

RE: NORTH WEST LEICESTERSHIRE LOCAL PLAN EXAMINATION

NOTE ADVISING

1. The facts of this matter are well known to those instructing me. In particular I would refer to the opening day of the examination into the NW Leicestershire Local Plan at which I attended on behalf of those instructing me. On their behalf I expressed the serious reservations of those instructing me about the examination proceeding to consider the crucial issues of the appropriate housing requirement in advance of the publication of the Housing & Economic Development Needs Assessment ('HEDNA'), as well as a review mechanism proposed by the Local Planning Authority ('LPA') as a modification to the emerging Local Plan.
2. The LPA has now published the HEDNA together with a joint statement prepared on behalf of the Leicestershire Authorities on 30th January 2017. In anticipation of that publication, the Inspector appointed to examine the Local Plan had set a timetable in an inquiry note (IN/08) to deal with housing issues within the wider HMA and implications for NWL as a result of the publication of new housing and employment evidence (HEDNA). In the note the Inspector directed that by the 6th Feb, the Council are required to publish its full Main Modifications and responses to various important issues raised during the examination. The note goes on to note that representors are to provide a further Position Statement also by 13th February:

"Additional Documentation in advance of Further Hearings

4. Representors are invited to submit to the PO **by 5pm on Monday 13 February 2017** their comments upon the HEDNA, Council proposals and additional documentation in the same form as Position Statements, limited to **3,000 words for the HEDNA** and **3,000 words for the other documentation**, unless otherwise agreed.

5. By **Monday 20 February 2017** The Inspector will issue confirmation of further Hearings and Participants, with any further requests for additional information and Agendas to follow in advance of the Hearings.

6. In the event that some alternative action or procedure is warranted as a result of the HEDNA, or for any other reason, the Inspector will provide his response accordingly.

Further Hearings

7. The original venue at Heartwood Conferencing is booked for further Hearings on **Tuesday 21 March 2017** and if required on **Thursday 23 March 2017**.

Other Matters

8. The Council will provide further updates of the housing land supply and trajectory in due course as necessary and appropriate. "

3. It follows that whilst the LPA has had many weeks to consider and react to the HEDNA, those instructing me, as well as others will only have 10 working days to consider and respond to what is a central component in the evidence which underpins the housing and an employment strategy of the emerging local plan.
4. The HEDNA is a critical document that goes to the heart of the Draft Local Plan and issues relating to Duty to Cooperate. In the ordinary course of events it would be expected that publication of the submission version of a draft local plan would be accompanied by an up to date evidence base, whereas in this instance important parts of the evidence base were palpably out of date, most notably the SHMA. Had the HEDNA been published at the time of submission then 6 weeks would have been provided to third parties to make representations upon the local plan in the light of HEDNA and the remainder of the evidence base.
5. I am instructed that other parties, most notably GVA, have made a request to the Inspector, following publication of IN/08 but prior to the HEDNA being published, that 2 weeks was insufficient time within which to review the 204-page HEDNA. GVA complained that such an approach was procedurally unfair and that at least a further 2 weeks should be provided noting that in their view this would not impact on the overall timetable however. On Wednesday 1st February those instructing me made a similar request for more time in support of the position of GVA.
6. I am asked to advise.
7. It is well established that even in the setting of an informal hearing that an Inspector is obligated to adopt a procedure which is fair to all parties (see *Dyason v Secretary of State for the Environment* [1998] 2 PLR 54). In that case Pill LJ stressed that there was an inquisitorial burden upon the Inspector which underscored the need to ensure fairness as between the parties. The same approach must by extension also have application in an examination.
8. Further it is well established that where consultation takes place upon documentation which will inform administrative decisions, then such consultation has to be both

meaningful and fair. Thus in the case of *R v N and E Devon Health Authority ex p Coughlan* [2001] QB 213 @108 the Court held that for a lawful consultation to take place, adequate time must be given for the response by a consultee, and the response conscientiously must then be taken into account.

9. In *R (Moseley) v Haringey LBC* [2014] 1 WLR 3947, Lord Wilson said;
"25 In R v Brent London Borough Council, Ex p Gunning (1985) 84 LGR 168 Hodgson J quashed Brent's decision to close two schools on the ground that the manner of its prior consultation, particularly with the parents, had been unlawful. He said, at p 189:

'Mr. Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content.

- *First, that consultation must be at a time when proposals are still at a formative stage.*
- *Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response.*
- *Third ... that adequate time must be given for consideration and response and, finally,*
- *fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.'*

*Clearly Hodgson J accepted Mr. Stephen Sedley QC's submission. It is hard to see how any of his four suggested requirements could be rejected or indeed improved. The Court of Appeal expressly [has]. The time has come for this court also to endorse the Sedley criteria. They are, as the Court of Appeal said in *R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts* (2012) 126 BMLR 134, para 9, 'a prescription for fairness'."*

10. It is accepted that the extent of a duty to consult will depend upon the nature of the consultation exercise and the statutory regime governing it, as Lord Reed also pointed out in *Moseley* at [40]. However, giving a person who is responding to a consultation access to the relevant information which has informed that choices which have been made in the formulation of the proposals so that they can understand the information and the resultant choices and test both that information and those judgments, must be

a basic requirement if consultation is to be fair and useful. The same must be true of the process of examining a local plan.

11. In fairness to the Inspector he appears to have fully recognised that the timescale that he has set for consultation is a tight one and may need to be revisited. At §6 of IN/08 he provides the following guidance:

“6. In the event that some alternative action or procedure is warranted as a result of the HEDNA, or for any other reason, the Inspector will provide his response accordingly.”

12. It follows therefore that the Inspector has not set an immutable timescale, but rather he has set a very tight preliminary timescale (in advance of publication of the HEDNA) but has given the clearest indication that he is willing to revisit that timescale in the event that any party is able to make a case for a variation.
13. I do not comment upon the steps that are needed to enable a fair and meaningful response to the HEDNA, but I do note that in the ordinary course of events the document would have been published long before the submission local plan and there would have been ample time for all parties to digest its conclusions, test its assumptions and then respond to its recommendations with a meaningful evidence base. To achieve all of that within a two week timescale, given the complexity of both employment and housing modelling, especially where the model covers all of the authorities in Leicestershire and not just NW Leicestershire seems challenging to say the least. Added to that is that on 6th February the same set of consultants, and third parties are being invited to consider a raft of other documentation from the Council and also react by 13th February. The overall burden seems likely to be intolerable.
14. I would accordingly advise that those instructing me respond to the Inspector’s note in IN/08 and formally request an extension of time which provides the opportunity to respond meaningfully to the HEDNA and the other documentation which is to be provided. Such a letter should explain the logistical difficulties of responding by 13th February and it should remind the Inspector of the above listed “Sedley principles” in the Moseley case. Given point 6 of the Inspector’s note my apprehension is that the Inspector will be receptive to a well-reasoned explanation as to why additional time is needed, and may have set a tight timescale deliberately in order to maintain the

momentum of the examination. However the desire to advance the examination expeditiously has to be tempered by the need to ensure that a fair procedure is followed, especially in relation to this key aspect of the evidence base.

15. Should anything else arise please do not hesitate to contact me further.

Kings Chambers
Manchester, Birmingham, Leeds

Paul G Tucker QC
6th February 2017

