

IN THE MATTER OF:

THE WYCOMBE LOCAL PLAN

NOTE

Introduction

1. I am instructed in this matter by Turley on behalf of SEGRO Plc in respect of land at Westthorpe Park, Marlow (“the site”). SEGRO has submitted representations to the emerging Wycombe Local Plan (“the Plan”) to the effect that the site should be allocated for employment development alongside a new country park. This Note should be read alongside those representations, which comprise submissions made at the Regulation 18 and 19 consultation stages of the Plan and various Hearing Statements submitted by Turley to the Inspector in response to her Schedule of Matters, Issues and Questions.
2. The Plan has now been submitted for examination, and I have been asked to provide a Note on whether the Plan meets the various legal compliance tests. In light of all of the matters set out in the Turley representations referenced above, it is my opinion that (i) the Plan fails the Duty to Co-operate; (ii) the Sustainability Appraisal (SA) is inadequate in terms of its assessment of the likely effects of the Plan’s policies and its consideration of reasonable alternatives and (iii) on the basis of the totality of the evidence as it currently stands it is very difficult to see how the Plan can omit the site and pass the tests of being positively prepared, justified, effective and consistent with national policy.
3. I consider briefly each of these three matters below, in reverse order.

Positively Prepared, Justified, Effective and Consistent with National Policy

4. The purpose of planning is to achieve sustainable development (NPPF Foreward). The presumption in favour of sustainable development contained in the first part of NPPF14 (plan-making) is engaged. This requires the plan-maker to ensure that the plan meets objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless doing so would significantly and demonstrably outweigh the benefits, or specific policies in the Framework indicate development should be restricted.
5. The first step therefore is to objectively identify the correct level of need for employment land. NPP17(3) provides that “every effort should be made to objectively identify and then meet the ... business ... needs of an area, and respond positively to wider opportunities for growth.”
6. The Plan falls at the first hurdle because it fails to objectively identify the true level of need for employment land. The HEDNA is openly based on a cautious, or pessimistic, approach to the need for B1c/B2 and B8 floorspace, preferring as it does the Oxford Economics forecast to the Experian forecasts. Further, and more importantly, the HEDNA fails to act on the commercial insights contained within it, not least of all the finding that B8 warehouse space has been constrained by a lack of supply and this is a sector that will continue to show strong growth. This is not evidence of an approach that is seeking to “respond positively to wider opportunities for growth.” Even leaving aside the marked contrast between the positivity found in the NPPF and the negativity of the HEDNA, but the Plan does not respond accurately to even that level of demand found within the HEDNA. The latter was updated with an addendum that at least recognised a changing market and higher growth, but the Plan continues to base itself on the original HEDNA figures.
7. The second step in plan-making (once the correct level of need has been identified) is to meet that need, unless there is evidence that meeting it would significantly and demonstrably outweigh the benefits. The importance of meeting needs, and in particular meeting needs to support economic growth, is re-iterated time and again

throughout the Framework:

- a. NPPF 17(3) states that sufficient suitable land should be allocated having regard to the needs of business communities, and that local authorities should be using the Plan to “proactively drive and support sustainable economic development to deliver the ... business and industrial units ...the country needs.”
 - b. NPPF 19 states that the “Government is committed to ensuring the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.”
 - c. NPPF 20 adds “local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.”
 - d. NPPF 21 emphasises the need for a positive and proactive approach at the plan-making stage: “In drawing up Local Plans, local planning authorities should: ... set out a clear economic vision and strategy for their area which positively and proactively encourages sustainable economic growth; support existing business sectors, taking account of whether they are expanding or contracting Policies should be flexible enough to accommodate needs not anticipated in the plan to allow a rapid response to changes in economic circumstances”.
8. Despite all of this very clear guidance in the NPPF, the Plan is designed to meet only 56% of the identified employment needs of the area. There is nothing in the evidence base to support the proposition that meeting the remainder of the identified need would cause significant and demonstrable harm, let alone such significant and demonstrable harm that it would outweigh the benefits of providing sufficient employment land to meet the Government’s commitment to secure economic

growth to create jobs and prosperity (NPPF18), or outweigh the “significant weight” the Government attaches to using the planning system to support economic growth (NPPF19). There is no assessment anywhere in the evidence base of what the harm would be if the Westthorpe Park site were to be allocated for employment, no assessment of what the consequences would be of failing to provide sufficient employment land, and no assessment to support any assertion to the effect that the harms would significantly and demonstrably outweigh the benefits.

9. Whilst I accept that the instruction to meet needs is subject to the qualification in the second indent (i.e specific policies may indicate that development should be restricted), and that the site lies in the Green Belt (“GB”), the fact remains that the LPA has accepted that exceptional circumstances exist to release land from the GB to meet employment needs. This is the justification that it puts forward for releasing Air Park from the GB to meet employment needs. Westthorpe Park must of necessity also meet the exceptional circumstances test given that it scores better in the Council’s own assessment.
10. There is a whole host of evidence set out in the Turley representations which demonstrates that the Westthorpe Park site is extremely well suited to meeting the identified needs for additional employment land required over the plan period, and that it can do so whilst at the same time furthering many of the overarching objectives of the plan (including the objectives of providing for a country park, enhancing the Westthorpe junction inter-change and fostering the economic strength of the M40/A404 location and that of the rural economy).
11. The situation can therefore be summarised as follows: there is an acknowledged need for employment land considerably in excess of that which the council is proposing to allocate; there is a suitable, available and deliverable employment site with developer commitment that can help meet that need; release of this site will not cause any harm, let alone significant and demonstrable harm; allocation of the site will help deliver other important objectives of the plan; the location of the site in the GB is not a bar to its release given (a) the acceptance by the LPA that GB releases are unavoidable to meet the identified need and (b) that the site performs

better as a GB release than sites favoured by the council for release from the GB. Against this background it is difficult to understand how the submitted plan, which fails to meet the objectively identified need for employment land, can be described as positively prepared, justified, effective and consistent with national planning policy.

12. The Council's only answer to the above appears to be that the need can be met in an adjoining district. But this is in truth no answer at all, for two reasons.
13. Firstly, the NPPF permits objectively identified needs to met outside of the LPA's area only if these needs cannot be met within their own area. NPPF 179 provides that "Joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas – for instance, because of a lack of physical capacity or because to do so would cause significant harm to the principles and policies for this Framework." In the present case there is no evidence that the need for employment land cannot be met within the area of Wycombe District Council, or that to meet those needs would fail to pass the tilted balance set out in NPPF14. Indeed all of the evidence demonstrates that the need can be met within its area (or at the very least, more of the need can be met than it proposes to meet, given the availability, suitability and deliverability of the SEGRO site).
14. Secondly, the requirement in the NPPF is to meet the need that has been identified, not some other unidentified and unquantified need. As the Framework expresses it at para. 7, the requirement is to ensure that the right type of employment floorspace is delivered in the right locations at the right time to support growth. The need here is the need for a particular operational market, and the Aylebury Vale area sits in a different Functional Economic Market Area (FEMA) to Wycombe. The evidence clearly demonstrates that Aylebury Vale cannot effectively provide for sites and premises to meet the needs of occupiers who, for commercial and logistical reasons, have to base themselves within Wycombe district. Pointing to the existence of B8 floorspace in a district (AVD) where there is no demand for such space is not an answer to not providing employment floor space in a district where there is growing demand and a lack of supply.

Sustainability Appraisal

15. The SEA/SA Regulations Schedule 2(8) requires an “assessment of reasonable alternatives” and the identification of the “reasons for selecting the alternatives tested in the light of the others available.” In *Ashdown Forest Economic Development LLP v SSCLG and Wealden DC* [2014] EWHC 406 (Admin), Mr Justice Sales held (at paragraph 97) that the plan-maker should be aware “*The court will be alert to scrutinise its choices regarding reasonable alternatives to ensure that it is not seeking to avoid that obligation by saying that there are no reasonable alternatives or by improperly limiting the range of such alternatives which is identified.*”.
16. I have considered Section 8 of Turley’s Regulation 19 Representations and am satisfied that the SA in this case is legally inadequate because, in short, it eliminates reasonable alternatives on a basis that is flawed as a matter of law.
17. The starting point is a recognition that GB is a policy designation and should not be used to assess the sustainability of a proposed allocation. The SA is the correct tool to assess the sustainability performance of reasonable alternatives. Contrary to this approach, the SA supporting this Plan was used only once the sites had been through the GB and HELAA process. This flaw is exacerbated by the fact that no clear and transparent explanation has been provided as to why some GB sites were considered to meet the exceptional circumstances test (such as Air Park), but Westthopre Park was not, despite it scoring better in the council’s own evidence base. The correct approach would have been one that put all sites that were subject to the GB assessment through the SA approach, so that a full and transparent assessment of the sustainability of each site could emerge. That should then have informed the council’s decisions on GB boundaries, as required by NPPF84 and 85. Instead, what has happened is that prior policy choices have driven the SA, as opposed to the SA informing policy choices in a clear and transparent manner that could then be subject to scrutiny by others.
18. In addition, the SA fails to assess the sustainability implications of not providing for sufficient employment land within Wycombe District with the reasonable alternative

of doing so.

Duty to Co-operate

19. As set out above, the duty to co-operate is triggered in respect of unmet needs if there is evidence that development requirements cannot be met within the area of the plan-making authority. In the present case an MOU has been signed between the Buckinghamshire authorities that proposes a broad and generic apportionment of unmet needs without (a) evidence that needs cannot be met within the area of each relevant authority and (b) contrary to evidence that there are two specific FEMAs and that the employment needs of one cannot be met by providing more employment floorspace in the other. This represents a perversion of the function and purpose of the Duty to Co-operate: rather than using it as a mechanism to ensure identified needs are met, it is being used as a mechanism to avoid meeting those identified needs by pointing to the availability of land outside of the district which is unsuitable to meet the needs identified through the objective evidence.

Conclusion

20. I have addressed the matters raised in my Instructions. If additional matters arise I would be pleased to assist further.

MARTIN KINGSTON QC
Number 5 Chambers

28 JUNE 2018

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OPINION

Martin Kingston QC