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By email to Jonathan Manning BSc
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through the Programme Officer

Enquiries to: David Hayward
Direct line:
Email: david.hayward@havant.gov.uk
My reference: CR19
Your reference:
Date: 4 November 2021

Dear Mr Manning & Mr Hatfield

RESPONSE TO INTERIM FINDINGS REPORT

1. Thank you for providing the Interim Findings Report, which has been added to the Examination Library with the reference CR18. This response letter will be added to the Examination Library with the reference CR19 and is provided following discussion with the Council's Cabinet, Chief Executive and Directors. This letter is provided immediately following publication of the Interim Findings Report in to provide yourselves as well the Borough's residents and the development industry with the necessary certainty that the matters highlighted are being addressed.
2. The Council is obviously disappointed by the conclusions reached regarding stage 1 of the Examination. It is appreciated as you highlight, that such conclusions would not have been reached lightly and the Council respects the examination process and the role of yourselves as inspectors appointed by the Secretary of State.
3. It can be deemed from the Interim Findings Report that the principal matter of soundness is the inadequate supply of new housing that would take place and the need to address this. The Council considers that the best way to give the market confidence to bring forward housing sites is to get a local plan in place. The Council is willing to explore any and all measures which would lead to a sound and legally compliant Local Plan being adopted as swiftly as possible. The stepped trajectory which the Council put forward at the stage 1 hearings, combined with a shorter plan period would address these concerns. As an additional, substantial step, the Council would commit to undertake an immediate review of the plan, directly following the completion of the Partnership for South Hampshire Joint Strategy. In particular, the Strategic Development Opportunity Area workstream, which is examining the potential for strategic scale urban extensions and new settlements, directly relates to the concerns raised. However this workstream will not be complete until Q3 2022¹. As such, the logical approach is to progress this local plan and initiate a review once the information is available to support that process.

¹ See table 1 in the recently approved PfSH Statement of Common Ground at <https://www.push.gov.uk/wp-content/uploads/2021/10/Item-11-Statement-of-Common-Ground-Revisions-and-Update.pdf>

4. For many years now, Havant Borough Council has prioritised preparing and maintaining an up-to-date local plan. This is essential in order to coordinate the provision of infrastructure alongside development. The Council has taken innovative and unprecedented steps in the past to sustainably maintain a supply of housing, including the adoption of the Local Plan Housing Statement in 2016.
5. The Council's main concern with a withdrawal of the local plan at this point is that it would undermine plan-led development in the Borough. As you are aware, many of the sites allocated in the Submission Local Plan (library reference CD01) have already been granted planning permission. In total, 704 homes² have been permitted this way. Whilst the Council recognised five year supply as a material consideration of substantial weight in making those decisions, nonetheless they were noted as a departure from the development plan. Furthermore, the Council is in receipt of planning applications for a further 1,218 homes on sites which are allocated in the submission plan³. A withdrawal of the plan would not render these applications invalid and housing supply would continue to be a material consideration of substantial weight. Finally, the Council is in receipt of planning applications for three sites, representing 205 homes on sites which are either omission sites or have not been submitted to the Council at any point in the plan's preparation⁴. As such, these have not been considered within any of the evidence base associated with the plan's preparation.
6. The Council is extremely concerned that a withdrawal of the plan at this point in time will lead to a position where planning permission will automatically need to be granted for most or all of the sites above due to housing supply alone. Such a situation does not constitute the plan-led approach which is the bedrock of the British planning system. It will lead to a situation whereby development takes place on an ad-hoc and unplanned basis, without a Local Plan providing appropriate and coordinated infrastructure planning and absent many environmental safeguards. It will also lead to a situation where the subsequent examination of a replacement local plan would likely be sites which already have planning permission. It is also probable that the absence of a plan will encourage applications for the development of land which the Council considers to be unsuitable for housing and other forms of development, leading to a risk of "planning by appeal" rather than a plan-led approach. That would be wasteful of resources and undermine confidence in the planning system.
7. The Council's position is that all measures should be taken to deliver a sound and legally compliant plan for the Borough as swiftly as possible. In that regard, it is encouraging that all of the matters raised can be addressed, many very quickly.

² Forty Acres (allocation ref H14, application ref APP/18/00450), Land North of Sinah Lane (allocation H29, application ref APP/20/01093) and Land South of Lower Road (allocation H20, application ref APP/19/00427 (granted on appeal)), Land East of Castle Avenue (allocation H15, application ref APP/18/01033), Camp Field (allocation H14, application ref APP/21/00678).

³ Land East of Castle Avenue (allocation H15, application ref APP/21/01010, Land North of Long Copse Lane (allocation H8, application ref APP/21/00893), Campdown (allocation H40, application ref APP/19/01101), Forty Acres partial re-plan for an additional 34 units (allocation H14, application ref APP/21/00605).

⁴ Land South of Lower Road and west of Old Manor Farm (APP/21/01071), Southmere Field (SHLAA ref HB15, application ref APP/21/00647), Land east of A3(M) (SHLAA ref LP127, application ref APP/20/00441)

Soundness

8. It is noted that a range of additional tasks would need to be completed, as set out in paragraph 51 of the report. The offer in paragraph 58 of the report to assist with further queries and advice is very much welcomed and will be taken up.
9. The Council had already begun scoping both the Hayling Island Transport Assessment (HITA) and Sustainability Appraisal workstreams, given the discussions which took place at the stage 1 hearings and the possibility that this may be needed. As was highlighted during the hearings and is referenced in paragraph 10 of the report, sensitivity testing can be undertaken using the existing microsimulation model. The data needed to undertake this work are readily available given the longstanding permanent presence of a traffic counter at the bridge linking the island to the mainland together with Bluetooth modelling which has been in place for some time now.
10. The Council intends to prepare an additional letter to you by 11th November with a scope for both workstreams, in order to clarify if the methodology proposed and timeframes for the completion of these assessments would likely address the current uncertainty. Nonetheless, it is fully expected that both of these matters can be addressed swiftly and comprehensively given that the necessary data is already available.
11. In regards to the substantive matter that the report raises, namely the deliverability of new housing, the Council intends to address this as a matter of urgency. As you are aware and is referred to above, a great deal of work is currently taking place regarding this precise issue through the Partnership for South Hampshire's (PfHS) Statement of Common Ground (library reference SCG09). This has recently been updated at the Joint Committee meeting of 25 October⁵ and the updated document is being added to the Examination Library with the reference SCG09a.
12. Nonetheless, additional discussions will be requested from neighbouring and nearby local authorities together with other relevant organisations in order to explore whether any unmet need from Havant Borough can be accommodated. This will be fully documented so that it can be made available through the examination in due course. Whilst it is not possible to give a precise timeframe for these discussions, given the strong collaborative relationship and work to date on the PfSH Statement of Common Ground, it is not expected to be particularly lengthy.

Legal issues

13. We note that you conclude the Council did not comply with the Statement of Community Involvement (SCI), 2013 (library reference CD28) when it consulted on the regulation 19 Submission Draft version of the Plan (library reference CD09) and that accordingly you would be obliged to conclude that the preparation of the Plan up until that point was not legally compliant. You advise that in consequence when the Plan is adopted there would be a risk of a legal challenge.

⁵ The Statement of Common Ground – Revisions and Update report was approved and is available on the partnership's website at www.push.gov.uk/wp-content/uploads/2021/10/Item-11-Statement-of-Common-Ground-Revisions-and-Update.pdf

14. Following advice from Counsel (Mr Timothy Leader), which is included as an appendix to this letter, the Council respectfully disagrees with your interpretation of the SCI, 2013, which we believe should be read purposively rather than literally. The critical issue is whether it required the Council to adhere to a list of mandatory activities irrespective of their utility, or select from a list of optional activities to secure fair consultation. We believe the second approach is the correct one, that “will” is not therefore to read as mandatory, so that the Council was able to and did select the most appropriate methods of consultation.
15. However, even if we are wrong, we do not read your letter to say that the perceived legal non-compliance requires the Council to withdraw the Plan; rather you advise withdrawal to avoid the risk of a legal challenge on adoption. We have considered that advice carefully in the light of the provisions of s.113 subsections (3) and (6)(b) of the Planning and Compulsory Purchase Act 2004 and are satisfied that if we carry out a further full consultation under the SCI, 2019 (library reference CD21) (which, as you say, is required by the Act), the risk of any person being able to demonstrate that they have suffered “substantial prejudice” is small. Thus, whilst there is always a risk of a legal challenge when a plan is adopted, we are satisfied a claim would be unlikely to succeed by reason of any failure to comply with the SCI, 2013. In forming this view, we note Parliament has legislated to the effect that non-compliance with section 20(5)(a) of the Act is not to be taken to prevent the adoption of a plan. Procedural non-compliance is only to be regarded as precluding recommendations that a plan be modified to make it sound and legally compliant if there has been a failure to comply with the duty to cooperate required by section 33A of the Act.

Next steps and way forward

16. As you are aware, the Partnership for South Hampshire (PfSH) authorities work closely together. The PfSH Statement of Common Ground is part of the evidence base library⁶ and sets out housing supply over the sub-region up to 2036. In particular, table 4 sets out completions and supply up to 2036 and shows that accross the sub-region there is a shortfall of 12,896 homes. This has not been updated with any supply commitments which Havant will no longer be able to make as a result of the Interim Findings Report. Following the publication of the Interim Findings Report, the Council will immediately commence discussions with neighbouring authorities to further explore whether any unmet need could be accommodated. However in reality, that has already taken place through the various discussions which have led to the PfSH statement of common ground and the figures in table 4. As such, the ability to accommodate unmet need is likely to be extremely limited.
17. In paragraph 52 of the Interim Findings Report it sets out that that there is a possibility that Havant could be an authority that cannot sustainability meet its housing needs in accordance with Paragraph 11 b) of the NPPF. It would be helpful to clarify if, given the sub-regional context set out above and the scale of housing which the Interim Findings Report states needs to be removed from supply, if you can clarify whether this is indeed the case.
18. It would be very helpful in moving this matter forward if a response was received to this letter by 19th November. At this point, whilst awaiting your clarifications and response following this and our subsequent letter, we formally request that the examination remain open. Following

⁶ Library reference SCG09, which is being replaced with the amended statement, which will have the reference SCG09a.

receipt of your clarifications following both letters, the Council will determine at that point if we will formally request that you complete the examination and that in accordance with the requirements of section 20(7C) you make recommendations that secure compliance with section 20(5)(a) and make the plan sound.

Yours sincerely

David Hayward

Planning Policy Manager