

**Gladman Developments Ltd**

**Winchester City Council**

**Local Plan Part 2: Development Management and Site Allocations**

**Examination Hearing Statement**

**Matter 1: Plan Background/Evidence Base/Sustainability**



**June 2016**

# 1 INTRODUCTION

## 1.1 Context

- 1.1.1 This submission is made to the Examination in Public (EIP) and focuses on the matters and issues raised by the Inspector from the document dated 18<sup>th</sup> May 2016. For brevity, this submission is made **in response to the Inspector's questions relating to whether the plan is supported by clear and robust evidence and whether the Winchester Local Plan Part 2 (LPP2) plans for a deliverable and developable supply of housing.**
- 1.1.2 This submissions follows the written representations submitted to Winchester City Council (WCC) to both the draft and pre-submission versions of the LPP2 in December 2015 and December 2016. **Gladman's positions remains based on the fundamental concerns raised** throughout these representations, particularly the high risk strategy being undertaken by WCC and the lack of a **diverse housing supply to meet the district's housing needs.**
- 1.1.3 Gladman are aware that the appointed Inspector is only able to examine the document as submitted and may find it sound. However, what we **are keen to ensure is that the Inspector's Report** makes explicitly clear that any such findings of soundness of the LPP2 cannot be considered as a revalidation of the existing Local Plan Part 1 (LPP1) requirement as a full OAN. The reasoning for this is that the LPP1 was prepared in accordance with previous era in national planning policy but had to be both consistent with the requirements of the National Planning Policy Framework (the Framework) and the South East Regional Spatial Strategy (SERSS) that was still extant at the point in time the Examination of the LPP1 took place.
- 1.1.4 **To address the Inspector's Matters and Issues it is necessary to explore how the LPP1 was developed** and the series of events that succeeded the examination of the LPP1 in order to consider when the LPP2 is positively prepared and the most effective strategy.

## 2 **MATTER 1: PLAN BACKGROUND/EVIDENCE BASE/ SUSTAINABILITY**

- 2.1 ii) Will it satisfactorily and sustainably deliver the new development needed over the plan period to implement the objectives and requirements of Local Plan Part 1?
- 2.1.1 Gladman submit that the present process of plan preparation is deeply flawed as a result of the **Council's continued approach in seeking to deliver a housing requirement that is unlikely to represent the District's full objectively assessed needs (OAN) for housing. Gladman are aware that the appointed Inspector is only able to examine the document submitted and may find it sound, even if he agrees with Gladman that the production of a different Plan based on a thorough understanding of the District's full OAN would have been a better use of the Council's resources.**
- 2.1.2 **Returning to the Inspector's question** it is necessary for the purposes of this examination to address in detail the evolution of the LPP2 and what has transpired since the adoption of the LPP1. For brevity, the situation that has since arisen is set out in Appendix 1 to these hearing statements setting out a list of events in chronological order that have come to pass since the adoption of the LPP1.
- 2.1.3 What we are keen to ensure is that **the Inspector's Report, should the Plan be found to be otherwise sound, makes explicitly clear that any such finding of soundness can in no-way be a revalidation of the existing LPP1 housing requirement as the full OAN for the district.** In preparing the LPP2, the Council has chosen not to review the existing housing requirement established within the adopted Local Plan Part 1 (LPP1). The situation that has arisen in Winchester is quite unique, in that the Plan was prepared in accordance with the provisions of the SERSS and at a point in time when the Framework was still in its infancy. As discussed in our pre-submission representation, the Wokingham judgment<sup>1</sup> confirms that such an approach is lawful, but it must be made clear that the LPP2 does nothing more than allocate a number of residual sites for a housing requirement that is not based on a Framework and Planning Practice Guidance (PPG) assessment of housing needs.
- 2.1.4 **The implementation of the Framework preceded the examination of the LPP1 and the Inspector's Report** relating to the soundness of that Plan was published on 11<sup>th</sup> February 2013. Following the publication of the **Inspector's Report** the Council subsequently adopted the LPP1 on 20<sup>th</sup> March 2014. However, at that moment in time the requirements of the SERSS were not formally revoked until 25<sup>th</sup> March 2013. The Inspector was therefore required to address the provisions of both the Framework and the SERSS that was still in force at that time.
- 2.1.5 Although the current examination is only lawfully required to consider the extent to which the LPP2 would be consistent with the LPP1, it remains to be the case **case that Winchester's existing housing**

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<sup>1</sup> Gladman Developments Ltd v Wokingham Borough Council [2014] EWHC 2320 (Admin)

requirement of 12,500 dwellings, is predicated on the now revoked SERSS, and is considered to be significantly out of date. In this regard, whilst it is noted that the Inspector examining the LPP1 applied an uplift to the housing figures contained in the 2012 Housing Needs Study, this was on the premise of a capacity based approach arising from the potential capacity for 2,500 dwellings to be delivered **in the Market Towns and Rural Areas and increasing the capacity of the Council's Sustainable Urban Extensions (SUEs)** rather than a true identification of the full OAN for the district.

- 2.1.6 The Government published its final suite of PPG on 6<sup>th</sup> March 2014, clarifying how specific elements of the Framework should be interpreted when preparing Local Plans. The PPG on the Housing and Economic Development Needs Chapter in particular provides a clear indication of how the Government expects local planning authorities to take account the requirements of the Framework when identifying their OAN. Whilst it is accepted that this guidance was not available to the Inspector when preparing his report, it clearly sets out the measures that are expected of local planning authorities when identifying the OAN, in particular the need for market signals uplift.
- 2.1.7 Gladman continue to assert that there is a need to review the existing LPP1 in accordance with §47 of the Framework. Whilst this was subject to debate at the High Court in Zurich v Winchester City Council<sup>2</sup>, this judgment belongs to a different world of planning that was anterior to the publication of the PPG and subsequent High Court and Court of Appeal Judgments in Hunston<sup>3</sup> and Gallagher<sup>45</sup>. The Zurich judgment<sup>6</sup> **does not salvage the Council's position (as the Council consider in its Housing Requirements and Supply Background Paper)** in that the LPP1 is sound as it only deals with a narrow set of claims made by the claimant at that point in time.
- 2.1.8 Not disputing the adequacy of Mr Justice Sales' judgment, the judgment clearly states at §55 that:

*“Three points may be made about this: (i) by the time of the independent examination of the Core Strategy in late 2012, one was already close to the period when the requirements of the second bullet point in paragraph 47 would clearly be satisfied; (ii) the table was only provided by way of background information and evidence for the Inspector, and not as part of the Core Strategy (i.e. it was again clear from this part of Background Paper 1 and the tables contained in it, as from the terms of the Core Strategy and Appendix F, that the Core Strategy itself was not being put forward by WCC as the relevant part of its Local Plan to meet the requirements of the second bullet point in paragraph 47 of the NPPF: see para. 21 above); and (iii) the table was based on conservative estimates of land supply, so there was a real prospect that in fact a better coverage of the Core Strategy figures by rate of supply would be achieved*

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<sup>2</sup> Zurich Assurance Ltd v Winchester City Council and South Downs National Park Authority

<sup>3</sup> Hunston Properties Ltd and the Secretary of State for Communities and Local Government and St Albans City and District Council [2013] EWHC 2678 (admin)

<sup>4</sup> Solihull Metropolitan Borough Council v (1) Gallagher Homes Ltd (2) Lioncourt Homes Ltd [2014] EWHC 1283 (admin)

<sup>5</sup> Solihull Metropolitan Borough Council and Gallagher Estates and Lioncourt Homes [2014] EWCA Civ. 1610.

<sup>6</sup> Appeal Decision Reference: APP/L1765/A/13/2209444

(and it should be noted that paragraph 47 of the NPPF was itself only policy guidance, not an absolute rule, so WCC could still lawfully have adopted a plan showing a slight shortfall in the first period if that was more than compensated for in the periods immediately following, as the table showed)."

- 2.1.9 The ability of the Council to demonstrate a sufficient number of deliverable and developable sites will be discussed in more detail in response to Matter 2. However, Gladman would like to point out that the LPP1's SUEs, have failed to come forward as initially expected and as a result has placed further pressure on the delivery of both market and affordable housing being achieved. Due to the significant reliance on SUEs and lack of meaningful growth within the market towns and rural areas, the LPP2 risks jeopardising the overall vitality and viability of these areas. The level of growth aimed towards sustainable settlements in the District is not considered to be sufficient to ensure that the housing needs of the rural population of the district can be addressed. As such, the lack of flexibility contained in the LPP2 means that should the SUEs fail to come forward now, as already experienced, then this risks the delivery of both market and affordable housing.
- 2.1.10 **Notwithstanding the Council's position contained in Background Paper 1 and the Zurich judgment,** it is our position that any future planning applications can now only be considered on the basis of addressing the past under-delivery through applying the Sedgefield methodology. Sales J made clear that a shortfall in housing numbers could only be acceptable if it more than compensated for the periods immediately following the adoption of the Plan.
- 2.1.11 **The merits of the Council's trajectory was also considered, albeit not fully explored,** in the land at the Parklands, Denmead appeal<sup>7</sup>. In particular, §25 states:
- "In placing weight on the trajectory I appreciate, having regard to the Zurich Assurance judgement, that, neither the JCS or the trajectory were being put forward by the Council as elements of its Local Plan which would meet the requirements of the second bullet point of paragraph 47 of the Framework. Both the Council and the Local Plan Inspector contemplated that these requirements would in due course be met in the LPP2. However, what the trajectory does do, as the judgement makes clear, is provide assurance that the suggested number of new homes over the plan period were realistic and deliverable and provided comfort to the Local Plan Inspector that if the JCS were adopted other development plan documents which would meet the requirements of the second bullet point of paragraph 47 could be adopted. This being so I consider that the Local Plan Inspector was satisfied that the approach in the trajectory would enable the requirements of the second bullet point in paragraph 47 of the Framework to be met."
- 2.1.12 To date, the SUEs have failed to come forward at the expected rate and despite Gladman raising this issue in response to both previous rounds of consultation, the Council has made no effort to

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<sup>7</sup> Appeal Reference: APP/L1765/A/13/2209444

recognise that there is now a need to reconsider the housing numbers of the LPP1 and the number of allocations required through the LPP2. In light of recent judgments and advice and guidance issued by the Secretary of State, the LPP2 cannot be considered to be a Plan that is positively prepared as it fails to provide surety and flexibility in its housing supply, especially given the continued reliance on large SUEs. The Council is now at a point in time where the LPP1 trajectory has failed to be implemented and has instead rolled forward the housing numbers over what was initially expected rather than allocating sufficient land to meet the shortfall already experienced. This matter is discussed in greater detail in response to matter 2.

- 2.1.13 The implications of OAN following the High Court Judgment in Gallagher<sup>8</sup> considered that arriving at a housing requirement is a two stage process and that an unconstrained OAN figure must first be arrived at. Paragraph 98 of the judgment in particular stresses the extreme caution that should be applied when assessing housing need on the basis of a RSS housing requirement. It states that:

*“Where housing data survive from an earlier regional strategy exercise, they can of course be used in the exercise of making a local plan now – paragraph 218 of the NPPF makes that clear – but where, as in this case, the plan-maker uses a policy on figure from an earlier regional strategy, even as a starting point, he can only do so with extreme caution – because of the radical policy change in respect of housing provision effected by the NPPF.”*

- 2.1.14 **It is Gladman’s concern that the Council in seeking to continue with a housing figure, that does not represent the district’s full OAN and the way in which WCC calculate its 5 year housing land supply will be used as a means to defend itself at Section 78 appeals outside of the examination of the LPP2. It is for that reason that we would wish to quote the Section 78 appeals at Oddington Road, Stow-on-the-Wold<sup>9</sup>, land south of Cirencester Road, Fairford<sup>10</sup> and land west of Beech Hill Road, Spencer’s Wood<sup>11</sup>, which very clearly set out how the assessment of a housing requirement, not based on the full OAN, and established through a Core Strategy and subsequent Site Allocations Document should be seen in the context of a Section 78 appeal. Whilst we acknowledge that the Inspector at the LPP1 could only consider the evidence before him at the point of Examination, the events that have taken place since then provides further clarity on how LPAs are expected to identify OAN. Therefore, whilst the housing requirement in the LPP1 is justified as a figure to be met by the LPP2 we do not believe it would be justified to endorse a strategy which does not provide the flexibility or contingency required should the Council’s SUEs fail to deliver.**

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<sup>8</sup> Solihull Metropolitan Borough Council v (1) Gallagher Homes Limited (2) Lioncourt Homes Limited [2014] EWHC 1283 (admin)

<sup>9</sup> Appeal Reference: APP/F160/A/13/2203411

<sup>10</sup> Appeal Reference: APP/F160/A/12/2213318

<sup>11</sup> Appeal Reference: App/x0360/220926

- 2.1.15 Further, whilst it is considered that it would have been more appropriate to withdraw the LPP2 and review the housing needs evidence, the Council suggest in its Housing Background Paper that the 2012 Household Projections would result in a reduction of approximately 3,500 dwellings over the period to 2031 against the LPP1 housing requirement. However, this should not be seen as an endorsement that the 2012 household projections provide for the full OAN as this is merely the starting point that has yet to be adjusted to reflect factors affecting local demography, household formation rates, economic circumstances and/or adjustment to reflect appropriate market signals. It should further be noted that the reasoning behind this opinion is brought about through the **Inspector's Report to the Test Valley Local Plan that is now subject to legal challenge and this position may change in the interim.**
- 2.1.16 Notwithstanding the above, Gladman reiterate that the principal importance is that the LPP2 does not identify a sufficient supply of housing that will be able to come forward. The high risk strategy of the LPP1 and the lack of effective planning contained in the LPP2 by way of the limited amount of housing allocations in a range of locations significantly reduces the level of flexibility that should be contained in any such plan. In this regard, if the strategic sites do not deliver at the expected delivery rates in full this will likely jeopardise the delivery of both market and affordable housing across the district and housing needs will not be delivered.
- 2.2 iii) Are any policies or proposals inconsistent with national policies in the NPPF and, if so, is there a local justification supported by robust and credible evidence?
- 2.2.1 This issue will be dealt with in more detail in response to matters 2, 3 and 4.