TANDRIDGE LOCAL PLAN EXAMINATION

Tandridge Local Plan Examination

Hearing Statement

Andrew Telfer

Matter 1: Procedural/legal requirements

1. Introduction

1.1 This statement is prepared by Town Legal LLP on behalf of Mr Telfer and addresses questions 1.2, 1.3 and 1.4 (sustainability appraisal) of the Inspector’s Matters, Issues and Questions for Examination.

1.2 The Appendix to this statement comprises a legal opinion from counsel, Richard Moules of Landmark Chambers, dated 18 June 2019. Paragraphs 6 to 28 of the opinion specifically address the question of the adequacy or otherwise of the sustainability appraisal that has been carried out to date by the Council.

2. Question 1.2: Is the Sustainability Appraisal (SA) adequate?

2.1 The sustainability appraisal is not adequate, for the reasons set out in Mr Moules’ opinion. As set out in paragraph 15 of the opinion, the appraisal is legally inadequate and it would be unlawful to recommend adoption of the draft local plan on the basis of the appraisal. In seeking to determine which reasonable alternatives should be considered to release of sites from the Green Belt from the approach taken in the draft local plan, the Council prematurely ruled out all potential reasonable alternatives that did not meet with the Council’s preferred strategy. In consequence, it failed to consider the reasonable option of allocating sites that are within a proximate buffer zone of existing settlements albeit not within or precisely adjacent to existing settlements, as opposed to simply considering one alternative – allocating any site, anywhere in its district!

2.2 As set out at paragraph 28 of Mr Moules’ opinion, the Council must carry out a proper assessment of reasonable alternatives and reconsider the draft local plan with a genuinely open mind in the light of further sustainability work, assessing the reasonable option of allocating sites within a proximate buffer zone of existing settlements, before it can proceed any further with this local plan.

3. Question 1.3: Has the SA been undertaken on the basis of a consistent methodology and is the assessment robust?

3.1 The answer to both questions is no, for the reasons set out above and in Mr Moules’ opinion.
4. Question 1.4: Has the SA taken into account the reasonable alternatives and has sufficient reasoning been given for the rejection of alternatives?

4.1 The answer to both questions is no, for the reasons set out above and in Mr Moules’ opinion.

Town Legal LLP

28 August 2019
IN THE MATTER OF
TANDRIDGE LOCAL PLAN
AND
THE LAWFULNESS OF THE SUSTAINABILITY APPRAISAL

OPINION

(1) Introduction

1. I am asked to advise Andrew Telfer whether the sustainability appraisal prepared by Tandridge District Council (“the Council”) in relation to the Tandridge Local Plan (“the Draft Local Plan”) is lawful. In particular I am asked to advise whether the Council has complied with the Strategic Environment Assessment Directive (“the SEA Directive”) as implemented by the Environmental Assessment of Plans and Programmes Regulations 2004 (“the 2004 Regs”).

2. For the reasons given below, I consider that the Council’s approach is clearly unlawful.

(2) Relevant factual background

3. Andrew Telfer is promoting the allocation of Lingfield Gardens, East Grinstead Road, Lingfield, RH7 6ES (“Lingfield Gardens”). Lingfield Gardens has the potential to accommodate 99 new homes. It is in the green belt contained by East Grinstead Road to the east and agricultural buildings/Eden Brook to the south. The Neighbourhood Plan Steering Group and the Parish Council support the allocation as a means of addressing housing need in Lingfield. The Site is separated from the village of Lingfield by a narrow strip of land, which is approximately 14m wide at its narrowest point and 30m at its widest point.

4. The Council’s Landscape Capacity and Sensitivity Study 2016 assessed Lingfield Gardens (L1N031) at p.229 as having “substantial” sensitivity (scoring 22 out of 35) and a “slight” landscape value (scoring 13 out of 35).

5. The Council’s Green Belt Assessment (Part 3) Exceptional circumstances and insetting (June 2018) (“the GB Assessment”) explains how the Council has assessed sites for exceptional circumstances and the considerations involved in determining which settlements should be inset. The following key points emerge from the GB
Assessment:

(1) the Council accepts at paragraph 1.2 that since 94% of the land in its area is designated as green belt (the highest of any green belt authority), “it is inevitable that the Council would need to look at the Green Belt to see if it is able to assist in delivering homes, jobs and infrastructure, for the future”;

(2) indeed, at paragraph 3.23, the Council “recognises that the quantum of land supply available for meeting the district’s development needs in sustainable locations is extremely limited, with land supply exhausted within the non-Green Belt settlements and the low density character of the district making the use of land at significantly higher densities difficult”;

(3) at paragraph 1.14, the Council accepts that “the exhaustion of these other reasonable options [for accommodating new development outside the green belt] and the resultant unmet development need is a contributing factor in the consideration of exceptional circumstances for moving the Green Belt boundaries”;

(4) section 3 sets out the methodology that the Council has used to assess the existence (or not) of exceptional circumstances to justify green belt releases. The Council’s approach to considering exceptional circumstances is informed by the judgment of Jay J in Calverton Parish Council v Nottingham City Council [2015] EWHC 1078 (Admin), which paragraph 3.5 of the GB Assessment summarises as requiring the Council to identify and grapple with:

(i) the acuteness/intensity of the objectively assessed need (matters of degree may be important);

(ii) the inherent constrains on supply/availability of land prima facie suitable for sustainable development;

(iii) (on the facts of this case) the consequent difficulties in achieving sustainable development without impinging on the Green Belt;

(iv) the nature and extent of harm to this Green Belt (or those parts of it which would be lost if the boundaries were reviewed); and
(v) the extent to which the consequent impacts on the purposes of the Green Belt may be ameliorated or reduced to the lowest reasonable practicable extent.

(5) Paragraph 3.40 of the GB Assessment explains that in addition to applying the Calverton principles, the Council “has undertaken a locally derived approach to exceptional circumstances”. That approach includes asking whether a site is “strategy compliant” (see paragraphs 3.42 & 3.45). As the diagram at paragraph 3.46 illustrates, the Council’s approach is not to even consider whether exceptional circumstances justify release of a site from the green belt if the site does not accord with the Council’s preferred strategy;

(6) The Council’s preferred strategy entails rejection of any site that is not “within or adjacent to” Tier 1 or Tier 2 settlements (see paragraph 3.52)

6. The Council’s Sustainability Appraisal contains the strategic environmental assessment of the two options that the Council has considered for new residential allocations (at p.159), namely option 1: allocate development sites anywhere and without regard to existing built form/settlement boundaries; and option 2: only allocate development sites where adjacent to existing built form/settlement boundaries. The Sustainability Appraisal assesses those two opinions as follows:

Commentary

Potential residential sites that do not abut existing settlements were effectively ruled out the HELAAA at an early stage as unsuitable. This approach is subject to sustainability appraisal in this section.

Overall objective 2 appears to be the much more sustainable option.

Restricting residential allocations to being either within or adjacent to existing settlements (Option 2) may lessen the supply of housing overall, so option 1 is more positive in respect of objective 1. Option 2 may also lead to a higher proportion of greenfield sites being developed, since fringe sites are typically greenfield, whilst opportunities unrelated to the existing settlement pattern (Option 1) may be more likely to be brownfield, for example on rural employment sites. For a similar reason, option 1 seems more likely to have negative economic effects (objectives 6 and 7) by increasing the risk and pressures for rural employment sites to change use to residential. Option 1 also facilitates residential development that is less accessible to key services and centres (objective 4), which has knock on negative consequences for air quality (objective 14).

Residential allocations forming an extension to existing settlement (option 2) may be
better placed to take advantage of low-carbon energy opportunities such as district heating/CHP. Conversely more remote residential allocations (option 1) maybe more incentivised to implement decentralised renewable energy generation, and may find fewer local objections and obstacles to doing so. Reliance on the private car, and hence overall emissions, seem likely with option 1. There would also be increased pressure on waste and recycling collection facilities with option 1.

Long-term, loosening restrictions on the location of residential development (option 1) seems likely to accelerate negative effects on landscape and biodiversity. This may be initially via direct impacts, but in the longer term also lead to a deterioration of landscape quality and rural character, as well as increased development pressure on land intervening the settlement boundaries and the new rural residential development.

7. The Draft Local Plan does not propose allocation of the Site which is not adjacent to the settlement of Lingfield on the Council’s approach, although it does read as being adjacent on the ground. The Council has, however, proposed allocation of the Star Fields site (HSG12) which is situated within the village of Lingfield and within the Lingfield Conservation Area and the setting of numerous heritage assets.

(3) Relevant legal principles

8. Regulation 12(2) of the 2004 Regs requires that an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated:

12.— Preparation of environmental report
(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.
(2) The report shall identify, describe and evaluate the likely significant effects on the environment of—
   (a) implementing the plan or programme; and
   (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.
(3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of—
   (a) current knowledge and methods of assessment;
   (b) the contents and level of detail in the plan or programme;
   (c) the stage of the plan or programme in the decision-making process; and
   (d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.
(4) Information referred to in Schedule 2 may be provided by reference to relevant information obtained at other levels of decision-making or through other EU legislation.

(5) When deciding on the scope and level of detail of the information that must be included in the report, the responsible authority shall consult the consultation bodies.

(6) Where a consultation body wishes to respond to a consultation under paragraph (5), it shall do so within the period of 5 weeks beginning with the date on which it receives the responsible authority's invitation to engage in the consultation. (Emphasis added)

9. The courts have held that the duty is not simply to assess all reasonable alternatives, but also to explain the reasons for selecting the alternatives dealt with. Unless this is done, the reader of the environmental report will be unable to understand the basis for selecting the alternatives and whether the selection was deficient. As Ouseley J explained in Heard v Broadland DC [2012] Env LR 23:

66. I conclude that, for all the effort put into the preparation of the JCS, consultation and its SA, the need for outline reasons for the selection of the alternatives dealt with at the various stages has not been addressed. No doubt there are some possible alternatives which could be regarded as obvious non-starters by anyone, which could not warrant even an outline reason for being disregarded. The same would be true of those which obviously could not provide what RS required, or which placed development in an area beyond the scope of the plan or the legal competence of the defendants. But that is not the case here on the evidence before me, in relation to a non NEG T growth scenario, with or without NDR, and especially with an uncertain NDR. Without the reasons for the earlier selection decisions, it is less easy to see whether the choice of alternatives involves a major deficiency.

67. I accept that the plan-making process permits the broad options at stage one to be reduced or closed at the next stage, so that a preferred option or group of options emerges; there may then be a variety of narrower options about how they are progressed, and that too may lead to a chosen course which may have itself further optional forms of implementation. It is not necessary to keep open all options for the same level of detailed examination at all stages. But if what I have adumbrated is the process adopted, an outline of the reasons for the selection of the options to be taken forward for assessment at each of those stages is required, even if that is left to the final SA, which for present purposes is the September 2009 SA.

68. The reasons for the selection of the preferred option, as distinct from the reasons for the selection of the alternatives to be considered, have not been addressed as such either in the SA, although some comparative material is available. The parties dispute the need for these reasons. It was very surprising to me that the reason for the selection of the preferred option was not available as part of the pre-submission JCS or the accompanying September SA, nor readily available in a public document to which the public could readily be cross-referred, with a summary.

69. This is not an express requirement of the directive or regulations, and I do not regard European Commission guidance as a source of law. However, an outline of reasons for the selection of alternatives for examination is required, and alternatives have to be assessed, whether or not to the same degree as the preferred option, all for the purpose of carrying out, with public participation, a reasoned evaluative process of the environmental impact of plans or proposals. A teleological interpretation of the directive, to my mind, requires an outline of the reasons for the selection of a preferred option, if
any, even where a number of alternatives are also still being considered. Indeed, it would normally require a sophisticated and artificial form of reasoning which explained why alternatives had been selected for examination but not why one of those at the same time had been preferred.

70. Even more so, where a series of stages leads to a preferred option for which alone an SA is being done, the reasons for the selection of this sole option for assessment at the final SA stage are not sensibly distinguishable from reasons for not selecting any other alternative for further examination at that final stage. The failure to give reasons for the selection of the preferred option is in reality a failure to give reasons why no other alternatives were selected for assessment or comparable assessment at that stage. This is what happened here. So this represents a breach of the directive on its express terms.

71. There is no express requirement in the directive either that alternatives be appraised to the same level as the preferred option. Mr Harwood again relies on the Commission guidance to evidence a legal obligation left unexpressed in the directive. Again, it seems to me that, although there is a case for the examination of a preferred option in greater detail, the aim of the directive, which may affect which alternatives it is reasonable to select, is more obviously met by, and it is best interpreted as requiring, an equal examination of the alternatives which it is reasonable to select for examination alongside whatever, even at the outset, may be the preferred option. It is part of the purpose of this process to test whether what may start out as preferred should still end up as preferred after a fair and public analysis of what the authority regards as reasonable alternatives. I do not see that such an equal appraisal has been accorded to the alternatives referred to in the SA of September 2009. If that is because only one option had been selected, it rather highlights the need for and absence here of reasons for the selection of no alternatives as reasonable. Of course, an SA does not have to have a preferred option; it can emerge as the conclusion of the SEA process in which a number of options are considered, with an outline of the reasons for their selection being provided. But that is not the process adopted here.

10. Although the identification and assessment of reasonable alternatives involves the exercise of evaluative assessment (planning judgment), it is still necessary for the plan-making authority to apply its mind to the question of what reasonable alternatives there are to the plan-making authority’s proposed policy. As Richards LJ explained in Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2015] EWCA Civ 681, at [42]:

42. I accept Mr Edwards's submission that the identification of reasonable alternatives is a matter of evaluative assessment for the local planning authority, subject to review by the court on normal public law principles, including Wednesbury unreasonableness: see Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223 . In order to make a lawful assessment, however, the authority does at least have to apply its mind to the question. A fundamental difficulty faced by the local planning authority in the present case, and not satisfactorily addressed in Mr Edwards’s submissions, is that there is in my view no evidence that the local planning authority gave any consideration to the question of reasonable alternatives to the seven kilometre zone. If the local planning authority had formed a judgment that it was not appropriate to “drill down” into the plan as far as the specific details of policy WCS12 for the purpose of identifying alternatives, or that there were no reasonable alternatives to the seven kilometre zone, then it would be in a relatively strong position to resist the claimant’s claim. But in the absence of any consideration of those matters, it is in a very weak position to do so. (Emphasis added)
11. At [50] Richards LJ also held that it is the duty of the plan-making authority to consider reasonable alternatives and “the fact nobody suggested alternatives cannot, however, validate the Council’s failure to consider the question at all”.

12. Additionally, the requirement to consider reasonable alternatives to the draft plan involves more than assessing generic alternatives to the draft plan e.g. not adopting a plan at all. The duty requires the plan-making authority to identify and assess reasonable alternatives to the specific policies in the draft plan. For example:

   (1) In City & District of St Albans v Secretary of State for Communities and Local Government [2010] JPL 10, at [21], the failure to subject specific policies within the East of England Plan relating to greenfield urban extensions to Strategic Environmental Assessment of reasonable alternatives was held to be unlawful;

   (2) In Save Historic Newmarket Ltd v Forest Heath District Council [2011] JPL 1233, Collins J quashed the housing policies in the Forest Heath Core Strategy on the basis that there had not been Strategic Environmental Assessment of the reasonable alternatives to the allocation of a particular site for residential development;

   (3) In Heard, Ouseley J held that the Broadland Joint Core Strategy was unlawful because the reasonable alternatives to a proposed urban extension north-east of Norwich had not been assessed in accordance with the SEA Directive;

   (4) In Ashdown Forest, the Court of Appeal quashed the Wealden District Core Strategy in part because a policy limiting development within certain distances of the Ashdown Forest SPA and SAC had not been the subject of Strategic Environmental Assessment of reasonable alternatives.

13. There is also up-to-date national guidance in the PPG chapter 11, Strategic environmental assessment and sustainability appraisal, including:

   How should the sustainability appraisal assess alternatives and identify likely significant effects?

   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 predict and evaluate the effects of the preferred approach and reasonable alternatives and should clearly identify the significant positive and negative effects of each alternative.
The sustainability appraisal should identify, describe and evaluate the likely significant effects on environmental, economic and social factors using the evidence base. Criteria for determining the likely significance of effects on the environment are set out in schedule 1 to the Environmental Assessment of Plans and Programmes Regulations 2004.

The sustainability appraisal should identify any likely significant adverse effects and measures envisaged to prevent, reduce and, as fully as possible, offset them. The sustainability appraisal must consider all reasonable alternatives and assess them in the same level of detail as the option the plan-maker proposes to take forward in the Local Plan (the preferred approach).

Reasonable alternatives are the different realistic options considered by the plan-maker in developing the policies in its plan. They must be sufficiently distinct to highlight the different sustainability implications of each so that meaningful comparisons can be made. The alternatives must be realistic and deliverable.

The sustainability appraisal should outline the reasons the alternatives were selected, the reasons the rejected options were not taken forward and the reasons for selecting the preferred approach in light of the alternatives. It should provide conclusions on the overall sustainability of the different alternatives, including those selected as the preferred approach in the Local Plan. Any assumptions used in assessing the significance of effects of the Local Plan should be documented.

The development and appraisal of proposals in Local Plan documents should be an iterative process, with the proposals being revised to take account of the appraisal findings. This should inform the selection, refinement and publication of proposals (when preparing a Local Plan, paragraph 16 of the National Planning Policy Framework should be considered).

Paragraph: 018 Reference ID: 11-018-20140306 (Emphasis added)

14. Where a local planning authority has failed properly to consider reasonable alternatives, it will be unlawful for the Secretary of State to recommend adoption of the plan and it will be unlawful for the local planning authority to adopt the plan. Hence, in Save Historic Newmarket, Heard and Ashdown Forest, the failure properly to consider reasonable alternatives led to the court quashing the relevant part of the plan.

(4) Failure to consider reasonable alternatives

15. In my view, the Council has clearly failed to comply with its duty under regulation 12(2)(b) of the 2004 Regs to assess all reasonable alternatives and explain its reasons for selecting its preferred option. Consequently, the Sustainability Appraisal is unlawful and it would be unlawful to recommend adoption of the Draft Local Plan. In particular, the Council has acted unreasonably (in a public law sense) by failing to consider the reasonable option of allocating sites that are within a proximate buffer zone of existing settlements albeit not within or precisely adjacent to existing settlements. Instead, the Council has only considered the extreme alternative of
allocating any site anywhere in its district.

16. The fundamental aim of the SEA Directive is to ensure that environmental considerations are integrated into the preparation of development plans so that potentially environmentally preferable options that will, or may, attain the authority’s policy objectives are not discarded as a result of earlier strategic decisions. That is why plan-making authorities are required to evaluate any reasonable alternatives.

17. The Court of Appeal’s decision in Ashdown Forest demonstrates that the plan-making authority is under a duty to consider whether there are reasonable alternatives i.e. it must turn its mind to that question. Furthermore, although the identification of reasonable alternatives involves the exercise of planning judgment, the exercise of that judgment is open to review by the courts on ordinary public law grounds, including Wednesbury reasonableness.

18. In the present case, the Council’s Sustainability Appraisal assesses only two alternatives. Its preferred option of considering sites for green belt release only if they are within or adjacent to Tier 1 or 2 settlements, and the option of considering any site anywhere in the district for green belt release. Yet between those two extremes is the obvious alternative of considering sites for green belt release if they are within a proximate buffer zone of existing settlements, albeit not precisely adjacent to the settlement.

19. The Council acted unreasonably in failing to identify and assess the reasonable alternative of considering sites for green belt release if they are within a proximate buffer zone of existing settlements. First, it is standard practice for green belt authorities to consider green belt releases in that way. For example, the Green Belt Review Part 2 prepared for Runnymede Borough Council by Arup explained at paragraph 2.2.2ff that a literature review of comparable green belt studies by plan-making authorities revealed the standard practice of identifying reasonable buffers or search areas for green belt releases around settlements showing the maximum likely extent of sustainable development:

2.2.2 To ensure the assessment was both comprehensive and consistent with the overall spatial strategy for the Borough, RBC developed indicative fixed buffers around each identified settlement. In determining an appropriate width of buffer, RBC carried out a literature review of broadly comparable studies elsewhere. On the basis of the literature review, the conclusions of the centre hierarchy paper, and following a high level consideration of the overall size of the Borough and spacing between settlements, as a starting point, the following buffers were drawn around all of the urban settlements in Runnymede:

- 1km
2.2.3 In addition, a narrower 250m buffer was drawn around Thorpe Village, Ottershaw, and Englefield Green. However, following further consideration, it was felt that the 500m and 1km buffer widths were too large for Runnymede’s urban settlements for this focussed and fined grained second phase of work. There was also concern that the 500m buffer was too large given the limited gaps between settlements in the southern part of the Borough in particular. Overall, it was decided that a 400m buffer would provide a reasonable buffer zone for the town centres and key service centres, and their surrounding urban areas. The 250m buffer was considered a reasonable buffer for the local service centres and their surrounding urban areas.

2.2.4 These buffers indicated the likely maximum extent of sustainable development and vary according to the position of the settlement in the centre hierarchy, as set out in Table 2.2. This approach limited Green Belt assessments to within the defined buffers of the Borough’s settlements, ensuring a proportionate and focussed study. It was felt this targeted approach was particularly justified given the fragmented nature of the Green Belt in North West Surrey.

20. Other examples of plan-making authorities using this approach are:

(1) Epping Forest Green Belt Review (August 2015): used an area of search refined by applying a buffer around each type of settlement (2km for towns, 1km for large villages and 0.5km for small villages);

(2) Rotherham Green Belt Review: initially used a 1km outer assessment boundary before deciding to review the entire green belt;

(3) Calderdale Site Allocations Assessment (April 2015): sites beyond a 500m buffer of built-up areas were deemed to be unsustainable locations and not assessed.

21. This sort of approach is therefore common place. A sensible buffer zone should have been selected to balance the desirability of preventing sporadic development and the policy objective of meeting the district’s objectively assessed need. To fail to identify and assess this alternative amounts to an unreasonable (and hence unlawful) failure to assess an obvious reasonable alternative.

22. **Secondly**, given the acute shortage of non-green belt land available for development and the significant identified housing need, it is plainly reasonable at least to consider whether more land may be released from the green belt by applying the exceptional circumstances test to a proximate buffer around existing settlements. The significant extent to which the Council is failing to provide for its objectively assessed need heightens the Council’s duty to explore whether there are reasonable alternatives.

23. **Thirdly**, the *Calverton* principles provide a structured methodology for assessing whether a particular site should be released from the green belt. Moreover, the
methodology recognises the balance to be struck between green belt protection and the meeting of housing needs. Given the safeguards for the green belt built into the exceptional circumstances test, it is unreasonable for the Council to refuse even to apply those principles to sites that are proximate to existing settlement albeit not precisely adjacent to them.

24. The Council is unlawfully fettering its discretion by refusing even to consider green belt releases except on its own narrow terms—in what it euphemistically terms “a locally derived approach to exceptional circumstances”.

25. Fourthly, as set out above, the suggested reasonable alternative would respect the Council’s desire to prevent piecemeal development in unsustainable locations by using a suitably proximate buffer zone. The size of the buffer might differ according to the type of settlement and it can be set on a locally appropriate basis. On any rational view, the buffer would have to include the Site which reads on the ground as being adjacent to the settlement even though it is not strictly abutting or adjacent to it.

26. Fifthly, in any event, the Council cannot sensibly argue that the suggested alternative would not be reasonable in light of its policy objectives given that the Council did in fact assess as a reasonable alternative option 2 i.e. allocating any site in the green belt irrespective of its proximity to existing development. Since it has assessed both ends of the spectrum as reasonable alternatives, the Council cannot rationally refuse to assess the intermediate alternative of allocating sites within a proximate distance of existing settlements. At the very least, the Council was under a duty to give a rational explanation as to why it did not consider that to be a reasonable option worthy of evaluation alongside options 1 and 2. It failed even to recognise the intermediate option, let alone assess it or justify its failure to do so.

27. Sixthly, the Council’s failure to assess this reasonable alternative has caused real prejudice. The Site is not within, and it does not immediately abut, the settlement of Lingfield. On that basis the Council has ruled it out and refused even to consider whether exceptional circumstances justify its release from the Green belt. Yet the Site is sufficiently close to be read as being adjacent to the settlement of Lingfield on the ground. The Site would not be an isolated pocket of development, but would instead enable sustainable development. Had the Council assessed the reasonable alternative of allocating sites proximate to existing settlements then the Site would have been considered for green belt release on its merits and (for the reasons given in Andrew Telfer’s representations) should have been allocated.

28. For all these reasons, the Council’s Sustainability Appraisal is unlawful because it fails
to assess the reasonable option of allocating sites within a proximate buffer zone of existing settlements. As such, it would be unlawful to adopt the Draft Local Plan. The Council must carry out a proper assessment of reasonable alternatives and reconsider the Draft Local Plan with a genuinely open mind in light of that further sustainability appraisal work before it can proceed any further.

29. It should also be noted how the Council’s entrenched position of only considering land adjacent to certain existing settlements has also infected other aspects of its plan-making process. The Council’s Housing and Economic Land Availability Assessment Methodology (March 2015) explains that it “is a technical study that determines the suitability, availability and achievability of land for development” (para 1.1). It correctly identifies that the advice in the PPG is that because the Housing and Economic Land Availability Assessment (“HELAA”) is an “audit of available land” its role is “to provide information on the range of sites which are available to meet need” (paras 4.1-4.3). As such “only in rare occasions will sites be excluded from the process entirely” (para 4.11), and exclusion will only occur during the desktop review if a site is identified “as being unsuitable for development with little prospect of constraints being overcome” (para 4.14). Yet contrary to the role and purpose of HELAAs, the Council’s HELAA (October 2016) excluded sites purely based on whether or not they were adjacent to certain existing settlements:

4.13 In determining locational suitability, a judgment was made that if a site was not within or immediately adjacent to a sustainable settlement, then it would not be a suitable location for development at this point in time. The exception to this was if a HELAA site, when combined with another HELAA site, would be adjacent to a sustainable settlement...

30. Thus far from providing the Council with an audit of the available land to meet its objectively assessed need as the PPG requires, the HELAA presented an artificially narrow picture because it introduced the same “locational suitability” judgment that fetters the Council’s approach to green belt release.

(5) Material scoring errors

31. I agree with the analysis at paragraphs 2.63 to 2.84 of Andrew Telfer’s representations. The Council has inconsistently and incorrectly applied the landscape tests in assessment the Site as compared e.g. to the Star Fields Site.

32. The key errors in relation to the assessment of the Star Fields Site are as follows:

(1) The Star Fields Site has incorrectly been treated as an infill site and it should have scored 4 out of 5 for “inconsistency with existing settlement
form/pattern”. This is because the Star Fields Site is only partially contained to the west. There are green fields to the north and south of the Star Fields Site and only very low density rural housing to the east. In no meaningful sense is the location an “infill site”. It is unreasonable (in a public law sense) to characterise it as such;

(2) The Star Field Site makes a valuable contribution to the rural setting and character of the village and should have scored 5 out of 5 for “contribution to the setting of surrounding landscape/settlement”;

(3) In terms of “views (visual sensitivity)” it should be recognised that development of the Star Fields Site would impact on views of the Grade I listed church spire from the south east;

(4) The score for “potential for mitigation” should be 5 out of 5 to recognise the high sensitivity of the site and the low potential for mitigation;

(5) The score for “ecological and other designations (e.g. heritage, flood zones etc)” should have been 5 out of 5 given that the Star Field Site is in the conservation area and the setting of numerous heritage assets;

(6) The score for “historical/cultural/literary associations” should have been 5 out of 5 because the Star Fields Site is an important setting for a medieval heritage area;

(7) The score for “contribution to setting of ‘outstanding assets’” should have been 5 out of 5 given the fact that the Star Fields Site is part of the setting of the Grade I listed Church of St Peter and St Paul and the Grade II listed New Place (dating from 1617);

(8) The score for “recreation and public access/locally valued spaces” should be at least 4 out of 5 given the significant local opposition to development of the site on the basis of its local value;

(9) The score for “perceptual aspects (e.g. scenic quality, tranquillity, and remoteness) should be 3 out of 5 given the very rural feel of the southern part of the Star Fields Site.

33. The key errors in relation to the assessment of the Site are as follows:

(1) The score for “contribution to the setting of surrounding landscape/settlement” should be reduced to 2 out of 5 because the Site is contained and predominantly screened from public view. Although the
Council has suggested that the Site noticeably protrudes to the south of the settlement, there is no evidence that developing the Site would have a significant impact on the setting of the surrounding landscape or the settlement of Lingfield. Accordingly a lower score is merited –especially given the approach taken in relation to the Star Fields Site against the same criterion (see above);

(2) The score for “views (visual sensitivity)” should be reduced to 1 out of 1 because the Site benefits from a high degree of visual enclosure. The detailed modelling work undertaken demonstrates that the development would be virtually invisible from East Grinstead Road;

(3) The score for “potential for mitigation” should be 2 out of 5 because the topography and natural screening of the Site allow generous opportunities for mitigation;

(4) The score for “inconsistency with existing settlement form/pattern” should be 2 out of 5 because the Site is only separated from the existing settlement boundary by a gap of 30m at its widest point;

(5) The score for “local distinctiveness” for landscape value should be lowered to 2 out of 5 because the Site is a private site adjacent to the village which ought to be scored lower than the Star Fields Site which is a publically used site in the setting of numerous heritage assets;

(6) The score for “recreation and public access/locally valued spaces” should be lowered to 1 out of 5 because the Site has no public access and is not a locally valued space.

34. Had the Council assessed the landscape sensitivity of the Site and the Star Fields Site consistently, the Site would have scored more favourably in terms of landscape sensitivity and landscape value. The Council ought to reconsider its scoring in light of the evidence and representations, otherwise its assessment underpinning the Draft Local Plan will be unjustified and unsound.

(6) Approach to green belt release

35. As set out above, the Council has not even considered whether exceptional circumstances apply to justify the release of the Site from the green belt. When it comes to consider that question the Council will be required to take a more proportionate approach to exceptional circumstances given the considerable local housing need.
36. For the reasons given in Andrew Telfer’s representations, the Council is proposing to release a disproportionately low amount of land from the green belt in order to meet its housing land shortfall. The Calverton principles require weight to be given to the acuteness/intensity of the objectively assessed housing need. The Council cannot lawfully, or consistently with national policy, downplay the acute need in the way that it has to date.

37. In large part, this issue is linked to the Council’s unlawful failure to consider the reasonable alternative of considering land proximate to, but not adjacent to, existing settlements for green belt release. By artificially drawing the net too narrowly, the Council has prevented itself from even considering whether exceptional circumstances justify the release of potentially sustainable housing sites from the green belt.

38. When it comes to assess whether exceptional circumstances exist to justify the release of the Site from the green belt, the Council will have to consider the extent to which the Site serves any of the five purposes of the green belt set out in NPPF para. 134, namely:

(a) To check the unrestricted sprawl of large built-up areas;

(b) To prevent neighbouring towns merging into one another;

(c) To assist in safeguarding the countryside from encroachment;

(d) To preserve the setting and special character of historic towns; and

(e) To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

39. Releasing the Site from the green belt so as to more fully meet the Council’s objectively assessed housing need would be wholly consistent with the five purposes of the green belt. In particular, the Site appears attached to the settlement when experienced on the ground, and its development would not cause neighbouring towns to merge into one another. Additionally, because the Site is contained (and reads as such) its development would not cause the unrestricted sprawl of built up areas or further encroachment into the countryside. Removing the Site from the green belt is consistent with green belt purposes and would lead to a defensible green belt boundary being maintained.

(7) Conclusions

40. For the reasons given above, I consider that:
(1) The Draft Local Plan is unlawful due to the failure to comply with the requirements of the 2004 Regs and the guidance in the PPG;

(2) In particular, the Sustainability Appraisal is unlawful because, contrary to Reg 12(2)(b) of the 2004 Regs, it does not identify or assess the reasonable alternative of considering sites for green belt release if they are within a reasonable buffer of existing settlements albeit not immediately adjacent to/abutting the settlements;

(3) The Draft Local Plan cannot therefore lawfully proceed in its current form;

(4) The Council has inconsistently and incorrectly applied the landscape tests in assessment the Site as compared e.g. to the Star Fields Site; and

(5) When it does come properly to consider whether exceptional circumstances justify the release of the Site from the green belt, the Council must give sufficient weight to the acuteness/intensity of its objectively assessed housing need and take a more proportionate approach towards green belt releases.

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