Kettering Site Specific Part 2 Local Plan (SSP2)

Examination – Hearing Statement – Inspector’s Matters, Issues and Questions

**Matter 1 – Legal and Procedural Requirements**

Week 1 - Day 1 – 8th October 2020

By: David Lock Associates (User ID No. 57)

On behalf of: Hanwood Park LLP
1.0 INTRODUCTION

1.1 This Hearing Statement has been prepared by David Lock Associates (‘DLA’) on behalf of Hanwood Park LLP (‘HPL’), the promoter and principal developer of Hanwood Park, formerly known as the East Kettering Sustainable Urban Extension. As Paragraph 9.1 of the Site-Specific Part 2 Local Plan (‘the Plan’ or ‘SSP2’) states, ‘the majority’ of the growth over the plan period within Kettering Borough will be provided through Hanwood Park.

1.2 This Statement responds to the Inspector’s Issue and Questions relating to Matter 1 – Legal and Procedural Requirements. The Statement does not seek to address all of the Inspector’s questions only those that impact upon Hanwood Park and related matters.

1.3 This Statement should be considered and read in conjunction with previous representations made on behalf of Hanwood Park LLP, including Statements made to respond to other Matters raised by the Inspector as part of the Examination of the Plan.
2.0 DUTY-TO-CO-OPERATE

2.1 In the Council’s response to the Inspector’s Initial Question 4, Kettering Borough Council states:

‘The Council does not consider that the Plan relates to any strategic matters, these are dealt with through the North Northamptonshire Joint Core Strategy (JCS). Therefore, the Council does not consider the Duty to Cooperate on strategic matters that cross administrative boundaries to be engaged by the Plan.’

2.2 This statement appears to directly contradict the Council’s Submission Plan Consultation Statement (May 2020), which states in Paragraph 1.11:

‘In addition to the work undertaken through the preparation of the JCS the Council has also undertaken on-going engagement with Duty to Co-operate bodies through the preparation of the SSP2.’

2.3 It is acknowledged that the North Northamptonshire Joint Core Strategy (NNJCS) is the “principal strategic element of the Council’s Local Plan”, as the Inspector for the Wellingborough Part 2 Local Plan stated in his Inspector’s Report\(^1\). The Inspector goes on to state that the Wellingborough Part 2 Local Plan dealt with “only limited strategic matters with cross-boundary implications”.

2.4 Kettering Borough Council’s housing trajectory relies heavily upon the delivery of Sustainable Urban Extensions, such as Hanwood Park, which by its very nature, scale and extent comprises strategic development. In addition, the Plan seeks to agree a proportion of dwellings suitable to meet the needs of older people (Policy HOU2) and 5% of plots to be made available as self-build or custom build serviced plots (Policy HOU4) on developments of over 50 dwellings. The Plan therefore seeks to require strategic sites, allocated by the NNJCS, to agree specific proportions of housing for older people and self-build.

\(^1\) Report on the Examination of the Plan for the Borough of Wellingborough Part 2 of the Local Plan (20 November 2018)
2.5 This is clearly a strategic matter, which builds upon Policy 30 of the NNJCS. Policy 30 parts f) and g) state that SUEs should make specific provision to meeting the needs of older households and should make available serviced building plots. The NNJCS is therefore less onerous than the SSP2.

2.6 Hanwood Park LLP therefore cannot understand how the Council considers the Plan does not relate to any strategic matters but seeks to impose delivery requirements upon its strategic sites, above those in the NNJCS or ‘parent’ Development Plan document. HPL therefore consider that to resolve this matter, a paragraph should be included in the Plan that more clearly outlines the co-operation that has been undertaken during the plan-making process.
3.0 NORTH NORTHAMPTONSHIRE JOINT CORE STRATEGY

3.1 Hanwood Park LLP considers that the SSSP2 has had regard to the North Northamptonshire Joint Core Strategy.

3.2 As the Council refers the Inspector to in its response to Initial Question 5, the North Northamptonshire Joint Planning Delivery Unit considers that the SSP2 “appropriately understands” its relationship with the JCS, Part 1 of the Local Plan (Comment ID 250).
4.0 HABITATS REGULATIONS ASSESSMENT

4.1 The Conservation of Habitats and Species Regulations 2010 require the Council to undertake a Habitats Regulations Assessment (‘HRA’) to assess whether there are any likely significant effects on sites of European importance as a result of the Plan’s proposals and allocations.

4.2 HLP note that Natural England have been consulted on the updated HRA, but as their response details they do not agree with the conclusion of “no Likely Significant Effects” on the Upper Nene Valley Gravel Pits SPA/RAMSAR.

4.3 Natural England is the “appropriate nature conservation body” under the Habitat Regulations. Its views and advice in relation to nature conservation matters therefore deserve great weight. The Council can rely on those views. It is not bound to agree with them, but it would need cogent reasons for departing from them\(^2\).

4.4 Therefore, until Natural England’s objections have been overcome, Hanwood Park LLP cannot consider the Plan is legally compliant in this regard.

\(^2\) See for example the judgement of Sullivan J. as he then was, in R. (Hart District Council) v Secretary of State for Communities and Local Government [2008] 2 P.& C.R. 16, at para.49 and the judgment of Owe J. in R. (Akester) v Department for the Environment, Food and Rural Affairs [2010] Env. L.R. 33, at para.112
5.0 SUSTAINABILITY APPRAISAL

5.1 An appropriate Sustainability Appraisal (‘SA’), incorporating the requirements of Strategic Environmental Assessment (‘SEA’), has been carried out by independent sustainability consultants on behalf of the Council throughout the Plan’s preparation, with appraisal and reappraisal at each stage of the process.

5.2 The Sustainability Appraisal makes reference to East Kettering SUE (Hanwood Park) and the infrastructure and facilities planned to be delivered within the site (Paragraphs 7.3.10 & 11.3.61). In addition, Section 9.2.3 (Education) of the SA outlines that there is expected to be spare capacity prior to the implementation of the SUE at Hayfield Cross CE Primary School, within Hanwood Park.

5.3 As the East Kettering Sustainable Urban Extension (Hanwood Park) Position Statement, submitted by the Council as EXAM_2G, notes, the time period for the submission of reserved matters pursuant to the outline permission for the SUE development expired in March 2020. However, the ability to submit reserved matters applications has been temporarily extended to 1st May 2021, due to the Business & Planning Act 2020. Hanwood Park LLP are currently also preparing a new outline application, to submit in October 2020, which includes the infrastructure provision previously agreed.

5.4 Hanwood Park LLP therefore consider the Sustainability Appraisal is adequate and there has been compliance with the legislative requirements recognising that SA/SEA is a process that is often comprised of many documents carried out over many months and that the level of assessment must be proportionate. It is also informed by the professional judgements of those who have been involved in undertaking the work. Those judgements, which relate not simply to the conclusions reached, but also the approach, scope and detail of the assessment, will inevitably differ from one professional to another. For these reasons, HPL note that the courts have recognised that authorities carrying out assessments should be afforded a substantial margin of discretion³.

6.0 CONSULTATION

6.1 Hanwood Park LLP have previously raised, and would like to maintain, their objections in respect of the nature of the Regulation 19 (the *Town and Country Planning (Local Planning) (England) Regulations 2012*) consultation processes undertaken by the Council.

6.2 Regulation 19 of the aforementioned Regulations states:

“Before submitting a local plan to the Secretary of State under section 20 of the Act, the local planning authority must –

a) Make a copy of each of the proposed submission documents and a statement of the representations procedure available in accordance with regulation 35...”

6.3 Kettering Borough Council’s Submission Document List (dated July 2020)\(^4\) includes reference to the Sports Facilities Audit and Needs Assessment (June 2020), Sports Facilities Strategy (June 2020), Playing Pitch Strategy (June 2020) and Open Space Standards Paper (July 2020).

6.4 The aforementioned documents were not available to comment upon at the time of the Regulation 19 consultation (between Wednesday 18\(^{th}\) December 2019 until Wednesday 12\(^{th}\) February 2020). In fact, the Plan was submitted to the Secretary of State on 28\(^{th}\) May 2020 prior to the publication of these evidence base documents some months later.

6.5 Evidence base documents, on the Kettering Borough Council Examination Web page are described:

‘In preparing the Plan the Council both refer to and were informed by a number of documents that together form the “Evidence Base” for the Examination. A list of these documents and weblinks to them are included in the Full List of Submission documents’.

6.6 Hanwood Park LLP would like to raise their concerns that the Plan was finalised, consulted upon and submitted prior to the completion and

publication of key evidence base documents that should have informed the Local Plan.

6.7 In addition, Hanwood Park LLP consider that consultation was not compliant with the Statement of Community Involvement\(^5\), adopted 25 September 2019, which states at paragraph 4.16 that “all consultation documents and supporting material will be made available in electronic format”. As outlined above, not all supporting material was made available at the time of the Regulation 19 consultation and only appeared some months after.

6.8 Hanwood Park LLP notes the Inspector’s Initial Questions 15 and 16 relating to this matter (EXAM 1), the Council’s responses (EXAM 2) and the Inspector’s Initial Questions Follow Up (EXAM 3). Although participants are able to refer to the documents in preparing for the hearings and in statements provided to the Inspector, the timing and publication of such documents raises concerns as to whether the Plan was positively prepared or justified.

6.9 Therefore, Hanwood Park LLP do not consider that Kettering Borough Council has complied with the Statement of Community Involvement and public consultation requirements of the Town and Country Planning (Local Plan) (England) Regulations 2012. Questions are therefore raised about the soundness and legal compliance of the Plan in this regard.

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7.0 POLICIES MAPS

7.1 Hanwood Park LLP considers that the updated Kettering Proposals Map, included as Appendix 6 of the Council’s response to the Inspector’s Initial Questions (EXAM 2F) correctly illustrates geographically the location of Hanwood Park.

7.2 Hanwood Park LLP welcomes the Inspector’s suggestion in her “Follow Up to her Initial Questions” (EXAM 3), namely that consideration should be given to including the consolidated Kettering Proposals Map with the Hanwood Park SUE annotated within the Plan as a committed SUE.
8.0 USE CLASSES ORDER

8.1 Hanwood Park LLP consider that the Plan will need to be thoroughly reviewed and modified as a result of the changes to the *Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020*, subject to the outcome of the legal challenge in the courts⁶.

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⁶ It was reported that High Court Judge Mr Justice Holgate has ruled that the case will be heard as a "rolled up hearing" for 1.5 days between 8 and 15 of September by a divisional court – see [https://www.planningresource.co.uk/article/1693535/campaigners-win-high-court-hearing-legal-challenge-pd-right-use-class-changes](https://www.planningresource.co.uk/article/1693535/campaigners-win-high-court-hearing-legal-challenge-pd-right-use-class-changes) and [https://www.leighday.co.uk/News/Press-releases-2020/September-2020/Judges-to-consider-legal-challenge-to-new-planning](https://www.leighday.co.uk/News/Press-releases-2020/September-2020/Judges-to-consider-legal-challenge-to-new-planning)
9.0 CONCLUSION

9.1 For all the foregoing reasons, Hanwood Park LLP raise concerns surrounding the consultation and preparation of the Plan and invite the Inspector to consider whether the Plan has satisfied its legal and procedural requirements.