

To

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The Inspectors  
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29 September 2023

Dear Sirs

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

We write further to our pre-action protocol letter dated 15 August 2023 (the "PAPL") and your purported response dated 14 September 2023 (the "PAPL Response").

In short, your response does not address the substance of our client's concerns. We do not accept our letter is an abuse of process, nor premature. In the latter regard we refer you to para 20 of the PAPL. Indeed we consider it highly appropriate to raise the fatal flaws we identify in the Council's response to ID28 of July 2023 (the "ID28 Response") at the earliest

possible opportunity to avoid the wasted costs on all sides associated with the course of action the Council has chosen to take. We maintain our key submission which is that the examination of the plan cannot lawfully proceed based on the ID28 Response, we note that the Inspectors (at least) accept there are concerns about soundness and we reserve our position entirely on that point. We reject the notion that we have “factual inaccuracies”.

### **Distinction Between Housing and Employment Land Needs and Requirements**

We note the Council's comments to the effect that the housing requirement is to be differentiated from housing need. We do not accept that there has been any confusion on our part. The important issue for present purposes is what the Inspectors in ID28 were requiring the Council to undertake and what they considered to be sound. It is quite clear that the Inspectors found the plan figure of 30,800 dwellings and 300 has of employment land, which is the requirement set out in the plan, to be sound in so far as it provided for Shropshire's requirements. The figure was not being found sound as a figure which also provided for the Black Country's needs as well. That is quite clear given the recommendation of the Inspectors of the work which they considered the Council should undertake.

As we have said, the effect of the Council's modifications is to incorporate part of the Black Country housing and employment requirement (or need) into the Council's existing requirement of 30,800 and 300 hectares. This means that the Council has necessarily reduced the requirement which it had set out in the draft plan for Shropshire. The reduction in the requirement for Shropshire was not permitted as a modification because, as we have indicated in the PAPL, that part of the plan was found sound.

### **Sustainability Appraisal**

We also stated in the PAPL at paragraph 21 that there should be an “appropriate” sustainability appraisal which “reflects the expectations set out in ID28” and “appropriately” accommodates the Black Country needs. The assessment of the sustainability issues, as we indicated in Ground 3, simply does not do that.

The Additional Sustainability Appraisal Report (“the ASAR”) has a series of defects as we set out in the PAPL (and do not repeat, although it is to be noted that they were set out as examples only).

Further, the ASAR does not proceed upon the correct basis. In relation to the strategic direction of the plan, it re-evaluates the different growth level options themselves rather than focussing properly and comprehensively only on the merits of the options for accommodating the additional growth beyond the sound requirement figure for Shropshire of 30,800 dwellings and 300 hectares – that is, what is the most appropriate option for accommodating the quantum of 32,300 dwellings and 330 hectares of employment land, to serve not just Shropshire, but also Black County needs.

Further in the alternative, if it were to be accepted (which it is not) that its approach towards optioneering is considered to be legally acceptable, the methodology of the ASAR itself is flawed.

The ASAR summarises the pros and cons of Option 5, variation 3 at 6.47 – 6.55. The positive effects listed appear to significantly outweigh the negative effects listed. The scoring is a simple ranking of the 5 different options assessed against a range of criteria with options scored 1 best to 5 worst. Scores are not however provided for all factors and the conclusion is not arithmetic, but a subjective judgement. If the scores that have been provided were totalled, they would show Option 5 High Growth Variation 3 to be the winner. The SA states at 6.65: *“In general terms, the additional SA assessment work can be summarised as concluding that the greater the level of housing proposed within the option, the greater the likelihood of positive impacts on social and economic factors. Conversely the greater the level of housing proposed within the option, the greater the likelihood of negative impacts on environmental factors. It is important to recognise that the principle of sustainable development is about achieving balance across all three pillars – social, economic, and environmental”*. The ASAR does not draw a conclusion on which housing option is preferred in SA terms. There is therefore no clear SA conclusion to carry forward into the planning judgement (which the ASAR at paragraph 6.37 states will be the final determination) about which option should be the proposed housing requirement for the Plan.

The assessment of the employment options follows a similar process, with the pros and cons appearing to favour this option. The scoring process is the same as for housing, but more of the criteria are scored (rather than being left blank) than for housing. Why it is possible to score more for one land use than another is not explained. If an arithmetic result were used this option would be the least preferred. Again, no conclusion is drawn as to which option is preferred in terms of SA.

The assessment of reasonable options for the strategic distribution of development (section 8 of the revised SA) does not explicitly consider the changed geography and other effects of including the BC provision.

With regard to the assessment of sites at section 9 which we have referred to above, paragraph 9.4 sets out factors a – d that are stated to have been considered, comprising: geographic proximity and links, migration patterns, commuting patterns and extent of the travel to work area. The conclusions drawn are that the central and eastern areas perform best, from which seven settlement areas are identified as the most appropriate location to meet the need. Despite there being no conclusion as to the growth option that should be selected, the SA does not assess any new or additional sites as confirmed at SA 9.31. Neither does the SA assess sites with regard to their ability to deliver social, economic or environmental benefits related to the BC need. The only factors considered which are specific to the BC, are factors set out at 9.4 a – d. We have undertaken an assessment of the shortcomings of the site assessment and its failure to consider exceptional circumstances for green belt release.

In light of the above, it remains the case that the Council has not adequately responded to ID28 paras 18 - 20 which require the SA to cast its analysis more widely to take account of the expanded geography of the BC, beyond that already considered in the context of meeting Shropshire’s needs. Although the revised SA has assessed the quantum of development including the BC need in addition to the current plan, it has not done so with regard to social,

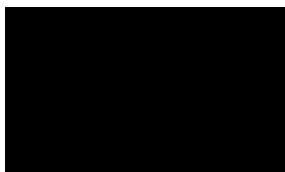
economic and environmental factors particular to or including the BC. The principle of the SA being revised to expressly consider the effects of meeting the needs of the BC in addition to just Shropshire needs (ID28 para 19) has not therefore been carried out. There has been no sustainability appraisal of which sites should be selected to meet the BC need, because no comparison between sites for that express purpose has been carried out contrary to ID28 para 21.

## **Summary and conclusion**

What the Council ought to have done, and has failed to do, is to assess against its baseline figures already assessed, the alternative options for additional provision to meet BC need.

The most glaring omission in its assessment of options at this stage is the failure to return to its conclusions about the reason for not taking forward the allocation “land at Junction 3” considered and rejected after the Consultation on Strategic Sites in 2019 on the basis that the need for it was not sufficiently established. That conclusion was reached in 2019 before BC needs were assessed and before the minimum additional requirement of 1,500 dwellings and 30ha employment land was established and accepted by Shropshire (see Cabinet Minutes of 7 December 2020), and now must be reassessed (at least, potentially alongside other options for meeting BC needs specifically). The ID28 response contains a lack of detailed consideration under the optioneering generally and specifically does not include a detailed reconsideration of the land at J3, as originally considered in the Consultation on Strategic Sites and as subsequently refined. We do not accept that unless and until land at Junction 3 (as a minimum) is subject to detailed consideration, taking into account the minimum additional requirement of 1,500 dwellings and 30ha employment land to serve Black Country needs subsequently accepted, that it is appropriate to move forward to consider soundness in the examination forum. We restate our Ground 2 of the PAPL that in seeking to avoid considering additional sites at all, the Council’s purpose is improper, and it is not possible to achieve a sound plan without taking those simple additional steps.

Yours faithfully



**Sebastian Charles**

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