ELMBRIDGE LOCAL PLAN EXAMINATION

STAGE 2: SPATIAL STRATEGY AND DISTRIBUTION

SUMMARY OF RELEVANT LEGAL PRINCIPLES

---

1. This note is supplied to assist the Inspector examine the Matters, Issues and Questions under Stage 2, by drawing together the main legal principles identified in the case law relevant to those MIQs.

Soundness

2. By s.20(5)(b) Planning and Compulsory Purchase Act 2004, one of the purposes of independent examination is to determine whether the plan is "sound". The Act does not define what is meant by "sound".

3. However, paragraph 35 NPPF sets out the policy requirements for a plan to be considered sound, including consistency with the NPPF "and other statements of national policy".

4. Consequentially, it is not unlawful for a development plan not to be consistent with national policy in every respect, see: ***Mead Realisations Ltd v SSLuHC*** [2024] EWHC 279 (Admin) at [139] (and associated footnote).

5. Local circumstances may justify a departure from national policy, see: ***R(West Berkshire District Council) v Secretary of State for Communities & Local Government*** [2016] 1 WLR 3923 at [19] to [21] and [25] to [26].

Sustainable development

6. By s.39(2) Planning and Compulsory Purchase Act 2004, a person exercising functions under Part 2 of the Act, must exercise those functions with the objective of contributing to sustainable development. The Act does not define "sustainable development".

7. Paragraph 11 NPPF, tells us what policy considers is “sustainable development” in plan-making.

8. As the Courts have explained, the output of the application of paragraph 11 NPPF reveals whether a plan or development proposal represents “sustainable development” to which the presumption in favour applies, see: ***Cheshire East BC v Secretary of State for Communities and Local Government*** [2016] PTSR 1052 at [24]-[25] and [40]; endorsed by the Court of Appeal in ***Barwood Strategic Land II LLP v East Staffordshire Borough Council*** [2017] EWCA Civ 893 at [35].

9. It follows that simply meeting housing needs in full would not always amount to sustainable development. For example, if those needs could only be met by adjusting the Green Belt boundary and the necessary exceptional circumstances were not present to adjust the boundary, that would not represent sustainable development. That is because the result would not accord with paragraph 11(b)(i) NPPF and therefore the Plan would not be consistent with national policy and accordingly would not be sound.

The housing requirement

10. By paragraph 67 NPPF, the Plan should establish a housing requirement. In establishing that figure, a number of points apply:
    a. The output of the standard method is a starting point for calculating the housing requirement, it is not the housing requirement itself (see paragraph 61 NPPF).

    b. There is no policy obligation to meet the needs of neighbouring authorities which cannot be met in those areas, however that unmet need should be “taken into account” (see paragraph 61 NPPF).

    c. However, there is no obligation on an examining inspector to calculate the OAN and unmet need for neighbouring authorities, where that has yet to be crystalised via a local plan. As Lieven J said in ***CPRE Surrey v Waverley BC*** [2018] EWHC 2969

(Admin) at [52],[1] when rejecting the argument that the Waverley Inspector should have updated the Woking un-met need position from that said out in its adopted Core Strategy:

> "For the Plan to be sound [the Inspector] had to establish a figure for the OAN in Waverley, and ensure the Plan sought to meet that OAN and unmet need in the HMA, see NPPF para 182. However, he was not carrying out the Woking Local Plan examination and indeed Woking is very far off any such stage of its plan making process. He did not, and realistically could not have had, all the evidence which would have been necessary to determine whatever Local Plan housing requirement figure Woking will ultimately bring forward."

d. Beyond the market needs, there is an obligation to "assess" the needs of different groups in the community and for those needs to be "reflected" in planning policies (see paragraph 62 NPPF).

e. However, there is no obligation to uplift the market housing requirement to meet the full affordable housing need (and other needs), see: ***Trustees of the Barker Mill Estates v Test Valley Borough Council*** [2016] EWHC 3028 (Admin) at [36]. The PPG "Housing needs for different groups" is consistent with that approach, see para.008. As Holgate J said, uplifting the market housing to deliver a proportion of the affordable housing need *"begs other questions, including whether an increase in open market housing is itself deliverable or desirable".* That is a fact-sensitive judgment, having regard to the economic, social and environmental impacts of so doing.

f. It is not unlawful to find a plan "sound" which does not meet the need for the entire plan period. In ***Grand Union Investments Limited v Dacorum Borough Council*** [2014] EWHC 1894 (Admin), the inspector found the council could only deliver enough housing for roughly the first ten years of the plan from adoption in

[1] Upheld on appeal, see [2019] EWCA Civ 1826.

2013 (to 2024 or 2025 at [27] and [76]). The Inspector found the plan sound subject to an early review in 2017/2018. The challenge to the adoption of the plan on that basis was rejected by the High Court. Lindblom J found the Inspector was not only entitled to recommend adoption on that basis but that it was "pragmatic, rational and justified" see [69]-[79].

Exceptional circumstances

11. By paragraph 11(b)(i) NPPF, the strategic policies must plan to meet the objectively assessed needs for housing and other uses, as well as neighbouring unmet need, unless the application of (inter alia) Green Belt policy provides a strong reason for restricting the allocations in the plan area.

12. By paragraph 140 NPPF, the Green Belt boundary once established, should only be altered where "exceptional circumstances" are fully evidenced and justified. That phrase is not defined but has been part of national policy since PPG2.

13. There is extensive case law on its meaning; the salient points are these:

    a. The process of preparing a new local plan cannot itself equate to exceptional circumstances, see: ***Carpets of Worth Ltd v Wyre Forest DC*** (1991) 62 P & CR 334, 336, 345. Accordingly, there is nothing in national policy which <u>*requires*</u> an alteration of Green Belt to meet needs. Indeed, such an approach would be contrary to the policy at paragraph 139 NPPF that *"the general extent of Green Belts across the country is already established".*

    b. Exceptional means exceptional, rather than "general planning concepts", see: ***Carpets of Worth*** at p.336.

    c. Whilst, "general planning needs" are not precluded from the scope of considerations which may bear on whether exceptional circumstances exist in a given case, see: ***Compton PC v Guildford BC*** [2019] EWHC 3242 (Admin) at [72], it

would be *"illogical, and circular, to conclude that the existence of an objectively assessed need could, without more, be sufficient to amount to exceptional circumstances",* see ***Calverton Parish Council v Nottingham City Council*** [2015] EWHC 1078 at [50].

d. The focus is on the harm to the Green Belt effected, see ***Calverton*** at [51]. It follows that simply because a neighbouring authority may have concluded there were exceptional circumstances to roll-back its Green Belt boundary does not mean exceptional circumstances exist in Elmbridge. The impact on purposes, openness and future boundaries are all relevant considerations.

e. Suitability of land alone in GB terms does not equate to exceptional circumstances, see: ***Calverton*** at [42].

f. It follows, that simply because a site is suitable for release in Green Belt terms, it may be unsuitable because of the effect on sustainable development, see paragraph 142 NPPF.

g. In ***Copas v Royal Borough of Windsor and Maidenhead*** [2001] EWCA Civ 180 the Court held at [40] that:

   "… where the revision proposed is to increase the Green Belt - cannot be adjudged to arise unless some fundamental assumption which caused the land initially to be excluded from the Green Belt is thereafter clearly and permanently falsified by a later event."[2]

   It logically follows that is a relevant factor to which regard may be had when the Green Belt boundary is to be rolled-back. The subsequent cases which considered

[2] That was upheld in relation to the NPPF in ***Solihull MBC v Gallagher Estates Ltd*** [2014] EWCA Civ 1610 at [35].

that proposition held it was not a *requirement*[3] but did not decide that it was irrelevant, it plainly *is* a relevant consideration.

h. When resolving whether to make adjustments to the Green Belt boundary, regard must be had to the need to promote sustainable patterns of development (see paragraph 142 NPPF). It follows, that as *"part of that patterns of development and additional travel are clearly relevant",* see ***IM Properties Development Ltd v Litchfield DC*** [2014] EWHC 2440 (Admin) at [98].

14. Paragraph 141 NPPF, represented a change in Green Belt policy. Now Green Belt boundaries should not be changed unless the authority has *"examined fully all other reasonable options for meeting its identified need for development".* It follows that the case law concerning previous versions of the NPPF,[4] which suggested there was no requirement to use Green Belt land only as a last resort, does not hold true for the 2021 NPPF.

15. National policy is now clear that Green Belt is a constraint on delivery of objectively assessed needs and provides a "strong reason" for not delivering those needs in full.[5]

16. As a consequence of the foregoing policy considerations (as interpreted by the courts) the judgment whether there are exceptional circumstances to release the Green Belt in a given case is a fine evaluative judgment. As the government has made clear, there should be a deference to the legitimate judgments of the democratically elected plan making authority before interfering with that judgment:

> "It has always been the case that a local authority could adjust a Green Belt boundary through a review of the Local Plan. It must however always be

[3] ***IM Properties Development Ltd v Litchfield DC*** [2014] EWHC 2440 (Admin) [90]-[91] and [95]-[96]; ***Compton PC v Guildford BC*** [2019] EWHC 3242 (Admin) at [70] and ***Keep Bourne End Green v Buckinghamshire Council*** [2020] EWHC 1984 (Admin) at [146(v)].

[4] ***IM Properties Development Ltd v Lichfield DC*** [2014] EWHC 2240 at [90]-[91] and [95]-[96]

[5] PPG "Housing and economic land availability assessment" para.002.

transparently clear that it is the local authority itself which has chosen that path – and it is important that is reflected in the drafting of Inspectors' reports."[6]

ASHLEY BOWES

LANDMARK CHAMBERS

180 FLEET STREET

LONDON, EC4A 2HG.

26 March 2024.

[6] The Parliamentary under Secretary of State (Planning) to Chief Executive of The Planning Inspectorate (3 March 2014).