

Examination of the Uttlesford Local Plan (ULP)

Inspector's initial soundness concerns and questions to the District Council

Having considered some of the main material relating to the plan, these are my initial soundness concerns and questions. It is likely that they will cover the majority of matters that need to be discussed at the hearings sessions. The points below are not necessarily placed in order of importance but generally follow the order of the plan's contents. I ask the Council to respond to the contents of this note by 17 September.

I have today also issued a procedure note which, among other things, describes the key stages and dates in the preparation for the hearings, including the dates when participants will be invited to submit further statements, if they so wish, on the matters and issues I identify when the Council has responded to this note.

1 Duty to Co-operate (DtC)

There is no scope to remedy any failure to comply with the DtC imposed by S33A of the Planning & Compulsory Purchase Act 2004. The Council has recently prepared a DtC compliance statement (L103), dated July 2014. I understand this to be the Council's full account of the way in which the duty has been addressed.

The National Planning Policy Framework (NPPF) indicates (para 178) that joint working on strategic matters of common interest should be 'diligently undertaken for the mutual benefit of neighbouring authorities'. Para 156 identifies the 'homes and jobs needed in the area' as one among of a set of 'strategic priorities',

National Planning Policy Guidance (NPPG) para 9-010 indicates that evidence will be sought on the outcomes of co-operation rather than just whether local planning authorities have approached others. Para 9-011 gives examples of the kinds of action that may constitute effect cooperation under the DtC, while para 9-015 refers to decisions about kinds of issues over which co-operation is required.

L103 records meetings with all the Council's neighbouring LPAs (plus Essex and Herts County Councils) and summarises their outcomes. It also identifies a number of jointly prepared/commissioned evidence studies. In some instances formal or draft DtC memoranda of understanding/terms of reference have been agreed, establishing frameworks for on-going co-operation on a wide range of common issues, including Stansted Airport and M11 capacity issues. The most active co-operation seems to have been with East Herts, Epping Forest, Harlow and Essex and Herts County Councils as well as with various groups associated with Stansted Airport and the London - Stansted - Cambridge - Consortium. In the cases of South Cambs, Braintree, Maldon, North Herts and Chelmsford, DtC exchanges have identified fewer material cross-border issues. DtC meetings have also been held between the London

Assembly and the Essex Planning Officers Association ‘to maintain dialogue and... awareness across London and Essex’.

5 of Uttlesford’s six immediate neighbours have expressly made representations that Uttlesford has satisfied the DtC. No specific response has been made by Harlow (?).

I understand this to be the gist of the Council’s position on the DtC. I do not ask for significant further information on the DtC, although some matters which are allied to it are better taken up under the soundness test of ‘positive preparation’. These issues are raised in other parts of this note.

2 The NPPF ‘justification’ test and the Sustainability Appraisals of the Local Plan

NPPF para 182 advises that the plan should be the ‘most appropriate strategy, when considered against the reasonable alternatives’, based on proportionate evidence.

An important part of the evidence to demonstrate that this test has been met consists of critical parts of the Strategic Environmental Assessment/Sustainability Appraisals undertaken at each stage of the plan preparation process. Leading Court judgements such as (1) *Save Historic Newmarket Ltd & others v Forest Heath DC and others* (2011) and (2) *Heard v Broadland DC & others* (2012) point to the need for the SA to provide readers with a clear audit trail of the reasons for the choice of the submitted strategy as opposed to other reasonable alternatives. This may be particularly important where (as in this case) the distribution, locations and development quantum of the proposed major development options have changed over time since the plan first began to be conceived.

The Planning Advisory Service (PAS) website page (Legal Challenges Update: September 2012) draws upon the Heard judgement to provide 3 principal learning points on the ‘Adequacy of Sustainability Appraisal’ and the reasons why the options selected in a plan are preferred to other reasonable alternatives previously canvassed.

I therefore ask the Council to provide the examination with (a) a guide to those particular sections of the SA which provide the necessary audit trail and (b) a commentary upon the legal adequacy of the process.

3 The relevant Housing Market Area

NPPF para 47 says that local planning authorities should use their evidence base to ensure that their Local Plans ‘meet the full objectively assessed needs for market and affordable housing in the housing market area’ as far as is consistent ..(etc). The question therefore arises ‘what is the housing market area (HMA) assessed for the purposes of the ULP?’

Para 4.5 of ULP appears to draw upon the London Commuter Belt East/M11 sub-regional SHMA 2008-2010 to state that the District lies within 3 sub-market housing areas, ie mainly within the Harlow/M11 sub-market with small areas in the Cambridge and Chelmsford sub-markets. The Council's recent proposed minor modification (PMM/11/10) states that Uttlesford is 'substantially within' the Harlow/M11 sub-market and 'on the border of'/'looking towards' the other two. This does not necessarily make the position clearer and may or may not be consistent with what is said about housing markets in the DtC statement (L103). The proposed change could be taken to mean that parts of Uttlesford are 'on the outside looking in' upon the Cambridge and Chelmsford sub-areas, or that they are still partly within them (as stated in L103). The latter seems to be inconsistent with view of the Cambridgeshire authorities who have jointly prepared a Strategic Housing Market Assessment for the whole of that county as a self-contained entity, not including any part of Uttlesford.

Subsequent to the 2008-10 SHMA Uttlesford seems to have been treated as self-contained for housing need assessment purposes. The later reports by Edge Analytics generate independent projections for all the Districts covered by them, as well as some macro-scenarios for various 'macro-areas' including the 'Stansted/M11 corridor', the 'Harlow Wider Area', 'Heart of Essex' and 'West Essex'. What was the purpose of identifying these macro-areas? How are their boundaries defined? Are they being treated as an input to local plan work? If so, in what way?

Some representations query whether it is sound to consider Uttlesford effectively as a self-contained HMA. They point to its participation (and fairly central location) within the London – Stansted – Cambridge Consortium, through which the various partners aim to drive economic growth in the area centred on the M11 corridor. They also refer to the NPPF soundness test of 'positive preparation', which includes seeking to meet the unmet needs of neighbouring authorities where it is reasonable to do so. They suggest that circumstances here require a more widely-based collaborative approach to factors such as the needs of North London, Harlow, the committed capacity for growth of Stansted and other needs and opportunities along the corridor.

I ask the Council to respond fully to all the above issues and questions. Do housing market and travel to work factors make it appropriate to treat Uttlesford as a single Housing Market Area and, if it is, why does the plan appear to suggest otherwise? Are the wider housing needs of the macro-areas relevant to the planning of Uttlesford and its neighbours, and if so how are they reflected in the plan?

4 Objectively-assessed housing needs

The basis for the assessed housing need underlying the plan (523pa) is set out in the 'Objectively Assessed Housing Need Technical Assessment' dated October 2013 (H105). H105 summarises the outcomes of successive stages of assessment through

the Greater Essex Demographic Forecasts (GEDF) contained in documents H101-H103).

An update prepared in April 2014 (H106) draws upon the subsequent Phase 5 of the GEDF forecasts (H104). This work considered later data from the 2011 Census and the revised mid-year population estimates for 2002-10, resulting in what could be quite substantial increased projections for Uttlesford as set out below.

Using the normal 5-year timeframe for migration (which is mainly internal migration) these are as follows:

at recession-based 2011-based household formation rates:	715-687 pa
at pre-recession based 2008-based household formation rates:	774-745 pa

Using a 10-year timeframe for the migration elements these are:

at recession-based 2011-based household formation rates:	577-537 pa
at pre-recession based 2008-based household formation rates:	631-589 pa

The Council's update statement (H106), having noted these figures, goes on to comment:

'These alternative trend projections are higher than the official projections. This is because the SNPP-2010 is based on evidence that has since been superseded by later evidence from the 2011 Census and revised mid-year estimates.'

'The Council has prepared its Plan on the most robust official projections available at the time. The Council consider that it should continue with a plan based on SNPP 2010-based projections as the latest official and robust projections. The SNPP 2012-based projections are due to be released in Spring 2014, and the next phase of the Greater Essex Demographic Forecasts will evaluate these new ONS projections.'

The scale of the differences between the ULP figure of 523pa and some of the above alternatives suggests the need for some further testing of the plan's housing provision in order to ensure that it is taken forward on the basis of up-to-date, clearly founded sound evidence. Has consideration been given to the implications of the SNPP 2012-based projections, released in May 2014? Have the GEDF consultants been asked to evaluate these latest ONS projections and their implications for household growth? H104 (para 1.7) suggests that Phase 6 of the GEDF work will be completed by July 2014. What stage has this work reached and what are its expected outputs?

5 5-yr land supply: the Housing Trajectory and 5-yr land supply (H108)

Concerning table 2 of H108, it appears that the 5 year requirement would be 523 x 5 (2615) plus 118 to make good the shortfall occurring during the first 3 years of the plan (bringing the total to 2733) plus a 5% buffer brought forward from future years (5% of 2733=137), making a total of 2870.

Turning to the supply, NPPG states at para 008 ref ID12-008 that a Council's policies will not be considered up-to-date if the existence of a 5-year supply of deliverable housing sites cannot be demonstrated. It therefore follows that a plan would be unlikely to be sound (and therefore appropriate to proceed to adoption) in such circumstances. Table 1 of H108 indicates that some 3592 dwellings are considered deliverable in NPPF terms within the 5 year period. On the face of it this is a healthy position although it is reliant upon the great majority of sites identified in Appendix 1 with extant full or outline permission (and some with resolutions to grant permission subject to an agreement) delivering fully within the 5 year period. Of course the table identifies exceptions in the case of the larger sites where delivery will take place over a long term. The realism or otherwise of these delivery rates, including those assumed for the local plan allocations without permission, will need to be tested during the examination.

More generally on the land supply, it is not at all easy to see from the text of the plan (but I have learned from other sources in the background documents) that events have moved on so far that the great majority of the plan's 'allocations' merely record sites with planning permission or a resolution to grant permission, subject to an agreement. To aid the efficiency of the examination and permit attention to be focused on sites that are not already committed, it would be helpful to receive a list of the allocation sites which fall into that category.

6 The spatial strategy – settlement classifications (paras 7.1-7.8)

I note that the planning status of some settlements has changed since the Local Plan 2005 eg Stansted Mountfitchet was an 'urban area' and is now a 'key village', while Hatfield Heath was an 'other village' and is now a 'key village'. The other rural settlements have been divided into type A and B villages. Is there an evidence document outlining the basis for these classifications?

7 General Development Principles (part 8)

7.1 Policy DES1

A Ministerial Statement (and its attached note) dated 13 March 2014 sets out the ways in which the themes of its Review of Housing Standards are to be taken forward. It is intended that the many overlapping, conflicting and confusing current national and local standards will be rationalised and simplified by consolidating any necessary technical standards on access, security, water, energy and space into the Building Regulations and/or a new national standard. In view of this the Council may wish to re-consider some aspects of this policy [and policies E8 and E10] where they appear to conflict with this direction of travel.

In addition, what is meant by the ‘latest Lifetime Neighbourhood’ standards? The glossary to the NPPF reminds us that while SPD can be a material consideration in a planning decision, it is not ‘part of’ the development plan. It is therefore inappropriate (see Regs 5(1)(iv) and 6 of the 2012 Regulations) for development plan policies to require compliance with the terms of non-statutory SPDs or any other documents which are not part of the plan itself. However, it may be acceptable for the explanatory parts of ULP to identify SPDs which have been prepared in accordance with the procedures for such documents and note that they may be taken into account as ‘material considerations’ in determining any relevant applications.

The above comment also applies to ‘Lifetime Homes’ standards, and ‘Wheelchair Accessible Home’ standards.

Turning to the introduction to the policy, rep 325 appears to me to identify a lack of consistency with the NPPF. Of course, the historic environment of Uttlesford is very important. However, by concentrating so much on that the policy fails to take the opportunity to seek appropriate responses to all environments, including the less historic ones and to encourage innovation.

8 Employment and retail strategies (parts 9 and 10)

I have no specific questions of the Council at this stage, although there may be some issues to explore in the call for responses to be issued at the end of September

9 Housing Strategy (part 11)

9.1 Policy SP7 This policy would be effective (and far simpler to understand and link to SP6) if numbers are inserted into bullet points 2 and 3 using figures from the 2014-based housing statement (H108) to show how the various elements of the overall provision add up to 10,460. The figures in paras 11.9 and 11.10 and the following table 5 could also be usefully edited to show the current position.

9.2 Policy H01 Is the message conveyed by paragraph 11.20 (making the best use of land subject to context) consistent with the wording of the policy? The paragraph does not support or explain these figures.

9.3 Policy H02 What is the current mix requirement? Should this not be referred to in paragraph 11.21? Otherwise constant reference is required to another document outside the plan.

9.4 Policy H04 Is the requirement for an energy assessment in para 11.23 (not included in the policy) consistent with the issue raised under policy DES1 concerning the national Housing Review?

9.5 Policy H06 Is this policy unduly restrictive? What is it trying to achieve? Does paragraph 11.25 adequately explain this?

9.6 Other housing issue NPPF para 50 indicates that plans should aim to provide for a variety of housing needs including those wishing to build their own homes. ULP does not appear to deal with this issue.

10 Environmental Protection (part 12)

10.1 Policy EN1 The 2nd paragraph can be confusing. It may be clearer if cast in the negative... 'Planning permission will not be grantedunless.....' And should this paragraph refer to not causing material harm rather than disturbance or nuisance? Harm caused by pollutants can go wider than disturbance or nuisance.

10.2 Policy EN8 and accompanying paragraphs See the point raised under policy DES1 above in relation to the Ministerial Statement.

10.3 Policy EN10 and accompanying paragraphs See the point raised under policy DES1 above in relation to the Ministerial Statement.

11 Development in the Countryside (part 13)

11.1 Policy SP9 Is the 'Countryside Protection Zone' an unnecessary policy tier overlaid upon the plan's other policies protecting the countryside? What further objective does it serve which is not otherwise obtainable?

11.2 Policy C2 Is this policy compliant with national policy and the recent changes to the General Permitted Development Order?

12 The Historic Environment (part 14)

12.1 Policy SP10 (Final para) See the comment under DES1 above concerning SPD.

12.2 Policy HE1 See the above comment re SPD. I note that the Conservation Area Appraisals are already properly referred to in para 14.7

12.3 Policy HE3 Does the policy adequately refer to sites of less than national archaeological importance? Also, should 'in situ' be inserted after 'preservation' in the 1st line of paragraph 3?

13 The Natural Environment (part 15)

13.1 Policies SP11 & NE1 See the comment under DES1 above concerning SPD, here in relation to the Essex Biodiversity Action Plan.

13.2 Policies NE1 & NE2 Is the plan adequately reflective of NPPF para 109 re seeking net gains in biodiversity and promoting the establishing of coherent and resilient ecological networks of green infrastructure? Is it adequately reflective of the importance of Hatfield Forest?

14 Assess strategy (part 16)

Policy SP12 (a) Transport modelling

Concerning the highway impact of the draft plan, Essex CC as Transport Authority concludes (I104) that its effects on Saffron Walden and Great Dunmow are able to be managed with some appropriate mitigation. Formal assessments of the cumulative impacts of Elsenham had not been undertaken (in March 2014). In the CC's view more detailed study is required, but there are limited options to reduce impact and these hinge on demand management, reducing the need to travel and high quality alternative means of travel.

As for the strategic network, Essex CC states that mitigation works at a cost of £5m would free up capacity for all traffic at J8 of the M11 but funding is not yet secured. The Highways Agency's representation (1817) does not appear to consider that sufficient investigation has been undertaken of the cumulative impact upon the strategic network of development in Uttlesford, East Herts, Harlow, and Epping Forest and is concerned that there is a risk that sites have been identified before it is clear that measures to manage impacts are deliverable.

The DtC statement (L103) para 5.15 indicates that in April 2014 Essex and Herts CCs and the Highways Agency signed off a predictive regional model for assessing traffic flows on strategic and local road networks using housing and employment growth data up to 2036. The County Councils have also agreed its use for strategic purposes with the Highways Agency.

The above points beg the question: is the present state of evidence sufficient to demonstrate that the Uttlesford allocations, taken together with those in nearby Districts, will be sound in the sense of being compatible with the capacity of the road network when the above model is run? When will outputs from the agreed model be available?

15 Infrastructure (part 17)

Policy INF1 Is INF1 adequately consistent with NPPF para 74? Is it (and the table) also consistent with all the tests in the bullet points of NPPF para 204? Is the plan

effective in explaining how the deficiencies identified in paras 17.3 and 17.4 will be addressed?

Policies INF2 & INF3 These two almost identical policies are confined to proposed development beyond development limits and therefore appear to be limbs of the countryside policies rather than providing policy on 'Infrastructure' as such. Why is there a separate need for them?

Policy INF4 Does this place unrealistic burdens on developers to carry out a function which can only be fulfilled by the Care Commissioning Group? (rep 1129 refers). Is it therefore ineffective? The reference to health services provision at para 10.19 also applies.

16 Site allocations (p95-204)

In the last paragraph of point 5 above I seek further information about which of these sites is already committed and which not. Consequently I do not now pose specific questions about the justification for (and effectiveness of) the uncommitted sites except Elsenham (see 17 below). Towards the end of September I shall identify more specific issues about the uncommitted sites which participants, including the Council, will be invited to respond to.

17 Elsenham

At the point when the Council decided that the plan needed to include a new settlement as part of the most appropriate strategy for meeting its assessed housing needs, which candidate locations/sites were identified and considered for that purpose and how was Elsenham judged to be the most justified and effective as compared with reasonable alternatives? Those making representations to the plan suggest a number of other potential/locations sites for new settlements. Which of these were/were not considered during the Council's process?

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