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Dear Sir/ Madam

SITES FOR GYPSIES AND TRAVELLERS PREFERRED OPTIONS FOR SITES (MARCH 2014): REPRESENTATIONS ON BEHALF OF BARWOOD STRATEGIC LAND II LLP

HOW Planning is instructed by Barwood Strategic Land II LLP to submit representations in relation to the above document, which identifies preferred sites to accommodate the need for Gypsy and Travellers sites in the borough over the next 15 year period.

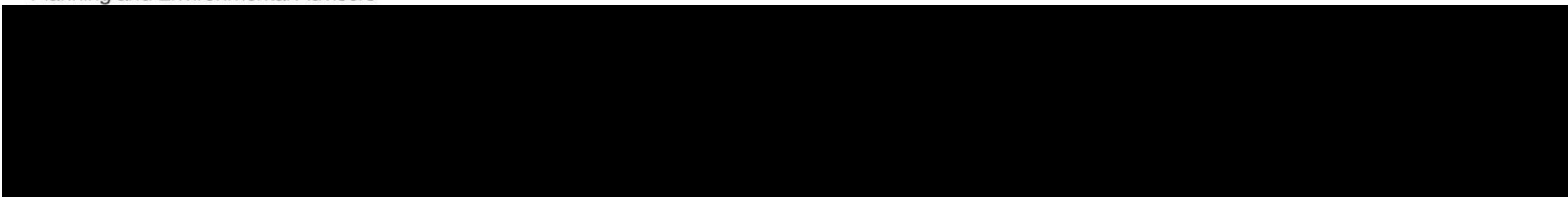
The representation is divided into two distinct elements. It firstly considers the Council's general approach to the Plan and secondly considers the site assessment criteria and findings. It is noted, in respect to the issue of Compulsory Purchase Orders, that these representations have incorporated legal advice on this matter from Eversheds.

Duty to Cooperate

Planning Policy for Traveller Sites (PPTS) clearly states at paragraph 9 that Local Planning authorities should, in producing their Local Plan:

c) Consider production of joint development plans that set targets on a cross-authority basis, to provide more flexibility in identifying sites, particularly if a local planning

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*authority has special or strict planning constraints across its area (local planning authorities have a duty to cooperate on planning issues that cross administrative boundaries)*¹

Whilst it is accepted that the Council has considered the need to comply with the duty to cooperate, as detail in paragraph 2.13 of the Preferred Options for Sites document, there is little evidence provided as to the extent to which Warwick Council have cooperated with neighbouring authorities. HOW Planning request that this information is made available, in order for respondents to be able to fully assess whether the duty to cooperate has been complied with.

Approach to Green Belt

National policy clearly sets out that where exceptional circumstance exist, a review of the Green Belt is acceptable. Paragraph 15 of PPTS states that;

"Green Belt boundaries should be altered only in exceptional circumstances. If a local planning authority wishes to make an exceptional limited alteration to the defined Green Belt boundary (which might be to accommodate a site inset within the Green Belt) to meet a specific identified need for a traveller site, it should do so only through the plan making process and not in response to a planning application. If land is removed from the Green Belt in this way, it should be specifically allocated in the development plan as a traveller site only."

Whilst the Council states that *"none of the suggested sites have been excluded on Green Belt grounds only"*², it is evident from the Preferred Options for Sites document, that the Council only included land outside of the Green Belt when selecting the areas of search³. This approach does not accord with the NPPF or the PPTS, which allows in exceptional circumstance, such as an identified housing need, a review of the Green Belt. In adopting this approach the Council has also presumed, without demonstrating the same, that the existing Green Belt boundaries are still performing the five purposes of including land within it. However it is generally accepted that changes occurring after Green Belt

¹ Planning Policy for Travellers Sites, March 2012, para 9. Pg. 3

² Sites for Gypsies and Travellers, Preferred Option for Sites (March 2014), Para 3.5

³ Sites for Gypsies and Travellers, Preferred Option for Sites (March 2014), Para 2.6

boundaries are established, can in some cases result in land being retained within the Green Belt that serves none of the Green Belt purposes. This would also constitute exceptional circumstances for the removal of land from the Green Belt.

It is also noted that a partial review of Green Belt boundaries has been undertaken for the wider Local Plan in order to meet the housing requirements across the borough adjacent to identified sustainable settlements. There is no evidence in the Preferred Options for Sites document or supporting evidence base as to whether the sites considered acceptable for removal from the Green Belt to meet the housing requirements of the Local Plan, have also been assessed by the Council so as to ascertain their suitability or otherwise for Gypsy and Travellers sites. From the Local Plan review it is evident that the Council accept that exceptional circumstances exist so as to justify amendment to the Green Belt boundary to meet non Gypsy and Travellers housing needs and therefore we question why the Council has not used a consistent approach when considering Gypsy and Travellers housing need.

The Council's approach to the Green Belt is clearly not justified in the context of the PTTS and their own approach on the wider Local Plan and as such the plan is unsound in accordance with paragraph 182 of the NPPF. This point is particularly important in the context of the Council's position on CPO's, as they will need to demonstrate that all reasonable alternative locations have been considered.

Site Assessments

The Council have established the following criteria for assessing the sites, in accordance with their emerging local plan policy for the provision of sites for Gypsy and Travellers:

1. Convenient access to a GP surgery, school, and public transport;
2. Avoiding areas with a high risk of flooding;
3. Safe access to the road network and provision for parking, turning and servicing on site;
4. Avoiding areas where there is the potential for noise and other disturbance;
5. Provision of utilities (running water, toilet facilities, waste disposal, etc.);
6. Avoiding areas where there could be adverse impact on important features of the natural and historic environment;

7. Sites which can be integrated into the landscape without harming the character of the area. Site development will accord with national guidance on site design and facility provision;
8. Promotes peaceful and integrated co-existence between the site and the local community;
9. Avoids placing undue pressure on local infrastructure and services; and
10. Reflects the extent to which traditional lifestyles (whereby some Travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.

These criteria largely accord with the guidance set out in paragraph 11 of the PPTS and therefore HOW Planning raise no objection to the use of these criteria to assess the suitability of sites. HOW Planning would note however, that in accordance with paragraph 12 of the PPTS consideration of the scale of sites in the context of the nearest settled community should also be included. This is relevant in the context of the Councils preferred sites as it is evident that the sites have been concentrated to the south of the Borough, within close proximity to each other. The Council need to consider the cumulative effect of the sites on the nearest settled community in line with the PPTS.

HOW Planning have reviewed the Council's site assessments and wish to highlight a number of concerns in respect of the specific site assessments for GT15; GTalt01 and GTalt03;

In respect to the site assessment for GT15, the assessment clearly highlights several significant site constraints including ecology, flooding, access and noise. In respect to ecology, the development would result in the large scale removal of the existing vegetation on site and along the boundaries in order to achieve the required visibility splays. This would have a significant ecology impact on the existing River Avon wildlife site. The assessment states that the site should be maintained as part of the wider area for its wildlife interest. It is also noted that the assessment concludes that a large proportion of the site is located within the flood plain, and that reducing the boundary to reflect the flooding constraints may make the site unviable. It is clear that this site is not suitable for development due to the site constraints listed above and therefore is should be classified as unsuitable ("red").

In respect to the site assessment for GTalt01, there is no consideration given to the proximity to the Grade I listed Park and Garden at Castle Park and therefore any potential impact to the setting has not been considered. It is also noted that the site assessment highlights a number of concerns/constraints of the site, namely in respect to ecology the Tach Brook is designated as Local Wildlife Site and the assessment states that if the site is developed a buffer and wildlife corridor should be retained, however no reduction in site size has been applied to accommodate this.

In respect to GTalt03, the site assessment clearly identifies that the site is available and deliverable. The only identified constraint that would prevent development on the site is the Green Belt designation. Assessing the site against the 5 purposes of including land within the Green Belt, it is clear that the site's removal will not have a negative impact on these purposes. As such the site should be classified as suitable ("Green") and promoted for removal from the Green Belt in order to meet the identified need, on a suitable, available and achievable site.

Council's Preferred Options for Consultation

Draft Policy PO1

In addition to the concerns in relation to the site assessments stated above, HOW Planning also questions the approach the Council has undertaken in identifying the preferred sites, as detailed in draft policy PO1. The Council's justification states that:

"Each of these sites has been assessed as suitable ("green") in the site assessment tables). Together they also represent a sustainable pattern of development in that:

- a) They are either located outside the Green belt, or in the case of GT19 the site is previously developed land*
- b) Their locations mean that the developments are located close to existing settlements which can accommodate the relatively small impact on infrastructure in a sustainable way."*

However it is noted that there is no justification for the selection of the preferred sites from the Council's list of suitable ("green") sites, as all of the sites would satisfy point a) and b) above. HOW Planning formally requests, in accordance with the freedom of

information act, that the Council provide further information on the selection process, in order for respondents to fully understand the Council's justification.

Draft Policy PO3

Draft Policy PO3 identifies the criteria against which proposals to develop land for use as Gypsy and Travellers sites will be assessed. These accord broadly with the 19 factors that the Council indicates in paragraph 6.2 of the Preferred Options that it has taken into account in its assessment of the proposed sites so as to reduce the list of sites to preferred options for consultation. These include:

- *"Availability of the site (including impact on the existing uses on the site); and*
- *Deliverability of the site and associated infrastructure requirements."*

We note that the Council has selected site GT12 as being preferred (Green), notwithstanding that the summary assessment explains that: *"the landowner is not willing to sell this site, so compulsory purchase powers would have to be used to bring the site forward"*. Accordingly, the Council has selected this site regardless of the fact that the land is not available and/or deliverable. The same principle applies to sites GT02, GT05 and GTalt12 which have been identified by the Council as alternative (Green) sites, and GT06 which is an alternative "Amber" site.

No indication is given by the Council as to the relative weight that it has applied to the Policy PO3 criteria in order to arrive at its list of Preferred and Alternative Sites, however we fail to see how it can be rational for the Council to select a site as Preferred or Alternative where reliance is being placed on the use of compulsory purchase powers in order to procure its delivery.

The Council will be aware that the use of CPO powers is a draconian measure which should only be pursued as a measure of last resort. There must be a compelling case in the public interest to make a CPO, and this requires an assessment of (*inter alia*):

"whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons,

for its re-use. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired”⁴

It is evident from the criticisms above that the Council has failed to address all reasonable alternative locations; its assessment of the proposed sites for selection is flawed; and it has not adequately evidenced or explained how it has arrived at the selected Preferred and Alternative Sites. These flaws would significantly undermine the Council’s case for the confirmation of a CPO to deliver a site and will prejudice the Council’s ability to satisfy the Secretary of State that there are not any alternative sites which could deliver its objectives.

The CPO process is also lengthy and costly. From making a CPO to its confirmation by the Secretary of State, it may take approximately 18 months if a public local inquiry is required. Moreover, that timescale does not factor in time for preparatory work, negotiations to acquire by private treaty, the Council’s decision making process, the risk of legal challenge and/or the exercise of CPO powers and the need to obtain vacant possession.

It follows that there is no guarantee that the Council will be successful in obtaining CPOs on the identified sites either at all, or within a reasonable timescale so as to deliver the Council’s objectives and meet Gypsy and Travellers need.

As such the availability of the above sites has not been proven and in accordance with the PPTS and NPPF definition, the sites cannot be considered deliverable. In our view, the assessment is flawed and the draft Plan is therefore currently unsound.

Sustainability Appraisal

Alongside the Preferred Options for Sites Document the Council has provided a Sustainability Appraisal (SA) for the 9 ‘areas of search’ and 15 alternative sites which are deemed to be potentially reasonable options by the Council. Whilst it is accepted that SA findings are not the sole basis for site selection, it is our contention where there are a number of identified sites which have been classed as suitable, then the findings of the

⁴ Paragraph 16 of Appendix A to Circular 06/2004 Compulsory Purchase and the Criche Down Rules

SA should be used to inform the site selection process. This will ensure that the Local Plan represents sustainable development, in accordance with Section 39 of the Planning and Compulsory Purchase Act 2004 and the NPPF.

The SA of Gypsy and Travellers Sites document assesses each site against the 16 SA objectives. It is noted that both the assessments for GT15 and GTalt01 highlight that development would result in more negative effects on sustainability than positive. Notwithstanding whether we accept the conclusions of the SA, we submitted that it would be illogical for the Council to ignore their own evidence based, which suggests that continuing to allocate these sites as preferred options would result in unsustainable development, against the golden thread of the NPPF.

The above is particularly important in the context that the assessment for GT02, shows that the development would result in more positive effects on sustainability than negative. There is no justification as to why site GT02 has not been included as a preferred site, when it appears to represent, in council view, a more sustainable form of development against the SA objectives than site GT15 or GTalt01.

It is also noted here that GTalt03, which was assessed as a potentially suitable site ("Amber"), was also assessed as having more positive effect on sustainability. As previously discussed it is our contention that this site is removed from the Green Belt and allocated as a preferred site, as it represents a suitable, available and achievable site which is being promoted by the land owner.

Summary

To conclude HOW Planning has highlighted a number of flaws in the Council's approach to the Preferred Options for Sites Document, namely the lack of evidence on the compliance with the Duty to Cooperate; the approach to the Green Belt and the failure to consider all reasonable alternatives; the selection of the Preferred Options sites (including the sites' availability and deliverability); and the failure to adequately explain or evidence how the Council has arrived at the Preferred and Alternative options. It is HOW's contention that if the Council continue their current approach towards allocating Gypsy and Travellers Sites, the plan will be unsound as it is not justified or effective.

In lights of these representations, How Planning requests that sites GT05, GT06, GTalt01 and GT15 are reclassification as "not suitable" (Red). It is also recommended that the Council carries out a review of the Green Belt in order to establish if there are available sites, which could be brought forward without causing harm to the purposes of the Green Belt, such as site GTalt03, as well as continuing to collaborate with neighbouring authorities in order to meet their identified need through the Duty to Cooperate.

I would be grateful if you could confirm safe receipt of these Representations and that they are duly made.

