

# Briefing Note



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Date: 2 December 2016  
Subject: Hearing Statement – Matter 26

## **Matter 26: Strategic Allocations**

### **Context**

- 1.1. This Hearing Statement has been prepared on behalf of 2020 Developments (Luton) Ltd (on behalf of Luton Town Football Club) in respect of the Stage 3 Examination hearings into the Luton Local Plan 2011-2031.
- 1.2. This Statement should be read in conjunction with our representations submitted in December 2015 to the Pre-Submission draft Local Plan.

### **Matter 26: Land South of Stockwood Park (LP5)**

**Main Issue: Are the proposed uses on the Strategic Allocation appropriate, justified and deliverable, including in terms of scale and mix? Are the policy requirements sound?**

- 1.3. The Club supports Strategic Objective 9 of delivering a new football stadium in Luton. This Objective represents an important part of the suite of objectively identified needs for the Plan Area. There has been rightly, no sustainable objection to this important objective. Furthermore, there has been overwhelming support for the provision of a new stadium, as evidenced by the well in excess of 10,000 submissions of support in respect of the Club's planning application.
- 1.4. However, the strategic objective cannot and will not be delivered at Land South of Stockwood Park. Unlike any other land-use allocations, Policy LP5 is not a generic allocation but

specifically allocated land for the purpose of a stadium for Luton Town FC, a precise end user.

- 1.5. Luton Town FC, **as landowner and operator, will not deliver a stadium on the land south of Stockwood Park.** The reasons for this are set out elsewhere in these proceedings but include the spatial need for the Club to be centred on the community it serves, the absence of sustainability in terms of a community use at Junction 10 and the absence of a viable business case for the development.
- 1.6. The Club is clear that this is its position even if the current planning application being considered by Luton Borough Council, to provide the stadium at Power Court, is refused.
- 1.7. In these circumstances, this policy, insofar as it seeks to allocate land for a football stadium for Luton Town FC, is undeliverable. It fails the key test of effectiveness as set out at paragraph 182 of the NPPF and therefore, is not sound.
- 1.8. Given the emphasis on delivery in the NPPF, that would be sufficient in itself to require the policy to be found unsound. However, the factors underlying the Club's clear and public stance are also land use planning reasons which explain why the allocation is neither justified nor consistent with Government policy.
- 1.9. Again, we cross refer to our earlier submissions in this regard.
- 1.10. For these reasons, we agree with the Council's proposed changes to the policy, namely the removal of LP5A i, ii and iii. Removal of the stadium element of the strategic allocation is an essential requirement.

- 1.11. However, we do not believe that these changes are sufficient to make the policy sound. There are two key reasons for this.
- 1.12. Firstly, removal of the stadium allocation without specifically identifying an alternative site within the Plan means that Strategic Objective 9, to deliver a new football stadium for Luton Town FC, is not met. Strategic objectives form the link between the Council's high level spatial vision and the detailed strategy. Failure to meet one of the Strategic Objectives and a major spatial need of the area renders the Local Plan unsound.
- 1.13. Secondly, the delivery of the balance of the employment/office allocation at the site without the stadium and other elements is insufficiently tested. There is no evidence that it is sustainable or deliverable and, in our opinion, is unlikely to create the critical mass necessary to be sustainable in a viability sense or in a public transport sense.
- 1.14. The same could be said about the park and ride facility which at all times appears to have been premised on the "full" mix of allocated uses.
- 1.15. On this basis, the remaining "rump" elements of the policy, in isolation, are not effective or justified and, hence, are not sound either.
- 1.16. This means that the entire strategic allocation is unsound. This has implications for the soundness of the entire Plan, including the employment provisions. This is particularly the case if Policy LP9 is also found to be unsound (see below).
- 1.17. In these circumstances, the Plan should be withdrawn now to allow these issues to be remedied.

- 1.18. If, contrary to this position the Plan is not withdrawn or found unsound in its entirety, any adoption should be strictly conditional upon the stadium use being removed from this allocation as suggested by the Council itself and an undertaking that an immediate review of the Plan be undertaken in relation to the location of a new stadium and the nature and extent of Policy LP5.
- 1.19. In the further alternative, the Council should pause this element of the Plan (and LP9) to undertake necessary further work in a manner identified as appropriate in the “Gold Book”. It is Luton Town FC’s contention that such a pause will only reinforce the view that the present allocation strategy is unsound and cannot be continued with.

Question 1: The site is proposed for mixed use development, including a football stadium for Luton Town Football Club (2.5ha), ancillary sports facilities (0.7ha), enabling provision (0.3ha), park and ride facility (2ha) and B1 business use (9.5ha). Is this overall mix of uses proposed appropriate and justified? Are there any extant planning permissions?

- 1.20. The Club will not deliver a stadium at Land South of Stockwood Park (see above). The allocation for the site for such a use is not, in any event, justified and would be contrary to national policy. The policy is, therefore, not justified, not deliverable or effective, and is not sound.
- 1.21. There is no justification or evidence base given as to why a park and ride is necessary in this location, or what other uses would be appropriate with the office use allocation following removal of the stadium for Luton Town FC element.
- 1.22. There are no extant planning permissions at the site.

Question 2: Is the policy sufficiently clear about what a developer will be required to provide in respect of uses, including through the requirement for a masterplan (Bi) to include indicative layout and phasing?

1.23. No. This is especially the case now that the Council accepts that the major elements of the mix are not soundly allocated here.

Question 3: Have options for the use of the site been adequately considered in the Sustainability Appraisal?

1.24. No. There was no evidence to justify the provision of a stadium in this location or alternative uses if the stadium is not delivered. The “rump” option now being advanced by the Council has not been subject of any adequate appraisal.

Question 4: Is this an appropriate site for the relocation of Luton Town Football Club in respect of accessibility (including by public transport) and having regard to the role of the club within the community it serves?

1.25. Land South of Stockwood Park is entirely inappropriate for the location of Luton FC’s new stadium given the Club’s role in the heart of the community it serves.

1.26. Although the site can be made accessible by public transport, locating a community use here is simply not the most appropriate strategy. It would be unsustainable from a public transport point of view when compared to reasonable alternatives.

Question 5: Luton Town Football Club considers that the site is not a suitable location for a football stadium and that a stadium would not be

viable (LTFC representations on the submitted plan). In this context, is the allocation for the football stadium effective and deliverable? [Pages 34 & 36 of the Local Plan Viability Assessment DEL003A refer to this site]

- 1.27. The allocation is not effective or deliverable for all the reasons set out above and in other evidence.
- 1.28. These include the fact that a stadium would not be viable. The Council's own evidence base recognises that development of a football stadium at Land South of Stockwood Park is not viably deliverable.

Question 6: The site is allocated in the Luton Local Plan 2001-2011 but has not yet been developed. What are the reasons for this and what evidence is there that any constraints to development can be overcome?

- 1.29. Notwithstanding the Club's in-principle opposition to providing a stadium at the site, there is no evidence which shows that the constraints to development generally can be overcome. As noted above, the stadium cannot and will not be delivered in this location.

Question 7: Is the Stockwood Park allocation justified (including the B1 business use and stadium) having regard to the potential effects on traffic, congestion and commuting? Would there be adequate opportunities to travel to the site by public transport? Have the transport and travel implications of an edge-of-settlement location been adequately considered? Will policy criterion Biii and viii be effective in securing and promoting access to and from the site by public transport, walking and cycling?

- 1.30. In principle, a mixed-use commercial development could be justified to meet the needs of the Plan Area. It is in principle, an important strategic site which can play a critical role in meeting employment and other needs
- 1.31. Potential effects on traffic, congestion and community, and accessibility by public transport can also be adequately mitigated and with positive benefits for the community. Any application brought forward on the site will improve public transport services and overall connectivity by a range of means of transport.
- 1.32. But the present allocation is not the appropriate vehicle for that. The Council needs to reconsider the future of this allocation site either by withdrawing the Plan or by undertaking a speedy review. In any event, the identification of the site as a suitable and deliverable stadium site must be removed.

Question 8: Does criterion ii have any implications for the deliverability of the site given it requires that no development will take place until Highways England is satisfied that the proposals do not have an unacceptable impact on junction 10a improvements and upon the M1 motorway and shall not compromise the safety of road users? Can any

adverse effects on the road network be adequately mitigated?

- 1.33. In principle, any adverse effects of development on the site on the road network can be adequately mitigated. Recent upgrades to the junction by Highways England have also been completed.

Question 9: Is the park and ride site intended to be a requirement for a developer delivering the football stadium and/or B1 business use? If so, is this sufficiently clear? Is the park and ride site necessary to mitigate potential effects on the road network?

- 1.34. The function of the park and ride site is not clear, particularly in the context of the Council's proposed modification to remove LP5A I, ii and iii.
- 1.35. The park and ride is not necessary to mitigate potential effects of the wider allocation on the road network.

Question 10: The policy refers to B1 business use on 9.5ha of land whereas the Background Paper refers to c5-6ha . What is the reason for the difference? Is the figure in the Plan intended to be net or gross (for example, allowing for structural landscaping)?

- 1.36. If the policy is to remain, it should provide flexible wording to ensure that the quantum of office accommodation can respond to market demand at the time of development, having regard to the need to create an appropriate mixed-use gateway scheme and the overall employment generation benefits at the site. It should also reflect the commitment to an early review of the allocation's role in the spatial strategy.
- 1.37. Clearly, and as noted above, there is absolutely no convincing



evidence that the office element can be delivered in isolation. It can only be delivered as part of a mixed-use scheme.

Question 11: What is the justification for the enabling provision of 0.3ha of small scale A1, A3 and A4 uses? Is criterion ix (which states that enabling development will be of a scale that does not adversely affect the regeneration of Luton town centre) intended as a limitation on the 0.3ha of enabling provision?

1.38. No justification has been provided.

Question 12: Why is it necessary for development to meet the maximum car parking standards set out in Appendix 2? (criterion iv)

1.39. It is not necessary for the plan to specify that development will meet maximum car parking standards. Car parking levels for the site are more appropriately addressed through the development management process once the specific quantum and type of development is understood and can be assessed.

Question 13: The site lies outside the public safety zones defined in Policy LP34. Nevertheless, given the proximity to the airport have public safety considerations been adequately taken into account?

1.40. Development at the site would not give rise to public safety considerations which could not be addressed through appropriate conditions on any planning permission.

Question 14: Are the policy criteria sufficient to ensure that the proposal would not cause unacceptable effects in respect of the landscape character of the surrounding area and on nearby biodiversity sites and heritage assets? Should the policy make specific reference in v. to the Luton Hoo Registered Park and Garden? (See Council's proposed

modification MOD15)

- 1.41. The policy criteria in this regard are sufficient and any planning application brought forward will have to assess any effects as part of the environmental impact assessment. Sufficient protection is also provided through statute.
  
- 1.42. No specific reference to Luton Hoo is required given the distance between the sites, the topography and the fact that there are sufficient statutory protections for Luton Hoo. The site has been allocated for strategic development since the 1990s. Development on the site will not cause unacceptable effects in respect of the landscape character of the surrounding area or on nearby biodiversity and heritage assets. Any impacts can be adequately mitigated through the development process.

Question 15: A significant area of the site appears to be designated in the Luton Local Plan 2001-2011 as an 'other site of nature conservation importance'. Does the site have biodiversity value and has this been adequately taken into account?

- 1.43. The site does not have any biodiversity value which would provide a barrier to development.

## **Matter 26: Power Court (LP9)**

**Main Issue: Are the proposed uses on the Strategic Allocation appropriate, justified and deliverable, including in terms of scale and mix? Are the policy requirements sound?**

Question 1: The site is proposed for mixed use development, including around 600 dwellings, c3,393 sqm convenience retail, comparison retail in accordance with the borough's overall identified need for the town centre and provision for sport, leisure and entertainment. Is the overall mix of uses proposed appropriate and justified? Are there any extant planning permissions?

- 2.1. The mix of uses identified is, in principle justified, given the town centre location of the allocation.
- 2.2. As worded, policy LP9 allows for the potential provision of a football stadium at Power Court as part of a town centre mix. In our opinion, this recognition that a main town centre use as defined by the NPPF could be located in the town centre is entirely appropriate. This is especially the case now that the Council has recognised that the identification of the Land South of Stockwood Park site as a stadium location is unsound.
- 2.3. Proposed MOD22, which makes reference to D2 uses, makes the potential identified above even clearer.
- 2.4. This part of the Policy, and the identification of the overall mix of uses, is therefore, sound.
- 2.5. Power Court is the most suitable site to accommodate a stadium as part of a mix of uses. It is the only site within or close to the town centre, which is the focal point of the local

community.

- 2.6. Power Court is also the most accessible site, given its proximity to the main modal transport hub and it is by far the most suitable in terms of its potential to deliver a place shaping development which would be a catalyst for regeneration in Luton.
- 2.7. Whether or not the stadium is provided at Power Court, it is not appropriate to allocate this site to accommodate all of Luton's identified comparison retail need. There will not be sufficient space available (see question 4) and it is unlikely that a retail dominated scheme would deliver a viable development given the site constraints and abnormal costs which are acknowledged by the Council.

Question 2: The Policy states that the site is allocated for sport, leisure and entertainment. The Council has advanced a proposed modification - 'Use Class D2, sport leisure and assembly and entertainment' (MOD22). Is this necessary to achieve soundness? Is the Plan sufficiently clear about acceptable uses?

- 2.8. Even prior to the Council's acceptance that LP5 was an unsound allocation site to accommodate the stadium, policy LP9 correctly identified the town centre as potentially an appropriate location for a stadium. This is reflected in the Sustainability Appraisal.
- 2.9. In light of Strategic Objective 9 and the Council's now acceptance that Land South of Stockwood Park is not soundly allocated, the policy (if it is to remain – see below) should retain and now strengthen the reference to D2 uses such as a stadium being appropriate as part of the mix.

Question 3: Have options for the use of the site been adequately considered in the Sustainability Appraisal?

- 2.10. Yes. The Sustainability Appraisal (SUB 0004 A) considers a number of alternative uses for the site including provision of a stadium. Crucially, the appraisal concludes that the site is suitable to accommodate the football stadium (Paragraph 7.1.9).

Question 4: Does the policy have sufficient clarity about the amount of comparison floorspace to be provided? Is the intention that the site should provide all of the comparison retail floorspace identified in the plan or a component of it (LP3 refers to 30,096 sqm by 2025 and page 63 of the Plan to 53,715 sqm by 2031)? Should this be made clear in the policy? [see also Matter 13 Qu 8]

- 2.11. Given the constraints to delivery (see below), the policy needs to retain a significant degree of flexibility if the site is ever to be developed.
- 2.12. For reasons we set out elsewhere, it is unclear whether the site can meet all of the comparison and convenience need, particularly given the range of uses that are proposed for the site. The policy should be flexible in respect of these uses to allow for a suitable mix of town centre uses to come forward on the site, which will contribute to the vitality and viability of Luton Town Centre in a viable way.
- 2.13. If all of the retail need cannot be met in full at Power Court, given that other appropriate uses are being delivered, retail proposals elsewhere should be considered on their merits.
- 2.14. If the policy is now altered specifically to require the meeting of

all comparison retail need, there will be very real doubt about its delivery at all and about the delivery of the other key town centre uses. Such a change would be a very significant alteration in the Plan and would be inappropriate and unjustified by the evidence.

- 2.15. If the site is now to be identified as the location for a set and fixed amount of comparison retail, then the appropriate route would be to withdraw the Plan and to justify this significant change through a new policy.
- 2.16. This would be an appropriate route to take, especially if the Policy LP5 allocation for a stadium is accepted to be unsound.
- 2.17. Alternatively, if the policy is thought to give insufficient guidance, then an alternative route would be to adopt the policy as it is as part of an adopted plan, but to require the Council to undertake an immediate review of this policy and the overall town centre strategy following adoption.
- 2.18. In the further alternative, the Council could pause this section of the Plan to undertake the necessary further work

Question 5: Is the policy sufficiently clear about what a developer will be required to provide in respect of uses? For example, is it intended to be a requirement that the site should provide around 600 dwellings and c3,393 sqm retail convenience and any specific quantity of comparison retail? Is this made sufficiently clear in the policy, including through the requirement in Ai for a masterplan to include phasing and a delivery mechanism?

- 2.19. We believe that the policy is intended to be interpreted flexibly and it is noted in this respect that the floorspace figures are not

included under the 'requirements' in LP9A. The policy intends that these figures are indicative / approximate and that the appropriate mix of uses will be determined as part of any planning application for the mixed-use development of the site. The policy requires this flexibility to deliver a scheme which overcomes the well-understood constraints and abnormal costs associated with the site.

- 2.20. Much will depend upon the ability to overcome the development constraints which are referred to elsewhere in our evidence.

Question 6: Is the site of sufficient size to deliver all the development set out in the policy? What evidence is there for this? What density is assumed for the 600 dwellings? How much land will be required to provide for each of the following - 600 dwellings and the specified convenience and comparison floorspace?

- 2.21. The site is of sufficient size to deliver all of the elements set out in the policy but the scale and quantum of such provision will be dependent on viability issues. The planning application for the mix of uses on the site illustrates that, in principle, the components of the policy can appropriately be addressed.
- 2.22. As noted previously, the policy should retain flexibility to ensure it is deliverable. The final quantum of the various elements will depend on the scheme being promoted.

Question 7: Is the proposed development viable and deliverable? Are there likely to be any abnormal development costs? The site is allocated in the Luton Local Plan 2001-2011 but has not yet been developed. What are the reasons for this and what evidence is there that any constraints to development can be overcome? Is there a reasonable prospect of development in the plan period?

- 2.23. It is acknowledged that the site is challenging for development. It has been largely derelict for over 13 years despite efforts to bring forward development.
- 2.24. Retail development on its own is not viable or deliverable. The failure to develop the site by previous owners well-versed in delivering difficult town centre sites is evidence of this.
- 2.25. Paragraph 6.3.23 of the Sustainability Appraisal (SUB 0004 A) acknowledges that there are economic viability issues with the site, particularly “*the extent of environmental remediation required...*”. In addition, and not identified by the Sustainability Appraisal, there are significant abnormal costs associated with re-directing and opening up the River Lea and the need to relocate a sub-station.
- 2.26. However, Luton Town FC believes that the site is deliverable for a new football stadium and mix of uses as evidenced in its planning application in respect of the site, albeit with elements of cross-subsidy. It is important to note that the nature of a football club means that the normal and usual viability criteria and funding arrangements are less in play.
- 2.27. The reality is that Luton Town FC is the only landowner even close to being in a position to realise the development of this important site. The Club has of today (2 December 2016)



exchanged contracts with British Land to acquire its entire interest at Power Court. Completion will take place on 16 December 2016. The purchase will remove a significant impediment to delivery.

- 2.28. If however, the Inspector takes the view that the site is unviable and undeliverable, then it would be unsound in terms of the NPPF.
- 2.29. In these circumstances, coupled with the unsoundness of Policy LP5, the appropriate course would be for the Council to withdraw the Plan.
- 2.30. The other options involving adoption subject to immediate review or pausing this element of the Plan (and Land South of Stockwood Park) have been set out above.

Question 8: Will the policy be effective in helping to ensure that the proposed town centre uses on the site will form an integral part of the town centre, including in relation to the town centre shopping area and frontages as shown on the Policies Map?

- 2.31. As drafted, no. Without delivery of the football stadium to act as a catalyst for development, the site will not be deliverable at all given the abnormal development costs and site constraints.
- 2.32. There will be limited incentive for the developer of a retail-led scheme to ensure that Power Court is integrated with the rest of the town centre.
- 2.33. On this basis, sufficient flexibility is required to the remainder of the policy, ie the policy should not prescribe quanta of floorspace for town centre uses. It should be read flexibly to

enable the mix of uses to be determined as part of a planning application. This would make the policy effective.

Question 9: Are the policy criterion in Ai to vi justified and effective? In particular, will criterion Aii be effective in securing an appropriate standard of design (see Council's proposed MOD23)? Is the requirement in Aiii to consider opportunities for making more effective use of the River Lea likely to be effective?

2.34. The Luton Town Centre Development Framework (LTCDP) was adopted in December 2004. It is over ten years old and does not provide a useful guide to development. In places it contradicts the Local Plan. In short, proposals which comply with Policy LP9 will not comply with the LTCDP. Reference to it should be removed or clarified that proposals should “*reflect the broad objectives of the LTCDF*”.