

SUBMISSION DRAFT GILSTON AREA NEIGHBOURHOOD PLAN 2020-2033

EXAMINATION

EXAMINER'S NOTE 2

1. The main purpose of this Note 2 is to set out some serious concerns that I have, at this early stage of the Examination, as to the compliance of the NP with the basic conditions set out in Schedule 4B of the Town and Country Planning Act 1990, paragraph 8(2). My particular focus of concern is sub-paragraph (a): *“having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan”*.
2. The policies and guidance that are relevant include the following.
3. The NPPF follows the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004. See paragraphs 12, 13 (*“The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings”*), and 16d (*“contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals*) and f (*“serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area...”*).
4. Paragraph 102 advises that *“Transport issues should be considered from the earliest stages of plan-making and development proposals so that: (a) the potential impacts of development on transport networks can be addressed; (b) [and one can address] “...the scale, location and density of development that can be accommodated”*.
5. Planning Practice Guidance on neighbourhood plans is the “advice contained in guidance” referred to above.
6. The advice that is particularly relevant to my concerns is as follows:
 - a. Paragraph 040: *“...The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan...”*
 - b. Paragraph 041: *“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence..”, recognising that it may provide (paragraph 074) *“...an additional level of detail and/or a distinct local approach to that set out in the strategic policy...”*.*

- c. Paragraph 045: In relation to infrastructure : *“The following may be important considerations for a qualifying body to consider when addressing infrastructure in a neighbourhood plan:*
- i. what additional infrastructure may be needed to enable development proposed in a neighbourhood plan to be delivered in a sustainable way*
 - ii. how any additional infrastructure requirements might be delivered*
 - iii. what impact the infrastructure requirements may have in the viability of a proposal in a draft neighbourhood plan and therefore its delivery*
 - iv. what are the likely impacts of proposed site allocation options or policies on physical infrastructure and on the capacity of existing services, which could help shape decisions on the best site choices”.*
- d. Paragraph 046: *“A qualifying body should set out and explain in their draft neighbourhood plan the prioritised infrastructure required to address the demands of the development identified in the plan”.*
7. *“A statutory requirement of this kind requires a decision maker not only to take national policies into account but also to observe them and depart from them only if there are clear reasons for doing so....Accordingly although..... an examiner must decide whether it is appropriate for a plan to proceed having regard to national policy, a departure from that policy must be explained”*: Court of Appeal in R (Lochailort Investments Limited) v Mendip District Council [2020] EWCA Civ 1259, paragraph 6.
8. The effect of the above policy and guidance may be stated in short summary: the development plan (which here will consist of the East Herts District Plan October 2018 [DP] and this NP) is to inform the reader, so as to provide the framework for decisions on planning applications, as to where and when development may take place (and where it is not expected to take place), in the light of all relevant constraints, its location(s), amount, type, appearance etc, and what infrastructure is needed for that development and when it is likely to be required. This brings me to my **first and most acute main concern**.
9. The strategic context for the NP is provided in Policies GA1 and GA2, set out succinctly (10 pages) in Chapter 10 of the DP. It is for the NP to provide additional detail and/or a distinct local approach, and to provide the framework summarised in paragraph 8 above. As the DP itself states at paragraph 3.4.2 NP’s *“...will be able to shape and influence where development in the local area will go and what it will look like”.*
10. There is a positively bewildering array of planning documents that set out provisions (whether to be described as policy, guidance, design guidance, vision etc) seeking to guide

the nature, extent, appearance, required infrastructure for development and protection of natural and built assets. None is a development plan (which has been through the statutory process of, inter alia, independent scrutiny and examination). A very incomplete list of such documents includes:

- a. The Concept Framework July 2018
- b. The Gilston Area Charter SPD June 2020
- c. The Harlow and Gilston Garden Town Vision November 2018, Design Guide November 2018, Sustainable Transport Strategy January 2020 draft, the Infrastructure Delivery Plan April 2019.

11. I discuss the Concept Framework [CF] first. It appears that the CF was produced (see pages 4, 6, 172 and many such references) to provide sufficient evidence for the Gilston Area to be allocated in the then emerging DP (and for the purposes of its examination), and to show that there would be “no show stoppers”. It appears to have been written by the two landowners, and EHDC. Since it did not (any more than the DP) contemplate a NP for the same area, it set out to establish policy. It sets out “development principles that will inform future planning decisions.....establish key principles for development including land use, movement.....” etc. Accordingly its Spatial Framework shows (eg page 79) the locations and general extent of the 7 villages, and indicates (eg page 137) the approximate number of dwellings assigned to each village. It contains extensive material indicating density and how built development will be designed, and how countryside, spaces, landscaping and other such topics are to be dealt with. Accordingly it—and not the development plan—shows “where development will go and what it will look like”.
12. As noted, it appears that those involved in the preparation and examination of the DP did not contemplate this NP. Hence Policy GA1 II says that the CF will be used as a benchmark for “reviewing” proposals for development, though recognising that “*Prior to the submission of any planning application(s) further design work through the pre-application engagement process will be required in order to agree, among other things, the quantum and distribution of land uses, access and layout principles*”. The subsequent advent of this NP, however, with its statutory role, now requires the DP to be considered alongside this NP (assuming it passes the present process and is made, to become part of the development plan).
13. Consistently with the CF the draft NP provides a primary role to planning applications in the formulation of development principles. They are to “*....set a spatial framework for the detailed masterplanning of villages, establishing parameters for the location of built development, protection of open space and heritage assets, provision of infrastructure etc*”.

The planning applications are to set “*principles*” for the preparation of “...*a Strategic Landscape Masterplan for the whole area and Masterplans for each village...*”: draft NP paragraph 369. In terms of infrastructure “*Details of the infrastructure triggers to control the delivery of key infrastructure must be provided as part of the outline planning applications....A key element of the planning application and masterplanning process will be to establish how the specific infrastructure required for each development allocation will be delivered*”: draft NP paragraphs 247, 252 (I am uncertain where one can find “*each development allocation*” set out, save in the CF). In other words, the proper role of the NP as a development plan is being delegated to planning applications. The landowners are (understandably) keen that the NP should not “*pre-empt*” the development management process.

14. The NPG state (at page 5 of their Comments Following Reg.16 Consultation) that “*We have not tested and are not in a position to verify the capacity of the village areas: this was the responsibility of the developers and the Council at the time of the Local Plan preparation and it is not a task that can reasonably be expected to be undertaken by the Neighbourhood Plan Group*” and “*All references to maximum heights and densities which were advocated by the community at the time of the Reg.14 Consultation have been removed at the request of both developers to allow a more flexible exploration of the most appropriate design response*”.
15. The draft NP contains copious cross-references to the CF. They are plainly to be read together.
16. When a development plan is planning for significant housing growth by way (as here) of new villages in the countryside, one would expect to be able to identify in the development plan the location and extent of each village, its proposed dwelling number(s), density, heights of development, the associated physical (and other) infrastructure required, and the relationship between development quantum and required infrastructure. These are matters addressed in the CF. It appears that the primary motive for producing the NP was “...to elevate [the CF] to formal policy status...”: CF paragraph 6. As things stand, these matters are to be identified outside the development plan, by a process involving informal planning documents and now driven by planning applications.
17. I referred at paragraph 10 above to the array of other planning documents (apart from the CF) that are extensively cross-referenced and discussed in the NP. This brings me to my **second main concern**. The clear advice is that a NP should be concise and avoid unnecessary duplication with other policies. The NP is 198 pages long. The planning documents that are cross-referenced and incorporated are, I suspect, over 1000 pages long. There is very

extensive duplication with such documents. Just focussing on the NP, I do not doubt that it contains a considerable number of excellent expressions of the community response to the challenge, set out in a number of principles and objectives, such as that the development should be by way of individual villages in a rural landscape rather than urban neighbourhoods separated by green fingers; that there should be 7 separate and distinctive new villages, each separated by landscape; that the distinctive character of the existing villages should be protected; that existing landscape assets and heritage assets should be protected; that the development should be distinct from Harlow. But these topics are endlessly repeated, both in the policies and even more so in the supporting text. The policies account for some 15 pages, about 7% of the NP.

18. My **third main concern** relates to how the provision of infrastructure, and especially transport infrastructure is deal with in the draft NP. I have set out above what the NPPF and PPG expect of a NP in this respect. The NP does not inform the reader in these terms. Instead, it simply delegates (see pages 105-108 and AG9) these decisions to two processes outside the development plan, the Infrastructure Delivery Plan 2019 and the planning application process. I entirely appreciate that the River Stort Crossings (DP Policy GA2) are the responsibility of the several agencies referred to in GA2, and that they are necessarily outside the remit of the NPG. However, the NP fails to “...set out and explain...the prioritised infrastructure required to address the demands of the development identified in the plan”.
19. Accordingly I will wish to receive representations, in advance and/or at the proposed hearing, as follows:
 - a. In relation to my **first main concern**, as to whether the draft NP departs from national policy and and advice in guidance in the respects set out above and, if so, whether it is now possible to explain that departure by way of proposed modifications.
 - b. Likewise in relation to my **second main concern**.
 - c. Likewise in relation to my **third main concern**.

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Examiner

26 October 2020