

ISSUE 1: LEGAL COMPLIANCE

**HEARING POSITION STATEMENT SUBMITTED ON BEHALF OF
BURHILL DEVELOPMENTS LTD**

Woking Borough Council Local Plan Examination

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1 INTRODUCTION

- 1.1 This Statement has been prepared on behalf of Burhill Developments Limited ('BDL') who own land to the rear of 79 – 95 Lovelace Drive, Teggs Lane, Pyrford which was identified and previously supported by the Council as GB11 in the draft Site Allocations Development Plan Document ('SADPD') Regulation 19 version that was considered by the Local Development Framework Working Group at its meeting on 5th September 2018.
- 1.2 For the avoidance of any confusion, we hereafter refer to the land as 'the Site'. Comments throughout this Hearing Statement will also refer to GB19 (Woking Palace, Carters Lane, Old Woking) which is owned by BDL and has been proposed by the Council to deliver a Heritage Parkland / Country Park in the Proposed Modifications to the draft SADPD. BDL oppose GB19.
- 1.3 This Statement is made following the submission of the Woking Borough Council's (the 'Council') Proposed Modifications to the SADPD to the Secretary of State ('SoS') for Examination in Public ('EiP') on 31st July 2019. We note and approve of the scope of examination as detailed by yourself in the 'Matters, Issues and Questions' ('MIQs') published on 14th October 2019 and this Statement covers those questions posed within Matter 1 – Is the SADPD legally compliant, have the relevant procedural requirements been met, and has the Duty to Co-operate ('DtC') been discharged?
- 1.4 Under Matter 1, seven issues are identified for consideration. This submission addresses:
- Issue (i) - Questions 1 and Question 2;
 - Issue (ii) - Questions 1, Questions 2 and 3 combined, Question 4; and
 - Issue (v) - Question 3.
- 1.5 BDL has submitted duly made representations to each stage of the SADPD and this includes submissions to the Council's Regulation 19 consultation (in December 2018) where comment was made on the soundness of the SADPD, the Sustainability Appraisal ('SA') and matters of legal compliance. This submission must be read in the context of, and in conjunction with these earlier representations.

2 ISSUE (I) – HAS THE DUTY TO CO-OPERATE BEEN DISCHARGED?

Question 1 – Has the Council engaged constructively and on an ongoing basis with all relevant organisations on any strategic matters in accordance with the Duty to Co-operate?

- 2.1 The Core Strategy ('CS') was largely produced prior to the DtC taking effect although it certainly was extant at the time of the Examination in Public ('EiP'). However, the then EiP inspector noted there was little guidance available at that time on the DtC. Also, the CS had been produced in the context of the South East Plan after the then Government's failed attempt to revoke it. The Planning Policy Guidance ('PPG') confirms that the DtC places a legal duty on local planning authorities in England and public bodies to engage constructively, actively

and on an ongoing basis to maximise the effectiveness of Local Plan preparation in the context of strategic cross boundary matters.

2.2 It is acknowledged that the DtC is not a duty to agree. But local planning authorities should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their Local Plans for EiP.

2.3 Together with Waverley Borough Council ('Waverley') and Guildford Borough Council ('Guildford'), the Council is a member of the West Surrey Housing Market Area ('WSHMA'). Although not part of the WSHMA, Elmbridge Borough Council ('Elmbridge'), Runnymede Borough Council ('Runnymede') and Surrey Heath Borough Council ('Surrey Heath') neighbour Woking.

2.4 In September 2018, the Council published a 'DtC Bodies Topic Paper' in which it confirmed that it *"is in the same Housing Market Area as Guildford and Waverley Borough Councils"* and claimed that it *"has constructively worked in partnership with them throughout the preparation of its Development Plan Documents"*. The evidence suggests to the contrary.

2.5 At a meeting of the Full Council on 18th October 2018, and linked to the continued progress of the SADPD, a report was presented that argued a review of the Council's CS (2012) was not necessary. It is relevant to note the response of neighbouring authorities.

2.6 On 17th October, Guildford wrote:

"we understand that a review of Woking's Core Strategy is being presented at the Council meeting on Thursday 18th October 2018 for approval. Guildford Borough Council (GBC) was given no forewarning of the review and have not been consulted on it. Indeed, GBC first became aware of the review on 15th October 2018. The failure to engage constructively, actively and on an ongoing basis with GBC in relation to the review is plainly contrary to both the spirit and legal requirements of the Duty to Co-operate, see in particular Planning and Compulsory Purchase Act 2004, s.33A(1), (2) and (3)(a), (d)&(e)".

2.7 Also on 17th October, Runnymede wrote:

"we would wish to make clear that for these reasons set out in this letter, Runnymede Borough Council feels that it is inappropriate to offer assistance to meet any unmet needs from Woking until such a time that Woking Borough Council has identified that it has turned every stone in meeting its identified housing needs. Woking Borough Council is therefore urged to produce additional evidence to support a more focussed and detailed review of its Core Strategy and carry out consultation with partners under the Duty to Cooperate before concluding that its Core Strategy Review is completed for another 5 years, leaving the question of unmet need in the Guildford, Waverley and Woking HMA unresolved".

2.8 On 18th October, Waverley wrote:

"It has come to our attention that one of the reports that is being considered by your Council tonight relates to the review of the Woking Core Strategy. In essence I understand that you are recommending to your Council that you do not need to carry out a review of the 2012 Core Strategy because you consider that it remains up to date for the purposes of managing development across the Borough.

Until this was drawn to our attention a few days ago, we were not aware that you had carried out such a review or that you had reached this conclusion. The purpose of this email is to make it clear that this is a matter in

which this Council has an interest, given the fact that the recently adopted Waverley Borough Local Plan includes an allowance for unmet need arising in Woking”.

2.9 It is clear from these responses that neighbouring authorities considered the Council was not co-operating having regard to let alone fully exercising its DtC and that it had not constructively, actively and in an ongoing basis worked with its neighbours, with all of the authorities highlighting a complete lack of awareness of the Council’s intended strategy. It would seem clear that the Council set out on a clear deliberate strategy of not co-operating with its neighbours on this fundamental point.

2.10 On 18th December, Waverley wrote to the Council to express concern at the approach that the Council has taken and the letter concludes *“Waverley Borough Council does not agree with this approach and still strongly considers that through the Site Allocations DPD or a formal review/update to the Core Strategy, Woking should be doing more to address the unmet need that currently exists.”*

2.11 In its response, Guildford notes:

“The Woking Inspector made it clear that the Plan could only be found ‘not sound in the absence of a GB review provided the overall level of housing planned for the borough and its annualise housing provision average are deemed to be minimums’. The Inspector went on to say “it will be incumbent upon the boroughs and its neighbours to ensure that the processes and outcomes related to the duty to co-operate are honed further to maximise the sustainable delivery of suitable housing” and further “within this context and in discharging the duty to co-operate, the Council will need to maintain a review of its housing delivery intentions.” Given this context alone, GBC consider it appropriate for Woking to plan to exceed the minimum housing requirement as set in the Core Strategy when allocating sites within the Site Allocations DPD (SADPD).”

2.12 The submissions of neighbouring authorities who are members of the WSHMA is evidence that the Council has failed in its DtC.

2.13 At paragraph 22 (reference ID: 61-022-20190315) of the PPG it states that:

“Strategic policy-making authorities should explore all available options for addressing strategic matters within their own planning area, unless they can demonstrate to do so would contradict policies set out in the National Planning Policy Framework. If they are unable to do so they should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their plans for examination. Authorities are not obliged to accept needs from other areas where it can be demonstrated it would have an adverse impact when assessed against policies in the National Planning Policy Framework.

Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or are not relying on the inspector to direct them. Where a strategic policy-making authority claims it has reasonably done all that it can to deal with matters but has been unable to secure the cooperation necessary, for example if another authority will not cooperate, or agreements cannot be reached, this should not prevent the authority from submitting a plan for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any outcomes achieved; this will be thoroughly tested at the plan examination.”

2.14 It is evident from the submissions of neighbouring authorities that the Council has failed in its DtC.

- 2.15 The approach taken by the Council in this case has strong parallels with the EiP into the Sevenoaks Local Plan. The Inspector wrote to Sevenoaks District Council on 17th October 2019 to advise:

"My main concern relates to the lack of constructive engagement with neighbouring authorities to resolve the issue of unmet housing need and the absence of strategic cross boundary planning to examine how the identified needs could be accommodated. Indeed, the Council did not formally ask neighbouring authorities if they were in a position to address its unmet housing need until just before the Local Plan was submitted for Examination. I am not satisfied, therefore, that the Council has addressed this key strategic matter through effective joint working, but has rather deferred it to subsequent Plan updates. This is evidenced by the 'actions' set out in the Statements of Common Ground with neighbouring authorities submitted to the Examination. I consider this to be a significant failure in the Council's Duty to Co-operate. Any failure of the Duty to Co-operate cannot be rectified during the Examination and therefore the only option is for a Report recommending non-adoption to be issued or for the Plan to be withdrawn from Examination."

- 2.16 It is evident that in the preparation of the SADPD, the Council has failed in its DtC. Whilst the underlying factual matrix is different to that in Sevenoaks, the failure to operate under the DtC is similar.

Question 2 – How does the SADPD address any cross-boundary issues that have emerged as a result of engagement with prescribed bodies?

- 2.17 It is evident that Woking's failure to operate under the DtC has to some extent left potential cross boundary issues unexplored and so unsurprisingly perhaps, the SADPD does not address cross-boundary issues that have emerged, noting that these issues did not emerge as a result of engagement in the manner required by the DtC, but rather by the authorities finding out that the Council was not intending to review their CS.
- 2.18 The responses of neighbouring authorities are evidence that the cross boundary issues that were raised have been ignored by the Council.

3 ISSUE (II) - DOES THE SUSTAINABILITY APPRAISAL (SA) COMPLY WITH THE REQUIREMENTS OF THE STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE (SEA DIRECTIVE) AND THE ENVIRONMENTAL ASSESSMENT OF PLANS AND PROGRAMMES REGULATIONS 2004 (THE SEA REGULATIONS)?

Question 1 – Has the SA process complied with the requirements of the SEA Directive and the SEA Regulations?

- 3.1 The SA process is an iterative one, up to the point of adoption of the Local Plan. Whilst we consider the SA scoring process itself to be sound, the way in which the Council has used the SA to make decisions in respect of the draft SADPD is not sound, particularly in relation to housing allocations, safeguarding adequate land and the proposed country park (GB19). There is a clear inconsistency between the evidence base and the draft allocations in the SADPD. Moreover, no reasonable alternatives have been assessed and compared specifically meeting needs in Woking compared to beyond the borough boundary in either Guildford, Waverley

or Runnymede. Should the Council have undertaken a review, they would have realised that more land could have been released from the Green Belt.

- 3.2 Whilst we identify a flaw with the SA undertaken to-date in that it does not support the proposed allocations, the opportunity remains for the Council to rectify these deficiencies, as long as this supplemental work is approached with an open mind.
- 3.3 The principle that deficiencies in SA may be rectified, or “cured”, by later SA work, has been established in the *Cogent Land v Rochford* case and restated by the Court of Appeal in *No Adastral New Town Ltd*. Accordingly, the necessary work to make a legally compliant SA can be incorporated as part of an addendum or replacement report, published alongside the necessary Main Modifications to the draft SADPD, noting the failures in soundness discussed under other Issues.
- 3.4 The SA Report accompanying the Regulation 19 consultation SADPD represents the requisite ER for the purposes of Article 2 of the Directive.
- 3.5 Nowhere in the SA does it consider reasonable alternatives for the provision of the heritage parkland/country park. In Table 7, it states that the site:

“will make provision for the delivery of a significant amount of green infrastructure, in the form of heritage country parkland. Improving this site would contribute significantly towards SA Objective 10.”

- 3.6 The failure to consider reasonable alternatives conflicts with the requirement of Annex I of the Directive. In order to retain the proposed allocation – and we explain below which we consider it should be deleted - the Council is required to undertake a fresh/supplementary assessment.

Questions 2 & 3 – Is the approach to SA compliant with the advice set out in the PPG and based on an appropriate methodology, and has the SA process been genuinely iterative and carried out in step with the stages of plan preparation?

- 3.7 In relation to GB19, the SA has not followed an appropriate methodology. It would appear the Council has simply decided that it is in favour of the proposal because it owns Woking Palace, and there is no evidence it has applied an iterative SA process in relation to its proposals Woking Palace, instead it has simply allocated the site for the Heritage Parkland / a Country Park.
- 3.8 Woking Palace is identified for the establishment of a Heritage Parkland / Country Park extending to 64.4 hectares (it is also calculated to be 65.7 hectares). In the Proposed Modifications to the draft SAPDP it is referred to as GB19 (it was GB22 in the Regulation 18 version and GB17 in the Regulation 19 version).
- 3.9 Although reference is made to the inclusion of the proposal in the Woking Local Plan (1999) in the form of Policy REC17, there is no recent evidence to support the proposal. It states that the site will be delivered in the Plan period, possibly requiring compulsory purchase powers. Given the lack of evidence and justification of the need for such a use(s), BDL opposes the proposed allocation. Simply put, GB19 is not justified.

- 3.10 It is asserted that the justification for a Heritage Parkland / Country Park links to CS Policy 17. This policy relates to open space serving new residential development and provision of SANGs. There is no reference in Policy 17 to the establishment of a Heritage Parkland / Country Park in Woking. The proposal is simply carried through from the Woking Local Plan (1999) and is clearly out of date.
- 3.11 It is suggested that funding for this will be through CIL contributions. However, the establishment of this is not included in the projects included on the Council's Regulation 1-2-3 list. This refers only to the establishment of SANGs, outdoor sports, allotments, child play space and teenage play space.
- 3.12 If the Council as landowner and / or planning authority wishes to rejuvenate Woking Palace, it can do this without requiring the establishment of a Heritage Parkland / Country Park.
- 3.13 There is no justification for GB19 and it should be deleted. GB19 is not sound.

Question 4 – Are the alternatives considered by the SA sufficiently distinct to highlight the different sustainability implications of each

- 3.14 As we have explained, the Council has not undertaken any consideration of alternatives in relation to GB19 and it follows that there has been no consideration of different sustainability implications.

4 ISSUE (V) - TO WHAT EXTENT HAS THE PRODUCTION OF THE SADPD COMPLIED WITH THE COUNCIL'S PUBLISHED LOCAL DEVELOPMENT SCHEME (LDS)?

Question 3 - do any strategic policies contained in the SADPD accord with the Framework insofar as they "should look ahead over a minimum 15 year period from adoption, to anticipate and respond to long-term requirements and opportunities"?

- 4.1 The CS covers the period from 2010 to 2027 and the SADPD should link to this. However, because Woking has left it so late to produce its own SADPD (and in the process pressed some neighbouring authorities into meeting Woking's unmet needs) and because it has rejected a review of the CS, it cannot now comply with the minimum 15 year period.
- 4.2 In terms of housing delivery over this period, the response of neighbouring planning authorities makes clear in these circumstances it would be:

"appropriate for Woking to plan to exceed the minimum housing requirement as set in the Core Strategy when allocating sites within the Site Allocations DPD (SADPD)."
- 4.3 However, the Council has sought only to identify the minimum amount of land to meet the minimum housing target for the borough. As we have explained in our response to Matter 4 (Issue i – Question 1), the spatial strategy will result in the under delivery of affordable housing because residential development on brownfield

sites is yielding low amounts of affordable housing. In response to this, adequate land should be taken out of the Green Belt, and by providing 50% of housing on those sites in the form of affordable housing, the Council will get closer to meeting the identified need.

- 4.4 As discussed in respect of Matter 2 (Issue ii – Question 2), there is also uncertainty that GB10 will yield the number of market dwellings given the requirement for “*significant elements of Green Infrastructure*], *having regard to the landscape’s particular sensitivity to change*” (GBBR, paragraph 3.5.12)”. This shortfall would require the release of additional land to meet the stated target of 550 homes being developed on land that would be removed from the Green Belt.
- 4.5 As also confirmed in our response to Matter 2, (Issue ii – Question 2), it is clear inadequate land is proposed to be safeguarded, which will result in a shortfall in housing delivery. The Council needs to release more land from the Green Belt now to ensure they meet the housing need set out in the CS to which the SADPD is linked.
- 4.6 In deciding which sites to release from the Green Belt, the Council undertook an SA and appraised a number of sites. The Council’s analysis resulted in two sites having the same score, but it decided only to release one of them. As the Council is required to safeguard more land, it would seem logical to release sites which it decided against allocating/safeguarding and which have the same score as a site which was allocated/safeguarded. One such site is GB11.
- 4.7 Unless the Council allocates adequate land, the SADPD is not sound.