



The Planning Inspectorate

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# **Report to North West Leicestershire Council**

**by L Gibbons BA(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Date: 17 February 2021**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the North West Leicestershire Local Plan Partial Review**

The Plan was submitted for examination on 18 February 2020

The examination hearings were held between 15 and 17 September 2020

File Ref: PINS/G2435/429/5

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## **Abbreviations used in this report**

FEMA	Functional Economic Market Area
HEDNA	Housing and Economic Needs Development Assessment
HMA	Housing Market Area
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground

## **Non-Technical Summary**

This report concludes that the North West Leicestershire Local Plan Partial Review provides an appropriate basis for the planning of the District, provided that a number of main modifications [**MMs**] are made to it. North West Leicestershire District Council has specifically requested that I recommend any MMs necessary to enable the Plan to be adopted.

Following the hearings, the Council prepared schedules of the proposed modifications and, where necessary, carried out sustainability appraisal and habitats regulations assessment of them. The MMs were subject to public consultation over a six-week period. I have recommended their inclusion in the Plan after considering the Sustainability Appraisal and all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Amendments to Policy S1 and supporting text to ensure that the changes are justified and will be effective in relation to the Partial Review having regard to the timescale of the substantive review of the Local Plan;
- Amendments to Policy S1 and supporting text to ensure consistency with national policy;
- Ensuring that Policy S1 is justified in relation to meeting unmet needs and cross boundary co-operation; and
- A number of other modifications to ensure that the plan is up to date, internally consistent, effective and consistent with national policy.

## Introduction

1. This report contains my assessment of the North West Leicestershire Local Plan Partial Review in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether it is sound and whether the Plan is compliant with the legal requirements. The National Planning Policy Framework 2019 (paragraph 35) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The North West Leicestershire Local Plan Partial Review (Partial Review) submitted in February 2020 is the basis for my examination. It is the same document as was published for consultation in November 2019.

## Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Council requested that I should recommend any main modifications [**MMs**] necessary to rectify matters that make the Plan unsound and thus incapable of being adopted. My report explains why the recommended MMs are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2** etc, and are set out in full in the Appendix.
4. Following the examination hearings, the Council prepared a schedule of proposed MMs and carried out sustainability appraisal of them. The MM schedule was subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report and in this light, I have made an amendment to the detailed wording of **MM1**. This will clarify that the Partial Review will supersede Policy S1 and the supporting text in the North West Leicestershire Local Plan. The amendment does not significantly alter the content of the modifications as published for consultation or undermines the participatory processes and sustainability appraisal that has been undertaken. I have highlighted this amendment in the report.

## Policies Map

5. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. No changes to the policies map result from the Partial Review.

## Context of the Plan

6. The North West Leicestershire Local Plan Partial Review is limited to the review of Policy S1 (Future Housing and Economic Development Needs). It is proposed to replace Policy S1 and related supporting text in the North West Leicestershire Local Plan which was adopted in November 2017 (the 2017 Local Plan). The 2017 Local Plan sets out the strategy for delivering homes, jobs and infrastructure in the District between 2011 and 2031. Policy S1 makes provision for housing and employment land in accordance with the

## Leicester and Leicestershire Housing and Economic Development Needs Assessment 2017.

7. Policy S1 as set out in the 2017 Local Plan requires the Council to commence a review of the Local Plan by the end of January 2018 or within 3 months of the adoption of the Local Plan. The Policy also requires submission of the Local Plan review within two years from the commencement of that review, otherwise as the Policy states, the whole plan would be deemed to be out of date. This was to address the Inspector's concern about whether the Council should accommodate unmet needs of the City of Leicester and the Borough of Oadby and Wigston as set out in Paragraph 135 of the Inspector's Report for the 2017 Local Plan (LP/05).
8. The Council undertook consultation in February 2018 on a replacement Local Plan in accordance with Policy S1, effectively triggering the review. Initially the Council were progressing a full review of the plan. However, due to changes in circumstances the Council decided to take an alternative approach to a full review and to address the issue of the whole plan being deemed to be out of date. The changes included the lack of progress made on the Leicester Local Plan and apportionment of unmet housing and employment needs within the County. The introduction of the standard methodology also required the Council to consider the implications in relation to the housing requirement for the District.
9. The Council has therefore undertaken a Partial Review of the Plan, focussing solely on limited changes to Policy S1 and supporting text, whilst simultaneously undertaking a Substantive Review to complete the work on a Local Plan to 2039. This will include site allocations and other policy changes as necessary. The Substantive Review will be a full replacement of the Local Plan including a further replacement to Policy S1 setting out new housing and employment requirements.
10. The Partial Review does not change the overall strategy of delivering housing and employment within Policy S1, with provision continuing to meet the Objectively Assessed Need and housing requirement for the District identified in the 2017 Local Plan. There is no effect on the plan period or other policies of the 2017 Plan.

### **Public Sector Equality Duty**

11. I have had due regard to the aims expressed in S149(1) of the Equality Act 2010. This has involved my consideration of several matters during the examination including the effect of the Partial Review on the overall provision of housing and employment within the area. There is no compelling evidence that the Partial Review would bear disproportionately or negatively on those with protected characteristics.

### **Assessment of Duty to Co-operate**

12. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.

13. The key strategic issue relates to the consideration of redistributing potential unmet housing and employment needs for Leicester City. The Council has been proactive and have been actively engaged with the other Leicestershire authorities and other relevant organisations including authorities outside of the area and statutory organisations such as Natural England, Historic England and Highways England.
14. Co-operation is well established with the Leicestershire authorities. Key outcomes have included a Housing and Economic Development Needs Assessment (HEDNA) from 2017 that demonstrates that the Leicestershire Authorities operate as a self-contained Housing Market Area (HMA) and also as a Functional Economic Market Area (FEMA). The authorities have also worked together to produce a Strategic Growth Plan for the area up to 2050. Although it is a non-statutory plan it provides a framework for the way that growth is delivered in the area through Local Plans.
15. Arrangements are in place to work on strategic matters on an on-going basis with the authorities and the Leicester and Leicestershire Enterprise Partnership. A Members' Advisory Group with representatives from each authority meets quarterly with attendance from an observer from the Partnership. Supporting this strategic overview arrangement are several groups of officers from the authorities that also meet regularly and feed into the decisions of the Advisory Group.
16. An initial indication of unmet housing need in Leicester was presented to the City Council's Overview Select Committee in November 2019. However, there were delays to the consultation on the City's draft local plan mainly due to the impact of Covid19. However, this does not mean that constructive discussion between North West Leicestershire and the rest of the HMA/FEMA has failed to take place.
17. The Leicestershire authorities have been involved in commissioning an independent assessment of the evidence provided by Leicester City. The Council have also engaged with the Leicestershire authorities in relation to the Partial Review resulting in a signed Statement of Common Ground (LP/08). This includes a commitment from the authorities to joint working on strategic housing, employment and infrastructure matters and a continued commitment to meet the areas housing and economic needs within the HMA and FEMA boundaries. The other authorities in the area agree that the housing requirement set out in Policy S1 stays the same for the purposes of this review. It is also agreed between the authorities that completing the full review of housing and employment needs within the initial Local Plan review timescale was not feasible.
18. Leicester City have now produced their draft Local Plan for consultation, which currently indicates a potential unmet need for housing and employment land. Whilst the actual figures are yet to be determined through an examination of that Plan, the signed Statement of Common Ground accompanying the Partial Review also acknowledges that redistribution of any unmet needs within the area will be agreed through established mechanisms. This is being achieved through the production of a new separate Statement of Common Ground which will be agreed by the authorities. The matter of redistributing Leicester's

unmet need will be ongoing, and any potential requirements will be picked up in the Council's Substantive Review.

19. I am satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the duty to co-operate has therefore been met.

## **Assessment of Soundness**

### **Main Issue**

20. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings, I have identified one main issue upon which the soundness of this plan depends. This report deals with this main issue. It does not respond to every point or issue raised by representors.

### **Whether the proposed changes to Policy S1 and supporting text are positively prepared, justified, effective and consistent with national policy and guidance?**

#### The Plan being 'out of date'

21. In February 2019 the new National Planning Policy Framework (NPPF) was published. The 2019 NPPF does not refer to whole plans being out of date. Where it does refer to 'out-of-date' this relates to the presumption in favour of sustainable development and policies as they relate to determining individual planning applications. In respect of being 'out of date' Peel Investments North Ltd v. Secretary of State v. Saltash City Council (CO/5073/2018) also focused on the context of paragraph 11(d) of the NPPF in relation to deciding on 'the most important policies' and did not consider the question of whole plans being out of date.
22. There is no evidence to suggest that the Council are unable to demonstrate a five-year supply of housing. They have also met the government's Housing Delivery Test. Nevertheless, Policy S1 as worded could potentially lead to the decision maker having to apply the requirements of paragraph 11 (d) of the NPPF to every planning application in the District.
23. Therefore, the deletion of the wording relating to the whole Local Plan being deemed out of date as set out in the submitted Policy S1 is sound as it ensures consistency with the 2019 NPPF requirement that the planning system should be genuinely plan led. It allows the presumption in favour of sustainable development to be applied to planning applications in the area in a manner that is consistent with the requirements of paragraph 11 of the NPPF.

#### Substantive and Partial Review

24. The Substantive Review of the Plan has continued in parallel with the Partial Review with the timetable set out in the Local Development Scheme. Elements of the technical work and evidence for the Substantive Review have been completed and others are in preparation including an assessment of potential development sites. The Council has considered several reports for the

preparation of the Substantive Review including an interim housing requirement.

25. At this stage, sufficient progress has been made to demonstrate the Council's commitment to completing the Substantive Review in accordance with the timetable. Given the progress made on the Substantive Review, the principle of the Council's approach to the Partial and Substantive Reviews is appropriate.
26. However, for the change in Policy S1 to be effective and justified **MM1** and **MM3** are necessary to explain the distinction between the Partial and Substantive Reviews in the supporting text, to clarify that the Partial Review supersedes Policy S1 and supporting text, whilst **MM1** also makes it clear that the Substantive Review will supersede the 2017 Local Plan in its entirety. **MM2** is necessary as a consequential change to Policy S1 and for effectiveness to include a reference to the FEMA, and the basis of the 2017 Local Plan for housing and employment being the 2017 HEDNA. **MM4** sets out the implications of the government's standard method and provides additional explanation on unmet needs within the area. **MM4** is a new paragraph which explains that the Partial Review is based on the HEDNA rather than the government's 'standard method' for calculating the housing requirement. This modification is necessary as without it Policy S1 would not be effective.

#### Unmet need and cross boundary co-operation

27. One of the strategic locations identified in the Leicester and Leicestershire Strategic Growth Plan (December 2018) covers the northern part of North West Leicestershire and Charnwood Borough. Although the split between the two authorities has yet to be agreed, there is likely to be a significant number of dwellings within the North West Leicestershire area as a result. The implications of this would form part of the consideration of the Substantive Review. However, to be effective it is necessary for a new paragraph of supporting text to refer to this by way of **MM7**.
28. It is also necessary to reflect that work has been undertaken on strategic warehousing needs within the FEMA and that it will be necessary for the Substantive Review to take this into account. Accordingly, **MM7** refers to this, and other new evidence which may need to be considered. This ensures that the Partial Review is positively prepared and the changes to Policy S1 are justified.
29. The draft Leicester Local Plan published in September 2020 (OTH/02) indicates there is a potential unmet need of 7,742 homes and 23 hectares of employment land. A Task and Finish Group including officers from all the authorities was set up in June 2019 to progress the technical work based on these figures and to support the production of a Statement of Common Ground. The Task and Finish Group are progressing a Sustainability Appraisal as part of the evidence which will assess options for where this unmet need could be accommodated as well as the potential for different scales of unmet need which may be affected by changes in considerations such as the government's standard method.

30. The separate Statement of Common Ground will need to inform the content of the Council's Substantive Review of the Local Plan. This would be consistent with what is required for review of Local Plans for other authorities in the HMA (Statement of Common Ground Comparison of Triggers Used in Recent Local Plans in Leicestershire NWL/03). Therefore, the inclusion of a reference to the Statement of Common Ground in Policy S1 would be consistent with the approach taken elsewhere in the HMA.
31. The Joint Position Statement produced by the authorities in the HMA in September 2020, indicates that the Statement of Common Ground is likely to be completed in early 2021 (OTH/01). To be effective and positively prepared, it is necessary for Policy S1 to specifically refer to the Statement of Common Ground and to indicate how this will influence the date of submission of the replacement Local Plan (Substantive Review). There may also be unmet need from other authorities within the HMA/FEMA which North West Leicestershire may have to accommodate. This approach is justified subject to **MM8** to Policy S1, and a new paragraph added to the supporting text as **MM5**. Additionally, for the Policy to be effective, **MM5** provides a definition of what is meant by the Statement of Common Ground being 'agreed' in the Policy.
32. In the event of the Statement of Common Ground being delayed or put on hold for any reason, it is essential to include an alternative date by which the replacement Local Plan (Substantive Review) will be submitted for examination. Without this, the policy would not be effective or justified. The alternative date is therefore included within **MM8**, and a consequential explanation is necessary in the supporting text through a new paragraph in **MM6**.

#### Use Classes Order

33. On 21 July 2020, the Government published the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. These came in to force on 1 September 2020. Use classes A, B and D no longer exist. A new class E (commercial, business and service) has been created. This subsumes A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes) and B1 (business). The Substantive Review of the Local Plan will assess the detailed implications of the impact of the changes to the Use Class Order, and the evidence does not suggest that there is a significant impact upon the review of Policy S1. Nevertheless, in order for the Policy to be effective, consistent with national policy and to be clear to the decision maker, it is necessary for Policy S1 and the supporting text in **MM2**, **MM3** and the Policy in **MM8** to include a reference to the new use class as it relates to the employment requirements within the Policy.

#### Conclusion

34. Subject to the MMs identified above the proposed changes to Policy S1 and supporting text are positively prepared, justified, effective and consistent with national policy and guidance.

## **Other Aspects of Legal Compliance**

35. The Plan has been prepared in accordance with the Council's Local Development Scheme.
36. Consultation on the Plan and the MMs was carried out in compliance with the Council's Statement of Community Involvement.
37. The Council carried out a Sustainability Appraisal of the Plan, prepared a report of the findings of the appraisal, and published the report along with the plan and other submission documents under regulation 19. The appraisal was updated to assess the main modifications. The sustainability appraisal has been adequate.
38. The Shadow Habitats Regulations Assessment of the Local Plan Partial Review Report (September 2019) screens out the proposed changes to Policy S1 and sets out why an Appropriate Assessment is not necessary.
39. The Development Plan, taken as a whole, includes policies to address the strategic priorities for the development and use of land in the local planning authority's area.
40. The Development Plan, taken as a whole, includes policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.
41. The Plan complies with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

## **Overall Conclusion and Recommendation**

42. The Partial Review has a number of deficiencies in respect of soundness for the reasons set out above, which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explained in the main issues set out above.
43. The Council has requested that I recommend MMs to make the Plan sound and capable of adoption. I conclude that the duty to cooperate has been met and that with the recommended main modifications set out in the Appendix the North West Leicestershire Local Plan Partial Review satisfies the requirements referred to in Section 20(5)(a) of the 2004 Act and is sound.

*Louise Gibbons*

Inspector

**This report is accompanied by an Appendix containing the Main Modifications.**