

WRITTEN REPRESENTATIONS ON DUTY TO CO-OPERATE

Introduction

1. These representations are made on behalf of the Harpenden Green Belt Association, the Harpenden Society and Joanne Whitehead (“**the Representors**”). They reflect oral representations made at the Initial Hearing on 26 October 2016.
2. Each of the Representors responded to the consultation held in Spring 2016 under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (“**the 2012 Regulations**”) stating their view that St Albans District Council (“**the Council**”) had not complied with the Duty to Co-operate under s.33A of the Planning and Compulsory Purchase Act 2004 (“**the DtC**”) and indicating a wish to be heard at the oral part of the examination. However, at the time of those representations, only a limited amount of information was publicly available in relation to the DtC. These representations are made with the benefit of further information and documents, including those put in evidence by the Council through its Statement of Compliance with the Duty to Co-operate (“**the Statement**”) and others obtained under the Freedom of Information Act 2000 and/or Environmental Information Regulations 2004 (“**EIR**”).
3. Documents which are referred to below which have not already been submitted to the examination, and which may not be easy to immediately locate, are enclosed: this includes the relevant responses to the Council’s Reg. 18 consultation in 2014. Responses under Reg. 20 (i.e. to the Reg. 19 consultation held following publication of the SLP), which the Inspector already has, are not enclosed. Other readers will find these on the Council’s consultation portal: to make searching easier, a list of relevant ID numbers is given in Appendix 1.

Executive Summary

4. The Council has failed to comply with its legal duty under s.33A of the Planning and Compulsory Purchase Act 2004 in relation to the following:
 - (1) its dealings with Central Bedfordshire Council (“**CBC**”) and Luton Borough Council (“**Luton**”), particularly with respect to strategic matters affecting Harpenden;
 - (2) its dealings with Hertfordshire County Council (“**HCC Highways**”), the Highways Agency/Highways England, CBC and Luton as highway authorities;
 - (3) its dealings with Hertfordshire County Council as education authority (“**HCC Education**”) as regards a proposed new secondary school for Harpenden; and

- (4) its failure to have regard to the activities of the Local Enterprise Partnership (“LEP”), as required by s.33A(2)(b).

Scope, Timing and Content of the DtC

5. By s.33A(1) of the 2004 Act, a duty is placed on local planning authorities and other public bodies to

“co-operate...in maximising the effectiveness with which activities within subsection (3) are undertaken.”

6. By s.33A(3)

“The activities within this subsection are –

- (a) *the preparation of development plan documents....so far as relating to a strategic matter”.*

By s.20(5),

“The purpose of an independent examination is to determine in respect of the development plan document - ...

- (c) *whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.”*

7. By virtue of s.37(3) of the 2004 Act, in the case of the Council, the Strategic Local Plan (“SLP”) is one development plan document, the Detailed Local Plan (“DLP”) another. The Council must comply with the DtC in relation to the preparation of each; each is subject to its own independent examination at which that compliance will be tested.

8. The Inspector is referred to *Samuel Smith Old Brewery (Tadcaster) v Selby DC* [2015] EWCA Civ 1107; [2016] PTSR 146 (copy at **Enclosure 1**) for authoritative guidance from the Court of Appeal on the timing and scope of the DtC. That case concerned the question whether the DtC applied to an authority whose plan had been submitted for examination and then suspended for the authority to carry out further work; s.33A had been brought into force during the suspension. The Court of Appeal held that the DtC applied, and only applied, to the stage of the plan-making process that was properly to be regarded as plan preparation under s.19 of the 2004 Act, which included activities preparatory to plan preparation but was distinct

from the process of independent examination of the plan under s.20: see in particular paragraphs [28] and [31]-[35]. Activities of “preparation” had necessarily ceased by the time the plan was submitted for examination. Consequently, the local authority was held not to be subject to the DtC in the period whilst the examination was suspended.

9. This decision underlines the fact that the DtC under s.33A is not a generalised, unfocused obligation to meet or work with other public bodies. It is a specific obligation to co-operate in the preparation of the relevant development plan document. It is that specific obligation with which the Inspector is here concerned.

10. That is one reason why it is not sufficient for the Council simply to list a series of meetings attended, as it has done in paragraph 44 of its representations to the Initial Hearing (“**the Council’s Representations**”). Activities are only relevant to the DtC if they relate to the preparation of the SLP. Joint working in relation to other matters does not count. This list does not show what part of those meetings, if any, related to preparation of the SLP. Other reasons for the inadequacy of a bland list of meetings like that found at paragraph 44 are that it does not satisfy the requirement in PPG para 11 to demonstrate how the particular activities relied on have “*influenced the plan*” or why the meetings evidence “*sustained joint working with concrete actions and outcomes*” rather than just “*an exchange of correspondence, conversations or consultations between authorities*”, as PPG para. 11 also makes clear is required.

11. There are three important consequences of the fact that the relevant acts of co-operation must relate to “the preparation” of the development plan document under examination:

(1) The first is that compliance with the DtC must come early enough to influence the content of the development plan document, here the SLP. It is no good preparing the plan and only then trying to bolt on appropriate co-operation. The need to work constructively “*from initial thinking*” and “*at the outset at the plan scoping and evidence gathering stages before options for the planning strategy are identified*” is emphasised by NPPF para. 181 and PPG paragraphs 9 and 12. As the Planning Advisory Service says in “Doing Your Duty – Practice Update” (copy at **Enclosure 2**), under the heading “Start early and carry on”

“*Co-operation has to be early enough in the process to ensure any outcomes influence the content of the plan*”.

This is because co-operation which brings about results which do not influence the content of the plan is not co-operation in relation to the preparation of the plan. The only relevant “outcomes” of co-operation are those which inform the plan.

In the present case, the Broad Locations were selected in July 2014 and the SLP published on 8 January 2016. It has not changed since. Yet the Council's Representations rely very heavily (at para 44) on meetings taking place after January 2016, and in some cases (para. 45) only after the plan had been submitted. None of these could have influenced the content of the SLP. In so far as any of them relate to preparation of any development plan document, they are likely to relate to the DLP, not the SLP, which remains in the course of preparation.

- (2) Second, the 2004 Act itself (in addition to the NPPF and PPG, to which regard must be had by virtue of s.33A(7)) gives some assistance in understanding the expected outcomes of proper co-operation under s.33A. As the Court of Appeal noted in *Selby*, the activities of "preparation" are governed by s.19 of the 2004 Act. In that section, Parliament has laid out a list of things to which the Council must have regard in the preparation of the SLP. They include, at 19(2)(i), "*the resources likely to be available for implementing the proposals in the document*". In relation, in particular, to infrastructure, an authority is only going to have an understanding of the resources likely to be available for implementing its proposals if it has effectively co-operated with those DtC bodies concerned with infrastructure.

It is clear, however, from the Infrastructure Delivery Schedule at Appendix 5 of the SLP that, contrary to s.19, the Council has not "*had regard to the resources likely to be available for implementing the proposals in the document*", particularly (but not exclusively) in relation to highways. It has simply no idea what highways work is required, whether it is technically possible, what it will cost, or how it will be funded. This is, of itself, a strong indicator that the Council has not complied with the DtC with the relevant highway authorities.

- (3) Third, the DtC is a duty to be complied with in the preparation of this development plan document, the SLP. If that duty has not been complied with, the Inspector has no choice but to recommend non-adoption, pursuant to s.20(7A) of the 2004 Act (unless the plan is voluntarily withdrawn). A failure to comply with the DtC in respect of this development plan document cannot be cured by a promise to comply with the DtC in relation to another development plan document, namely the DLP. Yet this is what HCC Highways are suggesting. The HCC Highways position statement (set out in italics at the end of paragraph 2.11 of its representations to the Initial Hearing ("**the HCC Highways Representations**")), whilst no doubt a well-meaning attempt to move things along, is not a position which the Inspector is lawfully permitted to accept.

Risk of Distortion

12. The DtC is not simply owed by one public body to another. It is a duty which the Council and other DtC bodies also owe to the residents of the District. Those who live and work in the District are entitled to have a plan which is properly informed by the required degree of collaboration.
13. Whilst that point may seem obvious, it is one which may be lost sight of, given the selection of those invited to sit “around the table” on the DtC issue. They include public authorities and developer interests, but no residents. This has tended to skew the written representations and oral discussions towards particular issues. “Around the table”, the primary focus has been on the first strategic priority listed in NPPF para. 156, namely “*the homes and jobs needed in the area*” and discussion has almost exclusively concentrated on the growth proposed for East Hemel Hempstead. Residents, however, are at least as much concerned with the other strategic priorities listed in NPPF para. 156, including the provision of infrastructure and the “*conservation and enhancement of the natural and historic environment, including landscape.*” They are also concerned to ensure that the DtC has been complied with in relation to all aspects of the SLP, including the growth proposed at St Albans and Harpenden, and not just at East Hemel Hempstead.
14. The Inspector is asked to bear in mind when making his determination on the DtC that the choice of invitees for the Initial Hearing is likely to have led to a particular emphasis on certain aspects of the DtC to the exclusion of others, and to ensure that all aspects are comprehensively considered.

Failure to Co-operate with CBC and Luton

15. Harpenden lies on the District and County boundary with CBC, with Luton very close by. This gives rise to a number of cross-border infrastructure issues: for example, Harpenden’s traffic moves to and from Central Bedfordshire and Luton, children from outside the District attend schools in Harpenden: even Harpenden’s sewage is exported to a treatment works in Central Bedfordshire.
16. The selection of the NW Harpenden Broad Location by the Council for housing development raises further critically important strategic cross-border issues, because this Broad Location will bridge the current Green Belt gap between the built environment of Harpenden and the County/District boundary. That obviously raises a question, as between Central Bedfordshire and the Council, about where the appropriate, long-term, Green Belt boundary should be. The Green Belt boundary proposed by the Council is incredibly weak, being only an imaginary

line, not reflecting any existing feature on the ground and not being compliant with NPPF para. 85¹.

17. Moreover, on both sides of the administrative boundary, the landscape to the north of Harpenden has protected status: the Council designates it a “Landscape Conservation Area”, whilst CBC designates it “an Area of Great Landscape Value”. There is consequently a cross-border strategic issue in relation to protection of the landscape.
18. The importance of these cross-boundary issues is underscored by the fact that CBC has indicated a strong and consistent interest in seeing the NW Harpenden Broad Location expanded into Central Bedfordshire, to meet some of its own or Luton’s OAN. It raised this in both its Reg 18 and Reg 19 consultation responses and in the one meeting which appears in the Council’s DtC evidence (see below). Earlier this year, CBC put out a “call for sites”, it having failed its own plan examination on the DtC. Legal & General, which controls the northern part of the NW Harpenden Broad Location, has answered that call by promoting further land it controls north of the County/District boundary (Site NLP228), adjacent to the NW Harpenden Broad Location. The graphic at **Enclosure 3** illustrates the two adjacent sites, the NW Harpenden Broad Location being promoted by the Council for 500 homes, NLP228 being promoted by L & G in Central Bedfordshire and understood to accommodate approximately 900 homes. If this proposal is adopted by Central Bedfordshire, Harpenden will be required to take some 2,200 new homes (c.800 within the existing town boundaries; 500 on Green Belt at NW Harpenden and 900 at NLP228), which would mean that Harpenden would be required to grow by about 18% - a higher rate of growth and a greater relative loss of Green Belt than at either St Albans or Hemel Hempstead. The consequences for Harpenden are very significant indeed.
19. Given these vitally important cross-boundary issues relating to the Green Belt, landscape, transport and other infrastructure, the residents of Harpenden are entitled to see a considerable degree of joint working having taken place between the Council on the one hand, and CBC and Luton on the other. There is no justification for treating the cross-border issues relating to Harpenden as of any less importance than those relating to Hemel Hempstead.
20. The evidence produced by the Council, however, demonstrates no attempt to grapple with the strategic issues facing Harpenden and a remarkably low level of contact between CBC/Luton and the Council. There has been no joint working on the Green Belt, on traffic or other infrastructure, or on protection of the landscape at all.

¹ The Inspector is referred to Section G of the Harpenden Green Belt Association’s response to the Reg 19 consultation.

21. As regards its dealings with CBC, the Council has produced evidence of only one meeting, which took place on 16 March 2015. The agenda for this is at [**Statement Appx 84**]; the meeting notes at [**Statement Appx 85**]. Otherwise the only evidenced contact between the two councils has been when CBC has responded to the Council's Reg 18 (**Enclosure 4**) and Reg 19 consultations: which, as PPG paras. 9 and 11 make clear, is insufficient to comply with the DtC.
22. The meeting on 16 March 2015 took place some 18 months after work on the SLP had commenced (with the setting up of the Planning Policy Committee, following the Council's rejection of the earlier Core Strategy in 2012); 8 months after the Broad Locations had been selected² and after the Council had drawn up a draft plan and submitted it to consultation under Reg. 18 in the Autumn of 2014. It is hardly evidence of "*local authorities working together from the outset at the plan scoping and evidence gathering stages before options for the planning strategy are identified*", as required by PPG para. 12. Furthermore, there are no relevant outcomes of that meeting which had any influence on the SLP. It was nothing more than a cosy chat.
23. The wilful blindness of the Council to the significance of the DtC with CBC is illustrated by the cavalier way in which it has brushed off concerns about the prospect of development of NLP228. When a PPC member referred to local concern about CBC's call for sites at the PPC meeting on 14 June 2016 (agenda item 10), Mr Briggs sought to reassure the councillor that NLP228 was "one of over 830 sites" submitted to the call for sites. He omitted to mention that it was the only one of those 830 sites which CBC had consistently raised in all of its communications with the Council on the SLP.
24. Further, on 14 June 2016, Harpenden Town Council wrote to the Council expressing its concerns about the implications for the DtC of any failure by the Council and CBC to fully and properly assess the implications of a potential 1,400 dwelling strategic urban expansion of Harpenden (**Enclosure 5**). It stated that the situation did offer an opportunity for the traffic and wastewater modelling work which the Council was then undertaking to consider the impact of development of NLP228 as well as the growth proposed in the SLP. Despite the request that the letter be "*carefully considered*" and "*fully discussed*" by PPC, it is not clear that it was ever even seen by PPC members: certainly it does not appear as an agenda item for the PPC meetings of 14 June or 12 July 2016 before the SLP was submitted for examination. In any event the Council chose not to take up the obviously sensible suggestion that the traffic and wastewater modelling look at the potential for development of NLP228 as well as the growth in the SLP.

² The Inspector is referred to Section E of the Harpenden Green Belt Associations response to the Reg 19 consultation for further details of this process.

25. As regards its dealings with Luton, the Council has produced evidence of two meetings, which took place on 13 March 2015 and 2 February 2016. The agenda for the first is at **[Statement Appx 87]**, the meeting notes at **[Statement Appx 88]**. The agenda for the second is at **[Statement Appx 90]**. No agreed meeting notes have been produced, but a draft may now be found appended to the draft minutes to the PPC meeting on 11 October 2016.
26. Again, these meetings with Luton took place too late to influence the SLP and there are no relevant outcomes from them.
27. In March 2015, Luton did ask to be involved in transportation work commissioned if the NW Harpenden Broad Location was taken forward: the NW Harpenden Broad Location has of course been taken forward, but Luton has not been involved in the (limited and very recent) transportation work commissioned. The draft meeting notes for February 2016, which have been put together recently with this examination in mind, refer coyly to Luton being involved “*at the appropriate time*”. Wouldn’t the appropriate time be right at the outset, particularly since Luton has been carrying out traffic modelling to inform its own local plan since 2013 and so presumably has useful information to share with the Council?
28. It is submitted that when the Inspector asks himself whether the Council has submitted “*robust evidence*” of the efforts it has made to co-operate with CBC and Luton on strategic cross-boundary matters, bearing in mind that “*effective co-operation is likely to require sustained joint working with concrete actions and outcomes and is unlikely to be met by an exchange of correspondence, conversations or consultations between authorities alone*”, there is only one possible answer: it has not.

Highways

29. All highway authorities are DtC bodies by virtue of Reg 4(1)(k) of the 2012 Regulations: here, there are (at least) four relevant highway authorities: HCC Highways, Highways England (formerly the Highways Agency), CBC and Luton. As PPG paragraph 13 says,

“Planning for infrastructure is a critical element of strategic planning”

and PPG para 14:

“Close co-operation between district local planning authorities and county councils in two-tier local planning authority areas will be critical to ensure that both tiers are effective when planning for strategic matters such as minerals, waste, transport and education.”

30. There is, inevitably, an overlap between considerations of soundness and the DtC when it comes to infrastructure planning, but that does not mean that the DtC is devoid of content in relation to infrastructure: on the contrary, the deliberate inclusion of authorities concerned with infrastructure provision (such as highway authorities and other transport bodies and County Councils) in the list of DtC bodies, together with the references to infrastructure planning in NPPF paras.156, 181 and PPG para. 13 underscore the importance of effective collaboration between public authorities when it comes to infrastructure planning.
31. HCC Highways has repeatedly made it clear to the Council that it needs to carry out detailed traffic modelling to inform the spatial choices in the SLP, to identify the potential scale of highways impacts and to identify and cost suitable and viable mitigation measures.
32. It should be noted that such District-wide traffic modelling is quite distinct from the particular project in relation to the Maylands Growth Corridor which is referred to in the second bulletpoint in paragraph 2.11 of HCC Highways Representations³.
33. At the Initial Hearing, Mr Flowerday for HCC Highways suggested that the first communication of the need for appropriate transport modelling came with HCC Highways' Reg. 18 consultation response in 2014, but it goes back much further than that. At **Enclosure 6** is a copy of HCC Highways' response to a consultation in 2009 on the Council's then emerging Core Strategy. At page 7-8 it addresses "AOS 5 (north part): east of St Albans at Oaklands Campus south of Sandpit Lane", which is now known as the East of St Albans Broad Location, stating:

"Clearly, a development of this scale (up to 1000 homes) will require major road and junction improvements. There are significant traffic implications associated with the proposal...To date the highway authority are not aware of any feasibility work that has been carried out to predict how the proposal or the links will impact on the existing road network...bearing in mind the scale of the proposal and the lack of any information associated with sustainability and access arrangement it is difficult for the local highway authority to comment in more detail."

At page 8 it addresses "AOS 8 (south west part) north of Harpenden, Luton Road/Ambrose Lane" – this is the southern part of what is now known as the NW Harpenden Broad Location. The response states:

³ The Maylands Growth Corridor study is described in more detail in HCC's response to the Reg. 19 consultation, under the heading "SLP 13a – East Hemel Hempstead (North) Broad Location – Mixed Use & SLP 13b East Hemel Hempstead (South) Broad Location – Mixed Use". It will be noted that the modelling work only considered approximately one-third of the potential growth at East Hemel Hempstead but nevertheless indicated that minor improvements would not be sufficient to prevent serious delays and safety issues. At that stage the only mitigation measure with any long-term benefit to potentially cope with the forecast growth was seen to be a large-scale remodelling of M1 J8, at a (then) estimated cost of £80m.

“This area of search represents a large site that will have a significant impact on the road network in the area. Issues surrounding network capacity, access and sustainability must be fully investigated at the earliest opportunity. To date the highway authority are not aware of any work that has taken place to support this proposal.”

34. Moreover, for some time a Local Plan Protocol has existed in Hertfordshire, which is designed specifically to set out the information required by HCC Highways from districts in the plan-making process. It is understood that a version of this Protocol has been in existence since 2011⁴.

35. The Local Plan Protocol has been through a number of iterations. Copies of the versions dated October 2014 and May 2015 – i.e. those which were in effect at the time of the Reg. 18 and Reg. 19 consultations respectively – are at **Enclosures 7** and **8**. They explicitly state at the outset that

“This Protocol has been developed to enable Districts to understand the role and expectations of the County Council (in its capacity as Local Highway Authority) throughout the Local Plan process. The intention of the Protocol is to set out the level of information expected by the Local Highway Authority at each stage of the Plan making process to ensure that a consistent approach is applied across the County...”

The overall aim of the protocol is to ensure that sufficient evidence is available by the time of an Examination in Public (EiP) so that the County Council as Local Highway Authority are able to support the Development Strategies and Infrastructure Development Plans being brought forward in Hertfordshire. It will ensure that the expertise and resources of the authorities is used as effectively as possible to achieve the best outcome for the local community whilst reducing the work required by each authority.”

36. The Local Plan Protocol, which the Representors understand to have been developed by HCC Highways in conjunction with all the districts in the County, including the Council, sets out very clearly what the expectations are at particular stages of the plan-making process. For example, the diagram at page 2 (of the 2014 version) and Table 1 at page 9 demonstrate that whilst existing traffic and transport data will be sufficient for evaluations at the “Issues and Options” stage, modelling of highways impacts associated with emerging development proposals and testing of mitigation options will be required at the stage of assessing and developing “Preferred Options”, and beyond. The Protocol sets out clearly what data and modelling systems HCC Highways already hold and offers HCC Highways’ assistance in advising districts on the most appropriate form of assessment to build new models for the

⁴ The Representors do not have a copy of the 2011 version, or any other versions than those enclosed, but HCC Highways would no doubt be able to assist in this regard.

districts' work. There are sections on the role of the Highways Agency/Highways England and on how HCC Highways will assist districts to identify costs and funding mechanisms for the purpose of their Infrastructure Delivery Plans.

37. The HCC Highways' Representations identify, at para. 2.3, some challenges to the operation of the Protocol. However, the Council could be in absolutely no doubt whatsoever from the Protocol that it was expected to carry out appropriate traffic modelling to inform the SLP and that HCC Highways would assist them in that.
38. No doubt HCC Highways would also have pointed this out to the Council in advance of the Reg. 18 consultation, had the Council followed its own agreed methodology for evaluating proposed sites to be taken out of the Green Belt. As explained in Section C4 of the Harpenden Green Belt Association's Reg. 20 response, in March 2014 PPC agreed a methodology for the evaluation of 8 Green Belt sites. The methodology required officers to have "detailed discussions" with HCC Highways before scoring the sites on traffic and access grounds. As revealed by an EIR response⁵, the Council did not approach HCC Highways for advice at all, before proceeding to score the sites and, on the basis of those scores, selecting the Broad Locations which are now in the SLP.
39. HCC Highways' response to the Reg. 18 consultation (**Enclosure 9**) was unequivocal in stating that

"Due to the scale and location of the broad locations listed in the Spatial Strategy (part b) there is a requirement for traffic modelling to be carried out to allow the highway authority to fully assess the impact of the proposals on the local road network. There is also a requirement to prepare sustainable transport studies which will also lead to specific mitigation. The modelling and sustainable transport planning will help identify and design specific infrastructure which can inform the supporting IDP. At this stage the highway authority are not aware of this level of detail being prepared for any of the sites."

40. The Highways Agency's response to the Reg. 18 consultation (**Enclosure 10**) was equally critical of the lack of transport evidence to support the choices made by the Council. This took the form of a Technical Note from the Agency's transport consultants, AECOM. The Inspector is referred in detail to this Note, which makes clear the expectation that a transport evidence base which assesses the district's planned growth, in particular the broad locations, "should already be in preparation" (para. 5.11). The Note also criticises the assertion that there are no "showstopper" items of infrastructure, given the lack of evidence to support this assumption (paras. 3.5, 5.9).

⁵ At Enclosure 4 to the Harpenden Green Belt Association's Reg. 20 response, dated 20 November 2014

41. It appears from the HCC Highways Local Plan Protocol that the Highways Agency/Highways England also have their own independent protocol setting out their expectations of Districts during the plan-making process, which has existed at least since 2014 (see **Enclosure 7**, page 5 and **Enclosure 8**, page 6)⁶.

42. It is therefore quite astonishing that the Council proceeded to publication of the SLP without commissioning the required traffic modelling. At this point HCC and Highways England again reiterated their 2014 consultation responses, stressing the need for modelling. HCC said (summary, part 4):

“The strategic broad allocation sites equate to approximately half the growth and as such there is still a need to model the cumulative effect of development across St Albans District to allow the highway authority to fully assess the impact of the proposals on the local road network. There is also a requirement to prepare sustainable transport studies which will also lead to specific mitigation. The modelling and sustainable transport planning will help identify and design specific infrastructure which can inform the supporting IDS. Based on emerging information it is apparent that some fairly significant infrastructure will need to be delivered to support the plan it is not yet clear whether it will be feasible to deliver these interventions in the timescales required as such it is important that these issues are identified with appropriate mitigation measures.

Currently there isn't enough technical evidence and demonstrable understanding of the mitigation measures required for this Plan period. HCC Highways are unable at this stage in the plan process to confirm that any interventions when identified can be deliverable.”

43. The message was clear: there is insufficient transport evidence to show what infrastructure work will be needed, what it will cost or whether it is deliverable. Yet the Council continue, repeatedly, to say that there are “no showstoppers”, as indeed Mr Briggs told the Inspector at the Initial Hearing. This is a deliberate sleight of hand: it seeks to turn “there is no evidence whether or not there are any showstoppers (because the evidence is wholly inadequate)” into “the evidence shows that there are no showstoppers”. HCC Highways’ Reg. 19 consultation response makes plain that there is insufficient evidence for HCC to say that there are no “showstoppers”, as Mr Flowerday confirmed remains the case.

44. In any event, the purpose of developing a proper transport evidence base to inform the SLP is not simply to identify whether or not there are “showstoppers”: it is to ensure that development is guided towards the best and most sustainable locations and that public and private resources are used most effectively. For this purpose, the Council needed to do what the

⁶ The Representors do not have a copy of this Protocol but no doubt HCC Highways would be able to assist in this regard.

Local Plan Protocol makes clear it should do: commission traffic modelling at the stage of moving towards preferred options. This means that it should have commissioned that modelling *before* it chose the Broad Locations in July 2014.

45. The Inspector is referred to a letter from HCC Highways to the Council dated 27 May 2016 (**Enclosure 11**). This sets out the history of a number of meetings between HCC Highways and the Council at which HCC Highways voiced its concerns about the Council's lack of co-operation with its requests. It is disappointing that neither the Council nor HCC Highways thought it appropriate to bring this letter to the Inspector's attention⁷, particularly as it refers to several meetings which have apparently not been minuted. It makes clear that the Council agreed to undertake some very limited traffic modelling only when pressed to do so by HCC Highways at a meeting on 27 April 2016 – some 4 months after the SLP had been published. It also notes the inadequacy of the "desk top study", which was all that could be commissioned at that stage, and the inadequacies of the developers' traffic work which is also relied on by the Council in its Infrastructure Delivery Plan.
46. Following the letter of 27 May 2016, a meeting took place on 13 June 2016, the draft meeting notes of which are at **Enclosure 12**. It was agreed at this meeting that the Council and HCC Highways would agree a "Further Transport Evidence Base Work Plan" and would also seek to formulate a "position statement" from HCC Highways to be submitted to the examination. The "Further Transport Evidence Base Work Plan", agreed some time after the meeting on 13 June 2016, may be found at [**Statement Appx 169**] with the position statement at [**Statement Appx 171**].
47. The Council formally responded to HCC Highways' letter of 27 May 2016 on 27 July 2016, imminently before the SLP was submitted for examination (**Enclosure 13**)⁸. In this letter, it was suggested that the Local Plan Protocol was unsuitable for authorities with a two-stage process (i.e. SLP followed by DLP). As far as the Representors are aware, it was only after HCC Highways' letter of 27 May 2016 that the Council suggested this. In several reports to

⁷ It is not clear that this letter was seen even by PPC members at the time it was sent. It was certainly not placed on the agenda for the PPC meeting on 14 June 2016. The PPC did, however, receive an Information Report at that meeting on the SLP Infrastructure Delivery Plan, which informed them that "*sufficient information is available now to progress the SLP to submission*" (para. 4.12) and (again) that "*no showstoppers have been identified*" (para. 5.1). The letter from HCC Highways dated 27 May 2016 was not made available to the public until 21 October 2016, after it had been specifically requested under the EIR, when it was attached to draft minutes for the PPC meeting of 11 October 2016.

⁸ This letter states that the HCC Highways' position statement had been reported to the previous PPC meeting, on 12 July 2016. This statement is inaccurate: in fact, in answer to a public question specifically querying the relative scoring of sites on traffic grounds (from Jonathan Shreeves, Hunston Properties Ltd), officers had reported only *part* of the HCC position statement – see **Enclosure 14**. They omitted reference to the Work Plan or to the potential for a review of the spatial options in the SLP. Councillors' discussions of the scoring in the DSSOE at that meeting and their decision to recommend submission of the SLP were therefore based on an incomplete understanding of HCC Highways' position. The "Further Transport Evidence Base Work Plan", which includes the full position statement, was added as an Appendix to the minutes of this meeting only after the SLP had been submitted for examination.

PPC during 2015 and answers to public questions, the Council had previously taken the stance that detailed traffic modelling would be undertaken in relation to the SLP⁹.

48. The suggestion that the requirement of traffic modelling is inappropriate for an authority with a two-stage process is, in any event, illogical. The SLP is the point at which the Broad Locations are selected. The DLP will not change that selection, merely implement the detail. It is obvious, therefore, that traffic modelling to inform the selection of sites must take place at the SLP stage, even if further traffic modelling may need to take place at the DLP stage.
49. The first stage of the “Further Transport Evidence Base Work Plan” took place very shortly before the SLP was submitted for examination. This first stage involved the “desk top study” which was discussed in April 2016, which is referred to in the Work Plan as a “Technical Note”. The Technical Note was inserted into the Infrastructure Delivery Plan (at Appendix 13A) at the last minute before submission, but was not placed on the agenda for discussion by PPC prior to submission and was too little, too late in terms of influencing the content of the SLP¹⁰.
50. As regards CBC and Luton as highway authorities, as noted above, Luton specifically asked to be involved with traffic modelling if the NW Harpenden broad location was taken forward, but has not been. From the evidence available, the Council does not appear even to have discussed the possibility of working with CBC on traffic modelling.
51. Taken all together, it is apparent that the Council has failed in its DtC with highway authorities. The SLP (at para. 3.21) states that one of the Strategic Objectives is “Delivering Infrastructure” and claims that

“The Council will take appropriate measures throughout the Plan period to ensure that an historic infrastructure deficit is addressed and that new development fully addresses current and future physical, social and green infrastructure needs.”

Yet because the Council has not done what HCC and Highways England have made clear it needed to do, it has simply no idea whether the SLP has any prospect of fulfilling this Strategic Objective. These are fine words without any substance at all.

⁹ See: Report to PPC 12 Feb 2015 “Responses to Consultation – Key Infrastructure Issues”; Report to PPC 21 May 2015 “Strategic Local Plan: Infrastructure Delivery Plan Research/Update” and answers to public questions from David Mitchell, Chris Marsden and David Rankin 21 May 2015.

¹⁰ At the meeting on 12 July 2016, officers produced a “summary” of the Technical Note in response to some public questions. The summary, produced at the meeting itself and not available to councillors or the public beforehand, contained selected extracts from the Technical Note. When it comes to considerations of soundness, the Inspector will be shown how the summary presented a distinctly misleading picture when compared with the full Technical Note.

52. When questioned at the Initial Hearing, Mr Briggs placed heavy reliance on HCC Highway's position statement. But this position statement is so hedged about by caveats as to be utterly meaningless. It states that HCC Highways will support the SLP – but only “*subject to further work/modelling being carried out to establish whether feasible mitigation(s) exist*” and on the basis that “*in the event that mitigation is not achievable this would require a review of the Spatial Options which form the Local Plan*”. In essence, HCC are saying only that they will support the SLP if it turns out, once the necessary work has been done, that there is nothing in it not to support; and if the contrary is found, it will not support the SLP's choice of spatial options.
53. In any event, as submitted above, this is not a legally appropriate position for HCC Highways or the Council to take and cannot be adopted by the Inspector. If, as is plainly the case, the Council has failed in the DtC in relation to the SLP, that failure cannot be “repaired” by later work on the DLP, or by promising a review which will start the SLP process of site selection all over again.

Schools

54. HCC Education, as a County Council, is a DtC body pursuant to s.33A(1)(b) and the importance of the DtC in relation to strategic planning on education matters is emphasised in PPG para. 14, set out above.
55. For some considerable time, HCC Education has been asking the Council to allocate a site in the SLP for a new secondary school for Harpenden and its surrounding villages. HCC Education's Reg. 18 consultation response (**Enclosure 15**) at paras. 1.5-1.7 summarises representations to this effect made in 2011. The consistent message from HCC Education has been that the need for additional secondary school capacity exists now and arises from the existing population and not just proposed new development: see Reg. 18 consultation response at para. 3.12, 3.15 and 6.11; Reg. 19 consultation response para. 4.9.
56. The question of a school is an issue of strategic importance for Harpenden and the villages because the school is unlikely to be accommodated on a non-Green Belt site and HCC's proposed timescales for the school mean that a planning application cannot await the finalisation of the DLP. HCC Education's position is that the school is a “showstopper” item of infrastructure: see Reg. 18 consultation response (Enclosure 15) at para. 8.2.
57. Despite these requests, the Council refused to consider whether a site for a new school should be allocated in the SLP, insisting that sites for schools will only be identified in the DLP. In practice, therefore, HCC Education finds itself having to satisfy the stringent “very special circumstances” test in NPPF para. 87.

58. The Council should have considered the issue of a new secondary school for the existing residents of Harpenden and the villages in advance of, or at least simultaneously with, planning for housing for new residents.
59. The Inspector needs to be aware that the particular site in Harpenden which has been identified by HCC Education ("Site F") has not met with universal approval, for a number of reasons, including the fact that it is a Green Belt site which is not one of those identified by the Green Belt Review as contributing least to Green Belt purposes, and because of the traffic which it is feared a school on that site will generate down the already congested Lower Luton Road.
60. Had the Council properly collaborated with HCC Education on this issue, HCC Education's education need figures could have been robustly tested and proper consideration given to whether "exceptional circumstances" exist justifying allocation of a school site and, if so, which. Delaying this process to the DLP means that the choice of sites for the school is limited, because some of the potential sites, in particular the NW Harpenden Broad Location (which was specifically assessed by HCC Education as a possible location for the school), have already been allocated for housing. Furthermore, had the Council properly planned for a secondary school as part of the SLP and carried out traffic modelling as HCC Highways has required, the issue of school-related traffic could have been properly addressed in the selection of both school and housing sites.
61. The Statement does not exhibit any meeting notes with HCC Education. From EIR responses, the Representors are aware that a meeting took place between the Council and HCC Education on 26 January 2016; a copy of a follow-up letter is at Enclosure 16. This made clear that HCC Education had received advice from Counsel that the failure to allocate a site for a school, and the allocation of the NW Harpenden broad location for housing, in the SLP, rendered it unsound.

The LEP

62. The Council has a specific obligation to "have regard to" the activities of the LEP pursuant to s.33A(2)(b) of the 2004 Act.
63. At page 16 of the Statement is a plan taken directly from the LEP's Strategic Economic Plan. This shows three growth areas. One, the "M1/M25 growth area" includes Hemel Hempstead and St Albans, but not Harpenden.

64. The Council makes much in its Representations of the fact that it has “had regard to” the activities of the LEP in allocating land for housing at Hemel Hempstead. It fails to mention, however, that it has not had any regard, in the scoring of Green Belt sites, to the fact that St Albans is within, but Harpenden without, the LEP’s Growth Area. This is because it is politically necessary for there to be “parity” of Green Belt release between the City of St Albans and the town of Harpenden, regardless of the LEP’s strategies. In this, as in many aspects of the SLP’s preparation, the Council has put politics above planning. It has failed in its DtC because it has “had regard to” the activities of the LEP only when it suited the Council’s political ends and has otherwise ignored them.

**JOANNE WHITEHEAD
(JOANNE WICKS QC)
31 October 2016**

Appendix 1 – ID references on Council’s Consultation Portal for Reg. 19 Consultation

Name	ID
Harpenden Green Belt Association (Mr David Rankin)	866541
The Harpenden Society (Mr Christopher Marsden)	972587
Joanne Whitehead	343745
CBC (Mr Jason Longhurst)	978337
HCC Highways (Mr Paul Donovan Environment Department)	978222
Highways England (Heather Archer)	970237
HCC Education (Matthew Wilson HCC Planning Policy Team)	905310

List of Enclosures

1. Samuel Smith Old Brewery (Tadcaster) v Selby DC
2. Planning Advisory Service “Doing Your Duty – Practice Update”
3. Graphic showing NW Harpenden Broad Location and NLP228
4. CBC Response to Reg.18 consultation
5. Harpenden Town Council letter to Council, 14 June 2016
6. HCC Highways Response to 2009 consultation on Core Strategy
7. Local Plan Protocol Oct 2014
8. Local Plan Protocol May 2015
9. HCC Highways’ Response to Reg. 18 consultation
10. Highways Agency’s Response to Reg. 18 consultation
11. HCC Highways letter to Council, 27 May 2016
12. Draft meeting notes of meeting HCC Highways and Council, 13 June 2016
13. Council’s letter to HCC Highways, 27 July 2016 and response 2 Aug 2016
14. Public questions and answers to PPC 12 July 2016
15. HCC Education’s Response to Reg. 18 consultation
16. HCC Education’s letter to Council, 4 Feb 2016