

THE NORTH WEST LEICESTERSHIRE LOCAL PLAN  
PARTIAL REVIEW EXAMINATION

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OPENING STATEMENT BY THE COUNCIL

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1. The adopted North West Leicestershire Local Plan (“NWLLP”) (document LP/04a) was adopted in November 2017 following the publication of the examining Inspector’s Report (“IR”) which, subject to main modifications, found it sound and legally compliant (LP/05).
2. Main modifications included (in summary) a “Commitment to early review of the Plan by Policy S1 on Future Housing and Economic Development Needs to accommodate any unmet needs identified by agreement within the Housing Market Area according to the future Strategic Growth Plan and to reconsider the adequacy of land supply for housing and employment (MMs1-9);”.
3. Those main modifications were necessary because, at the time of examination, for the reasons explained in the IR, the quantum of unmet housing and employment need in the HMA and FEMA (Leicester and Leicestershire) was not finalised - and the same applied to where such unmet need would be met. Therefore the Council proposed, and the inspector agreed, to defer consideration of accommodating any unmet needs from other HMA authorities to an early review of the Plan, depending on whether, and to what extent, this proved to be necessary.
4. Policy S1 therefore includes a commitment to working collaboratively with the other authorities in the HMA to establish the scale and distribution of unmet need and includes the following ‘tail-piece’ (emphasis added):

“The District Council will **commence a review** of this Local Plan (defined as being publication of an invitation to make representations in accordance with Regulation 18 ..... by the end of January 2018 or within 3 months of the adoption of this Local Plan (whichever is the later). The Plan Review will be **submitted for examination** within two years from the commencement of the review. In the event that the reviewed plan is not submitted within two years then **this Local Plan will be deemed to be out of date.**”
5. No-one seriously contends that the Council has failed to meet either milestone; we are now at the examination stage of the review. What some representors complain about is that the nature of the review and/or the terms proposed in the review are not ‘sound’.
6. The Council proposes (LP/01) deleting the ‘tail-piece’ altogether and adding a sentence to the previous paragraph in policy S1 which commits to submitting a

“replacement Local plan” for independent examination within 18 months of it being agreed with the other HMA authorities what the “redistribution of any unmet need” is to be.

7. The formula is proposed in these terms because the amount of unmet need from Leicester, although clarified, was not yet agreed at the time of submission and nor was its redistribution. It was therefore not sensible to put forward a specific date for the submission of the review. It is still not finally agreed.
8. It was necessary however to submit a review for examination - otherwise the adopted Local Plan would have been “deemed to be out of date” by virtue of the provisions of Policy S1 as adopted, with adverse and unsound consequences for development management in the District.
9. The development management system is ‘plan-led’ - this means that planning applications are determined in accordance with the development plan unless other material considerations indicate otherwise.
10. The NPPF is one such material consideration. The 2019 version includes (¶11) the ‘presumption in favour of sustainable development’ which includes, so far as decision-taking is concerned:

“c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting permission unless: .....

11. So far as ¶11.c) and d) are concerned, a plan or a ‘most important’ plan policy that, on its face, is deemed to be out of date, is likely to be determinative that the plan is not up-to-date and the policy is out-of-date.
12. In effect, the tail-piece to adopted policy S1 would , if it was to remain in place, take away the planning judgment that a decision-taker would otherwise apply in ¶11 of the NPPF. The adopted plan (submitted on 4 October 2016) was examined against the policies in the 2012 edition of the NPPF. The equivalent policy was at ¶14. Since the plan was examined the Courts have confirmed that whether or not policies are up-to-date is a matter of planning judgment unless the ‘deeming’ provisions in the NPPF apply.
13. The inspector examining the now adopted Local Plan knew full well the consequences of the deeming provision in policy S1 he found ‘sound’. That is not surprising given the evidence base at the time included that determination of the amount of unmet need was imminent. It was also ‘sound’ to ‘hold the Council’s feet to the fire’ when it came to agreeing what ‘fair share’ NWL should provide for and submitting a local plan review to meet it.
14. However, even ‘best laid plans’ can be de-railed as the Council explains in the introductory text to the Partial Review document submitted (LP/01). As one of the

representors (Pegasus Group) accepts in its Issue 2 statement (¶1.3) “In hindsight, the wording of the final paragraph of Policy S1 in the adopted NWL Local Plan is perhaps unfortunate and unduly onerous....”.

15. The proposed changes to policy S1 will not mean that in considering planning applications a decision-taker will inevitably conclude that all policies, or at least the most important policies, relevant to the determination of the planning application are up-to-date. That will still be a matter of planning judgment applying the usual principles. But it will ensure that not all of them are deemed to be out-of-date. Planning applications will therefore be determined in the ‘normal’ way. It has been suggested that a ‘back-stop’ date for the agreement of a SoCG ought to be inserted into the proposed wording for policy S1. This is not sound - the SoCG will be agreed when it is agreed. If there is an unreasonable delay, it will be open to decision-takers to take this into account in deciding whether, as a matter of planning judgment, certain policies in the plan should be regarded as being out-of-date.
16. The Council has not delayed in carrying out a substantive review of the adopted plan - in parallel with this partial review, the substantive review for a Replacement Local Plan has proceeded apace. The replacement tail-piece is a ‘sound’ approach in that context. If, the Council delays, then it will be open to a decision-taker, as a matter of planning judgment, to consider that in the context of whether the most important policies are up-to-date.
17. This opening statement sets the context for the remainder of the examination.