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# **Rossendale Draft Local Plan**

## **Pre-Submission Publication Version Regulation 19 Consultation**

Representations on behalf of  
Edenfield Community Neighbourhood Forum (ECNF)

**5<sup>th</sup> October 2018**

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**Mr Michael Atherton**  
**Planning Manager**  
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## Rossendale Draft Local Plan

### Pre-Submission Publication Version Regulation 19 Consultation

### Response on behalf of Edenfield Community Neighbourhood Forum

Dear Mr Atherton,

Troy Planning + Design (Troy Hayes Planning Limited) has been instructed by Edenfield Community Neighbourhood Forum (ECNF) to prepare representations to the Rossendale Local Plan (Regulation 19) Consultation. I confirm that we wish to appear at the upcoming Local Plan examination hearings on behalf of ECNF.

As you will be aware, Edenfield is a designated neighbourhood area (see Appendix 1 for the designated neighbourhood area boundary) and the ECNF is the qualifying body preparing the Neighbourhood Plan. We are providing the Forum with consultancy support on the Neighbourhood Plan which is currently making good progress through its initial stages.

In summary, we consider that the Local Plan, Sustainability Appraisal and supporting evidence base to be unsound and not legally compliant. We explain our reasons for this in the attached documentation.

We request to be notified of the following via email address: [thayes@troyplanning.com](mailto:thayes@troyplanning.com) or by post at Troy Planning + Design 1 St Peter's Square, Manchester, M2 3AE:

- When the Rossendale Local Plan has been submitted to the Secretary of State for independent examination
- Publication of the recommendations of the person appointed to carry out the independent examination of the Rossendale Local Plan
- Adoption of the Rossendale Local Plan

Please find attached our representations to the Local Plan consultation. We have grouped our detailed representations into the following sections:

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- Overall Comments
- Statement of Representations
- Local Plan Policies
- Sustainability Appraisal

The Appendices to our representations are:

- Appendix 1: Edenfield Neighbourhood Area Boundary
- Appendix 2: Letter from MHCLG Secretary of State (11 September 2018)
- Appendix 3: Calverton PC v Nottingham CC Judgement
- Appendix 4: Viewpoint Map (with photos) of Edenfield

We enclose a separate attachment listing of individuals who support these representations. As you will note from the enclosed list it is comprised of the Edenfield Village Residents Association and 1,213 individuals. The individuals comprise 898 residents of Edenfield, 156 other residents of Rossendale Borough and 159 people residing outside of the Borough. Please be aware that it is a condition of these individuals' support that their details are only shared with Rossendale Borough Council and the Planning Inspectorate.

Also enclosed the results of an analysis of sites and land supply throughout the Borough which has been undertaken by the ECNF. The information contained in that document is a result of data analysis with RBC Officers in order to attempt to understand the reasons for discounting / not including sites in the plan. It is a working document and we will continue to update and clarify with RBC and the Planning Inspector as necessary.

Please include this Cover Letter as part of our formal representations.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Troy Hayes".

Troy Hayes (MRTPI, AICP)  
Managing Director





### Overall Comments

1. We have a number of important points to make on matters which do not necessarily fall under the specific policies of the Local Plan and consider that it would be helpful to set these out under this 'overall comments' section so that the RBC and the Inspector are aware of these from the outset of reading our representations:
  - It is unknown whether RBC will submit its Local Plan to the Secretary of State before or after the 24<sup>th</sup> January 2019 date set by MHCLG in terms of the version of the NPPF used for examination purpose, we have therefore referred to both the 2012 NPPF and 2018 NPPF in a number of places in this document. We wish to provide further representations on this matter as part of the examination once the outcome of the submission date is known.
  - The Local Plan appears to have two titles. On the cover of the document it is referred to as the 'ROSSENDALE DRAFT LOCAL PLAN Pre-Submission Publication Version Regulation 19 Consultation' whereas the footer throughout the document refers to it as 'Local Plan Written Statement (Regulation 19)'. This makes it confusing to the reader as to what the Local Plan should be called and should be addressed in the Council's modifications.
  - The Local Plan contains no paragraph numbers. Apart from being unusual, not including paragraph numbers makes the Local Plan much more difficult to comment on when referring to specific paragraphs. This is also the case with the Topic Papers which have no paragraph numbers. The Infrastructure Delivery Plan does not include page numbers or paragraphs. Therefore, our representations refer to page numbers and explain where on the page we are referring to without the help of paragraph numbers.
  - The Local Plan includes various text colours with some policy wording set out in the colour blue and others in the colour red. The Local Plan, as far as we can see, does not explain this colour coding so we are unclear of its significance.
  - The Site Allocations & Development Management Development Plan Document Economic Viability Study (February 2016) and Update in Relation to Affordable Housing (2017) are out of date and not fit for purpose. The original study was undertaken in 2015 and published in 2016 and was prepared according to the study to "*assess the viability of development across the Borough to ensure that the current policies contained within the adopted Core Strategy Development Plan Document are deliverable. The results of the testing will assist the Council in formulating the Site Allocations and Development Management DPD ('Local Plan Part 2')*"<sup>1</sup>. The purpose of the update to this study in 2017 is solely focused on affordable housing. Therefore the Council does not have a whole plan viability study which assesses the

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<sup>1</sup> Site Allocations & Development Management Development Plan Document Economic Viability Study (February 2016) – Executive Summary



Local Plan's policies and its proposed allocations therefore the plan cannot be considered to be viable.

- There are a number of outstanding key evidence base and topic paper that have not been made available for this consultation at all or were released after the consultation commenced and not subject to the full 6-week consultation as required by the Regulations. These are set out below with a summary:
  - **Local Plan Errata:** The Local Plan Errata document is dated 3<sup>rd</sup> September which is eleven days after the consultation on the Local Plan commenced (23<sup>rd</sup> August). The proposed changes in the Errata are not insignificant as they deal with errors to housing sites, employment sites and the housing trajectory. RBC should have extended their consultation period by at least 11 days to compensate for these late changes.
  - **Employment Topic Paper:** The webpage for the Local Plan Consultation states that "*Please see below the relevant documentation, a further Topic Paper on Employment will be made available soon.*" It would appear that RBC still has outstanding work to do on its employment strategy and evidence given that this topic paper has not been prepared in time of consultation.
  - **Highways Capacity Study:** The Emerging Local Plan webpage explains that "*The Council commissioned a Highways Capacity Study to undertake a Highways Capacity Analysis in relation to the draft Local Plan. The Technical Note on phase one of the study is available to download [here](#). Further analysis is currently being undertaken to identify solutions and the final report will be available to view [here](#) in due course.*" However, this study is not available as part of the Local Plan consultation. RBC has clearly proceeded with a Local Plan and spatial strategy without understanding the results of a key evidence base study on highways capacity in the Borough. Furthermore, the representors to the Local Plan, such as ourselves, have not been given the opportunity to review and comment on this evidence base as part of any consultation by RBC. Surely RBC should have awaited the results of the evidence base before it decided to proceed with their preferred strategy and consider their Local Plan to be sound. The Council instead decided to agree a Pre-Submission Plan despite it missing key evidence base including the Highways Capacity Study.
- The Heritage Impact Assessment (2018) of the proposed site allocations does not specify the heritage assets which are being assessed. For instance, it does not mention the Grade II\* Listed Building (Edenfield Parish Church). Nor does the study indicate whether the 'setting' of heritage assets are assessed. We note that the Stubbins Conservation Area and its setting are not mentioned or considered by the assessment in relation to the strategic site proposed in Edenfield. These are very considerable shortcomings of the study which mean it is not compliant with the NPPF and not fit for purpose.



- The Sustainability Appraisal has incorrectly referenced many housing allocations within the Local Plan including the largest proposed housing allocation (H72) as H74. As such, it undermines the credibility of this document and whether the assessments for each site have been accurately undertaken.

### **Statement of Representations**

#### ***Not Legally Compliant***

2. We consider that the Statement of Representations is not compliant with the Regulations<sup>2</sup>. The Regulations state that the Statement of Representations must specify the subject matter of the Local Plan. Although RBC provides a specification of what the Local Plan covers it does not mention Green Belt and is misleading. We consider that the Statement of Representations is misleading and incomplete given the significant actions of RBC in claiming it has exceptional circumstances and proposing strategic Green Belt release in the Local Plan.

### **Local Plan Policies**

#### ***Strategic Policy SS: Spatial Strategy***

***Unsound: Not Positively Prepared, Not Justified, Not Effective, Not Consistent with National Policy.***

3. The First Paragraph of Strategic Policy SS states that:  
*"The Council will focus growth and investment in Key Service Centres, on major sites and on well located brownfield sites whilst protecting the landscape and current built character and rural areas."*
4. The policy then designates the following Key Service Centres explaining that this is where growth and investment will be concentrated:
  - i. Rawtenstall
  - ii. Bacup
  - iii. Haslingden
  - iv. Whitworth
5. It then goes on to designate the following Urban Local Service Centres stating that "*a level of growth and investment appropriate to the settlement size will be encouraged at the following Urban Local Service Centres to help meet housing, employment and service needs*":
  - i. Waterfoot
  - ii. Broadley/Tonacliffe
  - iii. Stacksteads
  - iv. Crawshawbooth
  - v. Helmshore

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<sup>2</sup> The Town and Country Planning (Local Planning) (England) Regulations 2012



- vi. Facit
- vii. Stubbins
- viii. Britannia

6. Edenfield is not identified in the Local Plan as a Key Service Centre. Edenfield is not in fact identified in the Local Plan as being an Urban Local Service Centre, or a Rural Local Service Centre either. The Local Plan fails to place Edenfield in the settlement hierarchy at all. However, the Strategy Topic Paper explains that one of the key reasons the strategic allocation was selected at Edenfield was because it is a 'Local Service Centre'<sup>3</sup>. There is not even a 'Local Service Centre' classification in Strategic Policy SS. The Local Plan<sup>4</sup> explains that 'Local Service Centres' "*that are close to the Key Service Centre towns and are more urban in character are distinguished from Local Service Centres in more rural locations*". It is unclear what is meant by this.
7. The Strategy Topic Paper states that: "*Background work which informed the development of the Hierarchy is attached in the Appendix. The purpose of focussing development in or adjacent to Service Centres is to provide residents with the opportunities to access a range of services as easily as possible, especially for those without access to a car.*"<sup>5</sup>
8. The Appendix to the Strategy Topic Paper provides a 'Draft Settlement Hierarchy Criteria' (our emphasis). The Hierarchy consists of 5 level of settlements in the hierarchy with Level 1 being the highest order settlement and 5 being the lowest order settlement. The rationale and methodology behind the hierarchy is entirely unclear. It appears to identify 'sub rankings' under each level of settlement for instance Rawtenstall has a sub ranking of '1a' within the Level 1 settlement presumably because it has "higher order shops" and a "greater range of bus services" than Bacup, Haslingden and Whitworth which are sub ranked as '1b'.
9. Within the Appendix, Edenfield is identified as a 'Level 3' because it has a "*Local Parade or more than one shop; good quality bus service (around perimeters for Helmshore); Primary schools; playing fields*". In terms of Edenfield:
  - The draft Criteria does not define what a Local Parade is. We note that the Local Plan Strategic Policy R1 identifies Edenfield as a 'Neighbourhood Parade' however it does not define what a Neighbourhood Parade is either.
  - In terms of 'good quality bus service' it does not define what is considered 'good' or 'quality'. Edenfield has a bus service however it is poor in the late evening so should not be considered as 'good quality bus service' however this depends on how this terminology is defined.

<sup>3</sup> Strategy Topic Paper Page 11

<sup>4</sup> Local Plan (Reg 19)Page 9

<sup>5</sup> Strategy Topic Paper Page 9



- Edenfield (neighbourhood plan area) has one primary school so does not fit the criteria of having multiple primary schools (although this does not restrict entry to village residents).
  - Edenfield has only one playing field therefore it does not fit this criterion either.
10. Based on the above analysis and the Council's criteria, Edenfield should be lower in the hierarchy of settlements. The method for setting the criteria is poorly defined, we therefore reserve the right to comment on any future iterations of the hierarchy criteria prepared by the Council.
11. It is inexplicable based on its own settlement hierarchy why RBC proposes in its Strategic Policy SS the identification of 'Major Sites' where will be allocated:
- I. Edenfield
  - II. Futures Park
  - III. New Hall Hey
  - IV. Carrs Industrial Estate
12. For avoidance of doubt, all of the proposed Major Site allocations are in or adjacent to Key Service Centres apart from Edenfield. All of the proposed Major Site allocations are proposed for 100% employment uses (apart from Gypsy and Traveller provision at Futures Park). Therefore, a small village which is likely to be distinctly at the lower tiers of the settlement hierarchy has been identified as a suitable location for a Major Site despite not having the services and infrastructure that are required to facilitate major housing development.
13. We have attempted to understand how RBC has come to the conclusion that, in settlement hierarchy terms, Edenfield is suitable settlement to take a 'Major Site'. We provide a number of quotations from the Local Plan and the Strategy Topic Paper which attempt to explain this with our comments. Given the numerous inconsistencies throughout the documents, the below points are not comprehensive but provide evidence as to the unstructured and illogical approach taken by the Council in selecting its spatial strategy.

*"A number of major sites are identified, some of which are outside the urban boundary and or where previously in Green Belt. Their strategic value for development has led to their inclusion in the Plan. These sites reflect, where possible, the priorities of the Council and key partners."<sup>6</sup>*

**Comment:** What does the Council consider to be 'strategic value for development'? Given that this was clearly a key consideration for the Council in deciding to propose the release of Green Belt in Edenfield much further explanation needs to be provided as to why 'strategic value for development' meets the Government's high policy standard for having 'exceptional circumstances' to justify Green Belt Release.

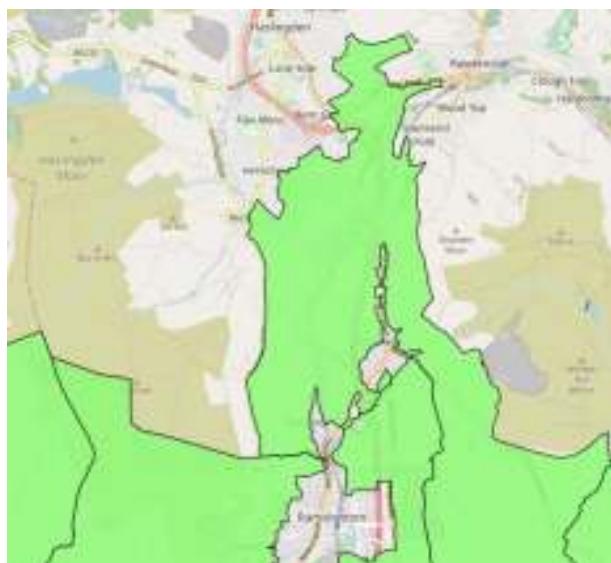
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<sup>6</sup> Local Plan (Reg 19) Page 5

**Comment:** This paragraph states that these sites reflect the priorities of the Council and key partners. Exactly what priorities were key in deciding which 'major sites' were allocated? The site selection process does not appear to be evidence led. What priorities are embodied within the Edenfield sites proposed for allocation? Finally, which 'key partners' is the Council referring to?

*"The land is immediately adjacent to Edenfield which though a discrete settlement in functional terms forms an extension of the large built up area of Ramsbottom in neighbouring Bury MBC. The opportunities for high quality, Masterplan led development are considered to outweigh the effect of the scale of the proposed development on a designated Key Service Centre."<sup>7</sup>*

**Comment:** This statement is about Edenfield forming an extension of the large built up area of Ramsbottom is unfounded (see map below). Edenfield is not an extension of Ramsbottom and Ramsbottom is on its own not a 'large built up area' even in the Council's own Green Belt Study.



**Figure 1:** Existing Green Belt in Edenfield and Surrounding Area  
Source: <http://troyplanning.com/project/green-belt-map/>

**Comment:** The statement that the opportunity for a high-quality masterplan led development outweighs the effect of the scale of the proposed development on a designated Key Service Centre needs to be clarified by the Council. This seems to suggest that the strategic release of Green Belt at Edenfield was chosen as it has the opportunity for high quality masterplan led development which is to be favoured by the Council over the effect of development in Key Service Centres.

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<sup>7</sup> Local Plan (Reg 19) Page 7



14. The Strategy Topic Paper (see Figure below) states the reasons why the site was selected. We address each of the bullet points and address the other points such as Green Belt exceptional circumstances elsewhere in our representations.

***"The proposed housing is deliverable with willing land owners and would make a significant contribution to overall housing numbers":***

- Any housing site being deliverable with willing land owners is not unique. Furthermore, there is no evidence to suggest the site is 'deliverable' in line with the NPPF definition for deliverability. The Council has provided no evidence in respect of site deliverability. The Strategy Topic Paper is selective in terms of the infrastructure section which although it identifies £0.2 million to improve the Edenfield mini roundabout (not including land, utilities, demolition costs) fails to set out some of the other estimated costs associated with the development from its own evidence base which we summarise below.
- The Topic Paper and the Local Plan fail to set out the infrastructure costs set out in the Council's Infrastructure Delivery Plan (2018). The IDP states that:
  - Lancashire County Council (LCC) have indicated that if the planned development at Edenfield goes ahead they may require either a school extension or a new school with a new school cost estimate in the region of £4 million. It states that a new primary school would be a Free School and not maintained by the education authority. It is unclear where this cost estimate is derived from and what the logic is in terms of any new school being a Free School and not maintained by the education authority.
  - There are geotechnical issues with the A56 embankment in Edenfield that would need to be addressed in any adjacent development proposals. The IDP provides no further information than this however the geotechnical issues should be considered in much greater detail by the LPA before suggesting that the site is suitable and deliverable.
  - In respect of the Edenfield roundabout scheme referred to above, the IDP states the following.

*"the schemes at Edenfield, Toll Bar and Waterfoot are challenging to implement because of the constrained urban environment. All the junctions are likely to become at capacity towards the end of the Plan period. Further work is being undertaken by the developers' consultants to look at options for Edenfield"*

- It is particularly concerning that a) the Council consider improvements to the Edenfield roundabout to be challenging (as well as their description of Edenfield as a constrained urban environment) b) the junction is 'likely' to be at capacity towards the end of the plan period c) the Council is reliant on the developers' consultants to "look at options for Edenfield". Apart from it being



entirely unclear what options the developers are looking at for Edenfield in respect of the roundabout, the Council's reliance on a third party with a clear conflict of interest to provide crucial evidence for the Local Plan is unacceptable.

***"The land is in an area of high viability for housing and proven market demand. This facilitates building but also provides the opportunity for developer contributions to be secured for affordable housing, appropriate infrastructure and a high standard of design and layout:***

- The viability evidence for the Local Plan is out of date and not fit for purpose as these representations already set out therefore the Council has no evidence to support the claims it makes.

***"Edenfield is close to the M66 and on the X41 bus route so has good accessibility."***

- Edenfield does not have access to M66 (entry or exit). The X41 service is not guaranteed medium and long term. Bus operators have removed the service in the past due to traffic congestion in Edenfield.
- We question and challenge the simplicity of the Council's statement as a reason for selecting this area for strategic development. If more consideration went into this reason for site selection then the Council should have set it out here.

***"It is a Local Service Centre"***

- As these representations already explain, Edenfield is not identified as a Local Service Centre in the Local Plan or in the Strategy Topic Paper so this statement is inaccurate.

***"The Green Belt Review did not consider that the land performed strongly in Green Belt terms"***

- We address Green Belt matters under Policy SD2. However, we consider this statement that the Green Belt Study considered that the land did not perform strongly in Green Belt to be misleading and inaccurate.

***"Only the southern part of the site is supported by the Landscape Study"***

- This is a simplistic, misleading and inaccurate statement which we address later in our representations.



The proposed site at Edenfield is by a significant margin the largest proposed housing allocation within the Local Plan (400 dwellings) and a strategic Green Belt release. This comprises just over 12.5% of the total housing figure for the Borough. The site was selected for a range of reasons:

- The proposed housing is deliverable with willing developers and would make a significant contribution to overall housing numbers
- The land is in an area of high viability for housing and proven market demand. This facilitates building but also provides the opportunity for developer contributions to be secured for affordable housing, appropriate infrastructure and a high standard of design and layout.
- Edenfield is close to the M66 and on the X41 bus route so has good accessibility
- It is Local Service Centre
- The Green Belt Review did not consider that the land performed strongly in Green Belt terms

It is recognised that there is strong local opposition to the site and the allocation is not supported by Edenfield Community Neighbourhood Forum. Only the southern part of the site is supported by the Landscape Study. Infrastructure issues with the road network will

require further detailed analysis as part of the Masterplanning process. Extensions to Edenfield Primary School (or a new school) will be required to accommodate additional pupil numbers. The scale of the housing provision will be significant for the size of the settlement. However it is considered that, looking at the planning balance, the overall benefits for the Borough outweigh the local impacts and that "Exceptional circumstances" exist for the release of this land for housing. The site will help contribute to addressing past housing under delivery; contribute to a balanced housing supply across the Borough; is viable and contributes to housing mix across the Borough.

Figure 2: Excerpt from Strategy Topic Paper Page 11



15. We note an inaccuracy in the Local Plan. The supporting text of the Local Plan states the Borough is covered by 20% Green Belt<sup>8</sup> whereas the Topic Paper states that it is covered by 23% Green Belt<sup>9</sup>. One of these must be inaccurate. The Topic Paper states that most of the Green Belt is concentrated in the south west of the borough<sup>10</sup> however we consider that the communities in the north west and south east of the borough, including Whitworth, may feel they have been left out of this description given that both of these areas have a significant amount of Green Belt as well.
16. Additionally, in this Paper the Council has only identified 2,853 of the 3,180 homes target but has not included the sites with five or less houses referred to as 'Small Sites'. The shortfall is 327 which equates to 21.8 homes per annum. The Council has achieved this target in the past from 'Small Sites' and there is little doubt it can be achieved in the future. They have also not included 'windfall developments' such as Hawthorn House which occur from time to time. Note the 'Small Site' numbers only represent 10% of the total number of homes involved.

#### **Strategic Policy SD2: Urban Boundary and Green Belt**

##### ***Unsound: Not Positively Prepared, Not Justified, Not Effective, Not Consistent with National Policy.***

17. We consider that the Local Plan and Strategic Policy SD2 to be unsound in relation to its approach to Green Belt and particularly the proposed release of Green Belt land in Edenfield.
18. Green Belt Exceptional Circumstances, as required by the NPPF, have not been demonstrated by the Council and there are a number of methodological and assessment errors with the Green Belt Review evidence base. We provide our detailed comments on this below.

##### ***Exceptional Circumstances***

19. The importance of protecting and securing the Green Belt around Edenfield is part of the current policy of the RBC Development Plan The 2011-2026 RBC Core Strategy (November 2011) identified that Edenfield would be an 'Area for Green Belt Review'. Policy 1 of the Core Strategy identified that a review of the existing Green Belt boundaries would be undertaken as part of the Site Allocations DPD. This review would only be limited to small scale changes and cartographic corrections that do not adversely impact on the purposes of including land in the Green Belt.
20. The Site Allocations and Development Management Policies Plan Document was withdrawn in February 2016 so this review never took place, The Green Belt Review in the Core Strategy was clearly only concerned with small scale changes and cartographic corrections and did not intend for the removal of 'strategic' sites from the Green Belt. Therefore, it is unclear from

<sup>8</sup> Local Plan (Reg 19) Page 5

<sup>9</sup> Strategy Topic Paper Page 4

<sup>10</sup> Strategy Topic Paper Page 4



the Local Plan or from the Green Belt Topic Paper what changed in the intervening period between preparing its Site Allocations and Development Management Policies Plan Document that made RBC consider it had exceptional circumstances that warranted the strategic release of Green Belt in Edenfield. We are aware that this time coincided with Taylor Wimpey acquiring a significant amount of the land within the proposed allocation in this plan (Parcel 43 of the Green Belt Review).

21. The National Planning Policy Framework (NPPF) is clear that Green Belt boundaries should only be altered in 'exceptional circumstances' however Rossendale appear to have failed to consider whether it has exceptional circumstances or what these exceptional circumstances might be until it prepared its Green Belt Topic Paper when it published its Regulation 19 Local Plan.
22. ECNF requested that RBC provide verbally and in writing what its exceptional circumstances were during our meeting with RBC on 13<sup>th</sup> March 2018 and on subsequent occasions. The Council's purported exceptional circumstances were not available to the Councillors when it voted to proceed with the Regulation 18 Local Plan in 2017 or when it voted to agree the Regulation 19 Local Plan on 11<sup>th</sup> July 2018.
23. The Green Belt Topic Paper prepared by the Council is inadequate and fails to demonstrate exceptional circumstances in Rossendale. It lists nine reasons that it has exceptional circumstances:
  - 1) To meet housing land requirements through a balanced approach to supply
  - 2) Address past under-delivery
  - 3) Provision of a balanced employment portfolio in suitable locations for the market
  - 4) To enable a balanced approach of housing and employment
  - 5) Provide a good mix of housing types across the Borough
  - 6) Viability
  - 7) Other authorities are unable to meet housing / employment need
  - 8) Improving the Green Belt
24. Without dissecting each of these reasons individually, it is clear that the reasons RBC provides for exceptional circumstances are actually basic requirements of the NPPF.
25. Green Belt should only be released in 'exceptional circumstances' with the National Planning Policy Framework (2012) Paragraph 83 stating that "*Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan.*"
26. The changes to the NPPF in relation to Green Belt point towards an even greater scrutiny of how exceptional circumstances have been evidenced and justified through the preparation of Local Plans, whether the local authority has fully examined all other reasonable options to



meet its development needs (including suitable brownfield sites, underutilised land, the optimisation of development density and statements of common ground with neighbouring authorities).

27. There is no reason why these national policy requirements from NPPF 2018 should not apply to Rossendale and their Local Plan regardless of when the Local Plan is submitted. These are sound planning principles regardless of whether the Plan is submitted under NPPF 2012 or 2018.
28. We draw your attention to the recent Secretary of State's direction to East Hertfordshire District Council regarding the halting of the adoption of the East Hertfordshire Local Plan (see Appendix 2) due to proposed Green Belt release. The Secretary of State's direction appears to align with this added scrutiny of proposed Green Belt release.
29. We provide a few key paragraphs from the NPPF (2018) in relation to how Green Belt should be approached in Local Plans:
  - *"Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans."*<sup>11</sup>
  - *"Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:*
    - a) *makes as much use as possible of suitable brownfield sites and underutilised land;*
    - b) *optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and*
    - c) *has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground."*<sup>12</sup>
  - *"Where it has been concluded that it is necessary to release Green Belt land for development, plans should give first consideration to land which has been previously-developed and/or is well-served by public transport. They should also set out ways in which the impact of removing land from the Green Belt can be*

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<sup>11</sup> Paragraph 136 (NPPF 2018)

<sup>12</sup> Paragraph 137 (NPPF 2018)



*offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land."*

30. The Calverton Parish Council v Nottingham City Council<sup>13</sup> (see Appendix 3 to these representations) provides a number of tests for what should be considered and 'grappled with' before an LPA determines whether it has exceptional circumstances.
31. The Hon. Mr Justice Jay concluded that having an objectively assessed need does not amount to 'exceptional circumstances':

*"it would be illogical, and circular, to conclude that the existence of an objectively assessed need could, without more, be sufficient to amount to "exceptional circumstances" within the meaning of paragraph 83 of the NPPF."* (Paragraph 50)

32. In that case, Mr. Justice Jay concluded that having undertaken the first stage of assessing objectively assessed need; the local authority should at least identify and then grapple with a number of matters as a minimum. These matters are set out below together with the full text:

*"In a case such as the present it seems to me that, having undertaken the first-stage of the Hunston approach (sc. assessing objectively assessed need), the planning judgments involved in the ascertainment of exceptional circumstances in the context of both national policy and the positive obligation located in section 39(2) should, at least ideally, identify and then grapple with the following matters:*

- *the acuteness/intensity of the objectively assessed need (matters of degree may be important);*
- *the inherent constraints on supply/availability of land prima facie suitable for sustainable development;*
- *(on the facts of this case) the consequent difficulties in achieving sustainable development without impinging on the Green Belt;*
- *the nature and extent of the harm to this Green Belt (or those parts of it which would be lost if the boundaries were reviewed); and*
- *the extent to which the consequent impacts on the purposes of the Green Belt may be ameliorated or reduced to the lowest reasonably practicable extent."*<sup>14</sup>

33. Whilst RBC's Green Belt Topic Paper refers to this case it has not 'grappled' with these steps and importantly has critically not undertaken the 'staged approach' from the Hunston<sup>15</sup> case which Mr Justice Jay refers to in his Judgement. In Hunston, the Court of Appeal:

<sup>13</sup> EWHC 1078 (Admin) (21 April 2015)(Appendix 2)

<sup>14</sup> EWHC 1078 (Admin) (21 April 2015)(see Appendix 2 to these representations)- Paragraph 51

<sup>15</sup> St Albans CC v Hunston Properties Limited



*"...endorsed a two-staged approach to the application of paragraph 47 of the NPPF. The first stage is to reach a conclusion as to the "full objectively assessed needs for market and affordable housing". This is a purely quantitative exercise. The second stage involves an exercise of planning judgement (in relation to development control or the formation of a local plan, as the case may be) as to whether the policy constraints in the NPPF carry the consequence that the objectively assessed needs should not be met."*

34. We deal with RBC's objectively assessed needs in relation to Policy HS1 in these representations, however it is important to explain here that the quantum of housing RBC is planning for has decreased since its previous draft Local Plan which was based on the Council's SHMA (2016) with the current draft Local Plan being based on the Government's standardised methodology. These housing needs are set out below (2019-2034):

- Rossendale Draft Local Plan (Regulation 18 draft) Policy HS1: At least **4,000 dwellings (265 dwellings per annum)**
- Rossendale Draft Local Plan (Regulation 19 draft) Policy HS1: At least **3,180 dwellings (212 dwellings per annum)**

35. Therefore, its stated housing requirement has decreased by 820 dwellings and when the earlier Local Plan made allocations, for what it considered to be suitable sites, for an additional 442 dwellings than what its Regulation 19 Local Plan is planning for.

36. The Regulation 18 Local Plan made allocations for 3,622 dwellings<sup>16</sup>. The Council's Core Strategy has a target of 247 dwellings per annum which considerably more than that set in the draft Local Plan. The Council's Authority Monitoring Report (AMR)<sup>17</sup> shows that the Council has delivered 938 new dwellings between 2012-2017 which equates to 188 dwellings per year as an average with the Council delivering 265 dwellings in the 2013/14 monitoring year.

37. On this basis alone the 'trigger' (the second stage of the Hunston test) for considering whether the Council has exceptional circumstances should not have been engaged. As we set out under Policy HS1 in these representations, the latest household projections<sup>18</sup> indicate a downward trend in housing need for RBC further raising the question as to why RBC considers its OAN is of such an acuteness and intensity to warrant considering releasing the Green Belt. The reasons the Council provides for exceptional circumstances are basic requirements of plan making in the NPPF.

#### *Green Belt Review (2016)*

38. We have analysed the Rossendale Green Belt Review (LUC) (2016) which supported the emerging Local Plan. We query how robust / reliable their site visits were when considering the assessment for Parcels 39, 43 and 44 (which form part of the draft HS2.71 allocation). We

<sup>16</sup> Rossendale Regulation 18 Local Plan (Table 1 Housing Site Allocations)

<sup>17</sup> Rossendale AMR (2014-2017)

<sup>18</sup> 2016-based household projections in England (Note that new 2016 based projections are due to be published by ONS on 3<sup>rd</sup> December 2018)



query a number of the parcel assessments made in the Green Belt Review where we consider there to be inconsistencies throughout the study. Parcels 39, 43 and 44 form part of the proposed allocation of the Local Plan and we have assessed these in turn below.

39. It is important to note that Purpose 1 was split into two sub purposes: Purpose 1a (whether land has already been affected by sprawl and whether it retains an open character) and Purpose 1b (the potential for urban sprawl to occur in the absence of Green Belt designation). Only parcels in settlements which abut the large built up area of Greater Manchester have been considered under purpose 1 for this study, which have included Parcels 34, 39, 43 and 44 (which all scored Moderate under both Purpose 1a and 1b). Clearly these areas which were assessed under Purpose 1 are more 'at risk' given their proximity to the large built up area of Greater Manchester. This is a factor which has not been properly taken into consideration in the findings of the Review.

Parcel 39



Figure 3 – Blackburn Road facing West/South-West facing towards A56 (Source: Google)

40. Parcel 39 of the Green Belt Review has been recommended for removal in the study. This parcel forms part of the draft Policy HS2.71. As assessed in Appendix 4.1 of the Green Belt Review, the site scored 'Moderate' with regards to Purpose 1 (to check unrestricted sprawl of large built-up areas) and Purpose 3 of the Green Belt (to assist in the safeguarding of the

countryside from encroachment). With regards to Purpose 1, LUC also considered that “*the A56 dual-carriageway defines the western boundary and detracts from the sense of openness in parts*”. The A56 ‘boundary’ is also referenced in the assessment under Purpose 3. Whilst a ‘satellite view’ might suggest that the A56 forms a boundary, the reality on the ground due to topography and key public views reveals that this is not the case on the ground. The assessment of this site under Purposes 1 and 3 should be ‘Strong’. The parcel proposed for removal contributes to the openness and permanence of the Green Belt at this location.

Parcel 43



Figure 4 - Market Street facing West towards A56 (Source: Google)

41. Parcel 43 of the Green Belt review has been recommended for removal in the study. This parcel forms part of the allocation in Edenfield. Figure 4 above is a Google Street View image taken from Market Street looking west towards the A56. As assessed in Appendix 4.1 of the Green Belt Review, the site scored ‘Moderate’ with regards to Purpose 1 (to check unrestricted sprawl of large built-up areas) and Purpose 3 of the Green Belt (to assist in the safeguarding of the countryside from encroachment). The assessment made the same judgements on the A56 relating to the impact on the Green Belt with regards to Purpose 1 and 3 of the Green Belt as in Parcel 39. However, more so than with Parcel 39, this photo does not clearly identify this boundary; instead showing a rural area which appears to have the key Green Belt characteristic of being ‘open’.

Parcel 44



Figure 5 – Exchange Street facing west towards A56 (Source: Google)

42. This parcel is located to the south of Parcel 43. This site can be assessed in a similar way to that of 39 and 43, however it scored 'Weak' under Purpose 3. As with Parcel 39 it is considered that there would be an encroachment into the countryside and the A56 does not form a defensible boundary. Therefore, it is considered that this site should also score 'Strong' under Purposes 1 and 3.

Assessment process

43. In addition to Parcel 43, Parcels 17, 21, 26, 29, 30, 31, 32, 33, 35, 39, and 44 have been recommended for removal in the Green Belt Review. Figure 6 identifies these parcels and their assessments. Parcels 22 and 28 have also been shown below, however these have not been recommended for removal from the Green Belt in the Local Plan and their scores are used as a comparison against those which have been recommended for removal. There appears to be inconsistency in the method for areas recommended for removal.



Parcel (Location)	No.	Purpose 1a	Purpose 1b	Purpose 2	Purpose 3	Purpose 4	Purpose 5
17 (Rawtenstall)	N/A	N/A	Moderate	Weak	Weak		Equal Contribution
21 (Rawtenstall)	N/A	N/A	Weak	Weak	No Contribution		
22 (Haslingden)	N/A	N/A	Moderate	Weak	No Contribution		
26 (Ewood Bridge)	N/A	N/A	Moderate	Moderate	No Contribution		
28 (Ewood Bridge)	N/A	N/A	Moderate	Weak	No Contribution		
29 (Ewood Bridge)	N/A	N/A	Moderate	Weak	No Contribution		
30 (Helmshore)	N/A	N/A	Weak	Moderate	No Contribution		
31 (Helmshore)	N/A	N/A	Weak	Moderate	No Contribution		
32 (Ewood Bridge)	N/A	N/A	Moderate	Weak	No Contribution		
33 (Ewood Bridge)	N/A	N/A	Weak	Weak	No Contribution		
34 (Edenfield)	Moderate	Moderate	Weak	Moderate	No Contribution		
35 (Ewood Bridge)	N/A	N/A	Weak	Moderate	No Contribution		
39 (Edenfield)	Moderate	Moderate	Weak	Moderate	No Contribution		
43 (Edenfield)	Moderate	Moderate	Weak	Moderate	No Contribution		
44 (Edenfield)	Moderate	Moderate	Weak	Weak	No Contribution		

Figure 6: Assessment of Green Belt Parcels (Source: LUC Green Belt Review 2016).

44. Table 4.3 of the Green Belt Review identifies the degree of potential harm to the Green Belt if the parcels in question were to be released. Table 4.2 of the Green Belt Review identifies the definition of harm.

Stage 2 assessment of parcels	Potential harm caused by release of parcel
Makes a STRONG contribution to one or more GB purposes.	High
Makes a MODERATE contribution to one or more GB purposes. No strong contribution to any purpose.	Medium
Makes a WEAK contribution to one or more GB purposes. No strong, or moderate contribution to any purpose.	Low
Makes NO contribution to any GB purposes. No strong, relatively strong, moderate, relatively weak or weak contribution to any purpose.	None

Figure 7: Framework for assessing harm (Source: LUC Green Belt Review 2016 Table 4.2)



Parcel ref	Purpose 1a Rating	Purpose 1b Rating	Purpose 2 Rating	Purpose 3 Rating	Purpose 4 Rating	Degree of Harm
34	Moderate	Moderate	Weak	Moderate	No Contribution	Medium
39	Moderate	Moderate	Weak	Moderate	No Contribution	Medium
43	Moderate	Moderate	Weak	Moderate	No Contribution	Medium
44	Moderate	Moderate	Weak	Weak	No Contribution	Medium

Figure 8: Degree of Harm by Green Belt Parcels for HS2.71 (Source: LUC Green Belt Review 2016 Table 4.3)

45. Therefore, taking into consideration Figures 7 and 8 above, only Parcels 21 and 33 identified in Figure 4 score as ‘Low’ harm for removal. All remaining parcels scored a ‘Moderate’ harm for removal, including all Green Belt parcels which make up the area for the proposed strategic allocation in Edenfield. It is also not clear why Parcels 22 and 28 were not recommended for removal, given these Parcels scored less favourably in the Green Belt Review than Parcel 43 (given Parcel 43 contained two ‘Moderate’ scores compared to one each for Parcels 22 and 28).
46. Therefore, as Parcels 39, 43 and 44 should be rated as ‘Strong’ under Purpose 1 and 3 (following our assessments on 39, 43 and 44) the potential harm caused by release of the parcels would be considered ‘High’. However, it is also considered that this assessment process identified in Figure 7 is not consistent with the resultant recommendations for those parcels recommended for removal from the Green Belt – as Parcels 39, 43 and 44 have all been recommended for removal from the Green Belt despite their release considered to have a ‘Medium’ degree of harm on the Green Belt.
47. The Green Belt which surrounds Edenfield village is very much linked to the functional Green Belt surrounding Manchester and is critical to the protection against sprawl and ensuring that the designated Green Belt land remains open.
48. This Green Belt is valued by local residents and forms a key part of the village’s linear character and identity. Rossendale Borough Council has proposed this strategic release of Green Belt which would result in a population increase for Edenfield in excess of 50%.



### **Strategic Policy HS1: Meeting Rossendale's Housing Requirement**

#### ***Unsound: Not Positively Prepared, Not Justified, Not Effective, Not Consistent with National Policy***

49. Strategic Policy HS1 outlines that at least 3,180 additional dwellings would be required over the plan period (2019-2034) – equating to 212 dwellings a year. The housing requirement for Edenfield Community Neighbourhood Forum over this plan period would be 456<sup>19</sup>. This equates to 14.3% of the borough's housing requirement over this plan period.
50. For context, the Regulation 18 Draft Local Plan stated that dwellings required over the Plan Period would be 4,000<sup>20</sup>. Therefore, this is a reduction of 820 over the plan period (20.5% decrease).
51. The 2017 mid-year population estimates for Rossendale Borough, according to Lancashire County Council via the Office for National Statistics, is 70,365<sup>21</sup>. The Edenfield Community Neighbourhood Forum note on their website that Edenfield has approximately 2,300 inhabitants residing within approximately 970 dwellings in Edenfield<sup>22</sup>.
52. The population of Edenfield is approximately 3% of the total for the Rossendale Borough. The inclusion of 456 dwellings within Edenfield would increase the number of dwellings by approximately 47%. As noted in our representations, Edenfield was identified as a 'Level 3' settlement therefore, any proposed housing need for Edenfield should reflect its settlement hierarchy within the Borough.
53. Paragraph 78 of the NPPF 2018 states that in order to promote sustainable development in rural areas, housing should be located where it will "*enhance or maintain the vitality of rural communities*". It is considered that a 47% increase in the settlement to approximately 1,450 homes would cause a detrimental impact on the rural nature and character of the settlement (particularly along Market Street), which is a linear row of dwellings with key views of valley to both the east and west. The settlement is surrounded by Green Belt and low in the settlement hierarchy, therefore cannot be considered an urban area of comparable scale to Rawtenstall, Haslingden and Bacup. Therefore, it is considered that HS1 would not be consistent with national policy.
54. The Explanation for Strategic Policy HS1<sup>23</sup> provided in the Local Plan states that the need for new housing in Rossendale has been assessed through the Council's Strategic Housing Market

<sup>19</sup> Local Plan (Reg 19) Page 18

<sup>20</sup> Local Plan (Reg 18) Page 6

<sup>21</sup> <https://www.lancashire.gov.uk/lancashire-insight/population-and-households/population/mid-year-population-estimates/>

<sup>22</sup> <http://edenfieldcommunityforum.uk/welcome/>

<sup>23</sup> Local Plan (Reg 19) Page 18



Assessment (SHMA). However, no justification has been provided as to why the Council has given the Edenfield Community Neighbourhood Forum a housing target of 456 dwellings over the plan period.

55. Further to the above points, the Council has given ECNF a housing target and proposed allocations as to where the development will be located which in theory removes the ability of the Neighbourhood Plan to determine an appropriate level of housing need for its area or allocate any housing sites. The housing target for ECNF is unjustified, undeliverable and an entirely inappropriate level of housing for the village.
56. We note that while some new sites for housing were included in the Regulation 19 Pre-Submission Draft, over 1,000 dwellings were removed from consideration between Regulation 18 and Regulation 19 draft Local Plans. This equates to a removal of over 25% of sites across the whole of the Borough.
57. Rossendale Borough had 1,188 vacant homes as of 2017, according to Lancashire County Council - based on figures from the Department of Communities and Local Government and Council Tax records<sup>24</sup>. We consider that Rossendale Borough Council should have considered assessing whether to include some or all of these vacant homes in calculating the OAN.
58. Policy HS1 does not provide justification of whether all brownfield land sites were considered. While discussed further in this Representation's analysis into the soundness of EMP2, the inclusion of land to be considered for employment use has not been fully justified by an up-to-date Employment Land Review – therefore some of this Brownfield Land initially considered for employment should be considered for housing.
59. A comparison of the brownfield and mixed sites lists in the Regulation 18 and Regulation 19 Plans highlights that 21 prospective sites with the capability of delivering 656 homes were reclassified for various reasons.

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<sup>24</sup><https://www.lancashire.gov.uk/lancashire-insight/population-and-households/households-and-housing/vacant-dwellings/>



### **Strategic Policy HS2: Housing Site Allocations**

***Unsound: Not Positively Prepared, Not Justified, Not Effective, Not Consistent with National Policy***

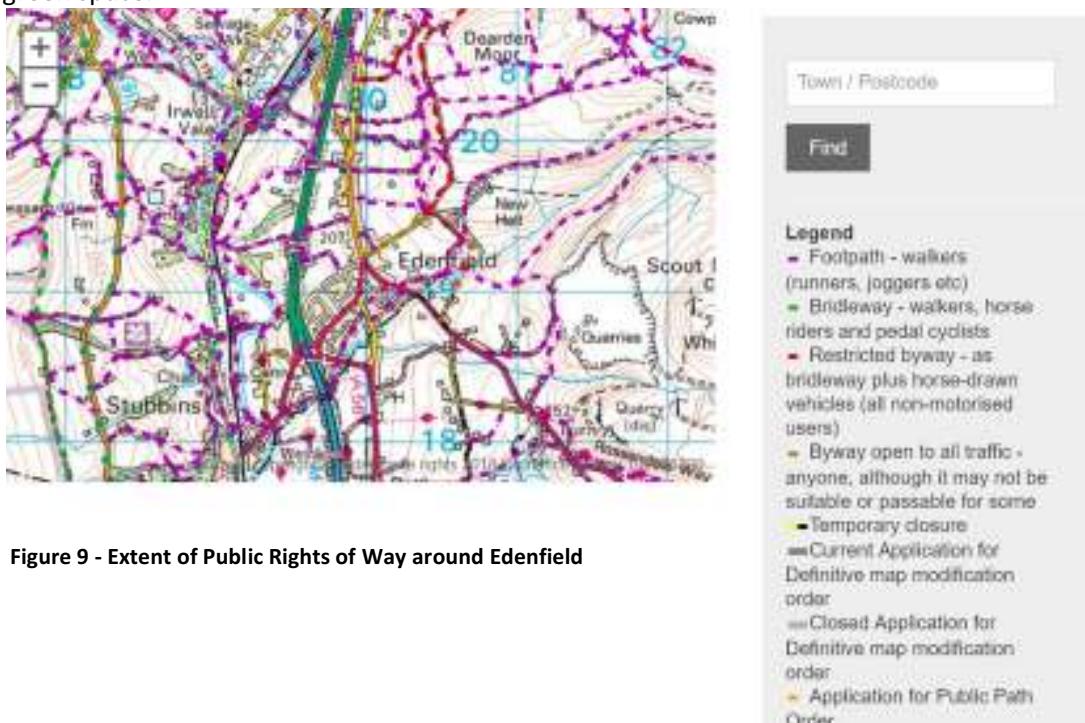
60. Strategic Policy HS2 identifies that proposed housing allocation H72 located within Edenfield will accommodate 400 dwellings. The Council has not justified the site selection process, particularly why Edenfield has been selected for such a large amount of housing in a single allocation.
61. The Local Plan has failed to allocate a key strategic site suitable for housing. The site is Stubbins Vale Mills (EE37) which has been partially vacant for several years and will be completely vacant in 2019. The owners have previously requested partial change of use to residential (refused) and now wish to dispose of the entire site for residential development. There is no justification for retaining this site for employment use when there is a significant amount of employment land remaining unallocated.

### **Strategic Policy HS3: Edenfield**

***Unsound: Not Positively Prepared, Not Justified, Not Effective, Not Consistent with National Policy***

62. Strategic Policy HS3 on Pages 23-25 identifies that proposed housing allocation H72 would be subject to:
  - a) a comprehensive development of the entire site through a Masterplan;
  - b) the implementation of development in accordance with an agreed Design Code;
  - c) phasing and infrastructure delivery schedule for the area;
  - d) agreed programme of implementation in accordance with the masterplan; and
  - e) identifications of mechanisms to enhance the quality and access to Green Belt land in the area.
63. A Masterplan and Design Code would indeed be necessary for the delivery of housing of this scale. However, to address point (b), applicants are required to provide details on (not restricted to) lighting, parking, noise, refuse and design layout (amongst other matters). These are matters which would be addressed through a planning application (particularly as required in validation checklists) and therefore do not need to be noted within the policy. However, it is of note that the proposed allocation H72 is located close to the A56 by-pass, which is a busy dual carriageway. Due to the valley which Edenfield sits within, the land slopes towards the A56. Most of the proposed development would be at a higher elevation than the A56 which results in a significant impact on openness and important views from and into the village.
64. The noise and air pollution, exacerbated by the prevailing westerly wind alone make this an unsuitable development area. The Local Planning Authority should have investigated these matters further before proposing such a large allocation for housing.

65. The requirement to identify mechanisms to enhance quality and access to Green Belt land shows that the policy fails to reflect and understand the principle of Green Belt. Paragraph 133 of the NPPF (2018) states that "*the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.*" The Council appear to muddle Green Belt and green space.



66. This policy has been drafted to its length (spreading over three separate pages) to overcompensate for the lack of detail and evidence to justify this housing allocation, particularly with notable absences of the Highways Capacity Study, a local highways access study, Employment Land Review (to be discussed in addition regarding to Policy EMP2) and the late release of the Green Belt Exceptional Circumstances<sup>25</sup>. Work to assess the suitability of the site for housing should be front loaded in the process and provided by the Local Planning Authority
67. The Local Plan has been supported by the 'Lives and Landscapes Assessment for Rossendale Borough Council' (2015), prepared by Penny Bennett. A large portion of land which now accommodates the emerging allocation H72 was assessed as part of this landscape for scope of Assessment (Appendix E). 'Area A' (as seen in Appendix E) is the largest of these areas and when assessed against various criteria, it has been considered unsuitable for development on landscape grounds. Therefore, factoring in the impact on the openness and permanence of the Green Belt, the proposed allocation H72 should not be supported due to the impact on landscape grounds.

<sup>25</sup> Rossendale Local Plan Green Belt Topic Paper



OUTCOME OF SITE ASSESSMENT	
Land east of the motorway Area A	Not suitable for development on landscape grounds
Land east of the motorway Area B	Site suitable for development
Land east of the motorway Area C	Site suitable for development with mitigation
Land east of the motorway Area D	Site suitable for development with mitigation

Figure 10 – taken from Appendix E of Lives and Landscape Assessment for Rossendale Borough

#### **Strategic Policy EMP1: Provision for Employment**

***Unsound: Not Positively Prepared, Not Justified, Not Effective, Not Consistent with National Policy***

68. This policy sets an employment land target of 27 hectares which is not adequately justified by the supporting text and the Employment Topic Paper has not been published alongside this Local Plan consultation.
69. The policy does not provide any breakdown of B1, B2, B8 land or any land for non-B jobs. Nor does the policy or explanatory text explain how these figures equate to job numbers in the Borough.
70. There is approximately 20ha of land that has been identified for employment use in the Local Plan but has not been allocated.
71. There is no analysis provided in terms of how the employment land and jobs would (or would not) balance with the Local Plan target in the Local Plan and what the implications would be for transport movements within the Borough and surrounding sub region.

#### **Strategic Policy EMP2: Employment Site Allocations**

***Unsound: Not Positively Prepared, Not Justified, Not Effective, Not Consistent with National Policy***

72. Strategic Policy EMP2 provides a list of existing employment and new employment and mixed-use sites within the Plan Period (2019 – 2034) to meet the target of 27 hectares of employment land. We consider that the Local Plan ‘oversupplies’ employment land protecting employment sites that could be released for housing.



### **Strategic Policy TR1: Strategic Transport**

***Unsound: Not Positively Prepared, Not Justified, Not Effective, Not Consistent with National Policy***

73. Strategic Policy TR1 notes in its final bullet point that the focus will be:

*"Ensuring that development that generates significant movement is located where the need to travel will be minimised and the use of sustainable transport modes can be maximised."*

Paragraph 102 of the NPPF (2018) notes that transport issues should be considered from the earliest stages, so that:

- a) the potential impacts of development on transport networks can be addressed;*
- b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;*
- c) opportunities to promote walking, cycling and public transport use are identified and pursued;*
- d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and*
- e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places."*

74. The allocation of 456 dwellings within Edenfield, will generate 'significant movement' – particularly as a proportional increase to the 970 dwellings already located within Edenfield<sup>26</sup>

75. Given Edenfield's rural location, it is expected there will be a larger reliance on private motor vehicle usage in comparison to urban areas such as Bacup, Haslingden and Rawtenstall. Given the minimal services located within Edenfield, particularly no secondary school or doctor's surgery, local residents are already having to travel outside of the settlement for these services. Edenfield is served by bus services, notably the X41 'Red Express' bus service between Manchester and Accrington and the 481 (Blackburn to Bury), 482 (Bacup to Bury) and 483 (Burnley to Bury) bus services. While bus services during the day time are frequent, evening services are less frequent with the last bus out of Edenfield in either direction not long after 10 pm.

76. It has been noted by Edenfield Community Neighbourhood Forum during a recent community workshop for the Neighbourhood Plan (in 2018), that local bus services have been cancelled in the past due to the issues with traffic caused by on-street parking along Market Street. Therefore, it is considered that need to travel is not able to be minimised given the lack of

<sup>26</sup> <http://edenfieldcommunityforum.uk/welcome/>



services and that sustainable transport is not able to be maximised, due to operational issues in the past and limited evening bus services.

77. The Highways Capacity Study, which was prepared by Mott MacDonald, was supposed to be a key evidence document for Regulation 18 Draft Local Plan Consultation in 2017. This document was only made available to the public on 1<sup>st</sup> October 2018, just 4 days before the end of this Regulation 19 consultation. As such, we have not had sufficient time to review this document. Given the delay in its release, we are querying whether this Regulation 19 consultation should have taken place without the release of this vital evidence, let alone submitting a Local Plan to the Planning Inspectorate which has not been adequately evidenced or consulted on.
78. RBC however did release a Technical Note in advance of the Highway Capacity Study. The junctions of Rochdale Road/Market Street and A56/M66 Junction 0 (located within Edenfield) have been assessed. Of particular note is the Rochdale Road/Market Street junction – this has been assessed as not being able to accommodate the full fifteen years of the plan. The Technical Note did state for this junction, along with other junctions that could not accommodate the full 15 years of the plan:

*“operational performance at these junctions is notably poor in both the Reference Case and Local Plan scenarios at 2024 and 2034. The poor performance is not necessarily a result of the Local Plan allocations, it is considered however that the views of LCC should be sought nonetheless.”*
79. Therefore, it is not justified as to why RBC have considered proposed housing allocation H72 of this scale for Edenfield when it is likely to have poor performance as early as 2024, irrespective of the Local Plan allocations.
80. It is understood that the developers with housing land interests in Edenfield are undertaking their own assessment of impact/potential for housing to the West of Market Street at a more local level to assess the impact of potential junctions off Market Street and Exchange Street. It is understood that the RBC will not be undertaking their own study at this scale and will be accepting that of the developers. Therefore, questions should be asked as to the impartiality of these studies – questioning whether Policy TR1 has been positively prepared and appropriately evidenced.
81. Therefore, in consideration of Paragraph 102 and commenting on each of the criteria as identified above –
  - a) *the potential impacts of development on transport networks can be addressed;*

**Comment:** The potential impacts of development on transport network cannot be addressed without the appropriate evidence base being available.



- b) *opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;*

**Comment:** No strategic level highway or public transport improvements are proposed in the proposed policy map for Edenfield.

- c) *opportunities to promote walking, cycling and public transport use are identified and pursued;*

**Comment:** No improvement has been proposed within the Reg 19 Policies Map.

- d) *the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and*

**Comment:** The potential impacts of development on transport network cannot be addressed without the appropriate evidence base being available.

- e) *patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.”*

**Comment:** This would only be addressed at the design and Masterplan stage – however it is not clear (due to lack of appropriate evidence base or justification) as to whether existing parking and traffic issues within Edenfield have been taken into consideration or mitigated (particularly due to the high level of existing on-street parking within Edenfield).

#### Sustainability Appraisal (July 2018)

**Not Legally Compliant**

**Unsound: Not Positively Prepared, Not Justified, Not Effective, Not Consistent with National Policy.**

82. Section 2.3 of the Sustainability Appraisal (SA) explains that “*four Strategy approaches to delivering development requirements and what this will mean in terms of the location and quanta of development*”. It states that the four alternatives for quanta of development were assessed for their likely impacts on sustainability. The four alternatives are:

- 3,000 dwellings and 10ha of employment land;
- 7,000 dwellings and 24 ha of employment land;
- 2,000 dwellings and 6ha of employment land; and
- 5,000 dwellings and 9 ha of employment land.

83. The SA provides no explanation as to why these four strategy approaches were selected. It simply provides a brief explanation that the SHMA identified a housing need of between 265-335 dpa and the Regulation 19 housing figure of 212 dwellings per annum which it states is 3,180 over the plan period. It provides no explanation as to why the employment land figures



were selected for these strategy approaches or how the housing and employment land quantums relate to each other.

84. The SA then jumps to a section explaining that "*The Council has considered various spatial strategies for delivering development proposed in the Local Plan*"<sup>27</sup>. Table 2.2 of the SA sets out four 'spatial options'. However the description of Table 2.2 is "*Spatial strategy reasonable alternatives considered by the Council and assessed in Appendix D*". By this point of reading the SA we have presented with such inconsistent terminology that it is unclear as to what we consider are:

- 'Strategy Approaches'; or
- 'Spatial Strategies'; or
- 'Spatial Strategy Reasonable Alternatives'

85. Appendix D of the SA is called 'Strategic Spatial Options' so the reader is presented with the fourth term for what may or may not be the same approaches, strategies and reasonable alternatives listed above. Appendix D attempts to explain how the housing and employment figures were tested in the SA stating that:

*"The Council's Strategic Housing Market Area Assessment (SHMA) (2016) examined economic and demographic evidence to assess the housing needs in the borough for the Plan period. Since then, the Government implemented a new standard methodology for calculating housing figures. Using this approach, the annual housing need for Rossendale its 212dpa. Over the Plan period (2019 – 2034) this would equate to a total of 3,180 dwellings. The Council therefore consider there to be a need for a total of 3,180 dwellings over the Plan period (in addition to 27ha of employment land)."<sup>28</sup>*

86. It states that the 3,180 dwellings in addition to the 27ha of employment land. It is unclear as to where the 27ha of employment land has come from.

87. Table D.1 of the Appendix D is entitled: 'Spatial Options and Quanta reasonable alternatives assessed in this report', which appears to be the fifth term for what appear to be the same other 'options' already mentioned above. Table D.1 is included below and summarises the Spatial Options tested. It is completely unclear as to why the quanta of development or how the distribution of development was prepared as they seem to be random. This raises considerable concern as to how much of the SA can be relied on. What is most worrying is that the SA supposedly informed the preparation of the Local Plan. For instance:

- Why do none of the options test the selected housing target for the Local Plan?
- Why do none of the options seek to meet the 27ha of employment land stated above which is the target in the Local Plan?

<sup>27</sup> Sustainability Appraisal August 2018 (Para 2.4.1)

<sup>28</sup> Sustainability Appraisal August 2018 (Appendix D, Para 1.1.4)



- Why do none of the options test the Local Plan housing target and employment target as an option?
- Why do three of the four options test an employment land figure which is many times smaller than the employment land target of the Local Plan?
- Why are 7,000 dwellings tested as a reasonable alternative? This is more than double the Local Plan Target.
- Why are 2,000 dwellings tested which is considerably lower than the objectively assessed need figure?

88. We have a number of questions about the Spatial Options which highlight how flawed the SA is. There is only one option which includes Edenfield (Option B).

89. Spatial Option A:

Distribution

- This option does not include Edenfield however shows that it can nearly meet the Local Plan housing target.
- What does “58ha on urban boundaries” mean and which urban boundaries is it referring to?
- What is the breakdown between housing and employment land as it simply says 23ha Rawtenstall, 23ha Bacup, 9.5ha Whitworth?
- It states 5ha Green Belt sites – where are these sites and what type of development was tested?
- <20% Brownfield sites – where is this brownfield land it is referring to?

90. Spatial Option B:

Distribution

- Why is significant development at Edenfield part of this Option? What is considered significant?
- 25ha of greenfield in villages – what villages and why was 25ha selected?
- Where are the 11ha of Green Belt which were tested?
- <10% Brownfield sites – where is this brownfield land it is referring to?

**Table D.1: Spatial Options and Quanta reasonable alternatives assessed in this report**

	Spatial Option A	Spatial Option B	Spatial Option C	Spatial Option D
Quanta	3,000 dwellings 10ha employment	7,000 dwellings 24ha employment	2,000 dwellings 6ha employment	5,000 dwellings 9ha employment
Distribution	<ul style="list-style-type: none"> <li>- 58ha on urban boundaries</li> <li>- 23ha Rawtenstall</li> <li>- 23ha Bacup</li> <li>- 9.5ha Whitworth</li> <li>- 5ha Green Belt sites</li> <li>- &lt; 20% brownfield sites</li> </ul>	<ul style="list-style-type: none"> <li>- Significant development at Edenfield</li> <li>- 25ha of greenfield sites in villages</li> <li>- 11ha Green Belt sites</li> <li>- &lt; 10% brownfield sites</li> </ul>	<ul style="list-style-type: none"> <li>- Focus on urban areas</li> <li>- Increase density to 40-45dph</li> <li>- Maximise reuse of vacant mills</li> <li>- More development in deprived locations</li> <li>- Development linked to existing services</li> <li>- 35% brownfield sites</li> </ul>	<ul style="list-style-type: none"> <li>- Mix of development across Borough</li> <li>- Increase density to 40-45 dph</li> <li>- 14ha Bacup</li> <li>- 10 ha Rawtenstall</li> <li>&lt; 20% brownfield sites</li> </ul>
Benefits	<ul style="list-style-type: none"> <li>- Reduces urban sprawl by focusing development near urban boundaries</li> <li>- Opportunities for brownfield development</li> </ul>	<ul style="list-style-type: none"> <li>- More than double the housing need</li> <li>- No issues with housing deliverability</li> <li>- Maximises growth opportunities</li> </ul>	<ul style="list-style-type: none"> <li>- Focus on brownfield development</li> <li>- Better related and maximises the use of current services</li> <li>- Limited disturbance to landscape</li> </ul>	<ul style="list-style-type: none"> <li>- Exceeds the housing need</li> <li>- Combines strategies</li> <li>- Optimal use of brownfield land</li> <li>- Retains key existing employment sites</li> </ul>
Potential Issues and Risks	<ul style="list-style-type: none"> <li>- Just short of the housing need</li> <li>- Short of employment land need</li> <li>- Release of Green Belt</li> <li>- Limited availability at Haslingden</li> <li>- Road capacity issues</li> <li>- Landscape impacts</li> </ul>	<ul style="list-style-type: none"> <li>- Large release of Green Belt</li> <li>- Development related to opportunity – not need or services</li> <li>- Strong environmental and landscape impacts</li> <li>- Road capacity issues</li> </ul>	<ul style="list-style-type: none"> <li>- Falls short of housing and employment land need</li> <li>- Loss of employment sites for housing</li> <li>- Loss of open space in urban areas</li> </ul>	<ul style="list-style-type: none"> <li>- Short of employment land need</li> <li>- Limited availability at Haslingden</li> <li>- Flood risk</li> <li>- Road capacity issues</li> </ul>

**Figure 11 Table D.1 Spatial Options and Quanta reasonable alternatives assessed in this report (SA Appendix D)**

- The land west of Market Street has been wrongly identified as allocation H74 (rather than H72).
- The SA fails to refer to any specific heritage assets and their setting. It assumes that a future masterplan will address and mitigate any heritage assets however this is not an assumption that can be relied upon. There is no reference to the Grade II\* listed Edenfield Parish Church

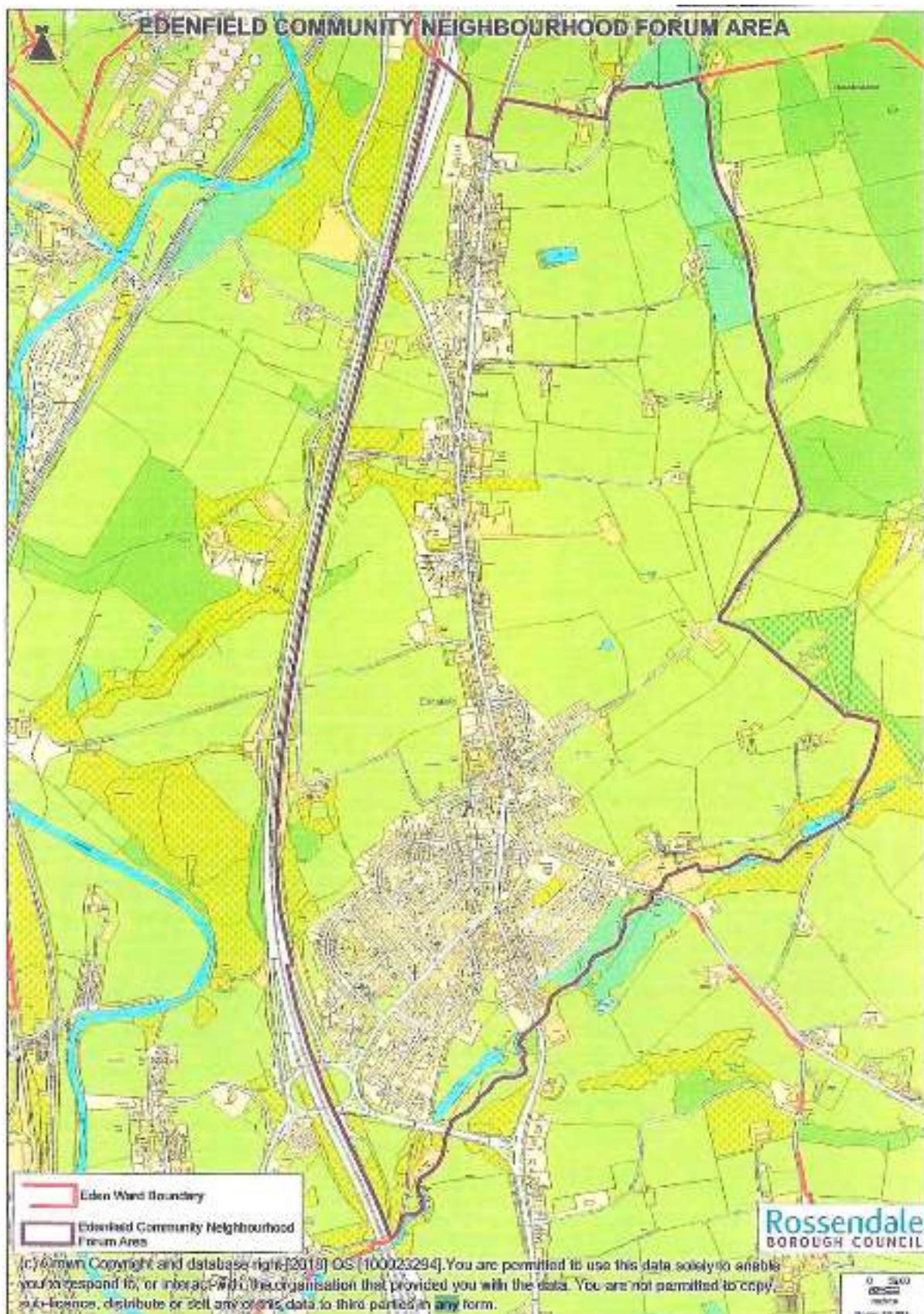
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**MANCHESTER**  
PETERSFIELD  
PORTLAND



[troyplanning.com](http://troyplanning.com)  
1 St Peter's Square  
Manchester  
M2 3AE  
Tel: 01613 990 154

in the SA or Elton Banks Grade II listed building in Edenfield. Nor does the SA mention the Stubbins Conservation Area or consider the impact on its setting which is near to the proposed strategic development in Edenfield.

# APPENDIX 1 - EDENFIELD COMMUNITY NEIGHBOURHOOD FORUM AREA



## APPENDIX 2 - Letter from MHCLG Secretary of State (11 September 2018)



Ministry of Housing,  
Communities &  
Local Government

Councillor Linda Haysey,  
Leader of East Hertfordshire District Council  
Wallfields  
Pegs Lane  
Hertford  
SG13 8EQ

The Rt Hon James Brokenshire MP  
Secretary of State for Housing, Communities and Local  
Government

Ministry of Housing, Communities and Local  
Government  
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2 Marsham Street  
London SW1P 4DF

Tel: 0303 444 3450  
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[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

11 September 2018

Dear Councillor Haysey

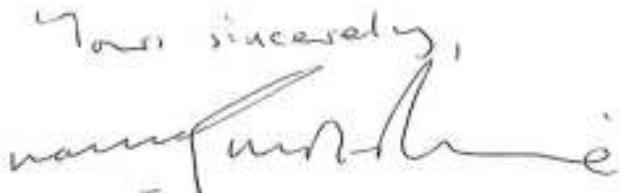
### East Hertfordshire District Council's Local Plan

I have received several requests to intervene in the East Herts District Plan ("the Plan"), including from Stephen McPartland MP (Stevenage), the Hertfordshire branch of the Campaign to Protect Rural England, Aston Parish Council, Eastwick & Gilston Parish Council, Thorley Parish Council, Bishop's Stortford Civic Federation and Protecting Aston's Community Existence (PACE). The requests raise a number of issues including the proposed release of land within the Green Belt.

In respect of the issues identified above, I am considering whether to give a direction to East Hertfordshire District Council in relation to the Plan under section 21 of the Planning and Compulsory Purchase Act 2004. Therefore, in exercise of my powers under section 21A of that Act (inserted by section 145(5) of the Housing and Planning Act 2016), I hereby direct East Hertfordshire District Council not to take any step in connection with the adoption of the Plan, while I give the issues raised in the letters further consideration.

This direction will remain in force until I withdraw it or give a direction under section 21 of the 2004 Act in relation to the Plan.

My officials will be in touch with your officers to discuss next steps.



RT HON JAMES BROKENSHIRE MP



Neutral Citation Number: [2015] EWHC 1078 (Admin)

Case No: CO/4846/2014

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21/04/2015

**Before:**

**MR JUSTICE JAY**

**Between:**

<b>CALVERTON PARISH COUNCIL</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>(1) NOTTINGHAM CITY COUNCIL</b>	<b><u>Defendants</u></b>
<b>(2) BROXTOWE BOROUGH COUNCIL</b>	
<b>(3) GEDLING BOROUGH COUNCIL</b>	
<b>-and-</b>	
<b>(1) PEVERIL SECURITIES LIMITED</b>	<b><u>Interested Parties</u></b>
<b>(2) UKPP (TOTON) LIMITED</b>	

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**Richard Turney (instructed by Public Access) for the Claimant**  
**Morag Ellis QC and Annabel Graham-Paul (instructed by Nottingham, Broxtowe and**  
**Gedling Borough Councils) for the Defendants**  
**Richard Honey (instructed by Walker Morris, Leeds) for the Interested Parties**

Hearing date: 24<sup>th</sup> March 2015

-----  
**Approved Judgment**

**The Hon. Mr Justice Jay:**

## **Introduction**

1. This is an application brought under section 113 of the Planning and Compulsory Purchase Act 2004 (“the Act”) to quash, in part, the Greater Nottingham - Broxtowe Borough, Gedling Borough and Nottingham City - Aligned Core Strategies (“the ACS”), adopted by the Defendants in September 2014. The ACS is part of the development plan for each of the three Council’s areas.
2. Broxtowe Borough and Gedling Borough are contiguous with the outer boundary of the city of Nottingham, and substantially comprise Green Belt. The Claimant is a Parish Council within Gedling Borough and may be described as an enclave within Green Belt. Two Interested Parties have intervened in these proceedings: they own land at Toton, which is within Broxtowe Borough and technically, Green Belt. Although Toton is some distance away from the city boundary, it may fairly be characterised as within the main built-up area of Nottingham.
3. Development within Green Belt is never without controversy. It is clear from the “Chronology of Events”, namely Appendix 1 to the witness statement of Alison Gibson dated 11<sup>th</sup> November 2014, that a strategic review of the Nottingham-Derby Green Belt has been on the table for some time. The precise concatenation of events is not relevant to this application. The ACS was subject to independent review by a planning Inspector, Ms Jill Kingaby, and examination hearings took place in 2013 and 2014. On 24<sup>th</sup> July 2014 the Inspector published her report, approving the ACS with modifications. The Claimant’s advisors identified what were considered to be legal deficiencies in the report, but notwithstanding its contentions the ACS was adopted by the three Councils on various dates in September 2014.
4. The Inspector’s report and the ACS will require more detailed exposition subsequently. At this stage, it is appropriate to turn to the relevant legislative framework. I will focus now on the legislative provisions relevant to Grounds 1 and 2; Ground 3 raises a discrete point, and will be addressed subsequently.

## **The Statutory Scheme**

5. I was taken to all the relevant provisions of the Act. Some of these explain the status of the ACS as a local plan, included in the local development documents which form part of the development plan for each of the three Council’s areas (see, in particular, sections 15, 17 and 38). I will concentrate on the statutory provisions which bear on the issues between the parties.
6. Section 19(2) of the Act provides:-

“In preparing a development plan document or any other local development document the Local Planning Authority must have regard to –

- (a) national policies and advice contained in guidance issued by the Secretary of State;
- ...
- (h) any other local development document which has been adopted by the Authority;”
7. Section 20 provides for independent examination by the Secretary of State’s Inspector. Pursuant to section 20(5):-
- “The purpose of an independent examination is to determine in respect of the development plan document –
- a) whether it satisfies the requirements of section 19...;
  - b) whether it is sound;”
8. The definition of the adjective “sound” is not to be found in the Act itself but in national policy - the latter being “guidance issued by the Secretary of State” for the purposes of sections 19(2)(a) and 34, and to which regard must be paid.
9. Miss Morag Ellis QC for the Defendants placed particular weight on section 39 of the Act, which provides:-
- “Sustainable Development**
- 1) This section applies to any person who or body which exercises any function –
  - b) under Part 2 of this Act in relation to local development documents;
- ...
- 2) The person or body must exercise the function with the objective of contributing to the achievement of sustainable development”
10. I agree that this confers a positive obligation on the Councils, but its limitations need to be understood. “Sustainable development” is not a concept which is defined in the Act, in which circumstances the enlightenment which is required may only be found in national policy.
11. Section 113 confers powers on this Court to intervene if satisfied “that a relevant document [including a development plan] is to any extent outside the appropriate power”. It is common ground that the jurisdiction of this Court on this statutory appeal is akin to Judicial Review. The Court of Appeal has explained on a number of occasions (see, for example, Blythe Valley BC v Persimmon Homes (North East Limited) and another [2009] JPL 335) that whether a development plan complied with national policy guidance was largely a matter of planning judgment with which the

Court should be slow to interfere, subject always to that guidance being properly understood.

## **National Policy**

12. Relevant national policy is located in the National Planning Policy Framework (“the NPPF”), published by the Department for Communities and Local Government in March 2012. I was taken to the National Planning Policy Guidance finalised in March 2014. This is referred to in the Inspector’s report, but in my view does not significantly supplement the NPPF.
13. “Sustainable development” is not expressly defined in the NPPF, but light is nonetheless thrown on it. The effect of paragraph 6 of the NPPF is that the substantive policies set out elsewhere in this national policy, interpreted and applied compendiously, amount to the Government’s view of what sustainable development means. On one view, it represents a balance between three factors – economic, social and environmental – which are admittedly not necessarily complementary (see paragraph 7). On another, if certain environmental factors are identified, then their weight must be assessed and these factors constitute a restriction or brake on what would otherwise be sustainable development. The NPPF is not worded with fine legal precision (it is a policy, not a commercial contract), but some further assistance is given by paragraph 14, which provides: -

“At the heart of the NPPF is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.

For **plan-making** this means that:-

- Local Planning Authorities should positively seek opportunities to meet the development needs of their areas;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole; or
    - specific policies in this framework indicate development should be restricted.”

14. This last aspect is footnoted as follows:-

“For example, those policies relating to sites protected under the Birds and Habitats Directive (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of

Outstanding Natural Beauty, heritage coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.”

15. I agree with Miss Ellis that development which meets objectively assessed needs is presumptively sustainable, but I would add that the preposition “unless” is drawing attention to a policy constraint. That approach is reinforced by the footnote.
16. The parties are agreed that paragraph 47 of the NPPF is another important provision. It provides:-

“To boost significantly the supply of housing, Local Planning Authorities should:

- Use their evidence base to ensure that their local plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this framework, including identifying key sites which are critical to the delivery of the Housing Strategy over the plan period;
- Identify and update annually a supply of specific deliverable sites sufficient to provide 5 years’ worth of housing against their housing requirements with an additional buffer of 5%...
- Identify a supply of specific, developable sites for broad locations for growth, for years 6-10 and, where possible, for years 11-15;

...”

17. The subordinate clause, “as far as is consistent with the policies set out in this framework”, is arguably slightly more generous (in terms of favouring sustainable development) than the “unless” in paragraph 14 of the NPPF, but ultimately nothing turns on this. It should be emphasised, though, that paragraph 47 does not create a statutory duty (c.f. section 39(2) of the Act); it constitutes policy to which regard must be had.
18. Section 9 of the NPPF deals with “Protecting Green Belt Land”. A fundamental aim of Green Belt policy is to prevent urban sprawl. Under paragraph 80 of the NPPF, the Green Belt serves five purposes, one of which is explicitly environmental – “to assist in safeguarding the countryside from encroachment”. Paragraphs 83 and 84 are particularly relevant, and provide:-

“83. Local Planning Authorities with Green Belts in their areas should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review

of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period.

84. When drawing up or reviewing Green Belt boundaries Local Planning Authorities should take account of the need to promote sustainable patterns of development. They should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary.”

19. Paragraphs 83 and 84 are, clearly, complementary provisions. Mr Richard Turney for the Claimant is entitled to emphasise the second sentence of paragraph 83. The review process referred to in paragraph 84 cannot ignore that sentence. On the other hand, I agree with Miss Ellis that the review process must consider “sustainable patterns of development” – e.g. the desirability of an integrated transport network. During any review process, the *consequences* for sustainable development must be carefully considered. The second sentence of paragraph 84 is not altogether clear. On the face of things, it might well be argued that it appears to reinforce the need to protect the Green Belt, but in my view it is capable of being interpreted slightly more broadly. The *consequences* for sustainable development may require revision of the Green Belt. Nonetheless, I do not readily agree with Miss Ellis that paragraph 84 throws any light on the meaning of “exceptional circumstances” within paragraph 83, or should be taken as somehow diluting this aspect. Sustainable development embraces environmental factors, and such factors are likely to be negatively in play where release of Green Belt is being considered. The second sentence of paragraph 83 supplies a fetter or brake on development which would, were it not for the Green Belt, otherwise be sustainable; but in deciding whether exceptional circumstances pertain regard must be had to the whole picture, including as I have said the *consequences*.
20. “Exceptional circumstances” remains undefined. The Department has made a deliberate policy decision to do this, entrusting decision-makers with the obligation of reaching sound planning judgments on whether exceptionality exists in the circumstances of the individual case.
21. Paragraph 150ff of the NPPF deal with “Local Plans”. Paragraph 151 reflects section 39(2) of the Act. Paragraph 152 is material and provides:-

“Local Planning Authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three. Significant adverse impacts on any of these dimensions should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impact should be considered. Where adequate mitigation

measures are not possible, compensatory measures may be appropriate.”

22. I read this provision as making clear that the identification of “exceptional circumstances” (although not expressly mentioned) is a planning judgment for the Local Planning Authority. However, net gains across all three of the dimensions of sustainable development may not always be possible. In these circumstances, the impingement on environmental factors will require the identification of exceptional circumstances in order to be justified (“significant adverse impacts on any of these dimensions should be avoided”), and - to the extent that this cannot be achieved - must be ameliorated to the extent possible.
23. I appreciate that section 39(2) of the Act imposes a positive obligation to achieve sustainable development, and that if such development is not carried out then there would be harm to the economic and social dimensions which form part of this concept. However, I do not accept Miss Ellis’ submission that the issue boils down to the balancing of three *desiderata*. Review of Green Belt in the face of sustainable development requires exceptional circumstances. Refraining from carrying out sustainable development, and thereby causing social and economic damage by omission, does not.
24. Paragraph 182 of the NPPF explains the meaning of “sound”:-

“The local plan will be examined by an independent Inspector whose role is to assess whether the plan has been prepared in accordance with the duty to co-operate, legal and procedural requirements, and whether it is sound. A Local Planning Authority should submit a plan for examination which it considers is “sound” – namely that it is:

- **Positively Prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable developments;
- **Justified** – the plan should be the most appropriate strategy, when considered against a reasonable alternative, based on proportionate evidence;
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priority; and
- **Consistent with National Policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.”

25. The phrases “consistent with national policy” and “in accordance with the policies in the Framework” reflect earlier language; and, ultimately, sections 19 and 34 of the Act.

## The ACS

26. Within the ACS, aspects of Policy 2, “The Spatial Strategy”, and Policy 3 “The Green Belt”, are under challenge. As I have said, the Inspector approved the ACS with modifications, and the version in the bundle contains the Inspector’s input. I will examine the ACS in its final, modified form.
27. Policy 2 states that a minimum of 30,550 new homes will be provided for between 2011 and 2028, with the majority in the main built-up area of Nottingham. Paragraph 2 of Policy 2 refers to a “settlement hierarchy” of growth, with the main built-up area of Nottingham being at the top of the tree, and “Key Settlements” at the third tier. Calverton is specified as a “Key Settlement”, with up to 1,055 new homes. It is common ground that the building of these homes will require a revision of the existing Green Belt boundary. These “Key Settlements”, and other “Strategic Locations” which are marked on the ACS with an asterisk, “will be allocated through Part 2 Local Plans”. On the other hand, “Strategic Allocations”, including the Interested Parties’ land at Toton, and land at Field Farm, are available for development from the date of adoption.
28. Policy 2 also sets out the justification for the approach taken. I have had regard to paragraph 3.2.10, but will focus for the purposes of this Judgment on the Inspector’s Report.
29. Policy 3 deals with the Green Belt. Save for the “Strategic Allocations” already considered, the policy contemplates that the detailed review of Green Belt boundaries, to the extent necessary to deliver the distributions in Policy 2, will be undertaken in what is described as “Part 2 Local Plans”. A sequential approach will then be deployed, prioritising the use of land which is not currently within Green Belt. To the extent that adjustment of any Green Belt boundary is required, regard will be had in particular to its statutory purposes.
30. Paragraph 3.3.1 is clearly germane:-

“The Nottingham-Derby Green Belt is a long established and successful planning policy tool and is very tightly drawn around the built-up areas. Non-Green Belt opportunities to expand the area’s settlements are extremely limited and therefore exceptional circumstances require the boundaries of the Green Belt to be reviewed in order to meet the development requirements of the Aligned Core Strategies in Part 2 Local Plans.”

31. It is clear from this that the Defendants appear to have had regard to the criterion of “exceptional circumstances”. The issue raised by Mr Turney’s submissions is whether the approach taken properly engaged with it.

## **The Inspector's Report**

32. The proceedings before the Inspector were lengthy and complex, and a mass of evidence – only some of which is before the Court in these proceedings – was supplied. It is unnecessary to dwell on the proceedings, save to pause to consider a number of points advanced by Mr Turney during his oral argument.
33. Before and during the course of the proceedings, the Inspector appears to have formulated, with the assistance of the parties, the main issues arising in relation to each of the elements of the ACS policy. Thus, as regards “the Spatial Strategy and Housing Policy”:-

“The main issues are:

- i. whether the local context, vision and spatial objectives set out in Chapter 2 of the ACS objectives are appropriate, locally distinctive and provide a sound basis for planning the area over the next 15 years; whether Policy 2, the spatial strategy, follows logically from the local context, visual, and spatial objectives, and is sound (i.e. positive, justified, consistent with national policy and capable of delivery); and
- ii. whether appropriate provision is made for new housing in the three Local Authority areas, having regard for the requirements of the NPPF and taking account of the proposed numbers, the phasing and distribution of housing, affordable housing, and provision for gypsies and travellers, and other groups.”

A number of specific questions were then posed, which I have borne in mind.

34. As for “Green Belt”:

“The main issue is: whether the spatial strategy and Policy 3 of the ACS are consistent with the fundamental aim and purposes of Green Belts as set out in the NPPF, and whether the proposals for alterations to Green Belt boundaries are underpinned by the quick review processes and justified by exceptional circumstances.

### **Questions**

The Councils contend that, having objectively assessed the full need for housing across their areas and reviewed their strategic housing land availability assessments, some alteration to Green Belt boundaries is required to accommodate the growth in housing and associated development. Is there substantive evidence to counter this argument?

The ACS is founded on a two-stage review of Green Belt boundaries: (i) strategic assessment to find the most sustainable locations for large scale development around Greater Nottingham and define a limited number of strategic allocations for growth, and (ii) a detailed examination of individual sites and settlements suitable for sustainable growth with precise boundaries being established in subsequent development plan documents. Given the commitment of the Local Authorities to produce core strategies and consequent, more detailed development plan documents, what precisely is wrong with this two-step approach reviewing the Green Belt? Will it delay the development process unreasonably as some suggest?"

Mr Turney criticised both the formulation of these questions and the Defendants responses to them, and I have had regard to both.

35. On 23<sup>rd</sup> October 2013 the Inspector sent a note to the parties which said, amongst other things:-

"Having reviewed all the evidence in respect of housing requirements for the full plan area, I consider the Policy 2: the Spatial Strategy which states that "a minimum of 30,550 new homes will be provided for" is sound."

36. Mr Turney made much of this, in support of a submission that the Inspector came to a conclusion on the issue of soundness before addressing the Green Belt and environmental considerations which were plainly relevant to that issue. I will revert to this alleged criticism in due course.

37. The Inspector's report is quite lengthy, and it would unnecessarily overburden this Judgment if I were to set out every single relevant passage. I will therefore focus on what is key, reassuring the parties that I have borne in mind the entire document.

38. The key passages in the Inspector's report include the following:-

"29. Local Plans should meet the full, objectively assessed needs for market and affordable housing in their HMA, as far as is consistent with other policies set out in the NPPF. This requires an initial assessment of "need" based on likely demographic change over the plan period..."

40. ...I consider that the significant boost in housing supply, to which paragraph 47 of the NPPF refers, is absolutely necessary to reverse the long-term, upward trend in real house prices associated with undersupply and the growing numbers of people, notably young adults and families, who find suitable housing unaffordable.

41. Even though a boost in Greater Nottingham's housing provision as envisaged may not on its own reduce higher house prices significantly, it should make a positive contribution to

balancing the mismatch between supply and demand/need ... a failure to encourage overall house building would only restrict further the availability of affordable, as well as new market, housing ...

45. I have taken account of the Court of Appeal judgment for “Hunston”. I have noted the Councils’ observation that, whilst the judgment pronounced on the interpretation of the first two bullet points in paragraph 47 of the NPPF, the planning decision did not directly consider the question of the soundness or otherwise of a development plan. The issue in dispute was whether, in advance of the area-wide balancing of the many facets of sustainable development which are needed to secure a sound local plan, a Section 78 Inspector could or should take account of policy constraints when deciding what was the relevant figure for “full, objectively assessed needs”.

48. Nevertheless, the Hunston judgment importantly sought “a definitive answer to the proper interpretation of paragraph 47” of the Framework. The judgment is clear that the full objectively assessed needs for housing in the area have to be the starting-point when assessing the adequacy of housing supply... The approach to housing need assessment which the judgment supports is not therefore different to that supported by the PPG, which as explained above, I have fully considered in examining in the ACS.

47. Policy 2 of the ACS states that “a minimum” of 30,550 new homes would be provided, which wording should encourage and not impede the provision of additional housing. In looking to meet the needs, the councils have assumed that fewer houses will be developed on windfall sites than in past, once an up to date local plan underpinned by regularly reviewed SHLAAs is in place. However, if windfalls continue to come forward at the same rate as in the past, this should not be perceived as a negative factor as the aim is to boost the supply of new housing. Proposed change **Mod 3**, reinforces the essential point that the councils will adopt a proactive and positive approach to the delivery of new housing.

48. Proposed new paragraph 3.2.6a, **Mod 6**, includes a commitment to review the ACS’s future housing projections, based on the 2011 Census data and expected in 2014, show that the Councils’ assumptions underpinning its planned housing provision are no longer appropriate. **Mod 17** sets out the process and timing for initiating such a review. The NPPF expects local plans to meet their full needs for housing, “as far as is consistent with the policy set out in the Framework”. Subsequent sections of my report address policy for the distribution of housing across the authorities, policy for protecting the Green Belt, for environmental and infrastructure

planning, among other things. These confirm that delivery of the minimum housing numbers should be feasible. I agree with the Councils that there should be no insurmountable constraints to meeting the fully objectively assessed need for housing.

49. I conclude that the overall level of housing provision proposed by the ACS is justified and consistent with national planning policy. The proposed changes are necessary to reflect the Councils' commitment to keep the local plan under review and to ensure that the planned level of housing remains sound.

...

67. Understandably, there is considerable amount of local opposition to the prospect of development here in the Green Belt [in the context of Field Farm]. However the work which has been done to identify the site and will continue to take it forward has been undertaken by the Council as a democratically elected local planning authority. It considers that it has made its decision in the best interests of the Borough and its people, particularly those who now or in the future will need a home of their own. Having regard to the housing requirements and limited availability of alternative sustainable sites, the Councils' decision to allocate this site in the ACS meets the exceptional circumstances requirement as set out in the NPPF for the alteration of Green Belt boundaries. Field Farm's inclusion as a strategic allocation in the ACS is justified.

...

70. ...I share the Councils' view that the potential for land at Toton to help meet the requirements for housing and mixed use development in Broxtowe Borough constitutes the exceptional circumstances needed to remove the land from the Green Belt. Its potential to maximise the economic benefits from the proposed HS2 station reinforces the Councils' case for changing the Green Belt boundary at Toton.

...

98. The NPPF seeks a significant boost in the supply of housing, and this is not required to occur only in the first five years of a plan. The first bullet of paragraph 47 expects local plans to meet their full, objectively assessed needs "as far as is consistent with the policies set out in this Framework". Although The Court of Appeal judgment (Hunston) quotes protection of the Green Belt and land in an area of outstanding natural beauty or national park as examples of such policies, I see no justification to look only at land-use designation policies. The NPPF includes a range of other policy matters

requiring local plans to be aspirational but realistic, to take account of relevant market and economic signals, and be effective and deliverable.

99. In this case, I am satisfied that the prospective build rates for each 5 year tranche do not represent an attempt to suppress house building in the early years or rely on past poor economic conditions to justify low housing targets. The proposed build rates are supported by convincing evidence on the operation of housing markets ... As the Councils argued, however, significantly increasing the supply of sites in the early years would not necessarily speed delivery, would require the release of additional Green Belt land contrary to national policy, and could delay progress on some of the more challenging regeneration sites.

...

**Issue 2 – Whether the Spatial Strategy and Policy 3: the Green Belt are consistent with the NPPF and whether the approach to making alterations to the Green Belt is justified.**

110. ...In order to meet the housing requirements of 30,550 new homes and achieve sustainable growth with supporting infrastructure, jobs and services, I accept the Councils' judgement that future development will have to extend beyond Nottingham's main built up area.

111. The NPPF continues the well-established planning policy of protecting Green Belt land. The Green Belt boundaries are drawn tightly around Nottingham, and to promote development beyond the Green Belt's outer edge would extend travel to work and for other purposes in an unsustainable fashion. Areas of safeguarded land exist in Gedling Borough, but these are unlikely to meet all the plan area's development requirements outside the main built up area. I agree with the Councils that the exceptional circumstances required for alterations to Green Belt boundaries exist.

...

113. The evidence base was criticised as being too dated, related to a different search for more substantial extensions, and not subject to adequate public consultation. However, I accept that the Green Belt and settlement pattern are largely unchanged since 2005/6 ... Ashfield District Council I am advised, assessed all possible sites against the five purposes of including land in the Green Belt enabling the least valuable sites to be identified. Even if the assessment of the ACS area was more strategic, I consider that sufficient investigation of the characteristics of

potential sites for developments of differing sizes was carried out...

114. The ACS envisages a two-staged approach to altering Green Belt boundaries, with the precise boundaries for individual sites to be released from the Green Belt being established in the Part 2 Local Plans. The NPPF does not directly support this approach, probably because it expects a single local plan for each authority in contrast to the previous preference for a core strategy followed by more detailed development plan documents. Newark and Sherwood and South Staffordshire with adopted plans were cited as authorities which had used the two-stage approach taken by the Greater Nottingham Councils.

...

116. I have considered the arguments that a more rigorous assessment could have been carried out of the inner urban edge of the Green Belt, before sites which would only result in long-distance commuting were selected ...

117. Regarding the risk of coalescence of Kimberley, Whatnall and Nuthall, I consider it appropriate that the Part 2 Local Plan should assess the impact of any new development at this more detailed level, having regard for the aim and purposes of the Green Belt...

118. I strongly support the view that, with a two-stage review process, the ACS should give more direction to Part 2 Local Plans to emphasise that Non-Green Belt sites have first preference, and that sites to be released from the Green Belt must have good sustainability credentials. A sequential approach should secure an effective policy consistent with national policy, and this would be achieved with main modification **Mod 18...**"

### **Relevant Jurisprudence**

39. The Court of Appeal in St Albans CC v Hunston Properties Limited and another [2014] JPL 599 endorsed a two-staged approach to the application of paragraph 47 of the NPPF. The first stage is to reach a conclusion as to the "full objectively assessed needs for market and affordable housing". This is a purely quantitative exercise. The second stage involves an exercise of planning judgement (in relation to development control or the formation of a local plan, as the case may be) as to whether the policy constraints in the NPPF carry the consequence that the objectively assessed needs should not be met. The issue in Hunston was whether "very special circumstances" existed (see paragraphs 87 and 88 of the NPPF), but in my judgment the position must be the same in a case involving a local plan.

40. At paragraph 10 of his judgment, Sir David Keene said this:-

“The Framework does not seek to define further what “other considerations” might outweigh the damage to the Green Belt, but in principle there seems no reason why in certain circumstances a shortfall in housing land supply might not do so.”

41. The two-stage approach underwent further examination in Solihull Metropolitan Borough Council v Gallagher Estates Limited and another [2014] EWCA Civ 1610. In that case, Laws LJ endorsed the conclusion of Hickinbottom J that:-

“Paragraph 47 requires full housing needs to be objectively assessed, and then a distinct assessment made as to whether (and, if so, to what extent) other policies dictate or justify constraint.”

Mr Turney placed particular reliance on paragraph 36 of the judgment of Laws LJ. There, he said:-

“The fact that a particular site within a Council’s area happens not to be suitable for housing development cannot be said without more to constitute an exceptional circumstance, justifying an alteration of the Green Belt by the allocation to it of the site in question. Whether development would be permitted on the sites concerned in this case, were they to remain outside the Green Belt, would depend upon the Council’s assessment of the merits of any planning application put forward.”

42. Mr Turney sought to turn this through 180 degrees, and submitted that the fact that a particular site happens to be suitable for housing development cannot, without more, constitute an exceptional circumstance justifying an alteration of the Green Belt. I agree with Mr Turney insofar as this goes, but in my view there is not a precise symmetry here. The issue in Solihull was whether land could be allocated to Green Belt: in other words, the point was addition, not subtraction. The mere fact that a particular parcel of land happens to be unsuitable for housing development cannot be a Green Belt reason for expanding the boundary. In a case where the issue is the converse, i.e. subtraction, the fact that Green Belt reasons may continue to exist cannot preclude the existence of countervailing exceptional circumstances – otherwise, it would be close to impossible to revise the boundary. These circumstances, if found to exist, must be logically capable of trumping the purposes of the Green Belt; but whether they should not in any given case must depend on the correct identification of the circumstances said to be exceptional, and the strength of the Green Belt purposes. In the present context, one needs to continue to bear in mind paragraph 10 of Hunston (see paragraph 39 above), and to draw a distinction between, on the one hand, suitability without more, and on the other hand, suitability and availability. Suitability *simpliciter* cannot logically be envisaged as an exceptional circumstance (here, the second sentence of paragraph 36 of Solihull applies); suitability and availability may do, subject to the refinements discussed below.

43. Miss Ellis placed particular reliance on the decision of Patterson J in IM Properties Development Limited v Lichfield District Council [2014] EWHC 2440 (Admin). This case was decided after the first instance decision in Solihull and before the case reached the Court of Appeal. Patterson J observed that the only statutory duty was that contained in section 39(2) of the Act (see paragraph 97 of her judgment). At paragraphs 99 and 100 Patterson J said this:-

“99. Here, the release from the Green Belt as proposed in Lichfield which is seen by the Defendant as consistent with the town-focused spatial strategy. The further releases have been the subject of a revised sustainability appraisal by the Defendant. That found that no more suitable alternatives existed for development.

100. The principal main modifications endorsed by the Defendant expressly referred to the Green Belt review and to the supplementary Green Belt review as informing the release of Green Belt sites. They contained advice as to the relevant test that members needed to apply. Both documents were available to the decision-making committees and were public documents. Ultimately, the matter was one of planning judgement where the members had to consider whether the release of Green Belt land was necessary and, in so determining, had to be guided by their statutory duty to achieve sustainable development.”

44. “Necessary” may be seen as broadly synonymous with “the existence of exceptional circumstances”. Mr Turney submitted that these passages are both *obiter* and inconsistent with Solihull. It is unnecessary for me to reach concluded views about this. My preference would be to express the point made in the final sentence of paragraph 100 slightly differently: the issue is whether, in the exercise of planning judgment and in the overall context of the positive statutory duty to achieve sustainable development, exceptional circumstances existed to justify the release of Green Belt.

### **The Claimant’s Grounds**

45. Mr Turney has advanced three grounds on behalf of the Claimant, namely:
- (1) Failure to consider whether housing numbers should be reduced to prevent release of Green Belt land;
  - (2) Failure to apply national policy in considering the release of Green Belt land;
  - (3) Failure to comply with the Environmental Assessment of Plans and Programmes Regulations 2004 (“the SEA Regulations”).

## **The Claimant's Grounds Developed**

46. As I indicated during oral argument, it seems to me that Ground 2 is logically prior to Ground 1. They are, in any event, inextricably intertwined. Accordingly, I will take these together. Although advanced under a different statutory regime, it also seems to me that Mr Turney's third Ground interacts with his earlier Grounds.
47. The primary thrust of Mr Turney's submission, both in oral argument and in his written Reply, is that the Inspector adopted a circular approach. The evidence demonstrates that she considered the 30,550 figure for new housing, and concluded that it was sound, before paying any attention to the environmental and Green Belt constraints. This is borne out by the note the Inspector sent to the parties (see paragraph 35 above), and indeed her examination of Policy 2 in her report. At no stage, so the submission runs, did the Inspector properly consider whether the meeting of objectively assessed needs would be consistent with national policy; and, if so, to what extent. Furthermore, the formulation of the main issue assumed that objectively assessed needs should be met: hence the circularity. Put another way, the "exceptional circumstances" are defined as the requirement to meet the objectively assessed needs.
48. On Mr Turney's argument, the use of the term "insurmountable constraints" in paragraph 48 of the Inspector's report shows that proper regard was not paid to the question of "exceptional circumstances"; the two terms or concepts cannot be readily assimilated the one to the other. Accordingly, the Inspector's approach violated paragraph 47 of the NPPF and a proper application of the two-stage test stipulated by the Court of Appeal in Hunston.
49. Mr Turney advanced two further, specific submissions. First, he contended that the hierarchical approach underpinning both the Inspector's report and the ACS itself suggests there were no exceptional circumstances. Secondly, Mr Turney advanced a methodological attack on the two-stage process, namely Part 1 and Part 2 of the Local Plan. The application of this two-staged process meant that exceptional circumstances were ignored or sidelined: on the one hand, they were not properly considered within Part 1 (because the assumption was that the review of the Green Belt boundary would be left over to Part 2); on the other hand, when Part 2 is reached there would be no room for considering exceptional circumstances, because any later development plan document would have to accord weight to the ACS. The die has been cast. In support of this submission, Mr Turney drew on the Inspector's analysis of the position relating to Field Farm, where exceptional circumstances were considered. Without prejudice to his submission that this analysis was also flawed (and he made the same point as regards the Interested Parties' land, where exceptional circumstances were found), his contention was that a similar approach both could and should have been consistently applied throughout.

## **Analysis and Conclusions on Grounds 1 and 2**

50. I agree with Mr Turney that it would be illogical, and circular, to conclude that the existence of an objectively assessed need could, without more, be sufficient to amount to "exceptional circumstances" within the meaning of paragraph 83 of the NPPF. No

recourse to what I called during oral argument the “mantra” of planning judgment could save a decision from a successful section 113 challenge in such circumstances.

51. In a case such as the present, it seems to me that, having undertaken the first-stage of the Hunston approach (sc. assessing objectively assessed need), the planning judgments involved in the ascertainment of exceptional circumstances in the context of both national policy and the positive obligation located in section 39(2) should, at least ideally, identify and then grapple with the following matters: (i) the acuteness/intensity of the objectively assessed need (matters of degree may be important); (ii) the inherent constraints 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 the 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 reasonably practicable extent.
52. Although it seems clear that what I have called an ideal approach has not been explicitly followed on a systematic basis in the instant case, it is a counsel of perfection. Planning Inspectors do not write court judgments. The issue which properly arises is whether the Inspector’s more discursive and open-textured approach, which was clearly carried through into the ACS, was legally sufficient.
53. It is clear from (i) the formulation of the main issues; (ii) the frequent references in the Inspector’s report to the need to protect the Green Belt; and (ii) the several references to “exceptional circumstances”, that the Inspector had in mind the broad contours and content of paragraph 83 of the NPPF. It is indisputable that she had regard to Hunston and the need for a two-staged approach, with the ascertainment of the objectively assessed need being the “initial” stage (to adopt the epithet used by the Inspector). The main issues might have been expressed with slightly more focus and precision, but I do not accept that their formulation somehow dictated, or pre-judged, the outcome. Further, the Inspector’s note dated 23<sup>rd</sup> October 2013 needs to be read in context: although her reference to the 30,550 housing figure being “sound” is somewhat ambiguous, the note read as a whole indicates that the Inspector had not yet reached a conclusion about Green Belt matters. I read the note as indicating that the Inspector had reached the provisional conclusion which we may now discern at paragraph 48 of her report.
54. Paragraphs 40 and 41 of her report indicate that the Inspector considered that the need for additional housing supply was acute, both generally and in this particular area. Paragraph 48 of the report indicates that in the Inspector’s view the 30,550 figure was both feasible and deliverable, although at that stage she was stating in terms that consistency with other NPPF policies would be considered later in the report. Thus, *pace* Miss Ellis’ skeleton argument and submissions, I do not read the last sentence of paragraph 48 of the report as containing any finding about exceptional circumstances. We see such a finding at paragraphs 67 and 70 (in relation, respectively, to Field Farm and the Interested Parties’ land at Toton), and at paragraph 110ff. The “insurmountable obstacles”, or their absence, relate to matters of feasibility and deliverability. Even if I am wrong about this, and paragraph 48 is to be read as a harbinger of paragraph 111, it seems clear that what the Inspector must be taken to

have meant is that the reason why the obstacles were surmountable was that exceptional circumstances existed.

55. Field Farm and Toton are separately addressed because these sites were allocated in the ACS as land suitable for immediate development. The Inspector was considering specific sites, not strategic areas the precise delineations of which would require subsequent analysis and review. The key sentence in paragraph 67, “having regard to the housing requirements and limited availability of alternative, sustainable sites”, contains in these circumstances a logically coherent reason for holding that exceptional circumstances existed. Mr Turney sought to persuade me that the issue of limited availability could not sensibly add to the issue of objective assessment of need, but I cannot agree; this was a free-standing factor which was clearly capable of amounting to an exceptional circumstance. Additionally, an examination of all the reasoning contained within paragraphs 63-67 of the report reveals that the Inspector paid regard to the purposes of the Green Belt, the nature and quality of the proposed impingement, and the issue of sustainability. As for the latter, this Green Belt was drawn close to the City boundary and it would have been difficult to have undertaken sustainable development beyond the outer boundary of the Green Belt. This was an issue which, albeit hardly decisive, was properly taken into account – it is referred to specifically in paragraph 84 of the NPPF. All these factors were properly assessed in determining the existence of exceptional circumstances.
56. A similar approach underpins the Inspector’s broader consideration of the Spatial Strategy and Policy 3 within the ACS. The formulation of the issue, “whether the approach [in the ACS] to making alterations to the Green Belt is justified”, is a reference to paragraphs 47, 83 and 86 of the NPPF. At paragraph 110, the Inspector accepts the Defendants’ contention that the acuteness of the need is such that some intrusion into the Green Belt (and its consequent revision) will be required. Paragraph 111 may be quite brief but, read both in isolation and in conjunction with the remainder of the report, makes clear that the Inspector is continuing to ask herself the same sorts of questions that she posed, and answered, at paragraphs 63-67 of her report: viz. (i) limited availability; (ii) the location of the Green Belt in relation to the main built-up area of Nottingham; and (iii) sustainability (to which paragraph 86 of the NPPF relates, in particular). Footnote 26 to her report (relating to the first sentence of paragraph 111) is a legally accurate statement of the position under paragraphs 47, 83 and 86 of the NPPF. It follows that the core conclusion in the first sentence of paragraph 111 of the report – that exceptional circumstances exist – cannot be successfully impugned. Albeit with less than complete precision, I consider that the Inspector has, at least in legally sufficient terms, followed the sort of approach I have set out under paragraphs 19, 21, 22 and 43 above.
57. I agree with Miss Ellis that Mr Turney’s submissions go too far, and tend to the very circularity he seeks to identify in the Inspector’s report. Specifically, his submissions are in danger of according excessive weight to paragraph 83 of the NPPF, by stacking up a series of objections to sustainable development which came close to being insurmountable.
58. As for Mr Turney’s separate point about the two-staged approach adopted by the ACS, I agree that, in principle, there is a danger of the issue of exceptional circumstances falling between two metaphorical stools. If, for example, exceptional circumstances were not properly considered at Stage 1, it would be difficult for the

issue properly to be addressed at Stage 2. Although section 19(2)(a) of the Act would no doubt continue to apply, the ACS would be a powerful dictator of subsequent policy, particularly in circumstances where Stage 2 is only concerned with the detail, and not with the principle.

59. The question arises of whether the flawed approach I have just outlined was, in fact, the approach adopted by the Inspector. In my judgment, it was not. As the Inspector correctly observed, a two-staged approach is not impermissible in principle although it is not expressly authorised by the NPPF. The Inspector recognised that there were some weaknesses inherent in such an approach (see paragraphs 116 and 117), but these were manageable. In my judgment, the key point is that the Inspector was able to reach an evidence-based conclusion as to the presence of exceptional circumstances at the first stage, and that she was not in some way adjourning the matter over for substantive consideration at Stage 2. Further, in modifying the ACS so as to achieve a sequential approach to site release (with Green Belt release occurring, as it were, last) the Inspector was achieving an overall state of affairs which, as she put it, “should secure an effective policy consistent with national policy” (paragraph 118). Not merely was this a legally tenable approach, it was in my judgment both sensible and appropriate in the circumstances of the instant case. I would not go so far as to hold that paragraph 118 of the report directly applied paragraph 83 of the NPPF, and somehow satisfied the touchstone of exceptional circumstances; but what it did was to bring about an outcome which has the strong tendency to protect the Green Belt and its purposes. For example, to the extent that release of Green Belt land would be required, the first candidate for release would be land nearer the inner boundary. The sequential approach was, therefore, a factor to be taken into account.
60. I agree with Miss Ellis that in relation to the Part 2 Local Plan exercise it would remain incumbent on the Defendants to act consistently with national policy, in line with sections 19(2)(a) and 34 of the Act.
61. I am far from convinced that Mr Turney’s first ground really adds to his second. The complaint is that consideration was not given to a figure lower than 30,550, such that revision of the Green Belt might not be required. It is of course correct that the majority of the new housing will not be built on Green Belt land, from which it follows that removing several thousand homes from the aggregate figure could well lead to the consequence that no Green Belt release would be required. However, the issue for the Inspector was whether the release of some Green Belt land was justified, having regard to the objectively assessed need. The Inspector concluded that it was, applying paragraphs 47, 83 and 86 of the NPPF. If it was not justified, the Green Belt boundaries would have remained as before. It was not incumbent on the Inspector to “salami-slice” the objectively assessed need further, and to consider some hypothetical lower number. Such an obligation would only have arisen if meeting the whole of the objectively assessed need was not justified, because exceptional circumstances did not exist to amount to that justification.
62. Given these conclusions, the Interested Parties do not need to succeed on their separate submissions directed to the particular attributes of their land at Toton. However, I accept the submissions of Mr Richard Honey for the Interested Parties that his clients’ land may be separately considered. First, the subject land is a co-ordinated, mixed-use site, and the Claimants in these proceedings are not challenging those aspects of the ACS which cover employment and transport. Secondly, detailed

consideration was given at paragraphs 68-76 of the report to whether exceptional circumstances existed to justify the revision of the Green Belt to accommodate this particular mixed-use site. Given that the Interested Parties' site was both highly sustainable and on built-up land, albeit within Green Belt, the robust conclusions appearing at paragraph 70 of the Report are hardly surprising.

63. It follows that, despite the clarity and force of Mr Turney's submissions on his primary grounds of appeal, I cannot accept them.

### **Ground 3**

64. By this Ground the Claimant seeks to challenge the Defendants' sustainability appraisal dated June 2012, which it is submitted failed to satisfy the requirements of the SEA Regulations. The general principles are not in dispute: the SEA Regulations provide the framework for development consent decisions to be subject to an assessment of their environmental effects, in line with the purposive interpretation mandated by the SEA Directive (2001/42/EC) (see, for a detailed exposition, Walton v Scottish Ministers [2013] PTSR 51).
65. Regulation 12 of the SEA Regulations provides:-

#### **“Preparation of Environmental Report**

- 12.—(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.”
66. Schedule 2 to the SEA Regulations identifies the matters which, so far as may be relevant, ought to be included in the report.
67. The jurisprudence governing the application of Regulation 12 is not substantially in dispute. I am able to draw heavily on paragraphs 19 and 20 of Mr Turney's Skeleton Argument. The following propositions emerge from the decisions of this Court in Save Historic Newmarket v Forest Heath District Council [2011] JPL 1233 and Heard v Broadland DC [2012] Env LR 233:-
- (1) It is necessary to consider reasonable alternatives, and to report on those alternatives and the reasons for their rejection;

- (2) While options may be rejected as the Plan moves through various stages, and do not necessarily fall to be examined at each stage, a description of what alternatives were examined and why has to be available for consideration in the environmental report;
- (3) It is permissible for the environmental report to refer back to earlier documents, so long as the reasons in the earlier documents remain sound;
- (4) The earlier documents must be organised and presented in such a way that it may readily be ascertained, without any paper chase being required, what options were considered and why they had been rejected;
- (5) The reasons for rejecting earlier options must be summarised in the final report to meet the requirements of the SEA Directive;
- (6) Alternatives must be subjected to the same level of analysis as the preferred option.
68. In City and District of St Albans v SSCLG [2009] EWHC 1280 (Admin) Mitting J quashed the relevant policies because reasonable alternatives to them were not identified, described and evaluated before the choice was made.
69. Section 7 of the Sustainability Assessment, “Developing and Appraising Strategic Options”, is at issue. This purported to consider reasonable alternatives in line with the SEA Directive and the SEA Regulations. Three options were specifically considered, namely (1) what was described as the “high growth” option, entailing 71,700 new homes, (2) the “medium growth” or ACS option (based on a figure of 52,050 homes – which differs from the eventual ACS figure substantially, although nothing appears to turn on this), and (3) a “low growth” option based on what was described as past house building rates (41,888 new homes). The sustainability assessment analysed each option. It concluded that the high growth option secured more housing than was necessary, and was unlikely to be achievable in any event. As for the medium growth option:-
- “[It] would provide housing in line with the Regional Plan. Its impacts would be similar to that of Option 1 without such positive and negative impacts on the corresponding SA objectives, given that less housing would be provided, but it would meet the needs of the local population, and would allow for more limited in-migration to the planned areas. This level of growth would have a positive impact on the housing and health SA objectives but a negative impact on heritage, environment, bio-diversity and GI, landscape, natural resources and flooding, waste, energy and climate change and transport SA objectives.”
70. As for the low growth option:-

“[It] proposes housing growth below that of the Regional Plan. This is only a minor positive impact on the housing SA objective, as less housing will be provided. All other SA

objectives either have a negative, neutral or unknown score. Constraining housing supply would have a negative impact on health as this could exacerbate homelessness. This level of housing provision would not meet the needs of the local population (using the 2008 based housing projections); out-migration would also be unlikely. The impact on sensitive land or sites would be less, hence the lower negative scores for heritage, environment, bio-diversity and GI, landscape, natural resources and flooding, waste, energy and climate change and transport SA objectives. There would also be a negative impact on the employment SA objective as this scenario would constrain the labour force. No further mitigation is put forward and is set out for the first two appraisals.”

71. On my understanding, Mr Turney advances two related submissions on the Sustainability Assessment. First, he submits that no consideration was given to an option which, in terms, entailed no impingement on existing Green Belt land (in which circumstances no Green Belt review would be required). Secondly, criticism is made of the manner in which the low growth option was examined, in particular in the context of the implications for the Green Belt. In regard to both submissions, Mr Turney took issue with paragraph 22 of Miss Gibson’s witness statement, which provides:-

“The quantum of development allowed for in this lower, below trend assessment of housing provisions was broadly equivalent to the level of housing provision possible without requiring development in the Green Belt, according to the Councils’ strategic housing land availability assessments. (DDB8 demonstrates how this is worked out) and the sustainability consequences described would be the same.”

72. Mr Turney submits that reaching down into Miss Gibson’s witness statement entails an impermissible “paper chase”, particularly when one factors in the need to bring into consideration the calculations contained within DDB8.
73. In his written submissions Mr Turney took issue with other passages in Miss Gibson’s witness statement which indicate how the evidence base for the Sustainability Assessment was assembled. Mr Turney did not press these points in oral argument, and in my judgment they relate to matters of such minutiae that they cannot properly advance the gravamen of the Claimant’s third ground.
74. I cannot accept Mr Turney’s submissions on his third ground. Pages 116 and 117 of the Sustainability Assessment do expressly consider the consequences of not reviewing the boundaries to the Green Belt, and the consequent advantages and disadvantages. In my judgment, having regard to paragraph 22 of Miss Gibson’s witness statement does not entail an impermissible paper chase: this is admissible, expert evidence which explains the context of the low-growth option within the Sustainability Assessment. This is the option which did not involve incursion into the Green Belt. Furthermore, I take Miss Ellis’ point that there were district-specific sustainability assessments within the scope of the overall exercise: see for example, pages 82 and 87-142 in relation to Broxtowe Borough Council. Ultimately, it was for

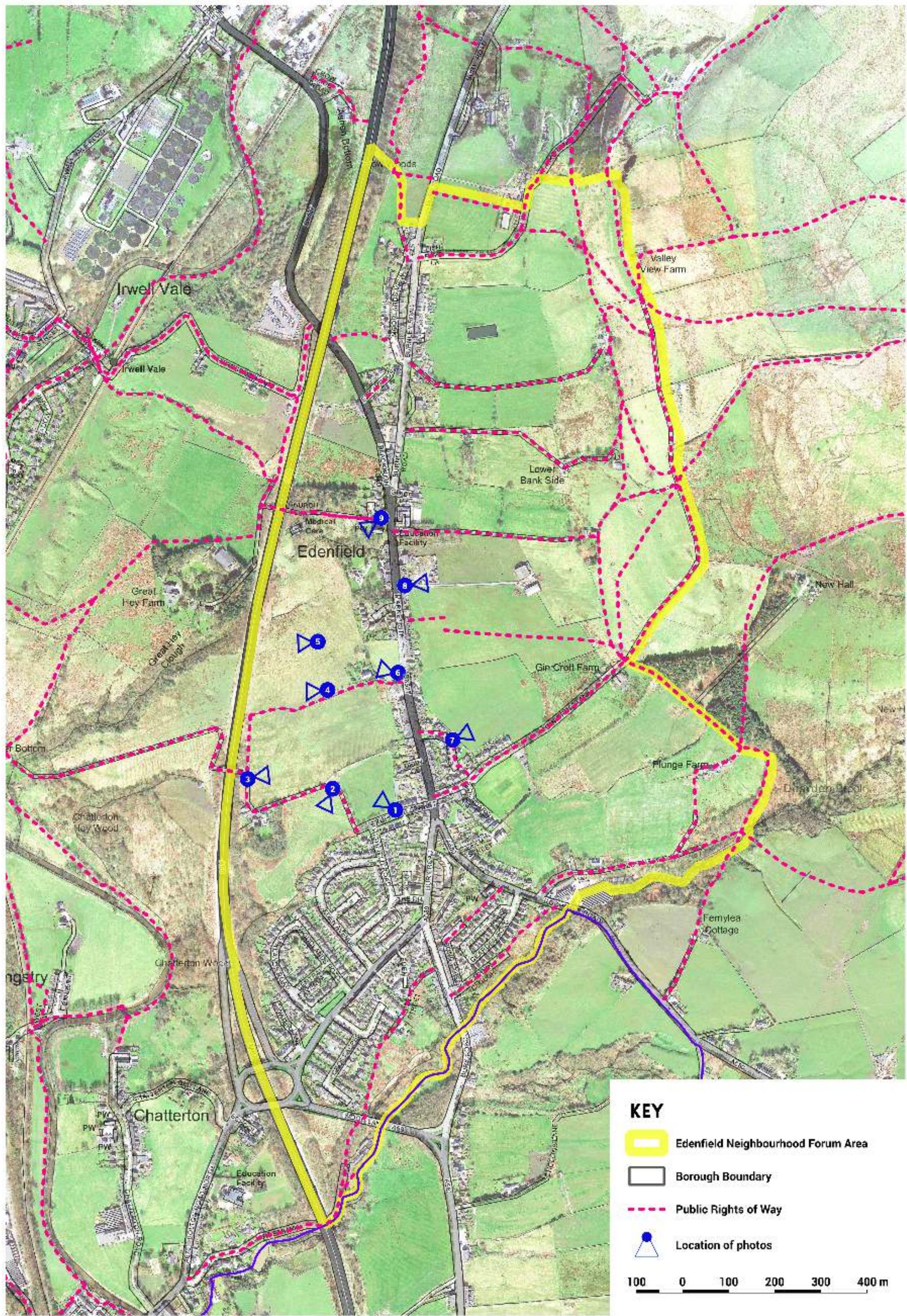
the Defendants in the exercise of their collective planning judgement to identify which “reasonable alternatives” needed to be considered, and in my view the approach taken simply cannot be impugned in these proceedings for error of law.

### **Conclusion**

75. This appeal brought under section 113 of the Planning and Compulsory Purchase Act 2004 must be dismissed.

## **APPENDIX 4**

### **VIEWPOINT MAP & PHOTOS**





**Photo nr 1. Recreation Ground Facing North West**



**Photo nr 2. PROW facing South West**



**Photo nr 3. Facing East from Public Footpath**



**Photo nr 4. Facing West from Public Path**



**Photo nr 5. Facing West from the fields**



**Photo nr 6. View from PROW (Horse and Jockey)**



**Photo nr 7. Heycroft View Facing East**



**Photo nr 8. Market Street Facing East**



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**Photo nr 9. Edenfield Parish Church and Setting**