

## MATTER 22

### APPENDIX A (REVISED)

#### DETAILED ANALYSIS OF THE OVERALL SUPPLY OF LAND FOR HOUSING

#### QUESTIONS 22.1 (a), 22.1 (b), 22.1 (c) and 22.1 (d) FROM THE INSPECTOR

- a) **A close analysis of NHDC's suggested OAN of 11,600 - the suggested yearly build targets.**

21) In Para 8 of its supporting paper: ('Housing delivery and five-year housing land supply at 1 April 2020'), NHDC advises that its Revised Proposed Housing Trajectory Tabulation of 1 April 2020 has a total of houses proposed for build as 14,656 with the difference between this figure and the 13,000 number due to an approximate 13% buffer. According to NHDC no sites in the Plan/Trajectory are proposed for deletion including the contentious east of Luton sites.

22) Supporting this in its Appendix A, there is a tabulation of current housing delivery assumptions that leads to the 14,656 number. This shows that average per year housing delivery from 2011-2020 has been 312. The highest yearly housing build total was in 2016/17 at 539 houses built.

23) In para 28 of the same document reference is made, (and I paraphrase here), '*to the current extreme difficulties in the building sector and housing market due to the impact of the Covid-19 pandemic and that social and economic impacts may ultimately prove more severe than anticipated, adversely impacting the assumptions made*'. That all seems very sensible.

24) NHDC says that notwithstanding these factors '*the Council retains its ambition to accelerate delivery on key strategic sites where possible*'.

25) Turning back to Appendix A, the tabulation shows that in the remaining 11 years of the Plan NHDC plans to deliver 11,482 houses at a yearly average build of 1,077 and this includes a lower front-end housing delivery between 2020/1 – 2022/3 of just over 500 houses on average during those three years as a recognition of the current difficulties in the building sector particularly due to Covid 19-related issues. This leaves, in the remaining eight years of the Plan, 10,316 houses to be built, and to achieve that, an eye-watering annual average of 1,290 houses per year will be needed.

26) It does not seem realistically feasible, surely, that such a high annual building rate can possibly be achieved by NHDC, especially since the figures presented by NHDC are based upon (they say) what are: '*best estimates based on robust data sources and **informal liaison with site owners and promoters***'. I am not exactly sure what a robust data source is that can estimate how many houses will be built so far into the future, and as for the so-called 'informal liaison' please see my para 29 below.

27) In my view this points inexorably to the need for a lower housing total for North Herts to be applied. If the revised OAN figures we offer in Matter 21 as a realistic alternative to the 11,600 for North Herts are adopted, this would result in lesser OANs of between 6,318, via 6,690 to a maximum of 7,061. Taking away the 2,814 houses already built would leave 3,504, or 3,876, or 4,247 remaining over the 11 years left of the Plan – at yearly averages of 319, 352 and 386 respectively. This seems much more realistic and achievable.

**b) A study of the document: 'Revised proposed Housing Trajectory – base data 1 April 2020'.**

28) The Trajectory in question is a supporting document supplied by NHDC that lists a number of proposed sites allocated for house building to meet both North Herts and also Luton's unmet needs (via the east of Luton sites) with suggested house numbers allocated per year.

29) In Para 9 of the main document NHDC states that this revised Trajectory has been **'informed by informal discussion with representatives for a number of proposed sites in the Plan'**. That strikes me as a lamentably feeble statement. What is it supposed to mean or convey? That NHDC has had a few chats with their developer contacts over a socially-distanced beer or there has been a brief exchange by telephone or email? I submit that this issue of housing provision – particularly where it affects those threatened on the Green Belt sites – is too important for this sort of seemingly slapdash approach. The end result of these 'discussions' is that NHDC states that most proposed sites remain in place (except for a drop in housing numbers from the proposed north of Baldock site).

**c) The fundamental flaw about the East of Luton sites**

30) There is also a fundamental flaw in the NHDC's assumptions that they only will be able to deliver 1,500 houses in the east of Luton sites by 2031 (1,400 to meet Luton's unmet needs and 100 for NHDC's requirements). They say in para 22 that this reflects delays in the examination process, conveniently omitting to mention that the primary reason for the delays is because of the principled opposition to their plans from the community around Cockernhoe which has resulted in the Inspector asking serious questions of NHDC.

31) The flaw is (and as discussed in Matter 21) Herts County Council has made it very clear that secondary schooling on the east of Luton sites has to be self-sustaining and, as a result, they cannot sanction capital expenditure to provide secondary schooling on this proposed site for anything less than the 2,100 houses proposed, having modelled the potential pupil numbers (ED109: February 2018; letter of July 10, 2015 from Herts County Council (HCC) to Mr Simon Ellis, NHDC). NHDC itself has said before that for this East of Luton site it is either 1,950 houses or it is none at all!

32) This stark statement is contained in a document sent very recently to the Inspector (ED173 Paper C of 27 November 2019 "The proposed East of Luton sites") where in Para 23 they say: **"It is finally worth re-emphasising that a key influence on the scale of the proposed allocation East of Luton is the requirement for it to be self-sustaining in terms of education provision. This point has already been explained at length to the examination. In NHDC's view, the contribution that this authority makes to Luton's unmet needs will be 1,950 homes or it will be nothing."**

33) The fact that according to NHDC only 1,500 houses can be achieved through to 2031 (100 of which are for North Herts needs) means they will be 550 short of their 1,950 target.

There are no plans in the public domain for the next Local Plan after 2031, so it very uncertain whether those final 500 will ever be needed/built and over what timescale.

34) This means that the policy decision by HCC surely has to be adhered to. If those 1,500 houses are built, it seems there could be no secondary school provision included which is unthinkable and probably illegal. It is already well established by HCC in 2019 that existing schools both nearby in Hitchin and Harpenden are full and that Luton Borough Council has also indicated that its schools are full; hence the requirements for the site to be self-sustaining for education provision.

35) There must be collective amnesia in the NHDC planning department as they seem to have forgotten this vital HCC intervention. And as we shall discuss below this aspect also plays into further consideration about the proposed east of Luton sites now being suggested as a buffer to help meet North Herts' own housing requirements.

#### **d) Considerations of the proposed buffer**

36) In terms of the housing buffer that is required, NHDC makes the point that there is no fixed policy to pursue a buffer of any particular percentage. Indeed the draft Local Plan had a buffer of 6% and over the examination period this has fluctuated through to 7% and then back to 6%.

37) Now NHDC argues that because of the current economic circumstances and the delays they have encountered in getting approvals for proposed housing sites in the Green Belt they state that the increased buffer to 13% is justified and also to demonstrate a 5-year housing land supply. There is also the consideration of what size of housing buffer is appropriate.

38) Not that NHDC has made much mention of the following, but they have fallen foul of the Government's Housing Delivery Test (HDT). The 2019 test, published in February 2020, revealed that eight Local Authorities were being sanctioned for failing to meet the required number of new house builds (Source: 'Inside Housing'). NHDC is one of those authorities, having only produced 44% of the required housing (Source: Dept of Communities & Local Government Housing Delivery Test 2019 published 1 February 2020). Both Luton and Central Bedfordshire achieved 185% and 103% of their requirements respectively. Incidentally, the Luton figure in particular seems to support my argument that Luton is over-delivering on its house-building programme.

39) Under the HDT and the Government's rules, a 'pass rate' is said to be 95% and above. Councils that deliver between 85% - 95% must develop an action plan to identify how they are going to increase the house build rate. Councils that fall between 25% and 85% must identify 20% more land (i.e a buffer) for development than originally required in the 5-year supply in their Local Plans. In the case of NHDC they have triggered the presumption in favour of sustainable development (which means they will be forced to give greater weight to the National Planning Policy Framework) relative to their local policies when deciding whether to accept planning applications. Sites not allocated as part of local plans may therefore be more likely to receive planning permission, as long as proposals meet the NPPF criteria (Source: 'Inside Housing'). This wording is rather unclear as to what exactly this means for sites in the Green Belt but the overall thrust sounds rather like a possible planning free-for-all which surely must be avoided.

40) In para 41 of the NHDC document, NHDC states that in regard to its proposed continuation of the '*Liverpool*' method of housing supply this will demonstrate a five-year housing land supply and also a 20% buffer. So is NHDC asking for a 13% buffer or a 20%

buffer? This doesn't seem to be at all clear. Furthermore, they go on to state that this approach would also enable the Council *'to maintain delivery above the HDT's 75% threshold, below which the presumption in favour of sustainable development lies.'*

41) Well it is clear from the Government's HDT tabulation that NHDC is already in 'presumption' - because it clearly says so - so presumably *'maintaining delivery'* is not exactly an accurate way to describe the predicament they are in. Or are they in some sort of denial?

42) It is unclear to me how this will play out in practice in terms of unallocated sites being brought forward, and also the uncertainty created by the fact that NHDC does not yet have an adopted Plan, but it does seem clear that NHDC might well have to apply a 20% housing buffer rather than the 13% they are proposing, though as seen above, they seem to be suggesting both figures in different parts of their document.

43) If we take the original NHDC figures in their paper of the OAN of 11,600, this housing requirement with a 20% buffer added would yield a further 2,320 houses, making a total of 13,920 houses required potentially for delivery.

44) The question then arises: will those extra 2,320 buffer houses actually be required and where will they be provided from?

45) This becomes apparent with the very worrying para 31 commentary where, NHDC suggests that releasing Green Belt sites now *'will ensure greater surety of supply when future plan reviews are undertaken'*.

46) This is amplified in Para 32 where, quoting from the legal case of Compton Parish Council v Guildford Borough Council of 4 December 2019, NHDC suggests that the ruling in that case demonstrates that councils can lawfully propose a substantive buffer over and above the housing requirement, and that, *"providing choice and flexibility over and above the housing requirement can be a contributory factor to the 'exceptional circumstances' required to release land from the Green Belt."*

47) This is a dreadfully unwelcome and surprising development from NHDC particularly in relation to the east of Luton Green Belt sites. At no time in the past has there been any suggestion that this land could be used for anything other than to meet the supposed unmet housing need from Luton. And as we have seen there is no way that NHDC can sanction the build of anything less than the 2,150 houses on this land in order to meet the requirements by Herts County Council of the proposed housing being self-sufficient in secondary education provision. So their notion that they can build 1,500 houses only is, surely, a non-starter. We are used to these desperate last-minute surprises from NHDC. In the past - having being confronted with evidence that there was in reality no unmet housing need from Luton - they tried to assert that the houses would be needed for the benefit of the wider Luton HMA, but this was shot down in flames and that argument withdrawn.

48) There is also the stupidity of the perverse logic of NHDC in making this statement, particularly in relation to the east of Luton sites. The vast majority of houses proposed for build on these sites are specifically and unequivocally meant to help meet the unmet needs from Luton under the Duty to Co-operate. They are NOTHING to do with meeting any need from within North Herts, except for the small number of 150 houses that are for that identified purpose. And yet, now, NHDC is saying that all these houses are needed, potentially, as a buffer to help meet the house building projections for within North Herts itself. If that logic is applied consistently then, in reality, only 150 of the homes planned for build on the east of Luton sites should theoretically be earmarked to meet the buffer requirements of North Herts.

49) Nonetheless, the fact that NHDC makes reference to the Guildford court case means we have to examine the situation in Guildford and compare that to what is happening in the case of the east of Luton sites.

50) Having read the Guildford Local Plan and the legal judgement it is apparent that right from the outset Guildford was very open with its constituents in regards to its plans and the needs for the release of Green Belt land. It was clearly identified in its Plan, but as a result of the lower ONS household projections Guildford reduced the overall housing requirement, but kept the Green Belt sites in the Plan to ensure that an adequate 5-year supply of land existed, so that if some allocated sites could not be proceeded with in a reasonable timeframe then other sites could be released as a buffer so ensuring the viability of the overall Plan. This decision was approved by their Inspector and in the subsequent legal case the judgement of the Inspector was upheld by the court.

51) Within NHDC I contend the situation is different. The land to the east of Luton has always been identified as being almost exclusively for meeting the unmet housing needs of Luton. At no time has there been any suggestion that any of these houses are for North Herts requirements (except for the 150 houses nominated for that purpose). To now suddenly state that the majority of houses in this area are needed to help make up the buffer for North Herts is contrary to the established position that has been the case for the years that the Local Plan has been under examination. As such, it is an entirely new development and one that was never envisaged/placed in the public domain at the time the Plan was launched. It smacks totally of a bright legal mind seeing this case and opportunistically suggesting it can be applied to NHDC, resulting in NHDC proposing this new idea, on the hoof.

52) Clearly however, if NHDC is allowed to prevail with this new policy stance - which is akin to leaving the residents in the threatened areas around Cockernhoe with the sword of Damocles poised continually above their heads – it will be a miserable outcome. I imagine that this new development, if allowed to proceed, will require legal examination.

**e) But let us look at what happens when Lower OAN numbers are applied to ED191B**

52) All of the above observations are based, as the Inspector required, on the stated revised NHDC OAN of 11,600. However, as discussed in Matter 21 this figure is derived from the Opinion Research Services (ORS) calculation of the OAN using the highest possible of the three Office for National Statistics (ONS) trend variations. As explained at length in Matter 21 this approach is flawed and I offered a range of alternative OAN figures for the Inspector's consideration.

53) The alternative OANs I offered were to use the ONS 5-year migration trend and apply Market Signals downturns of between -5%, through -10%, to -15% in preference to the ORS use of the +10% Market Signal. This results in new OANs of 7,061 (-5% MS), or 6,690 (-10% MS) and up to 6,318 (-15% MS).

54) In Appendix B (attached) I offer a similar calculation as in Appendix A in Matter 21 with the addition this time of suggested 6%, 13% and 20% buffers applied to the OANs.

55) To these OAN figures I have used the same methodology as in Matter 21 Appendix A looking line-by-line through the Trajectory, namely: I first deduct the 1,400 houses earmarked for the East of Luton sites which NHDC says they will build through to 2031 and which now NHDC states are needed as a buffer for North Herts in case other sites do not

come through as expected. Also, these 1,400 are not required for any unmet need for Luton as we have proved beyond reasonable doubt there is no realistic unmet need from within Luton that requires any contribution from NHDC, and furthermore NHDC is unable to build any smaller number of houses on these sites than the proposed full allocation of 2,100, due to the Herts Council County secondary school requirement.

56) I then apply 6%, 13% and also 20% buffers to the resulting numbers from above.

57) From these figures I then deduct the 2,814 houses already built; then I deduct the 1,962 houses that in the Trajectory have been granted planning permission to 2031; then I deduct the 1,649 proposed allocations that are not in the Green Belt and earmarked for build through to 2031.

58) The resulting calculations indicate that the NHDC/ORS preferred OAN with its much higher number will not achieve the required house numbers that NHDC says it needs to build no matter what % buffer is applied.

59) All of the other suggested OANs deliver mostly an over-build of the required numbers to meet the lower OANs. In the case of the -15% Market Signal the over-build will range from 1,212 houses with a 6% buffer compared to a smaller 523 at the lower end with a 20% buffer. In the case of the -10% Market Signal, the over-build ranges from 816 at the 6% buffer to an over-build of 77 at the 20% buffer. With the -5% Market Signal, there is a 374 over-build with the 6% buffer, but both the 13% and 20% buffers yield shortfalls of 31 and 368 respectively.

60) Whilst I fully acknowledge this is not a detailed and exhaustive statistical analysis, the direction of travel seems to be clear. By removing the contentious 1,400 houses from the east of Luton sites and using any of the OANs with -15% Market Signals, or -10% Market Signals, or -5% Market Signals and using either a 6%, a 13% or a 20% buffer, the housing requirement will largely be met in full and where there is a shortfall it is small to the extent that it probably could be regarded as being within the bounds of manageable error. Further, using these models the chances are good that in addition to the east of Luton site not being used, the over-build will mean that other Green Belt sites across North Herts can also be either totally spared or perhaps a small allocation of between 30 to 368 houses, depending on which variable is chosen.

September 2020