

**RE: SAFEGUARDED LAND
IN CHESHIRE EAST**

ADVICE

1. I am instructed on behalf of Bollington Town Council, Chelford Parish Council, Disley Parish Council, and Prestbury Parish Council (“the Local Councils”). The Local Councils all fall within the administrative boundary of Cheshire East Council (“CEC”).
2. CEC is engaged in the promotion of a draft Site Allocations and Development Policies Document (“SADPD”) that is intended to form part of its statutory development plan. A second publication version of a draft SADPD has been produced by CEC, and is undergoing a process of public consultation (that is due to close on 7 December 2020)¹.

¹ What is referred to by CEC as an initial publication draft of the SADPD was issued for consultation in August 2019. That document has undergone significant alteration in the current draft SADPD.

3. The Local Councils are concerned about the approach taken by CEC to the identification of safeguarded land within the draft SADPD. In particular, draft policy PG12 designates 8 sites as safeguarded land, and confirms that policy PG4 of the Local Plan Strategy (“LPS”) will apply to those sites. Within the draft supporting text for emerging policy PG12, it is stated (at paragraph 2.18) that;

“LPS Policy PG 4 'Safeguarded land' sets the policy related to land between the urban area and the inner boundary of the Green Belt that may be required to meet longer-term development needs. It also lists the areas of safeguarded land identified in the LPS and confirms that it may also be necessary to identify additional non-strategic areas of safeguarded land in the SADPD.”

4. The Local Councils are concerned that CEC’s approach to the release of land from the Green Belt to be identified as safeguarded land within draft policy PG12 is erroneous, in that it fails to address the requirements of national policy. Paragraph 136 of the National Planning Policy Framework (“the Framework”) is in the following terms;

“Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.”

5. In light of the provisions of the Framework, the Local Councils consider that CEC has not demonstrated exceptional circumstances so as to justify the release from the Green Belt of the 8 sites identified within policy PG12 of the draft SADPD.

6. That concern has been expressed to CEC. In an e-mail from Councillor Toni Fox (CEC's cabinet member for planning) to my instructing consultant dated 16 October 2020 it is stated that;

"The Local Plan Strategy is an up to date, strategic plan. It establishes that 200 hectares of safeguarded land will enable the Green Belt boundary to retain a sufficient degree of permanence so that it will not need to be reviewed again at the end of this plan period in 2030.

The provision of 200 ha of safeguarded land is established in the evidence for the LPS and confirmed in paragraph 8.57 (supporting text to LPS policy PG4 (Safeguarded Land)). The LPS identifies 186.4 hectares of safeguarded land, meaning that a further 13.6 ha needs to be identified in order to demonstrate that the Green Belt boundaries will not need to be altered again at the end of the plan period.

The evidence and justification for the Site Allocations and Development Policies Document approach to safeguarded land and its proposals is set out in full in the Local Service Centres Safeguarded Land Distribution Report [ED 53]. The exceptional circumstances required to make alterations to Green Belt boundaries are fully set out and justified in the LPS evidence base and summarised in paragraphs 8.42 to 8.49.

NPPF paragraph 136 also states that where strategic policies have established a need for changes to Green Belt boundaries, detailed amendments to those boundaries can be through non-strategic policies. The Site Allocations and Development Policies is a non-strategic Plan set within the strategic context established through the LPS."

7. Accordingly, it appears to be CEC's position that;

(i) the LPS, as CEC's strategic plan, identifies that 200 ha of land should be identified as safeguarded land,

- (ii) the exceptional circumstances required to justify the release of that level of safeguarded land was established within the evidence base that supported the LPS,
- (iii) the draft SADPD is a non-strategic plan that may implement detailed Green Belt boundary changes, “within the strategic context established through the LPS., and,
- (iv) as such, CEC is not required to demonstrate exceptional circumstances to support the release of sites from the Green Belt within policy PG12 of the draft SADPD.

8. I disagree. In particular, the starting premise (at point (i) above) advanced by CEC does not correspond with the policy position set out in the LPS.

9. Amongst other things, policy PG3 of the LPS identifies 26 sites for removal from the Green Belt and designation as either land allocated for development or safeguarded land. At its paragraph 6, policy PG3 states that;

“In addition to these areas listed for removal from the Green Belt, it may also be necessary to identify additional non-strategic sites to be removed in the Site Allocations and Development Policies Document.” (emphasis added)

10. Consistent with that approach, policy PG4 of the LPS (addressing safeguarded land specifically) lists the sites designated as safeguarded land within the LPS (that are also referred to in policy PG3) and states that;

“In addition to these areas of safeguarded land listed; it may also be necessary to identify additional non-strategic areas of land to be safeguarded in the Site Allocations and Development Policies Document.” (emphasis added)

11. Accordingly, the terminology used in policies PG3 and PG4 of the LPS is clear, and confirms that there is no certainty surrounding the further release of land from the Green Belt (whether by way of allocation for development or as safeguarded land).

12. In addition, there is no reference in LPS policies to the release of 200 ha of land from the Green Belt to be designated as safeguarded land. Policies PG3 and PG4 achieve the designation of 186.4 ha of land as safeguarded land, and simply record that there may be a need for the further identification of land within the SADPD. The policies themselves do not pre-judge the existence of that need.

13. That approach is consistent with the understanding of the inspector who conducted the examination into the LPS. That Inspector’s findings include the following;

“CEC also confirms that the SADPD will consider the need to provide a modest amount of Safeguarded Land at the LSCs [Local Service Centre’s], if necessary, in line with the spatial distribution of Safeguarded Land envisaged in the supporting evidence.”²
(emphasis added).

² at paragraph 102 of the LPS Inspector’s report.

14. Paragraph 8.57 of the LPS forms part of the supporting text to policy PG4 and states that;

“Given the desire to protect the countryside and minimise the impact on the Green Belt, it is appropriate to provide only the minimum amount of safeguarded land needed to make sure that Green Belt boundaries do not need to be altered again in the next plan period. Considering the potential options for accommodating development post 2030, it is considered that there are grounds for a modest reduction in the timescale for projecting forward needs, to provide for between 8-10 years of safeguarded land. Factors in relation to future housing densities have also been considered, including an ageing population, increased provision of smaller units and enabling higher densities through improved urban design. It is considered that there are sufficient grounds for assuming future housing densities of between 30 and 40 dwellings per hectare. A range of scenarios have been tested using the parameters on time period for projections and housing densities, which result in a requirement of between 155 ha and 244 ha of safeguarded land. Overdependence on any single influence is not appropriate given the timescales and variables involved, and a mid-point of 200 hectares is selected to take account of all factors concerned.”

15. I note;

- (i) the supporting text does not alter the plain words of the policies. Those policies confirm that the necessity for additional Green Belt release in order to designate further land as safeguarded land is a matter to be addressed in the SADPD, and,
- (ii) paragraph 8.57 confirms that the identification of a figure of 200 ha turned on a consideration of a range of factors that, in turn, generated a range of between 155ha and 244ha as the requirement for safeguarded land.

16. In my view, and for the SADPD to accord with the policies of the LPS, CEC is obliged to examine the need for the release of additional Green Belt land for designation as safeguarded land as part of the exercise in producing the SADPD.

17. That exercise would not only be consistent with the policies of the LPS, but also with the terms of national policy. In particular, with specific reference to the setting of detailed boundaries (that may be conducted in 'non-strategic' plans), paragraph 139 of the Framework includes the following;

"When defining Green Belt boundaries, plans should:

- a) ensure consistency with the development plan's strategy for meeting identified requirements for sustainable development;
- ...c) where necessary, identify areas of safeguarded land between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period..."

18. In order to comply with these provisions of national policy, the SADPD should examine the need for the release of further land from the Green Belt for identification as safeguarded land so as to;

- accord with policies PG3 and PG4 of the LPS and thereby ensure consistency with the development plan's strategy, and,
- meet the express requirement of the Framework, namely, to identify safeguarded land only where necessary.

19. It is not clear to me that CEC has conducted an up to date assessment of the need for the identification of further safeguarded land. Councillor Fox's e-mail to my instructing consultant made reference to part of the evidence base for the draft SADPD. The document with reference number ED53 is called the Local Service Centres Safeguarded Land Distribution Report ("ED53") and is dated August 2020. Amongst other things, it makes clear that;

- (i) CEC is proceeding on the basis that the LPS has established that 200ha of land should be identified as safeguarded land, and, as a result, the SADPD is to identify 13.6ha of safeguarded land³, and,
- (ii) the purpose of the Report is to address the distribution of that 13.6ha⁴.

20. Before addressing CEC's methodology for distribution (within section 2 of the Report), the ED53 concludes that;

"1.29 ...Unlike the situation in relation to provision of housing and employment land during this plan period, the further requirement for 13.6 ha safeguarded land remains the same now as it did upon adoption of the LPS in July 2017.

1.30 As set out above, the LPS (¶18.57) considers that 200 ha safeguarded land will enable the Green Belt boundary to retain a sufficient degree of permanence. It is considered that exceptional circumstances still exist to justify further alterations to the Green Belt boundary in the SADPD, to enable the full 200 ha

³ e.g. paragraph 1.3. At paragraph 1.17, the 200ha is said to have been "fixed" by the LPS.

⁴ at paragraph 1.4 of the Report.

safeguarded land required in order to comply with the requirements of NPPF ¶139 regarding the permanence of the Green Belt boundary.”

21. Apart from the assertion (at ED53’s paragraph 1.29) that the position remains the same as in July 2017, there is no assessment within ED53 by reference to up to date evidence that there is now a necessity for the designation of additional land (beyond that designated in the LPS) as safeguarded land.
22. I am not aware of any other part of the evidence base prepared in support of the draft SADPD that sets out an up to date assessment of the necessity for the further release of 13.6ha (or any other amount) of land from the Green Belt and its designation as safeguarded land.
23. My instructions list a series of factors that may be relevant in determining the question of the necessity for additional allocation of safeguarded land within the draft SADPD. I am not in a position to conclude whether or not those (or other factors) are relevant to that question, and if so, what weight they should carry in any proper assessment. However, it is sufficient to conclude that there will be factors relevant to the issue of need for additional Green Belt release and designation of safeguarded land⁵, and, on the face of it, CEC has not sought to assess any such factor, relying instead on the assertion that there has been no change since adoption of the LPS in 2017.

⁵ for example, my instructions refer to the fact that development on brownfield/windfall sites is well in excess of the level anticipated at time of adoption of the LPS.

24. In conclusion, it is my view that;

- (i) the policies of the LPS (PG3 and PG4) require CEC to determine whether or not it is necessary to release further land from the Green Belt to be designated as safeguarded land,
- (ii) that clear requirement of policy is not altered by the terms of supporting text within the LPS,
- (iii) that policy approach was one that was recognised (and endorsed) by the inspector who examined the LPS,
- (iv) it is a policy approach that is consistent with national policy (at paragraph 139 of the Framework), and,
- (v) CEC does not appear to have conducted an up to date assessment of the need for release of further land from the Green Belt to be designated as safeguarded land within the SADPD.

25. I acknowledge that the Framework refers to the requirement to establish exceptional circumstances to justify the alteration of Green Belt boundaries as a matter for strategic policy-making⁶. My conclusions (summarised in the preceding paragraph) are

⁶ at paragraphs 136 and 137 of the Framework.

not directed at the establishment of exceptional circumstances required to justify the alteration of Green Belt boundaries. It is clear that the principle of Green Belt boundary alteration was justified by the demonstration of exceptional circumstances through the LPS. However, when it comes to detailed boundary adjustment (that is the subject, amongst other things, of the SADPD), CEC must demonstrate the need for those adjustments so as to comply with local and national policy as set out above.

26. I also note the reference in both my instructions and the e-mail from Councillor Fox to the case of **Aireborough Neighbourhood Development Forum v Leeds City Council v Secretary of State for Housing, Communities and Local Government, Avant Homes (England) Limited, Gallagher Estates Limited**⁷. That case concerned a successful challenge to a site allocations plan on the grounds, amongst others, that inadequate reasons were given for finding exceptional circumstances to justify the release of Green Belt within that plan. As stated at paragraph 103 of the Judgment;

“The job for the Inspectors in deciding whether there should be GB release was to apply the NPPF, and in particular para 83. They therefore had to determine whether there were exceptional circumstances to justify GB release. If the level of need in the CS [Core Strategy] was undermined in emerging policy then that was a matter that they had to take into account and give reasons in respect of.”

27. Accordingly, the **Aireborough** case proceeded on the basis that exceptional circumstances were required in order to justify the release of Green Belt land within

⁷ [2020] EWHC 1461 (Admin).

a site allocations plan in accordance with national policy advice. The national policy of application in the **Aireborough** case was the 2012 version of the Framework. Its paragraph 83 is in different terms to paragraph 136 of the current (2019) version of the Framework. It stated that;

“Local planning authorities with Green Belts in their area should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term., so that they should be capable of enduring beyond the plan period.”

28. Unlike paragraphs 136 and 137 of the current version of the Framework, the earlier national policy provision did not refer to the demonstration of exceptional circumstances only as part of the strategic policy-making process. I have acknowledged the apparent effect of paragraphs 136 and 137 of the Framework (i.e. that the requirement to demonstrate exceptional circumstances appears to be limited to the strategic policy-making process). I have also concluded that separate to the demonstration of exceptional circumstances, the LPS policies themselves (PG3 and PG4) together with paragraph 139 of the Framework require CEC to demonstrate the need for Green Belt release and the designation of further safeguarded land.

29. Separate to the question of need for the designation of further safeguarded land through the release of Green Belt land, my instructions raise the issue of CEC’s selection of sites to be designated under policy PG12 of the draft SADPD.

30. The exercise of site selection is referred to in ED53 at paragraph 3.87 in the following terms;

“The assessment of the availability of sites to accommodate safeguarded land takes account of:

- the ‘Assessment of Urban Potential and Possible Development Sites Adjacent to the Principal Towns, Key Service Centres and Local Service Centres’⁸, which identified a pool of sites to be considered at SADPD stage;
- sites submitted in the LPS Proposed Changes Version that were not considered large enough to be a strategic site (as detailed in the Final Site Selection Reports);
- a call for sites exercise, held by the council, which ran from 27 February 2017 to 10 April 2017, to help inform any further land allocations for development that are made through the SADPD;
- consultation on the First Draft SADPD, which took place between 11 September and 22 October 2018; and
- consultation on the initial Publication Draft SADPD, which took place between 19 August and 30 September 2019.”

31. Similarly, CEC’s Site Selection Methodology Report (document reference ED07, dated August 2020) states that;

“This work involved utilising existing sources of information including the results of the Assessment of the Urban Potential of the Principal Towns, Key Service Centres and Local Service Centres and Possible Development Sites Adjacent to Those Settlements (August 2015), sites submitted to the Local Plan Strategy Proposed Changes Version that were not considered to be large enough to be a strategic site (as detailed in the Final Site Selection Reports), and sites submitted through the call for sites process, the First Draft SADPD consultation and the initial Publication Draft SADPD consultation.”⁸

⁸ at paragraph 2.6.

32. Paragraph 35 of the Framework sets out the tests of “soundness” for development plans, including the requirement that plans should be;

“Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence”.

33. The sources of data that are referred to in the Council’s evidence base (in the extracts from the evidence base documents set out above), appear to me to represent a reasonable basis for the identification of potential sites to be the subject of designation in the emerging SADPD. Whilst my instructions state that the only clear basis for CEC’s selection of sites is contained in an Urban Potential Study from 2012, that contention does not correspond with the list of sources that the Council refers to in its recent documents (ED53 and ED07). Based on the information that I have been provided with, it is not clear to me that CEC has fallen into error in the process of site selection. Of course, that conclusion does not dilute my conclusion in respect of what is clearly the primary issue, namely whether or not the Council is required to demonstrate a need for the further release of Green Belt land for designation as safeguarded land within the draft SADPD.

Kings Chambers,
Manchester, Leeds, Birmingham.

Ian Ponter,
11 November 2020.

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IN CHESHIRE EAST**

ADVICE

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