

ABBNEY PROPERTIES CAMBRIDGESHIRE LIMITED

**PROPOSED SUBMISSION LOCAL PLAN EXAMINATION HEARING
STATEMENT – MATTER 1**

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REPORT

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Prepared by:

RPS

Mark Buxton
Director

20 Farringdon Street
London, EC4A 4AB

T +44 20 3691 0500
E mark.buxton@rpsgroup.com

Prepared for:

Abbey Properties Cambridgeshire Limited

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1 INTRODUCTION

- 1.1 We are instructed by our clients, Abbey Properties Cambridgeshire Limited, to submit Hearing Statements and appear at the Examination Hearings on their behalf in relation the East Cambridgeshire Local Plan – Single Issue Review.
- 1.2 RPS previously submitted representations on behalf of Abbey Properties Cambridgeshire Limited to the East Cambridgeshire Submission Local Plan examination in May 2018 from which East Cambridgeshire District Council subsequently withdrew on receipt of the Inspector’s draft Proposed Main Modifications; and to the East Cambridgeshire Local Plan – Single Issue Review (Regulation 19) Consultation held in May/ June 2022.
- 1.3 A copy of the representations submitted to the SIR Regulation 19 Consultation are included at Appendix 1.
- 1.4 This Statement details our clients’ response to Matter 1 of the Inspector’s Matters, Issues and Questions for discussion at the Examination Hearing Sessions. A Hearing Statement has also been prepared in respect of Matter 2.

2 RESPONSE TO THE INSPECTOR'S MATTERS, ISSUES AND QUESTIONS FOR DISCUSSION AT THE EXAMINATION HEARING

2.1 The Inspector has posed a number of questions in respect of two matters for the Examination Hearing. This Hearing Statement seeks to respond to questions of relevance to our clients' interest in respect of Matter 1. These responses are provided below.

Matter 1: Whether all Statutory and Regulatory requirements have been met?

2.2 The 'Duty to Cooperate' is a legal requirement established through Section 33(A) of the Planning and Compulsory Purchase Act 2004, as amended by Section 110 of the Localism Act. This applies to all local planning authorities in England. The duty:

- Relates to sustainable development or use of land that would have a significant impact on at least two local planning areas or on a planning matter that falls within the remit of a county council.
- Requires that council set out planning policies to address such issues.
- Requires that councils and public bodies 'engage constructively, actively and on an ongoing basis', to development strategic policies.
- Requires councils to consider joint approaches to plan making.

2.3 Paragraph 156 of the National Planning Policy Framework (NPPF) sets out the strategic issues where co-operation might be appropriate. Paragraphs 178-181 give further guidance on 'planning strategically across local boundaries' and highlight the importance of joint working to meet development requirements that cannot wholly be met within a single local planning area, through either joint planning policies or informal strategies such as infrastructure and investment plans. This is further reinforced by the Planning Practice Guidance (PPG)¹.

2.4 Paragraph 34 of the NPPF further requires local plans to set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure).

2.5 As demonstrated through the outcome of the 2020 Sevenoaks District Council Local Plan examination and Judicial Review², if a council fails to satisfactorily discharge its Duty to Cooperate, this cannot be rectified through modifications and an Inspector must recommend non-adoption of the Plan.

2.6 The revised NPPF (2021) introduced a number of significant changes to how local planning authorities are expected to cooperate including the preparation of Statement(s) of Common Ground (SoCG) which are required to demonstrate that a plan is based on effective cooperation and has been based on agreements made by neighbouring authorities where cross boundary strategic issues are likely to exist. Planning guidance sets out that local planning authorities should produce, maintain, and update one or more SoCGs, throughout the plan making process.

2.7 It is clear that the proposed changes to the housing requirement within the East Cambridgeshire will have implications for development in the district and in adjacent local authority areas. Submission document CD03³ does not demonstrate that effective consultation was undertaken with neighbouring authorities. Indeed, Suffolk County Council in their letter dated 13 June 2022 in

¹ Paragraph: 009 Reference ID:61-009-20190315

² R on the Application of Sevenoaks District Council v Secretary of State for Housing, Communities and Local Government. Case Number: CO/1417/2020

³ East Cambridgeshire Local Plan SIR Stage 3 Consultation (Reg 19) May 2022

response to the East Cambridgeshire Local Plan Review Regulation 19 Consultation state the following:

“SCC [Suffolk County Council] would reiterate it’s concerns that the scale of growth in the area is significant and that by simply updating the housing numbers as part of the plan review does not provide suitable strategies to manage impacts on infrastructure, as required by paragraph 34 of the National Planning Policy Framework.

In particular SCC is concerned about cross boundary impacts on transport and education infrastructure and has highlighted the development in Soham, Burwell and Fordham as locations close to the border with Suffolk expecting significant levels of development in the next 5 years.”

- 2.8 In addition, despite being a signatory to the Cambridgeshire and Peterborough Memorandum of Cooperation⁴ it is unclear why discussions with Peterborough City Council and the other five signatories⁵ have not taken place as part of this review. The Memorandum aims to contribute to the achievement of sustainable development in Cambridgeshire & Peterborough, in accordance with the NPPF, for the Plan Period 2011-2031. The Memorandum recognised that delivering sustainable development necessitates the signatories working together across boundaries to *“meet the development needs of the area”*⁶. This is enshrined in the duty to cooperate included in the Localism Act 2011 and was considered within Appendix 1 of the Memorandum which reflects the outcomes of cooperation across the wider housing market area to establish the levels of provision for additional housing.
- 2.9 The proposed changes to Policy GROWTH1, and in particular the uplift in the housing requirements will have far reaching implications for development within the district and surrounding Council areas. As set out within our representations to Matter 2, the Council is seemingly refusing to consider an extension to the plan period beyond 2031. However, this is contrary to the requirements set out within the NPPF and PPG for strategic policies, namely that they should look ahead for a minimum period of at least 15 years. The current plan period would only allow for nine years. By adopting a limited plan period the robustness of the local plan and in particular its ability to deliver the necessary housing is put into question.
- 2.10 Moreover, the Council state that they do not intend to extend the plan period because *“to do so would likely have wider implications beyond the intention of the SIR”*⁷. The narrow focus of this Single Issue Review has therefore in our view been contrived by the Council to provide an opportunity to update Policy GROWTH1 without due consideration to other planning policies. It is an artificial and intentionally self-contained exercise which does nothing to provide the necessary clarity and certainty to the plan making process.
- 2.11 The changes will also have an impact on neighbouring Local Authorities, particularly in terms of infrastructure planning, where the reduced plan period would not allow neighbouring authorities to properly factor in the uplift in housing delivery.
- 2.12 Given the potential implications it is incumbent on the Council to properly consult with neighbouring districts to ensure that the proposed changes can be properly accommodated within the region. In failing to do so, as evidenced by Suffolk County Council’s aforementioned objection, it is clear the East Cambridgeshire District Council has failed to undertake their statutory and regulatory requirements and the Local Plan should be considered unsound having regard to the requirements of Paragraph 35(a) of the NPPF.

⁴ <https://www.cambridge.gov.uk/media/2553/appendix-n-memorandum-of-co-operation.pdf>

⁵ Cambridge City Council, Cambridgeshire County Council, Fenland District Council, Huntingdonshire District Council and South Cambridgeshire District Council.

⁶ Paragraph 11 of the NPPF

⁷ Paragraph 3.3 of Submission Document CD.03.

East Cambridgeshire District Council's Response to Inspector's Questions⁸

2.13 In the Council's Responses to the Inspector's Questions, we note the following:

Response to Inspector Paragraph 4 & Questions 1, 2 & 3.

2.14 The Council confirm that they have not undertaken any consultation with neighbouring local authorities. This is justified by stating that there is no *"unmet need"* to proposed to be transferred from one authority to another (in any direction), and that therefore there is no impact on neighbouring authorities. It is then questioned by the Council as to whether the duty to cooperate requirements are engaged at all.

2.15 Our client disputes this position and the Council's approach to this issue. Paragraph 24 of the NPPF is clear that local planning authorities are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries. As set out within our representations to Matter 2 (submitted under separate cover), the proposed changes to Policy GROWTH1 are strategic in nature. Appropriate consultation should therefore be undertaken with neighbouring local authorities, as demonstrated by Suffolk County Council's representations to this process.

2.16 It is also not correct for the Council to leverage maintaining the status quo (i.e., not adopting the SIR Plan/ revising Policy GROWTH1) as having a *"greater potential for 'significant impact' on neighbouring authorities, as it is unlikely under that scenario for the Council to be in a position to defend its five year housing land supply"*. It is suggested that this position would result in *"considerable speculative development"*. This is contrary to the Council's own assertions within Section 5 of Submission Document CD.03, where it is very clear stated that:

"...the new forward looking housing requirement (calculated as being 5,398 dwelling, 2022-2031) is far exceed by the identified supply (of 8,179 dwellings), even allowing for a small element of that supply being used up in the year 2021/22; plus, there is a further 2,008 supply beyond the plan period already identified."

2.17 The issue is that the Council in choosing to undertake this SIR has disregarded the wider implications of the proposed changes to Policy GROWTH1 on other, strategic policies (such as Policies GROWTH 2 and GROWTH4). The decision not to extend the plan period, is a contrived way to limit wider implications, and to give these implications due consideration. Similarly, the Council appears to have used this SIR to limit the scope of consultation with neighbouring local authorities, contrary to duty to cooperate principles and the Cambridgeshire and Peterborough Memorandum.

⁸ Examination Document EX.LA03(A)

3 CONCLUSION

- 3.1 On behalf of our client, we have a number of concerns in relation to the soundness of the draft East Cambridge Local Plan – Single Issue Review. This Hearing Statement has been produced to respond to Matter 1.
- 3.2 Local Plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Having regard to the four tests set out within Paragraph 35 of the NPPF we comment as follows:
- **Positively prepared** – the Council has not fulfilled its duty to cooperate with neighbouring local authorities or fully assessed the wider implications of the proposed policy change.
 - **Justified** – the Council has not demonstrated that this SIR was the only course of action available, nor that it was the appropriate course given the wider implications of the proposed changes.
 - **Effective** – the Council has acknowledged that the proposed policy change may have wider implications but has sought to defer its obligations to a later date without sufficient justification. This undermines the effectiveness of the proposed change and highlights that the Council recognises this issue cannot effectively be assessed in isolation and will require further work.
 - **Consistent with national policy** – for the reasons set out within this Statement the proposed changes are not consistent with national planning policy and guidance, including Paragraph 35(a) of the NPPF.
- 3.3 Accordingly, we consider that the Single Issue Review is unsound and has not been prepared in accordance with the national planning policy and guidance.

Appendix 1 – Representations to the Regulation 19 Consultation

The Single Issue Review is limited to an amendment to Policy GROWTH 1 and associated supporting paragraphs. It is our contention that this approach is not appropriate having regard to the NPPF and recent Appeal Decision reference APP/V0510/W/21/3282449 at Land to the North East of Broad Piece, Soham.

We consider that GROWTH 1 cannot be regarded as out-of-date without also concluding that GROWTH 2 (and other strategic housing policies) is similarly out-of-date.

Local Plan Policy GROWTH 2 (and other strategic policies) are firmly anchored to Policy GROWTH 1 and it is not appropriate to fundamentally update one strategic policy without updating all of the strategic policies which enable it to be delivered. The approach of 'mixing and matching' policies whereby some are up-to-date and some are not is not acceptable. It undermines any confidence in the local plan system and creates confusion for the public, applicants and indeed the Council itself. A full review of the Plan policies is warranted, justified and necessary in the circumstances. The Single Issue Review of the 2015 Local Plan is simply not a credible position for the Council to adopt.

Our position is supported by the Inspector's consideration as part of Appeal Decision reference APP/V0510/W/21/3282449. In this regard, the Inspector identified at paragraph 14 that *"There was much debate during the Inquiry as to whether policies GROWTH 2 and GROWTH 4 should also be considered out of date for the purposes of this appeal. **Based on the evidence put to me there is little doubt in my mind that they should. Policy GROWTH 2 is a locational strategy predicated on delivering the housing requirement contained in out-of-date policy GROWTH 1.** This requirement cannot be relied upon and the amount of housing now needed in the district within this plan period to 2031 is uncertain, as is the question of whether the need can be accommodated within existing settlement envelopes and/or whether sufficient housing allocations exist. The Council's planning witness accepted during cross examination that it would be wrong to assume what the locational strategy should be without knowing the new housing requirement and I agree."* (our emphasis)

The Inspector therefore determined that, in addition to GROWTH 1, Policies GROWTH 2 and GROWTH 4 are out-of-date, with GROWTH 2 being out-of-date on the basis that it is a locational strategy predicated on delivering the housing requirement set out within Policy GROWTH 1. The Council cannot, therefore, reasonably seek to amend Policy GROWTH 1 as part of the Single Issue Review without also undertaking a full assessment as to whether amending the locational strategy set out within GROWTH 2 which seeks to deliver that housing requirement is also required.

The Appeal Decision reference APP/V0510/W/21/3282449 is dated 11 February 2022 and fundamentally undermines the approach the Council is seeking to adopt as part of the Single Issue Review. In the context of the Appeal Decision, the Council must reconsider its approach.

The Council as part of application reference 21/01636/FUL at Land Accessed Between 2 and 4 Fordham Road, Isleham, Cambridgeshire acknowledges the Appeal Decision reference APP/V0510/W/21/3282449 and seeks to interpret the Inspector's conclusion on the issue of GROWTH 2 being found to be out of date. In this regard the Officer Report associated with application reference 21/01636/FUL identifies at paragraph 7.3.5 that *"... in the **specific location of the Appeal Site he found that continued strict application of GROWTH 2 was not justified** given that the Local Plan anticipated housing in that location and at the market towns. The Inspector also gave weight to the fact that, while outside the development envelope for Soham, the proposal was considered to comply with the development plan as a whole, including the location of the development at one of the three market towns, consistent with GROWTH 2. It is important to appreciate that this was a case where no other development plan conflicts were identified, including notably in respect of landscape. The Inspector therefore did not have to consider these specific wider considerations in assessing the datedness of the*

policy and its consequent consistency with NPPF.” (our emphasis). The Officer Report then goes on to consider at paragraph 7.3.14 that “For the current application GROWTH 2 is considered up to date and as such the presumption in favour of sustainable development is not engaged.”

This interpretation is, however, fundamentally at odds with the approach taken by the Inspector in their consideration of Appeal APP/V0510/W/21/3282449. Paragraph 20 of the Appeal Decision states *“For this particular proposal, policies GROWTH 1, GROWTH 2 and GROWTH 4 are the most important for determining the case in that they together set out the amount and locational strategy for the delivery of housing, including restricting development outside settlement envelopes. They are all out of date for the reasons I have set out and so the Framework’s presumption in favour of sustainable development applies”*. There is no reference within the Appeal Decision to GROWTH 2 being out-of-date in relation to Soham only. The reference to ‘for this particular proposal’ relates to the ‘most important policies’ pursuant to paragraph 11 of the NPPF. Again, the Council’s ‘mix and match’ approach is not acceptable. GROWTH 2 cannot be out-of-date in Soham only, and up-to-date elsewhere. As set out throughout, GROWTH 2 is out-of-date and as such, the approach to the Single Issue Review is fundamentally flawed.

Furthermore, the Council has to acknowledge that residential developments have been permitted, on application or appeal, in conflict with the locational strategy set out in GROWTH 2; ergo, it must be considered to be out of date and require a review, as it has not proved an effective policy.

The Single Issue Review is also fundamentally at odds with the aims of the NPPF. In this regard, paragraph 22 states *“Strategic policies should look ahead over a minimum 15 year period from adoption, to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure”*. The Single Issue Review will not however extend the duration of the Local Plan period (which ends in 2031). The Single Issue Review therefore conflicts with NPPF paragraph 22 which requires strategic policies to look ahead over a minimum 15 year period from adoption.

Paragraph 60 of the NPPF states *“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay”*.

The Inspector as part of Appeal Decision reference APP/V0510/W/21/3282449 recognises that *“Whilst the general objectives of the policy [Policy GROWTH 2] to manage patterns of growth and protect the setting of towns and villages are good ones that are consistent with the Framework, the policy can no longer be considered up to date because it can no longer be said that sufficient housing can and will be accommodated within the defined settlement envelopes. This is particularly so when the plan itself anticipated that development outside of the envelopes would at some point be needed within the plan period, at the broad locations identified”*.

The Inspector recognises that GROWTH 2 cannot sufficiently accommodate required housing growth. Therefore, in seeking to retain GROWTH 2 without reviewing its effectiveness, the Single Issue Review conflicts with NPPF paragraph 60.

We also consider that the proposed Local Plan conflicts with NPPF Paragraph 62 as the Council needs to provide evidence to demonstrate that the existing housing site commitments will ensure that the size, type and tenure of housing delivers against what is needed for different groups in the community. In this context we question how the Single Issue Review considers and satisfies the requirements in paragraph 65 of the NPPF.

With regard to NPPF Paragraph 69 the Council needs to provide evidence to establish how it intends to ensure that small and medium sized sites make an important contribution to meeting the housing requirement of the District. This includes the need to promote the development of a good mix of sites and to accommodate at least 10% of their housing requirement on sites no larger than one hectare (unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved). It is not appropriate in our view to rely upon the housing need being zero in this context and so some small (under 1 hectare) housing allocations should be included.

In relation to NPPF Paragraph 72 the Council needs to provide evidence to show how it intends to support the development of entry-level exception sites, suitable for first time buyers (or those looking to rent their first home).

We would suggest that a schedule of compliance with the 2021 NPPF be prepared as part of the next consultation given that, if adopted, the Local Plan (including the Single Issue Review) will need to demonstrate compliance with the 2021 NPPF in order to be found to be sound.