

## BIRMINGHAM DEVELOPMENT PLAN EXAMINATION

### Examination Statement Matter E : Green Belt policy, the Langley Sustainable Urban Extension (SUE) allocation and the Peddimore employment allocation (BDP policies TP10 & GA5-6)

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**Main Issue: Does the plan comply with national policy in its approach to the Green Belt? Are the Langley SUE and Peddimore employment allocations justified and deliverable? Should other Green Belt and/or major greenfield allocations be made?**

**Question 2: Do exceptional circumstances exist which justify an alteration to the Green Belt boundary to accommodate 6,000 dwellings?**

1. **Response:** The National Planning Policy Framework (NPPF) sets out at paragraph 14 that local authorities should meet their full objectively assessed need unless policies in the NPPF set out that development should be restricted. Green Belt policy is referred to in the footnote of paragraph 14 as one such restrictive policy. However, in the context of this, the Council has set out in paragraph 5.56 of the Birmingham Plan that the Council considers that the **“limited capacity of the urban area to meet the needs of the City’s growing population represents exceptional circumstances which justify the release of land from the Green Belt for housing development”**. It has therefore set out the justification to altering the Green Belt.
2. As for the weight of the justification, given the extensive level of housing need in the City and the fact that Birmingham is the country’s second city with exceptional responsibility to generate economic growth and provide for its population and wider housing market area, it is very clear that the Council is **fully justified** in its rational that exceptional circumstances for development in the Green Belt exist.

**Question 4 (a) Is there adequate justification, including Sustainability Appraisal and assessment of the transport, education, health, drainage, sewerage and other infrastructure implications, for the selection of Green Belt “Area C” to accommodate the Langley SUE?**

3. RPS has objection to the inclusion of Area C on the basis that the justification for Area C to accommodate the Langley SUE is not adequately demonstrated. The Council seeks to justify this principally within its Sustainability Appraisal (SA).

#### *Sustainability Appraisal*

4. RPS submitted representations on behalf of the Sutton Coldfield Charitable Trust and Bishop Vesey’s Grammar School (SCSCT & BVG) stating that there are significant flaws in the SA process generally and the justification for selection of the Langley SUE over other locations. Those representations are duly made and they are not repeated here.
5. However, with regard to the question above, observations are made in respect of the Council’s SA process and justification of Area C, over other reasonable alternatives.

6. Most concerning is the latest Sustainability Appraisal Report (June 2014) that does not include statutory requirements of the SEA Directive or meet the legislative requirements for development plan preparation in respect of justification for Langley SUE.
7. The SEA Directive at Article 5(1) Annex I(h) sets out that the Environment Report (for the purposes of SEA Directive) must contain an assessment of the alternatives and specifically:

***“outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information” Annex 1(h) of the SEA Directive.***
8. The SA report published in June 2014 does not contain this information. It contains no reference to the reasonable alternative of Area B or land at Withy Hill Farm or the reasons why this alternative, alongside the wider area of Area B has not been selected/discounted. It simply appraises the policies of the Plan.
9. RPS is aware that the Council has sought to develop an option and alternative appraisal process to justify the choices contained within the final plan compared to the alternatives is absent from the Final SA Report. This is, however, required to be set out in the final SA Report. In this context, RPS refers to the *Forest Heath* Judgement that clarifies that consultees should be able to find, **in the Final SA Report**, clear explanation of the reasonable alternatives considered within the preparation of a Plan, and the reason for their inclusion or exclusion from the proposals. It states (paragraph 15 refers) that the Environmental Report may rely on earlier material published, **but must bring it together so that it is identifiable in that report and that those affected should not have to read all previous reports to ascertain the current position.**
10. This is clarified in paragraph 40 of the *Forest Heath* Judgement that states ***“it was not possible for the consultees to know from it what were the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in the residential development made no difference. The previous reports did not properly give the necessary explanations and reasons and in any event were not sufficiently summarised nor were the relevant passages identified in the final report. There was thus a failure to comply with the requirements of the Directive and so relief must be given to the claimants”.***
11. The same is true of the submission SA report for Birmingham, in that it is not possible to derive from it the reasons for specifically rejecting the alternatives to Area C. Equally, and while various options have been appraised in previous documents for the Birmingham Plan, it is not possible for consultees to know from these documents the reasons. As such the SA Report is not robust enough to justify the selection of Area C.
12. In the context of the above, RPS refers to page (x) of the Submission SA Report that sets out that the information required of Annex I(h) of the SEA Directive will only be made available as through a ‘Post Adoption Statement’ following the adoption of the Birmingham Development Plan. The same is stated in reference to the consultation opinions expressed on the SA and the manner in which they

have been taken into account. This is believed to be unlawful as this information should be made available up front at submission and be subject to full and proper scrutiny as part of the Examination process, not deferred to a 'Statement' published post adoption.

13. In substantiating the above position, RPS makes reference to Article 8 of the SEA Directive that states that the information required within Article 5 of the SEA Directive (for example the reasons for choosing Area C in light of reasonable alternatives and the reason for not selecting alternatives) should be taken into account **before its adoption or submission to the legislative procedure**. The full text is below.

***“The environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure” [RPS emphasis].***  
*Article 8 of the SEA Directive (Decision Making)*

14. Furthermore, the Town and Country Planning (Local Planning) (England) Regulations 2012 sets out at Regulation 22 that the documents for submission to the Secretary of State for the purposes of the examination includes the Sustainability Appraisal Report. The Submission Documents for the purposes of the Regulations therefore comprises the SA/SEA Report in its final form.
15. The above is particularly pertinent given that SA Report states on page (x) that representations made on the Pre-submission Plan did not give rise to substantive issues to which the SA should respond. This is concerning as the SCCT & BVGS submitted substantive comments alongside others and no record is available on how those issues have been addressed or considered in accordance with Article 2 (b) of the SEA/SA Directive.
16. RPS makes the above statements fully conscious of Article 9 of the SEA Directive that sets out that post adoption the Council must release a statement on the decision. However, the Council's SA Consultant has read the requirement to include this information in a Statement that is published post adoption under Article 9 but not the need for this same information to be considered included within the Environmental Report prior to adoption and submission under Article 8.
17. These are two separate requirements and cannot be confused as being the same. Article 8 expressly states the Environmental Report [in its full form] should be taken into account **before** its adoption and submission to the legislative procedure, thus the information being considered as part of the examination of the Plan, with a subsequent 'Statement' on the matters published in accordance with Article 9 post adoption of the Plan. The purpose of the post adoption Statement is to explain any matters of change as a result of the examination / modifications process through to adoption.
18. Article 8 is concerned with making the information available in advance of decisions, to be considered as part of the decision making process, with Article 9 provides an updated in respect of the decision. If this were not the case, then Articles 8 and 9 would not exist as they are written and would not use future and

past tense language in the text of **'before adoption'** and **'when a Plan is adopted'**.

19. Therefore withholding this information from being considered as a part of the examination by not including the information is not compliant with SEA legislation.
20. Therefore, pursuant to the representations already made in respect of their being no robust SEA/SA justification for the Langley SUE it is considered that the SA/SEA Report available to the examination is also similarly significantly deficient as there is no evidence of justification of the location in light of other reasonable alternatives, or evidence on why those alternatives have not been selected. Furthermore, there is no **evidence available to the examination on how the Council has considered the representations made by the SCCT&BVGS in advance of submission to the examination under Article 8.**

**Question 4 (b) Is the SUE Deliverable within the expected timescales?**

21. The entire SUE is not considered deliverable within the Plan period for 5,000 dwellings. The Council has not fully demonstrated how the development of 5,000 dwellings will be delivered within the Plan period.

**Question 8 : Do exceptional circumstances exist which justify further alterations to the Green Belt boundary to release additional land for housing and/or employment development, either within the Plan period or as safeguarded land for development beyond the Plan period?**

22. As set out in the SCCT&BVGS response to Matter A and the paragraphs above, the Council has identified exceptional circumstances do exist for the release of Green Belt land and this is soundly based. RPS concurs that the circumstances justify the release of further land in the Green Belt, particularly given the Plan's stated aim of delivering the objectively assessed need.
23. In the context of the extent to which further Green Belt land should be released, this should be considered fully within the policies contained within the NPPF.
24. The NPPF provides the authority of not meeting its Objectively Assessed Need (OAN) for housing if it considers that Green Belt policy should be used as a constraint on meeting housing need (paragraph 14 refers). However, the Council has not enacted this component of the NPPF as it is amending its Green Belt to meet housing need. The question of Green Belt in principle being used has therefore already been accepted. It therefore considers that housing need does outweigh the importance of the Green Belt in light of paragraph 14 of the NPPF. This is confirmed as set out in more detail within RPS response to Matter A where it is demonstrated that the Council has made an expressly clear commitment to meet its unmet need, albeit through suggesting that growth elsewhere in neighbouring authorities can achieve this need.
25. The Plan is therefore built on this basis that housing need outweighs Green Belt policy and therefore to be sound, the Plan must establish mechanisms to meet its full aspirations of meeting housing need. If it does not, then a radical alteration to the Plan would be necessary to develop a strategy that sought at the outset to not meet unmet housing need, which would be radically different to that submitted.

26. In this context it is therefore clear that the Council is intending to meet its full OAN and while the mechanisms to fully do so are not contained within the Plan, there is clear justification to release additional land from the Green Belt within the Council's Vision and Strategic Priorities.
27. While the decision to release land in the Green Belt **has been made** and the justification is robust, the most pertinent consideration on this issue is the extent to which the Council's actions following the decision to release land from the Green Belt are consistent with the components of the NPPF Green Belt policy that set out the procedure for redefining the Green Belt boundaries. This is set out below.
28. **Paragraph 83** sets out that the Green Belt boundaries should have regard to their intended permanence in the long term so that they are capable of enduring beyond the Plan period;
29. **Paragraph 84** sets out that when reviewing Green Belt boundaries local authorities should promote sustainable patterns of development
30. **Paragraph 85** sets out that

***“when defining boundaries, local planning authorities should***

- ***ensure consistency with the Local Plan strategy for meeting identified requirements for sustainable development;***
  - ***not include land which it is unnecessary to keep permanently open;***
  - ***where necessary, identify in their plans areas of ‘safeguarded land’ between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period;***
  - ***make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development;***
  - ***satisfy themselves that Green Belt boundaries will not need to be altered at the end of the development plan period; and***
  - ***define boundaries clearly, using physical features that are readily recognisable and likely to be permanent”.***
31. It is therefore expected that when reviewing Green Belt boundaries, the Council must demonstrate how it is consistent with each of the above criteria. Most pertinent of these is the requirement to **ensure consistency with the Local Plan strategy** for meeting identified requirements for sustainable development. In this context, the Council has (as set out in the SCCT&BVGS response to Matter A) set out a strategy of meeting housing need, a vision for a healthy and economically prosperous city.
  32. On the basis of the above and given that the City has set out a Vision and Strategic Priorities for positive housing and economic outcomes, a sustainable

Birmingham is one where the City will meet its full housing and employment needs.

33. Therefore given that the City is not planning on meeting its full needs and a shortfall of 30,000 plus dwellings will lead to unsustainable levels of poor housing provision and increasing housing need, the City's policies are not consistent with its Local Plan Strategy for meeting identified requirements (paragraph 85 (i) of the NPPF) and as such unsound. The justification for additional Green Belt release is therefore provided against paragraph 85 (i) above in that the Councils Local Plan Strategy and vision is for an economically and successful and sustainable City. **Paragraph 85 of the NPPF therefore justifies further Green Belt release.**
34. Furthermore in reviewing its boundaries, the Council should ensure that its boundaries will not be altered at the end of the Plan period (paragraph 83 of the NPPF).
35. Most pertinent to this issue is the consideration that a significant number of adjoining authorities have already proposed review mechanisms to adjust Green Belt boundaries within their own local Plans to accommodating unmet need from Birmingham City once established. It is accepted that this can be an appropriate mechanism for an authority who is receiving additional levels of growth from an authority that has not yet established its unmet need. However, for the authority that is in the first instance establishing that level of unmet need to be met by others, it is not appropriate to use a similar review mechanism to address its own unmet need, or indeed rely on the untimetabled reviews of others. It must in the first instance secure for itself the conformity with paragraph 85 of the NPPF in respect of its own Green Belt boundary permanence and then inform the potential future needs of adjoining authorities.
36. This is critical as the review mechanisms of adjoining authorities cannot be **further predicated** on a potential future review of Birmingham's Green Belt boundaries, otherwise a perpetual period of short term planning / review of Green Belt boundaries will arise in the sub-region contrary to the NPPF.
37. Neighbouring authorities must instead be able base their review of Green Belt boundaries upon certainty that Birmingham has undertaken a comprehensive review of its own long term Green Belt boundaries (including safeguarded land) in accordance with paragraph 83 and 85 of the NPPF so that future housing needs within the City's boundary can be adequately planned for with confidence. In turn, neighbouring authorities can then produce Local Plan reviews including long term Green Belt boundary amendments of their own that have the permanence required in the NPPF.
38. In summary, the Council has decided to meet housing need and review the Green Belt. It therefore must logically follow that approach against paragraphs 83, 84 and 85 of the NPPF before defining its Green Belt boundaries. The Council has not demonstrated consistency with this requirement and instead sought to undertake a separate exercise of assessing parcels of land against Green Belt policy purposes. Unfortunately it has missed the process through which the NPPF states it must follow and as such is unsound.
39. The Plan should therefore release additional land in sustainable locations such as Withy Hill Farm that is within Area B2 and adjacent to the northern boundary

of Area C currently allocated. This would assist the Council in meeting its paragraph 85 and 85 requirements of the NPPF subsequent to the decision to review the Green Belt.

**Question 9**

**a) if additional housing or employment land is required, or if the selection of the Langley SUE / Peddimore site(s) is found not to be justified, is there justification, including SA, to release other specific areas(s) of Green Belt for development?**

**b) Would the development of the other area(s) / major greenfield sites(s) be achievable within the Plan period, or**

**c) should it/they be safeguarded for development beyond the Plan period?**

40. In answering sub-questions a, b and c, RPS has submitted substantial evidence on behalf of the SCCT&BVGS that land exists at Wither Hill Farm in a highly sustainable location adjacent to the current proposed allocation at Area C. The information is not submitted again in duplicate as the Inspector already holds this information. However in summary the following is provided with further evidence contained Section 7 of the RPS submission representations.
41. The evidence submitted to the pre-submission draft Plan included evidence correcting the Council's evidence in respect of the land at Wither Hill Farm on a number of technical matters. The submission refers to evidence already held by the Council in respect of the site submitted by RPS that demonstrates that there are no overriding constraints to development on Wither Hill Farm.
42. The area is entirely capable of being delivered as it is within two landowners that have agreed to jointly promote the site. It is constraint free as evidenced by the promotional document and evidence base studies that have been prepared for the site. It can also contribute to the Council's five year housing land supply and the long term strategic needs of the Plan through the delivery of up to 1,000 dwellings.
43. In respect of justification for inclusion of Wither Hill Farm, the site has been included within the Council's SA and consultation process as part of Area B2. As such there exists no procedural plan making constraints for inclusion of the site through the modifications to the Plan as justified by the evidence provided.
44. The site also forms part of the wider Area B of the Sutton Coldfield Arc that has been promoted to the Council by RPS in the submissions made to the Pre-submission consultation. The Sutton Coldfield Arc is part of a partnership with the land owners promoting the wider area of Area B as a comprehensive approach to meeting the needs of Birmingham, all of which have been through the Council's SA and consultation processes.
45. In respect of the Council's assessment of the area of Wither Hill Farm (B2 in the Green Belt Assessment Report), RPS set out a number of errors and inconsistencies in the Council's evidence. This is contained within Section 5 of the representation made by RPS and held by the Inspector. In summary, this concluded that using the Council's own evidence a number of concluding statements in the Council's assessment in respect of the land at Wither Hill Farm



were inconsistent or incorrect. Appendix 3 of the February 2014 representations made by RPS provides the accurate assessment of the land at Withy Hill illustrating that the proposals is a highly sustainable location for development, principally using the council's evidence.

46. The land at Withy Hill Farm is therefore considered highly sustainable, consistent with the strategy of the Plan, without significant land or ownership constraint and available.