

ID36

Shropshire Council. Examination of Shropshire Local Plan 2016-2038

Inspectors: Louise Crosby MA MRTPI, Carole Dillon BA (Hons) MRTPI and Nick Palmer BA (Hons) BPI MRTPI

Programme Officer: Kerry Trueman

Tel: 07582 310364, email: programme.officer@shropshire.gov.uk

Mr West
Planning Policy
Shropshire Council
PO BOX 4826
Shrewsbury
SY1 9LJ

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Dear Mr West

Shropshire Local Plan Examination - CPR Part 54 and Pre-Action Protocol

1. Thank you for your letter dated 23 August 2023 (GC39) in reply to our letter of the same date (ID35). We are also in receipt of your letter to Aardvark Planning Law dated 14 September 2023 (GC40) and we have seen their response (OD005). The purpose of this letter is to provide our view in relation to the letter from Aardvark Planning Law dated 15 August 2023, addressed to the Treasury Solicitor on behalf of The Secretary of State for Levelling Up, Housing and Communities (OD004). Our letter will focus particularly on the Grounds set out in paragraphs 15 to 27 (inclusive) and the Council's Additional Sustainability Appraisal Report – July 2023 (SA).

Ground 1 – Jurisdictional Issues

2. In our Interim Findings letter dated 15 February 2023 (ID28) we found that the Council's approach to identifying the housing and employment land needs derived within Shropshire itself to be sound. The housing need is different to the housing requirement figure of 30,800 homes and 300ha of employment land identified in policy SP2. In our letter we did not say that the housing requirement figure for Shropshire was sound. This clear distinction is important. However, that does not mean that we do not have some concerns with some of the work undertaken by the Council.
3. The housing requirement figure in policy SP2 is based on the Local Housing Need figure (LHN) assessed in 2020 and a High Growth Option tested through

the original Sustainability Appraisal. The employment land figure is also based on a High Growth option.

4. Planning practice guidance provides advice on when strategic policy-making authorities should assess their housing need figure for policy-making purposes. This says that *'strategic policy-making authorities will need to calculate their local housing need figure at the start of the plan-making process. This number should be kept under review and revised where appropriate'*. It adds *'however, local housing need calculated using the standard method may be relied upon for a period of 2 years from the time that a plan is submitted to the Planning Inspectorate for examination'*¹.
5. The plan was submitted to the Planning Inspectorate for examination on 3 September 2021. So, whilst the plan was submitted for examination just over 2 years ago this was not the case when the SA was carried out in July 2023. We did not indicate in our letter in February that it would be appropriate to take account of the most up to date local housing need figure in carrying out the additional work.
6. Moreover, even when housing need figures based on LHN become more than 2 years old during an examination there would have to be particular circumstances to require a review. This is because updating housing need figures during an examination can result in a great deal of consequential changes which have the potential to significantly delay the examination and the plan being found sound. We are not currently aware that these circumstances exist here.
7. From what we have read it seems that the Council have retained the 2020 LHN figure as the baseline but then adjusted what they consider to be a high growth option having regard to the 2023 LHN calculation of housing need which has reduced by 8%. The mixing of these figures is confusing, but as we understand it the Council have chosen to proceed with High Growth (variation 1) which results in the same figures as policy SP2 but effectively reduces the homes to meet Shropshire's need to be able to meet some of the unmet needs of the Black Country. Looking at annual housing requirement figures this is more akin to the Moderate Growth option in the original SA than the High Growth Option.
8. In terms of employment land, the SA seems to assess the reasonable options under the same headings as for housing and again the Council have decided that the High Growth (variation 1) option is appropriate based on their planning judgment. This reduces the amount of employment land

¹ Paragraph: 008 Reference ID: 2a-008-20190220

being required to meet the needs of Shropshire despite being labelled the High Growth (variation 1).

9. Our initial findings letter did not ask the Council to review its own housing requirement figure, but instead to assess through further SA work the implications of meeting the needs of Shropshire as well as some of the unmet needs of the Black Country (1500 homes and 30ha of employment land) Shropshire Council has agreed to accommodate through the duty to cooperate.
10. Paragraph 22 of our February letter says, *'if following the additional SA work, the Council chooses to pursue the same growth option as before then it follows that the housing and employment land requirements will increase, and more sites will be required. Consideration will also need to be given to the distribution of development since accommodating some of the unmet needs may result in more sites being required in the part of Shropshire nearest the Black Country. It would therefore be helpful if, once the Council has carried out the additional SA work, the proposed strategy in relation to the housing and employment land requirement is set out in the topic paper requested at paragraph 12 above. The Plan should also make clear what the Council's strategy is, through main modifications'*. Whilst our letter refers to potentially assessing different growth options as part of the SA work, it does not invite the Council to review the baseline growth options for Shropshire itself.
11. Indeed, the SA assessment of housing requirement reasonable options seems overly complicated. We are unsure why there are variations on the high growth option. It would have been much simpler to keep the existing high growth figure (plus the adjustment for the additional years), reflecting Shropshire's own needs, in the SA and then add in the unmet needs of the Black Country.
12. We have found the SA and housing and employment topic paper overly complicated and confusing. It is not clear why one growth option was preferred over another, based on the outcomes of the updated SA work. This is in part because the SA does not reach clear conclusions based on its results. Whilst we are not suggesting this was the Council's intention it would clearly be inappropriate to retrofit the SA to suit predetermined housing and employment land requirements.
13. Section 20(7C) of the Planning and Compulsory Purchase Act 2004, says that an Inspector has the power to recommend modifications to make a plan sound. The purpose of the modification process is to enable changes to be made to a plan which is defective, but which can, properly, be overcome by further work. The process is not to enable Councils to propose a different approach to matters which have already been promoted as sound and

found to be so by an Inspector. The Planning Inspectorate's Examination Procedure Guide² at paragraph 1.5 advises that *'there is no provision in the legislation which allows the LPA to replace all or part of the submitted plan with a revised plan during the examination'*. The introduction to this guide states, *'the main modifications must relate directly to the reasons why the Inspector has found the plan unsound or legally non-compliant'*. There seems to be very limited evidence to justify the reduction in the housing and employment land requirement for Shropshire, itself, which we did not ask the Council to review in our February letter (ID28).

Ground 2 - Improper Purpose

14. As alluded to above the SA does not assess the impact of accommodating the agreed unmet needs of the Black Country in addition to Shropshire's own housing and employment needs. Instead, it appears to have looked to absorb those needs into its own requirement which is precisely what we were concerned about in our letter in February. As the plan proposes to meet some of the unmet needs of the Black Country, it is necessary for the SA to appraise reasonable alternative options for achieving this against sustainability objectives. We will then consider the outcome of that work, and the consultation comments on it, to determine whether meeting the needs is an appropriate strategy.

Ground 3 – Sustainability Appraisal

15. The SA does not appear to properly assess reasonable alternative sites to meet the unmet needs of the Black Country. Clearly sites to meet the agreed unmet needs of the Black Country are likely to be most appropriately located close to the Council's administrative boundary with the Black Country authorities. Whilst the Council identify specific sites to meet both the housing and employment needs of the Black Country the sites which have been selected are sites that underwent SA assessment to meet the needs of Shropshire as a whole and not the specific geographical needs of the Black Country.
16. This appears to be confirmed in paragraph 9.31 of the SA as it says, *'With regard to the identification of sites, it was concluded that a comprehensive process was undertaken to identify sites for consideration within the site assessment process undertaken to inform the identification of proposed allocations within the draft Shropshire Local Plan'*.
17. The site selected to meet the unmet employment needs of the Black Country is in the Green Belt. The Council do not appear to have assessed whether there would be reasonable alternative sites either not in the Green

² [Procedure Guide for Local Plan Examinations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612222/Procedure_Guide_for_Local_Plan_Examinations.pdf)

Belt or in the Green Belt but with less Green Belt harm in the same geographical location.

18. The recent Green Belt Topic paper (GC30) says at paragraph 9.19, *'Consistent with paragraph 141 of the NPPF, before concluding that exceptional circumstances existed, consideration of all other reasonable alternatives was undertaken. This is comprehensively documented within paragraphs 8.64-8.87 of the Green Belt Revised Exceptional Circumstances Statement (EV051)'*. It appears from this that the Council have relied upon evidence from December 2020 (GC30) which was undertaken when the Council were just looking to meet its own housing and employment land needs.
19. Also, Stage 3 of the SA, when assessing sites P26 Amended and P26 Amended v2 says in the reasoning section of these sites that *'Whilst the sites size and location (proximity and connectivity to the Black Country) could mean that it is an appropriate location to meet cross-boundary needs arising in the Black Country, it is considered that there are other non-Green Belt locations/more appropriate locations to accommodate the proposed contributions to unmet needs forecast to arise within the Black Country'* (our emphasis). However, the Council are intending to release sites in Shifnal (SHF018b and SHF 018d) to accommodate the employment needs of the Black Country. These sites are in the Green Belt.
20. At paragraph 9.42 of the SA the Council seem to say that at stage 3 of the SA process they will consider and identify sites that are suitable to meet the identified unmet accommodation needs of the Black Country and therefore stage 3 of the SA and site assessment process will be subject to a comprehensive update. However, this comprehensive update does not appear to have taken place and reasonable alternative sites in the Green Belt have not been considered as far as we can see.
21. In addition, the updated SA confirms that stage 2b which filters sites based on availability, size and strategic suitability has not been updated. We find this illogical as matters such as size and strategic suitability are in our view matters of importance when looking to identify a site or sites to meet a different need i.e., that of the Black Country.
22. In summary, the SA should contain, among other things, the likely effects of the implementation of the plan and the reasonable alternatives, including cumulative effects, mitigating measures, uncertainties and risks as well as the reasons for selecting the proposals in the plan and rejecting the alternatives and then conclusions and recommendations as well as implementation and monitoring measures.

Conclusion

23. We have written this letter in response to the points made in Aardvark's letter to the Treasury Solicitor. However, the principles we have indicated that need to be followed in the SA work obviously apply equally to other sites, not just those of interest to Aardvark.
24. In order to remedy the shortcomings set out above the Council will need to carry out additional SA work and where necessary the Housing and Employment Topic Paper and Green Belt Topic Paper. Can the Council please provide a timescale for carrying out this additional work.
25. We are not inviting comments from any representors to our letter. Should the Council have any questions please direct them through the programme officer.

Louise Crosby, Carole Dillon and Nick Palmer

Examining Inspectors