2004 (as amended).
34. I appreciate that you will be disappointed with the contents of this letter but trust that you will understand that I am obliged to apply the legal requirements and soundness test rigorously. I would be grateful if you could confirm the Council's position via the Programme Officer as soon as possible.
35. In the meantime, it would clearly be inappropriate to proceed with the further hearing sessions scheduled to begin on 3 September 2013. Given that the deadline for the submission of statements was to have been 2 August and the Programme Officer is unavailable for much of that time, I would be grateful if the Council could inform relevant parties directly that the further hearing sessions will not be taking place and there is no need to submit statements. The Council's website should also be updated to reflect the situation. A copy of this letter should be placed on the website and made available on request.

Yours sincerely

*Kevin Ward*  
INSPECTOR