

**EAST STAFFORDSHIRE BOROUGH COUNCIL LOCAL PLAN
EXAMINATION**

INTERIM FINDINGS BY THE INSPECTOR

Following Hearings 1 to 4

Note

These Interim Findings are without prejudice to my ultimate conclusions upon the legal compliance and soundness of the East Staffordshire Local Plan (ESLP). These will be based upon all of the oral and written evidence including further material yet to be submitted and upon responses during further public consultation to take place before the close of the Examination.

Introduction

1. On completion of the first four hearing sessions on 28 to 31 October 2014 I announced that I would agree a list of matters to which the Council had agreed to give further consideration.
2. I also announced that I would aim to publish Interim Findings by 11 November, ahead of revised submission dates for further Position Statements of 14 and 21 November for Weeks 2 and 3 respectively.
3. The points already agreed for further consideration by the Council were listed in a Note Ref E.18 dated 4 November 2014.
4. The matters upon which I now set out below my Interim Findings are:
 - Legal compliance with respect to:
 - Duty to Co-operate (DtC), and
 - Sustainability Appraisal (SA),
 - Overall Spatial Strategy,
 - Objective Assessment of Housing Need (OAHN),
 - Site Selection Process,
 - Housing Land Supply (HLS), and
 - Affordable Housing Policy.
5. In summary, I find that:
 - a. the evidence is likely to lead to the conclusion that the DtC has been met, in particular regarding Housing Market Areas (HMAs),
 - b. the SA is inadequate as submitted and requires further work,

- c. the OAHN is insufficient to support a conclusion on the adequacy of the housing land requirement and further justification is required in response to detailed representations,
 - d. the Site Selection Process requires further clarification, and
 - e. consideration should be given to increasing the number and range of type and size of sites allocated and to adjusting the Housing Trajectory in the interest of the delivery of five year and overall housing land supply,
- but that
- f. the overall spatial strategy is likely to be found to be sound, and
 - g. necessary modification to the affordable housing policy SP17 could be determined on evidence currently available.

Legal Compliance

Duty to Co-operate

- 6. The Council has provided evidence which is likely to lead to the conclusion that it has met the DtC. In particular, the evidence appears to justify the definition of the relevant HMA as the extent of the Borough itself because the housing market relationship of East Staffordshire with any other planning authority area is relatively weak, whereby an essentially self-contained Strategic Housing Market Assessment (SHMA) is justified. That is including with respect to the relationship of Burton upon Trent to Swadlincote in neighbouring South Derbyshire and to the consideration of the amount and disposition of unmet need from the City of Birmingham, albeit that is as yet uncertain. I refer to OAHN below.

Sustainability Appraisal

- 7. Legislation and case law governing the preparation of SA, incorporating Strategic Environmental Assessment, is clear that it must be conducted at each stage of plan evolution at the earliest possible opportunity. That is to provide a clear audit trail of the consideration and assessment of strategic options, and of the selection of sites for development in particular. The SA should be undertaken with respect to a set of defined sustainability assessment criteria. The SA report is required to accompany the plan on submission for examination.
- 8. In this case there appears to be no dispute that:
 - a. as the Revised SA (RSA) was still subject to public consultation when the ESLP was submitted for examination, the ESLP as submitted is strictly not legally compliant in that aspect of procedure,

- b. the RSA has inevitably not taken into account proposed changes (potential Main Modifications - MMs) published since the ESLP was submitted for examination,
 - c. the 16 sustainability criteria identified at the scoping stage and applied to strategic options in the RSA are not carried forward to the consideration of the selection and assessment of sites for development, where a reduced and reformulated set of 11 criteria is substituted, apparently without explanation,
 - d. although the several options for the overall spatial strategy are considered, the chosen 'hybrid' version of Options 2c and 2d does not appear to be tested against the assessment criteria,
 - e. the selection of sites from the Strategic Housing Land Availability Assessment (SHLAA) for further appraisal and SA is apparently undocumented and therefore not articulated in the RSA, and
 - f. there are apparent inconsistencies between site assessments which, whilst necessarily subjective, justify more explicit reasoning.
9. The RSA is thus deficient as a source of evidence in support of the ESLP, both in respect of its technical adequacy and legal compliance. It will therefore require significant further work well beyond the scope of the established procedure for SA and public consultation upon MMs prior to the completion of my Report.
10. Such further work should be undertaken following careful consideration of the foregoing, in conjunction with stakeholders.
11. Furthermore, if any further revised SA is not to risk attracting successful challenge on grounds of legal non-compliance, it is essential that it cannot be regarded as seeking retrospectively to justify modifications to the ESLP for adoption, but must clearly demonstrate, by way of an explicit audit trail, the reasons for the judgements reached at each stage of the evolution of the ESLP.

Overall Spatial Strategy

12. Notwithstanding the concerns expressed above in connection with the RSA, the overall spatial strategy of the ESLP is essentially sound in allocating new development according to a reasonable and largely unquestioned settlement hierarchy, reducing the proportion of new development in Burton upon Trent in favour of Uttoxeter compared with previous regional guidance. Challenge to the strategy is focussed more on the quantum and distribution of development within settlements.

Objective Assessment of Housing Need

13. I refer above to the DtC and the evidence of a self-contained HMA within the Borough. In that context, it is evident that the assessment of housing need in the SHMA, with its addendum, properly bases its initial estimate of need on up-to-date published population and household

projections, save that the most recent population projections forecast a significant downturn by comparison. This implies that the overall figure of 11,648 dwellings could represent a generous estimate before appropriate adjustments for estimated employment growth and market indicators are made. Importantly however, the effect of any such downturn remains un-quantified.

14. The total draft requirement of 11,648 dwellings is substantially questioned in one particular respect related to the jobs growth scenarios considered in the Employment Land Review (ELR) and carried forward into the SHMA. The ELR includes a benchmarking exercise between several acknowledged sources of employment predictions and adopts a net employment yield from committed projects considered to be the most reliable for East Staffordshire of 4,751 jobs. This is elevated to 5,728 jobs based on an alternative labour demand scenario specifically related to local economic strengths. This figure is then carried forward into the SHMA.
15. The SHMA goes on to predict annual average change in dwelling requirement between 596 and 630 dwellings per annum (dpa), depending on whether fixed or employment-led headship rates are assumed. The ESLP adopts the mid-point calculation of 613dpa, equivalent to the ESLP total of 11,648 units.
16. The choice of the mid-point requirement is questionable on grounds that the higher employment-led total assumes a return to pre-recession economic trends within the Plan period and accordingly more appropriately reflects the thrust of the NPPF to boost growth and housing supply.
17. Moreover, several Representors question the source and the treatment of the employment predictions with reference to alternative scenarios and models and arrive at a range of suggested annual requirements between 660 and 880dpa.
18. It is fair to say that the ESBC benchmarking of employment predictions appears to represent a reasonable and balanced approach in an area where predictions are necessarily uncertain and widely variable. Dispute arises from the treatment of the results. Crucially, the ELR is unclear in the way it discounts from gross employment yield of 12,670 to the net figure of 4,751 with only passing reference to the English Partnerships Additionality Guidance 2008 which, it emerged on Day 2 of the Hearings, has been updated in 2014 in any event. As a result, the ELR methodology is substantially challenged in this respect. Moreover, the relevant sections of the SHMA remain unclear as to the basis of labour force increase scenarios with respect to such considerations as activity rates.
19. Therefore, on the evidence available, it appears that, at very least, the higher figure of 630dpa should be taken as the OAHN. That alone would result in an overall increase of 323 units in the total requirement. This would be in circumstances where the ESLP itself shows that, after taking

account of commitments since 2012, its allocations would already only just meet the requirement as submitted.

20. Having regard to the further challenge to the employment predictions, it could become necessary to conclude that the OAHN should be revised and the ESLP housing land requirement increased, in order to comply with national policy. Additional market signals of worsening overcrowding, increasing demand for housing benefit, under-delivery of affordable housing and reducing vacancy rates might all militate in favour of the same conclusion.
21. Moreover, notwithstanding the evidently weak market relationship between East Staffordshire and the Birmingham conurbation, the current uncertainty surrounding unmet housing need in Birmingham, whilst not requiring an immediate elevation of the East Staffordshire requirement, fully justifies a clear commitment to flexible review of the ESLP. That would take account of any change in these circumstances. It is also necessary to make clear that the stated housing requirements of the ESLP are in no way to be regarded as ceilings but as minima.

Site Selection Process

22. The same concerns apply to the site selection process as are expressed above in connection with the RSA. The process of initial selection of residential sites from the SHLAA with a potential yield of over 100 dwelling units for further assessment is not transparent. Furthermore, further consideration should be given to whether the choice of allocations should be widened over a range of size and capacity to offset an apparent reliance upon a relatively small number of large strategic sites. These are likely to be comparatively slow to deliver the requisite amount of housing land to restore the five year supply to the necessary level such that the policies of the ESLP once adopted would have full effect under NPPF para 49.

Housing Land Supply

23. There is no substantial dispute that, if all the site allocations of the draft ESLP were to come forward, they would just meet the draft requirement of 11,648 units over the Plan period as a whole. However, according to the admittedly cautious calculations of ESBC, the Borough would not enjoy a housing land supply of more than about 4.5 years for at least several years after adoption. At the same time, the Housing Trajectory appears optimistically 'front-loaded'. It would not be appropriate to adopt the ESLP in these circumstances. If the Trajectory were 'stepped' to 'back-load' the supply, the five year position might be rectified in the early years after adoption without detriment to overall delivery. Such a measure should be investigated. This consideration further militates in favour of an increase in the number and variety of size and location of sites.
24. There is a further issue of whether village development allowances are properly regarded as windfalls or allocations in light of any available

evidence of historical yield of windfalls per settlement. The outcome of this consideration could have further implications for overall housing delivery, as well as the respective roles of the ESLP and Neighbourhood Plans.

Affordable Housing Policy

25. Briefly, there is reasonably robust evidence to justify the flexible requirements of SP17, with appropriate MMs, for affordable housing contributions both on- and off-site. It is also evident that it is appropriate to specify an off-site proportion of the affordable housing contribution, in order to address a shortfall in affordable provision within the existing housing stock of the major urban areas. That is subject to clarification of the calculated equivalent value per unit of the off-site proportion. Otherwise, the precise terms of the changes required to incorporate sufficient certainty into the ESLP, avoiding inappropriate deferment to the supporting Housing Choice SPD, can be determined on the evidence currently available.

Further Work Required

26. On review of the evidence currently available in the light of discussions at the four Hearings conducted so far, it is clear for the reasons given above that it will be necessary for ESBC to undertake substantial further work to provide sufficient evidence and a further legally compliant sustainability appraisal before the ESLP can be regarded as sound.

27. That further work is summarised as follows:

- a. **Substantial revision of the SA** *as set out in paras 7-11 above.* The Council is asked to clarify as far as possible the evidential queries raised on the RSA and to indicate its intentions with respect to its ultimate revision and the likely timescale of that work. The Council may wish to consider taking further technical or legal advice to provide a considered response to the detailed submissions, made against the RSA in the representations, in particular those referenced in Doc PS-05.
- b. **Further justification of the OAHN** *as set out in paras 13-21 above.* On the evidence currently available it is impossible to conclude that the OAHN figure as put forward by ESBC is adequately justified such as to provide a sound basis for the overall housing requirement. However, before any such conclusion is reached it is proper that ESBC be given the opportunity to provide further justification of the conclusions of the ELR and SHMA. ESBC may also wish to take further technical advice in order to provide a considered response to the conflicting technical evidence on employment and housing predictions in the representations, in particular those referenced in Docs PS-20, PS-21 and PS-27.
- c. **Clarification of the Site Selection Process and Housing Land Supply** *as set out in pars 22-24 above.* This should include explanation of the initial strategic site selection, potential for

increasing the range of sites to improve overall Plan delivery, the effectiveness of village development allowances as subdivisions of windfall allowances, and the potential for a 'stepped' Housing Trajectory.

- d. **Additional Matters** as listed in Note E.18. (There is some overlap with the forgoing):

Information

- i. A schedule of omission sites arising from the original representations with cross-reference to the SHLAA or other source and brief details of each.
- ii. A schedule of appeal decisions issued or awaited for any allocated or omission site, including any that refer to matters relevant to this Examination, with copies of appeal decisions issued (or references to them in the existing evidence).
- iii. Consideration of whether it is appropriate to regard village development allowances also as part of the Borough-wide windfall allowance in relation to:
 - a. any evidence of historic yield of windfalls per village, and
 - b. the respective roles of the ESLP and Neighbourhood Plans.
- iv. Further justification of the £40,000 equivalent unit value assumed for off-site affordable housing contributions.
- v. Explanation of the shift in the SA from 16 sustainability criteria at the scoping stage and in connection with the strategic options to 11 in connection with the individual sites.
- vi. Explanation of the progression from the identification of strategic sites for consideration and their selection prior to SA.

Possible further Main Modifications

- vii. Clarification of the definition of strategic matters within the scope of the ESLP and those for consideration within Neighbourhood Plans, with reference to the proposed modification by Gladman Development.
- viii. Clarification of rural constraints as a 'fourth tier' of settlement outside main towns.
- ix. Flexibility of future Plan review (based on AM34).
- x. Housing targets expressly minima and not ceilings.
- xi. MM17 reference only to brownfield development.
- xii. Consideration of the use of the terms 'framework' and 'network'.
- xiii. Consideration of developed employment (or residential) sites outside settlements (such as JCB Uttoxeter) either:
 - a. as (detached parts of) the urban settlement, or
 - b. as locations redefined in their rural context with respect to the appropriate degree of development constraint applied to them.

Document

- c. English Partnerships Additionality Guidance 2014

Progress of the Examination and the remainder of the Programme

28. It is unfortunate that the timescale of the Examination to date has been protracted. This is largely due to the substantial amount of documentation put in by ESBC after submission of the ESLP for examination, including the RSA public consultation and proposed MMs, the need to incorporate representations on the Housing Choice SPD, the need for a Pre-Hearing Meeting to ensure that the documentation and procedure was understood and the need to ensure that Representors had sufficient time to consider the latest evidence via Position Statements.
29. I share the considerable level of sympathy, expressed at the Hearings by several Representors, for ESBC officers seeking to move the ESLP forward to adoption involving planning for uncertainty and addressing historic under performance in housing provision. Clearly, it is in the wide public interest that undue delay to the examination process should be avoided. However, despite their commendably quick response to my requests for additional information immediately after Hearings 1-4, it is my view that the further work required as a result of these Interim Findings is likely to require more time to prepare, and be considered by myself and Representors, than is available in the programme as currently set. In particular, it would not be in the best public interest to proceed with two more weeks of hearings on policies, allocations and omission sites before it can be concluded whether the housing requirement is justified or should be increased above 630dpa, especially when ESBC has accepted that, if further sites are required, the entire site selection process will need to be revisited.
30. As a result, I consider it necessary to postpone the remaining hearings currently scheduled for Weeks 2 and 3 to a later date to be confirmed, depending on the result of the further work now required. I am instructing the Programme Office accordingly. Further work by ESBC will need to be circulated for consultation before any resumption of the Hearings. Any disappointment or inconvenience to all those concerned is regretted but unavoidable in the circumstances.
31. I would now ask ESBC for an immediate acknowledgement of these Interim Findings with any initial comments and an indication of the likely timescale of its full response. Broadly I would hope within no more than a month from the date of these Findings to agree a revised programme for provision and consideration of fresh material and for further hearings as appropriate within no more than six months. Beyond that timescale I would consider it appropriate to proceed to make my Report on the available evidence.