

ABBNEY PROPERTIES CAMBRIDGESHIRE LIMITED

PROPOSED SUBMISSION LOCAL PLAN EXAMINATION HEARING STATEMENT – MATTER 2

JCG25957
October 2022

REPORT

Document status

Version	Purpose of document	Authored by	Reviewed by	Approved by	Review date
FINAL	Hearing Statement	Jorge Nash	Mark Buxton	Mark Buxton	27.10.2022

Approval for issue

Mark Buxton

27 October 2022

The report has been prepared for the exclusive use and benefit of our client and solely for the purpose for which it is provided. Unless otherwise agreed in writing by RPS Group Plc, any of its subsidiaries, or a related entity (collectively 'RPS') no part of this report should be reproduced, distributed, or communicated to any third party. RPS does not accept any liability if this report is used for an alternative purpose from which it is intended, nor to any third party in respect of this report. The report does not account for any changes relating to the subject matter of the report, or any legislative or regulatory changes that have occurred since the report was produced and that may affect the report.

The report has been prepared using the information provided to RPS by its client, or others on behalf of its client. To the fullest extent permitted by law, RPS shall not be liable for any loss or damage suffered by the client arising from fraud, misrepresentation, withholding of information material relevant to the report or required by RPS, or other default relating to such information, whether on the client's part or that of the other information sources, unless such fraud, misrepresentation, withholding or such other default is evident to RPS without further enquiry. It is expressly stated that no independent verification of any documents or information supplied by the client or others on behalf of the client has been made. The report shall be used for general information only.

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

Contents

1	INTRODUCTION	1
2	RESPONSE TO THE INSPECTOR’S MATTERS, ISSUES AND QUESTIONS FOR DISCUSSION AT THE EXAMINATION HEARING	2
3	CONCLUSION	6

Appendices

Appendix 1 – Representations to the Regulation 19 Consultation

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; 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 2 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 1.

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 2. These responses are provided below.

Matter 2: Are the proposed amendments to Policy GROWTH1 and the explanatory text of the Plan positively prepared, clear, justified and consistent with national policy and will they be effective?

2.2 Local Plans are not single-issue documents. They are required to fully consider the economic and housing developments needs of the district as well as needs for other uses such as retail and community facilities. Since the adoption of the current Local Plan in 2015, the National Planning Policy Framework (NPPF) has been amended several times.

2.3 As set out within Paragraphs 3.4 to 3.9 of the East Cambridgeshire Local Plan – A Second Review (2020)¹, East Cambridgeshire District Council ('the Council') maintain that the 2015 Local Plan remains broadly aligned with national policy, but not entirely so. For these reasons the Second Review advised the Council to determine whether a Local Plan review in whole or just the part identified in need of revising should be undertaken.

2.4 As it stands, the Council has chosen to undertake this Single Issue Review (SIR) and have set out within Submission Document CD03 their proposed changes to Policy GROWTH1, along with their justification for doing so. It is understood that the Council's position is that only Policy GROWTH1 needs to be revised, due to its out of date housing requirement. The rest of the Local Plan is considered by the Council to not, at the present time, need updating.

Housing Need

2.5 In determining whether the period over which housing needs are considered should be extended it is essential that the Council first considers whether the policy being amended is a strategic policy, and if so, whether it is consistent with the NPPF. Paragraph 20 of the NPPF outlines that a strategic policy is one that sets out the overall strategy for the pattern, scale and quality of growth and makes provision for that growth. The SIR seeks to update Policy GROWTH1 in the context of its current local plan and more specifically the number of homes it is required to deliver as set out in this policy. As such this policy must be, on the basis of paragraph 20 in the NPPF, considered a strategic policy. The consequence of this is that any amendments to this policy should look ahead for at least 15 years following the adoption of this policy in order to be compliant with NPPF paragraph 22. This may have wider implications and it will be necessary for the Council to consider those implications as part of this review, and address these where necessary, if the revised policy is to be considered sound.

2.6 The Planning Practice Guidance (PPG) states that strategic policy-making authorities will need to calculate their local housing need figure at the start of the plan-making process, and that this number should be kept under review and revised where appropriate². The undertaking of this SIR should ensure that the new housing requirement is incorporated into the policy.

2.7 The NPPF expects strategic policy-making authorities to follow the standard method for assessing local housing need³. Paragraph 22 of the NPPF further states that strategic policies should look ahead over a minimum 15 year period from adoption, to anticipate and respond to long-term

¹ Submission Document CD14 – Local Plan Review (Reg 10A(1) Review) April 2020

² PPG Paragraph: 008 Reference ID: 2a-008/20190220

³ PPG Paragraph: 002 Reference ID: 2a-002-20190220

requirements and opportunities, such as those arising from major improvements in infrastructure. The standard method provides authorities with an annualised number, based on a 10 year baseline, which can be applied to the whole period.

- 2.8 The requirement for strategic policies to look ahead for 15 years from their adoption is a shift in national policy between the 2019 NPPF and the 2012 version against which the adopted East Cambridgeshire local plan was examined. The 2012 NPPF only stated at paragraph 157 that local plans should *“be drawn up over an appropriate timescale, preferably a 15-year time horizon”*. This is an important qualification with regard to the period over which strategic policies should be considered.
- 2.9 The current proposal, however, does not intend to look ahead for the minimum 15 year period. The revised policy looks forward a further nine years from adoption only (i.e. to the end of the plan period in 2031). Accordingly, it is not considered that the standard methodology is being applied and past under delivery should be accounted for⁴.
- 2.10 This principle is consistently applied throughout the PPG, and it is clearly established that where shortfalls in housing completions have been identified against planned requirements, local authorities should seek to identify whether there are any measures that the authority can take, either alone or jointly with other authorities, which may counter the trend⁵.
- 2.11 The updated supporting text to Policy GROWTH1 considers the housing requirement for the period 2011-2022 to be the housing delivered in that period. However, five years after the adoption of the Local Plan in 2015, there was an outstanding under provision in excess of 2,500 that should be included within the calculation in accordance with the above principles.
- 2.12 East Cambridgeshire has failed to deliver sufficient housing to meet its annual housing requirement since the start of the plan period in 2011. The Council’s assumption that this can be written off in Policy GROWTH1 by revising the housing target for previous years to match the completion figures for those years, is not only contrary to the guidance contained within the NPPF and PPG, but it could also arguably skew the result of the Housing Delivery Test⁶. It certainly does nothing to address affordability issues with housing in the district which are on the increase and exceed the national average by some margin.
- 2.13 In terms of looking ahead, the supporting text for Policy GROWTH1 continues to reject the requirement to look beyond 2031 in relation to housing needs. Paragraph 22 of the NPPF requires strategic policies to look ahead over a minimum of 15 years from the point of adoption. However, the Council states in Paragraphs 3.3 and 3.4 of Submission Document CD.03 that this is not possible as to do so would have implications beyond the scope of the SIR, and thus it is not reasonable for them to make such an amendment.
- 2.14 The Council should recognise that the NPPF and the PPG must be read as whole. The policies and guidance are not mutually exclusive, and the Council cannot cherry pick those it wants to address through the review of the Local Plan and ignore other stipulations that require it to meet development needs over a longer period. The Local Plan will not only set housing requirements, but also infrastructure needs for development which are used by third parties (such as utilities companies, health authorities and the education authority) to understand their capacity requirements. Planning for a longer period provides clarity to these third parties (and other interested parties), particularly in terms of growth and where it is expected, so they can plan more effectively. The apparent refusal of the Council to extend the term does not provide certainty and undermines this process. It could also delay infrastructure improvements required to support development beyond the plan period.
- 2.15 This position is not justifiable, it is clearly contrary to the established principles set out within the NPPF and PPG. Consequently, the SIR cannot be viewed to be positively prepared, justified, effective or consistent with national policy, and is therefore unsound having regard to Paragraph 35

⁴ PPG Paragraph: 011 Reference ID: 2a-011-20190220

⁵ PPG Paragraph: 031 Reference ID: 68-031-20190722

⁶ The Housing Delivery Test (HDT) is calculated by dividing the total net homes delivered over a three year period by the total number of homes required over a three year period. Any adjustments made to these figures would therefore significantly affect the accuracy of the HDT.

of the NPPF. We would therefore suggest that the proposed updates to Policy GROWTH1 should take place within an extended plan period to 2037/38.

Specialist Groups

- 2.16 The proposed changes to Policy GROWTH1 are notably absent of commentary on the needs of specialist community groups⁷. Paragraphs 60 and 62 of the NPPF require the needs of groups with specific housing requirements to be assessed and addressed within planning policy. The Council recognise that there is a need to increase the housing need within the policy, but no assessment of the wider implications, particularly in terms of specialist housing groups has been undertaken. As with our wider comments on the lack of regard to Policies GROWTH2 and GROWTH4 this is symptomatic of a review process with insufficient scope.

Small and Medium Sized Sites

- 2.17 The Council does not propose to provide any further allocations in its Local Plan as a consequence of this SIR. It states in Paragraph 3.6 of Submission Document CD03 that this *“would require considerable work and would delay the review process significantly”*.
- 2.18 The refusal to undertake an assessment of existing and potential site allocations on the basis that it requires “considerable work” is not sufficient justification in our opinion. The Council has consistently argued that the proposed changes to Policy GROWTH1 are sufficiently minor so as to fall within the narrow scope of this SIR, however, it is clear that the wider implications of the proposed policy change are not small or limited in reach. The fact that the Council recognises there is considerable work to be undertaken in regard to site allocations demonstrates that they have sought to use this SIR to intentionally limit the scope of the review and seek to ignore their other related obligations.
- 2.19 Paragraph 69 of the NPPF recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out relatively quickly. Accordingly, an assessment of existing and potential site allocations should be undertaken to ensure that they accurately reflect the capacity and availability of development land within the borough.

Focus on Policy GROWTH1

- 2.20 The sole focus of the SIR on Policy GROWTH1 and its approach to suppress the delivery of housing over the remainder of the plan period, without accounting for the substantial shortfall in provision over the first 10 years of the plan period, should be considered unsound.
- 2.21 For the reasons set out above, the SIR cannot be considered to be positively prepared, justified, effective or consistent with the NPPF or PPG. In our view, these issues can only be resolved by undertaking a full review of the local plan, including the plan period and broader policy implications.
- 2.22 The consequence of not widening the scope of the SIR is that other policies within the Local Plan could and should be considered out of date. Given the importance of these policies in directing development within the district, this is short-sighted and does not accord with good plan making principles. It is also apparent that these wider policies are effectively *“out of date”* courtesy of the fact they have not delivered the housing numbers set out within adopted Policy GROWTH1.

Soham Planning Appeal

- 2.23 On 11 February 2022 an Inspector allowed a planning appeal⁸ which considered whether policies within the adopted Local Plan (2015) are out of date. Policy GROWTH 1 was agreed between parties to be out of date, however, the appellant had also questioned whether additional policies should also be considered to be out of date.

⁷ Including those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes (Paragraph 62 of the NPPF).

⁸ Land to the northeast of Broad Piece, Soham, ref. APP/V0510/W/21/3282449.

- 2.24 It is clear in this process that the Council accept that Policy GROWTH 1 which identifies the overall housing requirement for the district, is out of date. But they continue to consider that this solely applies to Policy GROWTH1 and no other policies within the Local Plan.
- 2.25 The Appellant in the Soham case, however, argued that Policies GROWTH2 and GROWTH4 are also out of date. The Inspector agreed with the Appellant in their decision. As a consequence, it was determined that the tilted balance was engaged.
- 2.26 Whilst the inspector recognised that some previous inspectors had considered policies GROWTH 2 and GROWTH 4 to be up to date, *“the decisions highlighted by the parties were now some time ago and I must consider circumstances as I [the inspector] find them now.”* The inspector concludes (further to the Appellant’s evidence), at paragraph 20 of the decision: *“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 [the tilted balance] applies.”*
- 2.27 This decision is clearly a material consideration and for the reasons set out previously in this Statement the scope of the SIR should be widened to include additional policies to ensure the Local Plan can accurately and positively respond to proposals for new development.
- 2.28 The Council’s argument that policies GROWTH 2 and 4 are only out of date in the specific context of the Soham appeal simply is not credible.

Summary

- 2.29 East Cambridgeshire has sought to use the SIR process to focus solely on Policy GROWTH1. Changes are sought to the policy to ensure that the revised housing need figure is identified within the policy and the Council have set out within Submission Document CD03 how they intend to reflect this within the updated policy.
- 2.30 For the reasons set out above, it is considered that the Council has ignored the relevant policies and guidance within the NPPF and PPG, particularly insofar as the calculation of housing need and minimum timescales for strategic policies when plan-making. The current intention is to retain the existing plan period, which would provide for a minimum period of 9 years. The NPPF and PPG are quite clear that ‘strategic’ policies should look ahead a minimum of 15 years.
- 2.31 It is clear that the Council has sought to use the SIR to contrive updates to Policy GROWTH1 without giving due and proper consideration to the implications these changes have on other strategic and non-strategic policies within the Local Plan. The result is an artificial and intentionally self contained exercise which does nothing to provide the necessary clarity and certainty to the plan making process.
- 2.32 As evidenced by the recent appeal decision⁹, other planning policies within the Local Plan are already considered to be out of date and treated as such. Given the strategic nature of Local Plan Policy GROWTH1 it is not surprising that other Local Plan policies are infected by GROWTH1 being out-of-date. The same principle applies to this SIR as updating GROWTH1 in isolation would leave the Local Plan confusing and inconsistent. Within this context the sole review of Policy GROWTH1 is considered to be short-sighted as it fails to ensure that the Local Plan is robust for the remainder of the plan period. The Council’s objections to extending the plan period with regard to Policy GROWTH1 further demonstrates that the Council does not want to undertake a full review of the Local Plan.
- 2.33 Fundamentally the Council’s approach is flawed, and further reviews will be required in the short term to ensure that the Local Plan is fit for purpose. Consequently, it is not considered that the proposed changes have been positively prepared, or that they are clear or justified. They are not consistent with national planning policies and/ or guidance, and due to the shortcomings identified in this Statement they are not considered to be effective.

⁹ Land to the northeast of Broad Piece, Soham, ref. APP/V0510/W/21/3282449.

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 2.
- 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.