

**Hastings Borough Council - additional submissions as requested.
Matter 7 - Soundness of the Development Management Plan with Particular reference to Objectively Assessed Housing Needs (OAHN) and relevant decisions of the Courts.
Representation (0693) from Mr Keith Hollidge.**

1. As part of his submitted representations to the Revised Submission Development Management Plan (Representation 0693) Mr Hollidge has stated that he considers the Plan unsound on the basis that when considering whether a Council has met the requirements of paragraph 47 of the National Planning Policy Framework (NPPF) that an assessment of objectively assessed housing needs cannot include any consideration of constraints. He has cited the case of St Albans District Council and Hunston properties as a determining Authority in respect of his argument and contends that the Council's adopted Planning Strategy and consequently the DMP is fundamentally unsound and thus fails all four tests of soundness as required by the Framework. In the earlier Hearing of Matter 2 – Housing, and from the Council's perspective we referred to the cases of Solihull Metropolitan Borough Council v. Gallagher Homes and also to Wokingham Borough Council v. Gladman Development Ltd.
2. At paragraph 3.2 of Mr Hollidge's representation he states – *“Accordingly in order to rectify this material defect in both the Planning Strategy and in consequence the DMP it will be necessary for the Council to seek to make an amendment to change the target for new homes delivery to 6,863 across the Plan period equating to 404 units pa and comprehensively review the DMP to ensure sufficient **additional** sites are made Housing Allocations to ensure the necessary 5 year housing land supply as required by paragraph 47 of the NPPF.”*
3. Mr Hollidge appears to have completely misunderstood the judgment in the St Albans Judgment and therefore its potential relevance to the examination of the Council's Development Management Plan. Indeed in the Council's submission, the St Albans decision, when properly read and interpreted alongside the Council's submitted Local Plan evidence, wholly supports the Council's position and the levels of housing growth set down within the submitted DMP.
4. The St. Alban's case arose out of a section 78 appeal about the definitive interpretation of paragraph 47 of the NPPF regarding the undertaking of Objectively Assessed Housing Needs (OAHN) and made against an Inspector's decision. However, it is, relevant only to the extent that it interprets the requirements of paragraph 47. The issue at hand was the approach to be adopted as a matter of Policy towards a proposal for housing in the Green Belt where the housing requirements for the area have not yet been established by the adoption of a Local Plan produced in accordance with the policies in the Framework. This is not the case in Hastings where there is a very recently adopted Local Plan (Planning Strategy – adopted February 2014), produced after publication of the Framework and which has been found sound following examination including its being in accordance with the Framework. In response to the Inspector's question of the Council we confirmed that its adoption had not been subject to any judicial challenge.
5. Paragraph 20 of the St Albans judgment confirms that, in this instance, the Inspector had erred in law, and that the proper way to address matters was to firstly assess housing need (paragraph 47 of the Framework), then to identify the unfulfilled need having regard to the supply of specific deliverable sites, and then to decide whether fulfilling the need clearly outweighed the harm which would be caused to the Green Belt. As the High Court had

rightly said – that final stage involved planning judgment and was not a matter for the Courts.

6. At Paragraph 25 of the judgment there is clear reference to the sub paragraph of paragraph 47 which advises Local Authorities as follows – *“to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework.”*
7. As set out very clearly at Paragraph 25 of the judgment, Lord Justices Kay and Ryder and Sir David Keane stated that the qualification contained in this quote is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs. The needs assessment, objectively arrived at, should not be affected in advance of the production of the Local Plan which will then set the requirement figure. Paragraph 30 at line 8 of the judgment confirms - *“This is the approach which takes proper account of the need to read the Framework as a whole and indeed to read paragraph 47 as a whole”*
8. Although dealing with housing provision in a Development Plan (as opposed to being a section 78 appeal), the Solihull case referred to by the Council is not dissimilar from the St Albans one insofar as the judge in this case again considered that both the Local Planning Authority (LPA) and the Planning Inspector were incorrect in their application of the Framework requirements due to the fact that constraints had been applied to determine the Objectively Assessed Housing Need (OAHN) rather than first determining this unconstrained figure prior to applying the necessary planning judgments required by sub paragraph 47 of the NPPF and referred to in the St Alban’s case.
9. None of these errors in interpretation apply in the case of the Hastings Planning Strategy or this Development Management Plan. Indeed at paragraph 53 of the Inspector’s report to the Council on the Hastings Planning Strategy (October 2013) paragraph 53 of that report makes it abundantly clear that the Inspector had specifically asked the Borough Council (as indeed had the Inspector carrying out the examination of the Rother Core Strategy), to undertake yet more work on demographic projections. This work, he noted, had been carried out and was outlined in the Hastings and Rother SHMA update – Housing Needs Assessment June 2013.
10. His report confirms at paragraph 53 – *“The 2011 trend based projection 2011-2028 (base - line projection) shows an annual estimate of 404 (net) dwellings, and this unconstrained requirement is generally accepted by the Council and other parties. The contention lies in the degree to which it should be met.”*
11. Contrary therefore to Mr Hollidge’s assertion, there has been an appropriate and unconstrained assessment of Housing Needs carried out in the case of Hastings, an assessment that, unlike in the St Alban’s or Solihull cases, was unconstrained as required by the Framework, and again unlike in the St Alban’s case, carried out post the publication of the Framework (March 2012). The Hastings Planning Strategy has been rigorously assessed and examined as part of the process and has resulted in the Strategy being found sound and ultimately to its adoption. In essence, what Mr Hollidge has set out as his representation (reference 0693) together with his reliance on St Alban’s is flawed.
12. It is also contradictory. In paragraph 3.2 of his representation, by his very act of quoting the (unconstrained) figure of 6,863 homes over the Plan period and his extrapolated suggested annual delivery of 404 units per annum, he is in essence arguing against himself by

accepting that a proper, unconstrained, paragraph 47 compliant assessment of objectively assessed housing needs has been carried out. His arguments that any OAHN cannot include consideration of constraints are, in the Council's submission, thus defeated by his own acknowledgement that a proper exercise was carried out and by quoting figures from that assessment.

13. The Wokingham case referred to by the Council also lends further considerable support to the argument as to the soundness of the Council's DMP and the approach to be adopted in considering Representation 0693 and indeed any similar ones. The Wokingham case is particularly closely aligned with the matters before the Inspector in the case of the Hastings Borough Council's submitted DMP.
14. Paragraph 44 of the Wokingham judgment deals with that Inspector's approach to considering the Managing Development Delivery Local Plan (MDD). Mr Justice Lewis confirmed that the Inspector's approach was correct in that what he was considering was that the MDD was dealing with the allocation of sites for the amount of housing proposed in the Core Strategy. In other words, the Inspector was considering whether the MDD was sound in providing a set of policies for the provision of the quantity of housing set out in the Core Strategy. Mr Justice Lewis confirms his view at paragraph 45 that firstly, the MDD which was before the Inspector clearly indicated that its purpose was to take forward the Core Strategy and to allocate sites in accordance with it. In the Council's submission this is precisely the relationship between, and purpose of, the Development Management Plan and the now adopted Hastings Planning Strategy. Further, and again all square with Mr Justice Lewis's conclusion for the Wokingham MDD (reference last line paragraph 45 of that judgment), there is nothing in the Hastings DMP that is before the Inspector at this examination to indicate that the intention of the DMP is to review the figure for housing in the 2014 adopted Planning Strategy.
15. The second principal issue in Wokingham's case – brought by the Claimant – was whether the Inspector could lawfully proceed to assess the MDD without there being an objective assessment of housing needs of the sort envisaged by paragraph 47 of the Framework. This is again, the Council would suggest, all square with the task before the Inspector in examination of the Hastings DMP. Paragraph 53 of Wokingham confirms that when looking at positively prepared plans these should be based upon a Strategy which seeks to meet objectively assessed development needs and based upon proportionate evidence.
16. In his judgment at paragraph 66, Mr Justice Lewis confirms that an Inspector in assessing the soundness of a development plan document dealing with allocations to deliver a quantity of housing is not required to consider whether an objective assessment of housing need would disclose a need for additional housing. He comes to this conclusion on the basis that firstly the statutory framework does not require this approach and explains that the structure of the 2004 Act (Planning Act) is entirely consistent with a situation where one development plan document is giving effect to another earlier such document (in our case the DMP to the adopted Hastings Planning Strategy). He also confirms at paragraph 62 of his judgment that *“There is however nothing in the Statutory Framework to suggest that a development plan document, such as the MDD here, cannot be adopted simply because another development plan document, such as the Core Strategy, may need to be updated to include additional provision, for example, for housing.”*
17. Secondly, the Wokingham judgment confirms that, properly read, the Framework does not require a development plan document such as the DMP, which is dealing with sites for

allocation for housing, to also address the question of whether further housing provision will need to be made. This, in the Council's submission, is the matter before the Inspector at this examination and, contrary to the assertions put forward by Mr Hollidge, the St Albans case is only of relevance insofar as it confirms and clarifies the requirement to carry out an unconstrained exercise to determine housing needs. This has been done and is clearly acknowledged in the representation made by him and in his use of the figures of the OAHN that informed the Planning Strategy.

18. Finally the Wokingham judgment confirms also that the Framework is guidance only and that an Inspector could depart from it for good reasons (paragraph 70).
19. In conclusion, all three of these cases do not change the law and the statutory duty on the examining Inspector to determine whether a Plan is sound. An Inspector does not, as a matter of law, have to follow any particular approach to assessing housing need so long as he or she has had regard to all relevant considerations including all relevant policies within the NPPF. Whether a DPD is "sound" is entirely a question of planning judgment for the Inspector so long as he/she has had regard to all relevant policies and guidance and understands what the relevant policies mean. A Planning Inspector is also not, as a matter of law, required to follow any particular policy within the NPPF in relation to "objectively assessed housing need" where and providing that he/she has rational planning reasons for departing from them. From paragraph 47 of the Framework it is clear that the Local Plan, taken as a whole, should provide for the objectively assessed needs of the area so far as is consistent with the other policies in the Framework. The work already undertaken at the Planning Strategy stage has set out very clearly at paragraphs 54 and 56 of the Inspector's report those clear and rational reasons. At Paragraph 56 it is confirmed that - *"These constraints are valuable assets which give the Borough its unique charm, character and appeal. In general they should be protected. This implies significant limitations on the capacity of the Borough to accommodate growth."*
20. The Wokingham judgment, which the Council submits is by far the most relevant to the task before the Inspector, provides absolute clarity that it is possible to find a DPD sound where it is seeking to deliver a previously adopted Strategy and without the need for carrying out any separate assessment of any further housing need.
21. The Council wishes to put in place a Plan-led approach across the Borough at the earliest opportunity and sees this as the best and most appropriate way of delivering sustainable growth whilst also protecting those unique assets previously referred to. With the minor modifications already discussed at these Hearings, together with any major modifications that may be recommended, we see no reason why this DMP should not now progress. The case put forward by Mr Hollidge is based upon a significant misunderstanding of the St Alban's case that he has cited. It is, in the Council's submission, simply incorrect. The St Alban's case cited by him as the reason for the DMP being unsound and his request for a doubling of housing numbers over the Plan period, is indeed, largely irrelevant to the matters before this Examination.

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