

## **Examination of the Northampton Local Plan Part 2 2011 – 2029**

### **Inspectors:**

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17 March 2021

Mr Paul Everard  
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Planning and Sustainability  
The Guildhall St Giles Square  
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Dear Mr Everard

### **Examination of the Northampton Local Plan Part 2 2011 - 2029**

1. Further to the submission of the Northampton Local Plan Part 2 2011- 2029 (the Plan), we have commenced the Examination with initial reading of the Plan, the supporting evidence base and representations. In this letter we seek clarifications on a number of matters and pose questions to assist us in our assessments of soundness and legal compliance. However, at this early stage in the Examination we consider that we must raise some significant concerns that we have in respect of the Plan and evidence base as submitted. We also have other less significant soundness questions in respect of the Plan which can probably be more easily addressed and others which we would pose through the preparation of Matters, Issues and Questions (MIQs).

### **The Plan being examined**

2. Firstly, we confirm that the plan that we are examining is the **Northampton Local Plan Part 2 2011 – 2029 Proposed Submission – Round 2 June 2020**. Prior to publishing the above Plan for consultation, the Council undertook consultation on the Northampton Local Plan Part 2 Proposed Submission draft (Regulation 19) in May and June 2019. Insofar as they relate to matters unchanged between the two versions of the document, we will take into account representations made in both rounds of the consultation.

## **The scope of the Examination**

3. The purpose of the Part 2 Plan is set out in Chapter 1 of the Plan and the Council's Local Development Scheme (LDS). The LDS describes the Plan in the following way:

*'To set out site specific allocations for Northampton Borough including residential and employment uses. It will include policies against which planning applications for the development, management and use of land and buildings will be considered. It will include the identification, phasing and implementation of local infrastructure for sites. As an example of some of its policies' content, it will include boundaries of retail centres, historic conservation, open space and nature conservation policies and designations, highway issues and car parking. It will replace the Central Area Action Plan'.*

4. The Plan is one of the Part 2 plans to the adopted West Northampton Joint Core Strategy (JCS). We note that through Policy 16 Gypsies, Travellers and Travelling Showpeople, the Plan is seeking to replace JCS Policy H6 Gypsies, Travellers and Travelling Showpeople. Please confirm that this is the only strategic policy of the JCS which is proposed to be replaced by the Plan. If this is the case, there would be a need for a main modification to the Plan to state this as per Regulation 8(5) of The Town and Country Planning (Local Planning) (England) Regulations 2012.

## **Habitats Regulations Assessment**

5. The Northampton Local Plan (Part 2) Habitats Regulations Assessment Report June 2020 (the HRA) has been submitted with the examination documents. The screening exercise within the HRA finds that likely significant effects arising from the Plan in combination with other plans and projects cannot be ruled out in respect of the Rutland Water Special Protection Area (SPA) and Ramsar site or the Upper Nene Valley Gravel Pits SPA. Consequently, an Appropriate Assessment (AA) has been carried out.
6. Natural England (NE) in its consultation response does not support the conclusion of the HRA that there would be no adverse effects on the integrity of the Upper Nene Valley Gravel Pits SPA and notes that the policy wording quoted in the HRA is not reiterated in the submission plan. NE considers that Policy 29 Supporting and Enhancing Biodiversity; Policy 30 The Upper Nene Valley Gravel Pits Special Protection Area and Policy 41 The Green, Great Houghton are unsound.
7. Our initial reading has highlighted several principle areas of concern to us. These relate to likely significant effects arising from the Plan in combination with other plans and projects to the Upper Nene Valley Gravel Pits SPA in respect of recreational disturbance and the potential loss of functionally linked land. We will consider each below.

### *Recreational disturbance*

8. The HRA acknowledges that access by people and dogs both on and off public rights of way is a significant cause of disturbance in some areas of the Upper Nene Valley Gravel Pits SPA, and evidences that visitor pressure arises principally from people living within 3 kilometres of the surveyed access points. The Upper Nene Valley Gravel Pits SPD acknowledges that recreational disturbance is the most significant threat to the SPA and that demand for access is increasing. Some of the allocations proposed in the Plan would increase the potential for disturbance.
9. Policy 13 of the Plan allocates land for around 2,310 new homes on 22 sites within 3 kilometres of the SPA. In addition, there are in combination effects with other development including the Northampton South of Brackmills SUE, which needs to be considered. The AA concludes that mitigation measures are required to address the issue of recreational disturbance.
10. Policy 30 of the Plan includes that 'Proposals must ensure that there is no adverse impact either alone or cumulatively on the Upper Nene Valley Gravel Pits SPA and Ramsar site. Applications comprising a net gain in residential units within 3 km of the Upper Nene Valley Gravel Pits SPA and Ramsar site will need to demonstrate that the impact of any increased recreational activity or pet predation (indirect or direct) on the SPA and Ramsar site will not have a detrimental impact'. However, the Policy does not address the mitigation of harmful effects of development on the SPA, ie it does not say what mitigation is required.
11. Additionally, the Plan in paragraph 10.17 sets out 'A mitigation strategy will be prepared for the Upper Nene Valley Gravel Pits SPA with a view to its subsequent adoption as an addendum to the SPD. It will advise applicants and ensure that development (standalone and cumulative) does not impact negatively on this biodiversity asset. This document will be produced within 12 months of the adoption of the Northampton Local Plan Part 2. However, the broad principles and a draft of the mitigation strategy agreed with Natural England will be prepared prior to the adoption of the local plan'. We note that the HRA in Appendix E records the agreement of the Council and NE regarding the wording of the Policy and Text of the Plan.
12. However, there is at this time no mitigation strategy for us to consider in the examination of the Plan. The Planning Practice Guidance (PPG) states that 'Any measures used to inform the decision about the effects on the integrity need to be sufficiently secured and likely to work in practice<sup>1</sup>'. On the balance of evidence, we are unable to conclude at this stage that mitigation measures can be sufficiently secured and are likely to work in practice. This is because we have nothing to indicate what those mitigations might be, whether they would provide satisfactory mitigation and whether they could be put in place without adversely affecting the deliverability of the proposed allocations. Consequently, our view is that it has not been demonstrated that

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<sup>1</sup> Paragraph: 004 Reference ID: 65-004-20190722

the Plan would not give rise to significant adverse effects on the integrity of the SPA in respect of recreational disturbance. In terms of the Habitats Regulations, we do not find that deferring the preparation of the mitigation strategy until after the adoption of the Plan would be a legally compliant approach, especially given the number of new homes specifically proposed in the Plan within 3 kilometres of the SPA. In addition, a number of the key policies of the Plan would not be consistent with paragraph 16 d) of the National Planning Policy Framework (the Framework), as it would not be evident how a decision maker should react to a development proposal.

#### *Functionally linked land*

13. The HRA identifies that there are two sites proposed for allocation for development being either optimal, or sub-optimal habitat for Golden Plover and/or Lapwing and could therefore be functionally linked to the SPA/Ramsar. These are LAA0204 The Farm, Hardingstone (also called The Green in the HRA) and LAA1098 The Green, Great Houghton. The HRA also acknowledges in paragraph 5.25 that Functionally Linked Land (FLL) could occur in areas not previously identified as suitable habitat. In addition, cumulative effects on FFL are considered in paragraph 5.26 of the HRA.
14. Policy 41 of the Plan requires that 'surveys are undertaken to identify whether the site is used by over-wintering Golden Plover / Lapwing, ie to be carried out in the winter. If significant numbers of Golden Plover or Lapwing are identified at the site offsite mitigation will be required for the loss of habitat i.e. functionally linked land'. No such requirement is made for LAA0204 which has no site-specific development management criteria set out in the Plan.
15. Given the evidence before us has not established whether LAA0204 and LAA1098 are used by over-wintering Golden Plover / Lapwing, and are functionally related to the SPA, we cannot conclude that there will be no adverse effects on the integrity of the SPA in this regard. Consequently, mitigation measures need to be considered. As stated above the PPG is clear that any measures used to inform the decision about the effects on the integrity need to be sufficiently secured and likely to work in practice. Furthermore, the PPG states that measures aimed at compensating for the negative effects of a project cannot be considered mitigation measures. However, the plan does not demonstrate that necessary robust and effective mitigation measures can be secured.

#### *Habitats Regulations Assessment conclusion*

16. At this stage, we have significant concerns about how the findings of the HRA have been taken into account in plan making, and the compliance with the Habitats Regulations as described above. The Plan is not consistent with national policy as set out in paragraph 174 of the Framework and is not justified in this regard given the lack of evidence.
17. In addition, both LAA0204 and LAA1098 are included within the housing trajectory set out in Appendix A of the Plan as delivering homes starting in

2020/21. Given the planning status of these sites as set out in evidence and that there is a requirement for winter bird surveys to be undertaken as set out in Policy 41, there must be questions over their respective deliverability to the timescale suggested.

18. We are aware that the Local Plan Viability Report (VR) takes into account the need to provide mitigation based upon the North Northamptonshire Upper Nene Valley Gravel Pits SPA SPD Addendum: Mitigation Strategy (December 2016) in the absence of mitigation measures being set out for West Northamptonshire. We would come back to the soundness of this approach in due course. We note at this stage that the VR does not take into account any costs associated with the findings of the HRA in respect of Policy 41 The Green, Great Houghton.
19. To address our concerns, further work is necessary to demonstrate robust mitigation in respect of recreational disturbance through the preparation of the mitigation strategy. Main Modifications should be required to the Plan with the HRA and Sustainability Appraisal being updated as necessary. Such changes require to be consulted upon. We understand that the Council is preparing a statement of common ground with Natural England and Northamptonshire County Council and trust that this would address areas of agreement/disagreement regarding the Habitats Regulations Assessment.
20. Further evidence is also required in respect of functionally linked land to establish the use of the sites by Golden Plover and Lapwing, and as necessary to identify and demonstrate that robust mitigation can be provided for the proposed allocations. We also need to be satisfied that the recommendations of the HRA are fully reflected in the Plan to ensure compliance with the Habitats Regulations.

### **Flood risk**

21. From our initial reading of the Northampton Local Plan Part 2 Flood Risk Sequential Test and Exceptions Test report December 2018 and having regard to the Framework and PPG, we have some concerns about the approach taken in preparing the Plan in regard to the application of the Exceptions Test.
22. The methodology for the site selection process for the Plan is set out in the Council's Northampton Local Plan Part 2 Sites Allocation Methodology and Land Availability Assessment (SAMLAA). It is clear from this document, the Sustainability Appraisal and the Flood Risk Sequential Test and Exceptions Test document how the Sequential Test has been applied.
23. However, it is not clear how the Exceptions Test (as set out in paragraph 160 of the Framework) has been applied in every case. In particular, we are concerned with the evidence provided in respect of part b) of the test regarding whether a development would be safe for its lifetime.

24. For a number of sites, for example LAA0328 Cattle Market Road, the Exceptions Test identifies the need for site specific flood risk assessment, including breach modelling, determining the extent of any defended areas and the standard of protection offered, and requirements that more vulnerable and highly vulnerable development avoids certain areas liable to flood. In the absence of specific evidence as to whether any development of the site would be safe for its lifetime, we do not consider that it has been demonstrated that the Exceptions Test has been passed.
25. It is our view that given the approach taken in the Plan, the Exceptions Test would need to be reapplied at the application stage, informed by a site-specific flood risk assessment. The lack of more detailed site-specific assessments at this stage leads us to question the deliverability of the proposed allocations, and their viability, given the unknown outcomes of the future site-specific assessments and any requirements identified.
26. We consider that further evidence is necessary to demonstrate whether the Exceptions Test has been passed in respect of all of the allocated sites as appropriate. Whilst we note reference to the Strategic Flood Risk Assessment (SFRA) Level 2 dated 2010, that document does not appear to be within the evidence base. This should be provided if it applies to all of the proposed sites for allocation. If not, an updated Level 2 SFRA should be provided.

### **Gypsies, Travellers and Travelling Showpeople**

27. The West Northamptonshire Travellers' Accommodation Needs Study Final report January 2017 concludes that given that no households in Northampton meet the planning definition as set out in Annex 1 to the Planning Policy for Traveller Sites (PPTS), there is no need for any additional pitches for Gypsies and Travellers in the plan period who meet the PPTS definition. However, there is need identified for additional pitches in relation to unknown Gypsy and Traveller households, and Gypsy and Traveller households that do not meet the PPTS definition. Additionally, we note that there was at the time of the survey 9 households on the waiting list for the public site in Northampton.
28. Is the assessment of need robust and based on an appropriate methodology? What is the evidence that the Plan would meet the housing needs of ethnic Gypsies and Travellers arising from unknown households and for those who do not meet the PPTS definition, and is such need effectively addressed through the policies of the Plan?

### **Housing Land Supply**

29. The JCS in Policy S3 sets the dwelling requirement for Northampton Borough of about 18,870 net additional dwellings for the plan period 2011 to 2029. We note that the provision of new housing in Northampton has not taken place at the pace envisaged in the JCS, either against an annualised figure or the trajectory set out in the JCS. Some representatives have made comments regarding strategic matters relating to the review of the JCS and the

preparation of the West Northamptonshire Strategic Plan. We think it would be helpful at this point to confirm that in the Examination of this Part 2 Plan for Northampton Borough, such strategic matters are not before us and are beyond the scope of our examination.

30. The Framework in paragraph 67 a) requires that planning policies should identify a supply of specific, deliverable sites for years one to five of the plan period, with an appropriate buffer as set out in paragraph 73 of the Framework. The PPG confirms that this should be calculated from the intended date of adoption. In this case, if the intended date for adoption falls within the year 2021/22, the housing land supply evidence should be updated to include the year ending 31 March 2021. Please also confirm whether the Council is seeking to secure a five-year housing land supply through the Plan?
31. The housing trajectory should also be updated. As we have already indicated, we have concerns that the trajectory may be somewhat ambitious in terms of delivery of new homes in respect of the sites which are noted as being FFL to the Upper Nene Valley Gravel Pits SPA, and those which could give rise to recreational disturbance, given the absence of an agreed mitigation mechanism. Furthermore, we have indicated our concerns regarding the application of the Exceptions Test. In this regard we also acknowledge the representations made concerning site delivery. In updating the housing land supply evidence and the housing trajectory, please direct us to, or provide the clear evidence that housing completions would begin on the identified sites as appropriate.

### **Other matters**

32. We now turn to some other matters which we consider would be appropriate to raise at this point.

#### *Duty to Cooperate (DtC)*

33. With particular regard to the Upper Nene Valley Gravel Pits SPA and Ramsar Site, does the Council intend to prepare a statement of common ground with the Borough Council of Wellingborough given the common issues? It would be helpful at this stage if the Council could provide a summary of the outcomes of the co-operation undertaken in respect of the preparation of the Plan until submission, such as relevant joint evidence documents, and provide as an appendix to the Duty to Cooperate Statement of Compliance, any notes of relevant meetings with DtC bodies.

#### *Proposed Main Modifications and changes to the Policies Map*

34. Would the Council please confirm whether, should it be necessary, you wish us to recommend modifications to the Plan that would make it sound and compliant with the legislative requirements as per Section 20(7C) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act)?

35. The starting point of the Examination is that the Council has submitted a Plan which you consider to be sound and ready for examination. At this stage there are only two means by which changes can be made to the submitted Plan:

(1) *main modifications* recommended by the Inspectors

(2) *additional modifications* made by the Council on adoption.

36. However, we can only recommend Main Modifications if they are necessary to resolve problems that would otherwise make the submitted Plan unsound or not legally compliant.<sup>2</sup> Main Modifications are changes which, either alone or in combination with others, would materially alter the Plan or its policies. Any potential Main Modifications must be subject to consultation and in some cases further Sustainability Appraisal (SA) and Habitat Regulations Assessment might also be needed.

37. Additional Modifications are those changes which do not materially affect the policies in the Plan<sup>3</sup>. They are made by the Council on adoption and are also sometimes referred to as 'minor modifications'.<sup>4</sup> The Council is accountable for any such changes and they do not fall within the scope of the examination<sup>5</sup>. The Council has submitted the Proposed Schedule of Minor Modifications November 2020. From an initial look at the document, there are some changes proposed which appear to us to more properly fall within the Main Modifications definition as they would materially alter the Plan and its Policies. For example, those changes arising from the recent amendments to the Use Classes Order<sup>6</sup>.

38. In respect of changes to the Use Classes Order, would the Council please confirm whether it considers that any soundness implications of these changes for the Plan would be addressed fully by the changes proposed in the Council's proposed 'Schedule of Minor Modifications'?

39. We invite the Council to review the proposed schedule of Minor Modifications as per the above definitions and separate out the list into lists of Main Modifications and Additional Modifications. In order to provide clarity and to ensure that terminology used in the examination is consistent with that used in the 2004 Act and Regulations, we suggest that we use the terms Main Modifications for changes we recommend to the Council and Additional Modifications for those non-material changes made by the Council on adoption. It would be helpful if the Council would subsequently maintain the separate lists of Main Modifications and Additional Modifications as live documents through the examination.

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<sup>2</sup> Under section 20(7B) & (7C) of the planning and Compulsory Purchase Act 2004

<sup>3</sup> S23(3)(b) of the PCPA 2004 "... if the additional modifications (taken together) do not materially affect the policies ..."

<sup>4</sup> 1.4 of *Procedure Guide for Local Plan Examinations (November 2020)*

<sup>5</sup> 1.4 of *Procedure Guide for Local Plan Examinations (November 2020)*

<sup>6</sup> the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

40. The Policies Map is not defined in statute as a development plan document and so we do not have the power to recommend Main Modifications to it. However, Main Modifications to the Plan's policies may require further corresponding changes to be made to the Policies Map. In addition, there may be some instances where the geographic illustration of policies on the submission Policies Map is not justified and changes to the Policies Map are needed to ensure that the relevant policies are effective. In this regard we note the Council's proposed changes to the Policies Map as set out in your schedule of Minor Modifications. A change to the Policies Map would not be either a Main Modification or Additional Modification. Rather it is an alteration to the proposed geographic illustration of a policy to ensure the policy is effective and therefore sound. Such changes should be collated, and ultimately consulted upon separately from Main Modifications and Additional Modifications.

41. We have seen that the submitted Policies Map does not include a notation for the Sustainable Urban Extensions (SUE) allocated in the JCS. It would be helpful to us if a version of the submitted Policies Map which shows the boundaries of the SUEs could be produced and added to the Examination Library.

### **Way forward for the Examination**

42. We are at an early stage in the Examination and have set out in this letter our initial concerns about the legal compliance and soundness of the Plan. In order to progress the Examination and for us to be able to complete our MIQs and set dates for hearings, we have set out the matters which we consider require to be addressed.

43. At this point, it appears to us that the examination hearings should be planned on a staged basis. Initially we would consider legal compliance matters, including the DtC and the HRA, and the following discrete topics; Housing Land Supply; Flood Risk; and provision for Gypsies and Travellers. The second stage hearings would consider the proposed allocations and development management policies. This is because the outcome of the first stage hearings may affect what happens next. Possible outcomes include progressing to a second stage of hearings, a pause in the examination for further work, or the recommendation of the withdrawal of the Plan.

44. We anticipate you may need some time to reflect on the contents of this letter and to determine the preferred course of action. We are not setting a deadline for a response from the Council, but an early indication of when the Council is likely to be able to provide a response via the Programme Officer would be appreciated. Subsequently we will be able to develop the programme for the examination.

45. We are not seeking a response to this letter from any other parties and will not receive any comments on it. Nevertheless, we are happy to provide any

necessary clarification to the Council via the Programme Officer. The Council should make this letter available to all interested parties by adding it to the Examination website.

Yours sincerely

*Philip Lewis and Mark Sturgess*

INSPECTORS