

Examination into the Luton & southern Central Bedfordshire Joint Core Strategy

Exploratory Meeting at 14.00 hours (2pm) on Wednesday 18 May 2011

Summary of the Inspector's Concerns

The Joint Technical Unit is requested to respond to the Programme Officer by Monday 9 May 2011 to the following points, answering concisely those questions for which answers are available now, and repeating where necessary any information already given to the Inspector. A brief indication of the timescale for responding to more involved questions and for any necessary responses back from the Joint Committee should be provided (see item 8 of the Agenda). This whole response should then be placed on the CS web site, with paper copies provided at the Exploratory Meeting.

Introduction

1. This paper sets out my main concerns to date on the Joint Core Strategy (the CS) that have led me to call an Exploratory Meeting (the EM). This does not mean that I have failed to appreciate the hard work that has gone into the CS, or that I have made a formal determination that it is unsound at this point. Before progressing to arranging hearing sessions these key concerns merit further discussion.
2. The EM agenda sets out the options for dealing with these concerns, one of which would be to defer the start of the Examination to enable the Council to suggest alterations to the CS and its evidence base. Some guidance on how to handle changes is on the PAS web site at: <http://www.pas.gov.uk/pas/core/page.do?pageId=64905>.
3. There is one minor administrative point - the Joint Committee's delegated authority to the Head of the Joint Technical Unit (the JTU) of October 2010 allows for him to make only minor changes to the CS which "*do not go to the heart of the policies or allocations*". Thus, the Examination may become difficult and lengthy if the JTU representatives are unable to agree quickly to suggested changes or to make suggested changes of their own in response to concerns raised. Can this be speeded up or resolved?
4. My main concern is that the policies in the CS do not clearly answer the key questions set out in Planning Policy Statement 12 (PPS12) at paragraph 4.1 and elsewhere:
 - **what** will be delivered?;
 - **where** will it be delivered?;
 - **when** will it be delivered?; and
 - **how** will it be delivered through the CS and other subsequent Plans?

Is the CS legally in 'general conformity' with the Regional Strategy?

5. Being in general conformity with the Regional Strategy (the RS) is a legal requirement (section 24 of the 2004 Act). The CS assumes that the RS no longer forms part of the development plan, but that is not correct¹. Whilst the Government has announced its intention to revoke the RS in the current Localism Bill, that has not yet occurred and the results and implications of the Government's environmental assessment (announced on 5 April 2011) of that proposal are not yet known.
6. The CS says that it does not provide the RS housing numbers but instead proposes a reduced amount of housing - some 14% less - based on a 'natural growth' or 'local need'

¹ http://www.planningportal.gov.uk/uploads/pins/advice_for_inspectors/impact_of_cala_homes.pdf : see Annex B

(see Document H4). Others have said (based on other JTU documents) that the reduction from the RS target is more than this, perhaps as much as 10,000 dwellings less. I have been unable to find the evidence for the local growth/need calculations or the reasons why that is preferred over the RS figures. The justification for lower housing figures than those in the RS needs to be explained. The method of calculation of the RS housing figures for the CS plan period as derived from RS policy H1 should also be explained as I do not understand how it has been decided or the reasons for the different figures given above by the JTU and others.

7. Similarly, the CS appears to provide for a different (lower) natural population increase employment growth level than that in the RS. The reasons for this need to be explained, together with an explanation of the calculation of the RS policy E1 indicative [my emphasis] target figure for the CS plan period and how the CS figures are calculated from the Employment Land Reviews. I do not understand the explanations given in Document EC5 which are not easy to relate to the employment proposal in policy CS1 and its paragraphs 3.33 to 3.35 and Table 3.2, and which do not clearly explain the need for contingency employment land or its distribution.
8. Some respondents complain about the shorter time period for the CS (to 2026) rather than that set out in the Milton Keynes South Midlands Sub-Regional Strategy which runs to 2031 (with 'safeguarded' land), and I cannot find an explanation for this. Is it because the JTU considers this part of the Sub-Regional Strategy not to be part of the RS due to RS paragraph 13.80, or is it due to other factors? A series of background papers or notes is needed on all these RS concerns to justify the CS differences.

Are the Proposals Map changes and Key Diagram clear and legal?

9. I have seen the Legal Opinion by Peter Village QC (available on the CS web site) expressing doubts about the legality of the Proposals Map changes proposed in the CS. The Inspectorate has advised² that "*many authorities are showing proposed changes through the use of inset plans within the submitted DPD. Generally Inspectors have found that this pragmatic approach does not create any problems*". The Inspectorate's advice goes on to say that a complete 'submission version' Proposals Map creates confusion between what is carried over and what is new. It is therefore not recommended unless there are wholesale changes proposed to a majority of designations – and as there are no wholesale changes proposed in this CS it would not be needed.
10. The above pragmatic approach has been used in all DPDs examined to date with no problems, but I acknowledge that it could be wrong in law for the reasons Mr Village sets out. The JTU should comment on Mr Village's legal point by the date set above.
11. My practical concerns are whether the boundaries shown on the Proposals Map Amendments in Appendix A2 of the CS for the strategic allocations are certain, precise and complete (e.g. the by-pass routes); their relationship (if any) to proposals shown on the Key Diagram; and the meaning and status of the various proposal symbols on the Key Diagram, such as the "New Luton North Railway Station". On this last Key Diagram point, are all the items shown strategically necessary to ensure the implementation of the CS? If so, why have they not all been allocated in the CS? If not, why are they on the Key Diagram? Are they likely to be implemented (see later)? Paragraph 4.1 of PPS12 indicates that it is only locations for strategic development that should be indicated on a key diagram.

Consultation procedures – legal compliance

12. The Legal Opinion by Peter Village QC expresses doubts about the legality of the consultation procedures of the submission CS arising from the March 2011 change in the

² http://www.planningportal.gov.uk/uploads/pins/ldf_learning_experience_sept2009.pdf : see paras 52 to 57.

Statement of Community Involvement. Again, the JTU should comment on Mr Village's legal point by the date set above, unless it now concedes the point. If there is a pause in the Examination then the JTU may decide, even if it disagrees with the point, to use the time to carry out the consultation that Mr Village believes is required.

Is the CS effective?

13. Many of the policies and their provisions at first sight appear not to be **effective** (a soundness criterion) either because the Vision and Strategic Objectives from which they flow are unclear; or because they do not answer the vital questions (see above) that any CS policy has to answer; or because they do not deal with the tough, critical issues; or because they fail to adequately explain how they will be delivered or implemented; or because of a combination of these failings.

Vision and Strategic Objectives

14. The Vision and Strategic Objectives are not locally specific and distinctive. Spatial planning is defined in PPS12 as being about "*place shaping and delivery*". If it does not shape a place and/or cannot be delivered then it should not be in the CS (paragraphs 2.1 to 2.7 of PPS12).
15. The Vision and Strategic Objectives are vague and aspirational, and do not provide a sense of purpose and direction. They do not flow from a clear identification of the problems that affect the area. Whilst there are key issues and trends in Appendix A3, they act mainly to justify decisions already taken in the CS's policies. There is no direct causal relationship between them and the Strategic Objectives. A CS should give a clear message about the ways in which the area will change by its end date.

Policy effectiveness

16. Paragraph 4.1 of PPS12 sets out what a CS should include. As I have previously said, policies must say **what** will be delivered; **where** it will be delivered; **when** it will be delivered; and **how** it will be delivered. Sometimes policy is included in the reasoned justification, contrary to Regulation 13(2) of the 2004 Local Development Regulations. At times I was left wondering what a policy, or a part of it, intends, and I give some examples below.

Critical questions

17. The critical strategic questions cannot be left in a CS to be answered by a subsequent master plan or other lower level planning document. Whilst the detail can be left to such documents, a CS must set out the broad principles and parameters within which the subsequent detailed decisions must be made. The CS is the place where the tough, hard and strategically important decisions have to be made.
18. For instance, I do not know why such an obviously major and strategically critical employment site like the Sundon Quarry Rail Freight Interchange is only "considered for allocation" in policy CS9 and has not been identified as a broad location for employment provision with its development principles resolved (e.g. infrastructure requirements and economic viability). Is such a major allocation to remain within the Green Belt? If not, what DPD will consider and amend the Green Belt boundaries? Sundon Quarry appears not to be effective. Conversely, the CS seems to be making detailed decisions that might not be needed at this stage - the North of Luton site (policy CS13) has been allocated when it is not set to deliver dwellings until 2019, so why is this not a broad location in the CS with the detail left for a future DPD to resolve? See the PAS web site: <http://www.pas.gov.uk/pas/core/page.do?pageId=469051>.
19. There are other allocations or recommendations in the CS which are unclear in their intent - are they strategic allocations or possible ideas to be decided in later DPDs? For

instance, in policy CS7 is the replacement football stadium for Luton Town Football Club a strategic allocation (in which case it should be firmed up as such with detailed evidence); or is it a broad location backed up by reasonable, proportionate evidence, with the development details left to be resolved in a later DPD (which and when?); or is it merely a possibility to be explored in a later DPD? I cannot find any evidence at the moment to justify safeguarding the land. If reliance is placed on the 'saved policy' from the Local Plan then why does the CS need to mention it?

20. I am concerned that the strategic allocations policies in the CS do not have the necessary level of detail in them. The policy in a CS for a strategic site (either allocation or broad location) should ideally cover the following matters (either in the policy or elsewhere):
- A clear objective/aim for what is intended to be achieved in the overall development;
 - Identification of site constraints - both those that are fixed and those that need to be overcome or mitigated;
 - All the different land uses/proposals and their scale that the site is to accommodate (e.g. xx housing, yy employment, community facilities etc);
 - What infrastructure (e.g. transport, education, social and community services) is needed to make that development a viable, attractive, sustainable location;
 - What of the above needs to be provided by when (i.e. inter-related phasing of all elements) and who will fund it and deliver it.
 - For an allocation: whether further detail is to be worked up in a master plan and/or SPD (if so, specify the timescales for its delivery);
 - For a location: stating that the detail is to be worked up in later DPD (possibly an AAP), specifying the timescales for its delivery.
 - For an allocation: milestones for progression of the development, e.g. application submission and commencement on site, phasing and consequences if missed. For a location, this aspect should be left to the later DPD.
21. It would be helpful for the CS to be supported by evidence which illustrates how the various elements might be accommodated within each strategic allocation. One way might be an indicative or first draft of a master plan. I would not endorse any such material (that would be the purpose of the later master plan) but it would serve to demonstrate that the proposals were achievable.
22. I am concerned that some of the critical decisions have not been taken by this CS and have been inappropriately devolved down to master plans. Examples include policies CS19 and CS21.

Delivery and implementation effectiveness

23. PPS12 (4.4) says that **delivery** is central to a CS. The CS has to show how its objectives will be delivered and that the resources required have a realistic prospect of being provided. The policies and proposals in the CS frequently say that they will be delivered in later Plans by site allocations policies (e.g. CS1, CS9, CS17 and CS22) or development management policies (e.g. CS7 and CS9). But none of these further Plans are shown as a present commitment in either Luton's or Central Bedfordshire's Local Development Schemes and so there seems to be little likelihood of them being produced in time to deliver these proposals within the required timeframe.
24. Moreover, I note that one of the joint authorities responsible for the CS, Luton Borough Council, is opposed to certain important aspects of the CS in terms of the lack of a Luton Northern by-pass, a desire for more housing than allocated, and a preference for housing to be located to the west of Luton. Therefore, I have doubts about how realistic will be the delivery of the policies in this CS without a clear commitment to its implementation by one of the two responsible constituent authorities.
25. There is a similar problem with the implementation of that part of policy CS1 which recommends an urban extension to the east of London Luton Airport. I am told (see the

separate Inspector Query on the CS web site) that this is not a strategic allocation, but that it is 'recommendation' to meet the employment needs of the area from 2016 and that it is partly dependant on the allocation of land in North Hertfordshire. But there is no commitment from North Hertfordshire to include it in any Plan. Its delivery is therefore not certain as there is no evidence of any joint cross-boundary working with North Hertfordshire showing that there is a reasonable prospect it would be allocated within the required timescale.

26. On that Airport employment proposal, I do not understand the nature of the 'recommendation'. It is shown as a new CS1 allocation on the Appendix A2 Proposal Map (a separate legal document from the CS) Amendments of the CS. To be an amendment to the Proposals Map implies that the site has been allocated in the CS. Or is it a broad location to be detailed in a later DPD? I note that policy EM3 in the Luton Local Plan allocates this site for employment, and that an outline permission has been granted (but not implemented). This leads to further soundness questions. Is this therefore a commitment to development in the Luton part? The EM3 policy and the outline permission's S106 Obligation provides for a new tunnelled access - is that to happen in this 'recommendation'? If so, why does the CS not say so, or give an alternative access route? Will a new access be able to cope with the additional area of land in North Hertfordshire and what work has been done to show this? Will the development be economically viable given the access cost? What is the justification for recommending an allocation of land in North Hertfordshire in the Green Belt as I cannot find it in the evidence base (it is not in Document EC2 which deals with the former East of Luton site)?
27. I am also unsure what the **contingency planning** is in the CS. Paragraph 4.46 of PPS12 says the CS has to show how it will deal with contingencies – in other words with foreseeable changes. I am concerned that the CS does not give an indication of what it would do if a vital infrastructure project was cancelled or delayed. There is contingency planning in the sense that land is available for development beyond the plan period, but what happens if one or more of the strategic allocations cannot be delivered on time or at all?

Whether the CS justifies the proposed development and proposals

28. PPS12 (4.8) states that a CS should be supported by evidence of what physical, social and green infrastructure is needed to enable the amount of development proposed for the area, taking account of its type and distribution. **Justification** of the policies is a key soundness criterion because the policies must be founded on a robust and credible evidence base.
29. The CS proposes the loss of **Green Belt** land so that land for future strategic development can be accommodated. There are other potential allocations that might involve the loss of Green Belt, such as Sundon Quarry, but this is not clear. National policy advice is that such boundary alterations should be related to a timescale which is longer than that normally adopted for other aspects of the Plan (2.12 of PPG2), possibly by identifying land to be safeguarded to meet longer term development needs. This has been done in this CS, but I do not know why the specific amounts of development have been chosen or how long they might satisfy development needs. From what I can see they appear to be the amounts left over after deducting the requirements for development up to 2026 within the sites. Clearly, I am concerned to ensure that no more Green Belt land is released than is necessary to satisfy national policy, but this has not been explained or justified. I do not know where exactly the safeguarded land is identified on the allocated sites (Annex B of PPG2). What are the policies for the safeguarded land's protection? A background or topic paper on this subject from the JTU would be of assistance.
30. A Level 1 **Strategic Flood Risk Assessment** has been completed. Has the Level 2 Assessment been completed (paragraph 9.26 of the CS), particularly for the strategic

allocations? If not, when will it be ready? What impact has this had on the PPS25 Sequential and Exception Tests for development proposed in the CS?

31. The **Housing Trajectory** (Document HC12) is not part of the CS. It should be included in an Appendix. It will be necessary to update it later to include the last monitoring year's figures (2010/11).
32. On **housing numbers**, the Strategic Housing Land Availability Assessment (SHLAA) is not directly related to the housing numbers now proposed in the CS, and appears to be based on the RS requirements with different plan period dates. This is a point allied to the RS general conformity issue above. I also do not know if the SHLAA takes account of the Government's recent changes to PPS3 policy on garden land and housing density, but it seems unlikely from the dates given. I think, therefore, that an updated SHLAA is necessary. I notice that some provision in the CS and the Housing Trajectory is made for elements variously called "additional urban capacity" and "unallocated growth in villages". I am not sure whether these are windfall figures which are allowed by the advice in PPS3. This could be explained in a background paper.
33. The **highway** evidence relates to the former versions of the CS and not to the submitted version. I am aware that updated evidence is due to be submitted soon and that there is a Statement of Common Ground between the two Councils and the Highways Agency to that effect (Document TR2). But at present I do not know what new highway and transport infrastructure is needed, when it is needed, which development it is needed for, or how much it will cost. Is any of it so strategically important that it needs to be allocated in the CS, e.g. the new M1 junction? Are the by-pass routes reasonably firm?
34. The evidence should cover who will provide the **infrastructure** and when it will be provided. In this CS the key development policies all have infrastructure implications of various degrees. The CS has an Infrastructure Schedule (Table 4.1), but it only covers the first five years of the plan period, including those requirements necessary at that time for the next five years. It is not related to particular CS policies or allocations, and it does not clearly set out what are the key or critical infrastructure projects needed to deliver the allocations and 'recommendations'. The CS Table appears to be based on information in the Infrastructure Delivery Plan & Funding Study [the IDP] (Documents GEN1.1 and GEN1.2). Neither set out what infrastructure is needed at what particular point or phase of a specified development. So I do not know whether the CS will deliver what it says it will, or at the time that it says.
35. Both the CS and the IDP mention a substantial "funding gap". I cannot find the information that tells me what that means in practice or how it might be solved so that development can be implemented. Please provide that information or direct me to it in the evidence base.
36. For development in the short term (5 years) I have not found the necessary detail to give me a high degree of certainty and confidence that the strategic allocations or the other employment or retail allocations or 'recommendations' can be delivered. I do not know if reasonable and sensible efforts to obtain infrastructure certainty have been made or not. Although I accept that the level of detail and certainty will be less for the medium (5 to 10 years) or longer term (11 to 15 years) sites or phases of development, I cannot find this information in the CS or its evidence base.
37. A CS has a key role in highlighting the main infrastructure needs – what is essential to deliver the strategy - so as to give them the backing of development plan status. Unfortunately, this CS does not adequately identify major infrastructure items that might hold up significant developments if they did not come forward at the right time.
38. I am particularly concerned about infrastructure evidence aspects of strategic allocations (policies CS13 to CS16). It would seem that the developments themselves will fund much of the infrastructure costs, yet I am not confident that there is an up-to-date

economic viability assessment (residual land value calculation) that would give me any comfort that this funding source is a realistic one (4.9 of PPS12).

39. Documents GEN4.1 and GEN4.2 on face value are a Study of the economic viability of the strategic site allocations. But the Study clearly states that it is a work in progress and that further details are required (e.g., on transportation matters) before it can be finalised (see paragraph 1.4). Moreover, the Study appears to be based upon values prepared in 2006 and 2008, and on development options (and new homes numbers) which are not now proposed in the CS. I question, therefore, the relevance and weight of these documents.
40. I find the infrastructure requirements for the strategic allocations to be very unclear – I cannot see exactly what is required or when for each site. One illustration of this is various by-passes or distributor or link roads that are to be provided as part of all the strategic allocations, along with the other transport infrastructure requirements in the plan area. When and how?
41. My preliminary view is that the CS should contain details of specific projects necessary for the implementation of its strategy (which it seems to do for the first five years) and for each proposal (which it does not do). My task is to examine the soundness of the submitted CS and not the supporting evidence, and my recommendations are binding only in relation to the content of the CS. But irrespective of where the necessary information is set out, I am concerned about the adequacy of evidence on infrastructure and the absence of policies/proposals in the CS which advance infrastructure delivery. At this stage I consider that the CS inadequately addresses infrastructure planning.

The CS's monitoring arrangements

42. PPS12 paragraph 4.47 sets out the requirements for monitoring and states: "*The delivery strategy should contain clear targets or measurable outcomes to assist this process.*" The CS in Appendix A5 has very broad brush indicators and targets for each policy, linked to the relevant Strategic Objective. I consider that more precise indicators/targets will be required for each policy, where possible. The following minimum information should be provided in respect of each policy; principal means of implementation, responsibility for implementation, timescale, resource implications, phasing, and targets and indicators.

Missing policy

43. I cannot find any policy for Gypsy, Travellers and Travelling Showpeople in the CS. The RS has relevant policies and there is submitted evidence (Documents H9 to H11). Have I missed it?

Future Examination of the CS

44. In addition to the above, a range of more detailed issues on the CS and its policies would also need to be addressed if the Examination was to proceed.

David Vickery: April 2011