Strategic Planning & Research Unit

For and on behalf of
Mr Edward Spanton

Thanet District Local Plan Examination
Response to MIQ's Matter 1: Legal Compliance

Land at Cliffsend, west of Ramsgate

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1.0 INTRODUCTION

1.1 This response to the Thanet Local Plan Inspector's Matters, Issues and Questions are made by Strategic Planning Research Unit ('SPRU') of DLP Planning Ltd on behalf of our client, Mr Edward Spanton, the landowner of land west of Cliffsend, west of Ramsgate, Kent. The site is, in part, identified for housing and a new railway station in the emerging Local Plan as proposed policies HO15, HO16, HO17 and SP45. If allocated as a whole, our client's site could provide **at least 600 dwellings**, the exact number will be confirmed upon completion of the masterplan.

2.1 The proposed development area extends to approximately 54 hectares of land across 4 parcels of land in the ownership and control of the landowner, Mr Edward Spanton.

2.2 Whilst partially allocated under emerging Policies HO15, HO16, HO17 and SP45, it is considered that given the shortage of available and developable site to make provision for the full 15 year period or to meet the OAN in the early part of the plan period there is a strong justification for the whole of the site to be allocated.

2.3 The site has been assessed (albeit in parts rather than as a single site) and is identified below. This is adjacent to the parkway station and represents a very sustainable location to the south of the district, a location which will assist in improving the overall delivery rates within the district by adding a further sustainable choice. In particular sites such as the one below can be developed quickly and assist the plan in achieving a five-year housing land supply at the date of adoption.

Figure 1. Location Plan

1.2

2.0 MATTER 1: LEGAL COMPLIANCE

a) Issue 4: Sustainability Appraisal

i) Q1. Have the likely environmental, social and economic effects of the Plan been adequately assessed in the *Sustainability Appraisal – Environmental Report* ('SA')?

2.1 No – for the reasons set out below.

ii) Q2. Does the SA test the Plan against all reasonable alternatives, such as different options for the scale and distribution of growth? Where is this set out?

2.2 In summary, no proper consideration has been given to the reasonable alternatives and it is noted that 'reasonable alternatives' has only been mentioned twice in the 2018 Report and not at all in the 2016 SA. The 2018 SA Report therefore does not provide reasons for not taking forward reasonable alternative sites. Reasonable alternatives are referred to in paragraph 5.4.2 of the Scoping Report (2013) but this is in the context that these **will** be assessed, rather than have been.

2.3 The PPG at the time of submission (Paragraph 018, Ref ID: 11-018-20140306) required all reasonable alternatives to be assessed against the same baseline environmental, economic and social characteristics as the preferred options. The SA process has considered mitigation of the preferred options, but not of the reasonable alternatives and the role of the SA is described on page 2 as being "*to communicate to interested parties the results from the SA of draft Local Plan preferred options".* This is wholly inadequate, and the site selection and SA processes are flawed in this respect. Furthermore, it makes it clear that reasonable alternatives must be assessed to the same level of detail:

"The Sustainability appraisal needs to compare all reasonable alternatives including the preferred approach and assess these against the baseline environmental, economic and social characteristics of the area and the likely situation if the Local Plan were not to be adopted… The sustainability appraisal should identify any likely significant adverse effects and measures envisaged to prevent, reduce and, as full as possible, offset them. The sustainability appraisal must consider all reasonable alternatives and assess them in the same level of detail as the options the plan-maker proposes to take forward in the Local Plan (the preferred approach)"

2.4 Furthermore, Table 5 of the 2018 SA is entitled "rationale for policy's not assessed as part of reasonable alternatives". This table clearly states that for policies SP13 to SP18 "these sites were assessed under broad housing locations as well as being assessed via the SHLAA". This suggests that these sites were not selected as part of the consideration of reasonable alternatives in the SA but were assessed under "broad housing locations". This is contrary to the required approach of the SA and the approach taken by the Council is flawed in fundamental respects and does not follow the Regulations/the SEA Directive.

2.5 In procedural terms the whole of the SA should be complete at the time of submission. However, Regulation 35 (T&C Planning Regulations 2012) requires that documents are taken to be available when made available for inspection and published on the LPA website. Section 19 of the Planning and Compulsory Purchase Act deals with the "preparation" of local plan documents and, in particular Section 19 (5) requires the SA and a report of the findings of the SA to be undertaken. The SA was not complete as it had failed to deal with reasonable alternatives at the time of the Regulation 19

consultation. "Preparation" ends at the commencement of Regulation 19 because the Plan cannot be amended by the Council after Regulation 19. The SA was not complete and this remains a substantive unresolved issue for this examination.

2.6 In methodological terms the SA is required to assess "reasonable alternatives" in order to comply with statute, regulations and guidance.

2.7 The failure to consider reasonable alternatives in the SA is important because the Site Selection Report has been confirmed by the Council (at the Examination Hearing on 12 February 2019) to be "embodied in the SA" and in this case, the UK authorities on reasonable alternatives are as follows:

a. St Albans v. Secretary of State [2010] JPL 70

b. Save Historic Newmarket v Forest Heath DC [2011] JPL 1233

c. Heard v. Broadland DC [2012] Env LR 23

d. R (Buckinghamshire CC) v Secretary of State for Transport [2013] EWHC 481 (Admin) (HS2) Ouseley J. who found breach of alternatives duty. Court of Appeal agreed [2013] P.T.S.R. 1194 at [72] and [183]-[185]. Not raised in Supreme Court.

e. Ashdown Forest Economic Development LLP v Secretary of State [2014] EWHC 406 (first instance) – wide judgment

f. Cogent Land LLP v Rochford DC [2013] JPL 170

g. No Adastral New Town v. Suffolk Coastal DC [2015] Env. L.R. 28

h. R. (Friends of the Earth Ltd) v Welsh Ministers [2016] Env. L.R. 1

i. R. (RLT Built Environment Ltd) v Cornwall Council [2017] JPL 37

2.8 Further guidance is set out in the Commission Guidance at 5.13 and 5.14 and UK Guidance Section 5 this highlights that:

j. Duty to consider alternative which would secure the objectives of the plan or programme proposed within that plan or programme;

k. Not legitimate to select alternatives which have obviously more significant adverse effects than the plan or programme as proposed in a bid to promote the latter.

l. Consider both positive and negative effects.

2.9 In terms of the above cases the following can be concluded;

m. St Albans – failure to consider alternatives to late modification;

n. Newmarket – failure in the final report to consider any alternatives to changing housing position and no summary or reference back in the ER to the options process considered earlier;

o. Heard – Broadland DC and South Norfolk DC JCS unlawful because the SEA undertaken did not explain (i) which reasonable alternatives to urban growth had been selected for examination and why; and (ii) it had not examined reasonable alternatives in the same depth as the preferred option;

p. Reasons must be given for both (i) the selection of alternatives for assessment, and (ii) the selection of a preferred option;

q. Save Historic Newmarket Ltd.

i. Paragraphs [16]-[17], [40] - alternatives can be sifted out as the draft goes through successive iterations without the need to re-examine at each stage but must give reasons in the report for their rejection, and where the reasoning had been given at earlier stages the ER accompanying the final draft must at least summarise that reasoning. No "paper-chase" (see Commission Guidance)

ii. As to the reasons for preferring the proposed plan as adopted: the proposition that a "prior ruling out of alternatives" may legitimately take place during the iterative process is subject to:

"the important proviso that reasons have been given for the rejection of the alternatives, that those reasons are still valid if there has been any change in the proposals in the draft plan or any other material change of circumstances and that the consultees are able, whether by reference to the part of the earlier assessment giving the reasons or by summary of those reasons or, if necessary by repeating them, to know from the assessment accompanying the draft plan what those reasons are":

iii. Heard –

1. Obvious non-starters could be ruled out [66] but outline of reasons for the selection of alternatives is required and alternatives have to be assessed.
2. There must be "a reasoned evaluative process of the environmental impact of plans or proposals" and the SEAD requires an outline of the reasons for selection of a preferred option even where alternatives also still being considered. Where only one option is under consideration, reasons must be given for that also [70]
3. alternative objectives do not have to be assessed; the focus of SEA is alternative ways of meeting those objectives

2.10 The situation here is that our client's site at Cliffsend west of Ramsgate was not assessed although it remains a reasonable alternative which has simply not been assessed at the same level of those sites that have been selected for development.

2.11 In terms of the approach required by the SA this site selection methodology fails for the following reasons:

r. The SA has not considered all reasonable alternatives – at best the SHLAA has only considered broad locations of growth in the most cursory of manners.

s. The assessment of much larger tracts of land is not an appropriate way of discounting smaller sites in the same area. This is because smaller sites my not necessary share the attributes of these much larger broad locations. **The approach of The Site Selection Report 2018 using much larger sites that are required to meet development needs appears contrary to Commission Guidance at 5.13 and 5.14 and UK Guidance Section 5.**

t. **The sites in the SHLAA (and hence the SA) has not been undertaken on a consistent basis.** Given that the sites that have been selected are assessed individually in the SA (as much smaller parcels) but the same approach has not been adopted for the sites discounted in the SHLAA in terms of the broad locations. An assessment of the smaller sites rather than broad locations that represented reasonable alternatives should have been undertaken in the same

way as those that had selected **this "dual approach" is unlawful Heard – Broadland DC and South Norfolk DC.**

u. **The SA should have reassessed alternatives once the scale of development changed.** The scale of development being considered at different locations varied over the production of the plan with early work considering the impact of large scale land releases and these assessments should have been revisited once a different level of development was being considered. **This approach of assessing a very significantly larger area in order to discount smaller reasonable alternatives is contrary to the judgements of Save Historic Newmarket and Heard – Broadland DC and South Norfolk DC (para 69 - 71).**

2.12 It is noted that the Housing Land Allocations and Assessment Results are set out in Appendix A of the 2016 SA report. This sets out the findings of the assessment for individual sites. This refers to the SHLAA Code from the previous (2013) SHLAA and there is a significant lack of clarity running through the documents. However individual sites appear to have been subdivided, hence the table 1 in SPRU's Reg 19 submission highlights that 6 sites assessed compared to the four sites promoted at this location.

2.13 In terms of the SA assessment of the promoted sites, it has been difficult to identify the individual assessments of each site, as reference numbers and site addresses change throughout the various evidence base documents. It is of note, that our client's site has not been assessed as a whole and comprises 6 different assessments.

2.14 It is also noted that the Council do not provide a map which details each parcel of land that has been assessed and we cannot be certain that the sites we have identified are in fact our client's site. Table 1 in our Reg 19 objection attempts to marry up what we consider to be our site in the SHLAA with the SA. Although it is clear from our struggles the Council are making this process unnecessarily difficult.

2.15 The approach adopted by the SA is not one of considering these as reasonable alternatives to the selected sites.

2.16 The whole of the site should at Cliffsend should have been assessed as a single site and covering the entire site area. The SA fails on both these points. The manner of the assessment of the sites as smaller piecemeal parcels fails to recognise the strategic potential of the site to provide a larger residential allocation which contains within it the new railway station. This is a significant failing of the SA and demonstrates its failure to assess all reasonable alternatives.

2.17 These failings together with the incomplete nature of the SA at the time of preparation and submission lead us to recommend that the examination be terminated and the submitted Local Plan withdrawn. It should not be found either legally compliant or sound.

iii) **Q3. Appendix G1 of the SA ('Justification of Preferred Options – Updated with further iterations of Policy') states that Option 9k (a new settlement) *"…would be unsustainable for the same reasons as freestanding countryside sites"*. Freestanding countryside sites were considered unsustainable due to their access to services, facilities and public transport connections. How does this correlate with paragraph 5.4 of the SA, which states that *"…sustainable implementation of a new settlement option could beachieved."*? Has the SA considered reasonable alternatives on a consistent basis?**

2.18 No. In our reg 19 response we highlighted that the SA has discounted sites on the basis of the broad location rather than a proper assessment of each individual site that

represents an actual alternative to those sites being proposed in the plan.

2.19 Furthermore, the justification in terms of policy choice (Appendix G1 of the SA page G4) refers to the locating development adjacent to existing urban areas assuming that they will be better served by existing transport links.

2.20 This approach confirms that the proposed new parkway station did not form part of the SA assessment of alternatives.

iv) Q4. How has the provision of a new settlement, as an alternative to the proposed growth strategy, been considered as part of the SA process?

2.21 It is considered that this an option that should only be considered after options which have considerably better in terms of access to sustainable transport (such as the site at Cliffsend) have been considered.

v) Q5. In response to the Inspectors' Initial Questions the Council confirmed that the options of locating housing adjoining the urban area and adjoining villages was considered in Appendix G of the SA. However, Appendix G is taken from a report to Cabinet, dated 11 December 2014, and appears to be based on a different housing requirement to the one found in the Local Plan? Please can the Council point to where an assessment of reasonable alternatives has been carried out having regard to the housing requirement in draft Policy SP11?

2.22 Appendix G1 of the SA page G3 indicates that the SA only considered 2 options for growth these being:

v. Option 8a. Zero net migration – 3,714 homes

w. Option 8b. Short term migration – 11,648 homes

2.23 The plan now proposes 17,140 in SP11 however SPRU and others proposed higher levels of growth in their earlier submission and these should have also been tested. (the SPRU Reg19 (Housing Requirement submission proposed 1,070 dpa plus an extension of the plan period to 2036 so that it there would be 15 years from the date of adoption).

2.24 This highlights the inappropriate approach of the SA in terms of consideration of reasonable alternatives and renders the SA not compliant with the legislation as explained above.

vi) Q6. Does the assessment of policies in the SA take into account the findings of the People Over Wind & Sweetman vs. Coillte Teoranta judgement? In particular, whether policies are likely to have an adverse effect on site integrity?

2.25 No comment.

vii) Q7. What is the justification for concluding that proposals for residential development and solar parks on greenfield sites will have a positive effect on the objective of conserving and enhancing biodiversity?

1.3 No comment.

viii) Q8. How has the SA considered infrastructure proposed in the Infrastructure Delivery Plan ('IDP'), which at this stage is only in draft form and may be subject to change

2.26 The SA has not considered the impact of the proposed new infrastructure in terms of the

assessment of reasonable alternatives.

2.27 The new 'parkway' station is a significant piece of new infrastructure and yet the SA is completely silent on any benefits that it might deliver in terms of its relationship with new housing development.

2.28 The assessment of the parkway station proposal (Policy SP45) is in Appendix G page G9) and this notes the following:

> *"Provision of a new station to support economic growth and encourage sustainable travel, is a project which is being led by the County Council and is expected to generate social and economic benefits for, and beyond, the district".*

2.29 The assessment does not take this proposal into account in assessing the suitability of potential locations for housing. This is despite the fact that the SA acknowledges that the Parkway Station is "providing infrastructure to support modal shift."

2.30 As a key assessment criterion, proximity to the new railway station has not been considered within the assessment for any of the promoted sites.

2.31 It is also not clear if the entirety of the promoted sites has been appraised and there has been no reasonable alternatives considered, there are no reasons provided by the Council as to why only a small fraction of the client's site has been allocated given its proximity to the proposed new railway station.

2.32 The fact that the SA has failed to recognise the importance of the new parkway station and has been used as simply to justify the council's selection of sites rather than inform the choice of sites means that sustainable sites such as the one subject to this objection has simply been overlooked.

2.33 The overreliance on a few large sites to the north of the district and the inadequate approach of the SA means that the LPA has failed to recognise the potential of Cliffsend and the proposals to develop a sustainable community around the new 'parkway' railway station. The provision of this new railway station which is an important piece of public transport infrastructure should have been properly considered and reflected in the proposed spatial strategy.

2.34 The justification for the Strategic Housing Sites (Policy SP13 to SP17) focusses on the spatial distribution of greenfield development and implications that this could have on accessibility to transport infrastructure, links and key services and facilities. It states that

> *"Assuming key facilities and transport links are more likely to be concentrated within and between built up areas, locating new development adjacent to existing urban areas will mean they are more likely to be better served." (page G4, 2018 SA)."*

2.35 While this acknowledges the positive impacts of focussing housing development in areas with good accessibility to transport infrastructure, this would also apply to sites close to the new parkway station, however this has not been considered as an option and has not been assessed as a reasonable alternative.

2.36 By purporting to undertake an assessment only of preferred options, the Council have failed to undertake an adequate SA as there is a legal requirement to consider reasonable alternatives. The Council appear to have circumvented a proper SA. Such an approach fatally undermines the soundness of the Draft Local Plan.

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