

Charnwood Local Plan Examination

Hearing Statement on behalf of Jelson Homes

Matter 1: Duty to Co-Operate and Other Legal Requirements

May 2022

Report Title: Charnwood Local Plan Examination – Hearing Statement – Matter 1

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For and on behalf of Avison Young (UK) Limited

1. Introduction

- 1.1 Avison Young (AY) acts for Jelson Homes (Jelson) and is instructed to represent Jelson at forthcoming EiP Hearing Sessions. We set out below, Jelson's answers to the Matter 1 MIQs that are of particular concern to it. These are Leicester's unmet need for housing and the Sustainability Appraisal.
- 1.2 The MIQs note that the "*apportionment of unmet need is a key element of the Duty to Cooperate across the eight Leicestershire authorities*". We agree. We are also firmly of the view that the apportionment must be examined / tested and settled through this EiP, and not deferred to a review of this Local Plan, or dealt with through the preparation of some other Local Plan elsewhere in Leicestershire. This Local Plan is the first to be examined at the point that the Authorities have published an apportionment on which the majority appear to be agreed and so there is no more appropriate time to consider and set a framework for how this critical issue is to be addressed in Charnwood, and elsewhere going forward.
- 1.3 Notwithstanding this, and the fact that the Inspectors clearly appreciate the significance of the unmet need issue, the MIQs, as currently presented, do not allow for any testing of the apportionment or, it would appear, the merits of deferring dealing with this matter until a subsequent review of the Plan. However, we comment on both of these issues below, under those questions that we consider are most appropriate.

2. Q1.4: When will the Statement of Common Ground on Housing and Employment Need (SCG-1) be updated to apportion the unmet need for housing and employment from Leicester to 2036?

- 2.1 The Leicestershire Authorities published an updated SoCG on 13 May 2022. This appeared on the website for the Leicester and Leicestershire Strategic Growth Plan along with a number of background documents. Amongst the background documents was a Leicester and Leicestershire Housing and Economic Needs Assessment Housing Distribution Paper.
- 2.2 The SoCG stated that:

"The key strategic matters addressed in this statement are; Duty to Cooperate; L&L Housing and Employment Needs to 2036; Unmet Need to 2036; and the Apportionment of unmet need to 2036."

- 2.3 It went on to confirm the agreed position as regards housing and employment needs across the HMA and noted the work that the Councils have done on the distribution of Leicester's unmet needs. It then said that the evidence that the Authorities have gathered has informed the following apportionment:

Local Planning Authority	Average Annual unmet housing need contribution 2020 to 2036 (dwellings)*
Blaby District Council	346
Charnwood Borough Council	78
Harborough District Council	123
Hinckley and Bosworth Borough Council	187
Melton Borough Council	69
North West Leicestershire District Council	314

Oadby and Wigston Borough Council	52
Total	1,169

2.4 As regards the status of the above, the SoCG said:

"The authorities agree that the figures in the Table 4 above represent the agreed apportionment by District/Borough, of the unmet employment need for Leicester, in order to meet the overall objectively assessed need for employment land within the Leicester and Leicestershire FEMA to 2036. These figures are subject to testing through each individual Local Planning Authority's plan making."

2.5 Notwithstanding the fact that the SoCG was published as an agreed document, it also makes it clear that it is not agreed by Hinckley and Bosworth Council. We also understand that it has not yet been ratified by any of the relevant Council committees.

2.6 At some point during latter half of w/c 23 May 2022, the SoCG and all of the supporting documents were removed from the website on account of the Councils having noted an issue with the employment land figures set out in the supporting Housing and Economic Needs Assessment. It is not clear when they will be reinstated.

2.7 That all said, the publication of the updated SoCG is important because (i) this is the first time in the 5 years since Leicester first declared an unmet need that the Leicestershire authorities have published an 'agreed' apportionment and (ii) whilst there may have been an issue noted with the employment land figures, there has been no suggestion that the above noted apportionment of housing need suffers from any form of arithmetic or technical defect. Accordingly, there is an apportionment of the unmet housing need that can and must be examined and tested now.

3. Q1.5: What liaison has taken place between the Leicester and Leicestershire authorities to address the unmet need for housing and employment since the announcement of the cities and urban centres uplift in December 2020? Where is this documented?

3.1 This remains unclear and there is no document which describes exactly what liaison has taken place since December 2020.

3.2 In February 2022, the Inspectors wrote to the Council saying:

"We would like to know what meetings and liaison have taken place between the signatories to the SoCG since the announcement of the revisions to the standard method on 16 December 2021 [sic] together with an indication of the working arrangements that are in hand to pursue the apportionment of the unmet need for both housing and employment."

3.3 In its response, the Council listed the working groups that meet to discuss strategic policy issues, and the dates on which these have met since December 2020 (to February 2022). However, the Council did not describe the working arrangements that were in hand to deal the apportionment of the unmet need and it said nothing about what was being discussed, how it was being discussed and what was / was not being agreed.

4. **Q1.8: If the Statement of Common Ground concludes that more housing is needed in Charnwood to meet Leicester's unmet need, does the development strategy set out in Policy DS1 represent a robust and appropriate approach for the distribution of further housing, employment and other development in the longer term?**

Does the development strategy set out in Policy DS1 represent a robust and appropriate approach for the distribution of further housing...?

- 4.1 No. There are two issues here. First, Policy DS1 only allows development on sites that are allocated in the Local Plan or Neighbourhood Plans, are within Limits to Development, if its supply of deliverable housing sites drops below 5 years, or if a site satisfies one of a small number of exception criteria. This means that DS1 provides very little in the way of flexibility and, in reality, only allows for significant / major development to occur on sites that are not allocated, or lie beyond Limits to Development, when the Plan fails to deliver an appropriate quantum of housing. The Policy, as currently drafted, is not capable of providing for the delivery of homes required to satisfy Leicester's unmet need, over any period of time.
- 4.2 Secondly, the Council calculates that its local housing need is 17,776 for the period 2021 to 2037. The SoCG indicates that, of Leicester's unmet housing need, Charnwood should accommodate 1,248 dwellings. We do not agree that either are sound figures but deal with Charnwood's need under Matter 4 and return to the matter of the apportionment of the unmet need below. For the purposes of this Question, assume that both 17,776 and 1,248 are correct. When these figures are added together, Charnwood's housing requirement becomes 19,024. The Council claims that the Local Plan provides for the delivery of 19,461 dwellings overall. We dispute this also but even if this is correct, 19,461 only gives the Council a 2.3% buffer. This is not sound. Typically, Authorities build greater flexibility and robustness into their Plans by providing for at least 10% (and often 15% - 20%) more homes than are required as doing anything less runs the risk of the Plan failing to satisfy the requirements of the 'presumption' at paragraph 11 of the NPPF. Policy DS1, which provides only for the delivery of 19,461 dwellings, does not present a robust and appropriate approach for the distribution of further housing development over the long term.
- 4.3 Policy DS1 requires modification such that it provides for greater flexibility and the delivery of a greater number of dwellings.

Does the Statement of Common Ground conclude that more housing is needed in Charnwood to meet Leicester's unmet need?

- 4.4 As noted above, the updated SoCG indicates that each of the Leicestershire authorities is to accommodate an element of Leicester's unmet housing need. Of the 18,700 homes that need to be accommodated beyond the Leicester administrative area, Charnwood has been allocated 1,248 in the period 2020 - 2036. This equates to just 6.7% of the total.
- 4.5 The above-mentioned Housing Distribution Paper explains how IcenI arrived at the apportionment that is detailed in the Table included in our answer to Question 1.4. It tells us that it has had regard to:
- a) the functional relationships that each of the HMA authorities has with Leicester (based on migration and commuting patterns) and the strength of these. Each authority is given a % score which is a blended average of the migration and commuting outputs and is said to be a reflection of the strength of its functional relationship. The IcenI analysis uses these %'s to apportion the unmet housing need;

- b) the balance, within each authority, between planned jobs and housing growth. Where there is a notable imbalance in favour of jobs, IcenI makes adjustments to the apportionment determined under (a), removing some of the numbers from some of the Authorities and placing these with others; and
- c) what is referred to as 'deliverability' or the ability of the local market to absorb the level of growth contemplated, based on the area's physical capacity (land availability) and the rate at which the housing stock has grown historically. IcenI makes a final set of adjustments at this stage to reflect what, essentially, it thinks is likely to be achievable in terms of housing growth based on past performance.

4.6 The analysis correctly identifies Charnwood as having a very strong functional relationship with Leicester (it ranks second highest for gross migration (just behind Oadby & Wigston), highest for in-commuting and second highest for out commuting (significantly behind Blaby)). Overall, on the blended average basis, Charnwood is shown as having the second strongest functional relationship with Leicester, after Blaby. On the blended average calculation, Charnwood scores 25% which gives it a 289¹ dwelling share of the 1,169 annual average unmet need figure. Jelson has no objection to Leicester's unmet need being apportioned on the basis of functional relationships. Indeed, this, in our view, is the critical and factor. The unmet need (for housing) arises in large part because the changes that the Government has made to the way in which objectively assessed needs for housing are calculated and it has made these changes for very specific reasons – because too much strain was being placed on our rural areas and not enough focus was being placed on the renewal of our towns and cities; building in existing cities and urban centres (and close to them) ensures that new homes can maximise access to and use of existing infrastructure such as public transport, schools, medical facilities and shops; and climate aspirations demand that we aim for a spatial pattern of development that reduces the need for unnecessary high-carbon travel. It is essential, therefore, that any unmet need arising in Leicester is addressed as close to Leicester as possible.

4.7 Notwithstanding the above, and as indicated in paragraph 4.5, IcenI has gone on to make adjustments to the apportionment that derives from the 'functional relationship' analysis and there, we say, are not sound. Amongst other things, they reduce Charnwood's share of the unmet need from 25% to 6.7% (and increases North West Leicester's from 4% to 20% for example).

4.8 We have a number of fundamental issues with the approach that IcenI has taken. For the reasons we summarise in our answer to Q1.10 below, it is critical that the matter of unmet need is addressed in this Plan but it is also critical that the proposed apportionment is the subject of proper analysis and testing. And there is no other forum in which that can be done (i.e. a forum other than an EiP). Moreover, it is not appropriate for each element of the apportionment (i.e. the percentage given to each authority) to be tested independently through the preparation of each Local Plan because what is agreed in respect of one administrative area will impact on others. Finally, as this Local Plan is the first to be examined after the publication of an agreed apportionment and covers an area that has:

- a) at least the second best functional relationship with the area in which the unmet needs arise; and
- b) the land to accommodate unmet needs without causing significant environmental effects; and
- c) the market to deliver the homes that are needed

it is essential that the matter is examined through this EiP

¹ There is an error in IcenI's calculations – 25% of 1169 is 292 not 289.

5. Q1.10: Will Policy DS2 be effective in its submitted form and are any main modifications necessary to improve its clarity in relation to timescales and its effectiveness? Should the policy include a reference to strategic warehousing and distribution needs?

- 5.1 Policy DS2 is not effective and is not sound. There are two fundamental problems with it as things stand.
- 5.2 First, it provides for the matter of Leicester's unmet need to be deferred to a review of the Local Plan. This is a matter that has been known about since 2017 but which the Leicestershire authorities have consistently failed to deal with. Not tackling this critical issue now is wholly inappropriate and in direct conflict with the provisions of the NPPF. The NPPF requires strategic policies to "*...as a minimum, provide for objectively assessed needs for housing and other uses as well as any needs that cannot be met within neighbouring areas...*" unless certain factors apply and which do not arise in Charnwood (NPPF paragraph 11). Moreover, the NPPF makes it clear that Plans will only be effective where cross-boundary strategic matters have been dealt with rather than deferred (NPPF paragraph 35). Leicester has unmet needs arising now and these must be addressed now. A Plan that does not make provision for meeting an appropriate proportion of Leicester's unmet need over the Plan-period, in a sustainable way, is simply not sound. Using Policy DS2 to provide a framework for dealing with this matter at a later date is unacceptable.
- 5.3 Secondly, the timescales referred to in Policy DS2 are not sound. DS2 would commit the Council to reviewing the Local Plan within 6 months of a SoCG being agreed for the apportionment of Leicester's unmet need. As things stand, and notwithstanding the fact that a supposedly agreed position on this was articulated in May, there is no telling how long it will take the authorities to ratify an SoCG (if at all). We note, for example, that Hinckley and Bosworth Council is not prepared to agree it and it is not clear what effect this will have on the decisions made by others. The Local Plan asserts that there is a long history of collaboration across the Leicestershire authorities and this is true. But this is collaboration that has failed, in 5 years of joint working, to deliver agreement on the apportionment of Leicester's unmet housing need and, if the latest Iceni work is anything to go by, an apportionment that stands up to scrutiny. So the track record of the 'partners' is not good and there is a significant risk that they will continue to drag their heels unless they are compelled to work together and to work at pace. DS2 goes on to say that once an update to the Plan is triggered, work on the update will be commenced within 12 months (not immediately) and a revised Local Plan will be submitted for Examination within 3 years of the update commencing. This means that, if the matter of Leicester's unmet need is deferred and not dealt with through the current EiP, it will probably be at least 5 years before provision is made for it to be addressed (in Charnwood). This is simply not acceptable when Leicester has unmet needs arising now.
- 5.4 There is, therefore, a fundamental and fatal problem with DS2 that cannot be addressed by Main Modifications (the matter of Leicester's unmet needs simply cannot be left to be addressed under DS2). However, if the Inspectors choose to go against the provisions of the NPPF then DS2 clearly needs to be modified so that it provides for any update to the Local Plan to be dealt with significantly more quickly than is currently contemplated. That could potentially be achieved by DS2 identifying certain milestones that, if not achieved, would render the current Local Plan out of date.

- 6. Q1.11: What is the role and status of the Strategic Growth Plan (EB/DS/6)? What consultation has been undertaken and is it subject to external scrutiny? How much weight does the Strategic Growth Plan have for plan making purposes?**
- 6.1 The Strategic Growth Plan has not been the subject of any external / independent scrutiny. It is not a statutory plan and it can carry no weight in either Plan-making or decision-taking processes (see below).
- 7. Q1.16: Is it clear how the Sustainability Appraisal (SD/5 & 6) has informed the preparation of the Plan and its policies at each stage, and how mitigation measures have been dealt with?**
- 7.1 See Q1.9 below.
- 8. Q1.17: Does the Sustainability Appraisal robustly test the Plan against reasonable alternatives for the scale and distribution of housing, employment, retail and other types of development set out in Policy DS1?**
- 8.1 See Q1.9 below.
- 9. Q1.18: What alternative spatial strategy options were considered, which were discounted and are the reasons for this clear? What was the purpose of the 'additional focussed assessment' in Appendix G of the Sustainability Appraisal and how has this informed the development strategy in Policy DS1?**
- 9.1 See Q1.9 below.
- 10. Q1.19: Have any concerns been raised about the Sustainability Appraisal and, if so, what is the Council's response to those?**
- 10.1 Jelson has made it clear that it has numerous concerns about the SA and the way in which the Council has shaped its Development Strategy around it. These can be summarised as follows:
- a) the SA began by assessing 11 distribution scenarios and two levels of growth. Three of these options included so called 'new settlements', one of which is our Client's scheme at Cotes. It is not clear why Cotes was been categorised as a new settlement, as opposed to one of the sites that forms part of the Loughborough Urban Centre. By categorised Cotes as a new settlement, subsequent aspects of the SA have been skewed;
 - b) for the purposes of testing the spatial options, the SA made assumptions about how much development each location within each option should accommodate. These quanta were never themselves explained, or tested and were not based, so far as we can tell, on any form of robust analysis of settlement sustainability or site capacity. Yet they went on to play an important part in the SA process. The SA should have started by assessing settlement sustainability and then gone on to assess how, through developing sites that are suitable and available for development, growth could be aligned with this. By starting with an assumed settlement capacity (which reflected what the Council thought might be available in terms of land, rather than the sustainability of the settlement), all subsequent stages of the assessment were to an unhealthy extent pre-determined;
 - c) the SA has tested its various distribution scenarios against the Leicestershire Strategic Growth Plan which, as noted above, is not a development plan document, has never been subject to any form

of independent examination and, in the light of the fact that it is heavily reliant on the delivery of a new southern A46 which has since been cancelled, is wholly inappropriate;

- d) the SA then assessed a refined list of 9 options, including two referred to as 'Hybrid'. Options 1 – 4 were low growth options (which best reflect the level of growth now being planned for now) and Options 5-8 were high growth options. Hybrid was tested for both low growth and high growth. Our Clients land at Cotes was the only 'new settlement' that made it through to this stage of the assessment and it featured in Options 4 and 7. There were only two noteworthy differences between Option 4 and Hybrid (Low Growth) and they were: (i) Option 4 contained Cotes, whereas Hybrid did not; and (ii) Hybrid assumed the delivery of 800 homes in 'Other Settlements' (settlements that are considerably less sustainable than Loughborough and the proposals at Cotes). The SA concluded that, from a 'wider environmental perspective' the Hybrid (Low Growth) option performed better than any of the other options and it was the Hybrid option that the Council, therefore, went on to build its strategy around;
- e) in the SA, the Hybrid option performed better than Option 4 in respect of: landscape; historic environment; healthy lifestyles; and housing. Option 4 performed better than Hybrid in terms of accessibility. But the SAs assessment of these and other matters was not sound and we explain why in our Regulation 19 Representations, highlighting as necessary, the flaws as they apply to Cotes;
- e) there are also obvious issues with the way in which the overall scores for Option 4 and the Hybrid option compare. These include:
- landscape character – it cannot be right that a more compact development strategy (Option 4) would have a greater adverse effect on the landscape than a significantly more dispersed strategy which envisages 800 homes being delivered across a large number of small villages (Hybrid);
 - climate change – likewise, it must be the case that a strategy that focusses more development on the main settlements (and locations immediately adjacent to these) will deliver better outcomes for climate change than a more dispersed pattern of development by reducing the need to travel by private car and / or reducing the length of the journeys that are made by car (increasing the ability to rely on electric vehicles with shorter ranges and reducing levels of pollution);
 - healthy lifestyles and active lifestyles – Option 4 scores worse than the Hybrid option. For the Hybrid option, the SA states that this is: *likely to generate positive effects in the majority of settlements, ranging from minor benefits in the service centres to potentially significant positive effects at Loughborough and Shepshed. This is related primarily to good accessibility with regards to health care, and opportunities to promote active living and recreation. However, negative effects are predicted in relation to the loss of land that may be considered locally important for recreation, and also where access to health care might be poor (for example in the 'other settlements'). On balance, the overall trend for the borough ought to be an improvement against the baseline position, despite some areas / people perhaps experiencing negative effects. Consequently, a potentially significant positive effect is predicted.* With Option 4 focussing a greater proportion of development in locations where residents would have the best access to healthcare and facilities that promote healthy living, and having a lesser propensity to impact on land that residents value for recreation (because of its more focussed / compact nature), it is difficult to understand how it would perform worse than the Hybrid option in this regard;

- housing – Option 4 scores worse than the Hybrid option in spite of it delivering more housing and more housing in those parts of the Borough where the need arises (Loughborough, the edge of Leicester and the Service Centres); and
- accessibility – overall, these two options score similarly in respect of accessibility but, again, this cannot be right when Option 4 focusses more development in the most accessible parts of the Borough.

f) because the low growth Hybrid option only considered a scenario in which land needed to be found for 7,800 new homes (rather than 8,951 now targeted), the Council conducted a sensitivity test to determine at what point growth within and adjacent to settlements at the different levels of the hierarchy would give rise to significant adverse effects. As in earlier rounds of the SA, Cotes, wrongly, was not assessed as part of Loughborough but, instead, as an opportunity for a new settlement. Its proximity to Loughborough and, in particular, the town centre, railway station and employment on the town's eastern side were not acknowledged. However, for Cotes, the SA only highlighted concerns in respect of soils, heritage and landscape and noted that effects as regards the latter two could be mitigated. The reality is that Cotes could add 1,450 homes to Loughborough's capacity without giving rise to any significant adverse effects. Yet its potential contribution to sustainable growth appears not to have been properly examined.

10.2 Ultimately, we suspect that it is the erroneous categorisation and scoring of Cotes that resulted in a downgraded assessment for Option 4, although there are plainly also issues with consistency of scoring across the options and a clear and inappropriate bias towards the Hybrid option. Were the categorisation and scoring issues to be corrected (and they could be corrected relatively simply), Option 4 would be proven to be by far and away the most sustainable of the options, and the delivery of development at Cotes a necessary component of a sustainable pattern of growth. Further, or alternatively, even if the Council were to maintain the Hybrid approach but select the most sustainable sites and delete sites where significant adverse effects can be avoided (see Matter 2), Cotes would be allocated in the Plan.

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