



3/12 Kite Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0303 444 5412
Customer Services: 0303 444 500

e-mail: Stuart.liddington@pins.gsi.gov.uk

Chiltern District Council
Head of Sustainable Development
King George V House
King George V Road
Amersham
Bucks
HP6 5AW

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Dear Mr Beckford,

Delivery Development Plan Document for Chiltern District – Examination in Public

This letter confirms the decision to suspend the Examination in Public for a period of up to 6 months, ending on 12 May 2015. Following a careful consideration of the evidence before me and the discussion and answers provided by the Council at the first day of the hearing stage of my examination of the Delivery Development Plan Document it is my conclusion that there are significant shortcomings relating to soundness in the document as submitted. It is also unlikely that the DPD would meet the criteria for soundness if the proposed modifications were to be incorporated. Although my initial appraisal raised concerns over the housing requirement, housing land allocations and Gypsy and Traveller provision, my reason for the decision to suspend the Examination relates, in the main, to the housing land allocations. Related issues of the overall housing requirement and the Duty to Co-operate have added to my major concern and I shall consider these matters later. I have also noted concerns over affordable housing and Gypsy and Traveller provision contained in the Plan as submitted, or proposed to be modified.

Housing land allocations

As a starting point, I have taken the view that the revised Table 1: Residual Housing Needs contained in the recommended modifications [doc CDC 1] should not form the basis for my consideration of the allocations. The reason for this is that the revised PPG, advising that C2 uses should form part of the housing requirement, was released in March 2014, only 4 days prior to the end of the consultation. The PPG considered the assessment of housing needs, indicating (para 012) that “..the need to provide housing for older people is critical given the projected increase in the number of households aged 65 and over..” and that “..assessment should set out the level of need for residential institutions (Use Class C2)”. Since the advice post-dates the preparation of the DPD, no such assessment of need forms part of the evidence base. It seems to me, therefore, that there is no logical or evidential basis for counting C2 care homes against the overall housing requirement, determined through a previous and quite different process emanating from the South East Plan.

Evidence at the hearing sessions on the first day reinforced my initial view that there are serious concerns with the deliverability of some of the housing allocations. Using the upper target figure of 2,900, the Table indicates dwellings left to be delivered as 1,761. The Table shows 504 dwellings with extant permission; 449 Core Strategy allocated housing sites without permission and 220 unidentified windfalls (22 per annum 2016 – 2026). Set against the residual requirement, this calculation leaves a shortfall to be identified in the Delivery DPD of 588 dwellings or, if the lower target of 2,650 dwellings is considered, 338 dwellings. These equate to 45 dwellings per annum for the upper target or 26 for the lower target for the remaining 13 years of the Plan period. These figures should be seen against the NPPF advice that local planning authorities should be concerned with significantly boosting the supply of housing (para 47).

Table 2 identifies 16 proposal sites (H15: The Glebe – 9 dwellings – is deleted through the proposed modifications). These are calculated to deliver 247 dwellings within the Plan period. Three of the sites (H3, H4 and H14) totalling 38 dwellings are also identified as Opportunity Proposal Sites under Policy DES9. All of the Opportunity Proposal Sites appear to involve the redevelopment of existing commercial and other uses and none appear to be at an advanced stage in the development process. Notwithstanding the evidence provided through doc CDC25 and the supporting information in doc CDC12, I remain sceptical that a substantial proportion of the housing proposal sites will produce development on the ground in the near future. For example, the statement relating to H1, that the *“scheme could potentially link the undeveloped area off Quarrendon Road with adjoining land, involving assembly of additional plots”* cannot be said to provide incontrovertible proof that the site is deliverable within the Plan period. Similarly a comment relating to H10, that the *“main part of the site likely to have fewer potential landownership constraints”* does not offer convincing evidence that it will be developed within the Plan period. In one case, referred to in representations, the estimated capacity of the site is questionable given that the Council has refused planning permission for smaller quantities on the grounds of *“overly intensive and cramped appearance”* of the proposals.

The Sustainability Appraisal does not consider deliverability, but against objective 14, does state that, for those sites involving an amalgamation of back garden land, that these are classified as green field land.

The Council accepts that land in multiple ownerships – such as assemblies of garden land – involves a degree of uncertainty as to whether these will come forward in the Plan period. Similar concerns with deliverability arise with the other sources of new development listed in Table 3, such as changes of use from offices to residential use and floorspace above shops, where there is no specific evidence which indicates certainty that such changes will generate significant quantities of residential development. Table 3 indicates an estimated supply of 100 dwellings on previously protected employment land, although the explanation that *“..these are not proposal sites as they have current employment uses but in time could in principle be developed for alternative uses including residential”* does not instil confidence that these will come forward any time soon.

On the basis that the housing allocations seek to address the housing requirement identified in the adopted Core Strategy the evidence supporting the deliverability of the allocations H1 – H17 (except for H15 – deleted) within the Plan period is not convincing. I also have concern that the other sources of new housing shown in Table 3 are not supported by convincing evidence that the estimated 310 dwellings would result from their development. The explanations included in the Table point to problems including, for example, multiple ownerships, current employment uses, a

low degree of certainty over delivery, and in the case of previously developed land in the Green Belt, no evidence to support the estimate of housing numbers. Further, there is no clear distinction between the sources of development included in this table and the estimated 220 windfall sites allowance.

For all of the above reasons I have concluded that there would be a need for a substantial amount of additional work to address these concerns, leading to my conclusion that it is necessary to suspend the Examination. This additional work would require some time and manpower and would be likely to lead to significant modifications to the Plan to make it sound. It is possible that the additional modifications would lead to a fundamentally different Plan to that submitted, raising questions about what I am examining.

The housing requirement

The Council has indicated that the Delivery DPD will be, in effect, a partial review of the Core Strategy. As such, it does not seek to review the housing need figures in the period to 2026. This is despite the Council recognising that "*..the Core Strategy assessment of housing need is out-dated and is not NPPF compliant*" [doc CDC20, para 2]. The decision is stated to be intentional since the adoption of the Delivery DPD is seen as having overriding planning benefits. The proposed Local Plan, it is suggested, will be an early review of the Core Strategy and the Delivery DPD, and will include an assessment of housing need and Green Belt review. That may be so, but the interim situation is that the Council is pursuing a Delivery DPD which is not in accord with the NPPF, most particularly in that it does not seek to meet the full, objectively assessed needs for market and affordable housing in the housing market area (NPPF para 47).

The Core Strategy, as its starting point, used the housing allocation for Chiltern District set by the now revoked South East Plan. The figure is 2,900 dwellings for the period 2006 – 2026, equating to an annual average of 145 new dwellings. The Core Strategy originally proposed 2,400 dwellings, based on the Council's preferred housing figure put forward during the preparation of the South East Plan, but prior to the hearings proposed revised figures giving a range of 2,550 -2,900. Following the Inspector's post hearing findings, and based on the evidence provided to him the figures were again revised to a range between 2,650 -2,900. At that time – prior to the publication of the NPPF - the Inspector did not consider that "*..a provision above the regional requirement is required for soundness, particularly bearing in mind the constraints on development in the district and that the district is, accordingly, not an identified growth area*" [doc ID/14, para 5.4]. The most recent assessment of the housing market is provided by the Assessment of Housing Demand in Chiltern District 2006 -2026 [doc CDN 114] prepared in support of the Core Strategy in February 2011. This indicated a potential future demand for 5,000 – 6,760 new dwellings to 2026 (I understand a figure quoted as 7,260 was in fact a typing error).

Circumstances since the adoption of the Core Strategy have changed significantly. In addition to the NPPF, the national Planning Practice Guidance, published in March 2014, clarifies the situation regarding the application of constraints to the assessment of development (including housing) needs. It states categorically that "*Plan makers should not apply constraints to the overall assessment of need, such as limitations imposed by the supply of land for new development, historic underperformance, viability, infrastructure or environmental constraints*" (ref ID: 2a-004-20140306). The second circumstance which has changed is the introduction of the Duty to Co-operate through S110 of the Localism Act 2011 requiring local planning authorities to engage constructively, actively and on an ongoing basis in any process relating to the preparation of development plan documents. In this context the Delivery DPD is

clearly based on a constrained dwelling need and so is not compliant with either the NPPF or the PPG. There is, in addition, no evidence from the Duty to Co-operate Report that any but the briefest consideration has been given to how an unmet housing need – which could be up to something around 4,000 new dwellings - might be met. Indeed, an Initial Assessment of Chiltern District Council's Unplanned Housing Need carried out in September 2014 sets out data sources and studies (although these are not referenced) which estimate unplanned need as potentially as high as 4,809 dwellings.

The Council has concluded that the Delivery DPD does not need to have an up-to-date Strategic Housing Market Assessment [doc CDC20, para 20] and offers reasons why finding the DPD unsound on the basis of not having an up-to-date SHMA would not be in the best interest of the communities in Chiltern District. I have not found this argument convincing. It appears to me that the Delivery Plan is based on an adopted Core Strategy which is out-of-date and which has a housing requirement based on the revoked South East Plan. Additionally, it appears to me that the absence of a recent objective assessment of housing need to support the requirement which this Plan seeks to deliver is a fundamental weakness of the Plan.

Affordable housing

Although the issue of affordable housing has not been raised so far in the Examination, there is a clear requirement for affordable housing to be provided in accordance with the Core Strategy Policy CS8. The measure of success includes a target to deliver 33 affordable homes per annum for the Plan period with the stated aim of providing 700 affordable dwellings within the period 2006 - 2026. The relative size of the housing proposal sites in the Delivery DPD ranging from 7 to 40 dwellings, with most sites likely to produce less than 20 it is difficult to see how the Plan can provide an effective means of implementing the Core Strategy Policy, raising a question of consistency with the Core strategy.

Gypsy, Traveller and Travelling Showpeople Accommodation

The proposed modifications already proposes significant changes to the Policy so far as delivery of the identified sites is concerned, but it continues to prioritise sites outside of Chiltern District over proposal sites identified on the Policies Map. This cannot be considered to be a positively prepared or effective policy, firstly because the Council has no means of requiring neighbouring authorities to comply with its policy, and secondly there is no evidence before this examination to suggest that neighbouring authorities are willing partners to the Policy requirements.

Duty to Co-operate

The Duty to Co-operate Report [doc SD 1.5] catalogues the steps taken by the Council to fulfil its duty and demonstrates that it has been actively engaged with neighbouring authorities in terms of cross-boundary issues and with prescribed bodies since 2012. More particularly, I have noted the degree to which cross-boundary co-operation has been considered during the plan preparation period. In this respect I have concluded that the Council has complied with minimum legal requirements of the Duty to Co-operate.

However, there remain matters of concern regarding the key issue of the housing requirement, which add to my concerns outlined above. The starting point for my concern is the statements from doc SD 1.5 that the level of development proposed in the Core Strategy “..falls significantly short of housing need over the same period”

(para 1.13). The Report summarises the position on housing need in Chiltern District (para 1.15), advising that *"..unplanned for housing needs in Chiltern to 2026 is being addressed in other areas through the Duty to Co-operate"*, and that *"an early review of the Chiltern Core Strategy and Delivery DPD will be undertaken, possibly starting in 2016 in conjunction with adjacent areas' plan-making and will include a revised strategic housing market assessment"*.

The Report continues with a letter to Aylesbury Vale DC dated 24 April 2014 making a specific request under the Duty to Co-operate *"that its housing needs to 2026 which cannot be met in Chiltern District area is considered to be met within the Aylesbury Vale Local Plan and fully tested as part of its evidence base"*. This follows the withdrawal of the Vale of Aylesbury Plan Strategy after the Inspector found that the Council had failed to comply with the Duty to Co-operate (letter dated 7 January 2014). Amongst his findings were that a number of authorities, including Chiltern, raised concerns about the overall provision of housing and the implications for their areas (para 23). The Inspector's conclusion was that *"..there was no evidence that the potential needs of other authorities was (sic) a specific factor taken into account.."* (para 39). By 30 July 2014, Aylesbury Vale DC was reporting that none of the responses (to a request to establish an agreed way of working on a new SHMA assessment for Aylesbury Vale) indicated *"..that there was any wish to undertake a joint SHMA/HEDNA"*.

The Report also indicates, through the minutes of a meeting dated 20 June 2014, concern that plans relying on pre-NPPF and RSS housing numbers risk that DPDs are no longer relevant or up to date, and that – at that time – Chiltern Council was considering its options, including whether to submit, delay or withdraw the Delivery DPD.

Gladman v Wokingham BC

I am aware that in the case of Gladman Developments Ltd v Wokingham BC, the application to quash the development plan was refused and the court found that the Inspector was not required to consider whether there was an objective assessment of need for housing before examining the plan to determine whether the allocation of sites was sound. There are, however, significant differences to the present examination which suggest to me that the Council can draw little comfort from that judgement.

The essential differences are that the Wokingham Managing Development Delivery Plan carried forward a strategy from the Core Strategy which included 4 Strategic Development Locations, all of which were capable of phased development within the plan period. The housing requirement, derived from the South East Plan, was not based on a constrained assessment of housing need and there was no need to consider the issue of unmet housing need through the Duty to Co-operate. There are no nationally designated landscapes within Wokingham Borough such as AONBs to constrain development locations. For these reasons comparisons between the Gladman case and this Delivery PDP are, in my opinion, limited.

Conclusion

Setting aside consideration of the policies relating to the control of development, a main purpose of the Delivery DPD is *"..to provide the land for 133 new dwellings per annum.."* (Appendix 1 – Core Strategy Key Issues). From all the evidence provided and my appraisal, above, it is difficult to conclude other than that the DPD will not provide an effective means of implementing the Core Strategy.

The Plan is not compliant with the NPPF in so far as there is no recognition that the housing target is derived from a constrained level of housing need based on a Core Strategy which, in turn, is based on the revoked South East Plan. There is no evidence to indicate that the targets are soundly based on anything other than the amount of land which is perceived to be developable within the Plan period. It has no direct relationship with any recent objective assessment of housing need.

The NPPF (paras 179 and 182) clearly indicates that to be positively prepared the unmet needs of neighbouring authorities should be considered, and that to be effective, plans should be based on effective cross-boundary working. This is particularly the case with the strategic priorities, including to deliver the homes and jobs needed in the area (para 156). There is an acknowledgement in the 2008 Strategic Housing Market Assessment that housing need could be significantly higher for the period to 2026, but there is little evidence before this examination that any real progress has been made towards ensuring any unmet need is properly considered through cross-boundary co-operation.

In the light of all the above findings it has to be concluded that the Delivery DPD is unsound, as submitted. It is also difficult to see what changes could be proposed which would make it sound and therefore adoptable. There is no doubt that the extent of changes necessary would be significant leading to a substantially revised plan compared to the one submitted, raising questions about what I am examining and suggesting an inappropriate evidence base and submission.

The Council may choose to undertake work to overcome the deficiencies I have identified. This carries the risk that the Plan may eventually be found unsound and not capable of being rectified. Proceeding with this course of action would require the Council to prepare a schedule and timetable of work to address the deficiencies.

However, the Council has indicated that work has commenced on a new Local Plan covering the period to 2036, which will review all aspects of the adopted Core Strategy. I understand that an input to that exercise will be an assessment of housing need carried out with adjacent local authorities. It is also intended that the preparation of local plans will be aligned between authorities. I have also noted the Council's evidence that there is more than a five year supply of deliverable housing land to meet immediate need whilst work is proceeding on the new Local Plan.

In these circumstances it is difficult to see the benefit of pursuing a significant amount of additional work to ensure soundness of the Delivery DPD and the Council may instead choose to withdraw the Plan under S22 of the Planning and Compulsory Purchase Act 2004 (as amended).

I appreciate the Council will be disappointed with my decision to suspend the Examination, but, in my judgement, this is likely to be a more productive course of action than continuing in the face of significant deficiencies in the evidence base supporting the Delivery DPD.

Yours sincerely

Patrick T Whitehead

Inspector