

To

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The Inspectors  
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Examination of Local Plan  
c/o Kerry Trueman  
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Shropshire Council FAO Eddie West, Interim Planning Policy and Strategy Manager  
By email [edward.west@shropshire.gov.uk](mailto:edward.west@shropshire.gov.uk)

15 August 2023

Dear Sirs

**Shropshire Council: Examination of Local Plan**  
**CPR PART 54 AND PRE-ACTION PROTOCOL**

We are instructed by Bradford Rural Estates Limited ("BRE"). This letter is written in accordance with the pre-action protocol for judicial review. The letter set out our client's strong objections to Shropshire Council's response (GC25 dated July 2023 added to the examination library on 2 August 2023) to the Inspectors' interim findings of 15 February 2023 (ID28). Leading Counsel has advised our client that the Council's approach, and a resumption of the examination based upon its proposed modifications and associated evidence base, would be unlawful. The letter is putative in so far as it identifies the illegality which would arise if the decision is taken to proceed with the examination on the basis of the Council's proposed modifications and evidence base as presently submitted by the Council in response to ID28.

## **1. The Proposed Defendants**

The Secretary of State for Levelling Up, Housing and Communities  
Shropshire Council

## **2. The Proposed Claimant**

Bradford Rural Estates Limited

## **3. Details of the Claimant's Legal Advisers**

Aardvark Planning Law  
1 Parsons Close  
Ecton  
Northants NN6 0QJ

FAO Sebastian Charles

## **4. Details of the Matter Being Challenged**

The decision to proceed with the examination into the Shropshire Local Plan on the basis of the Council's proposed modifications.

Before addressing that illegality, we set out the Inspectors' findings contained in document ID28.

### **Background - The Inspectors' Findings**

1. By way of brief summary of the Inspectors' key interim findings which run at the heart of our concern with the Council's response, we note the following points they made in ID28:
2. The Inspectors found that the Statement of Common Ground between the Council and the four Black Country Authorities (BCA) remains valid despite the collapse of the Joint Black Country Plan. There is no change to the evidence of need arising from the Black Country (BC) or the validity of the 1,500 homes and 30ha of employment land which Shropshire Council has agreed to accommodate towards BC needs (para 14).
3. The provision for BC needs must be made by specific site allocation(s) so that delivery is measurable (para 21). It obviously follows from these interim conclusions, that the specific allocation(s) to be made must be suitable to meet the BC needs.
4. The provision for BC needs cannot be deferred (para 15).

5. The Inspectors note that the Council's agreement to accommodate 1,500 homes and 30ha of BC need is a starting point. There is agreement between the Council and the BC Authorities to revisit the level of cross boundary provision to be made in Shropshire once levels of unmet need for housing and employment have been confirmed through the individual BC Authorities plans (para 16). The Inspectors' expectation, and that of Shropshire and the BC Authorities which are noted, is that there will be significant additional unmet need from the BC. The Inspectors requested views from the Council on how such expected future cross boundary need will be accommodated (para 25).
6. The Inspectors found that the Council's evidence and the basis of the Plan submitted for examination, is a need for 30,800 homes (1,400 dpa) and a requirement for around 300ha of employment land over the Plan period to meet the needs of Shropshire. The Inspectors' interim findings note the increase in housing need proposed by the Council to account for the 2 year extension to the Plan period proposed during the examination (para 10). The Inspectors did not comment upon the lack of any adjustment in the employment land requirement as may be required as a result of that plan period extension. Notwithstanding this, the Inspectors consider the Council's underlying assessment of need for housing and employment for Shropshire's needs is sound (para 13).
7. The Inspectors found that the SA did not take account of the provision to be made towards BC needs in drawing conclusion on the appropriate provision for Shropshire's needs (para 11). Accordingly, the Inspectors asked that the SA be revisited to add the agreed provision for the BC to the identified Shropshire needs (para 20).
8. The Inspectors specifically raised concern about the conflation of need with requirement for both housing and employment. The Inspectors' expectation based upon the evidence, was that the BC provision should be added to the 30,800 and 300ha (paras 11 and 12).
9. The submitted SA does not consider the 1,500 homes and 30ha to be provided towards BC needs (para 17). The SA is required to be revised to evaluate the proposals to make provision for the BC need and to consider the reasonable alternatives to such provision. In so doing, the SA must take account of the objectives of the plan and the revised geographical scope resulting from provision for BC needs. The selection of sites to meet the BC need should also be subject to sustainability appraisal to reflect the scope and objectives of the Plan (paras 18-21).
10. The Inspectors have requested the Council to consider its growth option and strategy through the revised SA, but not requested that it change its strategy. Any change would be as a result of assessment through the SA process (para 22).
11. The assessment of exceptional circumstances to consider green belt release to meet Shropshire's needs and the assessment of exceptional circumstances to consider green belt release to meet BC needs are two separate exercises. The Inspectors have requested both (para 23).

12. The effectiveness of the Plan requires monitoring of the delivery of the planned contribution to BC needs (para 26).
13. For the above reasons, the development strategy proposed by the Council is unsound (para 54).

### **BRE's Grounds in Summary**

14. In response to the above, the Council has sought to ignore the guidance the Inspectors have provided and, we suggest, paid lip service to the Inspectors' requests. The Council has, in effect, maintained its previously asserted approach and has sought to re-write its evidence base to support those pre-conceived conclusions. We respectfully submit that, in so doing, the Council has not complied with the Inspectors' requests and its revised strategy cannot be lawfully used as the basis for a modified plan.

### **Ground 1 – Jurisdictional Issues**

15. As we have noted above, the Council's local housing need figure for Shropshire contained in the submission draft of the local plan was found by the Inspectors to be sound. This figure is the high growth figure of 30,800.
16. The Council's position as now set out in its additional work has left the housing requirement figure 30,800 but this now includes a 1,500 dwelling contribution towards the Black Country requirements. This must mean that the Council has reduced the housing requirement for Shropshire from that originally included in the submitted draft plan; the Council seems to have done this by relying on later housing need calculations on a 2023 base (see, for example, para. 4.73 of the Housing and Employment Topic Paper). The Council's position on employment land provision has derived from a similar approach.
17. The jurisdiction to make modifications to a plan are circumscribed. Under s. 20(7C) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), an Inspector has the power (and duty) to recommend modifications to make a document sound (as well as comply with the requirements of subsection (5)(a)). The purpose of the modification process is to enable changes to be made to a plan which are defective but which can, properly, be overcome by further work. The process is patently not to enable an authority to propose a different approach to matters which have been promoted as sound and found to be so. That is because, were that approach to be permitted, it makes the process before Inspectors a plan-making process, rather than an examination (in part) of the soundness of a made plan. This approach is mirrored in the Examination Procedure Guide which states: "the main modifications must relate directly to the reasons why the Inspector has found the plan unsound or legally non-compliant" (see the Introduction).

18. The Council's proposed modifications are, in substance, to reduce the level of Shropshire's housing requirement within the plan; this has already been adjudicated upon by the Inspectors and been found to be sound.
19. There is, consequently, no jurisdiction to make the proposed modifications on employment and housing which are suggested.
20. A challenge to a local plan is capable of being made prior to the adoption of the relevant local development document; the ouster provisions in s. 113(2) of the 2004 Act do not apply to challenges against pre-adoption plans: see *R (CK Properties (Theydon Bois) Ltd) v Epping Forest District Council* [2019] PTSR 183.
21. However, to avoid such a challenge, the Council should, it is respectfully requested, be required to undertake an assessment, including an appropriate sustainability appraisal, which reflects the expectations set out in ID28, namely, to undertake an assessment which appropriately accommodates the Black Country authorities' employment and housing need in addition to Shropshire's (sound) needs.

## **Ground 2 - Improper Purpose**

22. The error of approach in the Council's analysis raises considerable concern as to whether the Council has acted for lawful purposes. The Council's failure to take any step to consider additional land to accommodate the Black Country's housing and employment need but, instead, to reduce the housing and employment requirements of Shropshire, raises significant doubts as to whether the Council has acted for the purpose of achieving a sound plan.
23. Rather, it appears that the Council's purpose is to avoid releasing further green belt land (beyond that already identified in the submitted plan) to accommodate Shropshire's requirements and the Black Country's needs; this is reflected in the Housing and Employment Topic Paper which, when dealing with the employment land requirement, justifies the relevant option on the basis that the option is "comparable to the scale of growth ... in the draft Shropshire Local Plan... This would provide confidence that Option 3 is consistent with the economic growth aspirations and capable of being delivered within the environmental objectives for Shropshire" (para. 5.67(c)(ii)).

## **Ground 3 - Sustainability Appraisal**

24. There are a substantial number of shortcomings in the sustainability appraisal ("the SA"). Principally, and consistently with the matters identified above, the SA fails to undertake any assessment of the effect of adding the identified Black Country employment and housing need to the original Shropshire requirement.
25. There are, however, a wide range of additional issues. It suffices at present to identify the following problems:

-SA 9.31 confirms that no new or additional sites have been considered through the assessment process, only sites that had already been considered through the plan to date. The previous failure to consider whether there are different sites better suited to meeting the needs of the BC (as opposed to Shropshire) has been repeated.

-There has been no consideration of whether there are different exceptional circumstances justifying release of land within the green belt specifically for the BC provision.

-It appears that the revised Stage 2a process takes account of subjective environmental factors only and has no regard to social and economic considerations. The SA process therefore remains fundamentally flawed.

-Stage 2b, which filters sites based on availability, size and strategic suitability, has not been updated. That appears a serious omission given the requirement to consider the specific needs of the BC separately.

-The reasoning set out in the stage 3 site assessment tables (Appendices 3-10) and specifically for P26 Amended and P26 Amended v2 (Appendix 10) states that there are not exceptional circumstances to justify the release of those sites from the green belt. The Council does however propose a green belt site to meet the contribution to BC employment needs and so has concluded that there are exceptional circumstances justifying green belt release in order to meet the BC employment provision. The assessment in respect of P26 Amended and P26 Amended v2 is therefore plainly wrong.

It follows that the merits of alternative sites to meet the BC employment need should be considered in respect of green belt considerations and other planning, social and economic considerations. The Green Belt Topic Paper, however, assesses just one site for employment and none for housing for BC purposes. The Green Belt Topic Paper assessment therefore predetermines the site selection. The SA does not provide an appropriately reasoned or rational basis for that pre-selection. Indeed, the Green Belt assessment of a range of alternative sites specific to meeting the BC need should have fed into the SA.

26. On the basis of these errors, the SA is so deficient that it could not reasonably be described as an environmental statement for the purposes of the Environmental Assessment of Plans and Programmes Regulations 2004: see *R (Blewett) v Derbyshire CC* [2005] Env LR 29.
27. In spite of these problems, the errors identified are largely capable of being corrected if the Council undertakes an assessment compliant with the approach identified by the Inspectors of meeting both Shropshire's requirements and the Black Country's needs.

**Details of the action that the Defendants are expected to take**

The examination is not resumed until the Council provides proposed modifications and an evidence base which corresponds with the Inspectors' requirements in ID28; in particular, the Council's response should provide modifications and an assessment which delivers the contribution to the Black country's housing and employment needs as an addition to Shropshire's housing requirements as set out in the submission local plan.

**ADR Proposals**

No ADR proposals are considered appropriate in this case.

**The address for reply and service of court documents**

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**Proposed Reply Date**

30 August 2023

Yours faithfully



**Sebastian Charles**

For and on behalf of Aardvark Planning Law

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