Dear Louise

RE: VALE OF AYLESBURY DISTRICT LOCAL PLAN EXAMINATION

We are instructed by and write on behalf of LaSalle Land Limited Partnership (LLLP) concerning the process and approach taken for the Vale of Aylesbury Local Plan Examination.

Context

The Vale of Aylesbury Local Plan Inspector’s Interim Findings report in August 2018 (Examination document reference: ED166) followed a series of oral hearing sessions in June and July 2018 at which our client participated extensively.

The Inspector has subsequently raised a number of matters for discussion with Aylesbury Vale District Council (AVDC) (Inspector’s Discussion Document D5).

AVDC has latterly (28th February 2019) published a response to the Inspector setting out its proposed actions to address the Interim Findings (ED180A and ED180B). The Inspector has then published a response to AVDC (ED181) (4th March 2019) which agrees with the approach for each action proposed by AVDC.

Prejudice and Pre-Determination

AVDC’s response (ED180A and ED180B) to the Inspector’s Interim Findings lays out significant and material changes to the evidence heard by the Local Plan Examination, including revisiting and revising arguments laid out at the hearing sessions with respect to inter alia: housing requirements; transport infrastructure; and the need for an early review of the Plan.

The Inspector’s confirmed agreement to AVDC’s proposed responses will now form the basis for proposed modifications to the Local Plan (ED181). The Inspector’s assent to AVDC’s approach has been given in the absence of consultation or engagement with representors to the Local Plan Examination, including LLLP, who have an ongoing, direct and significant interest in the process and outcomes of the Examination.

Indeed, representors have been actively excluded from the Examination process since the publication of the Inspector’s Interim Findings in August. LLLP’s written subsequent submissions (23rd November 2018 and 11th March 2019) have been rejected as unsolicited.
Leading Counsel for LLLP has reviewed the approach and conduct of the Examination by the Inspector and AVDC during the period from the publication of the Interim Findings.

While it is consistent with PINS guidance that further unsolicited material should not be forthcoming after the closure of the hearings, the period of time after the hearings is definitively not available to any party to seek to unpick that which has been settled upon as a result of the hearings. In circumstances where the Inspector informs the Council of the direction of travel of his thinking, it is not an opportunity for the Council to seek to reverse those parts of the Inspector's thinking with which they disagree or on which they would prefer a different finding.

The reason that this is a serious concern is because it changes the dynamic of the examination from a participative and transparent process into a private discussion as between the Inspector and AVDC. Of course, it is not private in the sense it is hidden or secret, but it is a discussion between only the Inspector and the local authority, with other parties excluded. Not only must the proceedings be fair, they must be seen to be fair, and not predetermined and there is a clear question as to the degree to which the Inspector would have an open mind in respect of any further representations which he may now permit and receive.

The points which have been discussed between the Inspector and AVDC are material and should, consistent with the Secretary of State’s guidance, have been the subject of discussion at hearings. This is not an academic, incidental or marginal matter.

The process has caused prejudice to LLLP’s and other representor’s legitimate interest and involvement in the Plan’s preparation. Leading Counsel has concluded that the circumstances set out and the way in which the Examination has proceeded since the Interim Findings results in substantial unfairness to LLLP and other representors.

Substantive Concerns

LLLP has three substantive matters that are of particular concern. In essence the Council has engaged with the Inspector in a manner and to an extent which has resulted in the Inspector materially amending his views and findings from the Interim Findings report.

The Plan’s Housing Requirement

AVDC’s response to the Inspector’s Interim Findings clearly seeks to reconsider and restate their case from the Examination hearing sessions. The approach of the Council and of its advisors is to seek to persuade the Inspector that his view, clearly stated in the Interim Findings and reached after lengthy discussion and examination at the Hearing Sessions was incorrect.

The proposed modifications to the VALP should be prepared on the basis of the Inspector’s findings not a revision of the arguments previously subject to extensive debate and evidence and from which the Inspector has given clear direction in the Interim Findings. Nothing in LLLP’s view has changed from the situation discussed and examined in significant detail at the Hearing Sessions and which underpinned the Inspector’s findings in his Interim Findings Report.

The Inspector’s response to AVDC (ED181) at the paragraph concerning ‘Proposed Action 2: Housing Requirement’ is of particular concern to LLLP. It states:

“I have carefully read the additional work commissioned from ORS. It covers the ground which I had asked to be covered and, in the absence of any comment from any other party, I have no reason to take issue with any of it. It represents the most up to date expert analysis available, so I agree that AVDC should proceed to prepare modifications to the plan based on that advice”. [Our emphasis underlined].
Representors, including LLLP, were at the Inspector’s instruction, precluded from making any comments on AVDC’s proposed actions or on the additional evidence presented by the Council prepared by their advisors ORS.

**Transport Infrastructure**

The Inspector’s Interim Findings at paragraphs 44 – 52 identify work necessary on transport infrastructure in order to make the Plan sound.

AVDC’s approach (**ED180B** - ‘Proposed Action 6: infrastructure’) is to propose actions that will insert key transport infrastructure requirements into the Local Plan upon which it relies and to undertake sustainability appraisals of new road alignments. This is however only one element of the work set out in the Inspector’s Interim Findings and does not address the extent of the deficiencies and lack of comprehensive, effective transport modelling to underpin the proposed new transport infrastructure in Aylesbury. In response to LLLP’s letter dated 23rd November 2018 which sought to clarify what work would be carried out by AVDC in order to overcome the shortcomings of the draft Plan and its evidence base identified by the Inspector in his Interim Report, AVDC has stated that it does not believe the Inspector required this work to be undertaken out and has refused to do so.

The Inspector’s response to AVDC welcomes and appears to accept the Council’s response without any further consideration of the position of representors or the transport modelling evidence presented to the Examination upon which the Inspector has yet to draw a final conclusion. Without a transparent explanation by the Inspector as to what he believes is and is not required in order to make the Transport Infrastructure evidence presented and prepared by AVDC in support of the draft Plan sound and fit for purpose, representors are prejudiced.

**Early Local Plan Review**

AVDC intend to revise the VALP to remove reference to an early review or update of the Plan (**ED180B** - ‘Proposed Action 1: Undertaking an Early Review’).

The intention of the early review was to deal with a wide range of matters including the Cambridge-Milton Keynes-Oxford Growth Arc, the new Expressway road and matters arising from the revised NPPF and the Standard Method for calculating housing requirements.

AVDC now argue that there is no need for such a review despite praying in aid of this mechanism as a way to make the Plan sound throughout the plan-preparation process and in the Examination hearing sessions.

LLLP’s concern is one of fairness and prejudice and also with regard to securing a consistent approach for early plan review in the context of the Growth Arc that aligns with that in neighbouring authorities, particularly Milton Keynes immediately to the north of Aylesbury Vale.

As with the Plan’s housing requirement, the Inspector has accepted the Council’s arguments in relation to the need for an early review without hearing any representations from third parties. The need for such a review was as noted above, prayed in aid by AVDC throughout the EiP hearing sessions and was raised by the Inspector in his interim findings. Nothing in LLLP’s view has changed since the interim findings were published, and unless and until third parties have the chance to make representations in relation to AVDC’s position and have these considered by the Inspector before the Main Modifications are prepared, once again they will have been prejudiced.

Additionally, the Milton Keynes Plan Inspector specifically recognised at paragraph 26 of his Report on the Examination of Plan:MK (February 2019) that:
“The Government has set out its desire to see joint vision documents for the caMKox [Cambridge Milton Keynes Oxford Growth Arc] in 2019 and further evidence from the MKFutures growth strategy will also be available in 2019. **With this in place, I see no reason why an expeditious review of Plan:MK cannot take place such that a new strategic plan could be submitted for examination by the end of 2022**.” [Our emphasis].

The Plan:MK Inspector found that the early review would serve as a bridge from the delivery of short-medium term needs to the transformational growth that needs to be further developed and articulated. He concluded at paragraph 27 that this would “wholly accord” with the Government’s response to the National Infrastructure Commission report which requires further assessment of the options for housing and infrastructure.

The VALP Inspector’s agreement with AVDC’s intended approach to remove reference to undertaking an early review is not consistent with the approach concluded for Milton Keynes that will be taken forward into that authority’s adopted Local Plan.

As noted above similar to LLLP’s concerns on related matters including the housing requirement and transport infrastructure, the Inspector’s agreement to AVDC’s approach has been reached without further engagement or consultation with representors and represents a fundamental, untested and unchallenged change to the position reached in the Inspector’s Interim Findings.

**Conclusions**

Leading Counsel’s opinion is that the Local Plan Examination process since the publication of the Interim Findings has caused prejudice to LLLP and other representor’s legitimate interest and involvement in the Plan’s preparation.

Since the publication of the Interim Findings, representors have been precluded from commenting but the lack of any comments has been used to justify and support a significant and material change to the Inspector’s position and upon which AVDC will prepare modifications to the Plan in due course.

This is unfair and prejudicial. Moreover, the Inspector’s position is now settled, making it difficult to see how this may be remedied without appointment of a different Inspector.

The most effective and appropriate remedy would be by the recusal of the VALP Inspector now, with a suitable replacement appointed. If this were not to happen then, as a minimum, the proposed actions and response from the Inspector in the period since the Interim Findings were published should be set aside and disregarded such that the Examination and proposed Main Modifications proceed on the basis of those Interim Findings.

In the absence of a positive response, LLLP will further consider all of the options and their rights and remedies regarding this matter.

Yours sincerely,

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