

10th April, 2015

By Email

Inspector Mr Roger Clews
c/o Ian Kemp
Programme Officer
Birmingham Development Plan 2031
49 All Saints Place
Bromsgrove
Worcestershire
B61 0AX

Dear Mr Clews,

BDP EXAMINATION – A RESPONSE TO BIRMINGHAM CITY COUNCILS REVISED SUSTAINABILITY APPRAISAL.

On behalf of Richborough Estates and The Gilmour Family, we write in response to the Revised Sustainability Appraisal (RSA) to accompany the Birmingham Development Plan (BDP).

On the 8th of January, you issued your interim findings (EXAM 131) on three of the key topics assessed during the Examination in Public (EIP) of the BDP – the objective assessment of housing need; the Sustainability Appraisal (SA) of the Plan and the duty to co-operate in the preparation of the Plan.

With respect to the SA you set out a summary of further work to be undertaken by the Council as follows:

1. Further SA work needs to be carried out in order to ensure that all reasonable alternatives have been assessed at the same level of detail as the option taken forward in the submitted Local Plan.
2. A review of the relevant material prepared previously for the Council and for those promoting alternative sites should form an input to this work, and any errors should be corrected.
3. A report of the further SA work, meeting all relevant statutory requirements, should then be prepared and submitted to me, and consideration given as to whether or not the further SA work indicates the need for modifications to the BDP.
4. Arrangements for public consultation on the SA report and any modifications to the BDP should be discussed once the timescale for the further SA work has been agreed.”

In early February, we understand that Birmingham City Council submitted a methodology for addressing your concerns (EXAM 135) and that the RSA to which we respond in this letter is the outcome of applying this methodology (EXAM 146). We understand that the RSA will be subject to a formal six week consultation in the summer of this year alongside any main modifications proposed for the BDP.

Prior to this consultation, you have invited comments on specific sections of the Revised SA in the context of Matter E: Green Belt discussions during the EIP hearings. These are:

- Section 5, all (pages 75-86)

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- Appendix A, pages A8 & A9 only
- Appendix B, all (pages B1-B10)
- Appendix C, pages C6 - C28 only
- Appendix D, pages D14 - D16 only
- Non-Technical Summary, Table Headed “Choice of Options over reasonable alternatives in respect of the SUE and Strategic Employment Site”, on pages viii - ix

On behalf of Richborough Estates and The Gilmour Family we provide our comments on these specific areas of the RSA as well as identifying a number of strategic issues pertaining to the legal compliance of the SA and therefore the BDP.

Revised Household Projections – February 2015

Although outside the scope identified above, we believe that it is highly relevant in respect of the soundness of the BDP and legal compliance of the RSA to highlight the revised household projections published by DCLG on 27 February 2015. A letter has been submitted by Barton Willmore to the Council (BCC) presenting a strong justification that this data warrants a reappraisal of the Objectively Assessed Housing Need (OAHN) and that this reappraisal is highly likely to result in a higher OAHN than currently adopted by BCC and appraised through the SA process. We are mindful of the guidance in the PPG, but the new 2012-based DCLG household projections show a radically higher figure for the growth in household from the 2011-based interim projections. These projections are of course the starting point for calculating the OAN, which the LPA and Inspector must identify.

Should you agree that this substantive change in the underlying household projections warrants a review of the housing needs and spatial distribution strategy, then this has a significant implication for the SA and specifically the identification and assessment of *reasonable alternatives* to meet a higher housing need in Birmingham.

The Revised Sustainability Appraisal

Prior to providing our comments in respect of the key sections of the RSA, we believe it appropriate to highlight specific paragraphs of your Interim findings (EXAM 131) as they represent key overarching themes reflected in our comments. These are:

- (i) Paragraphs 24, 49, 50 and 54 which state that all reasonable alternatives should be assessed at *the same level of detail* as the option taken forward in the submitted Local Plan. Furthermore paragraph 50 states that *it will be essential that those who undertake this additional SA work approach it with an open mind, and not on the basis of seeking to justify decisions previously taken.*
- (ii) Paragraph 55 states that a review of the relevant material prepared previously for the council *and for those promoting alternative sites should form an input to this work and any errors should be corrected.*

Section 5 of the RSA and relevant sections of Appendix A, B and C

The assessment of the 5,000 and 10,000 dwelling SUE

Section 5 of the RSA presents the summary results of the following scenarios:

- (iii) An assessment of a 5,000 or 10,000 dwelling SUE in Green Belt land around Sutton Coldfield to contribute toward Birmingham's significant unmet OAN.
- (iv) An assessment of the alternatives to meet the result of that assessment, namely a 5,000 or 10,000 dwelling SUE(s)

Section 5 and the relevant appendices of the RSA clearly seek to remedy the deficiencies of the pre-submission SA (HTY17) and the submission SA (SUB3) in terms of legal compliance with the SA Directive and the assessment of alternatives.

The Planning Practice Guidance (PPG) presents a description of a reasonable alternative as '*Reasonable alternatives are the different realistic options considered by the plan-maker in developing the policies in its plan. They must be sufficiently distinct to highlight the different sustainability implications of each so that meaningful comparisons can be made. The alternatives must be realistic and deliverable. Paragraph: 019 Reference ID: 11-019-20140306.*

We have significant concerns that the RSA does not meet the requirements of the SEA Directive, PPG guidance and EXAM 131 as set out below;

- (v) Page 75 of the RSA suggests that there are only two reasonable alternatives to consider in order to meet the (potentially much higher) OAN. These are a 5,000 and 10,000 dwelling option with the latter to be met via two 5,000 dwelling SUEs. Given the scale of land available for development it is our opinion that a 7,500 dwelling option should also have been considered as a reasonable alternative.
- (vi) We do not believe that the appraisal of the 5,000 or 10,000 dwelling SUEs has been carried out in accordance with the PPG guidance and paragraph 54 of EXAM 131 in that the *reasonable alternatives have been assessed at the same level of detail as the option taken forward in the Local Plan. We elaborate this point with a specific example below which was one of the main reasons why a 10,000 unit SUE was rejected from the RSA (page 77);*
 - Transportation. There is a substantial body of detailed evidence produced by the Council to assess the potential traffic impact of a 5,000 unit SUE at Area C¹ to support its allocation, yet the equivalent level of traffic assessment to assess whether Area B and C (or indeed A) is acceptable has not been undertaken. This is despite the statement contained within paragraph 8.1.11 of the Transport Analysis of Green Belt Options (TA3²), developed to support the Green Belt Assessment (PG1) which states that "*The highest capacity scores are for C and D, but the results **do not** indicate any overriding transport capacity reasons to exclude any of the sites at this stage.*"

Page 76, bullet point 2, of the RSA states that "*there is an absence of any evidence which shows that the traffic impacts from a larger development could be accommodated on the network. The design, costing and impacts of additional transport infrastructure provision of the larger scheme are unknown at this stage.*"

¹ Birmingham Development Plan. Transport and Infrastructure Evidence Base and Strategy. June 2014. Page 21, Section 3.5.

² Birmingham Development Plan. Transport Analysis of Green Belt Options. Phil Jones Associates, September 2013.

- (vii) To support earlier representations to the pre-submission BDP, Richborough Estates and the Gilmour Family submitted Transportation reports by Peter Brett Associates³ and WSP⁴. The conclusions of these studies (none of which are referenced within the SA) are that Area B should **not be** excluded from release from the Green Belt on transportation grounds. Given the presence of this evidence and the conclusion of TA3, the conclusion within the RSA that there *is an absence of any evidence* to indicate that a 10,000 unit SUE can be accommodated on the highways network is clearly inaccurate and demonstrates a breach of PPG guidance and the requirements of EXAM 131 in that the reasonable alternatives be assessed at the *same level of detail* as the option put forward in the Local Plan.
- (viii) It is clear that the inaccurate conclusions in respect of transportation as outlined above is one of the main reasons why the 10,000 unit SUE alternative has not been progressed in the RSA. Furthermore, the failure to review and reference the Transportation evidence submitted by the promoters of Area B demonstrates a failure with the paragraphs of EXAM 131 as outlined in (i) and (ii) of this letter.
- (ix) We also have concerns with regards to continued inaccuracies with the scoring of alternatives as outlined in the specific example below;

Built and Historic Environment. Table 5.1 of the RSA states that there will be a negative impact on this SA objective as a result of the 10,000 unit SUE. Table 5.2 of the RSA however states that there will be a neutral impact on this objective if any alternative (except for Area D) is developed. Appendix B6 provides the justification for allocating the negative score on this objective which states “*Additional impact through requirement to take areas with higher value assets*”. Given the neutral scores for this objective assigned to the appraisal of all areas except D, this is clearly an inaccurate reflection of the evidence.

- (x) There are also examples where the assessment has not been carried out objectively and would appear to be an *ex post facto* justification as outlined below;

Housing Delivery Rates. Table 5.1 allocates the 10,000 SUE alternative with an uncertain (?) sustainable (+) or very sustainable (++) score on the basis that the market is incapable of delivering this scale of housing despite strong evidence to the contrary presented at the EIP. The allocation of so many uncertain sustainability effects solely due to the pre-determined assumption that this scale of housing proposed is not deliverable (which Savills evidence submitted on behalf of our Client demonstrated was not remotely credible) is a clear demonstration that the assessment of the 10,000 dwelling SUE is an *ex post facto* justification and not an independent, fresh assessment of a reasonable alternative to meet the Council's (potentially now much higher) OAN.

The Assessment of the 5,000 dwelling SUE

Page 78 of the RSA confirms that (notwithstanding our comments above) the 5,000 dwelling SUE will be progressed further although it must be noted that the full text providing this justification is hidden from the readers view in the circulated copy.

³ Foxhill Sutton Coldfield. Representations in support of the Foxhill Site. Peter Brett Associates. February, 2014

⁴ Birmingham Development Plan. Transportation Technical Review. February, 2014. WSP.

Page 78 of the RSA then lists the reasonable alternatives that have been identified through the plan process as suitable for accommodating around 5,000 dwellings. These options include Areas A, B, C and D sub-areas A1 & A2, B1 & B2 and C1 & C2. In respect of this assessment we make the following points;

- (i) There is no text within the RSA that states why sub-areas A1, B1 or C1 have been discarded from the assessment as reasonable alternatives and have not been appraised within Table 5.2.
- (ii) It is not clear from the text whether sub-areas A2, B2 and C2 are being appraised on the basis of them being able to accommodate 5,000 units overall or whether each sub-area is deemed capable of accommodating 5,000 units individually.
- (iii) There is no explanation as to why Area B1 (and Area B as a whole) has maintained its negative score for Natural Landscape and Biodiversity despite the requirement of paragraph 44 of EXAM 131 and an admission by BCC in the EIP that there was no difference between Area B and C in respect of Landscape and Biodiversity constraints.

Non-Technical Summary.

Given our comments above we have significant reservations in respect of the conclusions within the non-technical summary which we do not wish to repeat in this section of our letter.

Summary

To summarise, we do not believe that the RSA meets the requirements of the SEA Directive, PPG and EXAM 131. It does not rectify the failures of the pre-submission SA (HTY17) nor the submission SA (SUB3) in respect of the assessment of alternatives. Furthermore it does not demonstrate a fresh and independent assessment, using the available evidence, of all reasonable and deliverable options to meet either 5,000 or 10,000 dwellings within Land to the North East of Birmingham.

It is our opinion that the following work should be undertaken by BCC to ensure that the SA is sound and legally compliant;

- (iv) The OAN should be reassessed and reconfirmed prior to embarking on any SA work;
- (v) All reasonable options to deliver housing on Land to the North East of Birmingham should be identified including a revision of the evidence base to ensure that all reasonable options are appraised at the same level of detail as that put forward in the Local Plan.

On behalf of Richborough Estates and The Gilmour Family we would also like to reiterate our desire to work with BCC and their appointed SA consultants to ensure that a fair and objective assessment is undertaken on all of the potential alternatives using all available evidence. We also remain committed to identifying the most sustainable option to meet Birmingham's substantial (and potentially higher) OAHN which, we believe, should focus on locating as much of the housing as possible within Birmingham's administrative boundary and which (as set out in evidence presented by BCC) should consist of high quality, well designed sustainable urban extensions to the north and east of Sutton Coldfield. Should BCC wish to convene a workshop or specific meeting to discuss the evidence in respect of the reasonable alternatives we would be delighted to participate.

We reserve the right to make more detailed and comprehensive representations during the actual consultation process itself.

Yours sincerely

Colin Morrison
Director – Head of Sustainability

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