

ST ALBANS (DRAFT) STRATEGIC LOCAL PLAN 2011-2011

OPINION

1.0 INTRODUCTION

1.1 I have been instructed by Barton Willmore LLP, on behalf of Hallam Land Management, Crest Strategic Projects and Hunston Properties Ltd (“the Consortium”), in respect of the St Albans District Council Strategic Local Plan 2011 – 2031 (“SLP”), and in particular as to whether St Albans District Council (“the Council”) has complied with the duty to co-operate (“DtC”) in the preparation of its SLP.

2.0 LEGISLATIVE AND POLICY CONTEXT

2.1 Section 110 of the Localism Act 2011 introduced the DtC by inserting Section 33A into the Planning and Compulsory Purchase Act 2004. The DtC requires the Council to co-operate with other Local Planning Authorities during the preparation of its SLP.

2.2 The Planning Practice Guidance (“PPG”) gives important guidance as to the scope and nature of the DtC; its interrelationship with the tests of a Plan’s “soundness” (that is to say whether the Plan has been positively prepared, is justified, effective, and consistent with national policy – see: paragraph 182 of the National Planning Policy Framework (“NPPF”)); and how these matters will be examined. The most relevant parts of the PPG in these regards are summarised below.

2.3 At Reference ID: 9-001-20140306 [Paragraph 001], it is explained that the DtC places a legal duty on Local Planning Authorities to engage constructively, actively, and on an ongoing basis, in order to maximise the effectiveness of Local Plan preparation in the context of strategic cross boundary matters; but explained also that the DtC is not a duty to agree – a point which is then repeated, in terms, at Paragraphs 003 and 021.

2.4 At Paragraph 002 (essentially repeated at Paragraph 18), it is explained as follows: that the DtC is a legal test that requires co-operation between Local Planning Authorities

to maximise the effectiveness of policies for strategic matters in Local Plans; that it is “separate from but related to the Local Plan test of soundness”; that the Local Plan Examination will test whether a Local Planning Authority has complied with the DtC; that the Inspector will recommend that the Local Plan is not adopted if the DtC has not been complied with, such that the Examination will not, then, proceed any further; and that it is only if the Inspector finds that the DtC has been complied with, that the Examination will also test whether the Local Plan is sound.

- 2.5 At Paragraph 003, it is explained that, whilst the DtC is not a duty to agree, Local Planning Authorities should make every effort to secure the necessary co-operation on strategic cross-boundary matters before they submit their Local Plans for examination; that they will “need to submit comprehensive and robust evidence” of both the “efforts” they have made to co-operate and any “outcomes” achieved; and that this will be thoroughly tested at the Examination.
- 2.6 At Paragraph 010, the importance attributed to the DtC “achieving outcomes”, and this being tested at Examination, is re-iterated.
- 2.7 At Paragraph 011, the importance of Local Planning Authorities submitting “robust evidence of the efforts they have made” to co-operate is re-iterated, it being stated that this could be in the form of a statement submitted to the Examination and “include details about who the Authority has co-operated with, the nature and timing of co-operation, and how it has influenced the Local Plan”.
- 2.8 At Paragraph 018, it is repeated that the Examination will only proceed to consider whether the Plan is sound if the examining Inspector is satisfied that the Local Planning Authority has complied with the DtC. Local Planning Authorities are expressly warned that a failure to demonstrate compliance with the DtC cannot be corrected after the Local Plan has been submitted for Examination. If an Inspector finds that the DtC has not been complied with, (s)he will not be able to recommend that the

Plan is adopted and the most appropriate course of action is likely to be for the Local Planning Authority to withdraw the Plan.

3.0 FACTUAL BACKGROUND

- 3.1 The Council published its Regulation 19 SLP for public consultation from 8th January to 21st February 2016 and submitted its SLP to the Secretary of State in July 2016. On 3rd August 2016, Mr David Hogger was appointed as the Inspector to conduct the Local Plan Examination. On 22nd August 2016, he published his "Preliminary Concerns", including with respect to the DtC, and suggested an Initial Hearing Session be held to enable him to conclude whether the DtC had been met and whether to proceed with the SLP Examination. The Inspector subsequently confirmed this intention and the Initial Hearing Session will be held on Wednesday 26th October.
- 3.2 The Inspector identified, in particular, that a number of Regulation 19 representations had expressed concerns in relation to the Council's DtC, including those of various Councils (Central Bedfordshire, Dacorum, Hertsmere, Luton, Three Rivers, Watford and Welwyn Hatfield), and the Home Builders Federation. Certain members of the Consortium on whose behalf I am advising raised similar concerns.
- 3.3 In considerable part these objections derive from two root concerns, with the second concern having two elements:
- (a) There was insufficient evidence produced by the Council to demonstrate that it had complied with the DtC when publishing its SLP for consultation ("the first concern"); and
 - (b) The Council had incorrectly defined its Housing Market Area ("HMA") and had incorrectly calculated its full objectively assessed needs of market and affordable housing ("OAN") in accordance with paragraph 47 of the NPPF ("the second concern").

The First Concern

- 3.4 The first concern relates to the fact that there was very little reference to the DtC in the SLP Publication Version, notably only in paragraphs 1.25, 4.18 and 4.19. Furthermore:
- (a) Paragraph 1.25 simply asserted that the Council had discharged the DtC and provided a brief summary of the meetings which had taken place.
 - (b) Paragraph 4.18 asserted co-operation with named Authorities to address “regional strategic spatial planning issues”, but did not identify these issues with any precision nor explain how they had impacted upon the SLP; and
 - (c) Whilst paragraph 4.19 did go into considerably greater detail, that was only with respect to Dacorum and the planned eastern expansion of Hemel Hempstead.
- 3.5 Since then, however, and in August 2016, the Council has published the “St Albans District Council Self-Assessment of Soundness and Legal Compliance of the Plan” (“SASLCP”), which is Examination CD14; and the “St Albans District Council Duty to Cooperate Statement of Compliance” (“DCSC”), which is Examination CD15.

The Second Concern

- 3.6 The second concern has two elements: first, the Council’s view that St Albans is almost a self-contained HMA; and second, its approach to calculating OAN. The Council reached its view on its HMA pursuant to a report it commissioned by *Housing Vision*. Other neighbouring Authorities fundamentally disagree, however, preferring an approach adopted by another consultant, *GL Hearn*, which includes St Albans in a larger HMA.
- 3.7 A number of neighbouring Authorities also question whether or not the Council’s measure of OAN is in accordance with the PPG.

4.0 ANALYSIS

Introduction

4.1 The essential question which has been asked of me is whether, on the evidence now available, the Inspector should properly conclude that the DtC has been complied with by the Council. This requires, however, consideration to be given separately to the two root concerns identified above, and raises the following issues:

- (a) Whether, in the light of information subsequently submitted by the Council in respect of the DtC, there is now sufficient evidence available to address the first concern; and
- (b) If so, whether the second concern properly goes to the DtC at all, or goes instead to the related (but different) question of the Plan's "soundness".

The First Concern: the Council's DtC Evidence

4.2 As noted above, evidence of the Council's DtC was very limited in the SLP Publication Version. Subsequently however, and importantly, the Council has published the SASLCP and DCSC. These are significant pieces of evidence, albeit post-dating the Regulation 19 consultation period and not publicly available during the Regulation 19 consultation period. Key extracts from those documents are identified below.

SASLCP

4.3 Pages 4-69 of the SASLCP provide evidence as to how the Council has met the "soundness" tests, based upon a Planning Advisory Service template. Although the DtC is separate from the Local Plan test of soundness, as noted in the PPG at Paragraph 002 it is related. Furthermore, the Council provides specific evidence of its compliance with the DtC throughout the SASLCP, cross referring to the DCSC (addressed below) as appropriate. In particular, its DtC is referred to on pages 26/27, 37, 46, 50, 51, 52 of the SASLCP, and references are made in Appendix 2 to Planning Policy Committees where the DtC was discussed. There is also commentary within a Planning Policy

Committee report, dated 12th July, on pages 112-119 of the SASLCP (notably paragraphs 4.1–4.5).

DCSC

- 4.4 Pages 4-21 of the DCSC summarise the measures the Council has undertaken to comply with its DtC during the preparation of the SLP, and further evidence of compliance with its DtC is included within the Appendices 2 and 4. In particular, the Council identifies how it has co-operated with neighbouring Local Planning Authorities, including Dacorum (in relation to the East Hemel Hempstead Area Action Plan); Dacorum and Welwyn Hatfield (in relation to the Joint Green Belt Review); Three Rivers (in relation to Gypsy and Traveller Sites). The Council confirms, also, that it is an active member of the Hertfordshire Infrastructure Planning Partnership which comprises 10 Hertfordshire Local Authorities and the County Council.
- 4.5 In addition, paragraph 1.2 refers to regular reports to the Council's Planning Policy Committee providing updates on its DtC work. Illustrative examples and references are contained within Appendix 4 (iv) (Pages 62-74) of the DCSC; and Table 1 of the DCSC provides summary details of which bodies the Council has co-operated with and in what manner.
- 4.6 Further details are included within the Strategic Planning Priorities section on pages 10-19 of the DCSC. These include details on five specific issues: meeting housing and employment requirements given Green Belt constraints; the HMA; delivering homes at East Hemel Hempstead; the functional economic market area; and delivering economic development at East Hemel Hempstead.

Conclusions on the First Concern

- 4.7 It is in my view quite evident from the above that the Council has undertaken extensive discussions with neighbouring Local Planning Authorities, and the Council states it will continue to do so. Further, although the SASLCP and DCSC post-date the Regulation 19 consultation (which is unfortunate) publication of such evidence after

that consultation is accepted – see: “Procedural Practice in Examination of Local Plans” (June 2016). In these circumstances, I do not consider that there is any absence of evidence as to the Council’s compliance with its DtC.

The Second Concern: the Council’s HMA and OAN

4.8 It is evident from the above that the Council has undertaken extensive discussions with neighbouring Local Planning Authorities, as set out (in particular) in the DCSC. Nonetheless, many of these Authorities refer to a failure of the Council to meet its DtC. Their substantive concerns centre on a disagreement as to the Council’s identified HMA and full OAN.

4.9 It is important to see how these issues arose:

- (a) In 2008, the Council participated in a joint Strategic Housing Market Assessment (“SHMA”), undertaken by *Opinion Research Services*, alongside Dacorum, Hertsmere, Three Rivers, Watford and Welwyn Hatfield. The SHMA identified a constrained housing target for the individual districts.
- (b) Subsequently, however, and in December 2013, the Council commissioned *Housing Vision* to prepare an up-to-date SHMA in order to identify the unconstrained housing need of St Albans. *Housing Vision* concluded that St Albans was almost a self-contained HMA and the Council, reasonably (in its view), and supported by its professional officers, agreed with this.
- (c) The neighbouring Authorities, however, prefer an approach adopted by a third consultant, *GL Hearn*, in a Report dated January 2016, which includes St Albans in a larger HMA.
- (d) Additionally, neighbouring Authorities consider *Housing Vision’s* approach to calculating OAN in 2013 is not in accordance with the PPG, first published in 2014.

- (e) Despite numerous meetings between the Local Planning Authorities, as evidenced in the DCSC, there has been no agreement on either issue between the parties.

4.10 The following important points need to be made:

- (a) First, as made clear in the PPG at paragraphs 001, 003 and 021, the DtC does not entail a duty to agree.
- (b) Second, the disagreements between the neighbouring Local Planning Authorities as to the Council's HMA and OAN did not arise out of a failure to co-operate, but are simply a result of them relying upon contradictory expert evidence as to what are the correct HMA and OAN for St Albans.
- (c) Third, and noting the entitlement of co-operating parties to disagree, I do not consider that there is any requirement on a Council to persist in engaging in fruitless, continued debate on issues with neighbouring Local Planning Authorities where such disagreement has arisen and is plain – rather, those disagreements are properly to be left for the Examination.

4.11 For all of these reasons, it is my view that the second concern does not arise from any failure of the Council to comply with the DtC, but goes instead to the separate (albeit related) matter of the SLP's "soundness" – viz., whether, as a matter of planning judgement, the SLP has been positively prepared, is justified, effective, and is consistent with national policy. These are all matters which, guided by the PPG, are therefore properly to be explored at the respective Hearing Sessions on these matters.

5.0 CONCLUSIONS

5.1 For all of the above reasons, and given the evidence now available, in my view the DtC has been complied with by the Council; they have evidenced this robustly; and the

Examination should therefore proceed to test the SLP's soundness, including in particular with regard to the significant and on-going disagreements as to the Council's correct HMA and OAN.

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