

SHROPSHIRE LOCAL PLAN EXAMINATION

Stage 1 Hearing Statement

Representor unique Part A Ref *	A0586
Matter	Matter 1
Relevant questions nos	1, 2, 3, 4, 5 & 15

*Your unique reference can be found in the Schedule of Respondents (Schedule 3 of document SD014.01) at:

<https://shropshire.gov.uk/planning-policy/local-planning/local-plan-review/draft-shropshire-local-plan-2016-2038-examination/examination-library/earlier-regulation-18-plan-making-stages-of-consultation/regulation-19-pre-submission-draft-of-the-shropshire-local-plan-consultation/>

SHROPSHIRE LOCAL PLAN EXAMINATION: STAGE 1 MATTERS, ISSUES AND QUESTIONS

**Stage 1 Hearings – Session 2 – Matter 1: Legal / Procedural
Requirements**

Nurton Developments Ltd

SLR Ref: 406.02395.00004
Version No: Final
June 2022

SLR[®] 

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1.0 Question 1

Is the Local Plan Compliant with:

a) The Local Development Scheme?

Nurton do not wish to comment on this question.

b) The Statement of Community Involvement?

It is disappointing that a summary of consultation responses was not published until the Regulation 19 Consultation and that full comments were not published until the Plan's submission. Nurton have been disappointed by the lack of engagement throughout the process, particularly as Shropshire Council (SC) specifically requested additional technical evidence to support their consideration of SHF035, in 2019. Since submitting this information as part of Regulation 18, we consider that SC have not appropriately assessed this information as part of their evidence base (see responses to Q2, 3, 4, 5 and 15).

There was a very small window for discussions between the Regulation 18 Consultation closing on 30 September 2020 and the Council's Cabinet papers being published at the end of November 2020. During this time, as outlined within the latter Regulation 19 Consultation Document, the Council was considering all 2,500 consultee submissions and outlined that *'every comment made as part of the Regulation 18 stages undertaken have been considered in arriving at the...Pre-Submission Draft of the Shropshire Local Plan'* (para 2.24). We consider this timeframe to be unreasonably short and note that few alterations were made as a consequence.

c) The 2004 Act and the 2012 Regulations?

Section 19(1B)-(1E) of the Planning and Compulsory Purchase Act 2004 sets out that each local planning authority must identify their strategic priorities and have policies to address these in their development plan documents. Nurton acknowledge that strategic policies have been drafted within the Draft Local Plan Review to address SC's key strategic objectives. However, Nurton considers that the proposed site allocations and safeguarded land approach requires further analysis and further sites should be identified to ensure adequate housing land supply. These sites should be released from the Green Belt (GB) as safeguarded land/reserve sites to meet demand and alleviate housing market pressures during the plan period (2016-2038) and beyond (See also 'Matter 6 - Hearing Statement' from Nurton).

2.0 Question 2

Are the likely environmental, social and economic effects of the Local Plan adequately and accurately assessed in the Sustainability Appraisal (SA)?

It is not accepted that this is the case given the errors in and omissions from the prepared evidence base and associated SA. This is outlined within our September 2020 submission¹ (Section 3).

In environmental terms, the Council have failed to engage with revised NPPF 2021 policy on assessment of flood risk and specifically Paragraph 159 and Paragraph 160. This is particularly important given the Inspector's initial questions to the Council raised on 3 November 2021, specifically Q.10.

In response the Council state in their note to the Inspector at paragraph 38 that the '*Local Plan is consistent with and positively responds to the updated NPPF (2021)*'. The Council assert that they, '*proactively engage and where appropriate undertake joint working with both Natural England (NE) and the Environment Agency...The emphasis throughout has been on collaboratively identifying opportunities for environmental protection and improvement through the draft Shropshire Local Plan,*' (para 92) and '*...In the majority, this engagement has had positive outcomes...Another example is the effective way that the Level 1 and Level 2 Strategic Flood Risk Assessments have informed the site assessment process undertaken to inform proposed allocations*'(para 93).

The issue for the Council however is that the Strategic Flood Risk Assessment ('SFRA'), upon which it relies particular relating to Shifnal, uses a hydraulic model dating back to 2003, which was already considerably out of date at the time of the original site assessment process. Critically, the Council has made no attempt to update the SFRA given the most recent and significant change to flood risk policy as set out in NPPF, paragraph 160.

The corollary of the above is that reliance on the existing SFRA as an integral part of the site selection process is unsafe and could potentially lead to some sites now proposed to be allocated or reserved not coming forward. It is essential therefore that additional sites outwith Flood Zone (FZ) 2 and 3 are considered for allocation as potential safeguarded/reserve sites as part of this current Local Plan Review.

¹ Please refer to '*Shropshire Local Plan Review – Regulation 18 Consultation, Upton Lane, Shifnal Submission for Nurton Development Ltd*' & resubmitted and additional evidence from Reg 19 (ref A0586).

3.0 Question 3

Does the SA test the Local Plan against the preferred options chosen and all reasonable alternatives?

Whilst the methodology provided within Chapter 4 of the SA implies that a range of assessments/technical studies have been undertaken to inform the site identification process, these were not published as part of the Regulation 18 Consultation. It has thus been difficult to fully understand the justification for some site allocations/safeguarded sites. The inability to scrutinise this technical information has made it challenging to understand the basis for some of the site assessment scores. For example, in Shifnal, site SHF034 is a proposed safeguarded allocation. Shifnal Place Plan Area Site Assessment (August 2020) marks SHF034 as a '0' when considering flood risk, despite it being dissected by an area of FZ 2 and 3. This apparent inconsistency has been raised with the Council.

SHF035 is also marked as '0' in the Assessment and is wholly within FZ1. Therefore, in flood risk terms, SHF035 is a sequentially preferable to SHF034, however SH035 has been discounted by the Council. In light of Paragraphs 161- 163 of the NPPF, it is concluded that the sequential approach has not been applied appropriately from the outset. In terms of flood risk and SHF034, for example, this site cannot be delivered while also maintaining the integrity of the site and direct access links into Shifnal without supporting infrastructure which will be within Flood Zones 2 and 3. This demonstrates some of the apparent inconsistencies in the site scoring process, which in all likelihood are not confined to Shifnal.

Additionally, there is no available evidence provided to suggest that SHF034 would deliver wider sustainability benefits to the community that outweigh flood risk, or that flood risk will be reduced overall. It is a requirement that both elements of the exception test be satisfied for more vulnerable development types (NPPF Paragraph 165). We consider that on the basis of NPPF (and its revisions), site allocations and safeguarded land which includes land in FZ2 and 3 should have been revisited and discounted where appropriate alternative sites were available. We consider, for example, that SHF035 has been demonstrated to be an 'appropriate alternative' which would deliver a wider range of social, environmental and economic benefits. The evidence was provided at the request of the Council during the Regulation 18 Consultation² and demonstrates that there are no technical constraints to the delivery of this Site, but a range of benefits. The Council have not revisited the issue of flood risk, particularly in relation to the NPPF revisions, nor given the availability of appropriate alternative sites.

Even before the recent update to the NPPF, our concerns about the consideration of flood risk in the identification of sites was conveyed to the Council, for example, as it related to the Wesley Brook which bisects SHF034 (FZ2 and 3) which would need to be crossed to deliver a comprehensive development proposition. Referring to EA guidance, no watercourse should be culverted unless there is no reasonable, practicable alternative, or if the detrimental effects of culverting the watercourse would be minor. In flood risk terms, culverting a watercourse increases Flood Risk (even when undertaken in line with best practice), and requires a lifetime commitment to maintenance. The introduction of a culvert on Wesley Brook involves a hard infrastructure asset which is an unnecessary flood risk addition. There has been no evidence submitted to suggest how the bridging of the Brook will be addressed, which again must bring into question the basis of site analysis

² Please refer to 'Nurton Development Promotional Document submitted at Regulation 18 - (Promotional Document to Inform Shropshire Council's Local Plan Partial Review 2016 – 2036) & resubmitted and additional evidence from Reg 19 (ref A0586).

by the Council from the outset.

In summary, we cannot conclude that all reasonable alternatives have been accurately assessed at a micro level in terms of the selection of sites, which brings into question also the macro approach to the Plan.

The evidence base upon which the Stage 2 and 3 SAs were undertaken seems inconsistent, with the assessment criteria being similarly applied inconsistently. The approach does not follow best practice in principle and unreasonably favours sites identified and promoted for allocation/safeguarding early in the local plan review process.

Nurton's Site is therefore considered to have been disadvantaged by an inconsistent approach to the Site Assessments. The Authority has erred in the Site Assessment process and, as such, the identification of sites comprising of land in FZ 2 and 3 is considered inappropriate and unsound, particularly having regard to the most recent version of the NPPF. For example, SHF034 cannot be demonstrated to be sequentially preferable from a flood risk perspective, whilst also the apparent driver for its safeguarding (the delivery of a new link road) is neither suitably tested nor deliverable.

The inconsistencies at a micro level relating to Site Assessment and SA process leads us to a key question – **Has this inconsistent approach been applied elsewhere, and if so what are the wider implications for the soundness of the Plan as a whole?**

4.0 Question 4

Have any concerns been raised about the SA methodology and what is the Council's response to these?

Nurton have expressed concerns regarding the accuracy of the SA methodology within our September 2020 Document³, particularly Section 3.0 'Assessment & Scoring Criteria'. In reviewing the Stage 2 and 3 Site Assessments contained within both the Strategic Site Assessments and Shifnal Place Plan Assessments, it is noted that there are a number of inconsistencies, alterations and/or omissions. In reviewing, Nurton compared the Stage 2 and 3 Assessments published as part of the evidence base for the Consultation Stages in November 2018, July 2019 and August 2020.

There have been various scoring amendments undertaken between the Stage 2 and 3 Assessments which have not been clarified and/or appear to be incorrect when compared against previous iterations. On this basis, we raise concerns that the evidence base, upon which the Local Plan Review is based, is not robust. These concerns were outlined at the Regulation 18 Consultation when we requested that they be reviewed prior to any Regulation 19 Consultation or formal submission of the Plan for Examination. This does not appear to have occurred.

To illustrate some of the inconsistencies we have sense checked and compared the scoring results for SHF035, with safeguarded site (SHF034) within Shifnal. We are of the view that SHF035 performs equally to (or better than) when errors, omissions or the correct evidence base information is taken into consideration. See Table 2 of our September 2020 submission, which contains a Composite Scoring Table of SHF034 from the site assessments for P15b, P16, P17a, SHF017 and SHF019 under the Preferred Sites Consultation SA (2018).

Regarding the Stage 3 Assessments, whilst the methodology provided within Chapter 4 of the SA implies that a range of assessments and technical studies have been undertaken and utilised to inform the site identification process, these were not published as part of the Regulation 18 Consultation. Furthermore, from previous discussions with the Authority, it is understood that the only assessment data/ information undertaken is that published and contained within the SA itself (i.e. the Stage 2 and Stage 3 tables). Neither the Authority's background evidence, nor any site promotion information was made publicly available for comment. This is not considered robust given that it does not allow a full consideration of the assessment process, nor the assumptions which have informed the site identification process.

³ Please ref to 'Shropshire Local Plan Review – Regulation 18 Consultation, Upton Lane, Shifnal - Submission for Nurton Developments' & resubmitted and additional evidence from Reg 19 (ref A0586).

5.0 Question 5

Have the requirements for Strategic Environmental Assessment (SEA) been met?

See Q 2, 3 and 4 answers; Nurton do not consider the requirements for the SEA have been met.

6.0 Question 6

Are the likely environmental, social and economic effects of the Local Plan adequately and accurately assessed in the Habitats Regulations Assessments (HRA)?

Nurton do not wish to comment on this question.

7.0 Question 7

Is the Local Plan's approach to water nutrient neutrality justified, effective and consistent with the National Planning Policy Framework (the Framework) and the requirements of HRA?

Nurton do not to raise comment on this question.

8.0 Question 8

What are the conclusions of the River Clun SAC Mitigation Measures Study? Which proposed site allocations are affected? Is the mitigation possible and how will it affect delivery of the affected sites? Will it impact on viability?

Nurton do not wish to comment on this question.

9.0 Question 9

Is it appropriate to deal with mitigation measures through a Supplementary Planning Document (SPD)? Should it be resolved before the Local Plan is adopted?

Nurton do not wish to comment on this question.

10.0 Question 10

Are there any outstanding objections from Natural England or the Environment Agency to the Plan proposals? If so, what are these and how is the Council working to overcome them?

Nurton do not wish to comment on this question.

11.0 Question 11

The proposal for the North-West Relief Road (NWRR) is not a specific allocation in the Local Plan and is subject to separate HRA process. What is the latest position on the planning application for this project? Does the Local Plan rely upon the NWRR to deliver sites allocated in it?

Nurton do not wish to comment on this question.

12.0 Question 12

Is there any substantive evidence to show that the Local Plan would have significant effects on equalities and, particularly groups with protected characteristics that have not been found in the Council's assessment?

Nurton do not wish to comment on this question.

13.0 Question 13

Does the supporting Equalities and Social Inclusion Assessment identify all relevant groups with protected characteristics?

Nurton do not wish to comment on this question.

14.0 Question 14

Does the submitted evidence show that the Local Plan would not have significant effects on equalities in respect of all groups?

Nurton do not wish to comment on this question.

15.0 Question 15

How does Policy SP3 along with the overarching strategy of the Local Plan secure the development and use of land which contributes to the mitigation of, and adaptation to, climate change consistent with S19 (1A) of the Planning and Compulsory Purchase Act 2004 and paragraphs 152 – 158 of the Framework?

Paragraph 153 of the NPPF outlines that Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures.

The changes introduced to NPPF (July 2021) have led to an increased focus on flood risk. The key impactful change to the NPPF that affects future development is that climate change needs to be assessed for **all sources of flooding**, as paragraph 161 refers.

There are two key points set out in the NPPF, both of which need to be considered:

- The risk posed to a site from all sources of flooding (i.e. not just fluvial and tidal), and
- The impact of climate change on flood risk.

With regard to ‘all sources of flooding,’ surface water flooding has not been appropriately considered. The sequential test now requires all sources of flooding to be reviewed, this necessitates a greater focus against the multiple sources of flooding, and specifically surface water flooding (in relation to Shropshire specifically) as opposed to the traditional approach of assessing whether a site was located in FZ1, 2 or 3. This change therefore has a great impact on decision making for Local Plans, Strategic Flood Risk Assessments, and also at a site-specific development level.

It is also unclear how the evidence base referenced in the Draft Local Plan has considered the impact of climate change on flood risk. The Level 2 SFRA only details the percentage of the sites that is impacted by flooding excluding the impact of climate change (i.e. direct use of EA Flood Zones). Climate change is discussed in the site summaries, but only qualitatively. It does not appear to have formed a part of the eventual site selection process and scoring criteria.

Whilst the level 1 SFRA (undertaken in 2018) considers the impact of climate change on fluvial flooding, this has not been assessed in line with the most recent guidance issued by the EA (guidance relating to changes in fluvial flow updated in July 2021).

To account for the climate change guidance, subsequent work has simply applied climate change uplifts to old flow estimates and rerun the same hydraulic model. SC have therefore not appropriately updated this model by virtue of not considering current allowances, which is particularly surprising, as hydraulic models are a key source of information used in forming the SFRA, and the subsequent site allocations.

Relating to Shifnal in particular, Shifnal’s hydraulic model dates back to 2003, this means circa 20 years of real-world data has been ignored, and any changes to the river systems (either at a catchment scale or changes in morphology / structures) have not been considered. The SFRA has therefore been based on out of date and misrepresentative data, which begs the question as to whether **all** settlements have been accurately assessed from the outset. Shifnal’s model is one of the oldest models; with numerous other settlement models dating from 2002 – 2012. Again, this leads to the question as to how ‘valid’ the evidence base is as a whole.

Additionally, we note that the Inspector has raised concerns regarding whether the updated version of the NPPF has been incorporated within the evidence base, (see response to Q2).

SC in their formal response of 10 February 2022 placed significant reliance on the draft Local Plan ‘Policy DP21: Flood Risk’ which supposedly addresses the NPPF flood risk changes. SC argue that *‘The draft Shropshire Local Plan has a policy specifically relating to flooding – DP21: Flood Risk. This policy outlines the requirements for development proposals in areas of flood risk now or in the future, which aligns with the requires as set out in the NPPF (2021).’*

Policy DP21 ‘Flood Risk’ was drafted prior to the revisions to the NPPF, in addition to the Level 1 SFRA (dated October 2018) and Level 2 SFRA (dated July 2020), which were also drafted prior to the revision to the NPPF and the most recent changes to EA climate change guidance which brought advice in line with the outputs from UKCP18⁴.

A Sequential and Exception Test Document which sets out how flood risk has been considered in the allocation of sites, was also undertaken in July 2020. This forms part of the evidence base documentation, and again, this was produced prior to the revision to the NPPF. This Document does not review the suitability of the Safeguarded Sites.

Critically, however, the Council has confirmed that the (considerably out of date) Level 1 and Level 2 SFRA’s have informed the site assessment process undertaken to inform proposed allocations. As examined and discussed in our response to Q2, that is an admission by the Council of a non-compliant policy position. It fails to have regard to paragraph 161 of the revised NPPF which requires a sequential, risk-based approach to the location of development – taking into account all sources of flood risk *and* the current and future impacts of climate change.

With the above in mind, we raise the below ‘Micro’ **Key Questions**:

- How ‘robust’ are the Strategic Flood Risk Assessments?
- In light of the revision to the NPPF, should previous sites which have been discounted or safeguarded be revisited/ re-assessed under the new ‘sequential test’ approach, in line with Paragraph 161 of the NPPF?
- Can it be deemed proven that due process has been followed; particularly have all reasonable alternatives been considered?
- Should further analysis be undertaken in light of sites like SHF035 being sequentially preferable to SHF034, particularly taking into account the age of the flood model data and the lack of alignment to new climate change guidance?
- What are the ‘exceptional circumstances’ (in light of Paragraph 63 of the NPPF) and where is the evidence base to support sites like SH034 being safeguarded for future development, when they might not be deliverable?
- How have the flooding implications of watercourses like the Wesley Brook been taken into account, particularly, for example, the bridging of Wesley Brook to access SHF034? And why was this key factor ‘bypassed’ during the SFRA / sequential test process?

⁴ <https://www.metoffice.gov.uk/research/approach/collaboration/ukcp>

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