Examination Statement

Land at Redhill Aerodrome

Thakeham Homes

Tandridge District Council – Local Plan 2033

Examination in Public

Matter 1 – Procedural / Legal Requirements
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1. Introduction

1.1. This Examination Statement is submitted by Savills on behalf of Thakeham. Thakeham is the sole promoter of Land at Redhill Aerodrome alongside development partners Quintain.

1.2. Prior to the submission of the Local Plan by Tandridge District Council (TDC) to the Planning Inspectorate for examination, Thakeham and their consultant team have participated in the formal consultations of the Local Plan at Regulation 18 stage in December 2016 and September 2017 and at Regulation 19 stage in September 2018. In addition, the site has been submitted to relevant call for sites for the Housing and Economic Land Availability Assessment (HELAA) and Thakeham and their consultant team have met with Planning Policy Officers throughout the process to discuss the strategic opportunity at Land at Redhill Aerodrome.

1.3. Thakeham made a number of objections to the Regulation 19 consultation of the Local Plan, which should be read alongside this Hearing Statement. It is our view that the Local Plan as submitted is not sound on the basis of legal compliance including Duty to Cooperate, the evidence base including Viability and Sustainability Appraisal and the allocation of South Godstone as a Garden Village.

1.4. The Land at Redhill Aerodrome is located across the administrative boundaries of both TDC and Reigate & Banstead Borough Council (RBBC) and therefore Thakeham has also been engaging with RBBC as part of the preparation of their Development Management Plan (DMP).

1.5. The location of the site, its surroundings and the vision for the Garden Village at Redhill Aerodrome were set out in detail in the representation to the Regulation 19 Local Plan Consultation and have therefore not been reproduced in this statement.
1.6. Thakeham are also members of the Tandridge Developers Forum (The Forum). To this end, whilst Thakeham have provided Hearing Statements on all of the Inspector’s Matters, Thakeham have not provided comments within their Statements on all of the Issues in order to avoid duplicating comments already made by the Forum. Thakeham are particularly supportive of the Forum’s comments relating to the Duty to Cooperate contained within their Matter 1 Statement and the Forum’s comments regarding housing numbers contained in their Matter 2 Statement.

1.7. In some instances Thakeham take a different view to that of the Forum, any departure from the Forum’s position is identified in Thakeham’s Statements. Thakeham’s key departure from the position of the Forum is that whilst Thakeham do not object in principle to the concept of a Garden Community in Tandridge, they do object strongly to the proposed location at South Godstone, for reasons set out in Thakeham’s Statements.

1.8. For clarity, in the event that there is a perceived conflict between any comments made in the Forum’s Statements and those made by Thakeham, then Thakeham’s position is that contained within their own Hearing Statements.
2. Response to the Inspectors Questions

2.1. Thakeham has informed the Programme Officer that they wish to participate at the hearing sessions relating to Matter 1 and will be represented by Savills at this Hearing.

Matter 1 - Procedural/legal requirements

ISSUE: Whether all Statutory and Regulatory requirements have been met?

Duty to Cooperate

Q1.1 Is there clear evidence that, in the preparation of the Plan, the Council has engaged constructively, actively and on an ongoing basis with neighbouring authorities and prescribed bodies on strategic matters and issues with cross-boundary impacts in accordance with section 33A of the Planning and Compulsory Purchase Act 2004, as amended [the 2004 Act]?

Is there clear evidence that the Council has done all it reasonably could to maximise the effectiveness of plan preparation by cooperating with all other relevant bodies, particularly in respect of addressing unmet housing need?

2.2. No.

2.3. The Council’s evidence in respect of the Duty to Cooperate is set out in a number of Statements of Common Ground and Duty to Cooperate Statements from 2015 – 2018. These documents include only high level evidence of engagement or commitments to engage rather than any robust evidence of cross working (over a period of time) and substantive discussions on key strategic matters.

2.4. On review of the Statements of Common Ground published following the Regulation 19 consultation, these again, are high level with most of the content referring to the planning context of the authorities. Unmet housing need is acknowledged in the Statements, but is not discussed in any detail and it is repeatedly concluded that no unmet need can be met across boundaries with no or little analysis to support this.
2.5. In the context of the submitted Local Plan proposing a housing target significantly lower than the OAN, the need to accommodate unmet housing need in neighbouring authorities is an important consideration, notably given the sub-regional Gatwick Diamond context. The lack of any agreement for neighbouring authorities to meet the unmet need of TDC will result in a serious undersupply of housing.

2.6. The lack of meaningful engagement is also demonstrated in the Sustainability Appraisal, within which a number of sites are dismissed as potential site allocations due to being close to or located across two authority boundaries. No genuine effort has been made to engage with neighbouring authorities regarding the potential for cross boundary delivery. The Duty to Cooperate evidence submitted with the Local Plan does not acknowledge the potential for cross boundary delivery, nor does it provide any robust evidence to demonstrate that cross boundary sites have been considered appropriately.

2.7. For a large number of the issues identified in the Statements of Common Ground, which cannot be agreed currently such as unmet housing need, the action proposed is for TDC to conduct a 5 year review of their Local Plan. This is not an appropriate approach to plan making. Whilst a review is required by the NPPF, a submitted Local Plan must meet the Duty to Cooperate. It is not acceptable to fail the Duty to Cooperate and aim to address the shortcomings later down the line through a plan review.

2.8. A number of issues and other matters have been raised in the Statements of Common Ground which are not agreed between authorities. This includes concerns from West Sussex County Council (WSCC) and Surrey County Council (SCC) on funding of infrastructure and highways impacts and there is no confirmation of these issues being resolved. Whilst there is no requirement for neighbouring authorities to agree on specific issues and matters, every effort should be made to secure co-operation through the plan making process.

2.9. This is demonstrated in the Inspector’s findings into the St Albans Local Plan 2016 (Appendix 1), in which the Inspector found that:

“it cannot be concluded that SADC (St Albans District Council) has made every effort to secure co-operation throughout the entire plan-making process to-date” (para. 36) and concluded “it is with regret that I must conclude that the Duty to Co-operate has not been met” (para. 46).

2.10. It is of note that SADC challenged this decision through the High Court but the decision was upheld with
Sir Ross Cranston finding that:

“once there is disagreement, I would add even fundamental disagreement, that is not an end of the duty to cooperate, especially in an area such as housing markets and housing need which involve as much art as science, and in which no two experts seem to agree” ([2017] EWHC 1751 (Admin) at [51]).

2.11. For ease of reference this decision is included in Appendix 2.

2.12. Overall the Duty to Cooperate Statements and supporting Statements of Common Ground are high level documents outlining very broad discussions on strategic matters and presenting no clear constructive engagement on key strategic issues such as unmet housing need and infrastructure. The evidence provided by the Council does not demonstrate that they have met the legal requirement to engage constructively, actively and on an ongoing basis with neighbouring authorities and this is a fundamental procedural flaw in the Local Plan process.

**Sustainability Appraisal**

Q1.2 Is the Sustainability Appraisal (SA) adequate?

2.13. The SA is not considered to be adequate.

2.14. When considered as a whole it has a number of key flaws, notably that the assessment of reasonable alternatives, individual sites and garden village locations are not consistent in methodology and are not robust.

2.15. A particular concern of Thakeham is the appraisal of Garden Village locations which has not been conducted in a robust or objective manner and has ignored key evidence submitted by Thakeham to the Local Plan process, specifically in respect to the delivery of the new junction at M23. The scoring of sites is inconsistent and is weighted towards the pre-determined outcome decided by the Council. This is outlined in detail in Thakeham’s Regulation 19 representations and supporting Sustainability Review (summarised in paragraphs 5.3 – 5.5 of the representations) and is also expanded upon in Thakeham’s Statement for Matter 3 in response to Question 3.2.

2.16. Based on these flaws the SA is not considered to be adequate. This is discussed in more detail in
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response to Questions 1.3 and 1.4 below.

**Q1.3 Has the SA been undertaken on the basis of a consistent methodology and is the assessment robust?**

2.17. The SA has not been undertaken on the basis of a consistent methodology and does not include a robust assessment, as set out in the Sustainability Appraisal Review (Savills October 2017) which accompanied Thakeham’s Regulation 19 representation.

2.18. The SA methodology and resulting assessment is inconsistent and flawed in a number of ways including:

- Appraisal of garden community locations does not take account of all the available evidence provided to the Council;

- The scoring of the Garden Village locations is not consistent and therefore the resulting assessment is not valid. The methodology of scoring appears to have been tailored to fit the location favoured by the Council. This can be clearly seen when comparing the scores in the SA for South Godstone Garden Village location and Redhill Aerodrome. Despite Redhill Aerodrome being in a more sustainable location based on existing infrastructure, including public transport, and South Godstone having little or no evidence that the required infrastructure can be funded or delivered, Redhill Aerodrome has a more negative score for transport (see paras. 2.7 – 2.11 of the Sustainability Appraisal Review (Savills October 2017)).

- The appraisal of different options for housing growth in the District are not consistent or objective and the application of the methodology favours the lower housing target promoted by the Council, ahead of the publication of the SA (2018). There is no credible justification in the SA for higher housing delivery scenarios scoring more poorly than lower housing delivery scenarios in respect of employment, the local economy and provision of new infrastructure and services via S106 negotiations. Very similar flaws can be seen in the assessment of affordable housing delivery scenarios.

- The explanation of the assessments and the resulting conclusions are often highly generalised and simplistic and do not consider fully the positive and negative impacts of different alternatives.
The assessment is not considered therefore to be objective and undermines the overall robustness of the SA.

2.19. Taking account of the issues outlined above and covered in more detail in Thakeham’s Regulation 19 representations and supporting Sustainability Review, the SA is not based on a consistent or sound methodology or robust assessment. This has resulted in the assessment of alternatives including growth scenarios, individual sites and garden village locations not reflecting available evidence and in the Local Plan not being able to demonstrate that it includes the most appropriate strategy.

Q1.4 Has the SA taken into account the reasonable alternatives and has sufficient reasoning been given for the rejection of alternatives?

2.20. The SA has not objectively assessed the reasonable alternatives due to an inconsistent methodology as outlined in our response to Q1.3.

2.21. The approach to the overall delivery strategy is not considered to be robust and has not been based on sufficient supporting evidence to be able to make valid conclusions. The SA considered 5 options for the approach to the delivery strategy, which are high level and do not specify a total amount of housing or employment growth expected to be delivered. This therefore does not allow for adequate assessment of the impacts of different approaches.

2.22. When considering the impacts of different scenarios the assessment considers only negative impacts of increased growth and does not consider the potential benefits that could be realised through a higher level of development, including for example the delivery of new services and facilities in the District.

2.23. The SA does not describe each approach for the spatial strategy in sufficient detail and provides no information of the assumption for Approach 6 Garden Village, it is therefore unclear how the options can be assessed against one another. This is also the case throughout section 5.13 in respect of the Garden Villages options and the options for overall housing numbers (section 5.4). There is also a lack of clarity in the reasons for selecting the chosen approach to the overall spatial strategy. This lack of clarity and inadequacies in reasons for selecting the preferred approach breach the legal requirement of an SA.

2.24. In respect of Redhill Aerodrome specifically, the SA does not adequately take account of the available
evidence provided by Thakeham and does not fully consider the impact of a new settlement in this location taking account of relevant mitigation. At page 246 of the SA a conclusion on each Garden Village location is set out and, despite all of the positive commentary and assessment of Redhill Aerodrome in the preceding sections, it concludes that Redhill aerodrome cannot be considered as a broad location for development due to the reliance on a new junction and link road from the M23 which causes deliverability issues.

2.25. Thakeham strongly object to this conclusion and consider this to be a further fundamental flaw in the SA which has led to an incorrect and unsound assessment of the “most appropriate strategy” for the Garden Village location. This conclusion within the SA is based on incorrect information, does not reflect the evidence base and has been considered to override all of the positive assessments of Redhill Aerodrome. On this basis the SA assessment and conclusions are not robust and the Local Plan cannot be considered to be “justified” and therefore is unsound.

2.26. This must also be considered in the context of the South Godstone Garden Community being required to deliver significant improvements to Junction 6 of the M25. In this context the off-site infrastructure required to support the South Godstone Garden Community is less advanced than that required for Redhill Aerodrome, where discussion with the Secretary of State for Transport and Highways England are already well progressed.

2.27. Overall the flaws in the assessment of reasonable alternatives and the lack of explanation for the rejection of certain approaches, locations for growth and individual sites, result in the SA not meeting the legal requirements and not being able to demonstrate that the Local Plan includes the most appropriate strategy.

**Habitats Regulations Assessment**

Q1.5 Has the Habitats Regulations Assessment been undertaken in accordance with the Conservation of Habitats and Species Regulations 2017 and the People over Wind & Sweetman v Coillte Teoranta judgement C-323/17?

Note') with our Regulation 19 representation. TDC’s Local Plan Submission HRA (January 2019, hereafter ‘the HRA’) is materially unchanged from the Regulation 19 Submission in respect of the matters raised, and therefore our previous representations remain relevant and are not repeated in detail here.

2.29. The TDC Local Plan Submission HRA includes a number of matters that are inconsistent with TDC’s obligations, as the Competent Authority, under the Conservation of Habitats and Species Regulations 2017 (as amended) and relevant case law, including the ‘People over Wind’ judgement C-323/17. These matters relate primarily to Mole Gap to Reigate Escarpment Special Area of Conservation (SAC). As it stands, the HRA and Local Plan cannot be considered sound.

2.30. A summary of the relevant matters is provided:

2.31. **Mole Gap to Reigate Escarpment SAC – recreational impacts:**

- TDC has incorrectly determined that there would be no likely significant effect on the SAC in relation to recreational impacts, on the advice of Natural England (3.4.2 and 3.4.4 of the HRA). Natural England has stated that the requirement for Appropriate Assessment can be screened out ‘due to lack of supporting evidence for recreational impacts’ (refer to Appendix 3 of the HRA). However, supporting information, in particular Appendix 6 of the HRA of the proposed Gatwick Second Runway (RPS, December 2017), provides a number of clear examples of existing impacts of recreational pressure on the SAC (refer to Paragraph 2.6 of the HRA Review Technical Note submitted with Thakeham’s Regulation 19 representation). In accordance with the ‘Precautionary Principle’, it is considered that this impact pathway should be screened and included in the Appropriate Assessment.

- 3.4.5 of the HRA identifies a number of ‘avoidance measures’ in respect of recreational impacts on the SAC. This is inconsistent with the ‘People over Wind’ judgement; i.e. where mitigation or avoidance measures are identified, it is not possible to conclude no likely significant effect, and Appropriate Assessment is therefore required. Consideration of mitigation measures should be included in this latter stage.

2.32. **Mole Gap to Reigate Escarpment SAC – air quality impacts:**
The HRA has incorrectly concluded that there would be no likely significant effect on the SAC as a result of air quality impacts arising from the M25, ‘due to the absence of SAC quality interest features within 200m of the M25 and the fact that the affected area will experience a net improvement in air quality to 2033’ (Section 3.6.3, page 53 of the HRA).

The assumption that SAC quality interest features do not occur within 200m of the M25 has arisen due to a misinterpretation by TDC of the SAC Qualifying Feature ‘H6210. Semi-natural dry grasslands and scrubland facies’. This was based primarily on work undertaken to inform the HRA of the proposed Gatwick Second Runway (RPS, 2017); refer to Paragraphs 2.11 to 2.13 of the HRA Review Technical Note and Appendix 6 of the Gatwick HRA.

The HRA states that calcareous grassland within 200m of the M25 does not form a Qualifying Feature of the SAC due to the absence of ‘rare orchid species’. This conclusion is erroneous (refer to Paragraph 2.14 of the HRA Review Technical Note); in summary, this Qualifying Feature includes a number of vegetation communities and is not restricted to areas where rare orchids are present. Furthermore, information contained within Appendix 6 of the Gatwick HRA states that this area ‘is unlikely to be suitable for the rarer orchid species due to the current management regime necessary to balance the requirements of open public access with biodiversity interest’ (refer to Paragraph 2.13 of the HRA Review Technical Note); the Conservation Objectives for the SAC require both maintenance and restoration of the Qualifying Features, and therefore any areas where the potential for restoration exists should be treated as part of the Qualifying Feature for the site.
Paragraph 40 of CJEU judgement C-461/17 Holohan v An Bord Pleanála (November 2018) states that an Appropriate Assessment must identify and examine the implications of the proposed project for the habitats and species present on that site and for which that site has not been listed, insofar as those implications are liable to affect the Conservation Objectives of the site. In the case of the matters discussed above, even if it was accepted that the calcareous grassland within the 200m impact zone did not constitute a Qualifying Feature of the SAC, this judgement confirms that effects on these habitats should be considered as part of the Appropriate Assessment, as these will be essential in maintaining the integrity of the Qualifying habitat features within the site.
3. Conclusion

3.1. As set out in the comments made in this Statement in respect of the Inspector's Main Issues and Questions Thakeham, and its development partner Quintain consider that all statutory and regulatory requirements have not been met. The plan has not been positively prepared due to deficiencies regarding the Duty to Co-operate and is unjustified and ineffective due to the reliance on a flawed SA and HRA. As a result Thakeham consider the plan to be unsound.
Appendix 2 – High Court Judgment ([2017] EWHC 1751 (Admin))