

## Examination of the North Hertfordshire Local Plan 2011 – 2031

Inspector: Mr Simon Berkeley BA MA MRTPI  
Programme Officer: Mrs Louise St John Howe  
[louise@poservices.co.uk](mailto:louise@poservices.co.uk) Mobile: 07789 486419

---

Mr Ian Fullstone  
Director Regulatory Services  
North Hertfordshire District Council

By email only

1 October 2020

Dear Mr Fullstone

### Examination of the North Hertfordshire Local Plan 2011 – 2031

Thank you for your letter dated 30 September 2020 about fixing hearing dates.

Regulation 24 of The Town and Country Planning (Local Planning) (England) Regulations 2012 ('the 2012 Regulations') is a matter for the Council to discharge. However, it is nonetheless part of my role to ensure that my examination proceeds in line with the 2012 Regulations and other statutory requirements.

Regulation 24 is open to two interpretations. The first is that "... *the opening of a hearing ...*" refers to an obligation to give six weeks' notice of the start of the hearing sessions as a whole. The second is that it refers to the opening of each individual hearing session. So far as I am aware, this issue has not been considered by the Courts.

If I understand your letter correctly, the Council subscribes to the first interpretation. I agree that, if this interpretation is accepted, there has already been notification of a hearing commencing on 12 October, such that no re-notification would be required. I also note your comments about the steps taken as part of the publicising of the hearings sessions – the provision of my detailed timetable which assigns matters for discussion to specific dates, along with my accompanying 'warning' about the possibility of changes to that detailed timetable – and your overall view that the notification procedure undertaken satisfy the requirements of Regulation 24.

On the basis of your interpretation of Regulation 24, you have suggested two options for progressing hearings sessions starting on 12 October. One aims to retain the original sequencing of the individual hearing sessions. The other is based on the individual hearing sessions originally scheduled for the weeks commencing 12 and 19 October remaining on their publicised date and time. Both options involve the hearing sessions being conducted over two weeks rather than the original three.

There are a number of difficulties here. The first is that the alternative interpretation, in the absence of any judicial direction to the contrary, remains equally as valid as that on which the Council relies. If that alternative interpretation were to be accepted, neither of the options put forward by the Council for setting hearing dates would, or now could, satisfy Regulation 24. Notwithstanding my 'warning' about the possibility of changes to the timetable, both options would require participants wishing to exercise their right to be heard to attend hearing sessions on dates for which they have not thus far been notified, and for which even an immediate notification now could not be six weeks

in advance of the hearing session opening. For your Option 1, only 11 days' notice could be given for the first hearing session where the matters for discussion would be different to those previously notified, and only 13 days' notice would be possible for your Option 2.

Consequently, it is clear that both of the options you have suggested for the hearing dates are problematic. Indeed, in my view, if a party with a right to be heard was unable to attend the revised hearing date and therefore could not fully participate in the examination, there is a risk that they could show that they had been materially prejudiced as a result of the shorter notice period given. I could take steps to minimise this risk, such as arranging to hear from anyone who could not attend for the reasons given above in a subsequent, special hearing session. But that would complicate matters and could do so significantly, depending on the circumstances.

Additionally, given the length of this examination so far, the amount of work and effort put in by the Council and all other participants, and the public funds expended, I consider that a more cautious approach should be taken. At this stage, to put this Local Plan at risk of challenge on a procedural point that could readily be avoided would be imprudent.

Moreover, there are additional practical difficulties with both of the options you suggest. Firstly, it appears that Option 1 would lead to the time to discuss Matter 23 (the Green Belt Review) being reduced from two days to one. Similarly, it seems that Option 2 would reduce discussion on Matter 21 (housing need and requirement) by half a day. I am concerned that this would lead to inadequate time to debate these matters. Additionally, the reserve time originally scheduled would be reduced for both options and, so far as I can see, Option 2 would leave no availability for reserve time at all.

More fundamentally than that, though, is that both options require hearings to be held for five days on each of the two consecutive weeks involved. Paragraph 3.7 of the Procedure Guide for Local Plan Examinations (June 2019, 5<sup>th</sup> Edition) says the following.

*“The hearings stage of the examination is intensive and places considerable demands on the Inspector, the LPA and the other participants. For this reason, hearing sessions will usually be limited to three days per week, to allow adequate time between sessions for preparation and follow-up work.”*

You will be aware that I have on several previous occasions held four full day hearing sessions in a week, in order to expedite this examination. However, for the reasons explained in the Procedure Guide, I am not prepared to sit for five days a week over two consecutive weeks. I have no reason to suppose that virtual hearings will prove less demanding or fatiguing for all concerned than 'normal' physical hearing sessions. To follow either of the timetables suggested by the Council would, in my view, risk undermining the diligence and robustness of the hearing sessions.

In the light of the above, I am unfortunately not willing to pursue either of the options suggested by the Council. As such, it seems to me that two suitable options remain:

1. Continue with the hearing sessions originally publicised for the weeks commencing 12 and 19 October, and re-schedule the hearing sessions originally fixed for this week to a later week, allowing for six weeks notification. This has the advantage of making some progress. The drawback is that the order of hearing sessions would be somewhat illogical.
2. Postpone all of the hearing sessions and re-schedule them for a later date that allows for six weeks notification. This has the advantage of retaining the logical order of matters for

discussion, but the disadvantage of leading to some delay, albeit no more than a matter of six weeks.

There may be other acceptable options, and I am happy to receive and consider any suggestions the Council may have.

As an aside, and for the avoidance of any doubt, I should say that all of this is predicated on the assumption that the extraordinary meeting of the Council set for 8 October does not lead to a change in the Council's position in relation to the objectively assessed need for housing or the Local Plan's housing requirement. If it does, then it is highly likely that all of the hearing sessions originally publicised will need to be postponed.

To take matters forward, rather than further exchanges of correspondence I suggest that Council officers liaise with me via my Programme Officer, Mrs St John Howe, to indicate which of the options for the hearings sessions that I have suggested would be preferable to the Council.

Please ensure that a copy of this letter is placed on the examination web page.

Yours sincerely

*Simon Berkeley*

Inspector

cc. Mr Nigel Smith, Strategic Planning Manager, North Hertfordshire District Council