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Dear Mr King

Hartlepool Local Plan Examination
Inspector's Initial Observations

As you will know I have been appointed to examine the Hartlepool Local Plan (HLP). In the initial part of my examination my primary focus has been on the duty to cooperate and certain specific strategic matters which experience has shown can result in fundamental problems with a plan. Accordingly, my preliminary read through the HLP, supporting documentation and representations has been directed to these considerations. As a result I have a number of initial queries to which I am seeking your response/assistance. I stress that this is without prejudice to anything that may need to be explored later in the examination, including at the hearings, and that it does not cover all the points on which I may need further information or clarification in due course.

Duty to Cooperate

Amended section 20(7B) of the 2004 Act establishes that the duty to co-operate is incapable of modification at examination. It is therefore important that this is considered at an early stage because if the legal requirement is not fulfilled then an Inspector has no choice other than to recommend non-adoption of a local plan.

I have read the latest Duty to Cooperate Statement (HLP015a) and Appendix 6 of the AMR 2015/16 (HLP043). I understand Wynyard is of particular local significance. There will be, however, other broader cross-boundary issues which need to be examined, not least assumptions informing the OAN, including those on employment trends and net in-migration.

I am satisfied that there has been dialogue with neighbouring authorities and relevant public bodies but the examination will need to test whether it has been in accordance with the Duty to "engage constructively, actively and on an on-going basis". With this in mind, it may well be useful if the Council's Statement (HLP015a) could be amplified with evidence (perhaps presented in

accompanying appendices), that corroborates the scale of cooperation described in the Statement (minutes of meetings, memoranda of understanding etc.).

Whilst LEPs (TVCA) are not subject to the Duty, the Planning Practice Guidance (PPG)¹ is clear that there must be cooperation with them. I remain unclear from the evidence as to the degree to which there has been cooperation at a Tees Valley level including through the auspices of the TVCA and its predecessor. No doubt, the Council will be able to explain this to me in due course at the hearings but I would be grateful at this early stage to understand at what point was the Hartlepool Local Plan considered at the Tees Valley Planning Managers meetings? Was it also discussed at the Tees Valley Directors of Place meetings? In respect of all these meetings are they more than consultative or information-sharing?

I note there have been further meetings with Stockton and County Durham outside of the forums described above. Were these meetings at officer level? Has there been any dialogue at Member level with adjoining authorities on strategic planning matters? Are there any minutes or action points that arose from these meetings?

Is there evidence of the frequency of Wynyard working group meetings, its terms of reference, and the outcomes of those meetings²? Is there a copy of the memorandum of understanding in respect of Wynyard? Will the working group provide a mechanism for sustained joint working post Plan adoption?

Is there evidence to support the Duty to Cooperate Statement at paragraph 6.48 that the SHMA and SHMA addendum have been discussed and Hartlepool's containment as a HMA agreed at the Tees Valley Planning Managers Group? Did the SHMA preparation process itself involve any dialogue/engagement with adjoining authorities?

I also note Natural England have referred to the scope for cross administrative border working in terms of developing effective mitigation strategies for recreational disturbance. Is there dialogue and engagement with others on such strategies for the Teesmouth and Cleveland Coast SPA and the Durham Coast SAC? What cooperation has been taking place through the Tees Estuary Partnership?

Meeting Objectively Assessed Housing Needs

The National Planning Policy Framework (NPPF) aims to boost significantly the supply of housing. To this end it requires that local planning authorities should

¹ PPG para 9-006-20160519

² Is this captured in paragraph 6.30 of HLP015a or have there been other meetings?

use their evidence base to ensure that the Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies of the NPPF. It is a soundness requirement of the NPPF that the Plan should seek to meet objectively assessed development and infrastructure requirements where it is reasonable to do so and consistent with achieving sustainable development. In the first instance therefore it is important that the objectively assessed housing needs of the housing market area are established.

I am pleased to see that the Council has produced a SHMA addendum that reflects the latest 2014 CLG household projections and that this was available alongside the consultation on the published Plan. The SHMA addendum references demographic analysis prepared in 2016 by Tees Valley Unlimited (paragraph 4.2) and TVCA (paragraph 4.3). Can this be made available? Is it one and the same source of evidence? [Is this an update to the POPGROUP analysis referred to in the SHMA?].

Having read the evidence before me the examination will need to look carefully at the adjustments for 'employment trends'. This will include looking at the reasonableness of assumptions on economic activity rates (with an aging working population), long term unemployment trends and commuting ratios. The robustness of the assumptions of 15% inward migration and improved retention of households planning to move (paragraph 4.18 of SHMA addendum) to meet the LEPs SEP jobs target are also important. Are these assumptions realistic? What has informed them? Where will the workers come from and does this raise Duty to Cooperate issues? How does this compare to known trends?

In light of a number of representations expressing concern about the transparency of the OAN I consider it would be of assistance to the examination if the Council could prepare a Housing and Employment Growth Topic Paper to bring together the evidence which justifies/explains the scenarios for growth and the preferred approach it has taken to OAN. This should include the preference for the LEPs SEP³ forecasts (and modelling) compared to the ELR (using the Oxford Econometrics approach) and the rationale for the scenario D2 applied in the SHMA addendum 2016.

In terms of the OAN, housing requirement and housing land supply, I raise the following aspects at this early point, not necessarily for a response now but to flag up to the Council they will form part of the agenda for hearing sessions and to which the Council may wish to give some additional consideration to.

- Soundness of the proposed Strategic Gaps
- Contingency arrangements in the event that housing delivery does not materialise as envisaged. Was the Monitoring Framework (HLP007)

³ I have not yet seen a copy of this document (ref HLP100)

available for consultation with the Plan? Should it form an appendix to the Plan?

- Timing, viability and delivery of High Tunstall
- The scale of housing growth at Wynyard
- The latest evidence on demolitions and replacements
- The durability of a 5.04 year housing land supply.
- The basis for the 20% figure as a buffer for affordable housing delivery as part of the housing requirement.

Sustainability Appraisal (SA)

Section 19(5) of the Planning and Compulsory Purchase Act, 2004 requires local authorities to carry out a Sustainability Appraisal (SA) of the Local Plan. SA incorporates a process set out in European Directive 2001/42/EC ('the SEA Directive') and related UK regulations (Environmental Assessment of Plans and Programmes Regulations 2004 – S.I. 2004 No. 1633) called Strategic Environmental Assessment (SEA).

SA should identify, describe and evaluate the likely significant effects of implementing the plan and reasonable alternatives, with the aim of establishing that the plan is the most appropriate. Reasonable alternatives are the different options considered in developing the policies; they must be sufficiently distinct to enable comparisons to be made of their different sustainability implications, and they must be realistic and deliverable.

SA is inherently an iterative process and it should be proportionate to the content and level of detail in the plan⁴. SA/SEA has provided a rich seam for legal challenge to Plan adoption but it is an area of plan-making which is capable of being supplemented and strengthened during the examination process, where necessary.

It is evident that the submitted SA accompanying the published HLP (document HLP003) has carefully considered how the published policies perform against the sustainability criteria and objectives. I particularly like the fact that a multi-disciplinary team, including officers outside of the planning policy team, have been integral to the SA assessment process. I have also looked at the SA report at the "Preferred Options" stage in May 2016 (document HLP017). I have not yet been able to access the SA Scoping Report, which should be made available as a core document.

I note the narrative at paragraphs 6.2-6.18 of document HLP003 (similar to 6.2 – 6.13 of the document HLP017) in terms of the evolution of the preferred options. I have also looked at the "proposed recommendations" not taken forward as set out in Section 6 of both documents. With this in mind, a number of representations on the published plan advocate alternative locational strategies, policy thresholds/criteria and/or alternative development

⁴ NPPF paragraph 167 & PPG ID 11-00920140306

proposals/sites. The section on “proposed recommendations” in HLP003 and HLP017, together with Section 7 in HLP003, does not cover all the alternatives suggested through the representations.

From what I have read I will need reassurance from the Council that reasonable alternatives, including a “do nothing” (as required under SEA), have been appraised through SA, thus reinforcing why the Plan’s contents would result in the most sustainable outcomes⁵. In this regard I have in my mind the judgement in Wealden District Council⁶ where it was clear that alternatives need to be considered, even where nobody is suggesting such. If reasonable alternatives have been appraised through the SA templates, I would be grateful to be pointed to the material. As the courts have held, reasonable alternatives need to be considered on a “like-for-like basis”.

It is also necessary that there is a clear audit trail which explains why certain unrealistic or unreasonable alternatives have been rejected and not appraised. I am not persuaded that Sections 6 and 7 or Appendix 2 of HLP003 adequately does this. Again, if another document has done this critique it would be helpful to be pointed to it.

I am also unclear having read the iterations of SA as to how the SEA requirements have been addressed. I appreciate the Scoping Report may well contain this. The areas I am particularly keen to assess include:
Whether there was any engagement with the prescribed SEA bodies (Natural England, Environmental Agency and Historic England) on the sustainability issues in the Borough and establishing the framework criteria?
What is the environmental baseline and what are those environmental characteristics likely to be significantly affected?
If there are potential significant adverse effects, how are these to be prevented, reduced and as fully as possible offset? Is mitigation or amendment to policy required? Can positive effects be enhanced? How does the SA record this? Does SA inform how the policy should be monitored? How is this evaluated against other options? (essentially Stage B in the flow diagram on p5 of HLP003 – see also PPG ID 11-017-20140306 and 11-018-20140306).

I note the SA has a non-technical summary as required. At five paragraphs it is arguably perfunctory and in my view short of what is required. The PPG at ID11-019-20140306 states that the non-technical summary should “....provide a clear, accessible overview of the process and findings.” As currently written it provides very little description of the key sustainability issues for the Borough, what are the likely significant effects of the HLP, and particularly whether they are likely to have a positive impact. In my view, it should be expanded to briefly

⁵ NPPF Paragraph 152

⁶ Ashdown Forest Economic Development v Wealden DC [2015] EWCA Civ 681

summarise “key sustainability issues, problems and opportunities” as well as “likely significant effects” in terms of the key issues (objectives).

Issues around SA can be addressed through an Addendum. This should be done prior to the submission of hearing statements so that representors who are seeking changes to the Plan can respond. For the examination, I consider it important to have in mind the PPG at ID11-022-20140306 in terms of the role of the SA. “The sustainability appraisal report should help to integrate different areas of evidence and to demonstrate why the proposals in the Local Plan are the most appropriate.” From what is submitted before me, I am doubtful that the work fully accords with the requirements for SA/SEA in terms of the tests of soundness (SA being a critical tool in understanding whether the Plan would be justified and effective). To meet the requirements at Schedule 2 of the SEA Regulations, and having regard to the PAS guidance on the Principles of Plan-Making⁷ I would be looking for a report that consisted of the following:

- a Non-Technical Summary;
- a chapter on consultation on the SA
- a chapter setting out the scope and purpose of the appraisal and including an overview of the emerging Local Plan;
- a chapter detailing the evolution of the Local Plan;
- a chapter summarising the key objectives of other plans and programmes and socio-economic and environmental issues relevant to the Local Plan;
- a chapter setting out the approach to appraisal and any difficulties encountered;
- a chapter outlining the likely effects of the implementation of the Local Plan and reasonable alternatives, including cumulative effects, mitigating measures, uncertainties and risks. Reasons for selecting the preferred Local Plan options and rejection of alternatives should be identified; and
- a chapter presenting views on implementation and monitoring.

To conclude this matter, I would invite the Council to respond to confirm that my concerns can be allayed because either the material exists (apologies if I have overlooked this) or there is capacity to remedy some of these issues through an Addendum document prior to the hearings.

Neighbourhood Planning

I note that there are three Neighbourhood Plans coming forward in the Borough. I would be grateful if the Council could provide me with a map showing the designated Neighbourhood Plan areas together with a brief update on their stage of preparation. If there are draft versions of these documents it would be helpful if they are Examination documents. If the timeframe for the future

⁷ Chapter 6 – The Role of SA <http://www.pas.gov.uk/chapter-6-the-role-of-sustainability-appraisal>

stages is known, including the intended date of when these Plans are likely to be made, again that would be of assistance to the examination.

At this early stage of examination it is the inter-relationship between the Hartlepool Rural Neighbourhood Plan and the HLP proposals at Elwick, Hart and the High Volts Strategic Wind Turbine Development area together with the High Tunstall and south-western extensions of Hartlepool which are of interest. Similarly, it would be useful to understand the dynamic between the Wynyard Neighbourhood Plan and the Plan's strategy and proposals for this part of the Borough.

Habitats Regulations Assessment

I appreciate the Council has undertaken an appreciable degree of work on a Habitats Regulations Assessment in terms a stage 1 screening and then a stage 2 appropriate assessment. Nonetheless both Natural England and RSPB have unresolved concerns regarding the likely significant effects of the Plan's proposals (housing, employment and recreation/tourism) on the Teesmouth and Cleveland Coast SPA and the effectiveness of mitigation. I also note Natural England raise issues regarding the proximity of the Durham Coast SAC and the HRA assessment of vulnerability and mitigation on site integrity. Both organisations advise that the published Plan and the work on effectiveness of mitigation means the document is unsound and not legally compliant.

I attach significant weight to the views of Natural England as they are the appropriate conservation body under the Habitats Regulations. I am also mindful that RSPB are also well-placed to comment on the Regulations, particularly in relation to SPAs. I note that the Council recognises the need for additional work and has already suggested additional text in HLP005. I consider the Council's approach is helpful. However, I need to be satisfied that Natural England are able to withdraw the concerns in their representations and that, in the light of the new evidence, that they consider the plan as submitted to be sound. I should therefore be grateful if you could obtain formal reassurance from them in this regard. If Natural England's withdrawal of their concerns is contingent on main modifications being made I should be grateful for the suggested wording of those, which you might want to agree with them.

I also note the Council refers to a "menu" approach to mitigation including SANGS but also to allow for financial contributions towards a diverse and flexible mitigation strategies. Are there established mitigation frameworks for the SPA and SAC which obligations can contribute towards implementation? I also have noted the issue of the pSPA at Phillips Tank Farm/Greatham Tank Farm/Greenabella Marsh (EMP4) and will be seeking clarification from the Council at the hearings.

From my perspective, there is an issue as to whether mitigation should be a sub-section of Policy LS1 or should it be a specific policy in the Natural Environment chapter that would set out an approach for international sites, including a menu of mitigation that reflects measures identified in the HRA (Section 7.3) and how they could be delivered (HRA, Section 7.4), together with other spatial actions the Council could consider either unilaterally or in partnership through bodies such as the Tees Estuary Partnership? The Council has suggested mitigation measures being secured through a SPD in response to the RSPB in HLP005. Is this the Planning Obligations SPD 2015 (updated)? Is this consistent with NPPF paragraph 153? How does it impact on development viability? Does the approach of SPD adequately ensure that there will be no

From the LDS (HLP041) I note there is no reference to preparing a CIL, consequently has the Council given thought to how planning obligations for SPA/SAC mitigation will lawfully be secured?

Having read the RSPBs representations, I will be exploring whether the outputs of the AA are suitably aligned to the Plan's monitoring and implementation framework (HLP007). I am aware that other authorities with similar issues to Hartlepool have committed to the preparation of mitigation, monitoring and delivery plans to ensure that appropriate mitigation (other than on-site SANGS) will be secured. Are there such plans in place and are they examination documents?

Given the comments of Natural England and RSPB, it would be extremely helpful if the Council could continue to engage with both bodies, not only to address their representations and possible modifications to the Plan but also to produce either a statement of common ground or a joint position statement in readiness for the hearings which clearly identifies matters which can be agreed and any which remain in dispute.

Gypsies and Travellers

The 2014 GTAA work undertaken by Renaissance initially identified a "hypothetical" need for 5 permanent pitches and no need for transient pitch provision for Gypsies and Travellers. With regards to permanent provision, the GTAA concludes that the theoretical need for 5 pitches is unlikely to materialise. This would appear to be explained by an amalgam of reasons, including affordability of securing private pitch provision, assumptions that older members of these communities may well not return to trailers/wagons for a variety of reasons and the fall-out from the 2013 consultation around site selection. Is that a fair assessment on my part or is there anything the Council wishes to correct or add?

Accordingly, and having regard to Planning Policy for Traveller Sites (August 2015) (the PPTS), notably paragraphs 4, 7 and 11, is the Council able to advise me on the following:

Does the change in definition at Annex 1 of the 2015 PPTS affect the assessment of need for permanent pitches? (i.e. those who permanently reside in bricks and mortar)

In terms of affordability being a potential factor inhibiting hypothetical need presenting itself as actual need, is private provision the only option? Are there practicable affordable options of pitch provision at the scale identified? Was the 2013 proposal for a private or public site?

The PPTS advises that criteria based policies should only be used where there is no identified need. Is a "hypothetical" need, nonetheless, an identified need?

Has the Council undertaken an equalities impact assessment of the Plan?

Has the Council given any consideration to S124 of the Housing and Planning Act 2016 in terms of a wider assessment of caravan provision?

In addition to consultation on the Plan and Sections 4 & 8 of the GTAA, can the Council evidence specific collaboration with neighbouring authorities either individually or under the umbrella of the TVCA on permanent pitch provision?

In respect of transient provision the GTAA evidence refers to unauthorised encampments, some of which appear to have arisen from those visiting family groups in Hartlepool.

Have any further unauthorised encampments occurred since 2014?

Having regard to paragraph 4 of the PPTS, is there a need to reduce the number of unauthorised encampments and make enforcement more effective? If so, how will the Plan contribute to this?

Again, other than consultation on the Plan and Sections 4 & 8 of the GTAA, can the Council evidence specific collaboration with neighbouring authorities either individually or under the umbrella of the TVCA on transit pitch provision?

Plan-wide viability

A number of representations from the development industry have raised concerns that the Plan has not been subject to viability testing in a manner consistent with national policy. I note the Council has referred to Appendix 1 'Economic Viability Assessment' in the Planning Obligations SPD which was adopted in November 2015. Paragraphs 173 and 174 of the NPPF set out the key parameters when considering Plan viability and deliverability. The NPPF clearly envisages a proportionate "assessment". There is useful guidance on viability in the PPG and I draw the Council's attention to paragraph 10-004-20140306. With this in mind, I have a number of concerns with the Council's approach.

Firstly, the SPD was consulted in Summer 2014. I am unclear as to whether the additional "in house" viability work in Sep/Oct 2015 was consulted on? Its content would appear to pre-date the detailed policies and proposals of the Plan before they were subject to consultation in 2016/2017 and is drawn from

evidence “submitted to the Council over the past few years”⁸. It is uncertain whether the assumptions applied in 2015 remain valid. Some assumptions also appear to be relatively broad-brush. Whilst the PPG advocates a proportionate approach to viability, has the Council considered looking at other site typologies to determine viability at a policy level? (Are all sites deliverable?) Has the Council been monitoring or assessing viability of development proposals in the Borough to build-up a picture of representative land values, development costs and planning obligation costs?

Secondly, the SPD encapsulates the Affordable Housing Economic Viability Assessment (AHEVA) work. The modelling applies various development costs applied to a single, general typology of greenfield housing sites. I note the SPD asserts that there has not been an attempt to underestimate inputs into the modelling. However, it is unclear whether development costs reflect what is now contained in the 2016 Local Infrastructure Plan (HLP031)? Do the development costs reflect the Plan-wide requirements on development as well as those infrastructure obligations identified in policy for specific sites? I note the SHLAA (paragraph 3.45) refers to detailed infrastructure costs for sites, notably transport infrastructure. Was this work done and where would I find it?

Thirdly, what engagement has there been with developers and landowners and other interested parties on understanding deliverability and viability? Has evidence been shared or discussed to ensure that local viability assumptions are clearly understood? The Plan’s locational strategy relies on a number of strategic sites which require (high) infrastructure investment. Is the broad viability of these sites understood and where is the evidence presented? Is there assurance in the evidence that the cumulative costs on strategic sites will not make them unviable?

Additional Technical Evidence

I note from the Council’s response to various representations that there are on-going updates of technical evidence to support the Plan’s contents including, amongst other things, an update to the SFRA, refinements to the Appropriate Assessment under the Habitats Regulations, updated Playing Pitch and Indoor Sports Facility strategies and further evidence in justification of the approach to strategic gaps. I also note that Highways England is seeking the Council to produce a composite resource to pull together the various strands of strategic highways evidence for the examination.

I would be grateful if the Council could confirm that this is the current extent of on-going technical work and the likely timeframe as to when this work will be available to the examination. In the interests of fairness to all parties this

⁸ Page 408, HLP005

additional technical evidence should be available before the programme for the hearings is set. This will enable those with a stake in the Plan to respond to the evidence in any hearing statement they wish to submit as well as orally at the event. As such I am looking to the Council to provide a realistic timeframe as to when the updated evidence will be available to the examination. This will form part of my assessment as to when the hearings will take place.

In respect of SFRA matters, I need to be satisfied that the Environment Agency are able to withdraw the concerns in their representations and that, in the light of the new evidence, that they consider the plan as submitted to be sound. I should therefore be grateful if you could obtain formal reassurance from them in this regard. If the Agency's withdrawal of their concerns is contingent on main modifications being made I should be grateful for the suggested wording of those, which you might want to agree with them. Again, a statement of common ground or joint position statement with the Agency could be helpful to the examination.

I note the SHLAA is dated December 2014 (HLP036). Section 4 of the document identifies that it is a 'living' document. Is there any significant update to the SHLAA content in the intervening two years or an intention to update the SHLAA in the near future? The SHLAA also refers at paragraph 3.44 to a separate report on 5 year housing supply, taking account of updated information. Is that report the Monitoring Report (HLP043) or a separate document/housing land supply position statement?

As an aside, the Council and others have made references to the previous Local Plan Inspectors Report (2013?). For the record, a copy of that report is not before me. Clearly, I am examining a new and different Local Plan which will generate its own issues of soundness and its own bespoke report. However, if the former report is going to be referred to, it will need to be an examination document.

Finally, I note the Health & Safety Executive in their correspondence on the published Plan refer to their advice of 15 July 2016. If not done so already can a copy of this 2016 advice be provided to the examination please.

Proposed modifications to the Plan

I refer the Council to the PPG and paragraph 024 (Reference ID: 12-024-20140306) and the various changes that the Council is outlining in its responses presented in the Consultation Statement. For the purpose of the Examination, changes to the plan need to be referred to as either 'main' or 'additional' modifications. These should be presented in a tabular form and preferably separately. They should be kept as 'live' documents throughout the examination

process and posted onto the Examination website with the latest version available just prior to the hearing sessions.

The distinction between 'main' and 'additional' modifications reflects the provisions of Sections 20 and 23 of the Planning and Compulsory Purchase Act 2004. Any change to the wording of a policy or supporting text necessary to make the plan sound should be presented as a main modification. Please note that any change to the text of the plan which directly relates to and/or would generate a change to the Policies Map should also be recorded as a main modification. Whilst the changes to the Policies Map are not in themselves main modifications (due to the legislation) there will also be a need for the Council to keep a separate running schedule of changes to the Policies Map. I would be grateful if the Council could start the task of formatting its suggested changes in HLP005 into tables of 'main' or 'additional' modifications. Each modification will need a bespoke reference (eg MM1 or AM1 etc.).

Conclusion

As I indicated at the beginning of this letter, my initial consideration of the HLP and its supporting evidence has been selective and directed at these particular matters. If the answers can be found in a core document then please direct me to the relevant document and page/paragraph. I stress that my initial observations in this letter do not mean that I have concluded that the HLP is unsound or is not legally compliant at this point.

I have identified a number of areas of additional work, above and beyond on-going additional technical evidence work. I am guided by the Council as to how long this will take. I remain firmly of the view, that time is better spent now getting these initial matters in order, rather than prematurely starting the hearings. That said, I would like to think that hearings in late June/early July, as indicated by the Council on submission, remain achievable and I will work with the Council to try to make that timetable happen. If, however, more time is needed, then realistically, and avoiding the school/summer holiday period, the hearings would be in the autumn.

I should be grateful for a prompt reply as the points I have raised are mainly seeking clarification / explanation. The Council should already have submitted the evidence on which it is relying. Making an allowance for the Easter period, a response by 5pm on Monday 8 May 2017 at the latest would be appropriate, unless there are particular reasons why the Council would need more time.

Yours sincerely

David Spencer

Inspector.